Lao v. Villones-Lao: Confusion over the Admissibility of Notarized Documents in Civil and Criminal Cases

Antonio M. Elicaño[*]

* J.D. '94, *with honors*, Ateneo de Manila University School of Law. The author formerly served as the Chief Judicial Staff Head of Chief Justice Hilario G. Davide, Jr., and the Deputy Executive Director of the Preparatory Commission on Constitutional Reform, headed by Chief Justice Andres R. Narvasa (Ret.). The author currently works as an attorney with the Bernas Law Offices; lectures on Constitutional Law, Statutory Construction, and Legal Writing at the Ateneo Law School; and serves as the Faculty Adviser of the Ateneo Society of International Law (ASIL). This essay is written pursuant to the Sasakawa Young Leaders Professorial Chair bestowed upon the author for the school year 2001–02. The author expresses his gratitude to Rev. Fr. Joaquin G. Bernas, S.J., Dean of the Ateneo Law School, for his support in having made this grant possible, and to Atty. Jose A. Bernas, the Managing Partner of the Bernas Law Offices, for his input to this essay and his support of the author's academic pursuits. The author also acknowledges the contribution of Ms. Maricris Ang, of the ASIL, to this essay.

The author was Articles Editor of Volume 37 and Editor-in-Chief of Volume 38, *Ateneo Law Journal*. His past works published by the *Journal* include: *An Alternative Framework for Miranda Rights*, 43 ATENEO L.J. 293 (1999); and *The Malmstedt and Cuizon Surveys Revisited: Refuting Exigent Circumstances as an Emerging Norm in Warrantless Arrests and Searches*, 41 ATENEO L.J. 399 (1997).

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INTRODUCTION

It would seem far too elementary to require citation of authority that a notarized document, by the mere fact of notarization, does not speak *ex cathedra*, but merely raises, in favor of the document, a rebuttable presumption of regularity as to its due execution and authenticity. Interestingly, however, in the course of the author's practice, he has encountered a disturbing trend of imprecise holdings by the Supreme Court on this subject, which has been utilized by overzealous (to say the least) members of the Bar to further their advocacy. It is with these in mind that the author has embarked on this essay, with the hope of setting forth proper and scholarly parameters as regards the admissibility of notarized documents in civil cases, and that of *ex parte* affidavits in criminal cases.

Truth be told, it was in the course of litigation in a criminal case that the author encountered the citation by adverse counsel of *Lao v. Villones-Lao*,[1] in support of the proposition that *ex parte* affidavits be admitted and appreciated by the trial court:

> Exhibits "[?]" to "[?]" are considered public documents admissible in evidence without further proof of its [*sic*] due execution and is [*sic*] conclusive as to the truthfulness of its [*sic*] contents ...[2]

The author found it bizarre that there could actually exist authority for the proposition that the mere fact of notarization bestows an irrefutable quality of truthfulness to the averments in a notarized document. What further confounded the author about adverse counsel's posturing was the latter's citation of *Lao*, in view of the nature and purpose of the documents which adverse counsel sought to have admitted and appreciated in the course of criminal proceedings.

These prompted the author to examine the primary source of *Lao*, only to find that the complete statement of the Supreme Court in *Lao* was as follows:

> While a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents, *this rule is nonetheless not absolute, but may be rebutted by clear and convincing evidence to the contrary.*[3]

What was inescapable was the statement that "a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents," bore closer examination, if only for three (3) reasons.

First, the very clause in *Lao*, which follows the statement under examination, negates the proposition that a "conclusive" presumption of

1. 306 SCRA 38 (1999).
2. *Id.* at 396, *citing* Baranda v. Baranda, 150 SCRA 59, 66-67 (1987); Antillon v. Barcelon, 37 Phil. 148 (1917); Embrado v. CA, 233 SCRA 335-48, 343 (1994).
3. *Id.* [emphasis supplied].

truthfulness attaches to a notarized instrument simply by virtue of notarization. Second, Section 30 of Rule 132 merely affords a *prima facie* presumption of due execution to a notarized document.[4] Third, an authority in Remedial Law advances a diametrically opposed view from the statement in *Lao* under examination, *viz.*: "[I]t is well-settled that public documents `are not conclusive evidence with respect to the truthfulness of the statements made therein by the interested parties ....'"[5]

In *Lao*, the authorities cited for the statement under examination were the following holdings of the Supreme Court: *Baranda v. Baranda*,[6] *Antillon v. Barcelon*,[7] *Mendezona v. Philippine Sugar Estate*,[8] and *Embrado v. Court of Appeals*.[9] For purposes of this essay, the author adds the other Supreme Court decisions wherein the statement under examination likewise appears: *Tan v. IAC*,[10] *Almendra v. IAC*,[11] and *Gerales v. Court of Appeals*.[12]

These eight (8) cases (including *Lao*) will be discussed below chronologically.

I. Admissibility of Evidence

Before the author gets too far ahead of himself, however, a few words as regards admissibility of evidence are in order. "Evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules."[13] Thus, for evidence to be admissible, two (2) requisites must concur: relevance and competence. Evidence is "relevant" when it has "rational probative value,"[14] or "a relation to the fact in issue, as to induce belief in its existence or non-

4. Section 30, Rule 132 of the Rules of Court provides: "Proof of notarial documents... Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved."

5. 7 Vicente J. Francisco, The Revised Rules of Court in the Philippines – Evidence, Part II 352 (revised by Ricardo J. Francisco, 1991) [hereinafter Francisco 1991].

6. 150 SCRA 59 (1987).

7. 37 Phil. 148 (1917).

8. 41 Phil. 475 (1921).

9. 233 SCRA 335 (1994).

10. 186 SCRA 322 (1990).

11. 204 SCRA 142 (1991).

12. 218 SCRA 638 (1993).

13. Rules of Court, Rule 128, § 3.

14. 2 Florenz D. Regalado, Remedial Law Compendium 581 (9d ed. 2001) (*citing* Wigmore) [hereinafter 2 Regalado].

existence;"[15] while evidence is competent, when, as stated above, it is not excluded by the Constitution,[16] statute,[17] or the Rules of Court.

On one hand, "relevancy" is tested by and against principles of logic, not of law. On the other hand, "competence," as determined by the rules of exclusion, is a judgment by the law that certain evidence sought to be admitted, by their nature, is or is not logically probative,[18] hence should be admitted or excluded. Thus, at the core of any issue concerning admissibility of evidence is the "reliability"[19] of the evidence for which admission is sought.

The end game in determining the admissibility of evidence is whether the court may at all consider it, as a condition *sine qua non*, to any conclusions the court may arrive at regarding the weight that should be properly afforded said evidence.[20] Admissibility is "determined at the time [the evidence] is offered to the court."[21] Simply put, if evidence is not admissible, the court may not even receive it; or, "[e]vidence may be admissible for a special [or for a specific] purpose, but not admissible generally; or it may be admissible for one purpose but not for another..."[22]

II. Admissibility of a Notarized Document in Civil Cases

A. *Antillon v. Barcelon*[23]

The seminal case was *Antillon v. Barcelon* (decided in 1917), which commenced as a dispute over ownership and possession of a certain parcel of land in Laguna. Plaintiff-appellee, Jose Antillon, alleged that notwithstanding a prior decision of the Court of Land Registration finding that said parcel of land belonged to the plaintiff, the defendant, Leoncio Barcelon, continued molesting the plaintiff and interfering with plaintiff's possession over said parcel of land.

15. Rules of Court, Rule 128, § 4.

16. *See* the various provisions of the Philippine Constitution, Article III, the Bill of Rights, concerning unreasonable searches and seizures, privacy of communication and correspondence, custodial investigation, the right of confrontation, and the right against self-incrimination.

17. *See, e.g.*, The Anti-Wiretapping Act, Republic Act No. 4200 (1965).

18. *See* 7 Vicente J. Francisco, The Revised Rules of Court in the Philippines – Evidence, Part I 19 (revised by Ricardo J. Francisco, 1997 ed.) [hereinafter Francisco 1997].

19. *Id.* at 21.

20. See *id.* at 20-21, concerning the distinctions between admissibility and weight of evidence.

21. 2 Regalado, *supra* note 14, at 582 (*citing* Rule 132, § 35).

22. Francisco 1991, *supra* note 5.

23. 37 Phil. 138 (1917).

The trial court, in holding for plaintiff, admitted two (2) documents as evidence that plaintiff owned the parcel of land. These documents showed that plaintiff had purchased the same from Albino Villegas (Exhibit F), and that Albino Villegas had acquired the title to the lot by purchase from Petra Dionido (Exhibit E). On appeal, defendant-appellant assigned as error that said documents (obviously, deeds of conveyance): (a) were immaterial and irrelevant; (b) had not been properly identified; and (c) were inadmissible as their due execution and delivery had not been proved.

The Supreme Court first found that before the trial court, "[n]o question was presented during the trial of the cause as to the verity of the acknowledgment under the hand and seal of the notary public to said Exhibits E and F."[24] After which, the Court afforded a notary public, as a public officer, a presumption of regularity, such that a notary public did not have to testify in court as to the contents of the document he notarized:

> The rule is well established that before private documents may be admitted in evidence as proof, their due execution and delivery must be proved. (Sec. 321, Act No. 190) Their due execution and delivery may be proved (a) by any one who saw the document executed, or (b) by evidence of the genuineness of the handwriting of the maker, or (c) by a subscribing witness. (Sec. 324, Act No. 190) There are certain statutory exceptions to the foregoing rule in this jurisdiction. (Sec. 326, Act No. 190)
>
> *To the foregoing rules with reference to the method of proving private documents an exception is made with reference to the method of proving public documents executed before and certified to, under the hand and seal of certain public officials. The courts and legislatures have recognized the valid reason for such an exception. The litigation is unlimited in which testimony by officials is daily needed; the occasions in which the officials would be summoned from his ordinary duties to declare as a witness are numberless. The public officers are few in whose daily work something is not done in which testimony is not needed from official sources. Were there no exception for official statements, hosts of officials would be found devoting the greater part of their time to attending as witnesses in court or delivering their depositions before an officer. The work of administration of government and the interest of the public having business with official would alike suffer in consequence. For these reasons, and for many others, a certain verity is accorded such documents, which is not extended to private documents. (3 Wigmore on Evidence, sec. 1631)*
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> *The law reposes a particular confidence in public officers that it presumes they will discharge their several trusts with accuracy and fidelity; and, therefore, whatever acts they do in discharge of their public duty may be given in evidence and shall be taken to be true under such a degree of caution as the nature and circumstances of each case may appear to require.*
>
> A notary public is sometimes spoken of as a public officer. (Ley del Notariado de 15 de febrero de 1889; Ley del Notariado para las Islas Filipinas). He is an officer known to the Law of Nations; hence his official acts receive credence, not only in his own country, but in all others in which they are used as instruments of evidence. (Kirksey vs. Bates, 7 Porter (Ala.), 529; 31 Am. Dec., 722; Governor vs. Gordon, 15 Ala., 72; Pierce vs. Indseth, 106 U. S., 546, 549; Greenleaf on Evidence, secs. 5; Townsley vs. Sumrall, 2 Peters (U. S.), 170)

24. *Id.* at 151.

> The functions of a notary public as a public or as a quasi-public officer has been recognized by the common law, the civil law as well as by the law of nations. He is recognized as a necessary official in nearly all the civilized countries. (Governor vs. Gordon, supra; Pierce vs. Indseth, supra; John's American Notaries, sec. 1)
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> The notary public is recognized by the law merchant, and his official acts are received as evidence, not only in his own, but in all countries. His duties are, often, of great variety and importance, consisting for the most part, in protesting inland and foreign bills of exchange, promissory notes, etc. Also the authentication of transfer to property, administering the oath as to the correctness of accounts or statements of important documents, which are often necessary for transmission to points where the parties directly in interest are unable to appear in person. The taking of depositions for actions pending in foreign or distant courts. The taking of the affidavits of mariners and masters of ships, their protests, etc., requiring care and judgment. In all such cases the notary's certificate or jurat, when accompanied with his official seal of office and proper certificates of his official character if the act is to be used beyond his own county or State, is received as prima facie evidence. (John's American Notaries, sec. 1)
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> All documents acknowledged by a notary public and certified to by him are considered public documents in this jurisdiction. (Art. 1216, Civil Code; Gochuico vs. Ocampo, 7 Phil. Rep., 15)
>
> The principal function of a notary public is to authenticate documents. When a notary public certifies the due execution and delivery of a document under his hand and seal he thereby gives such a document the force of evidence. (29 Cyc., 1076; Bradley vs. Northern Bank, 60 Ala., 252)
>
> Section 331 of Act No. 190 provides that, "every instrument conveying or affecting real property situated in the Philippine Islands, acknowledged or proved and certified as provided by law prevailing in the Philippine Islands, may, together with the certificate of the acknowledgment or proof, be read in evidence in an action or proceeding without further proof."
>
> Indeed, one of the very purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given in evidence without further proof of their execution and delivery. (John's American Notaries, section 168; Bowman vs. Wettig, 39 Ill., 416; Harrington vs. Fish, 10 Mich., 415)
>
> Our conclusions is, therefore, with reference to the first assignment of error, that *a document duly acknowledged before a notary public under his hand and seal, with his certificate thereto attached, is admissible in evidence without further proof of its due execution and delivery, unless and until some question is raised as to the verity of said acknowledgment and certificate.*[25]

For purposes of this essay, the pertinent phrase from *Antillon* is "a document duly acknowledged before a notary public under his hand and seal, with his certificate thereto attached, is admissible in evidence without further proof of its due execution and delivery, unless and until some question is raised as to the verity of said acknowledgment and certificate."[26]

25. *Id.* at 151-54 [emphasis supplied].

26. *Id.* at 153-54.

From the discussion in *Antillon*, it is clear that the intent of the Supreme Court was to afford a mere rebuttable presumption of regularity to a notarized document as regards its "due execution and delivery." This presumption of regularity, in turn, was based on: (a) the nature of the office of a notary public as a public officer; and (b) the public policy promoted by such a regularity, *i.e.*, the underlying necessity for the presumption, lest notaries public be besieged with "attending as witnesses in court, or delivering their depositions before an officer."[27]

While there can be no ambiguity as to the definition of the term "due execution,"[28] for the sake of clarity, the author shall briefly discuss the import of the term "delivery," as used in the context of *Antillon*. Understandably, the term "delivery," whether "actual or constructive," can be used in certain specific contexts of the law, whether within the ambit of the law on sales, *e.g.*, *tradition*, or mercantile law, *e.g.*, Section 16 of the Negotiable Instruments Law.[29]

Perhaps, however, the most apt definition of the term "delivery," in a general sense, was set forth in *Development Bank of Rizal v. Sima Wei*,[30] which, although specifically interpreting Section 16 of the Negotiable Instruments Law, may nevertheless apply to other contexts of the term:

> Delivery of an instrument means transfer of possession, actual or constructive, from one person to another. Without the initial delivery of the instrument from the drawer to the payee, there can be no liability on the instrument. Moreover, such delivery must be intended to give effect to the instrument.[31]

As thus culled from *Sima Wei*, "delivery," as used in *Antillon*, should refer to the transfer of possession of a document, coupled with the intent to give effect to the document.[32] It would not be unreasonable to so infer, in light of

27. *Id.* at 151.

28. Obviously, "due execution" primarily refers to the absence of any vice of consent upon the parties who executed the document. *See* 1 FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 155-56 (6d ed. 1997), *discussing* Rules of Court, Rule 8, §§ 7 and 8, concerning actionable documents, wherein "genuineness" is defined as a document not being spurious or counterfeit, while "due execution" is defined as the document being signed voluntarily and knowingly by the party whose signature appears thereon, that if signed by somebody else, such representative had authority to do so, that it was duly delivered, and that the formalities were complied with.

29. *See* JOSE AGATON SIBAL, PHILIPPINE LEGAL ENCYCLOPEDIA 224 (1986); BLACK'S LAW DICTIONARY 385-86 (5d ed. 1979).

30. 219 SCRA 736 (1993).

31. *Id.* at 740, *citing* the Negotiable Instruments Law, § 191, ¶ 6.

32. *See* Buenaflor v. Court of Appeals, G.R. No. 142021 (Nov. 29, 2000), as to "delivery" used in a general sense, but quoting the definition from Black's Law Dictionary, which did not specify that transfer of possession must be coupled with the intent to give effect to a document.

Antillon's referral to the "law merchant" and commercial documents such as bills of exchange and promissory notes, the transfer of which give rise to the creation of rights and obligations.

Indisputably, *Antillon* did not state that a public document was, by the mere fact of notarization, "conclusive as to the truthfulness of its contents," but merely that a public document was "admissible ... without further proof of its *due execution and delivery*."[33] What may not be overemphasized is that the truthfulness of the averments in Exhibits "E" and "F" in *Antillon* was not even in issue, but merely their admissibility (or "reliability"[34]), as they had not been properly identified, and their due execution and delivery had not been proved.

B. *Mendezona v. Philippine Sugar Estates*

In *Mendezona v. Philippine Sugar Estates*[35] (decided in 1921), plaintiff-appellant Secundino Mendezona sued the Philippine Sugar Estates Development Company (PSEDC) and Manuel de Garay for damages arising from a breach of contract of rentals over a parcel of land. In sum, plaintiff alleged that he was the real tenant of PSEDC, while de Garay was a fictitious tenant, although the rental contract was signed by de Garay and a representative of PSEDC. In holding against Mendezona, the Supreme Court ruled:

> Lastly, the true and incontrovertible fact is that it appears in a clear and unequivocal manner in a public document that the tenant with whom the defendant corporation contracted was Manuel de Garay and not Secundino Mendezona. In order to contradict this, as the plaintiff attempted to do, it was incumbent upon him to prove his claim with clear, convincing and more than merely preponderant evidence, something which the appellant Mendezona did not do.[36]

From *Mendezona*, the following are material to this essay: first, the admissibility of the notarized rental contract was never in issue (in fact, *Antillon* was not even cited), as appellant's primary contention there was that said rental contract did not reflect the true intent of the parties.[37] Second, the context in and process by which the Supreme Court upheld the truthfulness of the contents of the notarized rental contract was that: (a) since there was no issue as to admissibility, the Court initially dissected, then rejected, each and every assertion of Mendezona; and (b) only after which, the Court concluded (hence, the paragraph above quoted begins with the word "lastly") that the contents of the public document were truthful. Third, there was no categorical nor sweeping statement from the Court that a public document was, *per se* or by the mere fact of notarization, "conclusive as to the truthfulness of its contents."

33. *Antillon*, 37 Phil. at 154.

34. *See supra* text accompanying notes 18 and 19.

35. 41 Phil. 475 (1921).

36. *Id.* at 493 (citations omitted).

37. *Id.* at 479.

Fourth, *Mendezona* established the burden of proof necessary to defeat the averments in a notarized document, *i.e.*, "clear, convincing, and more than merely preponderant evidence."[38]

C. *Baranda v. Baranda*

Third, it was only in 1987, in *Baranda*,[39] that the phrase "conclusiveness as to the truthfulness of its contents," first appeared.

Baranda began as a suit to annul the sale and reconvey six (6) parcels of land. Paulina L. Baranda, a widow, died without issue, and petitioners, who claimed to be Paulina's legitimate heirs, sued private respondents Evangelina G. Baranda and Elisa G. Baranda, who had already taken over the lots by virtue of the supposed transfers which petitioners sought to annul.

Prior to Paulina's demise, she allegedly sold the lots to her nieces (private respondents, who were daughters of Paulina's brother, Pedro). In three deeds denominated "*Bilihan ng Lupa*," and dated January 29, 1977 and February 3, 1977, Paulina supposedly sold five (5) lots to Evangelina, and one (1) lot to Elisa. The sales were made, according to the documents, for the total consideration of ₱105,000.00, duly acknowledged as received by the vendor (Paulina) from the vendees (Evangelina and Elisa).

What made these transactions suspect was a subsequent complaint filed by Paulina against her nieces on August 1, 1977, before the Court of First Instance of Rizal. Paulina asserted that she had signed said deeds of sale without knowing their contents, and prayed that Evangelina and Elisa be ordered to reconvey the lands subject thereof to her. That suit ended in a compromise, whereby, in exchange for Paulina withdrawing her complaint, Evangelina and Elisa obligated themselves to "execute absolute deeds of sale covering the above-mentioned properties in favor of [Paulina]." However, when Paulina died in 1982, the certificates of title over the lots in question remained in the names of Evangelina and Elisa, hence the complaint filed by petitioners to annul the sales and for reconveyance of the six (6) parcels of land.

The trial court declared the deeds of sale executed by Paulina in favor of Evangelina and Elisa as void, but the Intermediate Appellate Court (IAC) reversed, "stressing that they were public documents and that their authenticity could further be sustained by the testimon[ies] of [Evangelina and Elisa]."[40] However, the Supreme Court, in reversing the IAC and reinstating the judgment of the trial court, held:

38. *Id.* at 493.

39. 150 SCRA 59 (1987).

40. *Id.* at 66.

> While it is true that a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents [citing *Antillon*], this rule is nonetheless not absolute but may be rebutted by clear and convincing evidence to the contrary....[41]

The High Court first scrutinized the testimonies of Evangelina and Elisa before the trial court concerning the alleged transfers, then invalidated the notarized deeds of sale upon concluding that the testimonies of Evangelina and Elisa, offered to prove the validity of the transfers, were utterly devoid of credibility (*e.g.*, neither could satisfactorily explain how they sourced the funds to answer for the consideration of ₱105,000.00).

What must be noted is that *Baranda* cited *Antillon* as authority for the statement "conclusive as to the truthfulness of its contents." However, as displayed above, what *Antillon* stated was that "a document duly acknowledged before a notary public under his hand and seal, with his certificate thereto attached, is admissible in evidence without further proof of its *due execution and delivery*," without ruling upon "the truthfulness of its contents."[42]

Reliance on *Mendezona*, however, was contextually proper, *i.e.*, since there was no issue as to admissibility of documents in this civil case, a finding as to truthfulness of the contents of the public document was arrived at only after sifting through the arguments of the parties, and not a finding of truthfulness by the mere fact of notarization of the document.

D. *Tan v. Intermediate Appellate Court*[43]

Fourth, *Tan* (promulgated in 1990) began as a dispute commenced by private respondents to recover real property with rescission and annulment of a contract, with damages against petitioners Felicito Tan and the Philippine National Bank (PNB). At issue was whether the following documents were binding and enforceable against private respondents: (1) a PNB Application for Loan (Exh. 1-PNB); (2) a Real Estate Mortgage Contract (Exh. 2-PNB); (3) a Promissory Note (Exh. 3-PNB); and (4) a Supplement to Real Estate Mortgage Contract (Exh. 4-PNB). The Supreme Court reviewed the testimonies of two (2) of the private respondents, then ruled in favor of petitioners, to wit:

> Furthermore, the notary public who notarized the documents, Lorenzo J. Morada, testified that all three private respondents appeared in his office in connection with their application for a loan with the PNB, which they personally presented to him together with two other documents — a real estate mortgage for P2,400 and supplement to real estate mortgage — for notarization. Since the documents were already signed he simply summoned all of them and asked them one by one whether

41. *Id.* at 66-67 (citing *Mendezona*).

42. *Antillon*, 37 Phil. 153-54 [emphasis supplied].

43. 186 SCRA 322 (1990).

> the signatures and thumbmarks appearing on top of their names were their true and genuine signatures and they answered in the affirmative (TSN, Hearing of November 24, 1976, pp. 68-71).
>
> Thus, the fact that Policarpio Martos, with his wife Berlina Rodeo and Lourdes Martos, did execute the application for loan, the real estate mortgage securing the loan of P2,400.00, the promissory note, and the supplement to real estate mortgage, has been established by the testimonies not only by the government officials whose presumption of regularity in the performance of duty has not been rebutted but also by the notary public before whom the notarized instrument was verified which is admissible as evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents, in the absence of clear and convincing evidence to the contrary (Baranda vs. Baranda, 150 SCRA 59, 60 [1987]). All these unquestionably overrule the uncorroborated and self-serving denials of Policarpio Martos of his participation in the questioned documents and the improbable declarations of Berlina Rodeo that she signed the documents and thumbmarked them for Policarpio Martos, as requested by Felicito Tan without knowing that she was executing an application for loan.[44]

The author posits that reliance on *Baranda* was improper, for the simple reason that *Baranda's* citation of *Antillon* was imprecise. Moreover, *Baranda* failed to distinguish between the contexts of *Antillon* and *Mendezona*.

E. *Almendra v. Intermediate Appellate Court*

The fifth ruling, *Almendra*,[45] was promulgated in 1991. In another case involving the annulment of deeds of sale, the Supreme Court upheld the validity of said deeds, as such:

> While petitioners' contention is basically correct, we agree with the appellate court that there is no valid, legal and convincing reason for nullifying the questioned deeds of sale. Petitioner had not presented any strong, complete and conclusive proof to override the evidentiary value of the duly notarized deeds of sale. Moreover, the testimony of the lawyer who notarized the deeds of sale that he saw not only Aleja signing and affixing her thumbmark on the questioned deeds, but also Angeles and Aleja "counting money between them," deserves more credence than the self-serving allegations of the petitioners. Such testimony is admissible as evidence without further proof of the due execution of the deeds in question, and is conclusive as to the truthfulness of their contents in the absence of clear and convincing evidence to the contrary. (citing Tan v. IAC)
>
> The petitioners' allegations that the deeds of sale were "obtained through fraud, undue influence and misrepresentation," and that there was a defect in the consent of Aleja in the execution of the documents because she was then residing with Angeles, had not been fully substantiated. They failed to show that the uniform price of P2,000 in all the sales was grossly inadequate. It should be emphasized that the sales were effected between a mother and two of her children, in which case filial love must be taken into account.

44. *Id.* at 328-29.

45. 204 SCRA 142 (1991).

> On the other hand, private respondents Angeles and Roman amply proved that they had the means to purchase the properties. Petitioner Margarito Almendra himself admitted that Angeles had a sari-sari store and was engaged in the business of buying and selling logs. Roman was a policeman before he became an auto mechanic and his wife was a school teacher.[46]

What matters in *Almendra* is that by relying on *Tan*, which, in turn, relied on *Baranda*, the Supreme Court persisted in failing to distinguish between *Antillon* and *Mendezona*.

F. *Gerales v. Court of Appeals*

The next case was *Gerales*[47] (promulgated in 1993), where petitioners claimed that they were not bound by a quitclaim they had executed, contending that "patent irregularities attended their execution, as petitioners executed them because private respondents led them to believe that what they were receiving were partial settlements only; and that the said documents were more of a receipt rather than any document."[48] However, the Supreme Court dismissed the petition, holding:

> Conversely, private respondents contend that the releases of claims executed and signed by petitioners show that full settlements were received by the latter from private respondents and their insurer, F.E. Zuellig, Inc.; that when petitioners executed these documents, they were assisted by their very own counsel, Atty. Jaime C. Bueza; that the same was duly notarized and that petitioners cannot now impugn the veracity of the documents upon the self-serving argument that they were misled by their own counsel into believing that the settlements were but partial.
>
> It should be borne in mind that the petitioners do not deny at all their having executed the releases of claims which are in the nature of quit claims. Their allegation that the execution thereof was attended by false pretenses is self-serving. Contrary thereto, petitioners, in executing these releases of claims, were in fact assisted by their counsel, Atty. Bueza, and the document was even notarized.
>
> A notarized instrument is admissible in evidence, without further proof of its due execution and is conclusive as to the truthfulness of its contents, although not absolute but rebuttable by clear and convincing evidence to the contrary [Baranda v. Baranda, 150 SCRA 59 [1987], citing Antillon v. Barcelon, 37 Phil. 148 [1917] and Mendezona v. Phil. Sugar Estate Development Corporation, 41 Phil. 475 (1921)]. A public document executed and attested through the intervention of the notary public is evidence of the facts in clear, unequivocal manner therein expressed. It has in its favor the presumption of regularity. To contradict all these, there must be evidence that is clear and convincing more than merely preponderant (Collantes v. Capuno, 123 SCRA 652 [1983]).[49]

46. *Id.* at 148-49.

47. 218 SCRA 638 (1993).

48. *Id.* at 645.

49. *Id.* at 647-48.

In *Gerales*, the misreading of *Antillon* and *Mendezona* was heightened, because through *Gerales*' reliance on *Baranda*, what resulted was that *Antillon* and *Mendezona* were indiscriminately lumped together — notwithstanding that *Antillon* is proper authority only as regards a presumption of regularity concerning due execution *and delivery* of a notarized document, *not truthfulness* of its recitals, by the mere fact of notarization.

What may be reasonably deduced is that through this commingling of *Antillon* and *Mendezona*, the phrase in *Antillon* that a notarized document may be introduced in evidence "*without further proof of its due execution and delivery*," was wrongfully intertwined with the context of *Mendezona*. Thus, the result was that the words "and delivery" from *Antillon* were omitted, and the remainder of the phrase in *Antillon* was improperly combined with the context of *Mendezona*, giving an impression that a public/notarized document would be admissible without need of further proof of its due execution (omitting "delivery"), and that the finding of the Supreme Court in *Mendezona* that the statements in the public document were true, but not based on the simple fact of notarization alone.

G. *Embrado v. Court of Appeals*

In *Embrado*[50] (decided in 1994), petitioner Lucia Embrado claimed that private respondents (Lucia's adopted daughter, Eda Jimenez, and Santiago Jimenez, Eda's husband/Lucia's son-in-law) misled Lucia into signing a deed of absolute sale in their favor, thinking that Lucia would be helping them obtain a loan from a bank if they could mortgage the property as security for their loan; that although she signed the deed of sale, she did not consent to the sale nor did she intend to convey or transfer her title to Eda Jimenez; and, that she never received the alleged amount of ₱1,000.00 as consideration for the sale of the property. The Supreme Court held that the deed of sale was null and void, with the pertinent portion of the ruling, as follows:

> While it is true that a notarized document is admissible in evidence without proof of its due execution and is conclusive as to the truthfulness of its contents, this rule is not absolute and may be rebutted by evidence to the contrary (citing *Mendezona*). In this case, it was clearly shown that Eda and Santiago Jimenez had no sufficient means of livelihood and that they were totally dependent on their mother Lucia for the support of their family. This fact strengthens the claim of Lucia that the price of the property was fictitious and that Eda Jimenez could not have paid the price of the property as she was financially incapable to do so. In fact, Eda Jimenez did not prove as to how she obtained the money to pay for the property she supposedly bought from Lucia. When the source of the purchase price is "intriguing," and is not convincingly shown to have been given by the "buyer" to the "seller," the claim of the latter that she signed the deed of sale without her consent may be upheld.[51]

50. 233 SCRA 335 (1994).

51. *Id.* at 343 (citing *Baranda*).

In *Embrado*, the commingling of *Antillon* and *Mendezona* was worsened, because this time, only *Mendezona* was cited, now conveying the impression that admissibility was likewise in issue in *Mendezona*.

H. *Lao v. Villones-Lao*[52]

Finally, in *Lao* (decided in 1999), petitioners Domingo and Ernesto Lao (father and son) sued respondent Estrella Villones-Lao (Domingo's estranged wife) for reconveyance over a parcel of land; annulment of a Special Power of Attorney, mortgage, and extra-judicial foreclosure; and cancellation of a certificate of title over the lot which had been issued in the name of co-respondents Carlos and Socorro Villena, as the signatures of Domingo and Ernesto had been forged on a notarized Special Power of Attorney (the forgery having been testified to by an agent of the National Bureau of Investigation) authorizing Estrella to sell the lot on behalf of petitioners. In granting the petition, the Supreme Court ruled:

> While this Court has held in several cases that "a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents, this rule is nonetheless not absolute but may be rebutted by clear and convincing evidence to the contrary" (citations already listed above). Such evidence, as the Court sees it, has been sufficiently established in this case.[53]

It is thus not difficult to imagine why the citation of authority in *Lao* was as such, *i.e.*, without a specification that *Antillon* only referred to "without further proof of its due execution" (even if "and delivery" had already been omitted), and that *Mendezona* only referred to the latter part of the phrase under examination, but without appreciating the context in which the Supreme Court arrived at such a finding in *Mendezona* to begin with, *i.e.*, the contents of the notarized document were confirmed to be true — not because of the mere fact of notarization — but only after analyzing the contentions and evidence of the parties.

As may be gleaned from the context of *Lao*, notarization only affords a rebuttable presumption of regularity as regards due execution and authenticity, because what the Supreme Court actually accomplished in *Lao* was precisely to rule that petitioners therein did not execute the Special Power of Attorney at all, through a finding that petitioners' signatures thereon were forged.

To reiterate, after having conducted a survey where the phrase under examination appears, the common denominators of those cases are as follows:

1. They were all civil cases;
2. All the instruments examined by the Supreme Court for truthfulness were commercial instruments, such as deeds of sale (*Antillon*, *Baranda*, *Almendra*, and *Embrado*); a rental contract (*Mendezona*); a loan application, a real estate mortgage,

52. 306 SCRA 38 (1999).

53. *Id.* at 396.

and a promissory note (*Tan*); a quitclaim (*Gerales*); and a Special Power of Attorney (*Lao*);

3. Admissibility of an *ex parte* affidavit due to an affiant not having testified before the trial court was never in dispute; and
4. At bottom, the issue in all eight (8) cases was whether the exceptions to the parol evidence rule[54] could be properly invoked.

I. *Other Decisions Citing* Antillon *and* Mendezona

It would not be remiss to point out that *Antillon* and *Mendezona* have been cited in other cases decided by the Supreme Court, but so long as the phrase under examination is not involved, *i.e.*, "a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents," the citation of *Antillon* and *Mendezona* have been faithful to the contexts in which each case was decided.

1. Other Citations of *Antillon*

"The notary is a public officer,"[55] thus, a sheriff, being a public officer, need not testify in court as to the facts stated in his entry.[56]

In *Bunag v. Court of Appeals*[57] and *Borillo v. Court of Appeals*,[58] the invocation of *Antillon* was confined to a statement that a document which is not notarized is a private writing, whose due execution and authenticity must be proved before it can be received in evidence.

While in *Bael and Jumalon v. IAC*[59] and *Brusas v. Court of Appeals*,[60] the High Court's reliance on *Antillon* was only as regards: (a) a public document acknowledged before a notary public is admissible in evidence as to the date and fact of its execution without further proof of its due execution and delivery (*Bael*); and (b) an affidavit of waiver, being a public document duly acknowledged before a notary public, is *prima facie* evidence of the facts stated therein (*Brusas*).

Even in *Joson v. Baltazar*[61] and *Dinoy v. Rosal*,[62] concerning administrative cases against erring attorneys commissioned as notaries public, referral to

54. Rules of Court, Rule 130, § 9.
55. People v. Carreon, 65 Phil. 588, 591 (1938).
56. Manalo v. Robles Transportation Company, 99 Phil. 729 (1956).
57. 158 SCRA 299 (1988).
58. 209 SCRA 130 (1992).
59. 169 SCRA 617 (1989).
60. 313 SCRA 176 (1999).
61. 194 SCRA 114, 119 (1991).
62. 235 SCRA 419, 422 (1994).

Antillon was only as regards admissibility of a public document: "[n]otarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity."

Rodriguez v. Court of Appeals,[63] a tort action arising out a fire, is not material to this essay, because reliance on *Antillon* there was only to justify the grant of a presumption of regularity in favor of an entry in an official record (pursuant to Rule 130, §44), not a presumption of regularity in favor of a notary public, as regards the due execution and authenticity of a notarized document; in fact, there was no mention at all of whether the Fire Investigation Report, the admissibility of which was in issue, was even notarized. The same may be said concerning the issue of admissibility of a police report in an action for damages pursuant to an accident at a construction site, in *D.M. Consunji v. Court of Appeals*.[64]

People v. Fabro[65] was the lone criminal case to rely upon either *Antillon* or *Mendezona*. In a prosecution for murder, part of the prosecution's evidence was the sworn confession of appellant Fabro. On appeal, he impugned the admissibility of his sworn confession, contending that the confession was secured in violation of his Miranda rights. In denying the appeal, the Supreme Court ruled that the sworn confession was voluntary; secured in consonance with appellant's rights during a custodial investigation; and that appellant's assisting counsel during custodial investigation was "independent" within the meaning of the pertinent Constitutional provision (Art. III, §12). Respecting *Antillon*, the Supreme Court cited it, thus:

> After the prosecution has shown that the confession was obtained in accordance with the aforesaid constitutional guarantee, the burden of proving that undue pressure or duress was used to obtain it rests on the accused. In *Antillon v. Barcelon*, the Court imposed a high degree of proof to overthrow the presumption of truth in the recitals contained in a public instrument executed with all the legal formalities.[66]

In *Fabro*, the Supreme Court was remiss in relying on *Antillon* as regards a presumption of truth of the contents of a public document, but at least, it was a mere rebuttable presumption, and there was no statement that would convey the impression that a public document, by the mere fact of notarization, is conclusive as to the truthfulness of the document's statements.

2. Other Citations of *Mendezona*

After having conducted another survey, but this time, as to the Supreme Court's reliance on *Mendezona* in other cases, the author discovered that:

63. 273 SCRA 607 (1997).
64. G.R. No. 137873 (Apr. 20, 2001).
65. 277 SCRA 19 (1997).
66. *Id.* at 37.

1. There was no issue as to admissibility of a document in any of the cases mentioned in this portion of this comment;
2. By virtue of notarization, the Supreme Court merely afforded a rebuttable presumption of truthfulness to the averments in a notarized document; and
3. The Supreme Court declared that the burden of proof to overcome statements in a notarized document is clear and convincing, not merely preponderant evidence.

For instance, in *Bank of the Philippine Islands v. Fidelity & Surety Company*,[67] it was held that "the amount of evidence necessary to sustain a prayer for relief, where it is sought to impugn a fact in a document, is always more than a mere preponderance of the evidence;"[68] while in *Masongsong v. Kalaw*,[69] the Supreme Court resolved the issue whether a document evinced a mortgage or a *pacto de retro* sale, by holding: "the record shows that there are facts established by a preponderance of evidence, aside from the deed of sale itself, Exhibit E, which corroborate the literal text of said deed, and which must prevail unless destroyed by evidence of sufficient weight and force, for the facts stated in a document are presumed to be true."[70]

Fealty to the burden of proof necessary to overcome statements in a notarized document being clear and convincing, not merely, preponderant evidence, was consistently upheld in *Calderon v. Medina*[71] and *Yturralde and Azurin v. Vagilidad and Managuit*,[72] concerning mortgages; *GSIS v. Custodio*,[73] as regards a deed of partition; *Yturralde v. Azurin*,[74] respecting a notarized deed of donation *inter vivos*; *DBP v. National Merchandising Corporation*,[75] with respect to a promissory note and contracts for financing and conditional resale; and *Ramos v. Court of Appeals*[76] and *Garcia v. Gonzales*,[77] with regard to notarized deeds of sale.

To the same end was the holding in a paternity suit, *Jison v. Court of Appeals*,[78] where the daughter (the private respondent), prior to suing for

67. 51 Phil. 57 (1927).
68. *Id.* at 63, *citing* Centenera v. Garcia Palicio, 29 Phil. 470 (1911), and *Mendezona*, 41 Phil. 475 (1920).
69. 55 Phil. 787 (1931).
70. *Id.* at 789, *citing* Asido v. Guzman, 37 Phil. 652 (1938), and *Mendezona*, 41 Phil. 475 (1920).
71. 18 SCRA 583 (1966).
72. 28 SCRA 393 (1969).
73. 26 SCRA 658 (1969) ("Certainly, it should take much weightier proof [than a self-serving act] to invalidate a written instrument...").
74. 28 SCRA 407 (1969).
75. 40 SCRA 624 (1971).
76. 112 SCRA 542 (1982).
77. 183 SCRA 72 (1990).
78. 286 SCRA 495 (1998).

recognition of her filiation, executed an affidavit, wherein she stated that petitioner was not her father. Before the trial court, private respondent testified and impugned her affidavit, on the grounds that she signed it under duress, *i.e.*, she was jobless, had no savings, and needed the money given in exchange for the affidavit to support herself and finish her studies; moreover, she signed the affidavit only upon the advice of a lawyer that the right to filiation could not be waived. In ruling for private respondent, the Supreme Court held that the credibility of petitioner's testimony and that of the nine (9) other witnesses who testified before the trial court, had clearly shown that petitioner had discharged the burden of proof to contradict a notarial document, *i.e.*, clear and convincing evidence and more than merely preponderant.[79]

III. Admissibility of *Ex Parte* Affidavits in Criminal Cases

As mentioned at the outset, the author encountered the citation of *Lao* by adverse counsel in a criminal case, who wished to have *ex parte* affidavits admitted as proof of the allegations contained therein. Suffice it to say, *Fabro* notwithstanding, all the decisions cited and discussed concerning admissibility of notarial documents in civil cases, should take a subordinate role in a criminal case as regards the admissibility of *ex parte* affidavits. This is imperative, in light of an accused's constitutional right to confront the witnesses against him.[80]

A. The Right of Confrontation

In criminal cases, the Constitution grants the accused the right of confrontation, with the two-fold purpose of the right having been discussed as follows:

> [The first is] to preserve the right of the accused to test the recollection of the witness in the exercise of the right of cross-examination. In other words, confrontation is essential because cross-examination is essential. A second reason for the prohibition is that a tribunal may have before it, the deportment and appearance of the witness while testifying.[81]

Pursuant to an accused's right of confrontation, it has thus been the consistent holding of the Supreme Court that said right:

> [I]ntends to secure the accused in the right to be tried, so far as facts provable by witnesses are concerned, by only such witnesses as meet him face to face at the trial, who give their testimony in his presence, and give to the accused an opportunity of cross-examination. It was intended to prevent the conviction of the accused upon depositions or ex parte affidavits....[82]

79. *Id.* at 539.
80. Phil. Const. art. III, § 14 (1).
81. U.S. v. Javier, 37 Phil. 449 (1918), *citing* U.S. vs. Anastasio, 6 Phil. 413 (1906).
82. *Javier*, 37 Phil. at 451-52, quoting Dowdell v. U.S., 221 U.S. 325 (1911) (Day, J., concurring).

B. Survey of Pertinent Jurisprudence

As held in *U.S. v. Javier*, the general rule is that an *ex parte* affidavit is not admissible in a criminal case, lest the accused's confrontational right be breached. The exception would be those validly exempt from the exclusionary effect of the hearsay rule: (a) the testimony of a witness deceased, given in a former action between the same relating to the same matter, wherein the adverse party had the opportunity to cross-examine the witness;[83] (b) a dying declaration;[84] (c) a deposition in a former trial;[85] or (d) an affidavit shown to be a part of the preliminary investigation wherein the accused had the opportunity to cross-examine the affiants.[86] *Javier* thus held:

> The sworn statement of Presa was not made by question and answer under circumstances which gave the defense an opportunity to cross-examine the witness. The proviso of the Code of Criminal Procedure as to confrontation is therefore inapplicable. Presa's statement again is not the testimony of a witness deceased, given in a former action between the same relating to the same matter. Consequently, the exception provided by Section 298, No. 8 of the Code of Civil Procedure, and relied upon by the prosecution in the lower court is also inapplicable. Nor is the statement of Presca a dying declaration, or a deposition in a former trial, or shown to be a part of the preliminary examination. Under these circumstances, not to burden the opinion with an extensive citation of authorities, we can rely on the old and historic case of R. vs. Paine (1 Salk., 281 [King's Bench Div]) occurring in the year 1696. It Bristol under oath, but not in P's presence, was offered. It was objected that B, being dead, the defendant had lost all opportunity of cross-examining him. The King's Bench consulted with the Common Pleas, and "it was the opinion of both courts that these depositions should not be given in evidence, the defendant not being present when they were taken before the Mayor, and so had lost the benefit of a cross-examination." Although we are faced with the alternative of being unable to utilize the statements of the witness now deceased, yet, if there has been no opportunity for cross-examination, and the case is not one coming within one of the exceptions, the mere necessity alone of accepting the statement will not suffice. In fine, Exhibit B was improperly received in evidence in the lower court.[87]

The holding in *U.S. v. Javier* met with approval of the Supreme Court, sitting *en banc*, in subsequent decisions: *People v. Lavarias*,[88] *People v. Santos*,[89] and *Talino v. Sandiganbayan*.[90]

Under a prosecution for violation of Section 5 of the Anti-Subversion Act,[91] when an accused was statutorily afforded the opportunity to cross-examine witnesses against him during preliminary investigation, then such opportunity to cross-examine prevented a violation of the right of confrontation at trial, as ruled in *People v. Liwanag*:[92]

> In seeking a reversal of the decision, the appellant assigned four errors allegedly committed by the trial court. On the fore is his claim that he was deprived of his fundamental right to confront the witnesses against him when the trial court granted the motion of the Fiscal that the testimony of the witnesses presented during the preliminary investigation be adopted and made part of the evidence for the prosecution.
>
> The Constitution guarantees an accused person the right to meet the witnesses against him face to face. This provision "intends to secure the accused in the right to be tried, so far as facts provable by witnesses are concerned, by only such witnesses as meet him face to face at the trial, who give their testimony in his presence, and give to the accused an opportunity of cross-examination. It was intended to prevent the conviction of the accused upon depositions or ex-parte affidavits, and particularly to preserve the right of the accused to test the recollection of the witnesses in the exercise of the right of cross-examination."
>
> Here, the testimony sought to be made part of the evidence in chief are not ex-parte affidavits, but testimony of witnesses taken down by question and answer during the preliminary investigation in the presence of the accused and his counsel, who subjected the said witnesses to a rigid and close cross-examination. The inclusion of said testimony was made subject to the right of the defendant to further cross-examine the witnesses whose testimony are sought to be reproduced and, pursuant to said order, the witnesses were recalled to the stand during the trial and again examined in the presence of the appellant. Upon the facts, there was no curtailment of the constitutional right of the accused to meet the witnesses face to face.[93]

In one holding,[94] the Supreme Court even went so far as to declare that an *ex parte* affidavit, while admissible if no timely objection is raised, "is hearsay and has no probative value," to wit:

> Firstly, the trial court erred in considering the identification of appellant by the deceased's brother-in-law Gerardo Francisco made in a sworn statement, dated

83. Rules of Court, Rule 130, §47.

84. *Id.* Rule 130, § 37.

85. *Id.* Rule 130, § 47.

86. *See* People v. Liwanag, *infra* note 92 and accompanying discussion.

87. *Javier*, 37 Phil. at 452-53.

88. 23 SCRA 1301 (1968).

89. 139 SCRA 583 (1985).

90. 148 SCRA 598 (1987).

91. No prosecution under this Act shall be made unless the city or provincial fiscal, or any special attorney or prosecutor duly designated by the Secretary of Justice as the case may be, finds after due investigation of the facts, that a prima facie case for violation of this Act exists against the accused, and thereafter presents an information in court against the said accused in due form, and certifies under oath that he has conducted a proper preliminary investigation thereof, with notice, whenever it is possible to give the same, to the party concerned, who shall have the right to be represented by counsel, to testify, to have compulsory process for obtaining witnesses in his favor, and to cross-examine witnesses against him: Provided, That the preliminary investigation of any offense defined and penalized herein by prision mayor to death shall be conducted by the proper Court of First Instance.

Republic Act No. 1700, § 5.

92. 73 SCRA 473 (1976).

93. *Id.* at 479.

94. People v. Esmale and Tresvalles, 243 SCRA 578 (1995).

October 17, 1985. It is a fact that Francisco never testified in the trial court. Thus, his out-of-court statement identifying appellant is hearsay and has no probative value. As this Court had also ruled in People v. Lavarias, 23 SCRA 1301, 1306 (1968):

> "May the conviction be sustained by virtue of the affidavits previously executed by the above witnesses wherein appellant was pointed at as one of those who participated in the offense charged? The constitutional right to confrontation precludes reliance on such affidavits. Such a constitutional safeguard cannot be satisfied unless the opportunity is given the accused to test the credibility of any person who, by affidavit or deposition, would impute the commission of an offense to him. It would be to disregard one of the most valuable guarantees of a person accused if solely on the affidavits presented, his guilt could be predicated...."[95]

For the sake of precision, however, it must be mentioned that the Supreme Court, in *People v. Franco*,[96] has had occasion to clarify that *ex parte* affidavits are admissible only to establish the fact that they were executed, but not to establish the truth of the facts asserted therein:

> Anent the issue of admissibility of Exhibits "F" and "G" — original and additional sworn statements of Maribel Diong, and Exhibits "H" and "I" — original and additional sworn statements of Hilda Dolera, it assumes significance to note that their admission in evidence has been seasonably objected to by the appellant on the ground that they are hearsay. The trial court nonetheless admitted them "as part of the testimony of Pat. Nestor Napao-it". *While we agree that these exhibits are admissible in evidence, their admission should be for the purpose merely of establishing that they were in fact executed.* They do not establish the truth of the facts asserted therein. In this case, our reading of the assailed decision, however, reveals that the foregoing exhibits were undoubtedly considered by the trial court as establishing the truth of the facts asserted therein. And herein lies another fatal error committed by the trial court, because without Maribel Diong and Hilda Dolera being called to the witness stand to affirm the contents of their sworn statements, the allegations therein are necessarily hearsay and therefore inadmissible. A contrary rule would render nugatory appellant's constitutional right of confrontation which guarantees him the right to cross-examine the witnesses for the prosecution.[97]

Finally, in an *en banc* decision,[98] the Supreme Court reiterated the ruling laid down in *People v. Franco*:

> *It is settled that unless the affiants themselves take the witness stand to affirm the averments in their affidavits, the affidavits must be excluded from a judicial proceeding for being inadmissible hearsay.* The rationale for this is respect for the accused's constitutional right of confrontation, or to meet the witnesses against him face-to-face. To safeguard this right, Section 1 of Rule 132, of the Rules of Court thus provides that the examination of witnesses presented in a trial or hearing, must be done in open court, and under oath or affirmation. At bottom, admitting Exhibits "A," "B," and "C" only as part of the testimonies of the NBI agents could validly be done, but in light of the foregoing discussion, these exhibits should have been excluded insofar as their contents related to the truth of the matter concerning the commission of the rape in question.[99]

95. *Id.* at 583-84.

96. 269 SCRA 211 (1997).

97. *Id.* at 218 [emphasis supplied].

98. People v. Manhuyod, 290 SCRA 257 (1998).

CONCLUSION

To summarize, in civil cases, a notarized document only carries a rebuttable presumption of regularity as regards due execution, authenticity, and truthfulness of the averments; and the burden of proof to overcome statements in a notarized document is clear and convincing, not merely, preponderant evidence.

In criminal cases, pursuant to an accused's right of confrontation, for an affidavit to be admissible to prove the truth of the averments and allegations therein, the affiant must testify, and the accused must have had reasonable opportunity to cross-examine the affiant. Otherwise, an *ex parte* affidavit is admissible only to establish the fact that it was executed, but not to establish the truth of the facts asserted therein. However, an *ex parte* affidavit would be admissible to prove the truth of the facts therein stated, if the requisites for one of the valid exceptions to the hearsay rule concur.

As declared at the outset, these rules of admissibility seem simple, basic, and elementary. However, as this essay has exposed, there is the disturbing trend of jurisprudence culminating in *Lao, i.e.*, that a notarized document, by the mere fact of notarization, is admissible and conclusive as to the truthfulness of its contents. It goes without saying that this oversight must be rectified and clarified. Moreover, advocacy by members of the Bar, and legal research and reasoning employed by those who don the robes of the Bench, must be scholarly and precise. When precedents are cited out of context, as what transpired from reliance on *Antillon* and *Mendezona* from *Baranda* to *Lao*, certainly, the foundation of *stare decisis*, a pillar of the entire system of jurisprudence, is eroded.

99. *Id.* at 270-71 [emphasis supplied].