

REPUBLIC OF THE PHILIPPINES  
**SUPREME COURT**  
MANILA

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**FIRST DIVISION**

**CARLOS CELDRAN y**  
**PAMINTUAN,**  
*Petitioner,*

**WITH CD FILED**

-versus-

**G.R. No. 220127**

**PEOPLE OF THE**  
**PHILIPPINES,**  
*Respondent.*

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**OMNIBUS MOTION**

- a. TO REFER THE CASE TO THE HONORABLE COURT *EN BANC*; and
- b. FOR RECONSIDERATION OF THE *RESOLUTION* DATED 21 MARCH 2018

The **PEOPLE OF THE PHILIPPINES**, through the **OFFICE OF THE SOLICITOR GENERAL**, unto this Honorable Court, respectfully states:

1. On 21 March 2018, this Honorable Court's First Division issued its *Resolution* of even date affirming the conviction of Petitioner Carlos Celdran y Pamintuan for the crime of Offending Religious Feelings defined and penalized under Article 133 of the Revised Penal Code. The dispositive portion of the Resolution states, to wit:

**WHEREFORE**, premises considered, the Decision dated December 12, 2014 and Resolution dated August 14, 2015 of the Court of Appeals in CA-G.R. CR No. 36170 are hereby **AFFIRMED**.

**SO ORDERED.**<sup>1</sup>

<sup>1</sup> Resolution dated March 21, 2018, p. 4.

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2. In its Resolution, this Honorable Court affirmed the Court of Appeals' *Decision* dated 12 December 2014 and *Resolution* dated 14 August 2014 subject of this appeal primarily on the ground that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court.

3. While questions of fact cannot generally be raised in a petition for review on *certiorari*, this rule admits of well-recognized exceptions. As will be discussed below, the Solicitor General believes that this case falls under at least one of the exceptions, allowing this Honorable Court to entertain the Petition and the questions of fact raised therein.

4. Further, in the proceedings before this Honorable Court, both Petitioner and the People of the Philippines, through the Solicitor General, asked for the declaration of unconstitutionality of Article 133 of the Revised Penal Code. Such issue, however, was not passed upon by this Honorable Court in its Resolution.

5. The Solicitor General maintains that Article 133 of the Revised Penal Code is unconstitutional, and that Petitioner should be acquitted—both on the basis of the inherent unconstitutionality of the legal provision under which he was criminally charged, as well as on the lack of factual basis to support his conviction.

6. Considering that the present case involves the constitutionality of Article 133 of the Revised Penal Code, it is most respectfully prayed that the present motion for reconsideration be resolved by the Honorable Court, sitting *en banc*, pursuant to Article VIII, Section 4(2) of the 1987 Constitution and Rule 2, Section 3(a) of the Internal Rules of the Supreme Court.<sup>2</sup>

7. In *Firestone Ceramics, Inc., et al. v. Court of Appeals, et al.*,<sup>3</sup> the Honorable Court *en banc* resolved a motion for reconsideration of a decision rendered by the Court's Third Division after the Court *en banc*, by a majority

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<sup>2</sup> A.M. No. 10-4-20-SC.

<sup>3</sup> G.R. No. 127022, June 28, 2000.

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of its actual membership, deemed the case of sufficient importance to merit its attention. The same procedure was observed by this Honorable Court in *NPC DAMA, et al. v. National Power Corporation, et al.*<sup>4</sup>

8. For these reasons, this Motion for Reconsideration is being filed respectfully inviting this Honorable Court sitting *en banc* to reconsider the disposition of the Petition.

**ARGUMENTS**

**I.**

**THERE IS GOOD GROUND FOR THIS HONORABLE COURT TO ENTERTAIN THE PRESENT PETITION AND THE QUESTIONS OF FACT RAISED THEREIN. REASONABLE DOUBT EXISTS AS TO WHETHER PETITIONER'S ACT CONSTITUTES THE CRIME OF OFFENDING RELIGIOUS FEELINGS UNDER ARTICLE 133 OF THE REVISED PENAL CODE.**

**II.**

**ARTICLE 133 OF THE REVISED PENAL CODE IS UNCONSTITUTIONAL.**

**DISCUSSION**

**I.**

**THERE IS GOOD GROUND FOR THIS HONORABLE COURT TO ENTERTAIN THE PRESENT PETITION AND THE QUESTIONS OF FACT RAISED THEREIN. REASONABLE DOUBT EXISTS AS TO WHETHER PETITIONER'S ACT CONSTITUTES THE CRIME OF OFFENDING RELIGIOUS FEELINGS UNDER ARTICLE 133 OF THE REVISED PENAL CODE.**

9. Rule 45, Section 1 of the Rules of Court states that in a petition for review on *certiorari*, only questions of law may be raised, which must be distinctly set forth in the petition. In

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<sup>4</sup> G.R. No. 156208, November 21, 2017.

*New City Builders, Inc. v. NLRC*,<sup>5</sup> this Honorable Court recognized several exceptions to this rule, to wit:

(1) **when the findings are grounded entirely on speculation, surmises or conjectures**; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) **when the judgment is based on a misapprehension of facts**; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) **when the findings are conclusions without citation of specific evidence on which they are based**; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) **when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.**<sup>6</sup>

10. In the Decision rendered by the Court of Appeals, the court *a quo* relied solely on the testimonies of the four (4) prosecution witnesses and utterly disregarded the testimonies of the witnesses presented on behalf of the accused. According to the Court of Appeals:

There were four (4) witnesses who presented themselves and emphatically declared that they were offended and insulted by the very same actuations of the petitioner which caused the religious ceremony to be disrupted.<sup>7</sup>

11. There were, however, two other witnesses—Ria Regina S. Limjap and Atty. Christian Monsod—who testified that they did not at all feel offended by Petitioner's act of displaying the placard 'DAMASO' during an ecumenical service inside the Manila Cathedral, despite also being members of the Catholic faith. The Court of Appeals overlooked this established fact which, had it duly considered, would have resulted in the acquittal of Petitioner, there being reasonable

<sup>5</sup> G.R. No. 149281, June 15, 2005, *citing* *Insular Life Assurance Company, Ltd. v. CA*, G.R. No. 126850, April 28, 2004.

<sup>6</sup> *Emphasis supplied.*

<sup>7</sup> CA Decision dated December 12, 2014, p. 13.

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doubt as to his guilt for the crime of offending religious feelings. This Honorable Court is most respectfully asked not to similarly turn a blind eye to the evidence presented by the accused.

12. Moreover, if this Honorable Court were to apply the standard laid down by Justice Luis B. Reyes in his commentaries that, in order for an act to be notoriously offensive to the feelings of the faithful, it must be directed against religious practice, dogma or ritual for the purpose of ridicule,<sup>8</sup> then this Honorable Court should note that the Decision of the Court of Appeals does not clearly cite any specific evidence on record to support this conclusion and is instead based entirely on speculation.

13. The Court of Appeals premised Petitioner's conviction merely on the fact that four witnesses presented by the prosecution felt offended by the disruption of an ongoing religious ceremony in a place of religious worship. Applying Justice Reyes' standard, however, the crime of offending religious feelings under Article 133 of the Revised Penal Code requires that the act performed be directed against a *religious practice, dogma or ritual*, thereby resulting in offense to the feelings of the faithful. Offense brought about by the mere disruption of the ongoing religious service is not enough.

14. To be sure, the disruption of any ongoing public gathering or meeting may be considered offensive. Nonetheless, whether the offense caused to another person rises to the level of a punishable criminal act, much more under Article 133 of the Revised Penal Code, is an entirely different question. The crime of offending *religious feelings* cannot be deemed to have been committed by the mere disruption caused to a public gathering.

15. The act of disrupting a public gathering may constitute one of the Crimes Against Public Order under Title III of the Revised Penal Code, but for an indictment for offending religious feelings found under Title II of the Revised Penal Code or Crimes Against the Fundamental Laws of the

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<sup>8</sup> L. REYES, II REVISED PENAL CODE, 76.

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State to prosper, it goes without saying that another person's constitutional freedom of religion should have been violated. Hence, it is required that the allegedly offensive act be directed against a religious practice, dogma or ritual.

16. Here, however, the prosecution failed to prove, much less identify, a religious practice, dogma or ritual that was allegedly ridiculed by Petitioner's act of displaying the placard 'DAMASO' in the Manila Cathedral resulting in an offense to religious feelings.

17. Quite the contrary, as testified to by prosecution witness Angelito Cacal, he found Petitioner's act "offensive" for the simple reason that the ongoing public gathering was disrupted. As he stated, "**parang may nag uusap na tao tapos bigla kang sisingit dun, parang pambabastos yun.**"<sup>9</sup> Another prosecution witness, Fr. Oscar Alunday, even thought that Petitioner's act was part of the bishop's reflection,<sup>10</sup> thereby defeating any claim that Petitioner's act of raising the placard 'DAMASO' was made to ridicule the religious nature of the ongoing service.

18. As such, there is nothing on record from which the Court of Appeals could have inferred that Petitioner's act was directed against a religious practice, dogma or ritual resulting in an offense to religious feelings. The absence of evidence on which the appellate court's decision was based is yet another ground upon which this Honorable Court is urged to entertain the questions of fact raised in the Petition.

19. Foregoing considered, the present case falls under one or more of the exceptions to the rule that only questions of law may be raised in a petition for review on *certiorari* before this Honorable Court.

20. In any case, it is a basic constitutional proposition that this Honorable Court has the power not only to promulgate, but also to suspend or relax rules of procedure pursuant to Article VIII, Section 5(5) of the 1987 Constitution. Only a year ago, this Honorable Court held in *Estipona v.*

<sup>9</sup> TSN dated February 22, 2012, pp. 16-17.

<sup>10</sup> TSN dated March 7, 2012, pp. 313 and 317.

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*Lobrigo*<sup>11</sup> that “[u]nder proper conditions, [the Court] may permit the full and exhaustive ventilation of the parties’ arguments and positions despite the supposed technical infirmities of a petition or its alleged procedural flaws. In discharging its solemn duty as the final arbiter of constitutional issues, the Court shall not shirk from its obligation to determine novel issues, or issues of first impression, with far-reaching implications.”

21. Inasmuch as both Petitioner and the Solicitor General seek the declaration of unconstitutionality of the criminal provision under which Petitioner was convicted, the interests of substantial justice beg that the issue of constitutionality be passed upon by this Honorable Court, together with the questions of fact raised in the Petition. Further, the declaration of unconstitutionality of Article 133 of the Revised Penal Code is of first impression. Most importantly, considering that the freedom of expression, a constitutional right accorded primacy and high esteem,<sup>12</sup> is alleged to be infringed upon by the continuous operation of Article 133 of the Revised Penal Code, the resolution of the constitutional issues tendered in this case will have far-reaching implications.

22. Finally, considering as well that the Court of Appeals overlooked facts established by the defense, and its assailed Decision and Resolution were based instead on pure conjectures, and contained findings which are mere conclusions without citation of specific evidence on which they are based, reasonable doubt exists as to whether Petitioner’s act constitutes the crime of offending religious feelings defined and penalized under Article 133 of the Revised Penal Code. Consequently, the Court of Appeals erred in affirming the decision of the Regional Trial Court and Metropolitan Trial Court convicting the accused for violating the assailed provision.

23. Thus, this Honorable Court is most respectfully urged to reconsider the Resolution dated 21 March 2018, reverse the Court of Appeals, and acquit Petitioner of the crime charged.

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<sup>11</sup> G.R. No. 226679, August 15, 2017.

<sup>12</sup> *Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008.

**II.**

**ARTICLE 133 OF THE REVISED PENAL CODE IS UNCONSTITUTIONAL.**

24. In its *Manifestation in lieu of Comment* dated 16 May 2016, the Office of the Solicitor General argued for the declaration of unconstitutionality of Article 133 of the Revised Penal Code, whether on its face or as applied to Petitioner. These arguments are similarly adopted in this Motion, in addition to those raised below.

***Whether on its face or as applied to Petitioner, Article 133 of the Revised Penal Code is vague and overbroad, resulting in a violation of the right to due process.***

25. This Honorable Court has held in *Jose Jesus Disini, et al. v. Secretary of Justice, et al.*<sup>13</sup> that “[w]hen a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable.” Citing the esteemed Acting Chief Justice Antonio T. Carpio’s dissenting opinion in *Romualdez v. Commission on Elections (“Romualdez”)*,<sup>14</sup> this Honorable Court clarified that its prior rulings on the inapplicability of the vagueness and overbreadth doctrines in criminal statutes is “appropriate only insofar as these doctrines are used to mount ‘facial’ challenges to penal statutes not involving free speech.”<sup>15</sup>

26. To the extent that Article 133 of the Revised Penal Code is related to the regulation of the content of a speech, its overbreadth and vagueness result in a chilling effect on what would otherwise be considered as protected speech. Stated otherwise, a person who does not know whether his speech constitutes a crime under Article 133 of the Revised Penal Code, an overbroad or vague law, may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence.<sup>16</sup>

<sup>13</sup> G.R. No. 203335, February 11, 2014.

<sup>14</sup> G.R. No. 167011, April 30, 2008.

<sup>15</sup> *Disini v. Secretary of Justice*, G.R. No. 203335, February 11, 2014.

<sup>16</sup> *Ibid.*



27. In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*,<sup>17</sup> this Honorable Court laid down the test to ascertain whether a law is unconstitutional for vagueness, to wit:

From *Connally v. General Construction Co.* to *Adderley v. Florida*, the principle has been consistently upheld that **what makes a statute susceptible to such a charge is an enactment either forbidding or requiring the doing of an act that men of common intelligence must necessarily guess at its meaning and differ as to its application.** Is this the situation before us? A citation from Justice Holmes would prove illuminating: "We agree to all the generalities about not supplying criminal laws with what they omit but there is no canon against using common sense in construing laws as saying what they obviously mean."

28. The Honorable Justice Carpio further elaborated in *Romualdez* the three tests to determine when a law is vague or overbroad.<sup>18</sup> If Article 133 of the Revised Penal Code meets all the tests, it complies with the due process clause and is therefore constitutional. If it fails any one of the three tests, then it is unconstitutional, and Petitioner must be acquitted of the crime charged. The tests are:

- a. *First*, does Article 133 of the Revised Penal Code give fair notice or warning to ordinary citizens as to what is criminal conduct and what is lawful conduct? Put differently, is Article 133 of the Revised Penal Code so vague that ordinary citizens must necessarily guess as to its meaning and differ as to its application?
- b. *Second*, is Article 133 of the Revised Penal Code so vague that it prescribes no ascertainable standard of guilt to guide courts in judging those charged of its violation?

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<sup>17</sup> G.R. No. L-24693, July 31, 1967 *citing* *Connally v. General Construction Co.*, 269 U.S. 385 (1926), *Adderley v. Florida*, 17 L. ed. 2d 149, Nov. 14, 1966, and *Roschen v. Ward*, 279 U. S. 337, 339 (1929); *emphasis supplied*.

<sup>18</sup> *See* Dissenting Opinion in *Romualdez v. COMELEC*, G.R. No. 167011, April 30, 2008.

- c. *Third*, is Article 133 of the Revised Penal Code so vague that law enforcers—the police and prosecutors—can arbitrarily or selectively enforce it?

29. The assailed provision of the Revised Penal Code states that:

Article 133. *Offending the religious feelings.* – The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony, shall perform acts notoriously offensive to the feelings of the faithful.

30. This Honorable Court in *People of the Philippines v. Jose M. Baes*<sup>19</sup> held that the *actus reus* of the crime punished under Article 133 is predicated on its *effect*, that is, being “notoriously offensive” to the “feelings of the faithful.” The provision, however, fails to furnish any objective standard that may reasonably be understood by and applied uniformly to ordinary citizens.

31. On its face, too, the provision does not readily provide any standard as to the determination of who constitutes the “faithful” against whom the alleged notoriously offensive act should be directed in order for the act to be considered criminal in nature. As worded, Article 133 of the Revised Penal Code authorizes just about any person who claims to be part of any faith to institute a criminal complaint against a person who performs the allegedly offensive act. This poses serious complications considering that an identical utterance would be safe before a tolerant crowd, but deemed criminal before an intolerant audience.

32. Differently put, the assessment of which acts are offensive, much more notoriously offensive, to the faithful is not based on any reasonable, uniform, and objective standard. Instead, it is entirely subjective on the part of whoever the complainant may be in any given case.

<sup>19</sup> See G.R. No. L-46000, May 25, 1939, wherein it is stated:

[W]hether or not the act complained of is offensive to the religious feelings of the Catholics, is a question of fact which must be judged only according to the feelings of the Catholics and not those of other faithful ones, for it is possible that certain acts may offend the feelings of those who profess a certain religion, while not otherwise offensive to the feelings of those professing another faith.

33. That ordinary citizens differ as to the application of Article 133 of the Revised Penal Code is further buttressed by the fact that, as applied to Petitioner's case, at least two witnesses who belong to the Catholic faith—Ms. Limjap and Atty. Monsod—testified that they did not feel in any way offended by Petitioner's act of "displaying a placard/board bearing the word 'DAMASO' while ecumenical service was going on inside the Manila Cathedral Church, Intramuros."<sup>20</sup>

34. What is more, the two witnesses described the reaction of those present during the incident and testified that Petitioner's act did not even elicit any strong response from the crowd. Ms. Limjap testified as follows:

Q: Did you notice the reaction of the people inside the church?

A: Yes I did actually, he was standing there for a few minutes. **There was no big reaction, there was no mumble, people were sitting down** and it was a few minutes I think a couple of policemen came out to escort Carlos out of the Cathedral. And in fact I remember that the (sic) even changed position, he held the placard up like this and he made a quarter turn and **at the point I was thinking, oh it's the funny Carlos.**

Q: So when you went outside the church after getting out of the back door and coming in again and when you noticed Carlos, can you please describe at that point, his demeanor?

A: **He is completely quiet, he was quite calm, he was literally standing in the middle of the aisle and did not say anything and in fact his movement was not scandalous.**<sup>21</sup>

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Q: Earlier you said that you are a Catholic?

A: Yes.

<sup>20</sup> Information dated October 1, 2010.

<sup>21</sup> Transcript of Stenographic Notes (TSN) dated June 27, 2012, pp. 12-13; *emphasis and underscoring supplied.*

**Q: As a Catholic, what did you feel when you saw the word Damaso before you get into the Church?**

**A: I have no feelings, it's just a word and a character in a novel.**

**Q: When you saw Carlos raising the sign with the word Damaso, what did you feel?**

**A: I felt that would be very brave, by doing that. That's it.<sup>22</sup>**

35. Atty. Monsod, on the other hand, testified:

**Q: You said earlier you are a Catholic, and this case is about offending religious feeling, what can you say about his action in relation to you being a [C]atholic?**

**A: I did not feel offended.**

Q: Why?

**A: He did not disrupt anything and this is a very [un]eventful incident as far I could see and he went quietly. And when he had gone to the side, he said in a loud voice, "[D]on't meddle in politics" and that was all. And then he went outside and nothing happened that seem ruffled the proceedings.**

Q: How did it affect the program?

**A: No, it did not affect the program, the program just continued on according to schedule.<sup>23</sup>**

36. On cross-examination, Atty. Monsod further testified:

Q: And you said in your own estimation, what he did was [un]eventful.

A: Yes, it seem (sic) that way.

Q: And you did not consider the fact the accused went with the policemen after he was ask by the policeman.

<sup>22</sup> *Id.* at 14-15; *emphasis and underscoring supplied.*

<sup>23</sup> TSN dated October 22, 2012, pp. 7-8; *emphasis and underscoring supplied.*

A: Yes.

Q: And according to you that was [un]eventful.

A: **Because it was done very quietly, no resistant (sic) no forcing.**

Q: So somebody being accosted by the policeman inside the church is [un]eventful to you?

A: I don't know if it was ever notice (sic) by the other people at the back.

Q: But to you it was [un]eventful.

A: **[Un]eventful in the sense that there was no disruption, no resistance, no fighting, no quarrel and no commotion at all.**<sup>24</sup>

37. Even a minister of the Catholic faith, Fr. Alunday, testified that he was shocked at the intrusion of Petitioner, but nevertheless admitted that he did not find the word 'DAMASO' offensive, much less offensive to religious feelings, at the time of the incident, *viz.* :

Q: Is it correct to say that when you saw Mr. Celdran, you thought it was part of Mr. Tirona's presentation?

A: Yes sir.

Q: So you were not shock (sic) at that time?

A: Not yet.

Q: Because you are thinking that it was part of Mr. Tirona's reflection?

A: Yes sir.

Q: **Is that because, there was nothing wrong with the word Damaso,** because earlier you said that Damaso is Saint Jerome's secretary?

A: **Yes sir.**

Q: **So the word Damaso itself did not mean anything to you at that point?**

<sup>24</sup> *Id.* at 14; *emphasis and underscoring supplied.*

**A: At that point, it did not mean anything to me.**<sup>25</sup>

38. Clearly, therefore, whether on its face or as applied, Article 133 of the Revised Penal Code is so vague that ordinary citizens must necessarily guess as to its meaning and differ as to its application.

39. Further exacerbating the confusion caused to ordinary citizens by the vagueness of Article 133 of the Revised Penal Code is the fact that even the courts, as in Petitioner's case, could not uniformly specify and agree on the factual basis for convicting the accused for the crime charged.

40. As already discussed, the trial<sup>26</sup> and appellate<sup>27</sup> courts adopted in their discussion the standard laid down by Justice Reyes in his commentaries that, in determining whether an act is offensive to religious feelings under Article 133, "it must be directed against religious practice, dogma or ritual for the purpose of ridicule, as mocking or scoffing at or attempting to damage an object of religious veneration."<sup>28</sup>

41. During trial, however, none of the witnesses were able to pinpoint any religious practice, dogma or ritual that was ridiculed by Petitioner upon which his conviction could have been based. For instance, the testimony of Angelito Cacal before the Metropolitan Trial Court shows that he was merely offended by the disturbance caused by Petitioner, not that it was directed against any religious practice, dogma or ritual, to wit:

Q: *Ginoong Cacal, nakita at nakunan ninyo ang nangyari sa Manila Cathedral, ano ngayon ang inyong reaction nung nakita ninyo ang nangyari?*

A: *Nung una po nagulat ako, hindi ko expected na magkakaroon ng ganung pangyayari, unang una ecumenical mass yun and then maraming bisita. Andun ang Papa Nuncio, kaya nagulat ako, gusto ko na sana siya kunin dun, kaya lang hindi ako*

<sup>25</sup> TSN dated March 7, 2012; *emphasis and underscoring supplied.*

<sup>26</sup> RTC Decision dated August 12, 2013, p. 11, *citing* MeTC Decision dated December 14, 2012, p. 27.

<sup>27</sup> CA Decision dated December 12, 2014, p. 17.

<sup>28</sup> L. REYES, II REVISED PENAL CODE, 76.

*authorized, kaya syempre nagalin (sic) din, kasi bakit niya ginawa yun.*

**Q: *Bakit naman kayo nagalit?***

**A: *Syempre, parang may nag uusap na tao tapos bigla kang sisingit dun, parang pambabastos yun.*<sup>29</sup>**

42. Contrary to what appeared in the evidence on record, the Regional Trial Court convicted Petitioner because his act was allegedly "meant to mock, insult and ridicule those clergy whose beliefs and principles were diametrically opposed to his own."<sup>30</sup>

43. The Court of Appeals, on the other hand, held that the disruption caused to the then ongoing ceremony was sufficient to convict Petitioner for the crime charged.<sup>31</sup>

44. The findings of both the Regional Trial Court and the Court of Appeals both miserably fail to satisfy even the standard laid down by former Justice Reyes in his commentaries that the courts had intended to apply.

45. Evidently, as applied to Petitioner, Article 133 of the Revised Penal Code is so vague and wanting of a reasonable, uniform, and objective judicial standard as to the *actus reus* of the crime, such that the courts considered different elements constituting the crime in handing out their judgment of conviction against Petitioner.

46. All told, Article 133 of the Revised Penal Code, whether on its face or as applied to Petitioner's case, fails to satisfy at least two of the three-pronged test to ascertain whether a law is vague or overbroad. The assailed provision is violative of the right to due process found in both Article III, Section 1 and Section 14 of the 1987 Constitution. For this reason, the challenged provision must be struck down as unconstitutional.

<sup>29</sup> TSN dated February 22, 2012, pp. 16-17; *emphasis and italics supplied.*

<sup>30</sup> RTC Decision dated August 12, 2013, p. 13.

<sup>31</sup> CA Decision dated December 12, 2014, p. 13.

**Whether on its face or as applied, Article 133 of the Revised Penal Code unduly restricts and violates freedom of speech and expression.**

47. Article 133 of the Revised Penal Code, by penalizing acts offensive to religious feelings through vague and overbroad standards, casts a chilling effect on what would otherwise be protected speech, and to that extent constitutes a prior content-based restraint on free speech. The assailed provision, thus, suffers from a heavy presumption of invalidity and is subject to the clear and present danger test.<sup>32</sup>

48. Indeed, the jurisprudence of this Honorable Court has consistently held that the State has the burden of proving the existence of a clear and present danger of a substantive evil that Congress has a right to prevent.<sup>33</sup> As this Honorable Court held in *Primicias vs. Fugoso*,<sup>34</sup> “[f]ear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned women. It is the function of speech to free men from the bondage of irrational fears.” There must be the probability of serious injury to the state. The act inimical to the interests of the State must be characterized by proximity and clarity.<sup>35</sup>

49. It is likewise well to note that in *Cohen v. California* (“*Cohen*”),<sup>36</sup> the United States Supreme Court has afforded judicial protection even to provocative and potentially offensive speech. Through *MVRS Publication v. Islamic Da’Wah Council of the Philippines, Inc.*,<sup>37</sup> *Cohen* found application in our jurisprudence and this Honorable Court, relying, among others, on *Cohen*, denied a complaint for damages filed on the basis of hate speech against a religious sect. This Honorable Court, summarizing *Cohen*, stated that **“[w]ith respect to the ‘fighting words’ doctrine, while it remains alive it was modified by the current rigorous**

<sup>32</sup> *Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015.

<sup>33</sup> *Arsenio Gonzales and Felicisimo Cabigao v. Commission on Elections*, G.R. No. L-27833, April 18, 1969.

<sup>34</sup> G.R. No. L-1800, January 27, 1948 *citing* Justice Brandeis in his concurring opinion in *Whitney vs. California*, 71 U. S. (Law. ed.), 1105-1107.

<sup>35</sup> *Ibid.*

<sup>36</sup> 403 U.S. 15 (1971).

<sup>37</sup> G.R. No. 135306, January 28, 2003.



**clear and present danger test**. Thus, in *Cohen* the U.S. Supreme Court in applying the test held that there was **no showing** that Cohen's jacket bearing the words "Fuck the Draft" had **threatened to provoke imminent violence; and that protecting the sensibilities of onlookers was not sufficiently compelling interest to restrain Cohen's speech.**"<sup>38</sup>

50. In much the same way, Petitioner's act did not constitute a clear and present danger that the State has an interest to suppress. Indeed, as Atty. Monsod testified, the incident turned out to be "[un]eventful in the sense that **there was no disruption, no resistance, no fighting, no quarrel and no commotion at all.**"<sup>39</sup>

51. Having failed to hurdle the clear and present danger test, Article 133 of the Revised Penal Code must be struck down as unconstitutional.

52. It bears noting that Petitioner's display of the word 'DAMASO' was made in the context of the debate over the Reproductive Health Bill then pending in Congress. Even the Regional Trial Court made such a finding,<sup>40</sup> and emphasized that Petitioner shouted "Don't meddle in politics" while he was being brought out of the Manila Cathedral.<sup>41</sup> The Regional Trial Court also concluded that "the dogged determination of the priests and bishops in clinching on to their beliefs by fervently campaigning against the passage of the RH Bill had spurred accused-appellant [Celdran] in committing what he had done during the subject incident."<sup>42</sup>

53. All premises considered, Petitioner's act was "both intended and received as a contribution to public deliberation about some issue," "foster[ing] informed and civic minded deliberation."<sup>43</sup> The act of displaying a placard/board bearing the word 'DAMASO' while ecumenical service was going on inside the Manila Cathedral Church, Intramuros was

<sup>38</sup> *Ibid.*; *emphasis in the original; underscoring supplied.*

<sup>39</sup> TSN dated October 22, 2012, pp. 14, *emphasis supplied.*

<sup>40</sup> RTC Decision dated August 12, 2013, p. 12.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015 and *SWS v. COMELEC*, G.R. No. 208062, April 27, 2015.

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Petitioner's way of conveying to the priests that he strongly disagreed with their stand on the Reproductive Health Bill then pending before Congress.

54. Viewed from this perspective, Petitioner's speech falls within the realm of political speech. The interest of the State is to protect the same, not to suppress it.

55. In sum, the Solicitor General requests the indulgence of this Honorable Court to exercise its broader power of judicial review and declare Article 133 of the Revised Penal Code unconstitutional, whether on its face or as applied to Petitioner, for being violative of the rights to due process, free speech and expression. This Honorable Court is likewise respectfully moved to entertain the questions of fact raised in the Petition, and rule that reasonable doubt exists as to the guilt of the accused for the crime charged.

**PRAYER**

**WHEREFORE**, it is respectfully prayed that:

- (a) This Honorable Court's First Division **REFER** the resolution of this Motion for Reconsideration to the court *en banc* pursuant to Article VIII, Section 4(2) of the 1987 Constitution and Rule 2, Section 3(a) of the Internal Rules of the Supreme Court; and that
- (b) This Honorable Court sitting *en banc*:
  - (1) **RECONSIDER** the *Resolution* dated 21 March 2018 rendered by the Honorable Court's First Division;
  - (2) **DECLARE** Article 133 of the Revised Penal Code as **UNCONSTITUTIONAL** on its face; or
  - (3) **DECLARE** Article 133 of the Revised Penal Code as **UNCONSTITUTIONAL** as applied to Petitioner Carlos Celdran y Pamintuan;

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- (4) **REVERSE** and **SET ASIDE** the *Decision* dated 12 December 2014 and the *Resolution* dated 14 August 2015 of the Court of Appeals, and that Petitioner be **ACQUITTED** of the crime of Offending Religious Feelings.

Other just and equitable reliefs are likewise prayed for.

Makati City for Manila, 14 August 2018.

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**EXPLANATION**

(Pursuant to Section 11, Rule 13 of the  
1997 Rules of Civil Procedure)

The foregoing **MOTION FOR RECONSIDERATION** is served by registered mail due to lack of personnel which makes personal service impracticable.

  
**JOSE ANGELO A. DAVID**

*Associate Solicitor*