



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**LOIDA M. JAVIER,**  
Petitioner,

**G. R. No. 193150**

Present:

- versus -

SERENO, *CJ*, Chairperson,  
LEONARDO-DE CASTRO,  
DEL CASTILLO,  
PERLAS-BERNABE, and  
CAGUIOA, *JJ*.

Promulgated:

**PEPITO GONZALES,**  
Respondent.

**JAN 23 2017**

X ----- X

**DECISION**

**SERENO, *CJ*:**

Two Decisions were promulgated by the trial court in this case: the first one for conviction, and the second for acquittal. We are called upon to resolve the procedural question of whether the promulgation *in absentia* of the earlier judgment of conviction was valid.

This Petition for Review on Certiorari under Rule 45 seeks a reversal of the Court of Appeals (CA) Decision<sup>1</sup> and Resolution<sup>2</sup> in CA-G.R. SP No. 97629. The CA affirmed the Decision<sup>3</sup> of Branch 40 of the Regional Trial Court of Palayan City, Nueva Ecija (the RTC of Palayan City) in Criminal Case No. 1066-P, penned by Judge Corazon D. Soluren (Judge Soluren). Judge Soluren reversed a previous Decision<sup>4</sup> penned by Judge Erlinda P. Buted (Judge Buted). In the earlier Decision, respondent was convicted of murder with frustrated murder and multiple attempted murder, and was meted the death penalty.

<sup>1</sup> Dated 22 March 2010, *rollo*, p. 34-44; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Rosmari D. Carandang and Ramon M. Bato, Jr.

<sup>2</sup> Dated 30 July 2010, *id.* at 45.

<sup>3</sup> Dated 31 October 2006, *id.* at 209-238.

<sup>4</sup> Dated 22 December 2005; *id.* at 157-198.

### THE ANTECEDENT FACTS

This case originated from a criminal case for murder with frustrated murder and multiple attempted murder lodged in Branch 96 of the Regional Trial Court of Baler, Aurora (the RTC of Baler). The Information charged respondent Pepito Gonzales as follows:

That on December 25, 1997 at around 11:30 o'clock in the evening in Barangay Diarabasin, Municipality of Dipaculao, Province of Aurora, Philippines and within the jurisdiction of this Honorable Court, the accused with intent to kill and with the use of treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously throw a grenade inside the house of one Leonardo Hermenigildo while the latter and his companions Rufino Concepcion, who sustained mortal wounds which were the direct and immediate cause of his death thereafter; that as further consequence of said explosion, Leonardo Hermenigildo was also hit and sustained physical injuries fatal enough to cause his death without immediate and able medical attendance; that Julio Toledo, Ariel Cabasal and Jesus Macatiag were also hit and likewise sustained physical injuries, but the said accused did not perform all the acts of execution which should have produced the crime of multiple murder as a consequence, by reason of causes other than his own spontaneous desistance, that is, the injuries sustained by said Julio Toledo, Ariel Cabasal and Jesus Macatiag were not necessarily mortal.<sup>5</sup>

Gonzales filed a Motion for Bail<sup>6</sup> with the RTC of Baler. Private complainant Carmen Macatiag (Macatiag) — sister of the deceased victim, Rufino Concepcion — filed her Opposition<sup>7</sup> to Gonzales's Motion for Bail. Gonzales then filed a Comment<sup>8</sup> to which Macatiag filed her Reply.<sup>9</sup> The RTC Baler issued an Order<sup>10</sup> granting Gonzales bail.

Thereafter, Macatiag filed with this Court an Urgent Petition for Transfer of Venue.<sup>11</sup> While her petition was pending, she filed a Motion for Reconsideration<sup>12</sup> of the Order of the RTC of Baler granting bail to Gonzales, who filed his Opposition<sup>13</sup> to her motion. The RTC of Baler denied<sup>14</sup> the Motion for Reconsideration and upheld its Order granting bail. Macatiag also filed with the RTC of Baler a Manifestation and Motion to Suspend Proceedings<sup>15</sup> pending the resolution of her previous petition for transfer of venue.

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<sup>5</sup> Id. at 12.

<sup>6</sup> Id. at 48.

<sup>7</sup> Id. at 53.

<sup>8</sup> Id. at 61.

<sup>9</sup> Id. at 66.

<sup>10</sup> Dated 8 December 1998; id. at 71.

<sup>11</sup> On 25 February 1999; id. at 73.

<sup>12</sup> Id. at 95.

<sup>13</sup> Id. at 102.

<sup>14</sup> Id. at 107.

<sup>15</sup> Id. at 105.



On 17 August 1999, the Court granted the transfer of venue and reassigned the case to the RTC of Palayan City, which was then presided by Judge Erlinda Buted.<sup>16</sup> Trial on the merits ensued.

The RTC admitted the prosecution's Formal Offer of Evidence.<sup>17</sup> Gonzales filed an Urgent Motion for Leave to File Demurrer to Evidence.<sup>18</sup> To this motion he attached a Demurrer to Evidence,<sup>19</sup> which the RTC denied.<sup>20</sup> Following the denial, Gonzales presented his evidence and witnesses and filed his Formal Offer of Evidence.<sup>21</sup>

Thereafter, on 30 November 2005, the RTC issued an Order<sup>22</sup> setting the promulgation of the case on 15 December 2005. The Return of Service<sup>23</sup> indicated that the Order dated 30 November 2005 and the Notice of Promulgation dated 6 December 2005 were received on 7 and 12 December 2005 by the sister of private respondent, who refused to sign the Return.

On 15 December 2005, the scheduled date of promulgation, Gonzales failed to appear. His lawyer, Atty. Mario Benitez (Atty. Benitez), personally filed a "Withdrawal of Counsel"<sup>24</sup> with his client's conformity.<sup>25</sup> The promulgation was rescheduled to 22 December 2005.<sup>26</sup> On the same date, a warrant of arrest<sup>27</sup> was issued and the bond forfeited in view of the nonappearance of the accused, who was deemed to have jumped bail.

A Notice of Hearing/Subpoena and Notice of Promulgation of Judgment<sup>28</sup> was issued on 15 December 2005 commanding the parties to appear before the Court on 22 December 2015. Notices were sent to Gonzales and Macatiag.<sup>29</sup>

On 22 December 2005, Gonzales still failed to appear without any justification. Judge Buted appointed a counsel *de officio* in lieu of Atty. Benitez.<sup>30</sup> The Branch Clerk of Court thereafter read the dispositive portion of Judge Buted's Decision in the presence of the public prosecutor, the counsel *de officio*, and the heirs of Macatiag. Macatiag had been killed on 14 December 2005, just a day before the first promulgation date, and Gonzales was also an accused in her killing. Gonzales was convicted of the murder charges:

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<sup>16</sup> Id. at 111.

<sup>17</sup> In an Order dated 5 October 2004; id. at 135

<sup>18</sup> Id. at 136.

<sup>19</sup> Id. at 138.

<sup>20</sup> In an Order dated 17 May 2005; id. at 143.

<sup>21</sup> Id. at 148-150. "Formal Offer of Documentary Exhibits for the Accused."

<sup>22</sup> Id. at 151-152.

<sup>23</sup> Id. at 318.

<sup>24</sup> Id. at 153.

<sup>25</sup> Id. at 154.

<sup>26</sup> Id.

<sup>27</sup> Id. at 155.

<sup>28</sup> Id. at 319.

<sup>29</sup> Id.

<sup>30</sup> Id. at 156.

**WHEREFORE**, the Accused is found **GUILTY** beyond reasonable doubt of the complex crime of **MURDER** with **FRUSTRATED MURDER** and **MULTIPLE ATTEMPTED MURDER** and is hereby sentenced to a single indivisible penalty of **DEATH**.<sup>31</sup>

Thereafter, the Clerk of Court was directed to enter the judgment of conviction in the RTC's criminal docket pursuant to paragraph 4, Section 6, Rule 120 of the Revised Rules of Criminal Procedure.<sup>32</sup> Since the death penalty was still in force at the time the judgment was promulgated, Judge Buted also ordered that the records of the case be immediately forwarded to the CA for automatic review.<sup>33</sup>

In less than a month after the judgment of conviction was rendered, or on 6 January 2006, private respondent Gonzales filed, through Atty. Benitez, an Omnibus Motion<sup>34</sup> asking that the judgment promulgated on 22 December 2005 be reconsidered and set aside. Gonzales argued that he had not been properly notified of the promulgation of judgment; that he had not been represented by counsel; and that the RTC had proceeded with deliberate haste in convicting him.

The trial court, now presided by Judge Soluren, gave due course to the motion of Gonzales and granted it through an Order dated 18 April 2006. The Order set aside the judgment of conviction and reinstated his bail.<sup>35</sup>

On 20 November 2006, petitioner Javier, Macatiag's daughter, discovered that the RTC had rendered a Decision<sup>36</sup> dated 31 October 2006 acquitting Gonzales of all charges.<sup>37</sup> On 16 January 2007, she filed a Petition for Certiorari under Rule 65 before the CA, citing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Soluren. The Office of the Solicitor General filed a Comment<sup>38</sup> dated 12 October 2007 praying that the Petition be denied due course and dismissed for lack of merit. The OSG opined that Judge Soluren did not commit grave abuse of discretion in reversing the earlier Decision of Judge Buted.

### THE CA RULING

In its assailed Decision, the CA dismissed the Petition for Certiorari. It ruled out grave abuse of discretion on the part of respondent Judge Soluren in granting private respondent's Omnibus Motion and rendering a new judgment of acquittal. It agreed with the theory of the OSG that the

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<sup>31</sup> Id. at 197.

<sup>32</sup> Rule 120, Sec. 6, par. 4 – In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or through his counsel.

<sup>33</sup> *Rollo*, p. 156.

<sup>34</sup> Id. at 199.

<sup>35</sup> Id. at 204.

<sup>36</sup> Id. at 209-238.

<sup>37</sup> Id. at 238.

<sup>38</sup> Id. 260-278.

promulgation was void, because respondent Gonzales had not been validly notified of the rescheduled promulgation of judgment on 22 December 2005; that since Gonzales's lawyer, Atty. Benitez, had already withdrawn his representation on the first scheduled date of promulgation, respondent had no knowledge that the promulgation had been rescheduled to 22 December 2005; that since he was no longer Gonzales's lawyer, Atty. Benitez was relieved of the duty to inform his client of court notices and processes; that since respondent was not personally notified of the rescheduled promulgation, Judge Buted's promulgation *in absentia* was invalid.

The CA further adopted the OSG's stance that before resorting to a Rule 65 petition for certiorari to question respondent judge's act of acquitting private respondent, petitioner should have first filed a motion for reconsideration. It ruled that a motion for reconsideration is not only a plain and adequate remedy available under the law, but is an indispensable condition that must be satisfied before an aggrieved party can resort to a special civil action for certiorari. The appellate court held that since the remedy of filing a motion for reconsideration was available to petitioner, and none of the exceptions to the filing of that motion existed, the Petition must be dismissed.

#### THE ISSUES

The main issue in this case is whether the CA erred in affirming the Decision of acquittal issued by Judge Soluren, who had ruled that there was no grave abuse of discretion amounting to lack or excess of jurisdiction on her part when she gave due course to the Omnibus Motion of private respondent questioning his prior conviction.

In order to resolve the main issue, the following issues have to be addressed:

- A. Whether there was a valid promulgation of judgment by Judge Buted in her prior Decision of conviction;
- B. Whether Judge Soluren's subsequent judgment of acquittal is valid;
- C. Whether a special civil action for certiorari under Rule 65 is the proper remedy to question a decision of acquittal.

#### THE COURT'S RULING

The Petition is impressed with merit.

As a prologue to our ruling, We take cognizance of the unusual circumstances surrounding this case. Petitioner is the daughter of the original private complainant, Carmen Macatiag, who was in turn the sister of the first victim, Rufino Concepcion. When petitioner filed the instant Petition for



Review with this Court, the OSG filed a Manifestation and Motion<sup>39</sup> praying that the People of the Philippines be removed as a co-petitioner because the OSG was not joining petitioner in this Petition. The pertinent portion<sup>40</sup> of the OSG's Manifestation and Motion reads:

[T]he records will show that the OSG already took on a position different from that of the petitioner Loida M. Javier when the case was elevated to the Court of Appeals. Specifically, the OSG in its Comment dated October 12, 2007 and Memorandum dated November 24, 2008 was of the position that Honorable Judge Soluren did not commit grave abuse of discretion when she ruled to acquit Pepito Gonzales. In this regard, the arguments raised by the OSG in the aforementioned pleadings were in fact, adopted by the Court of Appeals in its Decision dated May 22, 2010.

While the OSG ordinarily represents the People in proceedings before this Court, We have in the past allowed private parties to file certiorari petitions assailing rulings and orders of the RTC in criminal cases.<sup>41</sup> As early as 1969, in *Paredes v. Gopengco*,<sup>42</sup> the Court already held that offended parties in criminal cases have sufficient interest and personality as "persons aggrieved" to file a special civil action of prohibition and certiorari under Sections 1 and 2 of Rule 65. That ruling was in line with the underlying spirit of adopting a liberal construction of the Rules of Court in order to promote their object. Recently, We reiterated this ruling in *Almero v. People*.<sup>43</sup> Similarly, in the case at bar, We find that the ends of substantial justice would be better served and the issues determined in a more just, speedy, and inexpensive manner, by entertaining the present Petition.

We now proceed to the merits of the case.

There are two divergent RTC Decisions: one for conviction, and another for acquittal. Our resolution of this Petition for Review hinges on the validity of the second RTC Decision.

After review of the case and the records, We rule that the Court of Appeals, in affirming Judge Soluren's Decision of acquittal, committed reversible error, which can be remedied by granting this Petition for Review on Certiorari.

***Judge Buted's Decision convicting respondent was validly promulgated.***

Section 6, Rule 120 of the Revised Rules of Criminal Procedure allows a court to promulgate a judgment *in absentia* and gives the accused the opportunity to file an appeal within a period of fifteen (15) days from

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<sup>39</sup> Id. at 330-333.

<sup>40</sup> Id. at 331.

<sup>41</sup> See *Narciso v. Sta. Romana-Cruz*, 385 Phil. 208-224 (2000); *People v. Calo, Jr.*, 264 Phil. 1007-1015 (1990).

<sup>42</sup> 140 Phil. 81-94 (1969).

<sup>43</sup> G.R. No. 188191, 12 March 2014, 718 SCRA 698.

notice to the latter or the latter's counsel; otherwise, the decision becomes final.

Records show that respondent was properly informed of the promulgation scheduled on 15 December 2005. The RTC Order dated 30 November 2005<sup>44</sup> documents the presence of his counsel during the hearing. It is an established doctrine that notice to counsel is notice to client.<sup>45</sup> In addition, the Return of Service states that the Order and Notice of Promulgation were personally delivered to respondent's address.

During the promulgation of judgment on 15 December 2005, when respondent did not appear despite notice, and without offering any justification for his absence, the trial court should have immediately promulgated its Decision.<sup>46</sup> The promulgation of judgment *in absentia* is mandatory pursuant to the fourth paragraph of Section 6, Rule 120 of the Rules of Court:

SEC. 6. *Promulgation of judgment.*

x x x x

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation *shall* be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel. (Emphasis supplied)

If the accused has been notified of the date of promulgation, but does not appear, the promulgation of judgment *in absentia* is warranted. This rule is intended to obviate a repetition of the situation in the past when the judicial process could be subverted by the accused by jumping bail to frustrate the promulgation of judgment.<sup>47</sup> The only essential elements for its validity are as follows: (a) the judgment was recorded in the criminal docket; and (b) a copy thereof was served upon the accused or counsel.

In *Almuete v. People*,<sup>48</sup> petitioner's counsel informed the trial court that the accused were either ill or not notified of the scheduled date of promulgation of judgment. The RTC, however, found their absence inexcusable and proceeded to promulgate its Decision as scheduled. The accused went up to the CA, which acquitted them of the charge. This Court reversed the CA and upheld the validity of the promulgation.

In *Estrada v. People*,<sup>49</sup> this Court also affirmed the validity of the promulgation of judgment *in absentia*, given the presence of the essential elements.

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<sup>44</sup> *Rollo*, pp. 151-152.

<sup>45</sup> *Manaya v. Alabang Country Club, Inc.*, 552 Phil. 226 (2007).

<sup>46</sup> See *Chua v. Court of Appeals*, 549 Phil. 494-504 (2007).

<sup>47</sup> *Id.*

<sup>48</sup> G.R. No. 179611, 12 March 2013, 693 SCRA 167.

<sup>49</sup> 505 Phil. 339 (2005).

Judge Buted's Order dated 22 December 2005<sup>50</sup> fulfilled the requirements set forth by the Rules and prevailing jurisprudence. Pertinent portions of the Order read:

The judgment of conviction which carries the death penalty was pronounced in the presence of the Public Prosecutor, the counsel *de officio* of accused and the heirs of complainant Carmen Macatiag, the dispositive portion of which, the OIC Clerk of Court is directed to enter into the Criminal Docket.

x x x x

Let copy of the Decision furnished each the Public Prosecutor, the counsel *de officio* of the accused, Atty. Bembol Castillo, and the accused at his last known address.

Respondent was not left without remedy. The fifth paragraph of Section 6, Rule 120, states:

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.

However, instead of surrendering and filing a motion for leave to explain his unjustified absence, respondent, through Atty. Benitez, filed an Omnibus Motion before the RTC praying that the promulgation be set aside.<sup>51</sup> We cannot countenance this blatant circumvention of the Rules.

***Judge Soluren's Decision acquitting respondent is void and has no legal effect.***

Judge Soluren acted with grave abuse of discretion amounting to lack or excess of jurisdiction when she gave due course to respondent's Omnibus Motion. Aside from being the wrong remedy, the motion lacked merit.

The filing of a motion for reconsideration to question a decision of conviction can only be resorted to if the accused did not jump bail, but appeared in court to face the promulgation of judgment. Respondent did not appear during the scheduled promulgation and was deemed by the judge to have jumped bail. The fifth paragraph of Section 6, Rule 120, states that if the judgment is for conviction and the failure of the accused to appear was

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<sup>50</sup> *Rollo*, p. 156.

<sup>51</sup> *Id.* at 199.



without justifiable cause, he shall lose the remedies available in the Rules against the judgment, and the court shall order his arrest.

The Court underscores the fact that following Gonzales's waiver of the remedies under the Rules, Judge Buted issued an Order dated 22 December 2005. According to the Order, the case records shall be immediately forwarded to the CA for its automatic review of convictions meting out the death penalty.<sup>52</sup> This automatic review was pursuant to Supreme Court Administrative Circular 20-2005 (dated 15 April 2005) as implemented by OCA Circular No. 57-2005 (dated 12 May 2005).

Supreme Court Administrative Circular 20-2005 mandates as follows:

[A]ll Regional Trial Courts concerned, through the Presiding Judges and Clerks of Court, are hereby DIRECTED to henceforth DIRECTLY forward to the COURT OF APPEALS (Manila for Luzon cases, Cebu Station for Visayas cases, and Cagayan de Oro Station for Mindanao cases) the records of criminal cases whose decisions are subject to (a) automatic review because the penalty imposed is death or (b) ordinary appeals (by notices of appeal) because the penalty imposed is either reclusion perpetua or life imprisonment, notwithstanding a statement in the notice of appeal that the appeal is to the Supreme Court.

Meanwhile, OCA Circular No. 57-2005 gives the following directive:

[A]ll Judges and Clerks of Court of the Regional Trial Courts are hereby reminded that failure to comply with the above-cited Administrative Circular shall warrant appropriate disciplinary action pursuant to Rule 140 of the Rules of Court, as amended by A.M. 01-8-10-SC, which took effect on 11 September 2001, as well as the pertinent rules and regulations of the Civil Service Commission.

This Administrative Circular took effect on 19 April 2005, strict compliance herewith is hereby enjoined.

In utter disregard of this Court's circulars, Judge Soluren capriciously, whimsically, and arbitrarily took cognizance of private respondent's Omnibus Motion, granted it, and rendered a totally opposite Decision of acquittal. What she should have done was dismiss the Omnibus Motion outright, since Judge Buted's Decision of conviction was already subject to automatic review by the CA. By acting on the wrong remedy, which led to the reversal of the conviction, Judge Soluren contravened the express orders of this Court. Her blatant abuse of authority was so grave and so severe that it deprived the court of its very power to dispense justice.

We take this opportunity to correct a capricious, patent, and abusive judgment by reversing and setting aside the Decision.

Judge Soluren retired compulsorily in 2012. Had she still been in the service, some members of this Court would have been minded to refer this

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<sup>52</sup> Id. at 156.



matter to the Office of the Court Administrator for investigation into and evaluation of the question of whether the above acts call for the application of administrative sanctions.

***Double jeopardy is not triggered when the order of acquittal is void.***

Grave abuse of discretion amounts to lack of jurisdiction, and lack of jurisdiction prevents double jeopardy from attaching.<sup>53</sup>

In *People v. Hernandez*,<sup>54</sup> this Court explained that “an acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction does not really ‘acquit’ and therefore does not terminate the case as there can be no double jeopardy based on a void indictment.”

Considering that Judge Soluren’s order of acquittal was void from the very beginning, it necessarily follows that the CA ruling dismissing the Petition for Certiorari must likewise be reversed and set aside.

**WHEREFORE**, the foregoing Petition is **GRANTED**. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 97629 dated 22 March 2010 and Resolution dated 30 July 2010 are **REVERSED** and **SET ASIDE**.

The Decision of Branch 40 of the Regional Trial Court of Palayan City, Nueva Ecija dated 31 October 2006 and Order dated 18 April 2006, rendered by public respondent Judge Corazon D. Soluren acquitting respondent Pepito Gonzales, are likewise **REVERSED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The Decision dated 22 December 2005 rendered by Judge Erlinda P. Buted is **REINSTATED**.

The Court of Appeals is hereby ordered to conduct the mandatory and automatic review of the Decision dated 22 December 2005 pursuant to Sections 3 and 10, Rule 122 of the Rules of Court. Let the entire records of Criminal Case No. 1066-P entitled *People of the Philippines v. Pepito Gonzales* be immediately **TRANSMITTED** to the Court of Appeals.

The bail granted to respondent Pepito Gonzales is **CANCELLED**. Let copies of this Decision be furnished the Director of the National Bureau of Investigation and the Director-General of the Philippine National Police. The National Bureau of Investigation and the Philippine National Police are hereby **DIRECTED** to cause the **IMMEDIATE ARREST** and **DETENTION** of respondent Pepito Gonzales.

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<sup>53</sup> *Villareal v. People*, 680 Phil. 527 (2012) citing *People v. Hernandez*, 531 Phil. 289 (2006).

<sup>54</sup> *Supra* note 53.

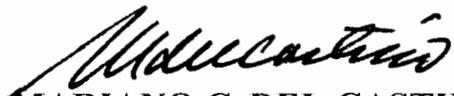


**SO ORDERED.**

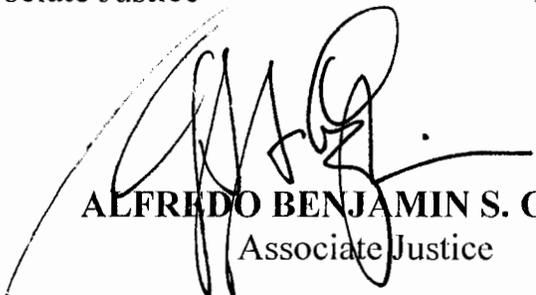
  
**MARIA LOURDES P. A. SERENO**  
Chief Justice, Chairperson

WE CONCUR:

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

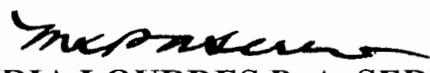
  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

*See concurring  
opinion.*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice