Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DANILO S. IBAÑEZ,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 198932

Present:

BERSAMIN, *C.J.*,
PERLAS-BERNABE,
GESMUNDO,
CARANDANG, AND
ZALAMEDA, *JJ.*

Promulgated:

OCT 09 2019

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DECISION

BERSAMIN, *C.J.*:

The offense of *estafa* as defined and penalized under Article 315, paragraph 1(b) of the *Revised Penal Code* requires misappropriation or conversion of money. Absent any evidence proving misappropriation or conversion, the accused cannot be justly convicted of said crime.

Also, the *estafa* charged herein requires breach of trust and confidence as an indispensable element. It is not committed if the transaction is a sale by which the ownership of the thing sold transfers to the accused as the vendee even if the vendor is not paid the proceeds in full by the vendee. The former only becomes an unpaid vendor, whose remedy is to enforce the sale.

The Case

The petitioner appeals the decision promulgated by the Court of Appeals (CA) on July 29, 2011[1] and the resolution promulgated on

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[1] *Rollo*, pp. 26-42; penned by Associate Justice Zenaida T. Galapate-Laguilles, and concurred in by Associate Justice Rodrigo F. Lim, Jr. and Associate Justice Pamela Ann Abella Maxino.

September 19, 2011,[2] whereby the CA respectively affirmed with modification the judgment[3] rendered by the Regional Trial Court (RTC), Branch 17, in Davao City in Criminal Case No. 53,130-03 convicting the petitioner of *estafa* as charged,[4] and denied his motion for reconsideration.

Antecedents

The accusatory portion of the information filed against the petitioner reads thusly:

> That on or about April 25, 2002, in the City of Davao Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating together and helping one another, having been authorized by the spouses Arturo T. Pineda and Honorata K. Pineda to sell their three (3) hectares orchard for an agreed price of ₱6,000,000.00 payable in twenty-four (24) months, located in Baliok, Toril, this [c]ity, and accused having sold various lots with a total amount of ₱2,513,544.00 and with express obligation to remit 60% of such amount to the complainant but remitted only the amount of ₱860,166.45, thereby leaving a balance of ₱647,560.00 (sic) but far from complying with the aforesaid obligation, with grave abuse of confidence and in violation of trust, wilfully, unlawfully and feloniously failed and refused to deliver/remit the said amount despite repeated demands made, thereby misappropriating and converting the same to their own personal use and benefit, to the damage and prejudice of spouses Arturo T. Pineda and Honorata K. Pineda in the aforesaid amount of ₱647,560.00 (sic).[5]
>
> **CONTRARY TO LAW.**[6]

The petitioner pleaded *not guilty* at arraignment, and trial ensued thereafter.[7]

The CA summarized the facts as follows:

> On April 25, 2002, private complainant Atty. Arturo T. Pineda (Atty. Pineda) and his wife Honorata, gravely in need of money to pay off their loan from one Evelyn Cheney, and impressed by the accused-appellants' expertise in real estate deals, engaged the latter's services to sell their three (3) hectares orchard at Baliok, Toril, Davao City, covered by TCT No. T-276925, for a price of Six Million Pesos (Php6,000,000.00), payable in 24 months. On the same date, Atty. Pineda signed a Memorandum (MOA) containing the following:
>
> x x x x

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2 Id. at 43-44.
3 Id. at 97-107; penned by Judge Renato A. Fuentes.
4 Id. at 97-107.
5 Id. at 45.
6 Id. at 27.
7 Id. at 9.

> 1. That the VENDOR hereby sells, transfer[s] and convey[s] unto the VENDEES his heirs, assignees, and successor, in interest (sic) the afore[-]described parcel of land including all the improvements existing thereon;
>
> 2. That the purchase price is SIX MILLION (₱6,000,000.00) PESOS to be paid in 24 months in the following manner:
>
> 1.A. ₱750,000.00 – available on September, 2002 – to pay the indebtedness for the (sic) of the [VENDOR] to Evelyn Cheney for the release of title and this represents payments for the month of May 2002 to September 2002;
>
> 2-B. ₱5,250,000.00 – to be paid in 19 months starting end of October 2002 in the amount of ₱276,315.78 per month and every month thereafter;
>
> 3-C. That the VENDOR shall execute a Special Power of Attorney in favor of the VENDEE to subdivide, sell, execute, sign all papers, deeds and affidavits that maybe required in connection with the sale of lots, to receive payments either in cash or checks, with authority to encash with payee bank;
>
> x x x x

On even date, Atty. Pineda executed a Special Power of Attorney (SPA) appointing the accused-appellants as his "*true lawful attorney (sic)-in-fact*", authorizing the latter:

> 1. To enter into any contract, subdivide and sell my parcel of land situated in Baliok, Toril, Davao City, covered by TCT T-276925 with an area of 30,000 square meters to any person either natural or juridical.
>
> 2. To execute, sign all papers, deeds and affidavits that maybe required in connection with the sale of said land.
>
> 3. To receive the payment either in cash or check with authority to encash with payee bank.

Accused-appellants, deriving authority from the SPA and MOA, sold parts of the property to several buyers and collected payments but did not remit the same to Atty. Pineda. Angered, the latter sent letters to the vendees informing them (vendees) that payment should be made to him (Atty. Pineda) being the landowner.

To put an end to their dispute, the parties on December 3, 2002 executed before the barangay a document entitled "*Amicable Settlement*" wherein they agreed as follows:

> - In the maintimes (sic) that the ₱6 Million is not yet satisfied, Atty. Pineda shall receive 60% of the total

collection of sales DRN Resources until such time that the ₱6 million (sic) is satisfied;

- That the obligation with MRS. EVELYN CHENNY shall be shouldered by Atty. Pineda;
- While the lot is not yet paid in full, the fruits of the land will still be under the disposal of Atty. Pineda;
- The DRN will submit to the Barangay the total list of their collectibles;
- That the remittance of the 60% for Atty. Pineda shall be weekly and/or every Monday to start on December 09, 2002;
- That the barangay shall be furnished with a copy of the weekly remittances.

The total sales collected by accused-appellants amounted to ₱2,513,544.00 as of 12 February 2003. However, accused-appellants failed to comply with the agreed 60% (₱1,508,126.00) of the total sales collected by them. Instead, accused-appellants remitted only the amount of ₱860,166.45, leaving a balance of ₱647,960.00. This prompted Atty. Pineda to file the complaint for Estafa against accused-appellants.[8]

Judgment of the RTC

On July 27, 2007, the RTC rendered judgment finding the petitioner guilty as charged, thus:

WHEREFORE, finding the evidence of the prosecution, more than sufficient to prove the guilt of both accused, beyond reasonable doubt of the offense charged. Accused, Danilo Ibañez, and Rolando Rubio, only, the other accused, Rodolfo Abelido, already dead, pursuant to Art. 315 paragraph 1 of the Revised Penal Code, it appearing the amount involved, is more than ₱22,000.00, in fact, the total amount misappropriated by both accused, is ₱647,960.00, applying the above-provision, imposing the indeterminate sentence law, without aggravating and mitigating circumstances in favor or against the accused and prosecution, both above-mentioned accused, are sentenced to suffer an indeterminate penalty of 8 years, 6 months and 15 days of prision mayor minimum, as minimum penalty, to 16 years, 5 months, and 20 days of reclusion temporal, medium as maximum penalty, together with all accessory penalty as provided for by law.

For lack of evidence of the prosecution, to prove the civil aspect in this case, no pronouncement is made on the civil indemnity, with cost against both accused.

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[8] Id. at 27-29.

SO ORDERED.[9]

The RTC found the petitioner and his co-accused to have acted as agents, and were as such liable for *estafa* by failing to remit the proceeds of the sale of the property.

Decision of the CA

On appeal, the CA affirmed the judgment with modification of the penalty, holding the petitioner and his co-accused jointly liable to pay ₱647,960.00 to the complainants, and disposing as follows:

> **WHEREFORE**, in view of the foregoing premises, the Decision of the Regional Trial Court of Davao City, Branch 17 dated 27 July 2007 is hereby **AFFIRMED WITH MODIFICATION** as the penalty hereby imposed upon each of the accused-appellants is an indeterminate sentence of Four (4) years, Two (2) months of *prision correctional,* as minimum, to Twenty (20) years of *reclusion temporal*, maximum.
>
> Accused-appellants are likewise **ORDERED** to pay, jointly and severally, private complainant Atty. Pineda the amount of ₱647,960.00 as actual damages, with legal rate of interest from the date of filing of the information until fully paid.
>
> **SO ORDERED.**[10]

The petitioner filed a motion for reconsideration,[11] but the CA denied the same on September 19, 2011.

Issues

In this appeal, the petitioner, insisting on his acquittal, submits the following issues for consideration and resolution, to wit:

> I.
> WHETHER OR NOT THE GUILT OF THE PETITIONER IN THE CRIMINAL ACTION FOR ESTAFA WAS ESTABLISHED AND PROVEN EVEN WITHOUT THE STATE PRESENTING ANY WITNESS IN THE CASE.
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> II.
> WHETHER OR NOT THE CONVICTION OF THE PETITIONER-ACCUSED DANILO S. IBAÑEZ FOR ESTAFA IN THE CASE IS TAINTED WITH REASONABLE DOUBT.[12]

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9 Id. at106-107.
10 Id. at 41.
11 Id. at 108-110.
12 Id. at 12.

Ruling of the Court

Generally, this Court will not disturb the factual findings of the trial court in view of the latter's first-hand opportunity to hear the witnesses and to observe their deportment as well as their manner of testifying during trial, thus having the better position to appreciate the credibility of the witnesses and to decide the case.[13] However, the rule admits of exceptions, including one where substantial errors were committed, or determinative facts were overlooked that would otherwise justify a different conclusion or verdict.[14]

We reverse the CA.

The Memorandum of Agreement (MOA) executed by the petitioner and complainant Atty. Arturo T. Pineda embodied the agreement of the parties. It pertinently reads:

> x x x x
>
> 1. That the VENDOR **hereby sells, transfer[s] and convey[s]** unto the vendees his heirs, assigns, and successor, in interest the afore-described parcel of land, including all the improvements existing thereon;
>
> 2. That the **purchase price is SIX MILLION (₱6,000,000.00) PESOS** to be paid in 24 months in the following manner;
>
> 1-A. ₱750,000.00 – available on September, 2002 – to pay the indebtedness for the (sic) of the VENDOR to Evelyn Cheney for the release of title and this represents payments for the month of May 2002 to September 2002;
>
> 2-B. ₱5,250,000.00 balance to be paid in 19 months starting end of October 2002 in the amount of ₱276,315.78 per month and every month thereafter;
>
> 3-C. That the VENDOR shall execute a Special Power of Attorney in favor of the VENDEE to subdivide, sell, execute, sign all papers, deeds and affidavits either in cash or checks, with authority to encash with payee bank;[15] (Bold emphases supplied)
>
> x x x x

As written, the MOA stipulated that the petitioner and Atty. Pineda had entered into a contract of sale involving the property for the price of ₱6,000,000.00 to be paid in 24 months as stated therein. The MOA thereby memorialized the full agreement of the parties on the sale of the property of

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13 *Caubang v. People*, G.R. No. 62634, June 26, 1992, 210 SCRA 377, 385.
14 *Mariano v. People*, G.R. 80161, December 14, 1992, 216 SCRA 541, 549.
15 *Rollo*, p. 57.

the complainants to the petitioner. In no wise was agency intended. Verily, the literal meaning of the MOA should control.[16]

The express terms of the MOA bound and concluded the parties thereto, and the Prosecution could not be permitted to contradict or vary the express terms of the MOA on the nature of the agreement between the parties without colliding with the parol evidence rule embodied in Section 9, Rule 130 of the *Rules of Court,* which states:

> SEC. 9. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
>
> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (a) An intrinsic ambiguity, mistake, or imperfection in the written agreement;
>
> (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
>
> (c) The validity of the written agreement; or
>
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The parol evidence rule precisely forbids any addition to or contradiction of the terms of a written agreement by testimony or other extrinsic evidence purporting to show that, at or before the execution of the parties' written agreement, other or different terms were agreed upon by the parties, varying the purport of the written contract. When an agreement has been reduced to writing, the parties cannot be permitted to adduce evidence to prove alleged practices which, to all purposes, would alter the terms of the written agreement. Whatever is not found in the writing is understood to have been waived and abandoned.[17]

Clearly, the lower courts erred in holding that the parties had entered into a contract of agency.

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[16] Article 1370 of the *Civil Code* says:

> Article 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.
>
> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. (1281)

[17] *Norton Resources and Development Corporation v. All Asia Bank Corporation*, G.R. No. 162523, November 25, 2009, 605 SCRA 370, 378.

Specifically, it was grave error on the part of the CA to have lent credence to the assertion of Atty. Pineda in his complaint-affidavit (Exhibit A) that the MOA had been a simulated contract of sale, and that the parties had really intended to authorize the petitioner as an agent to sell the property. The assertion had no weight in this case. We note with curiosity that Atty. Pineda did not present himself as a witness to identify and confirm his complaint-affidavit, and be examined thereon if the objective was hold out the contents of the complaint-affidavit as evidence against the accused. Thus, the Prosecution could not even formally offer Exhibit A as evidence under the belief that the petitioner had admitted its authenticity and due execution during the pre-trial. Contrary to the insistence to that effect by the Office of the Solicitor General (OSG), the pre-trial order dated February 19, 2007 precisely excluded Exhibit A from the documentary exhibits then admitted by the petitioner, as the following excerpt from the pre-trial order indicated, *viz.*:

> The genuineness and due execution of prosecution, Exh. "A" to "JJ", **only Exhs. "B", "F", "G" to "FF", "GG", "HH", "II" and "JJ" are admitted by the accused through counsel**. That of accused Exhs. "1" to "4" and submarkings, only Exhs. "1" and "3" are admitted by the prosecution through counsel.[18] (Bold underscoring supplied)

We stress the irrefutable fact that the complaint-affidavit remained as hearsay evidence in view of Atty. Pineda not having testified on its execution, and not having been examined on the contents thereof.[19] Hence, the complaint-affidavit was inadmissible,[20] and thus had no evidentiary worth.

In further ruling that the agreement of the parties was agency, the CA relied on the following testimony of the petitioner, *viz.*:

> Q: You bought the property of the complainant and yet you intend to sell the same?
>
> A: No, because the mode of payment is 24 months and the 24 months payments which we agree (sic) that we have to sell his property in terms which the memorandum of agreement coupled with the SPA (sic). We are not agent (sic) but we are buyers of the same property.
>
> Q: Ok. Having brought the complainant's property, why do you have to sell the same?
>
> A: Yes, because we are in the space of the row lot partitioning (sic), we are in this kind of business, we agree that we have to sell it in 24 months installment, so we pay him in 24 months installment. [21]

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18 *Rollo*, pp. 47.
19 *Unchuan v. Lozada*, G.R. No. 172671, April 16, 2009, 585 SCRA 421, 435.
20 *People v. Quitado, Jr.*, G.R. No. 117401, October 1, 1998 297 SCRA 1, 8.
21 *Rollo*, pp. 32-33.

The CA's reliance was unfounded. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. Inasmuch as the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it. Absent such mutual intent, there is generally no agency.[22] Contrary to the findings of the CA, the conduct of both parties did not manifest an intent to create an agency relationship. We find nothing in the records except the bare allegations of Atty. Pineda to show that the petitioner was merely acting in the complainants' behalf.

Had the MOA been incapable of expressing the intent of the parties, Atty. Pineda could have easily sought the reformation of the express terms thereof. But the terms and expressions contained therein were couched in simple terms easily understandable and capable of no other possible and reasonable interpretation than what were written therein. At any rate, Atty. Pineda, being a lawyer, was presumed to know the law,[23] and should not have agreed to the MOA in its present text.

Neither did the concurrent execution of the special power of attorney (SPA) and the MOA necessarily negate the contract of sale between the parties. The stipulation in the MOA on the SPA did not prove that the parties' relationship was one of agency. To begin with, the execution of the SPA was among the terms specifically stipulated in the MOA. Conformably with the *Civil Code*,[24] if some stipulation of any contract should admit of several meanings, the stipulation should be understood as bearing that import that is most adequate to render the contract effectual. Instead of proving an agency relationship, however, the stipulation that Atty. Pineda as the vendor should execute the SPA in favor of the petitioner evinced the intention of the parties that title would not be vested in the vendee until the full payment of the purchase price. Such intention was consistent with the sale, for the transfer of the title upon full payment of the consideration made the sale conditional, which did not change the nature of the transaction as a sale. We should remind that in a conditional sale, as in a contract to sell, the ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price. The full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising.[25]

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22 *Viloria v. Continental Airlines, Inc.*, G.R. No. 188288, January 16, 2012, 663 SCRA 57, 68.
23 *R.R. Paredes v. Calilung*, G.R. 156055, March 5, 2007, 517 SCRA 369, 407.
24 Article 1373 of the *Civil Code*.
25 *Nabus v. Pacson*, G.R. No. 161318, November 25, 2009, 605 SCRA 334, 349.

Another error on the part of the lower courts rested in their holding that the contract lacked consideration. Such was unfounded considering that the MOA expressly stated the purchase price of ₱6,000,000.00. In this regard, the petitioner admittedly complied with the terms of payment as set forth in the MOA, including partial payments made to Evelyn Cheney on behalf of Atty. Pineda. The error was due to the probable confusion in the minds of the lower courts about failure to pay the consideration, on the one hand, and lack of consideration, on the other. The two were not the same. The former resulted in a right to demand the fulfilment or the cancellation of the obligation under an existing valid contract, but the latter prevented the coming into existence of a valid contract.[26]

The crime of *estafa* with unfaithfulness or abuse of confidence as defined in Article 315, par., 1 (b) of the *Revised Penal Code* is committed as follows:

> x x x x
>
> (b) By misappropriating or converting to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission or for administration, or under any obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.
>
> x x x x

The crime requires the following elements to concur, namely: (1) receipt of items in trust or under an obligation to return them or the proceeds of an authorized transaction; (2) misappropriation, conversion for personal benefit or denial of such receipt; (3) entrustor or owner was prejudiced; and (4) demand was made by the offended party.[27]

With the transaction entered into by the parties being a sale, the petitioner as the vendee did not receive the property subject of the sale in trust or under an obligation to return. The parties' agreement to transfer the title upon payment of the purchase price rather placed the petitioner in the position of an owner and made him liable to the transferor as a debtor for the agreed price; he was not merely an agent who must account for the proceeds of a resale.[28] The failure on the part of the petitioner to pay the consideration in full only resulted to the complainants being unpaid vendors. The former did not thereby incur criminal liability for *estafa*, for, as earlier explained, the right of the complainants as unpaid vendors was only to demand the fulfilment or the cancellation of the obligation.

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26 *Montecillo v. Reynes*, G.R. 138018, July 26,2002, 385 SCRA 244, 256.
27 *Corpuz v. People*, G.R. No. 180016, April 29, 2014, 724 SCRA 1, 31-32.
28 *Viloria v. Continental Airlines, Inc.*, supra, note 22, at 75-76.

Moreover, the essence of this kind of *estafa* is the appropriation or conversion of money or property received to the prejudice of the entity to whom the return thereof should be made. The words "convert" and "misappropriate" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.[29]

Yet, the Prosecution notably did not establish the element of misappropriation or conversion because the ownership of the property subject of the sale had been meanwhile transferred to the petitioner as vendee. In this kind of *estafa*, the fraud which the law considers as criminal is the act of misappropriation or conversion. Consequently, when the element of misappropriation or conversion was missing, or was not established, there could be no *estafa*.[30]

The settled rule is that conviction can be handed down only if every element of the crime was alleged and proved.[31] Under the circumstances, the acquittal of the petitioner should necessarily follow on the ground that the obligation did not entail any trust as to the proceeds, and on the ground of the dearth of evidence to support the accusation. The State did not discharge its burden of proof if the evidence did not meet the test of moral certainty required for conviction. Thus, we must uphold the presumption of innocence in the petitioner's favor and acquit him.[32]

The foregoing notwithstanding, the petitioner was not entirely free from any civil liability where, as here, the facts established so warranted.[33] It is undisputed that the parties entered into an amicable settlement on December 3, 2002, under which they agreed that the petitioner should remit to Atty. Pineda 60% of the total sales, or ₱1,508,126.40, but the former remitted only ₱860,166.45, leaving unpaid the balance of ₱647,960.00. Such amount should be paid to the complainant, plus interest of 6% *per annum* from the filing of the information until full payment.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on July 29, 2011; **ACQUITS** petitioner **DANILO S.**

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29 *Gamaro v. People*, G.R. No. 211917, February 27, 2017, 818 SCRA 640, 656-657.
30 *Dy v. People*, G.R. 189081, August 10, 2016, 800 SCRA 39, 53.
31 *Ysidoro v. Leonardo-Castro*, G.R. No. 171513, February 6, 2012, 655 SCRA 1, 17.
32 *Khitri v. People*, G.R. 210192, July 4, 2016, 795 SCRA 502, 517-518.
33 *Serona v. Court of Appeals*, G.R. No, 130423, November 18, 2002, 392 SCRA 35, 45

IBANEZ of the crime of *estafa* defined and penalized under Article 315(1)(b) of the *Revised Penal Code* for failure to establish his guilt beyond reasonable doubt; and **ORDERS** the petitioner to pay the amount of ₱647,960.00 to Atty. Arturo T. Pineda, plus interest of 6% *per annum* from the filing of the information until full payment, without pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Chief Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

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.

LUCAS P. BERSAMIN
Chief Justice