



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NHORKAYAM TUMOG y  
CAJATOL,

G.R. No. 259511

Petitioner,

Present:

CAGUIOA, J., *Chairperson*,  
INTING,  
GAERLAN,  
DIMAAMPAO, and  
SINGH, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:

October 11, 2023

Mis-PCB-11

DECISION

**DIMAAMPAO, J.:**

This Petition for Review on *Certiorari*<sup>1</sup> inveighs against the Decision<sup>2</sup> and the Resolution<sup>3</sup> of the Court of Appeals (CA) Cagayan de Oro City Station, which sustained the conviction of Nhorkayam Tumog y Cajatol (petitioner) for the crime of Robbery under Article 299(a)(2) of the Revised Penal Code (RPC), and denied his Motion for Reconsideration<sup>4</sup> thereof, respectively, in CA-G.R. CR No. 01736-MIN.

<sup>1</sup> *Rollo*, pp. 14–30.

<sup>2</sup> *Id.* at 36–58. The Decision dated February 24, 2021 was penned by Associate Justice Richard D. Mordeno, with the concurrence of Associate Justices Edgardo A. Camello and Evalyn M. Arellano-Morales.

<sup>3</sup> *Id.* at 32–34. Dated November 5, 2021.

<sup>4</sup> *Id.* at 59–67.

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The case has its genesis in the Information<sup>5</sup> dated June 4, 2015, indicting petitioner for the crime of robbery, *viz.* :

That on or before May 31, 2015, in Kagawasan Village Subdivision, Pagadian City, Philippines, and within the jurisdiction of this Honorable Court, the above-named [petitioner], did, then and there, willfully, unlawfully and feloniously, with intent to gain, and by the use of force upon things without however carrying any arm, break the wooden wall of the kitchen or through the window[,] enter the house of DR. MARIAM ALUK ESPINOZA, and once inside, steal, take and carry away the following:

- a) half sack rice,
- b) One e-machine netbook with charger worth [P] 15,000.00,
- c) One firefly electric fan worth [P]3,000.00,
- d) assorted kitchen wares, assorted make-ups and perfumes, worth [P]2,000.00,
- e) one flat iron worth [P]500.00,
- f) one rice cooker worth [P]2,000.00[,]
- g) two pieces of extension wires worth [P]300.00,
- h) four piggy banks containing more or less [P]4,000.00,
- i) rabbit piggy bank containing [P]15,000.00,
- j) assorted gold, white and silver jewelries worth more or less [P]200,000.00,
- k) one big wallet containing [P]15,000.00 cash [,]
- l) oneblack [sic] wallet containing [P]35,000.00,
- m) tow[sic] sling bags, trolley luggage worth [P]17,500.00,
- n) assorted can[ned] goods and petty cash worth/amounting to [P]500.00,
- o) one unit Olympus digital camera with charger worth [P]10,000.00[,]
- p) One unit i-pod touch 4<sup>th</sup> [-]Gen worth [P]18,000.00[,] and
- q) other undetermine [sic] valuables,

all belonging to DR. MARIAM ALUK ESPINOZA to her damage and prejudice in the amount of more or less three hundred twenty-five thousand three hundred Pesos, Philippine currency (Php325,300.00).

#### CONTRARY TO LAW.<sup>6</sup>

Through the testimony of its three witnesses, the prosecution averred that Dr. Mariam Espinoza (private complainant) hired petitioner as a stay-out errand boy in March 2015. She treated him as a family member and even employed him at her office as an all-around janitor.<sup>7</sup> On May 30, 2015, private complainant left for Manila to attend to her daughter. A day before her departure, she requested petitioner to assist her in bringing home some items

<sup>5</sup> Records, pp. 1-2.

<sup>6</sup> *Id.*

<sup>7</sup> *Rollo*, p. 38. CA Decision dated February 24, 2021.

from her office. Before she left, private complainant locked and secured the house.<sup>8</sup> However, on May 31, 2015, when she returned to her house in Pagadian City, she found that the doors were open, the windowpanes were removed, and the side wall of her kitchen door was forcibly opened. Inside, she also discovered that two big cabinets were broken into and found that the items enumerated in the Information were missing. She immediately reported to the *barangay* that her house had been robbed and ransacked. She also filed a report with the Pagadian City Police Station and the incident was entered into the Police Blotter.<sup>9</sup>

The following day, private complainant proceeded to her office where she met petitioner who appeared ill-at-ease and speechless. She instructed him to do his daily routine and to return to their office by 12 noon. However, he failed to return at such time.<sup>10</sup> Private complainant then called up petitioner's aunt, Abelita Almogera (Almogera), and asked for his whereabouts. She also relayed to Almogera that her house had been robbed. Thereafter, Almogera and petitioner's brother, Nhorkhan, looked for petitioner and found him at his rented room in a boarding house in San Pedro District. In his possession were the items belonging to private complainant. When Almogera probed petitioner on what he had done, the latter hugged the former and cried. Almogera immediately coordinated with private complainant and told her that petitioner would go to her office to ask for forgiveness. Accompanied by both Almogera and Nhorkhan, petitioner went to the office, bringing along with him some of the stolen items. He asked for forgiveness, but private complainant said she would first seek legal advice.<sup>11</sup>

Private complainant coordinated with Police Officer 1 Renjie Narciso (PO1 Narciso) of the Pagadian City Police Station to conduct an investigation at petitioner's boarding house. Together with Almogera, Nhorkhan, and petitioner, PO1 Narciso proceeded there, where he found some of private complainant's stolen belongings. He prepared an inventory which both petitioner and Almogera signed. Afterwards, petitioner, accompanied again by Almogera and Nhorkhan, proceeded to the Pagadian City Police Station to surrender and apologize.<sup>12</sup> Private complainant likewise proceeded there to identify and recover the stolen items.<sup>13</sup> Subsequently, an Information for the crime of robbery was filed against petitioner before Branch 20, Regional Trial Court (RTC) of Pagadian City.<sup>14</sup>

For his part, petitioner opted not to present any evidence and merely submitted the case for the RTC's decision.<sup>15</sup>

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<sup>8</sup> *Id.* at 39.

<sup>9</sup> *Id.* at 38-39.

<sup>10</sup> *Id.* at 39.

<sup>11</sup> *Id.* at 39-40.

<sup>12</sup> *Id.* at 40.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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In its Decision,<sup>16</sup> the RTC found petitioner guilty beyond reasonable doubt of the crime charged. The *fallo* reads:

WITH THE FOREGOING DISQUISITIONS, judgment is hereby rendered finding [petitioner] guilty beyond reasonable doubt of the crime of ROBBERY under Article 299 of the Revised Penal Code and is hereby sentence [sic] to suffer an indeterminate penalty of imprisonment of ten (10) years of *prison mayor* in its medium period to seventeen (17) [years] and four (4) months of *reclusion temporal* in its medium period.

[Petitioner] is hereby ordered to indemnify the total value of the items taken from the private complainant in the amount of Php325,000.00.

His period of detention is credited provided he comply [sic] the requirements under Article 29 of the Revised Penal Code.

Costs against the [petitioner].<sup>17</sup>

The RTC rendered its decision based on circumstantial evidence and the disputable presumption laid down in Section 3(j), Rule 131 of the Revised Rules of Evidence where “a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act.” The trial court found that the testimonies of the prosecution witnesses sufficiently established all the elements of the offense and the identity of the perpetrator.<sup>18</sup> On the other hand, petitioner neither bothered offering an explanation as to how the stolen items came into his possession nor did he assert that he was the actual owner thereof.<sup>19</sup>

Petitioner moved for reconsideration,<sup>20</sup> but his motion was denied by the RTC.<sup>21</sup> Petitioner then filed an appeal with the CA.<sup>22</sup>

In the challenged Decision, the CA sustained petitioner’s conviction but partly granted his appeal and modified the imposed penalty, in this wise:

**WHEREFORE**, the appeal is **PARTLY GRANTED**. The April 27, 2018 Decision of the Regional Trial Court (RTC), Ninth (9<sup>th</sup>) Judicial Region, Branch 20, Pagadian City, in Criminal Case No. 12114-2K15, finding [petitioner] **GUILTY** beyond reasonable doubt of **ROBBERY** under Article 299, paragraph a, sub-paragraph number 2 of the Revised Penal Code is **AFFIRMED with modification** in that this Court **IMPOSES** on him the indeterminate penalty of eight years and one day of *prison mayor* as minimum to 14 years of *reclusion temporal* as maximum.

<sup>16</sup> Records, pp. 141–145. The Decision dated April 27, 2018 was signed by Presiding Judge Dennis P. Vicoy.

<sup>17</sup> *Id.* at 144–145.

<sup>18</sup> *Id.* at 142–144.

<sup>19</sup> *Id.* at 144.

<sup>20</sup> *Id.* at 157–161.

<sup>21</sup> *Id.* at 168. The Order dated June 7, 2018 was signed by Presiding Judge Dennis P. Vicoy.

<sup>22</sup> *Id.* at 175–176.

**SO ORDERED.**<sup>23</sup>

The CA rejected petitioner's claim that his arrest was illegal and that any evidence obtained incidental thereto was inadmissible as fruit of the poisonous tree. The CA clarified that petitioner was not arrested; rather, he voluntarily surrendered to the authorities.<sup>24</sup> Moreover, the exclusionary rule could not apply in this case since the stolen items proffered as evidence were either returned personally by petitioner or were retrieved from his possession by a police officer who went to his boarding house upon invitation and with petitioner's own consent.<sup>25</sup> The CA also found that the RTC correctly ratiocinated that all the elements to establish the crime of robbery were proved based on the reliable testimonies of the prosecution's witnesses.<sup>26</sup> The CA emphasized that the totality of the unbroken chain of circumstantial evidence pointed to petitioner as the perpetrator of the crime. Contrary to petitioner's assertion, the CA held that the disputable presumption under Section 3(j), Rule 131 of the Revised Rules of Evidence applied to the crime of robbery.<sup>27</sup> Nevertheless, the CA found that a modification of the penalty imposed was in order given the mitigating circumstance of voluntary surrender. Accordingly, the CA reduced the indeterminate penalty of petitioner's sentence.<sup>28</sup>

Unsatisfied, petitioner filed a Motion for Reconsideration<sup>29</sup> but the motion was denied in the impugned Resolution.<sup>30</sup> Hence, petitioner now seeks recourse before this Court through this Petition.

Petitioner insists that not every possibility of innocence had been excluded as no one saw who actually committed the robbery. At best, the prosecution's circumstantial evidence merely pointed to the destruction of private complainant's wooden wall and the taking of her personal property, but it did not prove who did the crime.<sup>31</sup> Moreover, assuming *arguendo* that petitioner was indeed guilty, he is only liable for theft and not robbery as there was no evidence shown of him using force upon things or that he broke the wooden wall of private complainant's kitchen to commit the deed.<sup>32</sup>

At its core, the issue for the Court's resolution is whether or not the CA correctly affirmed petitioner's guilt of the crime charged.

**THE COURT'S RULING**

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<sup>23</sup> *Id.* at 57. Emphasis in the original.

<sup>24</sup> *Id.* at 43–44. CA Decision dated February 24, 2021.

<sup>25</sup> *Id.* at 46–47.

<sup>26</sup> *Id.* at 49.

<sup>27</sup> *Id.* at 55.

<sup>28</sup> *Id.* at 56–57.

<sup>29</sup> *Id.* at 59–66.

<sup>30</sup> *Id.* at 32–34. CA Resolution dated November 5, 2021.

<sup>31</sup> *Id.* at 23. See Petition for Review on *Certiorari*.

<sup>32</sup> *Id.* at 25.

At the outset, it bears stressing that in criminal cases where the penalty imposed is not death, *reclusion perpetua* or life imprisonment, the proper mode of appeal is through the filing of a petition for review on *certiorari* under Rule 45 of the Rules of Court, which proscribes the assertion of factual issues as a general rule.<sup>33</sup> Moreover, it is an intrinsic requirement under Rule 45 that the petition must pose questions that are of such substance as to warrant the Court's consideration.<sup>34</sup> However, a meaningful examination of the Petition shows that it fails to satisfy the foregoing standards.

Foremost, the main arguments proffered are grounded on the apparent insufficiency of the prosecution's evidence to establish petitioner's culpability or to classify the offense as robbery, instead of theft, both of which necessarily entail a review of the evidence presented and thus, are questions of fact that are normally beyond the purview of a Rule 45 petition.<sup>35</sup> While this rule admits of exceptions,<sup>36</sup> petitioner failed to show that any applied in this instance. Settled is the rule that when the findings of fact of the RTC are affirmed by the CA, these are deemed final and conclusive upon this Court especially when supported by the evidence on record,<sup>37</sup> as in this case.

In any event, even if the Court were to review the evidence on record, it would inevitably arrive at the same conclusions both as to the existence of the crime and to petitioner's culpability as the author thereof.

Petitioner is charged with robbery by the use of force upon things, particularly defined and penalized under Article 299(a)(2) of the RPC, as amended by Republic Act (RA) No. 10951<sup>38</sup>—

ART. 299. Robbery in an inhabited house or public building or edifice devoted to worship. — Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by reclusion temporal, if the value of the property taken shall exceed Fifty thousand pesos (P50,000), and if—

(a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:

....

2. By breaking any wall, roof, or floor or breaking any door or window.

<sup>33</sup> See *Kumar v. People*, 874 Phil. 214, 227 (2020).

<sup>34</sup> *Id.* at 223.

<sup>35</sup> See *Maestrado v. People*, G.R. No. 253629, September 28, 2022.

<sup>36</sup> See *Labay v. People*, G.R. No. 241850 (Resolution), April 28, 2021.

<sup>37</sup> *Maestrado v. People*, *supra*.

<sup>38</sup> AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AS AMENDED. Enacted on August 29, 2017.

To be convicted of this form of robbery, it is necessary that the following elements are proved: (1) unlawful taking; (2) of personal property belonging to another; (3) with intent to gain; and (4) with force upon things,<sup>39</sup> *i.e.*, by breaking any wall, roof, or floor or breaking any door or window to enter the building where the robbery is committed. Additionally, the penalty to be imposed is dependent on the value of the things taken and whether or not the offender carry arms.<sup>40</sup>

As uniformly observed by the RTC and the CA, the documentary and testimonial evidence proved beyond reasonable doubt that robbery was committed.<sup>41</sup>

**First.** Assorted personal properties were unlawfully taken.<sup>42</sup> **Second.** These items belonged to private complainant.<sup>43</sup> **Third.** Intent to gain is presumed from the unlawful taking by the offender of the thing stolen.<sup>44</sup> Here, the intent to gain was established by the fact that the stolen goods were found in petitioner's house.<sup>45</sup> **Fourth.** The robbery was effected through the breaking of the side wall of the kitchen door and the removal of the window pane near the kitchen counter.<sup>46</sup>

Moreover, the testimony of private complainant, who was subjected to grueling cross-examination, served to prove the valuation of the stolen items totaling to ₱325,000.00.<sup>47</sup> It was also determined that petitioner was not armed at the time of the commission of the crime.<sup>48</sup>

It bears stressing that petitioner never denied that private complainant was robbed, only that there was no eyewitness testimony to pin him down as the perpetrator of the crime.<sup>49</sup> Petitioner argues that the CA erred in concluding that he was the author of the crime based solely on the fact that the stolen items were recovered in his rented residence at that time as it did not account for the possibility that someone else placed these items therein.<sup>50</sup>

Unfortunately, petitioner's reasoning cannot pass judicial muster.

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<sup>39</sup> See Article 293 of the Revised Penal Code; see also *Ablaza v. People*, G.R. No. 217722, 840 Phil. 627, 645 (2018) and *People v. Cordial*, G.R. No. 250128, November 24, 2021.

<sup>40</sup> See *People v. Barrera*, 891 Phil. 55, 76 (2020).

<sup>41</sup> Records, p. 144 (RTC Decision); and CA *rollo*, p. 191 (CA Decision).

<sup>42</sup> Records, pp. 1–15. Affidavit of Complaint, Joint Affidavit of Arrest, and Inventory List of Recovered Items.

<sup>43</sup> *Id.* at 4–5. Affidavit of Complaint.

<sup>44</sup> See *People v. Cordial y Brez*, G.R. No. 250128, November 24, 2021.

<sup>45</sup> Records, p. 6. Joint Affidavit of Arrest.

<sup>46</sup> *Id.* at 4. Affidavit of Complaint.

<sup>47</sup> *Id.* at 144. RTC Decision.

<sup>48</sup> Records, p. 144. RTC Decision.

<sup>49</sup> *Rollo*, p. 23. Petition for Review on *Certiorari*.

<sup>50</sup> *Id.* at 24.

Section 3(j), Rule 131 of the Rules of Court<sup>51</sup> provides for the disputable presumption that “a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act.” The foregoing presumption is satisfactory if uncontradicted by other evidence, and applies to theft, robbery, or carnapping alike.<sup>52</sup> Indisputably, petitioner failed to present any reasonable explanation for the presence of the stolen items found in his home. The alternative reason which he offered that his lessor or aunt planted the said items defies logic and common sense. Worse still, petitioner presented no countervailing evidence during trial to buttress his claims. On the other hand, the testimonies of the prosecution witnesses only served to further solidify the foregoing presumption.

All told, the CA did not err in affirming petitioner’s conviction for Robbery under Article 299(a)(2) of the RPC.

The foregoing notwithstanding, it does not escape the Court’s attention that the lower courts appear to have erred in the award of civil indemnity in favor of private complainant. In its Decision, the RTC ordered petitioner to indemnify “the total value of the items taken from the private complainant in the amount of [P]325,000.00,”<sup>53</sup> notwithstanding the fact that the stolen items were actually returned.<sup>54</sup> Notably, even the CA recognized that the items were recovered,<sup>55</sup> but made no changes to the RTC’s disposition as to petitioner’s civil liability.

This is erroneous. Civil indemnity *ex delicto* is “the indemnity authorized in our criminal law for the offended party, in the amount authorized by the prevailing judicial policy and apart from other proven actual damages, which itself is equivalent to **actual or compensatory damages** in civil law.”<sup>56</sup> It is intended as a kind of monetary restitution or compensation done to the victim “for the damage or infraction that was done to the latter by the accused.”<sup>57</sup>

Undeniably, while all persons criminally liable are also civilly liable,<sup>58</sup> the trial court does not have absolute discretion in what may be awarded. Under Article 105 of the RPC, restitution of the things subject of the crime must be made whenever possible. If restitution is not possible, reparations may be awarded based on the prices of the items and the special sentimental value to the injured party, if any.<sup>59</sup> Additionally, indemnity may be awarded

<sup>51</sup> As amended by A.M. No. 19-08-15-SC, issued on October 8, 2019.

<sup>52</sup> See *People v. Donio y Untalan*, 806 Phil. 601 (2017).

<sup>53</sup> Records, p. 145. RTC Decision dated April 27, 2018.

<sup>54</sup> See Inventory of Recovered Items (Records, pp. 8–15); Joint Affidavit of Arrest signed by Almogera and Nhorkhan (*Id.* at 6-7); and Inquest Resolution dated May 4, 2015, signed by Deputy City Prosecutor Cleto M. Edralin and approved by Clyde G. Rondrique (*Id.* at 3).

<sup>55</sup> *Rollo*, p. 40. CA Decision dated February 24, 2021.

<sup>56</sup> *People v. Jugueta*, 783 Phil. 806, 826 (2016).

<sup>57</sup> *Id.* at 827.

<sup>58</sup> See Article 100, Revised Penal Code.

<sup>59</sup> See Article 106, Revised Penal Code.

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for any consequential damages suffered by the victim, their family, or by third persons.<sup>60</sup> In all cases, evidence must still be adduced to prove the extent of damages suffered by the injured party.

Here, the RTC awarded the full value of the stolen items as “penalty pursuant to Article 299 of the [RPC].”<sup>61</sup> However, Article 299 does not provide for a separate penalty to be imposed on the accused. In basing the indemnity on the full value of the stolen items, the award seems to partake the nature of reparations, which is improper as there was complete restitution. At best, it could only be considered as a form of civil indemnity for consequential damages, but no evidence was proffered in this regard. Additionally, to award consequential damages to the extent of the full value of the recovered items, *sans* proof, would allow private complainant to unjustly enrich herself at the expense of petitioner.

While this issue was never assigned as error by petitioner,<sup>62</sup> the Court shall still correct the same in the higher interest of substantial justice, given that this award is patently contrary to the evidence on record and violates the above-mentioned provisions and principles embodied in the RPC.

In addition, there is a need to modify the penalty imposed by the appellate court.

Article 299, as amended by RA No. 10951, prescribes the penalty next lower in degree to *reclusion temporal* for robbery in an inhabited house when the offender “do[es] not carry arms, and the value of the property taken exceeds Fifty Thousand Pesos (PHP 50,000[.00]).” As earlier adumbrated, the RTC recognized that there was no evidence presented that petitioner was armed at the time of the commission of the crime.<sup>63</sup> Thus, the proper penalty for the crime charged should be *prision mayor*. Factoring in the mitigating circumstance of voluntary surrender, the imposable penalty should be lowered to *prision mayor* in its minimum period, which is six (6) years and one (1) day to eight (8) years.

Applying the Indeterminate Sentence Law, the maximum shall be taken within the range of *prision mayor* minimum, and the minimum shall be taken within the full range of *prision correccional*, which is one degree lower than the penalty prescribed by law.

**WHEREFORE**, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated February 24, 2021 and the Resolution dated

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<sup>60</sup> See Article 107, Revised Penal Code.

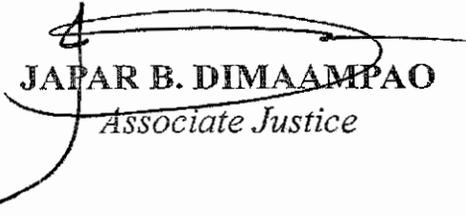
<sup>61</sup> Records, p. 144.

<sup>62</sup> Records, pp. 157–161 (Motion for Reconsideration to the RTC Decision); *CA rollo*, pp. 99–112 (Appellant’s Brief before the CA) and 213–221 (Motion for Reconsideration to the CA Decision); and *rollo*, pp. 14–30 (Petition for Review on *Certiorari*).

<sup>63</sup> Records, p. 144. RTC Decision.

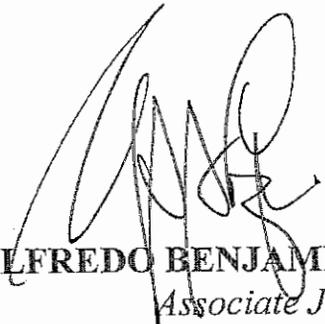
November 5, 2021 of the Court of Appeals in CA-G.R. CR No. 01736-MIN are **AFFIRMED** with **MODIFICATION**. Petitioner Nhorakayam Tumog y Cajatol is found **GUILTY** beyond reasonable doubt of the crime of Robbery under Article 299(a)(2) of the Revised Penal Code and he is hereby sentenced to suffer the indeterminate penalty of imprisonment for three (3) years of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor* minimum, as maximum. The civil indemnity of PHP 325,000.00 is **DELETED**.

**SO ORDERED.**

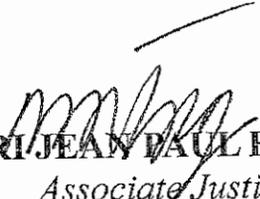


**JAPAR B. DIMAAMPAO**  
*Associate Justice*

**WE CONCUR:**



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



**HENRI JEAN PAUL B. INTING**  
*Associate Justice*



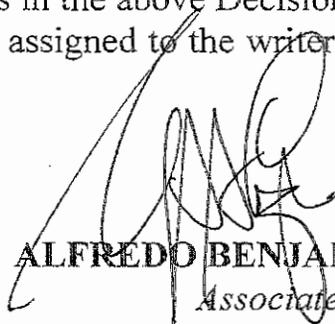
**SAMUEL H. GAERLAN**  
*Associate Justice*



**MARIA FILOMENA D. SINGH**  
*Associate Justice*

**ATTESTATION**

I attest 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.



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*  
*Chairperson, Third Division*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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 this Court.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*