



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 263278

*Plaintiff-Appellee,*

Present:

- versus -

GESMUNDO, *Chairperson*  
HERNANDO,\*  
ZALAMEDA,  
ROSARIO, and  
MARQUEZ, *JJ.*

ROMMEL JIMENEZ y DECENA,

Promulgated:

*Accused-Appellant.*

OCT 11 2023 *with file*

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DECISION

ZALAMEDA, J.:

The Court, in the case at bar, reiterates that great care should be taken in considering the identification of an accused, especially when this identification is made by a sole witness, and the judgment in the case totally depends on the reliability of the identification. Without a doubt, the constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.

\* On Leave.

### The Case

This appeal<sup>1</sup> seeks to reverse and set aside the Decision<sup>2</sup> dated 7 April 2022 of the Court of Appeals (CA) in CA-G.R. CR HC No. 13655. The CA affirmed with modification the Decision<sup>3</sup> dated 30 September 2019 of Branch 65, Regional Trial Court (RTC) of Infanta, Quezon in Criminal Case No. 2016-134-I, finding accused-appellant Rommel D. Jimenez (accused-appellant) guilty beyond reasonable doubt of the crime of Murder under Article 248 (1) of the Revised Penal Code (RPC).

### Antecedents

The accusatory portion of the Information charging accused-appellant of the crime reads:

That on or about March 21, 2016, at about 3 o'clock in the afternoon, in the Municipality of Infanta, Province of Quezon, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping one another by means of and or with the presence of qualifying circumstance of treachery and with evident intent to kill, did, then and there willfully, unlawfully, feloniously, assault and attack Jiamiao Shi a.k.a. Sandy Sy using a gun in shooting said victim suddenly and unexpectedly while not in the position to defend himself thereby inflicting upon him fatal gunshot wounds which caused his instantaneous death.

CONTRARY TO LAW.<sup>4</sup>

Upon arraignment, accused-appellant pleaded not guilty to the crime charged. Pre-trial, then trial on the merits, ensued.<sup>5</sup>

### Version of the Prosecution

The prosecution presented Norli Ducog (Norli) and Lowell Oblefias (Lowell) as witnesses. Norli testified through his Judicial Affidavit. He recalled that on 21 March 2016, around 3:00 p.m., he took a short break

<sup>1</sup> *Rollo*, pp. 3-5.

<sup>2</sup> *Id.* at 8-24. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Marlene B. Gonzales-Sison and Jennifer Joy C. Ong.

<sup>3</sup> *Id.* at 26-37. Penned by Presiding Judge Agripino R. Bravo.

<sup>4</sup> *Id.* at 8-9.

<sup>5</sup> *Id.* at 9.

from work and stood near the national road in Barangay Pilaway, Infanta, Quezon. He saw a vehicle, with plate number AAN7458, halt to give way to an approaching van. Thereafter, a black motorcycle stopped beside the vehicle, and its “backrider” suddenly alighted and shot the driver of the vehicle. When the vehicle moved forward, the “backrider” ran after it and attempted to fire another shot but his gun jammed. The “backrider” then rode the motorcycle, and fled with its driver. Later, the victim, who eventually died, was identified as Jiamiao Shi, also known as Sandy Sy (Sandy).<sup>6</sup>

Norli described the motorcycle driver as tall and slim, and with dark skin and dimpled cheeks. He also reported that the “backrider” was tall and fat, with a mole on his face. Norli asserted that his eyes crossed paths with the “backrider” before the latter fled. Norli also alleged that on 2 May 2016, PO2 Ireneo M. Luza (PO2 Luza) of the Infanta Police Station invited him for questioning. When PO2 Luza produced a “rouge gallery” with pictures of their detainees, Norli positively identified accused-appellant as the “backrider” who shot and killed Sandy. Thereafter, PO2 Luza presented accused-appellant to Norli. Norli further testified that he was four meters away from the vehicle, and five to six meters from accused-appellant. Lastly, he identified accused-appellant in open court as the assailant of Sandy.<sup>7</sup>

On cross-examination, Norli insisted that he witnessed the commission of the crime, and accused-appellant was the author thereof. He added that accused-appellant was wearing a white shirt, six-pocket shorts and white cap. He confirmed that he did not know accused-appellant prior to the incident.<sup>8</sup>

Lowell testified that he was the helper of Sandy, and he accompanied the latter in doing errands in the morning of 21 March 2016. He averred that he saw the lifeless body of Sandy inside the vehicle, but explained that he did not personally see the shooting incident. Thereafter, the prosecution formally offered its evidence, and rested its case.<sup>9</sup>

### Version of the Defense

Accused-appellant, on the other hand, denied the accusation against him. He also presented Arvin C. Alarcon (Arvin), Fernando D. Alarcon (Fernando), Richard I. Ravino (Richard) and Rodel M. San Valentin (Rodel)

<sup>6</sup> Id.

<sup>7</sup> Id. at 10.

<sup>8</sup> Id.

<sup>9</sup> Id. at 10-11.

as corroborating witnesses.<sup>10</sup>

He claimed that around 8:00 a.m. on 21 March 2016, he left Los Baños, Laguna, and arrived in Recto, Manila, between 10:30 a.m. and 11:30 a.m. According to him, he stayed in Manila for three hours, and only returned to Laguna at around 3:00 p.m. With these, accused-appellant contended that it was impossible for him to be in Infanta, Quezon at the exact time of the shooting incident. Lastly, accused-appellant alleged that he separately met Arvin, Fernando, Richard and Rodel in Laguna on 21 March 2016.<sup>11</sup>

On cross-examination, accused-appellant revealed that he used to stay in Infanta, Quezon, after jumping bail for charges involving violations of Sections 11<sup>12</sup> and 26<sup>13</sup> of Republic Act No. 9165.<sup>14</sup> He, however, clarified that he was already acquitted in the said cases. He then confirmed that he owned a dominantly black motorcycle, and that it was possible for him to travel from Laguna to Infanta, Quezon in one and a half hours.<sup>15</sup>

Arvin, Fernando, Richard and Rodel, all related to accused-appellant, testified through their Affidavits. They all confirmed that they separately met accused-appellant in Laguna on 21 March 2016. Arvin disclosed that accused-appellant met him from 2:30 p.m. to 3:30 p.m., when the latter bought chicken feeds near his house. Fernando averred that he saw accused-appellant at around 3:00 p.m. Richard and Rodel claimed that accused-appellant visited them at around 3:30 p.m., and they had snacks together.<sup>16</sup>

### Ruling of the RTC

In its Decision dated 30 September 2019, the RTC found accused-appellant guilty beyond reasonable doubt of the crime of Murder, viz.:

**WHEREFORE, in view of the foregoing,** this Court finds the accused Rommel Jimenez y Decena **"GUILTY"** beyond reasonable doubt for the crime of murder. He is hereby sentenced to suffer the penalty of **Reclusion Perpetua** and to pay the heirs of the victim the following amounts:

<sup>10</sup> Id. at 11.

<sup>11</sup> Id.

<sup>12</sup> Possession of Dangerous Drugs.

<sup>13</sup> Attempt or Conspiracy.

<sup>14</sup> Entitled "An Act Instituting The Comprehensive Dangerous Drugs Act Of 2002, Repealing Republic Act No. 6425, Otherwise, Known As The Dangerous Drugs Act Of 1972, As Amended, Providing Funds Therefor, And For Other Purposes." Approved 07 June 2002.

<sup>15</sup> Id. at 11-12.

<sup>16</sup> Id. at 12.

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|----------------------|---------------------|
| a) Temperate Damages | Php 50,000.00       |
| b) Exemplary Damages | Php 75,0000.00, and |
| c) Moral Damages     | Php 100,000.00.     |

All with 6% per annum legal interest upon finality of this decision.

SO ORDERED.<sup>17</sup>

The RTC pronounced that the prosecution has established that accused-appellant killed Sandy. Accused-appellant was positively identified by Norli, and the sudden attack of accused-appellant ensured that Sandy was unarmed and cannot retaliate.<sup>18</sup> Accused-appellant's defense of alibi was not appreciated since his witnesses cannot be considered disinterested; nor will accused-appellant's denial prevail over Norli's positive identification of accused-appellant as Sandy's attacker.<sup>19</sup>

### Ruling of the CA

On 07 April 2022, the CA affirmed the RTC Decision, to wit:

**PREMISES CONSIDERED**, the appeal is **DENIED**. The September 30, 2019 Decision of the Regional Trial Court of Infanta, Quezon, Branch 65, is **AFFIRMED WITH MODIFICATION**:

"WHEREFORE, in view of the foregoing, this Court finds the accused Rommel Jimenez y Decena "GUILTY" beyond reasonable doubt for the crime of murder. He is hereby sentenced to suffer the penalty of Reclusion Perpetua and to pay the heirs of the victim the following amounts:

- a) [Php]75,000.00 as civil indemnity;
- b) [Php]75,000.00 as moral damages;
- c) [Php]75,000.00 as exemplary damages; and,
- d) [Php]50,000.00 as temperate damages.

All with 6% per annum legal interest **from** finality of this decision **until fully paid.**"

SO ORDERED.<sup>20</sup>

The CA found that Norli's out-of-court identification satisfied the totality of circumstances test. While Norli failed to provide a complete description of the assailant, the in-court identification cured such irregularity. Norli was an eyewitness and was in a position to positively

<sup>17</sup> CA rollo, p. 59.

<sup>18</sup> Id. at 53-58.

<sup>19</sup> Id. at 58-59.

<sup>20</sup> Rollo, p. 23.

identify the assailant and narrate the incident. Norli was thus declared a credible witness.<sup>21</sup>

Further, the CA held that the prosecution proved all elements of murder. This, since the attack was sudden and Sandy had no opportunity to defend himself.<sup>22</sup> However, the CA modified the damages in accordance with prevailing jurisprudence.<sup>23</sup>

Hence, this appeal.

### Issue

The issue in this case is whether accused-appellant is guilty beyond reasonable doubt for murder.<sup>24</sup>

### Ruling of the Court

Accused-appellant insists that the prosecution witnesses failed to prove his identity as the perpetrator with moral certainty. Norli was five (5) to six (6) meters away from where the assailant was. Further, the assailant was wearing a white cap. Given the same, it would be improbable to see the mole on assailant's face. Norli also admitted that he does not previously know accused-appellant, thus, Norli does not have a degree of familiarity with accused-appellant. More importantly, the police officer who presented the rouges gallery to Norli failed to testify on how the presentation transpired. No explanation was also offered as to why accused-appellant's photo was shown as one of the suspects. Accused-appellant likewise claims that treachery was not established since no evidence was adduced to prove that he deliberately adopted the particular means or methods of the attack - specifically the route Sandy took, the time he took it, and the road construction in the area.<sup>25</sup>

On the other hand, the OSG maintains that the prosecution established all the elements of murder. The manner of executing the attack ensured that Sandy could not escape and that accused-appellant would be successful. Norli's testimony likewise identified accused-appellant as the person who

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<sup>21</sup> Id. at 15-19.

<sup>22</sup> Id. at 19-22.

<sup>23</sup> Id. at 22.

<sup>24</sup> CA *rojo*, p. 32.

<sup>25</sup> Id. at 33-42.

perpetrated the attack against Sandy.<sup>26</sup>

We find the appeal meritorious and acquit accused-appellant on the ground of reasonable doubt.

The principle that a criminal case rises and falls on the strength of the prosecution's evidence and not on the weakness of the defense is well-entrenched in our legal system. Even on appeals from criminal convictions, the Court is not precluded from overturning the factual findings of the trial court when it has been established that the trial court overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance.<sup>27</sup>

In assessing whether the accused-appellant's judgment of conviction should be sustained, the following must be considered: "**first, the identification of the accused** as perpetrator of the crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution's compliance with legal and constitutional standards; and **second**, all the elements constituting the crime were duly proven by the prosecution to be present."<sup>28</sup>

Accordingly, while the prosecution may successfully establish that all the elements for the crime of Murder are present in this case, the Court cannot affirm the trial court's finding of guilt when the identity of the perpetrator of the crime is doubtful. The prosecution bears this burden — and, its failure to discharge this burden justifies a judgment of acquittal. In the end, the constitutional presumption of innocence takes precedence over the uncertain identification of the alleged author of the crime.<sup>29</sup>

Simply put, a successful prosecution of a criminal action largely depends on proof of two things: *one*, the identification of the author of the crime; and *two*, his or her actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity. The constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.<sup>30</sup>

To that end, our case law has adopted the *totality of circumstances* test in determining the reliability, or at times even the admissibility, of a witness' out-of-court identification of the accused. It requires the Court to look at the

<sup>26</sup> Id. at 72-80.

<sup>27</sup> *People v. Torres*, G.R. No. 238341, 14 July 2021.

<sup>28</sup> Id. See also *People v. Ansano*, G.R. No. 232455, 02 December 2020.

<sup>29</sup> Id.

<sup>30</sup> *People v. Matias*, G.R. No. 247002, 12 April 2023.

following factors in weighing the reliability of the out-of-court identification: *one*, the witness' opportunity to view the criminal at the time of the crime; *two*, the witness' degree of attention at that time; *three*, the accuracy of any prior description given by the witness; *four*, the length of time between the crime and the identification; *five*, the level of certainty demonstrated by the witness at the identification; and *six*, the suggestiveness of the identification procedure.<sup>31</sup>

In *People v. Teehankee, Jr.*, the Court explained the concept of out-of-court identification and the factors to consider in determining its admissibility and reliability, thus:<sup>32</sup>

Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru **mug shots** where photographs are shown to the witness to identify the suspect. It is also done thru **line-ups** where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of **out-of-court** identification contaminates the integrity of **in-court** identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test where they consider the following factors, viz.:** (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. (Citation omitted and emphasis in the original)

Connectedly, the following so-called "danger signals" caution that the identification may be erroneous even though the method used is proper, to wit:

- (1) The witness originally stated that he or she could not identify anyone;
- (2) The identifying witness knew the accused before the crime, but made no accusation against him or her when questioned by the police;
- (3) A serious discrepancy exists between the identifying witness' original description and the actual description of the accused;
- (4) Before identifying the accused at the trial, the witness erroneously identified some other person;
- (5) Other witnesses to the crime fail to identify the accused;

<sup>31</sup> Id.

<sup>32</sup> *People v. Quillo*, 856 Phil. 123, 131-132 (2019).

(6) Before trial, the witness sees the accused but fails to identify him or her;

**(7) Before the commission of the crime, the witness had limited opportunity to see the accused;**

(8) The witness and the person identified are of different racial groups;

(9) During his or her original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;

**(10) A considerable time elapsed between the witness' view of the criminal and his identification of the accused;**

**(11) Several persons committed the crime;** and

(12) The witness fails to make a positive trial identification.<sup>33</sup>

Given the above disquisition, the Court rules that the identification of accused-appellant by Norli fell short of the jurisprudential standards for reliability. In other words, there is no moral certainty that accused-appellant was culpable for the offense charged against him.<sup>34</sup> The lower courts committed reversible error in holding that the positive identification of accused-appellant by the prosecution witness established his guilt beyond reasonable doubt.<sup>35</sup>

In this case, the identification was done through a show-up. Applying the totality of circumstances test, We find that the out-of-court identification made by Norli is unreliable and cannot be made the basis for accused-appellant's conviction. The Court finds the conduct of the show-up in this case impermissibly suggestive. A comprehensive analysis of Norli's testimony also reveals that such is dubious and lacks probative weight.<sup>36</sup>

Norli's opportunity to view the criminals and degree of focus at the time are suspect. To begin with, the assailant was wearing a white cap. Given the considerable distance of Norli from the assailant and the fact that the latter was wearing a cap, it cannot be gainsaid that Norli lacked the opportunity to positively identify the assailant since it would be more difficult to see someone's face especially if covered. The degree of Norli's focus and opportunity to view the assailant might have been impaired since there were allegedly two suspects in the killing, *i.e.*, the gunman and the motorcycle driver. It also seems suspect that from 5 to 6 meters away, Norli can see and identify a mole on the assailant's face. In this regard, Norli notably testified that the barracks where he was working at during the incident was 15 meters away from the vehicle where the victim was killed.<sup>37</sup> Hence, the possibility of mistake in the identification of the accused-appellant could not be discounted.

<sup>33</sup> *People v. Matias*, *supra*.

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

<sup>35</sup> *People v. Quillo*, 856 Phil. 131 (2019).

<sup>36</sup> *Id.* at 132. See also *People v. Torres*, *supra* note 27.

<sup>37</sup> TSN, dated 20 December 2016, p. 11.

So too, while the length of time between the identification of accused-appellant and the crime is relatively short, there are significant concerns as to the suggestibility of the witnesses during the show-up.<sup>38</sup> To underline, the crime happened on 21 March 2016, while the identification transpired on 2 May 2016. Thus, the identification occurred one month and two weeks after the incident.<sup>39</sup>

It is also worthy to note from Norli's testimony that he used the word "namukhaan" instead of "nakilala" thus showing an unconvincing level of certainty in his identification of accused-appellant.<sup>40</sup> In his initial testimony before the police, he merely recounted that the assailant was "matabang lalaki, malaki ang tiyan, mataas".<sup>41</sup> Significantly, when asked in court, Norli also said that the assailant was wearing a white t-shirt, but this detail was not mentioned in any of his affidavits.<sup>42</sup>

Finally, the police officer who presented the rouges gallery to Norli failed to testify on how the presentation transpired. Neither did Norli recount how the photos were presented to him. There could have been improper suggestion by the change of the officer's tone or by staring a bit longer on the photo of accused-appellant. It was also revealed from the records that accused-appellant's photo was presented to Norli a month after the incident took place, and while Norli was detained in the police station for investigation. The person of accused-appellant was also shown to Norli when the former was inside the jail.<sup>43</sup> It is likewise unclear how many photos and suspects were shown to Norli for identification.<sup>44</sup> Remarkably, no explanation was offered as to why accused-appellant's photo was shown as one of the suspects.

Hence, it is highly probable that Norli was testifying not based on his own personal knowledge but on the suggestiveness of the circumstance.

At this juncture, We emphasize that a show-up is highly suggestive in nature. In *People v. Niño*, the Court described the presentation of a single person in the out-of-court identification as "pointedly suggestive, generated confidence where there was none, activated visual imagination, and, all told, subverted their reliability as eyewitnesses." Also, in *People v. Baconguis*, the Court reiterated that a show-up is more susceptible to external influences and a witness could be more inclined to positively identify a suspect who

<sup>38</sup> *People v. Torres*, supra note 27.

<sup>39</sup> *Rollo*, p. 17.

<sup>40</sup> See *People v. Ansano*, supra note 28.

<sup>41</sup> Records, p. 28.

<sup>42</sup> TSN, dated 20 December 2016, p. 19.

<sup>43</sup> Id.

<sup>44</sup> See *People v. Torres*, supra note 27.

was shown detained alone inside his cell.<sup>45</sup>

Apart from the foregoing, a number of danger signals also impaired Norli's identification of accused-appellant.<sup>46</sup>

Significantly, Norli testified that he did not know accused-appellant:<sup>47</sup>

Q: On that particular time, do you know who [sic] Rommel Jimenez?

A: **Namukhaan ko lang po nung nangyari iyon.**

Q: Despite the fact that you never know the name of that person you were shown by the police of his picture?

A: **Hindi ko pa po kilala pero nung mangyari po, namukhaan ko talaga.**

In other words, he saw accused-appellant for the first time during the crime. This leads to the conclusion that Norli does not have any degree of familiarity with accused-appellant. As explained by the Court in *People v. Rodrigo*, this fact can make a lot of difference as human experience tells us: in the recognition of faces, the mind is more certain when the faces relate to those already in the mind's memory bank; conversely, it is not easy to recall or identify someone we have met only once or whose appearance we have not fixed in our mind.<sup>48</sup> In the same case, the Court likewise instructed that great care should be taken in considering the identification of the accused, **especially when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification.**<sup>49</sup>

To be sure, Norli's first encounter with the assailants — people he did not know before — happened very briefly during a very horrifying experience when his employer was shot and killed. Whether the event and its details etched themselves in Norli's memory or whether everything happened in a blur is hard to say with definite certainty.<sup>50</sup>

Additionally, a considerable time has elapsed between the witness' view of the criminal and his identification of the accused since Norli identified accused-appellant as the assailant one month and two weeks after the incident. Further, two persons allegedly committed the crime.

<sup>45</sup> Id.

<sup>46</sup> *People v. Matias*, supra note 30.

<sup>47</sup> TSN, dated 20 December 2016, p. 18.

<sup>48</sup> *People v. Rodrigo*, 586 Phil. 515, 534 (2008).

<sup>49</sup> *People v. Libunao*, G.R. No. 247651, 24 March 2021, citing *People v. Rodrigo*, 586 Phil. 528 (2008).

<sup>50</sup> *People v. Rodrigo*, 586 Phil. 535 (2008).

Given the foregoing, to the mind of the Court, there is a reasonable possibility that the confluence of the above circumstances may have, albeit inadvertently, improperly suggested to the mind of Norli that accused-appellant was the assailant.<sup>51</sup>

In other words, due to 1) the unusual situation that Norli just witnessed, 2) the brief period he allegedly saw the assailant's face, and 3) his position relative to where the assailant was, We find it difficult to believe that Norli was able to accurately identify the assailant. We cannot disregard the possibility that the prosecution witness committed an error in identifying the assailant. The interim period of one month from the time of the incident and the time Norli gave his sworn statement to the authorities and identified accused-appellant from the show-up could have affected Norli's ability to recall the assailant's identity. He also admitted that he has never met nor seen the assailant prior to the incident which compels the Court to doubt the accuracy of Norli's recollection. To Our mind, these factors, when taken as a whole, diminish the credibility of the witness and raise doubt on the truthfulness of his testimony and identification of accused-appellant as the assailant.<sup>52</sup>

On this note, We have settled that although the defense of alibi is inherently weak, the prosecution is not released from its burden of establishing the guilt of the accused beyond reasonable doubt. It is necessary to first establish beyond question the credibility of the eyewitness as to the identification of the accused before a court can apply the rule that positive identification prevails over alibi. Having failed to indubitably prove the identity of accused-appellant as the assailant, We cannot sustain accused-appellant's conviction.<sup>53</sup>

Verily, We cannot, in good conscience, pronounce with moral certainty that accused-appellant is guilty of the crime charged. The State thus failed to establish the guilt of the accused-appellant beyond reasonable doubt which warrants his acquittal.

**WHEREFORE,** the appeal is hereby **GRANTED**. The Decision dated 7 April 2022 of the Court of Appeals in CA-G.R. CR HC No. 13655 is **REVERSED** and **SET ASIDE**. Accused-appellant Rommel D. Jimenez is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is being confined for some other lawful cause.

<sup>51</sup> See *People v. Ansaño*, supra note 28.

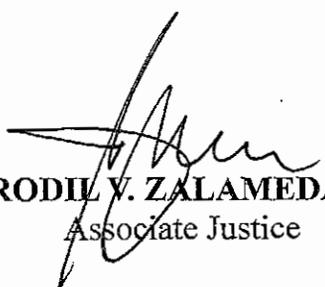
<sup>52</sup> Supra note 35.

<sup>53</sup> Id. at 126. See also supra note 28.

The Director General, Bureau of Corrections, Muntinlupa City is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

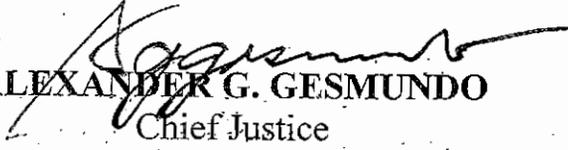
Let an entry of final judgment be issued immediately.

**SO ORDERED.**

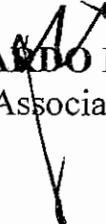


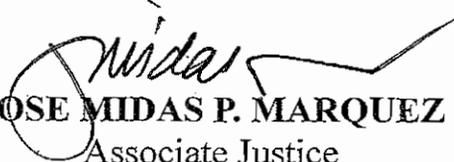
**RODIL V. ZALAMEDA**  
Associate Justice

**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
Chief Justice  
Chairperson

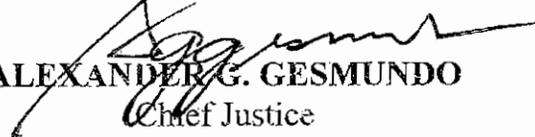
(On Leave)  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

**CERTIFICATION**

Pursuant to the 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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice