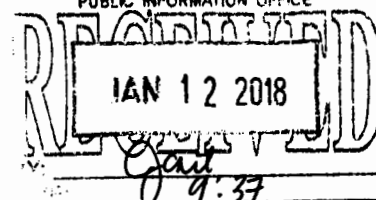




Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
 PUBLIC INFORMATION OFFICE



**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff-Appellee,*

**G.R. No. 218958**

- versus -

Present:

**EDILBERTO NORADA y HARDER,**  
**and AGUSTIN SEVA y LACBANES,**  
*Accused,*

SERENO, C.J., *Chairperson,*  
 VELASCO, JR.,\*  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO, *and*  
 TIJAM, JJ.

**EUGENE VILLANUEVA y CAÑALES,**  
*Accused-Appellant.*

Promulgated:  
**DEC 13 2017**

X-----X

**DECISION**

**DEL CASTILLO, J.:**

Eugene Villanueva y Cañales (appellant) seeks in the present appeal, the reversal of the January 14, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 00686 which affirmed with modifications the July 21, 2006 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Bacolod City, Branch 50, convicting him of the complex crime of attempted Kidnapping with Murder.

***The Antecedent Facts:***

In the afternoon of February 12, 2004, Police Inspector Bonifer Gotas (PI Gotas), Precinct Commander of Precinct VI, Bacolod City received a report that a dead person was recovered in a sugarcane field at Villa Angela Subdivision. The deceased was identified as Reggie Pacil y Nojas (victim), a 42-year old bachelor and was the school principal of the Alijis Elementary School in Valladolid, Bacolod City.

\* Designated as additional member per October 18, 2017 raffle vice J. Jardeleza who recused from the case due to prior participation as Solicitor General.

<sup>1</sup> CA rollo, pp. 213-231; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.

<sup>2</sup> Id. at 15-38; penned by Judge Roberto S. Chiongson.

During the investigation, PI Gotas was informed that the victim was killed at the Taculing Court Apartelle. An inquiry from a roomboy revealed that in the evening of February 11, 2004, three men on board a Suzuki multicab rented and spent some time at Room 106 of the apartelle. PI Gotas inspected the room and saw bloodstains scattered inside and on its wall. He was informed that one of the occupants of the room was Edilberto Norada y Harder (Norada). Days after the incident, Norada was arrested followed by appellant Villanueva and Agustin Seva y Lacbanes (Seva).

Rosalina Pacil (Rosalina), mother of the victim, testified that the latter received a monthly salary of ₱12,837.00 as school principal. Rosalina further testified that appellant was a friend of her son. Appellant frequently visited their house since the victim finances the former's fruit buying and selling business. On February 11, 2004, appellant was in their house waiting for the arrival of the victim. The victim arrived early in the evening with a Canadian friend, Ray Truck (Truck). Not long enough, the victim and appellant left, leaving behind Truck. That was the last time Rosalina saw her son alive.

In his Post Mortem Autopsy findings, Dr. Eli Cong (Dr. Cong), the medico-legal officer of the Bacolod City Health Office, found lacerated wound and contusion hematoma on the body of the victim and gave the cause of death as "Uncal Erniation, secondary to contusion hemorrhage brain parietal area, a secondary. Fracture with laceration of the skull parietal area, head, secondary to trauma by blunt instrument head, contusion hemorrhage, multiple"<sup>3</sup> which could have been caused by a blunt instrument like a piece of wood.

Appellant admitted that he was a close friend of the victim. His narration of the event which served as his defense and synthesized by the courts below is as follows:

x x x On February 8, 2004, he met Reggie Pacil [who] told him that he will treat him to a disco on February 11, 2004 to celebrate in advance his forthcoming birthday. Mr. Pacil instructed him to look for a car that they can hire to be used for that occasion. When he met the accused Edilberto Norada[,], a taxi driver[,], who is an old acquaintance the following day, he told him to look for a car. Norada succeeded in leasing a red Suzuki multicab owned by Cecile Pioquinto, a girlfriend of the accused Agustin Seva.

On February 10, 2004, [a]ccused Villanueva x x x and his co-accused Edilberto Norada, took the car from the house of Cecile Pioquinto. At that time, the accused Agustin Seva was in the house of Pioquinto. He paid rental in the amount of ₱2,000.00 for the use of the car.

<sup>3</sup> Id. at 18.

Leaving behind the car and Norada, Villanueva x x x went to Valladolid to fetch Reggie Pacil. Reggie Pacil was not in his house so he waited for him until about 7:30 in the evening. When Pacil arrived on board a taxi, he was with his friend from Canada a person named Ray Truck. He and Pacil took that same taxi for Bacolod City while the Canadian was left behind in Pacil's house.

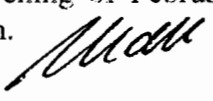
Eugene Villanueva further declared that they met Edilberto Norada at a designated place in the Golden Field Complex but instead of proceeding directly to a disco house, Pacil suggested that they first find a place to spend the rest of the night.

Reggie Pacil rented a room in the Taculing Court Apartelle and said that they will wait there for Pacil's other friends who will be joining them. As they were waiting, the two of them drank beer while Norada stayed outside of the room. At about 2:00 in the morning, the friends of Pacil was (*sic*) not able to arrive, so Villanueva x x x decided to go out alone. Pacil, however, would not allow him to leave. Villanueva x x x at that time x x x was beginning to realize that Pacil was intending to use him. When he held Pacil's hand to enable him to leave, he slipped and fell on the floor. Pacil placed himself over him and as they struggled, Edilberto Norada entered the room. Norada tried to pacify them but he was boxed by Pacil. Norada left and returned with a piece of wood and he hit Pacil on the head several times. Pacil fell unconscious. There was blood flowing out of Pacil's head so he and Norada panicked. They wrapped Pacil in a bedsheet and loaded him on the Suzuki multi-cab. They went around Bacolod City not knowing what to do. Eventually they dumped the body of Pacil at Villa Angela Subdivision.<sup>4</sup>

The testimony of accused Norada, on the other hand, was summarized by the trial court as follows:

Accused Edilberto Norada declared that he and Agustin Seva for sometime, have been hatching to organize a kidnap for ransom group in Bacolod City. This plan did not materialize as they have no money to fund the operation. Later, in 2003, he met Eugene Villanueva, a security guard of the Riverside Hospital. Eugene Villanueva revealed that he is a close friend of Reggie Pacil, a schoolteacher at the town of Valladolid. Reggie Pacil has a friend, a Canadian national named Ray Truck. This Ray Truck has plenty of money x x x. The three (3) of them, namely, himself, Agustin Seva and Eugene Villanueva, made a plan to kidnap Ray Truck.

To carry out their plan, accused Norada revealed that they rented the car of Cecile Pioquinto, who was the girlfriend of the accused Seva. They also rented a room at the Taculing Court Apartelle. The accused Villanueva would bring both Reggie Pacil and the Canadian Ray Truck at the Apartelle on the evening of February 11, 2004 and they will then execute their kidnap plan.



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<sup>4</sup> Id. at 21-22.

On the appointed day, Accused Villanueva fetched Reggie Pacil and Ray Truck in the house of Pacil in Valladolid but only Reggie Pacil came. Ray Truck remained in the house of Reggie Pacil in Valladolid. The non-appearance of Ray Truck made them change their plan. They decided to just kidnap Reggie Pacil as they were convinced that Rey Truck will pay ransom for his release. They decided that the kidnapping will take place as soon as Reggie Pacil falls asleep.

Inside their rented room in the Taculing Court Apartelle, Seva, Villanueva and Pacil [drank] liquor. Norada x x x slept [in] the car in the garage of the Apartelle.

In the early morning of the following day Norada said that Villanueva woke him up and told him that Pacil was already asleep. They began tying up Pacil but somehow he woke up and resisted. Norada said that he hit Pacil [on] the head with a piece of wood. Pacil was rendered unconscious only briefly and he again struggled. Norada hit him again and this time Pacil stayed motionless but snoring. Then Seva taped the mouth of Pacil while he and Villanueva tied x x x his hands and feet. They wrapped Pacil [in] a blanket, and loaded him into the car. Then they dumped his body at Villa Angela subdivision. Thereafter, they parted ways. x x x.<sup>5</sup>

### ***Ruling of the Regional Trial Court***

The RTC gave probative value to the narration of Norada respecting the conspiracy to kidnap the victim and how he was killed. The RTC further ruled that the killing was attended by treachery and abuse of superior strength. The court *a quo* ratiocinated that:

In the present case, the crime of Kidnapping was only in its Attempted Stage as the offenders only commenced the execution of the felony directly by overt acts but they failed to perform all the acts of execution x x x by reason of the resistance of Reggie Pacil. Article 267 of the Revised Penal Code defines and penalizes Kidnapping and Serious Illegal detention as a single felony such that all other offenses committed by reason of or on occasion of it are absorbed by it by express mandate of the law. But the absorption rule will not apply when the Kidnapping is only Attempted or Frustrated, as Article 267 does not so provide. [W]hen Kidnapping is attempted or Frustrated and another crime is committed arising out of the same act of attempted or frustrated kidnapping, the provision of the ordinary complex crime under Article 48 of the Revised Penal Code shall apply. An ordinary complex crime under Article 48 is committed when a single act results to two or more grave or less grave felonies. The act which constituted as an attempt to kidnap was also the same act that caused the death of Reggie Pacil. x x x

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<sup>5</sup> Id. at 23-24.

It should be stressed that the Information against the accused fully and completely alleges the commission of the crime of Murder, with the killing of the victim qualified by treachery and abuse of superior strength.

Article 48 of the Revised Penal Code provides that when a single act produces two (2) or more grave or less grave felonies, the penalty for the graver offense shall be imposed, the same to be applied in its maximum period. The maximum penalty for Murder is death but since the penalty of death had already been abolished, the penalty is Reclusion Perpetua.<sup>6</sup>

Thus, on July 21, 2006, the RTC rendered a Decision, the dispositive part of which stated:

FOR ALL THE FOREGOING, this Court finds all the three (3) accused, namely, Eugene Villanueva Y Canales, Edilberto Norada Y Harder and Agustin Seva Y Lachanes, GUILTY beyond reasonable doubt of the complex crime of Attempted Kidnapping with Murder, all as conspirators and all as Principals by Direct participation. All of them are sentenced to suffer the penalty of RECLUSION PERPETUA with all its accessories.

By way of civil liability, the three (3) above-named accused are held solidarily liable to pay to the heirs of the late Reggie Pacil the sum of Php1,950,967.20 as compensatory damages; the sum of Php50,000.00 as death indemnity. And to Mrs. Rosalina Pacil, the accused are solidarily liable to pay the amount of Php50,000.00 as moral damages.<sup>7</sup>

Norada did not appeal his conviction. Seva filed a Notice of Appeal but the same was denied for having been filed out of time. Hence only the appeal of appellant Villanueva will be resolved in this proceedings.

### ***Ruling of the Court of Appeals***

Like the trial court, the CA gave probative weight to the sworn statement of Norada and sustained its admissibility considering that its contents were reiterated affirmatively in open court thus transposing it as a judicial admission. The CA rejected appellant's plea of self-defense for his failure to prove the element of unlawful aggression arising from the victim. Thus the CA did not find any reason to reverse the RTC Decision. Hence, on January 14, 2015, the CA rendered its assailed Decision with the decretal portion reading as follows:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. Accordingly, the assailed *Decision dated 21 July 2006* of the

<sup>6</sup> Id. at 36-37.

<sup>7</sup> Id. at 37-38.



Regional Trial Court, Branch 50, 6<sup>th</sup> Judicial Region, Bacolod City, in Criminal Case No. 04-26009 is hereby AFFIRMED with MODIFICATIONS.

As modified, all three accused are held solidarily liable to pay the heirs of the victim the amounts of Php75,000.00 as civil indemnity, Php50,000.00 as moral damages, Php30,000.00 as exemplary damages and Php25,000.00 as temperate damages. Interest on all damages awarded is imposed at the rate of 6% per annum from date of finality of this judgment until fully paid.

SO ORDERED.<sup>8</sup>

Dissatisfied with the CA Decision, appellant elevated the case to this Court.

### **Our Ruling**

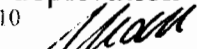
The appeal is partly meritorious.

*The crime of kidnapping was not satisfactorily established.*

Kidnapping is defined and punished under Article 267 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 7659. The crime has the following elements:

- (1) the accused is a private individual;
- (2) the accused kidnaps or detains another or in any manner deprives the latter of his liberty
- (3) the act of detention or kidnapping is illegal; and
- (4) in the commission of the offense, any of the following circumstances is present:
  - (a) the kidnapping or detention lasts for more than three days;
  - (b) it is committed by simulating public authority;
  - (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made or;
  - (d) the person kidnapped or detained is a minor, female or a public official.<sup>9</sup>

“The essence of the crime of kidnapping is the actual deprivation of the victim’s liberty coupled with the intent of the accused to effect it. It includes not only the imprisonment of a person but also the deprivation of his liberty in whatever form and for whatever length of time.”<sup>10</sup>



<sup>8</sup> Id. at 230.

<sup>9</sup> See *People v. Mamantak*, 582 Phil. 294, 302 (2008).

The totality of the prosecution's evidence failed to sufficiently establish the offense of kidnapping in this case. There was no concrete evidence whatsoever to establish or from which it can be inferred that appellant and his cohorts intended to actually deprive the victim of his liberty for some time and for some purpose. There was also no evidence that they have thoroughly planned the kidnapping of the victim. There was lack of motive to resort in kidnapping the victim for they were bent to kidnap his friend Truck. The fact alone of waiting for the victim to fall asleep and then and there tying his hands and feet, based on Norada's account, was not determinant of intent to actually detain the victim or deprive his liberty. As such, the trial court was indulging in speculation when it held that the victim "will either be taken away or simply be kept in the hotel and thereafter ransom will be demanded from the Canadian Ray Truck for his release."<sup>11</sup> Courts should not indulge in speculation no matter how strong the guilt of the accused. Hence since the offense of kidnapping was not sufficiently established, the trial court erred in holding appellant liable for attempted kidnapping.

*There is no unlawful aggression on the part of the victim hence the justifying circumstance of self-defense is untenable.*

There is no dispute that the victim was killed. Appellant however, invokes the justifying circumstance of self-defense to exculpate himself. By invoking self-defense, appellant in effect admitted his part in killing the victim. However, before the plea of self-defense may be appreciated, appellant must prove by clear and convincing evidence the following indispensable elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the appellant.<sup>12</sup> "In self-defense and defense of strangers, unlawful aggression is a primordial element, a condition *sine qua non*. If no unlawful aggression attributed to the victim is established, self-defense and defense of strangers are unavailing because there would be nothing to repel."<sup>13</sup>

The courts below correctly found that appellant failed to discharge the burden of proving unlawful aggression on the part of the victim. Both the RTC and the CA held that his version of the event was not only uncorroborated but crude and clumsy prevarication. We agree that appellant's evidence relative to unlawful aggression fell far short of being

<sup>10</sup> Id. at 303.

<sup>11</sup> CA rollo, p. 35.

<sup>12</sup> See REVISED PENAL CODE, Article 11, Section 1.

<sup>13</sup> *People v. Del Castillo*, 679 Phil. 233, 250 (2012).



“clear and convincing.” His claim of having been boxed by the victim did not show that he suffered any injury and no allegation on what part of his body was hit. More importantly, the punching if it was true, did not place the life of appellant in danger. Thus, appellant’s claim of self-defense deserves no merit at all.

*Treachery did not attend the killing.*

However, we cannot agree that the qualifying circumstance of treachery attended the killing. According to the trial court, “it was necessary for the accused to subdue [the victim] and they attempted to perform this act in a treacherous manner, tying up [the victim] while he was asleep. [The victim] however, resisted and this prompted the accused to hit him inflicting serious injuries on his person that caused his death.”<sup>14</sup> Clearly, this is the only context in which the trial court appreciated the qualifying circumstance of treachery and the appellate court concurred with this finding without laying any basis or explanation for its concurrence.

Contrary to the findings of the courts below, our review of the evidence shows that the killing of the victim was not attended by treachery.

“Treachery cannot be presumed [for] the circumstances surrounding the [killing] must be proved as indubitably as the crime itself.”<sup>15</sup> Treachery is present “when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.”<sup>16</sup> “To constitute treachery, two conditions must concur: (1) the employment of means, methods or manner of execution that would ensure the offender’s safety from any defense or retaliatory act on the part of the offended party; and (2) the offender’s deliberate or conscious choice of the means, method or manner of execution.”<sup>17</sup>

Indeed, the victim was struck on the head by Norada with a piece of wood which resulted to his death. However, the records is bereft of any evidence that appellant and his co-accused made some preparation to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the victim to defend himself.<sup>18</sup> In *People v.*

<sup>14</sup> CA rollo, p. 35.

<sup>15</sup> *People v. Nueva*, 591 Phil. 431, 446 (2008).

<sup>16</sup> REVISED PENAL CODE, Article 14, paragraph 16.

<sup>17</sup> *People v. Garcia*, 577 Phil. 483, 503 (2008).

<sup>18</sup> See *People v. Pat. Nitcha*, 310 Phil. 287, 303-304 (1995).



*Antonio*,<sup>19</sup> it was held that “[i]t is not only the sudden attack that qualifies a killing into murder. There must be a conscious and deliberate adoption of the mode of attack for a specific purpose.” Similarly, in *People v. Catbagan*,<sup>20</sup> the Court ruled that “[t]reachery cannot be considered when there is no evidence that the accused had resolved to commit the crime prior to the moment of the killing or that the death of the victim was the result of premeditation, calculation or reflection.” In the present case, the mode or manner of the attack on the victim did not appear to have been consciously and deliberately adopted.

*Conspiracy was established among the accused.*

As regards the matter of conspiracy, we note that the appellate court did not make any discussion or a finding of fact on the presence of conspiracy among the accused despite holding them solidarily liable for the payment of damages. However, we take this opportunity to tackle this issue following the principle that an appeal throws the whole case wide open for review.

We find that conspiracy in killing the victim was duly established. “Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime suggesting concerted action and unity of purpose among them.”<sup>21</sup> In the case at bar, the evidence showed that appellant did not prevent Norada from striking the head of the victim with the piece of wood. When the latter fell unconscious with blood oozing from his head, appellant even helped in wrapping the body with a bedsheet and loaded him on the Suzuki multi-cab. To completely end the life of the victim, they did not bring the victim to the hospital despite his still being alive but instead, dumped the body in a sugarcane field at Villa Angela Subdivision. These acts of appellant during and after the killing indubitably show that he acted in concert for a joint purpose and a community of interest with his co-accused in killing the victim. Thus applying the basic principle in conspiracy that “the act of one is the act of all,” appellant is guilty as a co-conspirator and regardless of his participation, is liable as co-principal.<sup>22</sup>

*No abuse of superior strength.*

The aggravating circumstance of abuse of superior strength is “present if the accused purposely uses excessive force out of proportion to the means

<sup>19</sup> 390 Phil. 989, 1017 (2000).

<sup>20</sup> 467 Phil. 1044, 1081-1082 (2004).

<sup>21</sup> *People v. Robelo*, 699 Phil. 392, 401 (2012).

<sup>22</sup> *Id.*

of defense available to the person attacked, or if there is notorious inequality of forces between the victim and aggressor, and the latter takes advantage of superior strength.”<sup>23</sup> However, as none of the prosecution witnesses saw how the killing was perpetrated, abuse of superior strength cannot be appreciated in this case.

*The crime committed was homicide.*

Considering that none of the circumstances alleged in the information, *i.e.*, treachery and abuse of superior strength was proven during the trial, the same cannot be appreciated to qualify the killing to murder. Appellant can only be held liable for homicide. Under Article 249 of the RPC, the penalty prescribed for the crime of homicide is reclusion temporal. In view of the absence of any mitigating circumstance and applying the Indeterminate Sentence Law, the maximum of the sentence should be within the range of *reclusion temporal* in its medium period which has a duration of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum should be within the range of *prision mayor* which has a duration of six (6) years and one (1) day to twelve (12) years. Thus, appellant should suffer an indeterminate prison term of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

Anent appellant’s civil liability, the Court finds a need to modify the same to conform to recent jurisprudence.<sup>24</sup> The Court modifies the awarded amount of ₱75,000.00 as civil indemnity by the CA by reducing it to ₱50,000.00. Anent the award of moral damages, the CA correctly imposed the amount of ₱50,000.00. The award of ₱30,000.00 as exemplary damages is deleted in view of the failure of the prosecution to prove that the killing was attended by treachery and abuse of superior strength.

With respect to actual damages, the parties stipulated the amount of ₱40,000.00 for the funeral, burial and other incidental expenses and dispensed with the presentation of proof thereof. However prevailing jurisprudence dictates an award of ₱50,000.00 as temperate damages, in lieu of actual damages, when no documentary evidence of burial or funeral expenses is presented in court.<sup>25</sup> Hence, we award ₱50,000.00 as temperate damages in lieu of actual damages.

As to the deletion of the indemnity for loss of earning capacity by the CA, we restore the award by the RTC of the sum of ₱1,950,967.26 as

<sup>23</sup> *People v. Del Castillo*, supra note 13 at 255.

<sup>24</sup> *People v. Jugucta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 386-387.

<sup>25</sup> *Id.* at 388.



unearned income as appearing from the Pay Slip<sup>26</sup> submitted in evidence which the CA plainly overlooked. The figure was arrived at based on the net earning capacity of the victim, to wit:

$$\text{Net earning capacity} = \frac{2}{3} \times (80 - \text{age of the victim at the time of death}) \times (\text{Gross Annual Income less the Reasonable and Necessary Living Expenses})^{27}$$

The victim was 42 years old at the time of his death. His annual gross income was ₱154,044.00 computed based on his monthly income of ₱12,837.00. His necessary living expenses is deemed to be 50% of his gross income. His life expectancy is assumed to be  $\frac{2}{3}$  of age 80 less 42, his age when he was killed. Thus using the above formula, the indemnity for loss of earning capacity of the victim is ₱1,950,967.26.

**WHEREFORE**, the appeal is **PARTLY GRANTED**. The Decision dated January 14, 2015 of the Court of Appeals in CA-G.R. CR HC No. 00686 is hereby **VACATED and SET ASIDE**. A new one is entered as follows:

1) appellant Eugene Villanueva y Cañales is hereby found **GUILTY** of the crime of Homicide and sentenced to an indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

2) appellant is ordered to pay the heirs of the victim the following amounts:

- a) ₱50,000.00 as civil indemnity;
- b) ₱50,000.00 as moral damages;
- c) ₱50,000.00 as temperate damages; and,
- d) ₱1,950,967.26 as indemnity for loss of earning capacity.

In conformity with current policy, we impose interest on all the monetary awards for damages at the rate of 6% *per annum* from date of finality of this Decision until fully paid.




<sup>26</sup> Records, p. 154.


<sup>27</sup> *People v. Garcia*, supra note 17 at 508.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

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

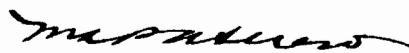
  
**PRESBITERO J. VELASCO, JR.**  
*Associate Justice*

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

  
**NOEL GIMENEZ TIJAM**  
*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.

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