Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

ARMANDO DELECTOR,
Accused-Appellant.

G.R. No. 200026

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

October 4, 2017

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DECISION

BERSAMIN, *J.*:

This case involves a brother fatally shooting his own brother. In his defense, the accused pleaded accident as an exempting circumstance. The trial and intermediate appellate courts rejected his plea and found him guilty of murder qualified by treachery. Hence, he has come to us to air his final appeal for absolution.

The Case

Under review is the decision promulgated on September 22, 2006,[1] whereby the Court of Appeals (CA) affirmed the decision rendered on March 17, 2003 by the Regional Trial Court (RTC), Branch 41, in Gandara, Samar convicting the accused of murder for the killing of the late Vicente Delector, and penalizing him with *reclusion perpetua*, with modification by increasing moral damages to ₱50,000.00.[2]

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[1] *Rollo,* pp. 3-10; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justice Romeo F. Barza and Associate Justice Priscilla Baltazar-Padilla.

[2] CA *rollo* pp. 19-30; penned by Judge Rosario B. Bandal.

Antecedents

At about 6:00 o'clock in the afternoon of August 8, 1997, the late Vicente Delector was talking with his brother, Antolin, near his residence in Barangay Diaz in Gandara, Samar when the accused, another brother, shot him twice. Vicente was rushed to the Gandara District Hospital where he was attended to by Dr. Leonida Taningco, but he was later on transferred to the Samar Provincial Hospital where he succumbed to his gunshot wounds at about 1:00 a.m. of the next day.[3]

Vicente's son, Arnel, identified his uncle, the accused, as his father's assailant. Arnel attested that the accused had fired his gun at his father from their mother's house,[4] and had hit his father who was then talking with Antolin. Corroborating Arnel's identification was Raymond Reyes, who had happened to be along after having come from his school. Raymond also said that Vicente had been only conversing with Antolin when the accused shot him twice.[5]

On October 2, 1997, the Office of the Provincial Prosecutor of Samar charged the accused with murder in the RTC through the following information, *viz.*:

> That on or about the 8th day of August, 1997, at about 6:00 o'clock in the afternoon, at Barangay Diaz, Municipality of Gandara, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one VICENTE DELECTOR alias TINGTING with the use of a firearm (revolver), which the accused had conveniently provided himself for the purpose, thereby inflicting upon the latter mortal wounds on the different parts of his body, which caused the untimely death of said Vicente Delector.
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> CONTRARY TO LAW.[6]

In his defense, the accused insisted during the trial that the shooting of Vicente had been by accident. His own son corroborated his insistence. According to them, Vicente had gone to their house looking for him, but he had earlier left to go to their mother's house nearby in order to avoid a confrontation with Vicente; however, Vicente followed him to their mother's house and dared him to come out, compelling Antolin to intervene and attempt to pacify Vicente. Instead, Vicente attacked Antolin, which forced the accused to go out of their mother's house. Seeing Vicente to be carrying

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3 *Rollo*, pp. 3-4.
4 TSN, Arnel Delector, August 9, 1999, p. 19.
5 Id. at 14.
6 *Rollo*, p. 4.

his gun, he tried to wrest the gun from Vicente, and they then grappled with each other for control of the gun. At that point, the gun accidentally fired, and Vicente was hit.[7]

Ruling of the RTC

After trial, the RTC rendered its decision,[8] finding the accused guilty of murder, and disposing:

> **WHEREFORE**, accused Armando Delector is hereby found **GUILTY** beyond reasonable doubt of the crime of Murder and is hereby meted a penalty of **RECLUSION PERPETUA**.
>
> Accused shall likewise indemnify the heirs of Vicente Delector the sum of Php50,000.00, actual damages of Php12,000.00, moral damages of Php30,000.00 and costs.
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> In line with Section 5, Rule 114 of the Rules on Criminal Procedure, the Warden of the Sub-Provincial Jail, Calbayog City, is hereby directed to immediately transmit the living body of the accused Armando Delector to the New Bilibid Prison at Muntinlupa City, Metro Manila where he may remain to be detained. The accused shall be credited for the period he was under preventive detention provided he has previously expressed his written conformity to comply with the discipline, rules and regulations by the detention center, otherwise he shall be entitled to only 4/5 thereof pursuant to Article 29 of the Revised Penal Code, as amended.
>
> **SO ORDERED**.[9]

Decision of the CA

Aggrieved, the accused appealed, contending that:

> I
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> THAT THE LOWER COURT ERRED GIVING FULL FAITH AND CEREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES; and
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> II
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> THAT THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

Nonetheless, the CA affirmed the conviction for murder subject to an increase of the moral damages to ₱50,000.00,[10] to wit:

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7 TSN, July 11, 2000, pp. 6-10.
8 Supra note 2.
9 CA *rollo*, pp. 29-30.
10 Supra note 1.

> **WHEREFORE**, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the appeal filed in this case and **AFFIRMING** the decision of the lower court in Criminal Case No. 3403 with the **MODIFICATION** that the award of moral damages is increased to ₱50,000.00.
>
> **SO ORDERED**.

The CA opined that the exempting circumstance of accident was highly improbable, stating:

> Indeed, given the circumstances surrounding the death of the victim, it is highly improbable that the same was due to an accident. It is unlikely that the accused-appellant would purposely set out and grapple with the victim who, if he is to be believed, was already armed with a gun while he (accused-appellant) was totally unarmed. Such actuation is utterly inconsistent with the ordinary and normal behavior of one who is facing imminent danger to one's life, considering the primary instinct of self-preservation. But then, even granting that the accused-appellant merely acted in defense of his other brother, Antolin, his failure to help or show concern to the victim, who was also his brother, casts serious doubts to his defense of accident.
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> Furthermore, a revolver, the gun involved in this case, is not one that is prone to accidental firing because of the nature of its mechanism. Considerable pressure on the trigger must have been applied for it to have fired. [11]

Hence, this appeal, in which the accused insists that:

> I
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> THE COURT A QUO GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.
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> II
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> THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.[12]

On its part, the State, through the Office of the Solicitor General, submitted its *appellee's brief* maintaining that the evidence of guilt was sufficient, but recommending that the crime for which the accused should be held guilty of was homicide, not murder, considering that the records did not support the holding that he had deliberately and consciously adopted a method of attack that would insure the death of the victim; and that evident

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[11] Id. at 8-9.

[12] *Rollo*, p. 50.

premeditation was not also shown to be attendant.[13]

Ruling of the Court

We affirm the decision of the CA that accident could not be appreciated in favor of the accused, but we must find and declare that, indeed, the crime committed was homicide, not murder.

To start with, the lower courts did not err in giving more credence to the testimonies of the Prosecution's witnesses instead of to the testimony of the accused and his son. Arnel and Raymond positively identified the accused as the assailant. Their identification constituted direct evidence of the commission of the crime, and was fully corroborated by the recollection of a disinterested witness in the person of Dr. Taningco, the attending physician of the victim at the Gandara District Hospital, to the effect that the victim had declared to the police investigator interviewing him that it was the accused who had shot him.[14] The testimonies of Raymond and Dr. Taningco are preferred to the self-serving and exculpatory declarations of the accused and his son.

The factual findings of the RTC are accorded the highest degree of respect, especially if, as now, the CA adopted and confirmed them. Unlike the appellate courts, including ours, the trial judge had the unique firsthand opportunity to observe the demeanor and conduct of the witnesses when they testified at the trial, which were factors in the proper appreciation of evidence of past events. Such factual findings should be final and conclusive on appeal unless there is a demonstrable error in appreciation, or a misapprehension of the facts.[15]

Secondly, the RTC and the CA both observed that the exempting circumstance of accident was highly improbable because the accused grappled with the victim for control of the gun. We see no reason to overturn the observations of the lower courts.

Article 12, paragraph 4, of the *Revised Penal Code* exempts from criminal liability "(a)ny person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it." The elements of this exempting circumstance are, therefore, that the accused: (1) is performing a lawful act; (2) with due care; (3) causes injury to another by mere accident; and (4) without fault or intention of causing it.

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[13] Id. at 88-99.

[14] Id. at 7.

[15] *People v. Tuy*, G.R. No. 179476, February 9, 2011, 642 SCRA 534, 537; *Garong v. People,* G.R. No. 148971, November 29, 2006, 508 SCRA 446, 455; *Lubos v. Galupo*, G.R. No. 139136, January 16, 2002, 373 SCRA 618, 622.

Accident could not be appreciated herein as an exempting circumstance simply because the accused did not establish that he had acted with due care, and without fault or intention of causing the injuries to the victim. The gun was a revolver that would not fire unless there was considerable pressure applied on its trigger, or its hammer was pulled back and released. The assertion of accident could have been accorded greater credence had there been only a single shot fired, for such a happenstance could have been attributed to the unintentional pulling of the hammer during the forceful grappling for control of the gun. Yet, the revolver fired twice, which we think eliminated accident. Verily, the CA itself pointedly debunked the story of the accused as to how the accident had occurred by characterizing such story not only incomprehensible but also contrary to human experience and behavior.[16] We adopt and reiterate the following observations by the CA:

> ... had the accused really been grappling and twisting the victim's right hand which was holding a gun, the latter would not have sustained the wounds. **It was improbable that the gun would fire not only once but twice and both times hitting the victim, had its trigger not been pulled. Further, the location of the gunshot wounds belies and negate(d) accused (appellant's) claim of accident**.
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> Also, the Court finds incredible [the] accused (appellant's) allegation that he did not know that the victim was hit. He admitted there were two gun reports. The natural tendency of (a) man in his situation would (be to) investigate what was hit. He surely must have known his brother was hit as he even said he let go of the gun. Then he said his brother went home so he also went home. It is odd that he did not attempt to help or show concern for the victim, his brother, had his intention (been) really merely to pacify.[17]

We reiterate that issues concerning the credibility of the witnesses and their account of the events are best resolved by the trial court whose calibration of testimonies, and assessment of and conclusion about their testimonies are generally given conclusive effect. This settled rule acknowledges that, indeed, the trial court had the unique opportunity to observe the demeanor and conduct of the witnesses, and is thus in the best position to discern whether they were telling or distorting the truth.[18]

Nonetheless, the Court cannot uphold the judgments of the CA and the RTC and convict the accused for murder. A reading of the information indicates that murder had not been charged against him. The allegation of the information that:-

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16 *Rollo,* p. 7.
17 *Rollo,* pp. 7-8.
18 *People v. Lagman*, G.R. No. 197807, April 16, 2012, 669 SCRA 512, 525.

> x x x the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one VICENTE DELECTOR alias TINGTING with the use of a firearm (revolver), which the accused had conveniently provided himself for the purpose, thereby inflicting upon the latter mortal wounds on the different parts of his body, which caused the untimely death of said Vicente Delector.

did not sufficiently aver acts constituting either or both treachery and evident premeditation. The usage of the terms *treachery* and *evident premeditation*, without anything more, did not suffice considering that such terms were in the nature of conclusions of law, not factual averments.

The sufficiency of the information is to be judged by the rule under which the information against the accused was filed. In this case, that rule was Section 9, Rule 110 of the *1985 Rules on Criminal Procedure*, which provided thusly:

> Section 9. *Cause of accusation.* – The acts or omissions complained of as constituting the offense **must be stated in ordinary and concise language without repetition**, not necessarily in the terms of the statute defining the offense, but **in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment**. (8)

Section 9 required that the acts or omissions complained of as constituting the offense must be stated "in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense." As such, the nature and character of the crime charged are determined not by the specification of the provision of the law alleged to have been violated **but by the facts alleged in the indictment, *that is*, the actual recital of the facts as alleged in the body of the information, and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law.**[19] The facts alleged in the body of the information, not the technical name given by the prosecutor appearing in the title of the information, determine the character of the crime.[20]

To enable "a person of common understanding to know what offense is intended to be charged," as Section 9 further required, the courts should be mindful that the accused should be presumed innocent of wrongdoing, and

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[19] *People v. Diaz*, G.R. No. 130210, December 8, 1999, 320 SCRA 168, 175; *People v. Juachon*, G.R. No. 111630, December 6, 1999, 319 SCRA 761, 770; *People v. Salazar*, G.R. No. 99355, August 11, 1997, 277 SCRA 67, 88.

[20] *People v. Escosio*, G.R. No. 101742, March 25, 1993, 220 SCRA 475, 488;*People v. Mendoza*, G.R. No. 67610, July 31, 1989, 175 SCRA 743, 752; *People v. Bali-Balita*, G.R. No. 134266, September 15, 2000, 340 SCRA 450, 469; *Buhat v. Court of Appeals*, G.R. No. 119601, December 17, 1996, 265 SCRA 701, 716-717.

was thus completely unaware of having done anything wrong in relation to the accusation. The information must then sufficiently give him or her the knowledge of what he or she allegedly committed. To achieve this, the courts should assiduously take note of what Justice Moreland appropriately suggested in *United States v. Lim San*,[21] and enforce compliance therewith by the State, to wit:

> xxxx Notwithstanding apparent contradiction between caption and body, we believe that we ought to say and hold that **the characterization of the crime by the fiscal in the caption of the information is immaterial and purposeless, and that the facts stated in the body of the pleading must determine the crime of which the defendant stands charged and for which he must be tried**. The establishment of this doctrine is permitted by the Code of Criminal Procedure, and is thoroughly in accord with common sense and with the requirements of plain justice.
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> x x x x
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> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. xxx. **That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named.** x x x.

In *People v. Dimaano*,[22] the Court has reiterated the foregoing guideline thuswise:

> For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the **acts or omissions complained of as constituting the offense;** the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is

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[21] 17 Phil. 273 (1910).

[22] G.R. No. 168168, September 14, 2005, 469 SCRA 647, 666-667 (the crimes involved two counts of rape and one count of attempted rape).

> controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. **No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.** (Bold underscoring supplied for emphasis)

If the standards of sufficiency defined and set by the applicable rule of procedure were not followed, the consequences would be dire for the State, for the accused could be found and declared guilty only of the crime properly charged in the information. As declared in *People v. Manalili*:[23]

> x x x **an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right. Indeed, the accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him.**

Article 14, paragraph 16, of the *Revised Penal Code* states that "[t]here is treachery 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 insure its execution, without risk to himself arising from the defense which offended party might make." For treachery to be appreciated, therefore, two elements must concur, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or retaliate; and (2) that the means of execution were deliberately or consciously adopted,[24] that is, the means, method or form of execution must be shown to be deliberated upon or consciously adopted by the offender.[25]

Treachery, which the CA and the RTC ruled to be attendant, always

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[23] G.R. No. 121671, August 14, 1998, 294 SCRA 220, 252.

[24] *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 480; *People v. Hugo*, G.R. No. 134604, August 28, 2003, 410 SCRA 62, 80-81.

[25] *People v. Punzalan*, No. L-54562, August 6, 1987, 153 SCRA 1, 9.

included basic constitutive elements whose existence could not be assumed. Yet, the information nowhere made any factual averment about the accused having deliberately employed means, methods or forms in the execution of the act – setting forth such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged – that tended directly and specially to insure its execution without risk to the accused arising from the defense which the offended party might make. To reiterate what was earlier indicated, it was not enough for the information to merely state *treachery* as attendant because the term was not a factual averment but a conclusion of law.

The submission of the Office of the Solicitor General that neither treachery nor evident premeditation had been established against the accused is also notable. A review reveals that the record did not include any showing of the presence of the elements of either circumstance.

As a consequence, the accused could not be properly convicted of murder, but only of homicide, as defined and penalized under Article 249, *Revised Penal Code*, to wit:

> Art. 249. *Homicide.* — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal.*

The accused is entitled to the benefits under the *Indeterminate Sentence Law*. Thus, the minimum of his indeterminate sentence should come from *prision mayor*, and the maximum from the medium period of *reclusion temporal* due to the absence of any modifying circumstance. Accordingly, the indeterminate sentence is nine years of *prision mayor*, as the minimum, to 14 years, eight months and one day of *reclusion temporal*, as the maximum.

Conformably with *People v. Jugueta*,[26] the Court grants to the heirs of the late Vicente Delector ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages (in lieu of actual damages for burial expenses), plus interest of 6% *per annum* from the finality of this decision until the full satisfaction.

The records show that the accused was first detained at the Sub-Provincial Jail in Calbayog City on November 19, 1997,[27] and was transferred by the RTC on July 18, 2003 following his conviction for murder to the custody of the Bureau of Corrections in Muntinlupa City, Metro

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[26] G.R. No. 202124, April 5, 2016, 788 SCRA 331.
[27] CA *rollo*, p. 32.

Manila.[28] Under the terms of this decision, the period of his actual imprisonment has exceeded his maximum sentence, and now warrants his immediate release from his place of confinement.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on September 22, 2006 of the Court of Appeals subject to the **MODIFICATION** that accused **ARMANDO DELECTOR** is found and pronounced guilty beyond reasonable doubt of **HOMICIDE**, and, **ACCORDINGLY**, sentences him to suffer the indeterminate sentence of **NINE YEARS OF *PRISION MAYOR*, AS THE MINIMUM, TO 14 YEARS, EIGHT MONTHS AND ONE DAY OF *RECLUSION TEMPORAL*, AS THE MAXIMUM**; and **ORDERS** him to pay to the heirs of the late Vicente Delector ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages, plus interest of 6% *per annum* from the finality of this decision until the full satisfaction, and the costs of suit.

Considering that accused **ARMANDO DELECTOR** appears to have been in continuous detention since November 19, 1997, his immediate release from the New Bilibid Prison at Muntinlupa City, Metro Manila is ordered unless there are other lawful causes warranting his continuing detention.

The Court **DIRECTS** the Director of the Bureau of Corrections to immediately implement this decision, and to render a report on his compliance within 10 days from notice.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice

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[28] Id. at 36.

MARVIC M.V.F. LEONEN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
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.

PRESBITERO J. VELASCO, JR.
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 the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
OCT 26 2017