



Republic of the Philippines
 Supreme Court
 Baguio City

EN BANC

LIWAYWAY VINZONS-CHATO,
 Petitioner,

G.R. No. 204637

Present:

- versus -

SERENO, C.J.,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 BRION,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 ABAD,
 VILLARAMA, JR.,
 PEREZ,
 MENDOZA,
 REYES,
 PERLAS-BERNABE, and
 LEONEN, JJ.

HOUSE OF REPRESENTATIVES
 ELECTORAL TRIBUNAL and
 ELMER E. PANOTES,
 Respondents.

Promulgated:

APRIL 16, 2013

X-----X

RESOLUTION

REYES, J.:

Before us is a Petition for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Prohibitory

1

Injunction¹ assailing the Decision² rendered on October 15, 2012 and Resolution³ issued on December 3, 2012 by the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 10-040 (EP). The Decision dated October 15, 2012 and Resolution dated December 3, 2012 denied herein petitioner Liwayway Vinzons-Chato's (Chato) electoral protest filed before the HRET to challenge the proclamation of herein respondent, Elmer Panotes (Panotes), as the duly elected Representative of the Second District of Camarines Norte.

In the May 10, 2010 elections, Chato and Panotes both ran for the congressional seat to represent the Second District of Camarines Norte. On May 12, 2010, Panotes was proclaimed as the winner for having garnered 51,704 votes. The votes cast for Chato totalled 47,822.

On May 24, 2010, Chato filed an electoral protest claiming that in four of the seven municipalities⁴ comprising the Second District of Camarines Norte, the following irregularities occurred: (a) the Precinct Count Optical Scan (PCOS) machines rejected and failed to count the votes, which if manually counted and visually appreciated, were in fact validly cast for her; (b) the PCOS machines broke down in some clustered precincts (CPs) and the ballots were inserted in contingency machines at later times rendering uncertain the actual inclusion of the votes in the final tally; (c) the protocols prescribed by the Commission on Elections (COMELEC) relative to the installation of the PCOS machines and Canvassing and Consolidation System (CCS), counting of ballots, canvassing and transmission of results, and closing of the voting were either not followed or modified making it possible for the tampering and manipulation of the election results; (d) several compact flash (CF) cards in the PCOS machines were reconfigured on the eve of the May 10, 2010 elections; (e) there were errors or lapses in transmitting results from several PCOS machines to the CCS of the Municipal Boards of Canvassers (MBOCs) resulting to the need to manually insert CF cards into the CCS, but in some instances, the insertions were made after significant and unaccounted lapse of time in cases where before transporting the CF cards to the MBOCs, the members of the Boards of Election Inspectors (BEIs) went home first or did private business; and (f) after the closing of the polls, some CF cards failed to show recorded results.⁵

On March 21, 2011, the HRET started the initial revision of ballots in 25% of the pilot protested CPs. The revision ended on March 24, 2011. Per

¹ *Rollo*, pp. 3-54.

² *Id.* at 55-87.

³ *Id.* at 116.

⁴ Chato named Daet, Vinzons, Basud and Mercedes as the four towns where irregularities allegedly took place. The CPs in these four towns totalled 160.

⁵ *Rollo*, pp. 56-57.

physical count, Chato's votes increased by 518, while those cast for Panotes decreased by 2,875 votes. The detailed results follow:⁶

Municipalities	VOTES FOR CHATO			VOTES FOR PANOTES		
	Per Election Returns (ERs)	Per Physical Count	Gain or (Loss)	Per Election Returns	Per Physical Count	Gain or (Loss)
Basud	1,735	1,891	156	3,067	2,242	(825)
Daet	3,337	3,704	367	5,229	3,186	(2,043)
Mercedes	779	779	0	1,573	1,573	0
Vinzons	1,628	1,623	(5)	3,224	3,217	(7)
Total	7,479	7,997	518	13,093	10,218	(2,875)

Panotes filed an Urgent Motion to Suspend Proceedings with Motion for Preliminary Hearing to Determine the Integrity of the Ballots and Ballot Boxes Used in the May 10, 2010 Elections in the Contested Precincts of the Second District of Camarines Norte and to Direct the Printing of the Picture Images of the Ballots of the Subject Precincts.⁷ Panotes claimed that in Daet and Basud: (a) the top cover of some of the ballot boxes were loose, and ballots, Minutes of Voting (MOV) and ERs can be taken out; (b) when keys were inserted into the padlocks of the ballot boxes, the upper portion of the locks disconnected from the bodies indicating tampering; (c) the packing tape seals, which he was able to put in some of the ballot boxes, were broken or cut, leading to the conclusion that the boxes had been opened prior to the initial revision; (d) some self-locking security seals were not properly attached; and (e) the contents of some of the ballot boxes, such as the MOV and ERs were either missing or in disarray, with the ballots unnecessarily folded or crumpled in the CPs, where the votes cast for him substantially decreased as per physical count when compared to the figures found in the ERs.

On March 22, 2012, the HRET issued Resolution No. 12-079 directing the continuance of the revision of ballots in 75% of the contested CPs. The proceeding commenced on May 2, 2012 and ended on May 9, 2012. The results were:⁸

⁶ Id. at 59.

⁷ Id. at 194-200.

⁸ Id. at 61-62.

Municipalities	VOTES FOR CHATO			VOTES FOR PANOTES		
	Per Election Returns (ERs)	Per Physical Count	Gain or (Loss)	Per Election Returns	Per Physical Count	Gain or (Loss)
Basud	4,792	5,259	467	4,812	3,163	(1,649)
Daet	12,569	13,312	743	12,856	9,029	(3,827)
Mercedes	8,553	8,554	1	6,166	6,166	0
Vinzons	5,085	5,087	2	4,883	4,883	0
Total	30,999	32,212	1,213	28,717	23,241	(5,476)

As shown above, there was a substantial discrepancy between the figures indicated in the ERs/Statements of Votes by Precinct (SOVPs) on one hand, and the results of the physical count during the revision, on the other. Thereafter, the HRET issued Resolution No. 11-208 directing the decryption and copying of the picture image files of ballots (PIBs). The proceeding was conducted within the COMELEC premises. However, Chato alleged that the back-up CF card for CP No. 44 of the Municipality of Daet and the CF card for CP No. 29 of the Municipality of Mercedes did not contain the PIBs. Chato filed before the HRET an Urgent Motion to Prohibit the Use by Protestee of the Decrypted and Copied Ballot Images. The HRET denied Chato's motion through Resolution No. 11-321 issued on June 8, 2011.

Panotes filed before us a petition⁹ assailing HRET Resolution No. 12-079. On her part, Chato instituted a petition¹⁰ challenging HRET Resolution No. 11-321. We ordered the consolidation of the two petitions, and both were dismissed in a decision which we rendered on January 22, 2013. Panotes' petition was moot and academic since revision was in fact completed. Chato, on the other hand, was not able to present sufficient evidence to prove that the integrity of the CF cards was not preserved.

Going back to HRET Case No. 10-040 (EP), in the 160 protested CPs, there were substantial variances in the figures per machine count as indicated in the ERs, on one hand, and per physical count, on the other, in a total of 69 CPs, 23 of which were in Basud and 46 in Daet. The HRET then tediously compared the paper ballots that were fed to the PCOS machine in these 69 CPs with the corresponding PIBs in the CF cards to resolve the discrepancies. The bar codes at the bottom right of the PIBs were compared

⁹ Entitled "*Elmer E. Panotes v. HRET and Liwayway Vinzons-Chato*" and docketed as G.R. No. 201350.

¹⁰ Entitled "*Liwayway Vinzons-Chato v. HRET and Elmer Panotes*" and docketed as G.R. No. 199149.

with those indicated in the paper ballots. However, the HRET found that while the name of Chato was shaded in some of the paper ballots objected to by Panotes, there were no votes (NV) for congressional representative reflected in the PIBs.¹¹ Notably, the number of ballots gained by Chato during the physical count of votes is directly proportional with the number of paper ballots for her objected to by Panotes with NV on the congressional representative line per PIBs.¹² The HRET likewise observed that per physical count, there was a substantial increase in the number of stray votes by reason of over voting (OV) for congressional representative. The decryption and copying of the PIBs revealed that there were only a few PIBs with OV for the said position.¹³ Panotes' loss per physical count is more or less proportionate with the number of ballots, which Chato claimed as having exhibited stray over voting for the congressional representative line.¹⁴

Chato and Panotes presented their respective evidence before the HRET.

Among the evidence offered by Chato were: (a) certified true copies of the Transcript of Stenographic Notes (TSN) of the testimony of Atty. Anne A. Romero-Cortez¹⁵ (Atty. Cortez) on June 2, 2010 when she explicitly said before the Congress, acting as the Presidential and Vice-Presidential Board of Canvassers, that “for the municipalities of Labo, Vinzons and Basud, there were CF cards that had to be replaced because they were defective”; (b) the testimony of Angel Averia (Averia),¹⁶ who, during the decryption and copying of the PIBs in the COMELEC premises on April 26, 2011, had allegedly heard COMELEC Director Esther Roxas (Director Roxas) admit that there was no inventory of the CF cards; (c) Panotes' own admission in his Opposition to the Motion to Reiterate the Continuation of Revision, dated March 22, 2011, to the effect that “the main CF card for CP 44 of the Municipality of Daet is missing and it would appear that the Election Officer submitted the back-up CF card in lieu thereof” but the “back-up CF card did not contain the picture image of the ballots”; and (d) Panotes' admission in the aforesaid Opposition that “in the Municipality of Mercedes, the BEI re-zeroed the results of the elections in CP No. 29,” and consequently, the PIBs for these precincts were erased from the CF card's memory.¹⁷

Following are among Panotes' claims to establish that in order to tilt the results of the electoral protest in Chato's favor, the paper ballots were

¹¹ *Rollo*, pp. 70-71.

¹² *Id.* at 71.

¹³ *Id.* at 73.

¹⁴ *Id.*

¹⁵ Provincial Elections Supervisor and Chairperson of the Provincial Board of Canvassers for Camarines Norte.

¹⁶ Information Technology witness.

¹⁷ *Rollo*, pp. 14-15.

tampered after the canvassing, counting and transmission of the voting results in the May 10, 2010 elections were completed: (a) the testimonies of Philip Fabia and Danilo Sibbaluca that “the ballot boxes used in the May 10, 2010 elections could be turned upside down and the bottom portion of the ballot box could be lifted so that the contents could be taken out”;¹⁸ (b) the reports of the HRET Revision Committees stating that in Daet and Basud, some of the padlocks and self-locking security seals in the ballot boxes were either missing or not properly attached, and the MOVs and ERs were likewise nowhere to be found;¹⁹ (c) the testimony of Benjamina Camino that during the revision, in the matched paper ballots and PIBs, the votes were identical except those for the position of congressional representative;²⁰ (d) testimony of Florivida Mago²¹ indicating that in the Random Manual Audit (RMA) conducted on the same day right after the closing of the polls, the team found that out of 420 valid votes counted by the PCOS machine, there was none with an over-vote for the congressional seat line, and there was only a single difference between the automated result and the manual count;²² (e) in direct contrast with the RMA team’s findings, in the revision report for CP No. 23 of Basud, 99 ballots reflected over-votes for the congressional seat line;²³ (f) the main CF card for CP No. 44 of Daet had already been retrieved from the ballot box of the municipality’s MBOC and its contents decrypted;²⁴ (g) even granting for argument’s sake that in Mercedes, the BEI re-zeroed the results of the elections in CP No. 29, this has no bearing since the physical count of the ballots jived with the results indicated in the ER;²⁵ (h) Chato took out of context Atty. Cortez’s testimony before the Congress because what the latter stated was that the defective CF cards were replaced with working ones on May 10, 2010 and not after;²⁶ and (i) Atty. Cortez and Director Roxas were not presented as witnesses before the HRET, hence, the statements ascribed to them by Chato do not bear weight.²⁷

The HRET found that out of the 160 contested CPs, there were 91 without substantial variances between the results of the automatic and the manual count. However, in 69 CPs in Basud and Daet, the variances were glaring.

On October 15, 2012, the HRET rendered the herein assailed decision dismissing Chato’s electoral protest based on the following grounds:

¹⁸ Id. at 181.

¹⁹ Id. at 180.

²⁰ Id. at 175.

²¹ Chairperson of the Random Manual Audit Team for CP No. 23 of Basud.

²² *Rollo*, pp. 183-184.

²³ Id. at 184.

²⁴ Id. at 189.

²⁵ Id. at 189-190.

²⁶ Id. at 190-191.

²⁷ Id. at 191-192.

[T]he settled rule in election contests is that the ballots themselves constitute the best evidence of the will of the voters, but the ballots lose this character and give way to the acceptance of the election returns when it has been shown that they have been [the] subject of tampering, either by substituting them with other official or fake ballots, or by substantially altering or changing their contents.

Consequently, the votes determined after the revision in the foregoing **69 CPs in Basud and Daet, which yielded a reversal of votes**, cannot be relied upon, as they do not reflect the true will of the electorate. Hence, the Tribunal has to rely on what is reflected in the election returns and/or statement of votes by precinct[,], the same being the best evidence of the results of the election in said precincts in lieu of the altered ballots.

X X X X

The votes of the parties per physical count in all the 120 [sic] protested CPs in the concerned district are 40,209 for protestant [Chato] and 33,459 for protestee [Panotes].

Considering that **69 CPs have substantial variances**, the Tribunal decided to disregard the ballots therein, *i.e.*, 18,535 for protestant and 10,858 for protestee, and to consider, instead, the **results in the election returns, *i.e.*, 16,802 for protestant and 19,202 for protestee.**

Hence, only the ballots in the **91 CPs without substantial variances, *i.e.*, 21,674 for protestant and 22,601 for protestee**, had undergone appreciation of ballots. Of the ballots appreciated, the Tribunal **rejected two (2) ballots for protestant and two (2) ballots for protestee**, while it **admitted 176 ballots claimed by the protestant and 183 claimed by the protestee.**

The votes of the parties in the **uncontested municipalities** are **9,338 for protestant and 9,894 for protestee.**

Accordingly, the parties' votes, after recount and appreciation and examination of the evidence presented in the 160 protested CPs as well as in the uncontested municipalities, are summarized below:

	[Chato]	[Panotes]
Votes in the 91 revised protested CPs <u>without SV</u> [substantial variance] per recount and appreciation	21,674	22,601
Add: Votes per ER/SOVP in 69 revised protested CPs <u>with SV</u>	16,802	19,202
Less: Rejected Ballots Objected to in the 91 revised protested CPs <u>without SV</u>	(2)	(2)

Add: Admitted PCOS Rejected Ballots Claimed in the 91 revised protested CPs <u>without SV</u>	176	183
Add: Votes in the uncontested municipalities	9,338	9,894
Equals: Total votes of the parties in the congressional district	47,988	51,878
Winning Margin of Protestee		<u>3,890</u>

The foregoing results of revision and appreciation of ballots in the protested CPs, and the evidence of the parties indicate that protestee's proclamation margin of 3,882 [votes] **increased** by **eight (8)**.²⁸ (Citations omitted)

On December 3, 2012, the HRET denied Chato's motion for reconsideration to the Decision dated October 15, 2012.

Central to the resolution of the instant petition are the issues of whether or not the HRET committed grave abuse of discretion when it:

(a) disregarded the results of the physical count in the 69 CPs when the HRET had previously held that the integrity of the ballot boxes was preserved and that the results of the revision proceedings can be the bases to overturn those reflected in the election returns;

(b) resorted to the PIBs, regarded them as the equivalent of the paper ballots, and thereafter ruled that the integrity of the latter was doubtful;

(c) held that Chato had failed to prove by substantial evidence that the CF cards used in the May 10, 2010 elections were not preserved.

In support of the instant petition, Chato reiterates her allegations in the proceedings before the HRET. She stresses that in the Order²⁹ issued on April 10, 2012, the HRET ruled that as regards the conditions of the ballot boxes in Basud and Daet, the self-locking security seals and padlocks were attached and locked, hence, "there was substantial compliance with statutory safety measures to prevent reasonable opportunity for tampering with their

²⁸ Id. at 76-85.

²⁹ Id. at 117-122.

contents x x x.”³⁰ Chato likewise argues that under Republic Act (R.A.) No. 9369,³¹ the May 10, 2010 Automated Election System was paper-based³² and the PIBs are not the official ballots. Further, under Section 15 of R.A. No. 8436, what should be regarded as the official ballots are those printed by the National Printing Office (NPO) and/or the *Bangko Sentral ng Pilipinas* (BSP), or by private printers contracted by the COMELEC in the event that the NPO and the BSP both certify that they cannot meet the printing requirements. Chato once again referred to the statements allegedly made by Atty. Cortez, Averia and Panotes himself to prove that serious doubt exists relative to the integrity of the CF cards used in the May 10, 2010 elections.

Panotes refutes the foregoing in his Comment³³ to the instant petition. He points out that in *Liwayway Vinzons-Chato v. HRET and Elmer Panotes*,³⁴ we sustained the PIBs as the functional equivalent of paper ballots, thus, they may be used for revision purposes. Further, the HRET had categorically ruled in the herein assailed decision that the physical ballots were altered or tampered, hence, not reflective of the true will of the electorate. Besides, Chato’s electoral protest was flimsily anchored on the alleged missing CF card in CP No. 44 of Daet. Panotes emphasizes that the CF card had already been retrieved. Even if it were not found, there are 14 CPs in Daet and one incident of a missing CF card cannot create a strong presumption that all such cards in the entire Second District of Camarines Norte had been tampered.

There is no merit in the instant petition.

Chato posits that since the HRET, in its Order dated April 10, 2012, had already considered the conditions of the ballot boxes as indicative of having substantially complied with “statutory safety measures to prevent reasonable opportunity for tampering with their contents”,³⁵ its subsequent disregard of the results of the physical count in the 69 CPs in Daet and Basud was tainted with grave abuse of discretion.

We do not agree.

³⁰ Id. at 120.

³¹ An Act Amending R.A. No. 8436, entitled “An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as Amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and for Other Purposes”

³² *Rollo*, p. 38, citing *Roque v. COMELEC*, G.R. No. 188456, September 10, 2009, 599 SCRA 69.

³³ Id. at 153-193.

³⁴ *Supra* note 10.

³⁵ *Rollo*, p. 120.

It bears stressing that the HRET's Order dated April 10, 2012 was issued to resolve Panotes' motion to suspend the continuance of the revision proceedings in 75% of the contested CPs. The HRET's findings then anent the integrity of the ballot boxes were at the most, preliminary in nature. The HRET was in no way estopped from subsequently holding otherwise after it had the opportunity to exhaustively observe and examine in the course of the entire revision proceedings the conditions of all the ballot boxes and their contents, including the ballots themselves, the MOV, SOVs and ERs.

We need not belabor the second and third issues raised herein as the same had been resolved in the following wise in *Liwayway Vinzons-Chato v. HRET and Elmer Panotes*³⁶ and *Elmer E. Panotes v. HRET and Liwayway Vinzons-Chato*:³⁷

Section 2(3) of R.A. No. 9369 defines "official ballot" **where AES [Automated Election System] is utilized** as the "paper ballot, whether printed or generated by the technology applied, that faithfully captures or represents the votes cast by a voter recorded or to be recorded in electronic form."

x x x x

[T]he May 10, 2010 elections used a paper-based technology that allowed voters to fill out an official paper ballot by shading the oval opposite the names of their chosen candidates. Each voter was then required to personally feed his ballot into the Precinct Count Optical Scan (PCOS) machine which scanned both sides of the ballots simultaneously, meaning, in just one pass. As established during the required demo tests, the system captured the images of the ballots in encrypted format which, when decrypted for verification, were found to be digitized representations of the ballots cast.

As such, the printouts thereof [PIBs] are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest.

x x x x

x x x [T]he HRET found Chato's evidence insufficient. The testimonies of the witnesses she presented were declared irrelevant and immaterial as they did not refer to the CF cards used in the 20 precincts in the Municipalities of Basud and Daet with substantial variances x x x.

To substitute our own judgment to the findings of the HRET will doubtless constitute an intrusion into its domain and a curtailment of its power to act of its own accord on its evaluation of the evidentiary weight of testimonies presented before it. Thus, for failure of Chato to discharge her burden of proving that the integrity of the questioned cards had not

³⁶ Supra note 10.

³⁷ Supra note 9.

been preserved, no further protestations to the use of the picture images of the ballots as stored in the CF cards should be entertained. (Citations omitted)

Chato attempts to convince us that the integrity of the physical ballots was preserved, while that of the CF cards was not. As mentioned above, the integrity of the CF cards is already a settled matter. Anent that of the physical ballots, this is a factual issue which calls for a re-calibration of evidence. Generally, we do not resolve factual questions unless the decision, resolution or order brought to us for review can be shown to have been rendered or issued with grave abuse of discretion.

In *Dueñas, Jr. v. HRET*,³⁸ we defined grave abuse of discretion, *viz*:

It is such capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction. Ordinary abuse of discretion is insufficient. The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In other words, for a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. There is also grave abuse of discretion when there is a contravention of the Constitution, the law or existing jurisprudence. x x x.³⁹ (Citation omitted)

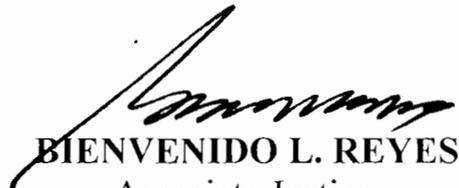
In the case at bar, the HRET disposed of Chato's electoral protest without grave abuse of discretion. The herein assailed decision and resolution were rendered on the bases of existing evidence and records presented before the HRET.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is **DISMISSED** for lack of merit. The Decision dated October 15, 2012 and Resolution dated December 3, 2012 of the House of Representatives Electoral Tribunal in HRET Case No. 10-040 (EP) are **AFFIRMED**.

³⁸ G.R. No. 185401, July 21, 2009, 593 SCRA 316.

³⁹ Id. at 344-345.

SO ORDERED.


BIENVENIDO L. REYES
 Associate Justice

WE CONCUR:

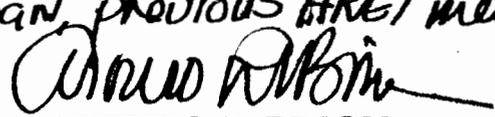

MARIA LOURDES P. A. SERENO
 Chief Justice
 Chairperson

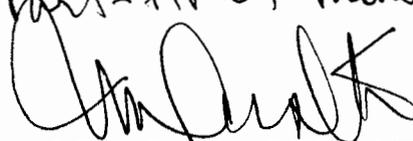

ANTONIO T. CARPIO
 Associate Justice

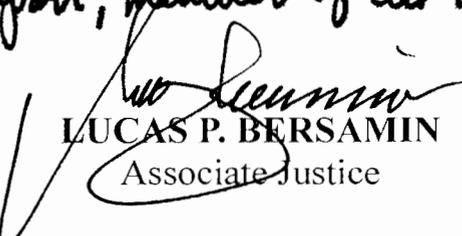
(no part due to participation in HRET)

PRESBITERO J. VELASCO, JR.
 Associate Justice

Sirecita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
 Associate Justice

No part, previous HRET member

ARTURO D. BRION
 Associate Justice

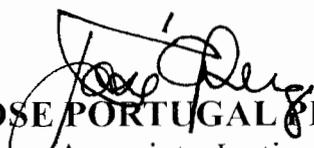
No part - HRET member

DIOSDADO M. PERALTA
 Associate Justice

No part, member of the HRET

LUCAS P. BERSAMIN
 Associate Justice

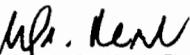

MARIANO C. DEL CASTILLO
 Associate Justice


ROBERTO A. ABAD
 Associate Justice


MARTIN S. VILLARAMA, JR.
 Associate Justice


JOSE PORTUGAL PEREZ
 Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
Chief Justice