



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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SECOND DIVISION

ENCARNACION GO,

Petitioner,

G. R. No. 249563

Present:

PERLAS-BERNABE, S.A.J.*

HERNANDO,

*Acting Chairperson,***

ZALAMEDA,

ROSARIO, and

MARQUEZ, JJ.

- versus -

THE PEOPLE OF THE
PHILIPPINES,

Respondent.

Promulgated:

MAR 09 2022

X-----X

DECISION

ROSARIO, J.:

Before Us is a Petition for Review on *Certiorari*¹ seeking to reverse the Decision² dated March 14, 2019 and the Resolution³ dated September 20, 2019 of the Court of Appeals (CA) in the exercise of its appellate jurisdiction, in CA-G.R. CR No. 39682, entitled *People of the Philippines vs. Encarnacion Go*.

Briefly, and insofar as they are pertinent to the resolution of the present petition, the facts are as follows:

In an Information⁴ dated January 12, 2006, Encarnacion Go (petitioner) and ASB Fishing Development Corporation (ASB) were charged with

*On official business.

** Per Special Order No. 2872 dated March 4, 2022.

¹ *Rollo*, pp. 25-52.

² Id. at 8-19. Penned by Associate Justice Ronaldo Roberto B. Martin and concurred in by Associate Justices Ramon M. Bato, Jr. and Ramon A. Cruz.

³ Id. at 21-22.

⁴ Id. at 149.

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violation of Section 92 of Republic Act No. (RA) 8550,⁵ or The Philippine Fisheries Code of 1998. The relevant portion of the Information reads as follows:

That on or about the 20th day of November 1999, more or less 10:30 o'clock in the morning, in the Municipality of Brooke's Point, Province of Palawan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, while on board Fishing Vessel Prince Arnold, fished off the waters of Brooke's Point using the method of "Muro-Ami" which required diving and other physical and mechanical acts to pound and destroy coral reefs and other fishery marine habitats to entrap, gather or catch fish and other fishery species.

CONTRARY TO LAW.⁶

Section 92 of RA 8550 provides as follows:

Section 92. *Ban on Muro-Ami Other Methods and Gear Destructive to Coral Reefs and Other Marine Habitat.* - It shall be unlawful for any person, natural or juridical, to fish with gear method that destroys coral reefs, seagrass beds, and other fishery marine life habitat as may be determined by the Department. "Muro-Ami" and any of its variation, and such similar gear and methods that require diving, other physical or mechanical acts to pound the coral reefs and other habitat to entrap, gather or catch fish and other fishery species are also prohibited.

The operator, boat captain, master fisherman, and recruiter or organizer of fishworkers who violate this provision shall suffer a penalty of two (2) years to ten (10) years imprisonment and a fine of not less than One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) or both such fine and imprisonment, at the discretion of the court. The catch and gear used shall be confiscated.

It shall likewise be unlawful for any person or corporation to gather, sell or export white sand, silica, pebbles and any other substances which make up any marine habitat.

The person or corporation who violates this provision shall suffer a penalty of two (2) years to ten (10) years imprisonment and a fine of not less than One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) or both such fine and imprisonment, at the discretion of the court. The substance taken from its marine habitat shall be confiscated.

The case, docketed as Criminal Case No. 21026, was heard in the first instance by Branch 62 of the Regional Trial Court (RTC) of Puerto Princesa City, Palawan. In the pre-trial conference held on April 19, 2007, petitioner and the prosecution stipulated on the following facts:

⁵ Entitled "An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and for Other Purposes." Approved: February 25, 1998.

⁶ *Rollo*, p. 149.

1. That [ASB] was engaged in the business of fishing thru *pa-aling* in the year 1999;
2. That the fishing vessel *F/B Prince Arnold* [sic] is owned and managed, and its fishing operation is operated by ASB in the year 1999;
3. That *F/B Prince Arnold* [sic] was apprehended at the Municipal Water of Brooke's Point, Palawan in November 1999 without warrant while conducting a fishing operation;
4. That the fishing vessel *F/B Prince Arnold* [sic] was licensed; and
5. That by virtue of the inventory, an investigation report was submitted by [the Bureau of Fisheries and Aquatic Resources (BFAR)] in Manila and likewise in the Office of the Provincial Prosecutor during the conduct of the preliminary investigation.⁷

Thereafter, trial ensued. Joegie Baldado (Baldado), a witness for the prosecution, testified that when he was about 16 or 17 years old, he was recruited by Roger Cortes, his neighbor in Bais City, Negros Occidental, to engage in *muro-ami* fishing. He was told that he would earn ₱20,000.00 to ₱30,000.00 in about two months of the fishing operation. He was likewise informed that he would be working for ASB on board the fishing vessel *F/V Prince Arnold*, which sailed with four other airboats for the operation.⁸

According to Baldado, there were about 400 people, some of whom were minors, who were involved in the operation. About 180 to 190 of them were assigned as surface swimmers, while about 200 were tasked as divers.⁹

Essentially, the surface swimmers, using hose devices with about five kilos of weight at the end, would pound the seabed to scare the fish away from their habitats and into an awaiting fish net. On the other hand, the divers were employed to ensure that the hoses do not get entangled in the seabed during the pounding.¹⁰

Baldado narrated that their group had already gone to three such operations when on November 20, 1999, their boat captain, Jose Cabulao, ordered the operation to be stopped because authorities had already discovered them. They tried to escape, but members of the Philippine Navy were able to overtake their vessel.¹¹

Baldado was able to elude arrest, but he eventually executed a *Gisumpaang Salaysay*¹² dated December 15, 1999 before a lawyer of the Environment Legal Assistance Center Inc. in Puerto Princesa City, Palawan.¹³

⁷ Page 2 of the RTC Decision, id. at 93.

⁸ Id. at 94.

⁹ Id. at 95.

¹⁰ Id. at 100.

¹¹ Culled from the CA Decision, id. at 11-12.

¹² *Rollo*, p. 208.

¹³ Id.

Meanwhile, based on the Joint Affidavit¹⁴ dated November 22, 1999, members of the Philippine Navy who conducted the operation against *F/V Prince Arnold*, including Boarding Officer Arnulfo C. Tintero, said that they were on board the *BRP Ismael Lomibao* when they spotted *F/V Prince Arnold* with seven small boats in tow. When they were about to draw closer to *F/V Prince Arnold* for a routine check, it tried to evade inspection, prompting them to give chase. They were eventually able to accost it.¹⁵

The joint affidavit mentioned that *F/V Prince Arnold* was owned and operated by ASB. Aside from said joint affidavit, the Philippine Navy likewise issued a "Boarding Certificate"¹⁶ and receipts for confiscated or seized articles,¹⁷ said documents listing petitioner as owner of *F/V Prince Arnold*.

After the prosecution rested its case, petitioner testified on her own behalf. She admitted to being one of the stockholders of ASB, owner of the *F/V Prince Arnold*. However, she denied that the vessel was engaged in *muro-ami* fishing, insisting instead that it employed the *pa-aling* system of fishing.¹⁸

Petitioner said that in 1999, she was appointed as treasurer of ASB but only for the purpose of facilitating the business of the corporation. However, in actuality, she did not perform the functions of her position. She also did not have a hand in the hiring of the vessel's employees, pointing to her brothers who supposedly were the ones who engaged the boat's workers.¹⁹

Finally, she denied being on board *F/V Prince Arnold* at the time it was apprehended by the Philippine Navy.²⁰

RULING OF THE RTC

On September 9, 2015, the RTC rendered its Decision,²¹ the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered finding both accused guilty beyond reasonable doubt of violation of Section 92 of R.A. No. 8550 and accordingly sentencing them as follows:

1. accused ASB Fishing Development Corporation is hereby fined in the amount of Php500,000.00;
2. accused Encarnacion Go is hereby meted the indeterminate sentence of imprisonment of three (3) years as minimum to five (5) years as maximum;

¹⁴ *Rollo*, p. 201.

¹⁵ *Id.*

¹⁶ *Id.* at 202.

¹⁷ *Id.* at 203-205.

¹⁸ *Id.* at 97.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 92-105.

The catch and the destructive fishing gear used in the *muro-ami* fishing conducted by the accused are confiscated;

Let the corresponding *mittimus* issue for the transmittal of accused Encarnacion Go to the National Correction for Women [*sic*]²² in Mandaluyong City, Metro Manila for the service of her sentence. Accordingly, the cash bond posted by the said accused for her provisional liberty endowed by O.R. No. 21469492 is hereby cancelled.

IT IS SO ORDERED.²³

In handing down a verdict of conviction, the trial court held that based on the testimony of Baldado, both ASB and petitioner were found to have conducted the prohibited *muro-ami* fishing. Citing the witness' testimony that his group of about 400 people constantly pounded the seabed with the use of hose devices with five kilos of *pamatos* (weights) tied to their end for the purpose of driving fish toward a waiting net, the trial court held that the prosecution was able to establish that ASB utilized *muro-ami*, and not the *pa-aling* method of fishing.²⁴

Insofar as petitioner is concerned, the trial court held her liable for being the treasurer/director of ASB. In holding her criminally responsible, the trial court relied on the case of *People vs. Tan Boon Kong*²⁵ (Tan Boon Kong), as reiterated in *Sia vs. People*²⁶ (Sia), where it was held that when a corporation violates a law, all who participated therein should be held liable.²⁷

According to the trial court, petitioner, as treasurer of ASB, was generally aware of its business activities as a result of her attendance in the meetings of the directors. She had the opportunity to prevent a violation of RA 8550, but did not do so, adding that she even benefited from the illegal activities of said corporation as part owner thereof.²⁸

From said Decision, petitioner filed a Motion for Reconsideration²⁹ but it was eventually denied by the RTC.³⁰

Thereafter, petitioner filed an appeal³¹ before the CA, contending, among others, that the trial court erred in convicting her based on a mere presumption and despite the fact that it was stipulated during pre-trial that she was never on board the seized vessel.³²

²² Should read as "Correctional Institution for Women."

²³ *Rollo*, pp.104-105.

²⁴ *Id.* at 100.

²⁵ 54 Phil. 607 (1930).

²⁶ 208 Phil. 571 (1983).

²⁷ *People v. Tan Boon Kong*, *supra* at 609.

²⁸ *Rollo*, p. 104.

²⁹ *Id.* at 109-131.

³⁰ *Id.* at 106-107.

³¹ See Notice of Appeal, *id.* at 133.

³² See Accused-Appellant's Brief, *id.* at 53-91.

Petitioner argued before the CA that her conviction was in violation of her right to be informed of the nature and cause of the accusation against her. The Information alleged that she was directly involved in *muro-ami* operations of *F/V Prince Arnold* but the court *a quo* convicted her because she purportedly did nothing, as officer of ASB, to prevent the commission of the offense. She put the RTC to task for holding her liable because she derived benefits from the vessel's *muro-ami* operations, a circumstance not alleged in the Information, and which was neither proven during trial.³³

Petitioner likewise emphasized that while the Information alleged her direct involvement in *muro-ami*, claiming that she was present during the commission of the offense, the prosecution and her counsel had previously stipulated during pre-trial that she was never on board the vessel when it was apprehended. Thus, she concluded that her absence alone during the operation of the Philippine Navy against the vessel should suffice to merit her acquittal.³⁴

Petitioner likewise reiterated her defense that *F/V Prince Arnold* utilized the *pa-aling* method of fishing, and not *muro-ami*.³⁵

RULING OF THE CA

On March 14, 2019, the CA rendered its Decision³⁶ affirming the conviction of petitioner. In resolving the appeal against petitioner, the court below held that even in the *pa-aling* fishing method, certain limitations were imposed by law, such as the number of fisherfolks involved, which should not exceed 250; the number of stones and chains utilized, which should not exceed 10; and the mesh size of the net, which should not exceed 3.38 centimeters.

These limitations were not observed by *F/V Prince Arnold*, proving that it in fact committed the prohibited *muro-ami*, and not *pa-aling* fishing.

Anent the insufficiency or defect in the Information, the appellate court ruled that while the Information did not explicitly state the relationship of petitioner to the vessel *F/V Prince Arnold*, the documents attached thereto, such as the Boarding Certificate and the Receipt for Confiscated or Seized Articles, clearly showed that petitioner was the offending vessel's owner.

Anent petitioner's contention that she should be acquitted since the prosecution failed to prove her presence in the vessel, the CA ruled that her presence or absence thereat was irrelevant, as under Section 4 (35) of RA 8550, such presence was not even required.³⁷

³³ Id. at 65-70.

³⁴ Id. at 71.

³⁵ Id. at 74-79.

³⁶ Id. at 8-19.

³⁷ Section 4 (35) of RA 8550 reads as follows: 35. Fishery Operator - one who owns and provides the means including land, labor, capital, fishing gears and vessels, but does not personally engage in fishery.

From said Decision, petitioner filed a Motion for Reconsideration³⁸ but it was denied by the CA in its Resolution³⁹ dated September 20, 2019.

Hence, the instant Petition for Review on *Certiorari* anchored on the following grounds:

1. The CA erred in affirming the decision of the RTC;
2. The guilt of petitioner was not proven beyond reasonable doubt;
3. The CA erred in concluding that petitioner was the operator of *F/V Prince Arnold*;
4. The CA wrongly affirmed and sanctioned the RTC's departure from accepted and usual course of judicial proceedings; and
5. Petitioner should not be convicted on a mere presumption.⁴⁰

Foremost of the arguments being raised by petitioner is that her conviction was in violation of her right to be informed of the nature and cause of the accusation against her. She reiterates that the Information charged her as having directly participated in *F/V Prince Arnold*'s illegal fishing, but she was eventually convicted for being either the owner or part-owner of the vessel, or the position she held at ASB.

Petitioner once again argues on the relevance of her absence from the vessel at the time it was seized by the authorities, as it would have established at the outset the fact that she did not have a hand in its operation at the time of its apprehension, and thus she could not be held liable as a direct participant in the offense as the allegations in the Information had charged.

Finally, she maintains that the crew of *F/V Prince Arnold* did not engage in *muro-ami* fishing.

On the other hand, in its Comment,⁴¹ the Office of the Solicitor General (OSG) moves for the dismissal of the instant petition on the ground that it supposedly raised questions of fact, which is not allowed in petitions for review on *certiorari* under Rule 45 of the Rules of Court. Aside from this procedural issue, the OSG stands by the finding of both the CA and the trial court that based on the testimony of Baldado, there was no doubt as to the method of fishing employed by *F/V Prince Arnold*, i.e., *muro-ami*.

The OSG also argues that petitioner was correctly convicted for her role as director and corporate officer of ASB. According to the OSG, Article 92 of RA 8550 expressly punishes the person or corporation for violation of the provisions therein.

³⁸ *Rollo*, pp. 354-372.

³⁹ *Id.* at 21-22.

⁴⁰ *Id.* at 31-32.

⁴¹ *Id.* at 415-426.

OUR RULING

The petition is meritorious. Petitioner correctly raised the issue of due process as a means of invalidating the decisions of the courts below.

But first, on the procedural aspect, or on the issue of whether or not the instant petition should be dismissed for having raised questions of fact. It should be noted that the instant case involves a criminal prosecution, and thus, despite the prohibition found in Rule 45 against raising questions of fact in petitions of this nature, said rule is not religiously followed in penal cases. As We held in the case of *Atty. Constantino vs. People*:⁴²

The Petition before this Court, however, is one filed under Rule 45 of the Rules of Court. Rule 45 mandates that only questions of law may be raised in a petition for review on *certiorari*. Thus, this Court generally gives great respect to the factual findings of the trial court, which had the opportunity to observe the witnesses' demeanor during trial and assess their testimonies.

Considering that criminal cases involve the constitutional right to liberty and the constitutional guarantee of the presumption of innocence, appeals of criminal cases before this Court are not necessarily treated in the same manner as appeals in civil cases. In *Ferrer v. People*:

It is a well-settled rule that an appeal in a criminal case throws the whole case wide open for review and that it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.

Appeals of criminal cases confer upon the reviewing court full jurisdiction and render it competent to examine the records, revise the judgment from which an appeal arose, increase the penalty, and cite the appropriate penal law provision.

Thus, this Court may still review the factual findings of the trial court "if it is not convinced that [such findings] are conformable to the evidence of record and to its own impressions of the credibility of the witnesses." Significant facts and circumstances may have been overlooked, which, if properly considered, could affect the result of the case.⁴³

We agree with the RTC and the CA that *F/V Prince Arnold* employed *muro-ami*.

Section 4 of the Fishery Administrative Code, No. 90, Series of 1994, imposes restrictions on *pa-aling*, including the number of fisherfolks at a maximum of 250; the mesh size of the net which should not be less than 3.38 centimeters; and that no person below eighteen (18) years of age should be engaged as a fisherfolk.

⁴² G.R. No. 225696, April 8, 2019. Citations omitted.

⁴³ *Id.*

Prosecution witness Baldado testified that during the time that he worked in *F/V Prince Arnold*, there were about 400 other people in the said boat, some of whom were minors. He likewise testified that they utilized a net with a mesh size of a ten-centavo coin, which is narrower than the minimum 3.38 centimeters prescribed by law.

They worked by pounding the seabed with their hoses, to which five (5) kilos of weight were attached at the end. The process resulted in fishes being driven away from their habitat and into a waiting net.

This is essentially the essence of *muro-ami* and not *pa-aling* fishing, a matter that this Court can take judicial notice of.

However, despite the clear commission of *muro-ami* by the crew of *F/V Prince Arnold*, this Court cannot sustain the conviction of petitioner, certainly not without violating her constitutional right to be informed of the nature and cause of the accusation against her.

In ensuring that an accused is afforded the exercise of this right, this Court, in the case of *Canceran vs. People*,⁴⁴ held that:

No less than the Constitution guarantees the right of every person accused in a criminal prosecution to be informed of the nature and cause of accusation against him [or her]. It is fundamental that every element of which the offense is composed must be alleged in the complaint or information. **The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his [or her] defense.** He [or she] is presumed to have no independent knowledge of the facts that constitute the offense.

x x x

The crime of theft in its consummated stage undoubtedly includes the crime in its attempted stage. In this case, although the evidence presented during the trial prove the crime of consummated Theft, he could be convicted of Attempted Theft only. **Regardless of the overwhelming evidence to convict him for consummated Theft, because the Information did not charge him with consummated Theft, the Court cannot do so as the same would violate his right to be informed of the nature and cause of the allegations against him, as he so protests.**

The Court is not unmindful of the rule that “the real nature of the criminal charge is determined, not from the caption or preamble of the information nor from the specification of the law alleged to have been violated – these being conclusions of law – but by the actual recital of facts in the complaint or information.” In the case of *Domingo v. Rayala*, it was written:

What is 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

⁴⁴ 762 Phil. 558 (2015). Citations omitted.

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.⁴⁵ (Emphasis supplied)

The Information against petitioner described the charges against her as follows:

That on or about the 20th day of November 1999, more or less 10:30 o'clock in the morning, in the Municipality of Brooke's Point, Province of Palawan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, while on board Fishing Vessel Prince Arnold, fished off the waters of Brooke's Point using the method of "Muro-Ami" which required diving and other physical and mechanical acts to pound and destroy coral reefs and other fishery marine habitats to entrap, gather or catch fish and other fishery species.

There is no mistaking that the foregoing excerpt from the Information charges petitioner with taking a direct part in the commission of *muro-ami* fishing by allegedly being on board the vessel. She was not indicted as an officer or a director of ASB nor as the owner of the said vessel.

As the Information had charged her with active participation in the offense, allegedly having been on board the vessel at the time of its commission, her defense should naturally revolve around her actual and physical role in the commission thereof. During trial, she was able to establish that she did not have a direct hand in the commission of the offense. Contrary to the allegation in the Information, petitioner was not even on board the vessel when the offense was committed.

This should thus suffice to acquit her of the charges.

In convicting petitioner, the trial court relied on the ruling of this Court in the *Tan Boon Kong*⁴⁶ and *Sia*⁴⁷ cases. However, We cannot draw a parallel between those two cases and the instant petition for the simple reason that the information in the cases cited by the trial court both indicted the accused in their capacity as officers of the corporations charged with some wrongdoing.

⁴⁵ Id. at 559.

⁴⁶ *People vs. Tan Boon Kong*, supra note 25.

⁴⁷ *Sia vs. People*, supra note 26.

That is not the case with petitioner. Nowhere in the Information was she charged as treasurer, director, operator, or owner of *F/V Prince Arnold*, and thus she could not be convicted in such capacity. To do otherwise would be the same as disregarding her constitutional rights as an accused in a criminal prosecution.

The CA affirmed petitioner's conviction by holding that any defect in the Information was cured by the fact that her position in ASB had been disclosed in the joint affidavit of the Philippine Navy Officers, the Boarding Certificate, and the Receipt[s] for Confiscated or Seized Articles, all said documents having been attached to the Information.

However, We note that the joint affidavit mentioned ASB as the owner of the vessel, while both the Boarding Certificate and the Receipt[s] for Confiscated or Seized Articles mentioned petitioner as the owner of said boat.

To Our mind, said documents made the matter all the more offensive to the defense of petitioner. To reiterate, the Information itself indicted her for her direct participation in *muro-ami*. However, if the Court should consider the disclosure made in the joint affidavit, it would then appear that petitioner was being accused in her capacity as a director and treasurer of ASB. Moreover, if the declaration in the Boarding Certificate and Receipts for Confiscated or Seized Articles were controlling, she should then be deemed as facing charges in her capacity as operator and owner of *F/V Prince Arnold*. Needless to say, the fact that the information and the attachments thereto have indicated the various capacities by which petitioner could be charged with did not in any way help the cause of the prosecution, as it even highlighted the defect in the charge made against petitioner *vis-à-vis* her aforesaid constitutional right.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The Decision dated March 14, 2019 and the Resolution dated September 20, 2019 of the Court of Appeals in CA-G.R. CR No. 39682 are **REVERSED** and **SET ASIDE**. Petitioner Encarnacion Go is **ACQUITTED** of the crime of violation of Section 92 of Republic Act No. 8550.

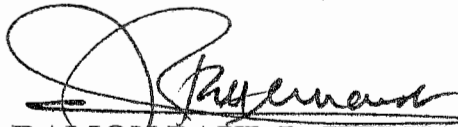
Let entry of judgment be issued immediately.


SO ORDERED.

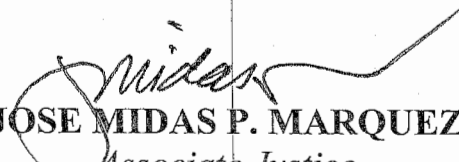

RICARDO R. ROSARIO
Associate Justice

WE CONCUR:

On Official Business
ESTELA M. PERLAS-BERNABE
Senior Associate Justice

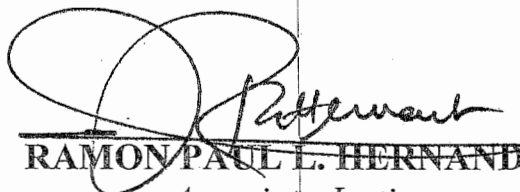

RAMON PAUL L. HERNANDO
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

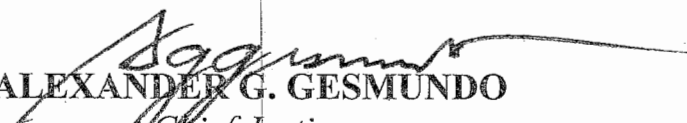
ATTESTATION

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.


RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's attestation, it is hereby certified 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