



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**CELSO PABLO Y GUIMBUAYAN,**      **G.R. No. 231267**  
*Petitioner,*

Present:

**GESMUNDO, C.J.,**  
*Chairperson,*

- versus -

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

**PEOPLE OF THE PHILIPPINES,**  
*Respondent.*

Promulgated:

FEB 13 2023

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**DECISION**

**HERNANDO, J.:**

This Petition for Review on *Certiorari*<sup>1</sup> assails the January 31, 2017 Decision<sup>2</sup> and the April 6, 2017 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 38866, which affirmed the February 28, 2016 Decision<sup>4</sup> of the Regional Trial Court (RTC), Branch 193, Marikina City. The RTC reversed the August 5, 2015 Decision<sup>5</sup> of the Metropolitan Trial Court (MeTC), Branch 94, Marikina City.

\* On official leave.

<sup>1</sup> *Rollo*, pp. 12-24.

<sup>2</sup> Id. at 29-40. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez (now a Member of this Court).

<sup>3</sup> Id. at 42-43. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez (now a Member of this Court).

<sup>4</sup> Id. at 75-85. Penned by Judge Alice C. Gutierrez.

<sup>5</sup> Id. at 60-69. Penned by Presiding Judge Maria Cecilia Ty Pantua.

While the MeTC adjudged herein petitioner Celso Pablo y Guimbuayan (Pablo) guilty beyond reasonable doubt of the lesser crime of Resistance and Disobedience to a Person in Authority or the Agents of such Person as penalized under Article 151 of the Revised Penal Code (RPC),<sup>6</sup> the RTC convicted Pablo as charged and found him guilty beyond reasonable doubt of the crime of Direct Assault pursuant to Art. 148 of the RPC.<sup>7</sup>

### **The Antecedents**

On December 6, 2012, two Informations<sup>8</sup> were filed against Pablo charging him with Direct Assault upon an agent of a person in authority under Art. 148 of the RPC and with violation of Section 9(c) of Marikina City Ordinance No. 133, Series of 2006. The accusatory portions read as follows:

#### **Criminal Case No. 12-61941:**

That on or about the 2<sup>nd</sup> day of November 2012, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that T/E George Barrios y Nieto and T/E Rolando Belmonte y Balaguer are CTMDO Traffic Enforcer member and in the actual performance of their duties as such, did then and there willfully, unlawfully and feloniously seriously intimidate and resist the persons of T/E George Barrios y Nieto and T/E Rolando Belmonte y Balaguer, by refusing to produce his driver's license as ordered by the traffic enforcers drawing and pointing his licensed .45 caliber pistol at them.

CONTRARY TO LAW.<sup>9</sup>

#### **Criminal Case No. 12-61942:**

That on or about the 2<sup>nd</sup> day of November, 2012, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously drive, manage and operate a passenger Taxi bearing plate number UVB-762, by entering the road along Marikina Bridge that was closed or with "No Entry" sign.

CONTRARY TO LAW.<sup>10</sup>

On January 3, 2013, the court issued a warrant of arrest which was later lifted after the court granted Pablo's motion to be released under the recognizance of Police Officer (PO) 3 Abraham Gundan Canapi.<sup>11</sup> Subsequently, Pablo pleaded not guilty of the two charges during his arraignment on March 21, 2013. Pre-trial proceeded then joint trial on the merits

<sup>6</sup> Id. at 68.

<sup>7</sup> Id. at 85.

<sup>8</sup> Id. at 59 and 30.

<sup>9</sup> Id. at 59.

<sup>10</sup> Id. at 30.

<sup>11</sup> Id. at 61.

ensued.<sup>12</sup> For the prosecution, Traffic Enforcer George Barrios (TE Barrios) was presented as its lone witness. The defense presented Pablo.<sup>13</sup>

### Version of the Prosecution

In time for the celebration of All Soul's Day, traffic rerouting was enforced and a road near Loyola Memorial Park was closed. Traffic signages such as "no entry" were in place to alert motorists of such road closure and route changes.<sup>14</sup> In the evening of November 2, 2012, TE Barrios and TE Rolando Belmonte (TE Belmonte) were stationed along the bridge at *Barangay* Sto. Niño, Marikina City where they carried out their duty of implementing traffic rules.<sup>15</sup> Both were in complete uniform, wearing a green shirt with the City Transportation Management and Development Office (CTMDO) of Marikina City patch and their individual name tags.<sup>16</sup>

At 6:40 p.m., TE Barrios and TE Belmonte flagged down a passenger taxi driven by Pablo because the latter entered a closed road despite the no entry signage.<sup>17</sup> Pablo rolled down the window of his cab. When TE Barrios asked Pablo to hand over his driver's license for the issuance of a violation ticket, the latter refused and said, "*Tikitan mo na lang ako pero hindi ko ibibigay ang aking lisensya sa inyo!*" TE Barrios and TE Belmonte called for assistance from other CTMDO enforcers nearby, but Pablo stood his ground. TE Barrios asked Pablo's two passengers to transfer to another taxi so that they would no longer be inconvenienced.<sup>18</sup> Irked, Pablo pulled out a gun, aimed at the traffic enforcers, and yelled, "*Subukan n'yo! Magkakatutukan tayo!*"<sup>19</sup> The enforcers moved away then Pablo endeavored to escape but the former blocked his way with a long table.<sup>20</sup> PO2 Bernard Medenilla and PO2 Noe Oro responded to the enforcer's call for assistance. They frisked Pablo and recovered from his possession a caliber .45 pistol. They also found two magazines, 28 pieces of bullets, a firearm license and permit to carry firearm. They were able to confiscate Pablo's driver's license and gave it to TE Barrios who promptly issued a Uniform Ordinance Violation Receipt (UOVR) for Pablo's violation of Sec. 9(c) of Marikina City's Ordinance No. 133, Series of 2006. Thereafter, Pablo was brought to the Marikina Police Station.<sup>21</sup>

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<sup>12</sup> Id.

<sup>13</sup> Id. at 61-62.

<sup>14</sup> Id. at 61.

<sup>15</sup> Id.

<sup>16</sup> Id. at 30.

<sup>17</sup> Id. at 61.

<sup>18</sup> Id. at 31.

<sup>19</sup> Id. See also *Rollo*, pp. 61 and 76.

<sup>20</sup> *Rollo*, p. 62.

<sup>21</sup> Id. at 31.

### Version of the Defense

On November 2, 2012, Pablo was driving a taxi with two passengers on board near Marikina Riverbanks. When they reached the bridge, he noticed the route changes because of the holiday. He then followed two tricycles on the same route. While he maintained not seeing a “No Entry” sign, he observed that traffic enforcers signaled to the two tricycle drivers to turn back. Pablo, however, proceeded and drove towards the traffic enforcers to ask for direction, but the latter demanded him to surrender his driver’s license before he even had the chance to ask. He replied “*Sandali lang*” and saw one traffic enforcer call another on the radio.<sup>22</sup>

When TE Barrios arrived, he shouted at Pablo and sat in the latter’s passenger seat while holding handcuffs. Pablo reacted and said “*Bumaba po kayo diyay*” to no avail.<sup>23</sup> TE Barrios noticed a gun inside Pablo’s taxi and laughingly remarked “*May baril.*” Pablo stayed inside the taxi while TE Barrios disembarked and radioed for police officers. When the police officers arrived, he was brought to the Marikina Police Station where he learned that the traffic enforcers were complaining and he was being charged for pointing a gun at them.<sup>24</sup> Pablo maintained his innocence and justified that he brought his licensed firearm as he was intending to go to the firing range. He contended that the traffic enforcers stole his ₱2,000.00 money.<sup>25</sup>

### Ruling of the Metropolitan Trial Court (MeTC)

In a Decision<sup>26</sup> dated August 5, 2015, the MeTC convicted Pablo for Resistance and Serious Disobedience under Art. 151 of the RPC instead of Direct Assault as the crime charged. It ratiocinated that Pablo’s act of aiming a gun at the traffic enforcer was not an act of intimidation but of self-protection. It could not be seen from the circumstances that Pablo’s intent was to defy a law officer as he in fact surrendered his gun to the police officers. In another note, the MeTC acquitted Pablo for violation of Sec. 9(c) of Marikina City Ordinance No. 133, Series of 2006 for the prosecution’s failure to formally offer the citation ticket or UOVR.<sup>27</sup>

The *fallo* of its Decision reads in this wise:

**WHEREFORE**, premises considered, the court FINDS the accused **CELSO PABLO y GUIMBUAYAN** guilty beyond reasonable doubt of Resistance and Serious Disobedience under Article 151 of the Revised Penal Code and SENTENCES him to suffer one (1) month and one (1) day of *arresto mayor* and to pay a fine of One Hundred Pesos (P100.00). In Criminal Case No.

<sup>22</sup> Id. at 31 and 62.

<sup>23</sup> Id. at 32.

<sup>24</sup> Id. at 32 and 62.

<sup>25</sup> Id. at 62.

<sup>26</sup> Id. at 60-69.

<sup>27</sup> Id. at 67-68.

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12-61942, accused is **ACQUITTED** for failure of the prosecution to formally offer the violation receipt.

SO ORDERED.<sup>28</sup>

In his Memorandum on Appeal,<sup>29</sup> Pablo argued that no crime was committed at all. The first element of resistance and serious disobedience was lacking because the prosecution failed to show evidence that TE Barrios was a duly appointed traffic enforcer at the time of the incident which raised doubts whether TE Barrios and TE Belmonte were members of the CTMDO when he was arrested.<sup>30</sup>

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

In a Decision<sup>31</sup> dated February 28, 2016, the RTC reversed the MeTC decision and found Pablo guilty of the second form of Direct Assault. It interpreted Pablo's utterance of "*subukan n'yo! Magkakatutukan tayo!*" as a clear assault, not merely a resistance or disobedience, to the traffic enforcers, especially when the same was coupled with pulling and aiming of his gun to said enforcers.<sup>32</sup> The lack of appointment papers did not create a dent as the traffic enforcers were in complete uniform and were performing their lawful duty at the time of the incident.<sup>33</sup>

The *fallo* of the Decision reads in this wise:

**WHEREFORE**, the Decision of the Metropolitan Trial Court, Branch 94, Marikina City finding accused-appellant Celso Pablo y Guimbayan guilty beyond reasonable doubt of the crime of Resistance and Serious Disobedience to a Person in Authority or the Agents of Such Person is **REVERSED and SET ASIDE**.

Judgment is hereby rendered finding accused-appellant Celso Pablo y Guimbayan **GUILTY** beyond reasonable doubt of the crime of direct assault and is ordered to suffer an indeterminate prison term of *one (1) year and one (1) day to three (3) years, six (6) months and twenty-one (21) days of prison correccional*. He is also ordered to pay a fine of ₱1,000.00.

SO ORDERED.<sup>34</sup>

Aggrieved, Pablo filed a Motion for Reconsideration<sup>35</sup> but the same was denied in an Order<sup>36</sup> dated June 24, 2016.

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<sup>28</sup> Id. at 68.

<sup>29</sup> Id. at 70-74.

<sup>30</sup> Id. at 71-72.

<sup>31</sup> Id. at 75-85.

<sup>32</sup> Id. at 83.

<sup>33</sup> Id. at 81-82.

<sup>34</sup> Id. at 85.

<sup>35</sup> Id. at 86-88.

<sup>36</sup> Id. at 89-90.

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## Ruling of the Court of Appeals

In its January 31, 2017 Decision,<sup>37</sup> the appellate court affirmed the RTC's findings of Pablo's guilt for the second form of Direct Assault. It held that the prosecution successfully proved that TE Barrios and TE Belmonte were persons in authority as they were on duty as traffic enforcers on November 2, 2012. The presentation of their appointment papers would only serve as corroborative evidence to the testimony of TE Barrios. It acceded to the RTC's findings as to the credibility of the witnesses and as to the factual matters of the case, such that Pablo's bare denial that he pointed a gun would not prevail over the categorical testimonies of the prosecution witnesses.<sup>38</sup>

The dispositive portion of the appellate court's Decision reads:

**WHEREFORE**, premises considered, the instant petition for review is hereby **DENIED**. The Decision dated February 28, 2016 of the Regional Trial Court, Branch 193, Marikina City is **AFFIRMED**.

**SO ORDERED.**<sup>39</sup>

Unrelenting, Pablo filed the instant petition<sup>40</sup> raising the following issues, to wit:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE PROSECUTION'S FAILURE TO PROVE ALL THE ELEMENTS OF THE SECOND MODE OF DIRECT ASSAULT.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE PETITIONER'S DEFENSE OF DENIAL.<sup>41</sup>

In the petition,<sup>42</sup> Pablo insists that TE Barrios and TE Belmonte were not proven to be persons in authority or agents of persons in authority to complete the elements of the second form of Direct Assault.<sup>43</sup> Pablo's simple and straightforward defense of denial cannot simply be disregarded because there may be situations when the accused might not have any other available defenses

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<sup>37</sup> Id. at 29-41.

<sup>38</sup> Id. at 37-40.

<sup>39</sup> Id. at 40.

<sup>40</sup> Id. at 12-24.

<sup>41</sup> Id. at 18.

<sup>42</sup> Id. at 12-24.

<sup>43</sup> Id. at 20-21.

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in his or her favor.<sup>44</sup> In sum, Pablo invokes that the prosecution's pieces of evidence are lacking so as to result to his acquittal.<sup>45</sup>

In its Comment,<sup>46</sup> the People contends that Pablo raised factual issues which are not cognizable in a petition for review on *certiorari*.<sup>47</sup> The RTC, as affirmed by the CA, likewise did not err in convicting Pablo of direct assault under Art. 148 of the RPC. TE Barrios and TE Belmonte were indeed engaged in the performance of their official duties during the incident.<sup>48</sup>

Pablo, in a Reply,<sup>49</sup> emphasizes that the issue whether TE Barrios and TE Belmonte are persons in authority or agents of persons in authority is a question of law because it involves the resolution of what the law is on such facts.<sup>50</sup> He also points out that the traffic enforcers could not be said to be performing their official functions absent any evidence of what their official duties are.<sup>51</sup> He concludes that it may be possible that TE Barrios and TE Belmonte were merely usurping authority when the incident occurred. Hence, without the concurrence of all the elements of Direct Assault, he must be acquitted.<sup>52</sup>

All told, the issue before this Court is whether Pablo is guilty beyond reasonable doubt of Direct Assault under Art. 148 of the RPC.

### Our Ruling

The petition lacks merit.

This Court affirms the conviction of Pablo for Direct Assault. Art. 148 of the RPC defines and penalizes Direct Assault, to wit:

ARTICLE 148. *Direct Assault*. — Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force or seriously intimidate or resist any person in authority or any of his [or her] agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of *prisión correccional* in its medium and maximum periods and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prisión correccional* in its minimum period and a fine not exceeding 500 pesos shall be imposed.

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<sup>44</sup> Id. at 21-22.

<sup>45</sup> Id. at 22.

<sup>46</sup> Id. at 133-144.

<sup>47</sup> Id. at 138-139.

<sup>48</sup> Id. at 139-143.

<sup>49</sup> Id. at 161-167.

<sup>50</sup> Id. at 162.

<sup>51</sup> Id. at 164.

<sup>52</sup> Id. at 165.

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Pablo is guilty beyond reasonable doubt of Direct Assault in its second form, which was defined in *Mallari v. People (Mallari)*<sup>53</sup> as “any person or persons who, without a public uprising, shall attack, employ force, or seriously intimidate or resist any person in authority or any of his [or her] agents, while engaged in the performance of official duties, or on occasion of such performance.”<sup>54</sup> *Mallari*<sup>55</sup> likewise sets forth the elements of the second form of Direct Assault, *viz.*:

1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance.
2. That the person assaulted is a person in authority or his [or her] agent.
3. That at the time of the assault the person in authority or his [or her] agent (a) is engaged in the actual performance of official duties, or [b] that he [or she] is assaulted by reason of the past performance of official duties.
4. That the offender knows that the one he [or she] is assaulting is a person in authority or his [or her] agent in the exercise of his [or her] duties.
5. That there is no public uprising.<sup>56</sup>

The central issue revolves on the authority and official functions of TE Barrios and TE Belmonte as traffic enforcers during the incident. This Court cannot subscribe to Pablo’s assertions for the sole reason that TE Barrios and TE Belmonte are deemed agents of persons in authority pursuant to Art. 152 of the RPC, as amended by Batas Pambansa Blg. 873<sup>57</sup> which specifically laid down the characterization of an agent of persons in authority, to wit:

Any person who, by direct provision of law or by election or by appointment by competent authority, is **charged with the maintenance of public order and the protection and security of life and property**, such as barrio [councilor], barrio [police officer] and barangay leader, and any person who comes to the aid of persons in authority, shall be deemed an agent of a person in authority.<sup>58</sup> (Emphasis supplied)

From the foregoing description, it may no longer be necessary to produce the document enumerating the duties and responsibilities of TE Barrios and TE Belmonte nor for one to testify on said matter because logic and discernment dictate that traffic enforcers, in general, are duty-bound to preserve public order by enforcing traffic laws, ordinances, and rules, by monitoring and directing the flow of traffic, and by apprehending erring drivers among others. It cannot be

<sup>53</sup> G.R. No. 224679, February 12, 2020, citing *Gelig v. People*, 640 Phil. 109, 116 (2010).

<sup>54</sup> *Id.*

<sup>55</sup> *Supra.*

<sup>56</sup> *Id.*, citing *Gelig v. People*, *supra* at 116-117 (2010).

<sup>57</sup> Entitled “AN ACT AMENDING ARTICLE 152 OF THE REVISED PENAL CODE BY CONSIDERING LAWYERS AS PERSONS IN AUTHORITY WHEN IN THE PERFORMANCE OF THEIR DUTIES OR ON THE OCCASION THEREOF.” Approved: June 12, 1985.

<sup>58</sup> Batas Pambansa Blg. 873, Sec. 1.

gainsaid that traffic enforcers are agents of persons in authority for they in fact maintain public order.<sup>59</sup>

In this case, this Court agrees to the factual findings of the trial courts and the CA, which declared that TE Barrios and TE Belmonte were performing their official duties on November 2, 2012 when they apprehended Pablo for his traffic violation. The MeTC narrated that “[TE] Barrios and [TE Belmonte] were performing their duties of implementing traffic rules along the bridge at *Barangay Sto. Niño, Marikina City*.”<sup>60</sup> And the CA likewise found that “[TE Barrios and TE Belmonte] were on duty near the Marikina Bridge in *Barangay Sto. Niño, Marikina City*. They were both in complete official uniform required of Marikina traffic enforcers, *viz.*, a green shirt with the CTMDO patch and their respective name tags, paired with black plants.”<sup>61</sup> These clearly negate Pablo’s contention that TE Barrios and TE Belmonte were usurping authority during the incident. Consequently, Pablo’s arguments cannot defeat the weight of the prosecution’s evidence pointing to his culpability for Direct Assault since all the elements were distinctly established.

With the rest of the elements being undisputed and resolved, it becomes imperative for this Court to delve into the first element which will finally settle whether the crime committed was Direct Assault under Art. 148 of the RPC or Resistance and Serious Disobedience under Art. 151 of the RPC. *Mallari*<sup>62</sup> enunciated the thin line between these two crimes, *viz.*:

To be considered as direct assault, the laying of hands or the use of physical force against the agent of a person in authority must be serious.

In *United States v. Gumban*, this Court held that the amount of force employed against agents of persons in authority spells the difference between direct assault and resistance of disobedience:

x x x. It is said in these two cases that any force is not sufficient to constitute an assault[,] **but that it is necessary to consider the circumstances of each case to decide whether the force used is, or is not, sufficient to constitute assault upon an agent of authority.**

Previous convictions for direct assault against an agent of a person in authority involve force that is more severe than slapping and punching. In *United States v. Cox*, the accused “seized [the police officer] by the throat, threw him to the ground, and struck him several blows with the club which he succeeded in wresting from the [police officer.]”

In *Rivera v. People*, the accused repeatedly hurled menacing threats against the police officer, challenged him to a fight, and scored a punch on the lip as they grappled. The officer sustained an injury that would take several days to heal,

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<sup>59</sup> See *Id.*

<sup>60</sup> *Rollo*, p. 61.

<sup>61</sup> *Id.* at 30.

<sup>62</sup> *Supra* note 53.

while the accused was only subdued with the help of other police officers. X x x.<sup>63</sup> (Emphasis supplied)

It is noteworthy to emphasize that while *Mallari* focused on the force employed that would establish Direct Assault, this Court finds that the successive acts of pulling out a gun then aiming the same towards the agent of persons in authority constitute serious intimidation. As TE Barrios testified:

[ATTY. IFURUNG]: So, If I ask you if you had examined the alleged gun, your answer would be "No"?

[TE BARRIOS]: Actually, Your Honor[,] I did not examine the gun. **The gun was pointed at me before I closed the door of the taxi.**<sup>64</sup>

x x x x

[FISCAL GADIT, JR.]: He pointed a gun at you?

[TE BARRIOS]: **Yes. So, I closed the door and told the policemen that he has gun.**

[Question]: What did you feel when he pointed a gun at you?

[Answer]: Shocked. Threatened.

[Question]: Threatened?

[Answer]: I was threatened but [I maintained] my composure. Then I closed the door for my safety.<sup>65</sup>

The act of pointing and aiming a gun may not be as forceful as described in *Mallari*, but the same is serious enough even to an agent of persons in authority. Prudence dictates that one cannot simply pull out a gun and aim towards a person in a heat of argument or altercation. If taken lightly and not meted with stringent consequences, it would leave a negative impression and cause great danger and at the expense of public order and peace.

In sum, Pablo's acts amounted to Direct Assault of an agent of persons in authority, in its second form, as defined and penalized under Art. 148 of the RPC.

**WHEREFORE**, the petition is **DENIED**. The assailed January 31, 2017 Decision and the April 6, 2017 Resolution of the Court of Appeals in CA-G.R. CR No. 38866 are **AFFIRMED in toto**. Petitioner Celso Pablo y Guimbuayan is found **GUILTY** beyond reasonable doubt for Direct Assault. He is sentenced to an indeterminate prison term of one (1) year and one (1) day to three (3) years, six (6) months and twenty-one (21) days of *prison correccional*. He is also ordered to **PAY** a fine of ₱1,000.00.

<sup>63</sup> Id., citing *Rivera v. People*, 501 Phil. 37, 41-42 (2005), *United States v. Gumban*, 39 Phil. 76, 79-80 (1918), and *United States v. Cox*, 3 Phil. 140, 141 (1904).

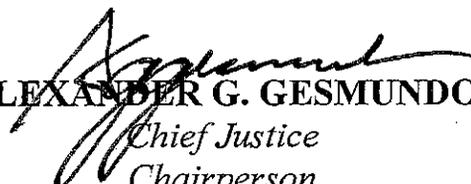
<sup>64</sup> *Rollo*, p. 103. See also TSN, June 26, 2014, p. 5.

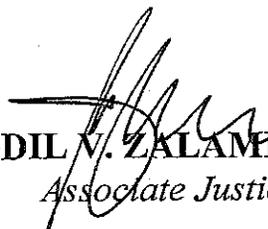
<sup>65</sup> *Rollo*, pp. 105-106. See also TSN, June 26, 2014, pp. 7-8.

**SO ORDERED.**

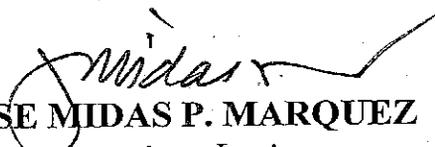
  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*  
*Chairperson*

  
**RODIL N. ZALAMEDA**  
*Associate Justice*

On official leave  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JOSE MIDAS P. MARQUEZ**  
*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.

  
ALEXANDER G. GESMUNDO  
*Chief Justice*