



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**      **G.R. No. 238905**  
*Plaintiff-Appellee,*

Present:

- versus -

**PO2 RICARDO FULLANTE y Ante,**  
*Accused-Appellant.*

LEONEN, *Chairperson*  
CARANDANG,  
ZALAMEDA,  
ROSARIO, and  
MARQUEZ, *JJ.*

Promulgated:

December 1, 2021

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**DECISION**

**ZALAMEDA, J.:**

Before this Court is an appeal from the Decision<sup>1</sup> dated 27 November 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07267 affirming (with modification) the Judgment<sup>2</sup> dated 01 October 2014 of the Regional Trial Court (RTC), Naga City, in Crim. Case Nos. 2011-0517 and 2011-0518. The RTC found accused-appellant PO2 Ricardo Fullante (accused-appellant) guilty beyond reasonable doubt of attempted homicide and murder, with the qualifying circumstance of abuse of superior strength.

<sup>1</sup> *Rollo*, pp. 2-21; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Stephen C. Cruz and Samuel H. Gaerlan (now a Member of this Court).

<sup>2</sup> *CA rollo*, pp. 68-95; penned by Judge Leo L. Intia.

### Antecedents

Initially, separate Informations for attempted murder and murder were filed against accused-appellant and his co-accused, Dante Ante, Jr. y Canino (Dante), Roger Sabolarse y Ante (Roger), Melvin Fullante y Ante (Melvin), Jeffrey Sabolarse y Ante (Jeffrey), Charlie Pasadilla y Marcaida (Charlie), Herman Sabolarse y Ante (Herman), and Argie Rozaldo y Arandia (Argie) (collectively, co-accused).<sup>3</sup>

The Information for attempted murder reads:

Criminal Case No. 2011-0517

The undersigned City Prosecutor of Naga City, Camarines Sur, accuses PO2 Ricardo Fullante y Ante, Dante Ante Jr y Canino, Roger Sabolarse y Ante, Melvin Fullante y Ante, Jeffrey Sabolarse y Ante, Charlie Pasadilla y Marcaida, Herman Sabolarse y Ante, Argie Rozaldo y Arandia of the crime of ATTEMPTED MURDER, defined and penalized under Art. 248, of the Revised Penal Code, committed as follows: That on or about November 5, 2011, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with abuse of superior strength, conspiring, confederating and mutually helping one another, did then and there, wilfully, unlawfully and feloniously, accused PO2 Ricardo Fullante was while armed with a handgun and in the presence and with the cooperation of accused Dante Ante Jr y Canino, Roger Sabolarse y Ante, Melvin Fullante y Ante, Jeffrey Sabolarse y Ante, Charlie Pasadilla y Marcaida, Herman Sabolarse y Ante and Argie Rozaldo y Arandia, after shooting and killing complaining witness' husband, Anthony Solomon, with intent to kill and without justifiable cause or motive, did then and there, shoot herein complaining witness ROCHELLE SALIENTE SOLOMON while the latter was embracing his (sic) dead husband, hitting her on right thigh, as a result of which said complaining witness suffered injuries as shown by the medical certificate hereto attached, as Annex "A" and made an integral part hereof, thus accused commenced the commission of the crime of ATTEMPTED MURDER directly overt acts, but was not able to perform all acts of execution which should produce it by reason of some causes other than accused's own spontaneous desistance, that is, due to the timely intervention of other persons and by reason of the timely medical assistance given to ROCHELLE SALIENTE-SOLOMON to his (sic) damage and prejudice.

ACTS CONTRARY TO LAW.<sup>4</sup>

On the other hand, the Information for murder provides:

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<sup>3</sup> *Rollo*, p. 3.

<sup>4</sup> *Id.* at 3-4.



Criminal Case No. 2011-0518

The undersigned City Prosecutor of Naga City, Camarines Sur, accuses PO2 Ricardo Fullante y Ante, Dante Ante Jr y Canino, Roger Sabolarse y Ante, Melvin Fullante y Ante, Jeffrey Sabolarse y Ante, Charlie Pasadilla y Marcaida, Herman Sabolarse y Ante, Argie Rozaldo y Arandia of the crime of MURDER, defined and penalized under Art. 248, of the Revised Penal Code, committed as follows: That on or about November 5, 2011, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with abuse of superior strength, conspiring, confederating and mutually helping one another, did then and there, wilfully, unlawfully and feloniously, maul Anthony Solomon, then accused PO2 Ricardo Fullante y Ante, while armed with a handgun, did then and there shoot Anthony Solomon several times, hitting different parts of his body, and thereafter hold (sic) Anthony Solomon's head and fire a shot at Anthony's nape thereby inflicting upon him serious, mortal, and fatal wounds which directly caused his death to the damage and prejudice of herein complaining witness, ROCHELLE SALIENTE-SOLOMON, wife of the deceased.

ACTS CONTRARY TO LAW.<sup>5</sup>

Accused-appellant, along with his co-accused, pleaded not guilty to the charges.<sup>6</sup> The charges were consolidated and jointly heard.<sup>7</sup>

The evidence for the prosecution proved as follows: on 05 November 2011 at 3:30AM, victim Rochelle Solomon (Rochelle) was at Gwenbay Resto Bar with her friends Joan M. Tejero (Joan), Niña L. Maralag (Niña), and Sherwin Agna (Sherwin). Accused-appellant and his seven co-accused sat drinking at an adjacent table. After a while, victim Anthony Solomon (Anthony) arrived to pick up his wife Rochelle. As Rochelle was about to stand up from the table, Anthony stepped back to give way. Accused-appellant then tapped Anthony's arm and his group started mauling Anthony. Dante held Anthony's arm and punched him, which caused the latter to fall. When Anthony tried to stand up, Melvin and Argie held each of his arms while Dante kicked him. Then, with Anthony surrounded, accused-appellant pulled out a gun, pointed it at Anthony's left temple, and fired. Anthony fell on his side. Rochelle tried to crawl towards her husband but was prevented by accused-appellant's group.<sup>8</sup>

As she persisted to crawl towards Anthony, Rochelle saw accused-appellant shoot Anthony several more times, hitting him on the right arm, elbow, back and thigh. Roger also stabbed Anthony as he lay on the ground.

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<sup>5</sup> Id. at 4-5

<sup>6</sup> Id. at 5.

<sup>7</sup> Id. at 4.

<sup>8</sup> Id. at 5-6.



The group thereafter fled the scene, while accused-appellant, who stayed behind, grabbed Anthony and proceeded to shoot him on the nape. He then shot Rochelle, hitting her on her right thigh, and then left. Both victims were brought to the hospital but Anthony was declared dead on arrival. Rochelle was treated for her gunshot wound.<sup>9</sup>

An autopsy performed on Anthony's body showed that he died of hemorrhagic shock resulting from multiple gunshot wounds. It was also determined that the gunshot entry wounds had powder burns, indicating that Anthony was shot at close range.<sup>10</sup>

Accused-appellant, for his part, claimed self-defense.<sup>11</sup> He maintained that Anthony was blocking the exit of the bar, prompting him to tap the latter on the back so he (accused-appellant) could pass. However, instead of moving, Anthony responded by brandishing a knife. Accused-appellant claims he tried to pacify Anthony by introducing himself as a police officer. However, Anthony allegedly continued trying to attack accused-appellant with a knife. A commotion ensued with both of them falling on the floor near the videoke machine. It was then that accused-appellant pulled out his gun and shot Anthony in the foot. Accused-appellant tried to run, but Anthony kept coming and trying to stab him so he fired more shots to defend himself. Accused-appellant also claims that after the incident, he went to his aunt's house to change and thereafter went to the police station to surrender.<sup>12</sup>

On the other hand, Dante testified that their group had already been drinking prior to going to Gwenbay Resto, and that there was a group of three males and three females in front of their cubicle. After a few minutes, accused-appellant excused himself to go out to look for food but a man blocked his path. A commotion ensued and Dante saw a man with his arms around accused-appellant and about to punch him. According to Dante, while he knew that accused-appellant was a police officer, he was not aware that the latter had his gun in his person. He then saw accused-appellant fire his gun at the man embracing him, and thereafter, he told his group to go out of the bar. Dante further claimed that he heard successive shots after the first shot and was shocked because he did not expect the shooting to happen.<sup>13</sup>

Roger, Herman, and Argie denied any participation in the shooting. They alleged in their affidavit that on the date and time in question, they were drinking at accused-appellant and Melvin's residence when they

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<sup>9</sup> Id. at 6.

<sup>10</sup> CA *Rollo*, pp. 128-131.

<sup>11</sup> Id. at 45-65.

<sup>12</sup> *Rollo*, pp. 77-78.

<sup>13</sup> CA *Rollo*, pp. 65-66.



decided to go to Gwenbay Bar were they fell asleep. Meanwhile, their other friends Dante, Melvin, Jeffrey, and Charlie continued drinking. They were awakened by gunshots and hurriedly left the place along with everyone else trying to flee the place. Accused-appellant was left behind.<sup>14</sup>

Charlie testified that during the night of the incident he was drinking with Jeffrey, Melvin, and Dante at Gwenbay. Herman, Roger, and Argie slept, while accused-appellant stayed outside and did not join while they were drinking inside Gwenbay. He further claimed that he never saw accused-appellant throughout the time at Gwenbay.<sup>15</sup>

For his part, Jeffrey maintained that they were already drinking prior to going to Gwenbay Resto. He hid under the table after hearing the gunshot and did not see anything except that time when accused-appellant and Anthony were grappling with each other. He heard more than five gunshots.<sup>16</sup>

### **Ruling of the RTC**

In its Decision dated 01 October 2014,<sup>17</sup> the trial court ruled that the defense did not substantiate its claim of self-defense while the prosecution established a more credible version of the events and clearly identified accused-appellant as the person who shot the victims several times. According to the RTC, there was abuse of superior strength when accused-appellant, trained as a police officer, shot Anthony several times using his service gun. However, it found that there was no conspiracy between accused-appellant and the other co-accused as the encounter between the groups was accidental.

The RTC found accused-appellant guilty of attempted homicide instead of attempted murder, for the attack against Rochelle, while the rest of his co-accused were acquitted. Accused-appellant was likewise convicted for murder for the killing of Anthony. Dante, Roger, Melvin, and Argie were convicted for slight physical injuries while Herman, Charlie, and Jeffrey were acquitted.

The dispositive portion of the RTC's Decision reads:

In Criminal Case No. 2011-0517:

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<sup>14</sup> Id. at 78-79.

<sup>15</sup> Id. at 80.

<sup>16</sup> Id.

<sup>17</sup> Id. at 68-95.



WHEREFORE, the prosecution having proved the guilt of accused RICARDO FULLANTE y ANTE beyond reasonable doubt for the felony of Attempted Homicide, he is hereby sentenced to suffer imprisonment for Four Months of *arresto mayor* as minimum to Four Years of prison correccional as maximum, in accordance with the Indeterminate Sentence Law. He is further directed to the amount of Pesos: Two Thousand Nine Hundred Thirty-Three and Eighty Centavos (P2,933.80) to Rochelle Santos as actual damages and Moral Damages in the amount of Pesos: Thirty Thousand (P30,000.00).

The other seven accused DANTE ANTE, ROGER SABOLARSE, MELVIN FULLANTE, JEFFREY SABOLARSE, CHARLIE PASADILLA, HERMAN SABOLARSE, and ARGIE ROZALDO, are hereby ACQUITTED for failure of the prosecution to prove their participation in the commission of the felony. As to them, the fact from which the civil liability might arise does not exist.

In Criminal Case No. 2011-0518:

WHEREFORE, the prosecution having proved the guilt beyond reasonable doubt of:

1) RICARDO FULLANTE y ANTE for the felony of Murder, he is hereby CONVICTED and sentenced to suffer the penalty of *reclusion perpetua* – imprisonment for twenty years and one day to forty years. The accused is further directed to pay the heirs of the victim Anthony Santos the following amount: Pesos: Seventy Five Thousand Pesos (P75,000.00) as civil indemnity for the death of the victim; Pesos: Fifty Thousand Pesos (P50,000.00) as Moral Damages in the amount of Pesos; Pesos: One Hundred Ninety Three Thousand Eight Hundred Sixty (P193,860.00) as actual damages; Pesos: Thirty Thousand (P30,000.00) as exemplary damages.

2) DANTE ANTE, ROGER SABOLARSE, MELVIN FULLANTE and ARGIE ROZALDO for the felony of Slight Physical Injuries are hereby CONVICTED and sentenced to suffer imprisonment for Thirty Days of *arresto menor*. Each of the accused are further directed to pay the heirs of Anthony Solomon the amount of Pesos: Twenty Thousand Pesos (P20,000.00).

The accused HERMAN SABOLARSE, CHARLIE PASADILLA, and JEFFREY SABOLARSE are hereby ACQUITTED for failure of the prosecution to prove their guilt beyond reasonable doubt. But they are civilly liable to pay damages to the heirs of Anthony Solomon the amount of Pesos: Fifteen Thousand Pesos (P15,000.00) each.

SO ORDERED.<sup>18</sup>

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<sup>18</sup> Id. at 93-94.



### Ruling of the CA

The appellate court denied the lone appeal filed by accused-appellant and affirmed, with modifications, the ruling of the RTC, thus:

We MODIFY the Decision dated 01 October 2014 of the Regional Trial Court, Branch 27, Naga City, thus:

a) in Criminal Case No. 2011-0517, we find the appellant PO2 Ricardo Fullante y Ante GUILTY BEYOND REASONABLE DOUBT of the crime of Attempted Homicide, and sentence the appellant to imprisonment of 4 months (as minimum) to 4 years (as maximum), and order the appellant PO2 Ricardo to indemnify the victim Rochelle Saliente-Solomon Php25,000.00 (as temperate damages, in lieu of actual damages), and Php20,000.00 (as moral damages), with interest at the rate of 6% per annum from the finality of this decision, until the award is fully satisfied; and

b) in Criminal Case No. 2011-0518, we find the appellant PO2 Ricardo Fullante y Ante GUILTY BEYOND REASONABLE DOUBT of the crime of Murder, and sentence the appellant to imprisonment of 20 years and 1 day of reclusion perpetua (as minimum) to 40 years of reclusion perpetua (as maximum), and order appellant PO2 Ricardo to indemnify the heirs of the victim Anthony Solomon Php193,860.00 (as actual damages), Php75,000.00 (as civil indemnity), Php75,000.00 (as moral damages), and Php75,000.00 (as exemplary damages), with interest at the rate of 6% per annum from the finality of this decision, until the award is fully satisfied.

IT IS SO ORDERED.<sup>19</sup>

Anent the finding for attempted homicide, the CA ruled that accused-appellant had no intent to kill Rochelle when he shot her while she was on the floor with no means to protect herself and that, as a result, Rochelle sustained a non fatal wound. It also held that the prosecution did not present evidence of any other circumstance that would qualify his offense to murder. Although it sustained the award of moral damages to Rochelle in the amount of ₱20,000.00, the CA modified the award and granted ₱25,000.00 as temperate damages in lieu of the actual damages initially awarded by the trial court (in the amount of ₱2,933.80) to Rochelle. It also imposed interest upon all damages awarded at the rate of 6% *per annum* from the date of finality of judgment until full satisfaction.

As to the crime of murder, the appellate court found that there was no unlawful aggression on the part of Anthony. The prosecution's version of the

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<sup>19</sup> *Rollo*, pp. 20-21.



events was clear and consistent in that it was accused-appellant who was initially aggressive. Further, the location of Anthony's wounds (nape and temple) shows that he was at a more vulnerable position relative to accused-appellant which, in turn, belies his claim of self-defense.

The CA also found that there was abuse of superior strength based on the following: 1) accused-appellant and his group mauled Anthony; 2) accused-appellant then shot Anthony, who at this time was already physically weak from the mauling and had no means to defend himself; and 3) accused-appellant was a police officer trained to deal with altercations with maximum tolerance and without use of excess violence.

Hence, the instant appeal before this Court.

### **Issue**

The sole issue for consideration is whether the CA erred in affirming the finding of guilt of accused-appellant for attempted homicide and murder.

### **Ruling of the Court**

After an evaluation of the case records, this Court resolves to affirm the conviction of accused-appellant and deny the appeal, there being no reversible error in the assailed Decision that would warrant the exercise of this Court's appellate jurisdiction.

Both the RTC and the CA held that the prosecution had discharged its burden to prove accused-appellant's guilt beyond reasonable doubt for the crimes of murder and attempted homicide.

Here, accused-appellant raised self-defense and thus assumed the burden of evidence to prove its elements by credible, clear, and convincing evidence. For self-defense to be appreciated as a justifying circumstance, the following requisites must be proved present, namely: "(1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person acting in self-defense; (2) there was reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) there was lack of sufficient provocation on the part of the person claiming self-defense, or, at least, any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression."<sup>20</sup>

<sup>20</sup> *People v. Escobal*, 820 Phil. 92, 114 (2017) [Per J. Bersamin].



Accused-appellant “must rely on the strength of his own evidence and not on the weakness of the prosecution. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.”<sup>21</sup>

In this case, accused-appellant was unable to discharge said burden.

For one, accused-appellant failed to prove that there was any aggression on Anthony’s part, much less one unlawful. Instead, witnesses for the prosecution presented a clear and consistent version of the incident at Gwenbay Bar, including that the **altercation between the two groups was started by accused-appellant.**<sup>22</sup>

As pointed out by the State, prosecution witness a certain Norbert, who was a waiter at Gwenbay and had not known either parties prior to the incident, testified as to the fact that accused-appellant and his group ganged up against Anthony.<sup>23</sup>

Factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.<sup>24</sup>

Furthermore, the locations of the gunshot wounds sustained by victim Anthony (including one at the left temple and one at the nape) further belie accused-appellant’s claim of self-defense. The wounds showed that Anthony was at a lower, more vulnerable position relative to the shooter. We thus agree with the lower courts in holding that there was no unlawful aggression on the part of victim Anthony. “Without unlawful aggression, there can be no justified killing in defense of oneself.”<sup>25</sup>

Even granting unlawful aggression from Anthony, We agree with the CA that the number of gunshot wounds (six entry wounds in all)<sup>26</sup> sustained by Anthony seems too disproportionate and excessive a response, especially from a police officer “trained to deal with altercations with maximum tolerance.”<sup>27</sup>

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<sup>21</sup> *People v. Guarin*, G.R. No. 245306, 02 December 2020 [Per CJ. Peralta].

<sup>22</sup> *Rollo*, p. 14.

<sup>23</sup> *CA rollo*, p. 134.

<sup>24</sup> *People v. Ibañez*, G.R. No. 06 July 2020 [Per J. Leonen].

<sup>25</sup> *People v. Lopez, Jr.*, 830 Phil. 771, 779 (2018) [Per J. Peralta] citing *People v. Nugas*, 677 Phil. 168 (2011) [Per J. Bersamin].

<sup>26</sup> *CA rollo*, p. 135.

<sup>27</sup> *Rollo*, p. 16.



Similarly, We find no reversible error on the part of the CA and the RTC when it convicted accused-appellant for attempted homicide.

Accused-appellant denies shooting Rochelle; instead, he asserts that she could have been accidentally hit by the successive shots he fired against Anthony in self-defense.<sup>28</sup> This position, however, relies on accused-appellant's claim of self-defense, which has already been soundly refuted.

On the other hand, “[i]ntent to kill is a state of mind that the courts can discern only through external manifestations, *i.e.*, acts and conduct of the accused at the time of the assault and immediately thereafter. [The factors to determine intent to kill are:] 1) the means used by the malefactors; 2) the nature, location, and number of wounds sustained by the victim; 3) the conduct of the malefactors before, during[,], or immediately after the killing; and 4) the circumstances under which the crime was committed and the motives of the accused.”<sup>29</sup>

Here, intent to kill was duly established when accused-appellant fired at Rochelle with a gun, a weapon capable of killing especially when fired at close range. It also bears emphasis that at that time, Rochelle was lying on the floor crying for her dead husband. That while Rochelle did not succumb to her wounds (or that said wound only required hospital confinement for two days), it does not negate intent to kill.

On the whole, accused-appellant miserably failed to advance any compelling reason to disturb the factual findings of the trial court, as affirmed by the CA. We thus go by the established principle that, on factual matters, “the findings of trial courts, especially when affirmed by the appellate court, must be accorded the greatest respect in the absence, as here, of a showing that they ignored, overlooked, or failed to properly appreciate matters of substance or importance likely to affect the results of the litigation.”<sup>30</sup>

We likewise find no reason to reverse the penalties imposed and monetary awards granted by the CA, as the same are consistent with the law and relevant jurisprudence.

However, We modify the penalty for Murder to *reclusion perpetua*. The penalty for the crime of murder under Article 248 of the RPC is *reclusion perpetua* to death. Article 63 of the RPC provides that when the penalty is composed of two indivisible penalties, the lesser penalty shall be

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<sup>28</sup> CA rollo, p. 62.

<sup>29</sup> *Serrano v. People*, 637 Phil. 319, 333 (2010).

<sup>30</sup> *Concepcion v. People*, 538 Phil. 126, 135-136 (2006) [Per J. Garcia].

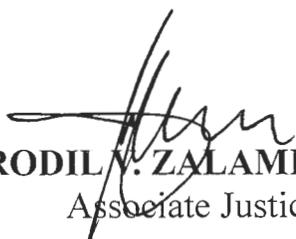


applied in the absence of mitigating or aggravating circumstances. Here, the CA imposed the penalty of imprisonment ranging from 20 years and 1 day of *reclusion perpetua* (as minimum) to 40 years of *reclusion perpetua* (as maximum). *Reclusion perpetua*, however, remains a single indivisible penalty.<sup>31</sup> And there being no mitigating or aggravating circumstances, the proper penalty should be *reclusion perpetua* without reference to its duration.

**WHEREFORE**, the appeal is hereby **DISMISSED**. The Decision dated 27 November 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07267 is **AFFIRMED with MODIFICATION**, thus:

- a) In Criminal Case No. 2011-0517, accused-appellant PO2 Ricardo Fullante y Ante is found **GUILTY BEYOND REASONABLE DOUBT** of the crime of **Attempted Homicide** and sentenced to suffer the penalty of imprisonment of four (4) months of *arresto mayor* (as minimum) to four (4) years of *prision correccional* (as maximum). He is likewise ordered to pay the victim Rochelle Solomon ₱25,000.00 as temperate damages in lieu of actual damages and ₱20,000.00 as moral damages, with interest at the rate of 6% *per annum* from the finality of this Decision, until fully satisfied; and
- b) In Criminal Case No. 2011-0518, accused-appellant PO2 Ricardo Fullante y Ante is found **GUILTY BEYOND REASONABLE DOUBT** of the crime of **Murder** and sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay the heirs of the victim Anthony Solomon ₱193,860.00 as actual damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with interest at the rate of 6% *per annum* from the finality of this Decision, until fully satisfied.

**SO ORDERED.**

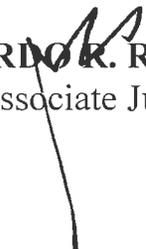
  
**RODIL V. ZALAMEDA**  
Associate Justice

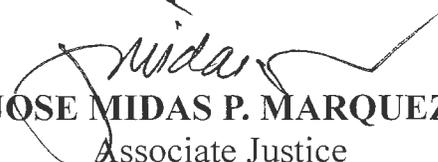
<sup>31</sup> *People v. Lucas*, 310 Phil. 77 (1995) [Per J. Davide].

**WE CONCUR:**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson

  
**ROSMARI D. CARANDANG**  
Associate Justice

  
**RICARDO R. ROSARIO**  
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.

  
**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson

## CERTIFICATION

Pursuant to the 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.

  
ALEXANDER G. GESMUNDO  
Chief Justice