



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ANTHONY JOHN APURA,
Petitioner,

G.R. No. 222892

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

MAR 18 2021 *metubali*

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DECISION

PERALTA, C.J.:

This is to resolve the Petition for Review on *Certiorari* under Rule 45, dated March 2, 2016 of Anthony John Apura (*Apura*) that seeks to reverse and set aside the Decision¹ dated May 29, 2014 of the Court of Appeals (*CA*), in CA-G.R. CEB CR-HC No. 00873, affirming with modifications the Decision² dated April 10, 2007, in CBU-66703 of the Regional Trial Court (*RTC*), Branch 20, Cebu City, finding petitioner guilty beyond reasonable doubt of the crime of Murder.

The facts follow.

¹ Penned by Associate Justice Marilyn B. Lagura-Yap with the concurrence of Associate Justices Edgardo L. Delos Santos (now a Member of the Supreme Court) and Jhosep Y. Lopez (now a Member of the Supreme Court); *rollo*, pp. 87-111.

² *Id.* at 66-85.

On July 18, 2003, the victim, Mark James Enriquez (*Enriquez*), his cousin Bobit, and Mark Pua were at Unibeersities Resto Bar located at Archbishop Reyes Ave., Cebu City. When Enriquez offered Christian Elly Labay (*Labay*), a waiter at the same bar, a shot of beer, the latter saw that a man walked behind Enriquez and struck the latter with a bottle on his head. The man who struck Enriquez on the head was later identified by Labay as the petitioner, Apura. Subsequently, Apura stepped aside and three other persons who were with accused Sherwin "Bungot" Que (*accused Que*), struck Enriquez with beer bottles. Thereafter, accused Que approached Enriquez and shot the latter. The gun, however, misfired. On the second attempt, after accused Que turned on his side to fix the gun, Enriquez was hit in the head and fell to the ground. A commotion then followed, with the rest of the customers running. It was then that Apura, accused Que, and the three other companions who struck Enriquez with beer bottles, walked through the big exit towards the gate and into the direction of Grand Convention Center where they boarded a white van with plate number GJM-961.

The victim, Enriquez was brought to the hospital and was attended to by Dr. Wyben Briones (*Dr. Briones*), and the former eventually died, the immediate cause of which was the injuries he sustained from the gunshot wound in the head. In his examination of the victim, Dr. Briones found out that aside from hematoma on the gunshot wound, on the right forehead of the victim, there was a "lacerated wound surrounded by an area of contusion and the skin was avulsed" which may have been caused by a blunt object, not a sharp bladed instrument. There was also a fracture on the proximal phalanx at the right hand (4th finger) caused by a penetration of a bullet that went through and through. There was also a metal fragment imbedded in the wound that is too small to be retrieved.

Thus, an Information was filed against Apura, accused Que and their companions, for the crime of Murder, which reads as follows:

That on or about the 19th day of July, 2003, at 12:45 A.M., more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused conniving, confederating, and mutually helping with one another, armed with and (sic) unlicensed handgun, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and use personal violence upon the person of Mark James Enriquez, by striking him with bottles of beer and shot him with the use of the said unlicensed handgun, hitting him on his head, thereby inflicting upon him injuries, as a consequence of which Mark James S. Enriquez died on July 21, 2003.

CONTRARY TO LAW.³

³ *Id.* at. 88.



Apura and his co-accused entered their respective pleas of “not guilty” during their arraignment. Thereafter, trial on the merits ensued.

The prosecution presented the testimonies of Christian Elly Labay, a waiter at the bar, Mark Anthony Lapatis (*Lapatis*), another waiter at the same bar, Jose Wilfredo Cala, a customer at the bar when the incident happened, Dr. Wyben Briones, the victim’s attending physician, and Dr. Gil Macato, the one who conducted the autopsy on the victim.

The defense presented the testimonies of Apura, accused Que and Hanzel Lauron (*Lauron*).

According to Apura, on July 18, 2003, he went to Unibeersities Resto Bar through the invitation of a certain Jose Perez (*Perez*). Apura arrived at the said bar at 10:00 p.m. Around 12:00 a.m. to 12:05 a.m., Perez went out of the bar to buy cigarettes and when he returned, Apura noticed that Perez’s lower lip was swollen. Apura asked Perez what happened, and the latter said that “somebody boxed me outside”. Around 12:30 a.m., Perez blurted, “Oy, the one who boxed me is here,” at the same time pointing at someone sitting near the bar about 10 meters from where they were seated. Perez then told him and their companions to accompany him. When petitioner was about one and a one-half (1 ½) meters from the man pointed by Perez as his alleged attacker (the victim, in this case), the latter told him “*unsa man*” (What?). Thereafter, the alleged attacker of Perez appeared to be pulling something from his side that looked like a black hunting knife. As such, Apura swung the bottle of beer that he was holding at that time towards Enriquez who was hit in the right temple of his head. At that time, Apura did not know the person he hit. Afraid that the victim’s companions might retaliate, Apura claimed that he ran out of the bar and hailed a taxi.

Accused Que, in his testimony, admitted that he brought a gun with him at the bar. He claimed that a fight erupted at the said bar between a fraternity he is a member of and a rival fraternity. It was during the commotion that he fired his handgun. He misfired the first shot and then fired another aiming at the chest of an attacker. According to him, he did not know if he was able to hit his attackers although he saw them scamper away. He then disposed the firearm in his place. The following morning, he learned that somebody was shot and that the victim was Enriquez. He declared that what happened was an accident and he had no intention of killing the victim. Witness Lauron corroborated the testimony of accused Que.

The RTC, on April 10, 2007, promulgated its decision finding Apura and accused Que guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the said decision reads as follows:



WHEREFORE, in view of the foregoing this court finds accused SHERWIN QUE GUILTY beyond reasonable doubt as a principal in the crime of Murder qualified by treachery and hereby sentences him to suffer *reclusion perpetua*. The court likewise finds accused ANTHONY JOHN APURA GUILTY beyond reasonable doubt as an accomplice, not as a principal, in the crime of Murder qualified by treachery and, applying the Indeterminate Sentence Law, hereby sentences him to an indeterminate prison term of 6 years and 1 day of *prision mayor* as minimum, to 14 years 8 months and 1 day of *reclusion temporal* as maximum.

Both accused are also hereby ordered to pay jointly and severally the heirs of Mark James S. Enriquez the sum of [P]50,000.00 as indemnity *ex delicto* and [P]50,000.00 as moral damages, and the costs.

Considering that the three other accused have remained at-large, let warrants of arrest issue against them, to be separately tried once, apprehended.

SO ORDERED.⁴

Petitioner elevated the case to the CA and the latter court, on May 29, 2014, dismissed the appeal with modifications, thus:

WHEREFORE, the April 10, 2007 Decision of the Regional Trial Court, Branch 20, Cebu City in Criminal Case No. CBU-66703, convicting [accused] Sherwin Que @ Bungot of Murder and sentencing him of *reclusion perpetua* is AFFIRMED with MODIFICATIONS. [Apura] is ineligible for parole. Moreover, the accessory penalties are deemed INCLUDED in the principal penalty. [Apura] is ORDERED to pay the heirs of Mark James Enriquez, the amounts of [P]75,000.00 as civil indemnity, [P]50,000.00 as moral damages, P30,000.00 as exemplary damages, [P]4,431,013.62 as actual damages, 6% interest on all the damages herein awarded from the date of the incident to the finality of the judgment and 12% interest from the finality hereof until fully paid, and to pay costs.

The Director of the Bureau of Prisons is ordered to submit a REPORT to this Court within five (5) days, acknowledging receipt of this Decision.

The April 10, 2007 Decision of the Regional Trial Court, Branch 20, Cebu City in Criminal Case No. CBU-66703, convicting [petitioner] Anthony John Apura as accomplice in the crime of murder is also AFFIRMED with MODIFICATION as to the maximum term of his penalty. [Petitioner] Anthony John Apura is penalized to suffer imprisonment for a period of six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum together with the accessory penalties under the law. [Petitioner] Anthony John Apura must pay jointly and solidarily with [accused] Sherwin Que @ Bungot, the heirs of the victim, Mark James Enriquez, the amounts aforestated as his civil liability.

⁴ *Id.* at. 87-88.

The Regional Trial Court is DIRECTED to cancel the bail posted by [petitioner] Anthony John Apura and to issue alias warrants of arrest for the other accused who are still at-large.

SO ORDERED.⁵

The CA rejected accused Que's plea of self-defense because he failed to prove the presence of unlawful aggression on the part of the victim, which is an essential element of such plea. The prosecution, according to the CA, was able to prove that all the elements of the crime of murder are present in this case. As to petitioner, the CA ruled that he was an accomplice to the crime of murder as there was unity of purpose with the principal.

Hence, the present petition.

Petitioner raises the following issues:

A. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN, IN VIOLATION OF RECENT LAWS AND JURISPRUDENCE, IT GAVE CREDIT TO THE TESTIMONY OF LAPATIS DURING DIRECT EXAMINATION, DESPITE THE LATTER'S INCONSISTENCIES AND SELF-CONTRADICTIONS;

B. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED, ON THE BASIS OF LAPATIS' TESTIMONY DURING DIRECT EXAMINATION, THAT THERE IS COMMUNITY OF CRIMINAL DESIGN BETWEEN APURA AND THE GROUP OF QUE AND THAT APURA BY HIS ACTIONS AGREED WITH THE CRIMINAL PURPOSE OF QUE.

C. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ITS APPLICATION OF THE LAW RELEVANT TO ACCOMPLICES, AND WHEN IT HELD APURA LIABLE AS AN ACCOMPLICE, NOT SEPARATELY AND INDIVIDUALLY LIABLE FOR PHYSICAL INJURIES;

D. WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AWARDED ACTUAL DAMAGES INCONSISTENTLY WITH RELEVANT LAWS AND JURISPRUDENCE.⁶

⁵ *Id.* at 110-111.

⁶ *Id.* at 7.

According to Apura, prosecution witness Lapatis is an incredible witness and his testimonies do not deserve any consideration because it is full of inconsistencies and contradictions. He also claims that the prosecution failed to show that there was a community of criminal intent between him and accused Que and the latter's group, that he agreed to the criminal purpose of accused Que and his group and that he cooperated in the accomplishment of the crime. As such, Apura argues that he cannot be held liable as an accomplice because the requisites of which are wanting. He further argues that the cases relied upon by the CA are inapplicable in his case and that he should be held separately and individually liable only for physical injuries. Lastly, he questions the award of damages by stating expenses incurred were not proven with reasonable certainty.

The petition is unmeritorious.

In order that a person may be considered an accomplice, the following requisites must concur: (1) that there be community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice.⁷

A close analysis of the events that took place prior and simultaneous to the crime committed shows that Apura is indeed an accomplice. He struck the victim in the head with a beer bottle, an act that indicates that he cooperated in the execution of the crime by a previous act that is not indispensable in the killing of the victim, but, nevertheless, aided accused Que in pursuing his criminal design. As aptly ruled by the RTC:

The evidence shows that Apura struck Enriquez with a beer bottle in the head from behind. In fact, he was the first to assault the victim. Thus, even if he was not a co-conspirator, the incontrovertible fact remains that he did an act which started the chain of events that culminated in the shooting of the victim by Que. By his act of striking Enriquez with a beer bottle in the head, he is deemed by this court to have cooperated in the execution of the offense by a *previous* act, albeit not indispensable as it was not necessary for him to do it in order that Que could carry out his criminal design to kill Enriquez. This fixes Apura's criminal liability in this case as that of an accomplice in the commission of the offense under Article 18 of the Revised Penal Code and conformably to the ruling of the Supreme Court in *People vs. Templonuevo*, G.R. No. L-12280, January 30, 1960. Under Article 18,

⁷ *Saldua v. People*, G.R. No. 210920, December 10, 2018, citing *Napone, Jr. v. People*, 821 Phil. 844, 865 (2017).

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Revised Penal Code, “(a)ccomplices are those persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts”. In *People vs. Templonuevo*, where it was shown that appellant struck the deceased on the forehead with a piece of wood, rendering the latter unconscious, thereby facilitating the subsequent slaying of the deceased by appellant’s co-accused, the Supreme Court held that said appellant must be deemed responsible as an accomplice in the killing. He cooperated in it by previous or simultaneous acts, albeit non-indispensable ones, as his co-accused could have killed the victim with his bolo even if appellant had not intervened.⁸

Thus, all the elements for one to be an accomplice are present in this case. The cooperation that the law punishes is the assistance knowingly or intentionally rendered that cannot exist without previous cognizance of the criminal act intended to be executed,⁹ and the prosecution was able to prove such cooperation. The unity of purpose with that of the accused Que was also proven by the prosecution. The CA, thus, appropriately ruled:

[Petitioner] Apura’s insistence that the ruling in *People v. Rustico Tilos and Mateo Mahinay (at-large)* is applicable, fails to convince Us. In that case, the Supreme Court noted that of the three prosecution witnesses, only one stated that the attacks of accused-appellant and accused-at-large on the victim immediately followed one another. The Supreme Court observed that the daughter and wife of the victim declared that the accused at-large attacked the victim through fistic blows on the face and nape only after the victim’s wife arrived and pulled him (victim) away from accused-appellant. It was the accused-appellant who first inflicted fistic blows on the abdomen of the victim. In the *Tilos* case, the Supreme Court held that such inconsistency in the sequence of events posed a significant doubt on the unity of purpose between the two accused so that the accused-appellant cannot be considered as an accomplice.

We do not find the facts in the *Tilos* case similar to the instant appeal. Immediately before the victim in this case was shot at the back of his head by appellant Que, he was first struck by [petitioner] Apura in the head using a bottle. The acts occurred in close proximity with each other and after the shooting, [petitioner] Apura was seen leaving the *locus criminis* with [accused] Que and the others. These circumstances constitute convincing evidence of unity of purpose with the principal (appellant Que) that makes [petitioner] Apura an accomplice.¹⁰

As to the inconsistencies in the testimony of the witness for the prosecution, the Court finds no need to deviate from the findings of both the RTC and the CA, as the said inconsistencies are minor and insignificant and does not affect the credibility of the said witness. As correctly ruled by the CA:

⁸ *Rollo*, pp. 83-84.

⁹ *Rustia, et al. v. People*, 796 Phil. 722,734 (2016), citing *People v. Elijorde*, 365 Phil. 640, 650 (1999).

¹⁰ *Rollo*, pp. 107-108.

Caution must be exercised to avoid the sweeping conclusion that [petitioner] Apura was no longer around during the shooting. The Supreme Court in *People v. Retuta* acceded that it cannot expect absolute uniformity in every detail because witnesses react differently to what they see and hear depending upon their situation and state of mind. In this case, Labay's answer to the question on cross-examination if he saw [petitioner] when the shooting occurred, was "no more." It is a remark which could mean that Labay did not see [petitioner] but not necessarily that [petitioner] was no longer around during the shooting. In the preceding question, Labay's answer was that he did not know where the accused was when the victim was struck again in the head which is about consistent with what he said in the direct examination that he did not know anymore what happened to Mr. Apura after the latter struck Mark James Enriquez.

At any rate, Lapatis' account was more specific that [petitioner] Apura stood at the side, after he struck victim with a bottle, and consequently, when the others threw bottles at the [Enriquez] and [accused] Que shot him (victim). [Petitioner] Apura exited the resto bar with them too. On these circumstances, it is reasonable to deduce that [petitioner] Apura knew of the criminal purpose of [accused] Que although his participation as a co-principal is not at all clear. In *People v. Samudio, et al.*, the Supreme Court stressed that the failure of the prosecution to prove the existence of conspiracy does not eliminate criminal liability on the part of the appellant. xxx Where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether the appellant acted as principal or as an accomplice will always be resolved in favor of the milder form of criminal liability – that of a mere accomplice. Juxtaposing jurisprudence with the evidence at hand, We fail to see any error committed by the trial court when it held that [petitioner] Apura's criminal liability was that of an accomplice only.¹¹

Minor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses. Moreover, time and again, the Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation.¹² This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.¹³

Modifications, however, must be made as to the award of damages. The CA ordered accused Que, as principal to the crime, and herein petitioner, as

¹¹ *Id.* at. 106-107.

¹² *Medina, Jr. v. People*, 724 Phil. 226, 234 (2014), citing *People v. Malicdem*, 698 Phil. 408, 416 (2012); *People v. Dumadag*, 667 Phil. 664, 673-674 (2011).

¹³ *Medina, Jr. v. People*, *supra* note 12, at 234-235, citing *People v. Villacorta*, 672 Phil. 712, 719-720 (2011).

accomplice, to pay the heirs of the victim, *jointly and severally*, the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages. This is error.

In *People v. Tampus, et al.*,¹⁴ the Court ruled that due to the difference in participation of the principal and accomplice, the principal, should be liable for two-thirds of the total amount of the damages and the accomplice should be ordered to pay one-third of the amount. Thus, per the original judgment of the CA, accused Que, as principal, can only be held liable for ₱50,000.00 as civil indemnity, ₱33,333.00 as moral damages and ₱20,000.00 as exemplary damages. While the petitioner, under the same judgment, can only be held liable to pay the amounts of ₱25,000.00 as civil indemnity, ₱16,667.00 as moral damages and ₱10,000.00 as exemplary damages.

We further observe, however, that the amounts of moral damages and exemplary damages awarded by the CA are not in conformity with standing jurisprudence. In *People v. Jugueta*,¹⁵ when the penalty imposed is *reclusion perpetua*, the amount awarded as civil indemnity, moral damages and exemplary damages shall be ₱75,000.00 each. Hence, the awards of moral damages and exemplary damages by the CA appear to be a deficient by ₱25,000.00 and ₱45,000.00, respectively.

The Court, in this case, however, cannot increase the amount of moral and exemplary damages to its full extent under *Jugueta*. It should be noted that Sherwin Que—who, as principal, is supposed to shoulder two-thirds of the increase—did not join petitioner in the present appeal. Under Section 11(a) of Rule 122 of the Rules of Court,¹⁶ the judgment in this appeal cannot prejudice accused Que. The amount of moral damages and exemplary damages may, therefore, only be increased as to the extent of petitioner's liability *i.e.*, only one-third of the increase allowed under *Jugueta*. Accordingly, petitioner should be adjudged to pay an additional ₱8,333.00 moral damages, and an additional ₱15,000.00 exemplary damages.

Anent the ₱4,431,013.62 actual damages awarded, the Court finds merit to the contention of petitioner. The Court has held that only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victims may be allowed.¹⁷ In this case, it appears that the heirs of the victim were not able to substantiate their claims as well as present receipts that are itemized or determined to have been

¹⁴ 607 Phil. 296, 331 (2009).

¹⁵ 783 Phil. 806 (2016).

¹⁶ **Section 11. Effect of appeal by any of several accused.** —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter;

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¹⁷ *People v. Salibad*, 773 Phil. 631, 64 (2015), citing *People v. Sanchez*, 367 Phil. 129, 148 (1999).

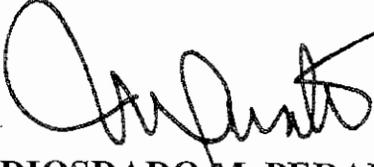
incurred in connection with the death, wake and burial of the victim. Nevertheless, it is proper to award temperate damages¹⁸ in lieu of actual damages since the heirs of the victim suffered a loss but failed to fully substantiate their expenditures. Prevailing jurisprudence now fixes the amount of ₱50,000.00 as temperate damages,¹⁹ with the principal, being liable for two-thirds of the amount and the petitioner, as an accomplice, one-third of it. The new award of temperate damages may be enforced against accused Que as the same would benefit him as opposed to the original award of actual damages.

WHEREFORE, Petition for Review on *Certiorari* under Rule 45 dated March 2, 2016 of petitioner Anthony John Apura is **DENIED** for lack of merit. Consequently, the Decision dated May 29, 2014 of the Court of Appeals is **AFFIRMED** with **MODIFICATION** in that the Court orders:

- (1) Sherwin Que, as principal, to pay the heirs of the victim ₱50,000.00 as civil indemnity, ₱33,333.00 as moral damages, ₱20,000.00 as exemplary damages and ₱33,333.00 as temperate damages.
- (2) Petitioner Anthony John Apura, as an accomplice, to pay the heirs of the victim ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, ₱25,000.00 as exemplary damages and ₱16,667.00 as temperate damages.

All awards shall earn 6% interest *per annum* from the date of finality of this Decision until full payment.

SO ORDERED.


DIOSDADO M. PERALTA
Chief Justice

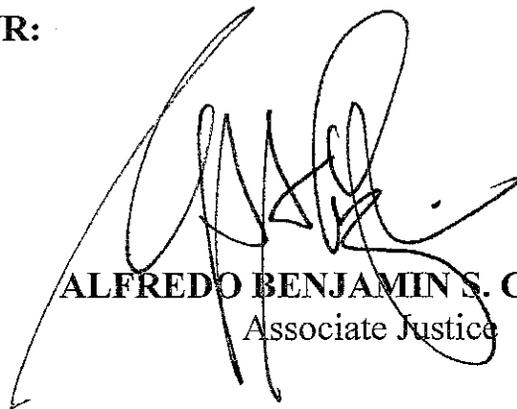
¹⁸ CIVIL CODE OF THE PHILIPPINES, Article 2224 reads:

ART. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

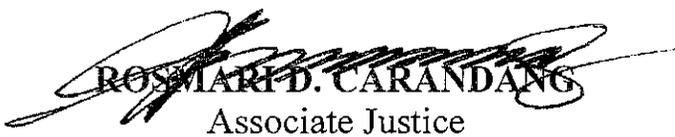
¹⁹ *People v. Jugueta*, *supra* note 15, at 854; *People v. Racal*, 817 Phil. 665, 686 (2017).

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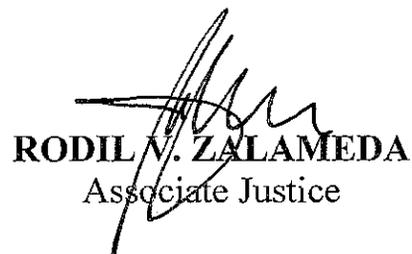
WE CONCUR:



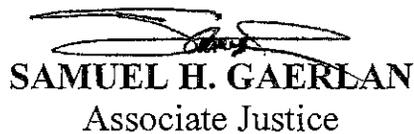
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ROSMAR D. CARANDANG
Associate Justice



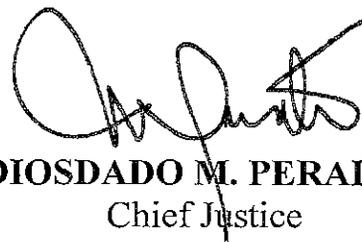
RODIL N. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
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.



DIOSDADO M. PERALTA
Chief Justice