



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

FE ABELLA y PERPETUA,
 Petitioner,

G.R. No. 198400

Present:

SERENO, C.J.,
Chairperson,
 LEONARDO-DE CASTRO
 BERSAMIN,
 REYES, and
 LEONEN,* JJ.

- versus -

Promulgated:

PEOPLE OF THE PHILIPPINES,
 Respondent.

OCT 07 2013

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DECISION

REYES, J.:

This is a Petition for Review on *Certiorari*¹ from the Decision² and Resolution³ dated October 26, 2010 and August 11, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. CR No. 00336-MIN affirming with modifications the conviction⁴ by the Regional Trial Court (RTC) of Misamis Oriental, Cagayan de Oro City, Branch 39 of Fe Abella y Perpetua (petitioner) for the crime of frustrated homicide committed against his younger brother, Benigno Abella (Benigno). The RTC sentenced the petitioner to suffer an indeterminate penalty of six (6) years and one (1) day to eight (8) years of *prision mayor* as minimum, to ten (10) years and one (1) day to twelve (12) years of *prision mayor* as maximum, and to pay Benigno

* Acting member per Special Order No. 1545 (Revised) dated September 16, 2013.

¹ *Rollo*, pp. 11-31.

² Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Edgardo A. Camello and Leoncia R. Dimagiba, concurring; *CA rollo*, pp. 74-82.

³ Penned by Associate Justice Edgardo A. Camello, with Associate Justices Abraham B. Borreta and Melchor Quirino C. Sadang, concurring; *id.* at 112-116.

⁴ Issued by Judge Downey C. Valdevilla, *id.* at 31-43.

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₱100,000.00 as consequential damages, ₱10,000.00 for the medical expenses he incurred, plus the costs of suit.⁵ The CA concurred with the RTC's factual findings. However, the CA modified the penalty imposed to six (6) months and one (1) day to six (6) years of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period as maximum. The CA also deleted the RTC's award in favor of Benigno of (a) ₱10,000.00 as actual damages corresponding to the medical expenses allegedly incurred; and (b) ₱100,000.00 as consequential damages. In lieu of the preceding, the CA ordered the petitioner to pay Benigno ₱30,000.00 as moral damages and ₱10,000.00 as temperate damages.⁶

Antecedent Facts

On October 7, 1998, the petitioner, who at times worked as a farmer, baker and *triscad* driver, was charged with frustrated homicide in an Information⁷ which reads:

That on or about September 6, 1998, at 11:00 o'clock in the evening, more or less, at Sitio Puli, Canitoan, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, did then and there wilfully, unlawfully and feloniously and with intent to kill, attack, assault, harm and hack one, BENIGNO ABELLA y PERPETUA, with the use of a scythe, hitting the latter's neck, thereby inflicting the injury described below, to wit:

- hacking wound left lateral aspect neck; and
- incised wound left hand dorsal aspect

thus performing all the acts of exe[cut]ion which would produce the crime of homicide as a consequence, but nevertheless, did not produce it by reason of some cause or causes independent of the will of the accused, that is the timely and able intervention of the medical attendance rendered to the said victim.

Contrary to Article 249 in relation to 250 of the RPC.⁸

After the Information was filed, the petitioner remained at large and was only arrested by agents of the National Bureau of Investigation on October 7, 2002.⁹

During the arraignment, the petitioner pleaded not guilty to the crime charged. Pre-trial and trial thus proceeded.

⁵ Id. at 43.

⁶ Id. at 81.

⁷ Original Records, p. 1-2.

⁸ Id. at 1.

⁹ Id. at 10.

The Prosecution offered the testimonies of: (a) Benigno;¹⁰ (b) Amelita Abella¹¹ (Amelita), Benigno's wife; (c) Alejandro Tayrus¹² (Alejandro), with whom the petitioner had a quarrel; and (d) Dr. Roberto Ardiente¹³ (Dr. Ardiente), a surgeon from J.R. Borja Memorial Hospital, Cagayan de Oro City, who rendered medical assistance to Benigno after the latter was hacked by the petitioner.

The Prosecution evidence established that on September 6, 1998, at around 11:00 p.m., Benigno was watching television in his house. A certain Roger Laranjo arrived and asked Benigno to pacify the petitioner, who was stirring trouble in a nearby store. Benigno and Amelita found the petitioner fighting with Alejandro and a certain Dionisio Ybañes (Dionisio). Benigno was able to convince the petitioner to go home. Benigno and Amelita followed suit and along the way, they dropped by the houses of Alejandro and Dionisio to apologize for the petitioner's conduct.

Benigno and Amelita were in Alejandro's house when the petitioner arrived bringing with him two scythes, one in each of his hands. Benigno instructed Alejandro and Dionisio to run away and the latter two complied. The petitioner wanted to enter Alejandro's house, but Benigno blocked his way and asked him not to proceed. The petitioner then pointed the scythe, which he held in his left hand, in the direction of Benigno's stomach, while the scythe in the right hand was used to hack the latter's neck once.¹⁴ Benigno fell to the ground and was immediately taken to the hospital¹⁵ while the petitioner ran to chase Alejandro.¹⁶ Benigno incurred an expense of more than ₱10,000.00 for hospitalization, but lost the receipts of his bills.¹⁷ He further claimed that after the hacking incident, he could no longer move his left hand and was thus deprived of his capacity to earn a living as a carpenter.¹⁸

Dr. Ardiente testified that Benigno sustained: (a) a "hacking wound left lateral aspect neck 11 cm"; and (b) an "incised wound left hand dorsal aspect 4 cm".¹⁹ Benigno was initially confined in the hospital on September 6, 1998 and was discharged on September 23, 1998.²⁰ From Dr. Ardiente's recollection, since the scythe used in the hacking was not sterile,

¹⁰ TSN, February 20, 2003, pp. 2-20.

¹¹ TSN, January 23, 2003, pp. 2-21.

¹² Id. at 21-35.

¹³ TSN, May 12, 2003, pp. 3-12.

¹⁴ TSN, January 23, 2003, pp. 9, 17.

¹⁵ Id. at 13-14.

¹⁶ Id. at 17-18.

¹⁷ CA *rollo*, p. 33.

¹⁸ Id.

¹⁹ TSN, May 12, 2003, p. 7; *see also* Medical Certificate and Clinical Cover Sheet, Original Records, pp. 69-70.

²⁰ Original Records, p. 70; TSN, May 12, 2003, p. 9.

complications and infections could have developed from the big and open wounds sustained by Benigno, but fortunately did not.²¹

The defense offered the testimonies of: (a) the petitioner;²² (b) Fernando Fernandez²³ (Fernando), a friend of the petitioner; and (c) Urbano Cabag²⁴ (Urbano).

The petitioner relied on denial and *alibi* as defenses. He claimed that from September 2, 1998 to October 2002, he and his family resided in Buenavista, Agusan del Norte. *Sitio Puli*, Canitoan, Cagayan de Oro City, where the hacking incident occurred, is about four (4) hours drive away.

Fernando testified that on September 6, 1998, he saw the petitioner gathering woods to make a hut.²⁵ Later in the evening, at around 5:00 p.m., Urbano spotted the petitioner drinking *tuba* in the store of Clarita Perpetua.²⁶

The RTC Ruling

On July 13, 2006, the RTC convicted the petitioner of the crime charged. The *fallo* of the Judgment²⁷ reads:

WHEREFORE, in view of the foregoing and finding the evidence presented by the prosecution sufficient to prove the guilt of the [petitioner] beyond reasonable doubt, judgment is rendered finding [petitioner] Fe Abella **GUILTY** beyond reasonable doubt of the crime of Frustrated Homicide as defined and penalized by Article 249 in relation to Article 50 and Art. 6 of the Revised Penal Code. Accordingly, [petitioner] Fe Abella is hereby sentenced to suffer an indeterminate penalty of Six (6) years and One (1) day to Eight (8) years of prision mayor as minimum to Ten (10) years and One (1) day to Twelve (12) years of prision mayor as maximum; to indemnify offended-party complainant Benigno Abella the sum of Ten Thousand ([P]10,000.00) Pesos for the medical expenses incurred; to pay the sum of ONE HUNDRED THOUSAND ([P]100,000.00) PESOS as consequential damages and to pay the costs.

SO ORDERED.²⁸

The RTC found the petitioner's defenses of *alibi* and denial as weak. No disinterested witnesses were presented to corroborate the petitioner's claim that he was nowhere at the scene of the hacking incident on September

²¹ TSN, May 12, 2003, pp. 9-11.

²² TSN, April 26, 2004, pp. 1-26.

²³ TSN, January 22, 2004, pp. 1-32.

²⁴ TSN, October 27, 2004, pp. 1-27.

²⁵ TSN, January 22, 2004, p. 13.

²⁶ TSN, October 27, 2004, pp. 5-6.

²⁷ CA *rollo*, pp. 31-43.

²⁸ Id. at 43.

6, 1998. Fernando and Urbano's testimonies were riddled with inconsistencies. The RTC accorded more credence to the averments of the prosecution witnesses, who, without any ill motives to testify against the petitioner, positively, categorically and consistently pointed at the latter as the perpetrator of the crime. Besides, medical records show that Benigno sustained a wound in his neck and his scar was visible when he testified during the trial.

The RTC awarded ₱10,000.00 as actual damages to Benigno for the medical expenses he incurred despite the prosecution's failure to offer receipts as evidence. The petitioner was likewise ordered to pay ₱100,000.00 as consequential damages, but the RTC did not explicitly lay down the basis for the award.

The petitioner then filed an appeal²⁹ before the CA primarily anchored on the claim that the prosecution failed to prove by clear and convincing evidence the existence of intent to kill which accompanied the single hacking blow made on Benigno's neck. The petitioner argued that the hacking was merely accidental especially since he had no motive whatsoever which could have impelled him to hurt Benigno, and that the infliction of merely one wound negates intent to kill.

The CA Ruling

On October 26, 2010, the CA rendered the herein assailed Decision³⁰ affirming the petitioner's conviction for the crime of frustrated homicide ratiocinating that:

Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; **(c) the nature and number of wounds inflicted on the victim**; (d) the manner the crime was committed; and (e) the words uttered by the offender at the time the injuries are inflicted by him on the victim.

Here, the intent to kill was sufficiently proven by the Prosecution. The [petitioner] attacked [Benigno] with deadly weapons, two scythes. [The petitioner's] blow was directed to the neck of Benigno. The attack on the unarmed and unsuspecting Benigno was swift and sudden. The latter had no means, and no time, to defend himself.

Dr. Roberto Ardiente, Jr., who attended and issued the Medical Certificate, testified that Benigno suffered from a hack wound on the left neck, and an incised wound on the left hand palm. He said that the wounds might have been caused by a sharp, pointed and sharp-edged instrument, and may have resulted to death without proper medical

²⁹ Id. at 19-30.

³⁰ Id. at 74-82.

attendance. Benigno was hospitalized for about a month because of the injuries. The location of the wound (on the neck) shows the nature and seriousness of the wound suffered by Benigno. It would have caused his death, had it not been for the timely intervention of medical science.³¹ (Citations omitted and emphasis supplied)

However, the CA modified the sentence to “imprisonment of six (6) months and one (1) day to six (6) years of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period, as maximum.”³² The CA explained that:

Article 249 of the *Revised Penal Code* provides that the penalty for the crime of consummated homicide is *reclusion temporal*, or twelve (12) years and one (1) day to twenty (20) years. Under Article 50 of the same Code, the penalty for a frustrated crime is one degree lower than that prescribed by law. Thus, frustrated homicide is punishable by *prision mayor*, or six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, absent any mitigating or aggravating circumstances, the maximum of the indeterminate penalty should be taken from the medium period of *prision mayor*. To determine the minimum of the indeterminate penalty, *prision mayor* should be reduced by one degree, which is *prision correccional*, with a range of six (6) months and one (1) day to six (6) years. The minimum of the indeterminate penalty may be taken from the full range of *prision correccional*.³³ (Citation omitted)

The CA also deleted the RTC’s order for the payment of actual and consequential damages as there were no competent proofs to justify the awards. The CA instead ruled that Benigno is entitled to ₱30,000.00 as moral damages and ₱10,000.00 as temperate damages,³⁴ the latter being awarded when some pecuniary loss has been incurred, but the amount cannot be proven with certainty.³⁵

Issue

Hence, the instant Petition for Review on *Certiorari*³⁶ anchored on the issue of whether or not the RTC and the CA erred in rendering judgments which are not in accordance with law and applicable jurisprudence and which if not corrected, will cause grave injustice and irreparable damage to the petitioner.³⁷

³¹ Id. at 79-80.

³² Id. at 81.

³³ Id. at 80.

³⁴ Id. at 81.

³⁵ Id., citing *Premiere Development Bank v. Court of Appeals*, 471 Phil. 704, 719 (2004).

³⁶ *Rollo*, pp. 11-31.

³⁷ Id. at 19.

In support thereof, the petitioner avers that the courts *a quo* failed to appreciate relevant facts, which if considered, would justify either his acquittal or the downgrading of his conviction to less serious physical injuries. The petitioner points out that after the single hacking blow was delivered, he ran after Alejandro and Dionisio leaving Benigno behind. Had there been an intent to kill on his part, the petitioner could have inflicted more wounds since at that time, he had two scythes in his hands. Further, the CA erred in finding that the hacking blow was sudden and unexpected, providing Benigno with no opportunity to defend himself. Benigno saw the petitioner arriving with weapons on hand. Benigno could not have been unaware of the danger facing him, but he knew that the petitioner had no intent to hurt him. Benigno thus approached the petitioner, but in the process, the former was accidentally hit with the latter's scythe.

The petitioner also cites *Pentecostes, Jr. v. People*³⁸ where this Court found the downgrading of a conviction from attempted murder to physical injuries as proper considering that homicidal intent was absent when the accused shot the victim once and did not hit a vital part of the latter's body.³⁹

Further, as per Dr. Ardiente's testimony, no complications resulted from Benigno's hacking wound in the neck and incised wound in the hand. Such being the case, death could not have resulted. The neck wound was not "so extensive because it [did] not involve [a] big blood vessel on its vital structure" while the incised wound in the hand, which only required cleansing and suturing, merely left a slight scarring.⁴⁰ Besides, Benigno was only confined for seventeen (17) days at the hospital and the injuries he sustained were in the nature of less serious ones.

In its Comment,⁴¹ the Office of the Solicitor General (OSG) seeks the dismissal of the instant petition. The OSG stresses that the petitioner raises factual issues, which call for a re-calibration of evidence, hence, outside the ambit of a petition filed under Rule 45 of the Rules of Court.

Moreover, the petitioner's argument that the development of infections or complications on the wounds is a necessary factor to determine the crime committed is specious. The petitioner's intent to kill Benigno can be clearly inferred from the nature of the weapon used, the extent of injuries inflicted and the circumstances of the aggression. Benigno could have died had there been no timely medical assistance rendered to him.

³⁸ G. R. No. 167766, April 7, 2010, 617 SCRA 504.

³⁹ Id. at 516-517.

⁴⁰ *Rollo*, pp. 25-27.

⁴¹ CA *rollo*, pp. 129-150.

If it were the petitioner's wish to merely get Benigno out of the way to be able to chase Alejandro and Dionisio, a kick, fist blow, push, or the use of a less lethal weapon directed against a non-vital part of the body would have been sufficient. However, the petitioner hacked Benigno's neck with an unsterile scythe, leaving behind a big, open and gaping wound.

This Court's Ruling

The instant petition raises factual issues which are beyond the scope of a petition filed under Rule 45 of the Rules of Court.

*Century Iron Works, Inc. and Benito Chua v. Eleto B. Bañas*⁴² is instructive anent what is the subject of review in a petition filed under Rule 45 of the Rules of Court, viz:

A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. It is only in exceptional circumstances that we admit and review questions of fact.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.⁴³ (Citations omitted)

In the case at bar, the challenge is essentially posed against the findings of the courts *a quo* that the petitioner had a homicidal intent when he hacked Benigno's neck with a scythe and that the wounds the latter sustained could have caused his death had there been no prompt medical intervention. These questions are patently factual in nature requiring no less than a re-calibration of the contending parties' evidence.

It is settled that the general rule enunciated in *Century Iron Works, Inc. and Benito Chua* admits of exceptions, among which is, "when the judgment of the CA is premised on a misapprehension of facts or a failure to notice certain relevant facts that would otherwise justify a different conclusion x x x."⁴⁴ However, the factual backdrop and circumstances

⁴² G. R. No. 184116, June 19, 2013.

⁴³ Id.

⁴⁴ *Rollo*, p. 20, citing *Fuentes v. CA*, 335 Phil. 1163, 1168 (1997).

surrounding the instant petition do not add up to qualify the case as falling within the exceptions.

Even if this Court were to be exceptionally liberal and allow a review of factual issues, still, the instant petition is susceptible to denial.

To successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.⁴⁵

In cases of frustrated homicide, the main element is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent. And the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim.⁴⁶

The petitioner now wants to impress upon this Court that he had no motive to attack, much less kill Benigno. The petitioner likewise invokes the doctrine in *Pentecostes, Jr.*⁴⁷ to argue that homicidal intent is absent in a case where the accused shot the victim only once when there was an opportunity to do otherwise. The petitioner belabors his claim that had he intended to kill Benigno, he could have repeatedly hacked him to ensure the latter's death, and not leave right after the blow to chase Alejandro instead.

The analogy is flawed.

In *Pentecostes, Jr.*, the victim was shot only once in the arm, a non vital part of the body. The attending physician certified that the injury

⁴⁵ *People v. Badriago*, G.R. No. 183566, May 8, 2009, 587 SCRA 820, 832, citing *SPOI Nerpio v. People*, 555 Phil. 87, 94 (2007); *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 695.

⁴⁶ *Colinares v. People*, G.R. No. 182748, December 13, 2011, 662 SCRA 266, 275-276, citing *People v. Pagador*, 409 Phil. 338, 351 (2001); *Rivera v. People*, 515 Phil. 824, 832 (2006).

⁴⁷ *Supra* note 38.

would require medical attendance for ten days, but the victim was in fact promptly discharged from the hospital the following day.

In Benigno's case, he sustained an 11-centimeter long hacking wound in the neck and a 4-cm long incised wound in his left hand caused by the unsterile scythe used by the petitioner. Dr. Ardiente testified that "it is possible to have complications [resulting from these] injuries because the wounds [were] extensive and [they were] big and [they were open wounds], so there is a possibility of infection[s] [resulting from these] kind[s] of wounds, and the instrument used [was] not [a] sterile instrument contaminated with other thing[s]." ⁴⁸ No complications developed from Benigno's wounds which could have caused his death, but he was confined in the hospital for a period of 17 days from September 6, 1998 to September 23, 1998.

From the foregoing, this Court concludes and thus agrees with the CA that the use of a scythe against Benigno's neck was determinative of the petitioner's homicidal intent when the hacking blow was delivered. It does not require imagination to figure out that a single hacking blow in the neck with the use of a scythe could be enough to decapitate a person and leave him dead. While no complications actually developed from the gaping wounds in Benigno's neck and left hand, it perplexes logic to conclude that the injuries he sustained were potentially not fatal considering the period of his confinement in the hospital. A mere grazing injury would have necessitated a lesser degree of medical attention.

This Court likewise finds wanting in merit the petitioner's claim that an intent to kill is negated by the fact that he pursued Alejandro instead and refrained from further hacking Benigno. What could have been a fatal blow was already delivered and there was no more desistance to speak of. Benigno did not die from the hacking incident by reason of a timely medical intervention provided to him, which is a cause independent of the petitioner's will.

All told, this Court finds no reversible error committed by the CA in affirming the RTC's conviction of the petitioner of the crime charged.

**The Court modifies the award
of damages.**

As to the civil liability of the petitioner, the CA was correct in deleting the payment of the consequential damages awarded by the trial court in the absence of proof thereof. Where the amount of actual damages cannot be

⁴⁸ TSN, May 12, 2003, p. 9.

determined because of the absence of supporting receipts but entitlement is shown by the facts of the case, temperate damages may be awarded.⁴⁹ In the instant case, Benigno certainly suffered injuries, was actually hospitalized and underwent medical treatment. Considering the nature of his injuries, it is prudent to award temperate damages in the amount of ₱25,000.00, in lieu of actual damages.⁵⁰

Furthermore, we find that Benigno is entitled to moral damages in the amount of ₱25,000.00.⁵¹ There is sufficient basis to award moral damages as ordinary human experience and common sense dictate that such wounds inflicted on Benigno would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury.⁵²

WHEREFORE, the instant petition is **DENIED**. The Decision and Resolution, dated October 26, 2010 and August 11, 2011, respectively, of the Court of Appeals in CA-G.R. CR No. 00336-MIN are **AFFIRMED with MODIFICATIONS**. The petitioner, Fe Abella y Perpetua is **ORDERED TO PAY** the offended party moral damages in the amount of ₱25,000.00 and temperate damages in the amount of ₱25,000.00. Further, the monetary awards for damages shall be subject to interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.⁵³

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

⁴⁹ *Esqueda v. People*, G.R. No. 170222, June 18, 2009, 589 SCRA 489, 512-513; Article 2224 of the CIVIL CODE OF THE PHILIPPINES provides: "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 can not, from the nature of the case, be proved with certainty."

⁵⁰ *Esqueda v. People*, *id.*; *Serrano v. People*, G.R. No. 175023, July 5, 2010, 623 SCRA 322, 341.

⁵¹ *People of the Philippines v. Rodel Lamuza y Bagaoisan*, G.R. No. 188562, August 17, 2011; *People of the Philippines v. Jesus Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436.

⁵² *Esqueda v. People*, *supra* note 49, at 513.

⁵³ Please see *People of the Philippines v. Jonathan "Uto" Veloso y Rama*, G.R. No. 188849, February 13, 2013.

WE CONCUR:



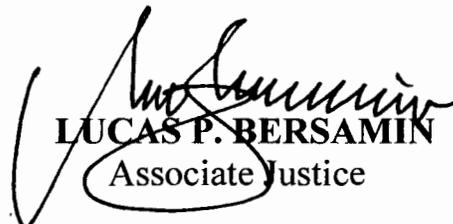
MARIA LOURDES P. A. SERENO

Chief Justice

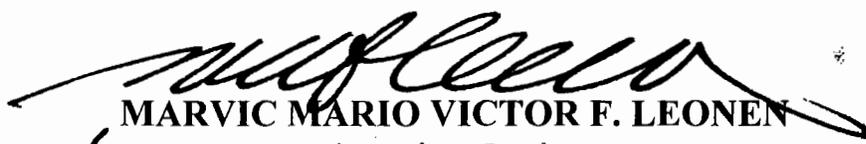
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



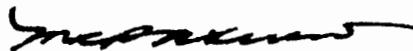
LUCAS P. BERSAMIN
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

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



MARIA LOURDES P. A. SERENO

Chief Justice