



**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G. R. No. 191723**

Present:

- versus -

SERENO, *CJ.*,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, *JJ.*

**ROLANDO LAS PIÑAS,**  
**JIMMY DELIZO AND**  
**MERWIN LAS PIÑAS,**  
Accused-Appellants.

Promulgated:

**JUL 23 2014**

X ----- X

**DECISION**

**LEONARDO-DE CASTRO, J.:**

This ordinary appeal seeks to reverse the consolidated December 22, 2009 Decision<sup>1</sup> of the Court of Appeals in CA-G.R. CR.-H.C. No. 00401 and CA-G.R. CR No. 28975, which affirmed the July 21, 2004 Decision of the Regional Trial Court (RTC), Branch 53, Sorsogon City, in Criminal Case No. 2001-5445,<sup>2</sup> and the Decision dated May 28, 2004 of the RTC, Branch 52, Sorsogon City, in Criminal Case Nos. 2001-5446, 2001-5447 and 2001-5448.<sup>3</sup>

**The Facts of the Case**

In an Information dated July 25, 2001 docketed as Criminal Case No. 2001-5445, the public prosecutor charged Renato, Rolando, Armando, Gilberto, Merwin, Freddie, Salvador, all surnamed Las Piñas, and Jimmy Delizo with frustrated murder committed as follows:

<sup>1</sup> *Rollo*, pp. 3-14; penned by Associate Justice Mario L. Guariña III with Associate Justices Arturo G. Tayag and Romeo F. Barza, concurring.

<sup>2</sup> Records (Crim. Case No. 2001-5445), pp. 258-264; penned by Judge Boanerges C. Candolea.

<sup>3</sup> Id. (Crim. Case No. 2001-5446), pp. 201-208; penned by Judge Honesto A. Villamor.

*mtm*

That on or about 2:00 x x x in the morning of May 2, 2001 at the fishpen in the Municipality of Castilla, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, th[e] above-named accused with treachery, evident premeditation and abuse of superior strength, armed with guns, conspiring[,] confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and shoot one ROGER ARINGO thereby inflicting upon the latter mortal injuries, to wit:

- = Gunshot wound face right side[;]
- = Gunshot wound chest right side, contusion[;]
- = Gunshot wound buttock left[.]

which injuries could have caused the death of said Roger Aringo, thus accused performing all the acts of execution which would have produced the crime of Murder, as a consequence, but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, because of the timely and able medical assistance rendered to said Roger Aringo, which prevented his death, to his damage and prejudice.<sup>4</sup>

In three other Informations all dated July 25, 2001, docketed as Criminal Case Nos. 2001-5446, 2001-5447 and 2001-5448, the public prosecutor charged the same persons above-enumerated with three counts of murder, to wit:

Criminal Case No. 2001-5446

That on or about 2:00 x x x in the morning of May 2, 2001, at the fishpen in the Municipality of Castilla, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery, evident premeditation and abuse of superior strength, armed with guns, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and shoot one EDGARDO ARINGO, thereby inflicting upon the latter mortal injuries on the different parts of his body which caused his death, to the damage and prejudice of his legal heirs.<sup>5</sup>

Criminal Case No. 2001-5447

That on or about 2:00 x x x in the morning of May 2, 2001, at the fishpen in the Municipality of Castilla, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery, evident premeditation and abuse of superior strength, armed with guns, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and shoot one BENJAMIN ARINGO, thereby inflicting upon the latter mortal injury which caused his death, to the damage and prejudice of his legal heirs.<sup>6</sup>

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<sup>4</sup> Id. (Crim. Case No. 2001-5445), p. 1.

<sup>5</sup> Id. (Crim. Case No. 2001-5446), p. 1.

<sup>6</sup> Id. (Crim. Case No. 2001-5447), p. 1.

Criminal Case No. 2001-5448

That on or about 2:00 x x x in the morning of May 2, 2001, at the fishpen in the Municipality of Castilla, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery, evident premeditation and abuse of superior strength, armed with guns, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and shoot one CARLITO LASALA, thereby inflicting upon the latter mortal injury which caused his death, to the damage and prejudice of his legal heirs.<sup>7</sup>

Of the eight accused, only Rolando Las Piñas, Merwin Las Piñas, and Jimmy Delizo were apprehended<sup>8</sup> and held for trial. The rest remained at large.<sup>9</sup>

Though the charges of Frustrated Murder and three counts of Murder emanated from the same set of facts, they were tried separately. Criminal Case No. 2001-5445 for Frustrated Murder was raffled to RTC-Br. 53, while Criminal Case Nos. 2001-5446, 2001-5447 and 2001-5448 (all for Murder) were raffled to RTC-Br. 52, both in Sorsogon, Sorsogon.

Upon their arraignment, the three accused-appellants pleaded not guilty to the crimes charged.<sup>10</sup>

In Criminal Case No. 2001-5445, to prove the charge of Frustrated Murder, the prosecution presented the victim, Roger Aringo (Roger), Dr. Antonio Lopez (attending physician), Rowan Estrellado (National Bureau of Investigation [NBI] special investigator)<sup>11</sup> and Atty. Tomas C. Enrile (a lawyer and executive officer of the Naga City NBI).<sup>12</sup>

In Criminal Case Nos. 2001-5446, 2001-5447 and 2001-5448, to establish the indictment for three counts of Murder, the prosecution again presented Roger, Susan Aringo (Edgardo Aringo's wife), Gliceria Lasala (Carlito Lasala's wife), Catalino Aringo (father of the Aringo brothers), and Dr. Salve Sapinoso (municipal health officer of Castilla Rural Health Office).<sup>13</sup>

From the testimony of Roger, the prosecution established that on the night of May 1, 2001, he and his brothers, Edgardo and Benjamin, and their cousin, Carlito Lasala, were at Edgardo's fishpen located within the coastal waters of the town of Castilla, Sorsogon. The fishpen was supported by four

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<sup>7</sup> Id. (Crim. Case No. 2001-5448), p. 1.

<sup>8</sup> Id. (Crim. Case No. 2001-5445), p. 44, 1st Indorsement dated May 28, 2001.

<sup>9</sup> Id. at 67, Joint Resolution dated June 26, 2001, penned by Judge Pierre E. Hate.

<sup>10</sup> Id. at 84 and 105.

<sup>11</sup> Id. at 258.

<sup>12</sup> TSN, September 23, 2002, pp. 3-9.

<sup>13</sup> Records (Crim. Case No. 2001-5446 to 5448), p. 202.

wooden posts arranged in a square. On top of the posts was a 9 to 10-meter bamboo platform about four to five meters above the sea. While on the platform, they lighted three pressure lamps in the middle of the fishpen to attract the fish. After checking the fishnet and eating supper, they took turns in resting and watching.<sup>14</sup>

At around 2:00 a.m. of May 2, 2001, while Roger was on guard duty and the rest were sleeping, the eight above-named accused arrived on board a “*sibid-sibid*,”<sup>15</sup> a long wooden boat mobilized by paddles. The accused then climbed up the platform and opened fire at the Aringo brothers and Carlito.<sup>16</sup>

Specifically, Roger narrated that he saw accused Armando and Rolando shoot Edgardo and Benjamin, while he witnessed Jimmy, Merwin and Freddie shoot Carlito. He likewise witnessed Armando slash the throat of Edgardo after the latter was incapacitated, and throw his (Edgardo) body into the sea. As for himself, Roger testified that his assailants were accused Renato, Salvador and Gilberto; and that he sustained gunshot wounds on his right cheek, left chest, and left buttock. The carnage finally ended when the accused thought that the three Aringo brothers and Carlito were all dead; and then they boarded their boat and left towards Sorsogon. Roger recognized all the accused because they used to be neighbors at Sitio Dulungan, Brgy. Libtong, Castilla, Sorsogon.<sup>17</sup>

Of the four, only Roger remained alive by daybreak and was eventually rescued by a passing fisherman. He was brought to the Sorsogon Provincial Hospital for treatment.<sup>18</sup> Initially, only the bodies of Benjamin and Carlito were recovered from the platform. But four days later, Edgardo’s body was found floating in the water.<sup>19</sup>

Dr. Antonio Lopez (Dr. Lopez) testified and presented a medical certificate on Roger’s condition. He explained that Roger suffered gunshot wounds on the right side of his face, his left chest, and in his left buttock; that he lost his eyesight in the left eye; and that his wounds were not immediately fatal but could have led to his death if neglected. Dr. Lopez further testified that he could only remove the bullet lodged in Roger’s chest, but not the one stuck behind his left eye and left buttock.<sup>20</sup>

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<sup>14</sup> TSN, April 2, 2002, pp. 18-19.

<sup>15</sup> TSN, May 6, 2002, p. 21.

<sup>16</sup> TSN, April 2, 2002, p. 19.

<sup>17</sup> TSN, November 26, 2001, pp. 16-27.

<sup>18</sup> TSN, April 2, 2002, p. 26.

<sup>19</sup> TSN, December 19, 2001, p. 4.

<sup>20</sup> TSN, April 2, 2002, pp. 6-11.

Dr. Salve Sapinoso testified that she conducted the post mortem examination on the remains of Edgardo, Benjamin and Carlito, and issued their death certificates.<sup>21</sup>

Rowan Estrellado, who was the assigned investigator of the NBI, testified that he took the sworn statements of Roger, Susan Aringo, Catalino Aringo, and Gleceria Warde Lasala;<sup>22</sup> while it was Atty. Tomas C. Enrile who administered the oaths of said witnesses.<sup>23</sup>

The wives of the deceased and the father of the Aringo brothers testified on the circumstances surrounding the incident and its discovery, how they felt on the loss of their loved ones, their family background, and the burial and hospitalization expenses.<sup>24</sup>

On the other hand, the defense presented the same set of witnesses for the frustrated murder case and consolidated murder cases,<sup>25</sup> *i.e.*, Gilberto Jesalva (Gilberto), Rodel Lato (Rodel), Lito Bojorque (Lito), Serafin Deocareza (Serafin), Leonora Delizo (Leonora), Rolando Las Piñas (Rolando), Merwin Las Piñas (Merwin), Blandino Diaz (Blandino), and Jimmy Delizo (Jimmy).

Gilberto, the chief *barangay tanod* of Barangay Bitan-o, Sorsogon City, testified that he and accused Rolando were with the other *barangay tanod* doing patrol duty on May 1, 2001. At around 11:45 p.m., Rolando asked permission to leave to unload the truck containing cargoes of shellfish locally known as “*badoy*” that arrived from Naga City. At about 12:45 a.m., they came upon Rolando still unloading the cargoes with the other workers.<sup>26</sup>

Blandino, the *barangay* captain, testified that at 11:00 p.m. on May 1, 2001, he saw the accused Rolando in the *barangay* hall and then left after 30 minutes. He later learned that he was unloading cargoes from a delivery truck.<sup>27</sup>

Rodel testified that he was in the business of buying and selling cooked “*badoy*.” He stated that at around midnight to 1:00 a.m. on May 2, 2001, there was a delivery of “*badoy*” from Naga City. When the delivery truck arrived at his house in Barangay Bitan-o, his supervisor and all around caretaker Rolando woke him. In turn, Rodel woke up Merwin, who was the designated cook. He said that Rolando and Merwin never left the premises

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<sup>21</sup> TSN, April 18, 2002, pp. 2-10.

<sup>22</sup> TSN, December 5, 2002, pp. 3-8.

<sup>23</sup> TSN, September 23, 2002, pp. 5-7.

<sup>24</sup> TSN, December 19, 2001, pp. 2-14; TSN, January 22, 2002, pp. 2-9; TSN, June 11, 2002, pp. 2-15.

<sup>25</sup> The defense in Crim. Case No. 2001-5445 (frustrated murder) adopted the evidence presented by the defense in Crim. Case Nos. 2001-5446 to 5448 pending before RTC-Br. 52.

<sup>26</sup> TSN, August 27, 2002, pp. 3-10.

<sup>27</sup> TSN, March 26, 2003, pp. 2-6.

until they were arrested.<sup>28</sup> Lito, another cook, corroborated Rodel's testimony on Rolando and Merwin's whereabouts in the early morning of May 2, 2001.<sup>29</sup>

Serafin, who testified for accused Jimmy, stated that he, Jimmy, and their companions went fishing in the morning of May 1, 2001 until 4:00 p.m. After getting their respective shares, they decided to have a drinking session in his house at 7:00 p.m. and ended at midnight of May 1, 2001. According to him, Jimmy was so drunk that he needed to be escorted home.<sup>30</sup> Jimmy's wife, Leonora corroborated Serafin's testimony and the two of them brought Jimmy home.<sup>31</sup>

When it was their turn to testify, accused Rolando, Merwin and Jimmy corroborated the testimonies of the defense witnesses.

***RTC-Branch 53 Decision in Criminal Case No.  
2001-5445 for Frustrated Murder***

In its July 21, 2004 Decision, RTC-Branch 53 convicted the accused-appellants of the crime charged. The *fallo* of said decision provides:

Premises considered, the court believes that the prosecution has proven beyond reasonable doubt that the offense charged of Frustrated Murder was committed and that the accused Rolando Las Piñas, Merwin Las Piñas and Jimmy Delizo are guilt[y] thereof.

For the pain that Roger Aringo suffered by reason of the assault on him and the injuries he sustained he is entitled to moral damage in the amount of ₱25,000.00. No credible evidence was adduced for the medical expenses.

The imposable penalty for Frustrated Murder is Reclusion Temporal. Applying the Indeterminate Sentence Law, the court hereby imposes upon the said accused the penalty of imprisonment for the period from eight (8) years and one (1) day of Prison Mayor as minimum to twelve (12) years, five (5) months and eleven (11) days of Reclusion Temporal as maximum and orders them to pay jointly and severally Roger Aringo ₱25,000.00 as moral damage[s] and to pay the cost of suit.

The period of their detention shall be credited in their favor.

The case against the other accused is ordered archived. Issue a standing warrant for their arrest.<sup>32</sup>

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<sup>28</sup> TSN, October 29, 2002, pp. 2-9.

<sup>29</sup> TSN, December 2, 2002, pp. 2-8.

<sup>30</sup> TSN, January 13, 2003, pp. 3-9.

<sup>31</sup> Id. at 27-32.

<sup>32</sup> Records (Crim. Case No. 2001-5445), p. 264.

The RTC found Roger's testimony to be credible, spontaneous, and straightforward having stood his ground despite the lengthy and intensive cross-examination.<sup>33</sup>

In contrast, the RTC did not believe the accused-appellants' defense of alibi because it was not established with clear and convincing evidence that it was physically impossible for them to be at the fishpen when the offense was committed especially so that the coastal Barangay Bitan-o was along the same coastline as Barangay Poblacion and Bagalaya of Castilla; and the fishpen involved in the incident was off-shore of these *barangays*. In fact, it was established that from Barangay Bitan-o to the two other *barangays*, one can travel by boat in one hour or less.<sup>34</sup>

In addition, the RTC held that the defense of alibi becomes unworthy of merit where it is established mainly by the accused himself and his relatives and not by credible persons. Here, accused-appellants Rolando and Merwin's alibis were supported by each other and their friends, while accused-appellant Jimmy's alibi was supported by his wife and his drinking buddy.<sup>35</sup>

Of the three qualifying circumstances alleged in all the Informations, *i.e.*, treachery, evident premeditation, and abuse of superior strength, the RTC held that only the circumstance of treachery was proved, that is, the means of execution gave the victims no opportunity to defend themselves, and the accused deliberately and consciously adopted said means.

The RTC also concluded that conspiracy attended the commission of the crime – all the accused arrived together, all were armed with short firearms, and all participated in the shooting; and after the attack, they all left together – the overt acts of the eight accused showed a common design and purpose to kill the victims in this case. Thus, the act of one was the act of all.<sup>36</sup>

***RTC-Branch 52 Decision in Criminal Case Nos.  
2001-5446, 2001-5447 and 2001-5448  
for Murder***

In a joint Decision dated May 28, 2004, RTC-Branch 52 found the accused-appellants guilty beyond reasonable doubt of the crime of murder committed in conspiracy with each other.

Similar to the finding of RTC-Branch 53, RTC-Branch 52 held that Roger's testimony as the lone eyewitness was credible, and his positive identification of the accused-appellants prevailed over the latter's defense of

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<sup>33</sup> Id. at 262.

<sup>34</sup> Id. at 262-263.

<sup>35</sup> Id. at 263.

<sup>36</sup> Id. at 264.

alibi. The RTC also determined that the accused-appellants failed to prove the physical impossibility to be at the place and time of the incident.<sup>37</sup>

The dispositive portion of the joint Decision of RTC-Branch 52 reads:

WHEREFORE, premises considered, the Court finds accused Rolando Las Piñas, Merwin Las Piñas and Jimmy Delizo each guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, with the qualifying circumstance of treachery in Criminal Case No. 2001-5446, Criminal Case No. 2001-5447 and in Criminal Case No. 2001-5448 and the Court hereby sentences each of them to an imprisonment of Reclusion Perpetua for Crim. Case No. 2001-5446, for Crim. Case No. [2001-]5447 and for Crim. Case No. 2001-5448 and to pay the heirs of Edgardo Aringo, Benjamin Aringo and Carlito Lasala as civil indemnity, at ₱50,000.00 each, jointly and severally the total amount of ONE HUNDRED FIFTY [THOUSAND] (₱150,000.00) Pesos, also the amount of Ninety Thousand (₱90,000.00) Pesos, at ₱30,000.00 each victim, as moral damages without subsidiary imprisonment in case of insolvency and to pay the costs.

The accused being detained, their detention shall be credited in full in the service of their sentence.

The case against accused Renato Las Piñas, Armando Las Piñas, Gilberto Las Piñas, Freddie Las Piñas, and Salvador Las Piñas are hereby ordered archived[.] Let issue an alias warrant of arrest of them and the same be coursed thru the Central, Regional, Provincial and Local PNP Command for service.<sup>38</sup>

The accused-appellants appealed the foregoing decisions to the Court of Appeals. They prayed for their acquittal in the Murder cases; and either a similar acquittal in the Frustrated Murder case, or a downgrading of the charge to Attempted Murder.<sup>39</sup>

### *The Court of Appeals Decision*

In its consolidated<sup>40</sup> December 22, 2009 Decision, the Court of Appeals affirmed the decisions of RTC-Br. 52 and Br. 53, viz:

IN VIEW OF THE FOREGOING, the decisions appealed from are affirmed.<sup>41</sup>

The Court of Appeals did not disturb both trial courts' rulings since the convictions of the accused-appellants for frustrated murder and three

<sup>37</sup> Id. (Crim. Case No. 2001-5446), pp. 205-206.

<sup>38</sup> Id. at 208.

<sup>39</sup> CA *rollo* (CA-G.R. CR.-H.C. No. 00401), p. 64 and (CA-G.R. CR No. 28975), p. 39.

<sup>40</sup> The appeal in the frustrated murder case was docketed as CA-G.R. CR No. 28975; while that in the murder case was docketed as CA-G.R. CR.-H.C. No. 00401. But upon motion of the People of the Philippines, through the Office of the Solicitor General (OSG), the twin appeals were consolidated.

<sup>41</sup> *Rollo*, p. 13.



counts of murder were based on the narration of a credible eyewitness, which was independently assessed by the two trial courts.<sup>42</sup>

Particularly, in sustaining that the acts committed against Roger amounted to frustrated murder, the Court of Appeals held that downgrading the charge to attempted murder instead was not supported by expert medical opinion. On the contrary, the attending physician explained that the injuries sustained by Roger would have led to his death if his injuries were neglected or medically unattended.

And in an attempt to discredit Roger's eyewitness account pertaining to the murder of Edgardo, Benjamin and Carlito, the accused-appellants alleged that he (Roger) did not really see what transpired as his left eye was blinded when the bullet that entered his right cheek eventually ended behind his left eye. But the Court of Appeals discredited said argument on account of the testimony of Dr. Lopez, Roger's attending physician, that Roger's right eye remained visually unimpaired.<sup>43</sup>

This case is now before the Court in view of the Notice of Appeal interposed by the accused-appellants from the consolidated Decision of the Court of Appeals.

### *The Court's Decision*

The parties waived the filing of supplemental briefs and adopted their Appeal Briefs earlier filed with the Court of Appeals.

The accused-appellants pray for the reversal of the judgment of conviction in the criminal cases on the following assignment of errors: (i) that the trial court gravely erred in finding the accused-appellants guilty beyond reasonable doubt of the crime of murder despite the insufficiency of evidence for the prosecution; (ii) granting *arguendo*, that the accused-appellants committed an offense, they can only be held liable for attempted murder; and (iii) that the trial court gravely erred in not giving credence to the accused-appellants' defense of alibi.<sup>44</sup>

In essence, the accused-appellants attack the consolidated disposition of the Court of Appeals affirming their conviction for frustrated murder and three counts of murder on the ground that the prosecution failed to discharge its function of proving their guilt beyond reasonable doubt. They make an issue out of Roger's delay in reporting the crimes to the authorities, and his supposed physical inability to observe the entire commission of the crimes. In a nutshell, they raise reasonable doubt in view of the issues identified by the accused-appellants that hinge on the credibility of Roger as an eyewitness.

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<sup>42</sup> Id. at 10.

<sup>43</sup> Id. at 11.

<sup>44</sup> CA *rollo* (CA-G.R. CR No. 28975), p. 27 and (CA-G.R. CR.-H.C. No. 00401), p. 46.

The appeal fails.

After a review of the records, the Court sustains the conviction of the accused-appellants for Frustrated Murder and three counts of Murder.

The age-old rule is that the task of assigning values to the testimonies of witnesses on the witness stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is, thus, no surprise that findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify.<sup>45</sup>

With respect to this case, the Court nevertheless carefully scrutinized the records but found no indication that the trial and the appellate courts overlooked or failed to appreciate facts that, if considered, would change the outcome of this case. The two trial courts and the Court of Appeals did not err in giving credence to the testimonies of the prosecution witnesses, particularly of Roger who was an eyewitness to the crime and was himself a victim of the shooting.

Roger's testimony does not suffer from any serious and material inconsistency that could possibly detract from his credibility. The accused-appellants were directly identified by Roger as three of the eight perpetrators of the crimes charged. Roger saw the shooting of Edgardo, Benjamin and Carlito, and was categorical and frank in his testimony. His testimony was the same with respect to his own experience at the hands of the other accused. From his direct and straightforward testimony, there is no doubt as to the identity of the culprits, viz:

[Direct Examination]

Q: By 2:00 o'clock in the early morning of May 2, 2001, do you recall of any unusual incident that took place?

A: Yes, sir.

Q: What is that incident?

A: At around 2:00 o'clock persons arrived in our place.

Q: What did you do if you did anything?

A: We did nothing.

Q: And did these people do if they did anything?

A: Upon arrival in our place they immediately fired their guns aiming at us.

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<sup>45</sup> *People v. Malolot*, 572 Phil. 444, 456 (2008).

- Q: And what happened afterwards?  
A: There were several rounds of gunfire and some of our companions fell dead.
- Q: By the way, in what particular part of that fishpen were you staying on that particular date and time?  
A: At the upper portion of the fishpen.
- Q: Who was with you?  
A: I was with Eduardo<sup>46</sup> Aringo.
- Q: What happened to this [Edgardo] Aringo?  
A: He was shot.
- Q: Do you know who shot this [Edgardo] Aringo?  
A: Yes, sir.
- Q: Will you be able to tell the Court?  
A: [They] were Armando Las Piñas and Rolando who shot him.
- Q: Do you know what weapon was used?  
A: It was a caliber .38.
- Q: After this [Edgardo] Aringo was shot, what happened to him, if you know?  
A: After he was shot he turned his body on his side.
- Q: What happened to him after that?  
A: After he was shot he felt his body.
- Q: And what happened afterwards?  
A: When he was already dead Rolando kept on holding him
- Q: Who was this Rolando?

## INTERPRETER:

Witness pointing to a man in court wearing white T-shirt who identified himself as Rolando Las Piñas.

- Q: What did this Rolando Las Piñas do to Edgardo Aringo if Rolando did anything to him?  
A: The accused was holding [Edgardo] Aringo on his body.
- Q: You made mentioned (sic) of another companion as Benjamin Aringo, what happened to this Benjamin Aringo?  
A: He was shot on his head.
- Q: Do you know who shot Benjamin Aringo?  
A: Yes, sir.
- Q: Could you be able to tell the Court?  
A: It was Jimmy Delizo, Merwin Las Piñas and Freddie Las Piñas.

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<sup>46</sup>

The real name of the victim is Edgardo Aringo not Eduardo per Postmortem Examination Report and Death Certificate (Records [Crim. Case Nos. 2001-5446], pp. 10-11).

Q: Do you know what weapon was used?

A: Yes, sir.

Q: What is that?

A: It was a caliber [.]38.

Q: What is your distance to Benjamin Aringo at that time?

A: Three (3) arms length.

Q: You also made mentioned (sic) another companion as Carlito Lasala, what happened to Carlito Lasala?

A: He was also shot.

Q: Who shot Carlito Lasala?

A: Merwin Las Piñas, Freddie Las Piñas and Jimmy Delizo.

Q: What weapon was used?

A: It was also a caliber [.]38.

Q: When your companions were shot, where were the assailants located?

A: On my right portion. They were positioned at the right portion.

Q: Were they on the water or at the palicede?

ATTY. OLIVAR:

Leading, Your Honor.

WITNESS:

They were positioned at the upper portion of the palicede.

ATTY. LAGUNA:

Q: What about you, what happened to you?

A: I was also shot/fired upon.

Q: Do you recall who shot you?

A: Yes, sir.

Q: Could you tell the court?

A: Renato Las Piñas, Salvador Las Piñas and Gilberto Las Piñas.

Q: And in what part of your body were you hit?

INTERPRETER:

Witness pointing to his right cheek; witness pointing below the left side of his nipple and also at the buttocks.

ATTY. LAGUNA:

Q: After you were shot, what happened afterwards, if you can still recall?

A: After I was shot they left me, and they went to my companion [Edgardo] Aringo and held him.

Q: After they held him, what happened?

A: After they held him he was thrown into the sea.

Q: After this person you mentioned was thrown to the sea, what happened if there was anything else that happened?

A: After Edgardo Aringo was thrown into the sea, they left already.<sup>47</sup>

[Cross Examination]

Q: What was your reaction when you saw these persons climbing the pole going to the top of the fishpen?

A: We were not able to do anything.

Q: Where were the assailants when you said they shot you? Were they in the climbing position; were they still in the boat or were they in the fishpen already?

A: Some of them were on the boat, some were climbing and they were firing shots while climbing.

Q: So no one was on top of the fishpen and firing shots?

A: There [were] already on top of the fishpen.

Q: Can you tell us who were those on the boat firing?

A: Merwin Las Piñas and some of his brothers were already at the upper portion of the fishpen.

Q: Who were the ones who first reached the top of the fishpen?

A: Renato Las Piñas, Armando Las Piñas, Rolando Las Piñas, Freddie Las Piñas, Salvador Las Piñas, Gilberto Las Piñas and Jimmy Delizo.

Q: The question of the court was that – you said a while ago that when they arrived some were climbing, some were still left on the boat and some have reached already the top of the fishpen. The question of the court is that when you saw these actions of the accused whom did you see were the first ones who reached the top of the fishpen?

A: The persons that I have named.

Q: You name the first ones?

A: Armando Las Piñas, Renato Las Piñas, Rolando Las Piñas, Salvador Las Piñas, Freddie Las Piñas, Gilberto Las Piñas and Jimmy Delizo. Yes, sir. They were quick (“listo”) in their climbing on the fishpen.

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<sup>47</sup>

TSN, April 2, 2002, pp. 19-23.

Q: Where were they when they started firing their guns, were they already on top of the fishpen; while they were climbing?

A: Some were firing while already on the top of the fishpen and some were firing while still climbing.

Q: And who were those who were firing who were already on top of the fishpen?

A: Renato Las Piñas, Armando Las Piñas, Rolando Las Piñas, Gilberto Las Piñas, Salvador Las Piñas and Jimmy Delizo.

Q: And who were those firing while still climbing?

A: Merwin Las Piñas who was firing while still climbing.<sup>48</sup>

[Direct Examination in Criminal Case Nos. 2001-5446 to 5448]

Q: Now, after [Edgardo] was shot, what happened to him, if there was anything that happened?

A: After [Edgardo] was shot, Rolando Las Piñas helped him while Armando slashed the throat of [Edgardo] and then he was thrown overboard.

Q: But would you be able to describe to this court how the throat of this [Edgardo] was slashed?

A: While [Edgardo] was lying on his back he was held by Rolando this way (witness stood up and placed his two hands downward as if pinning down something) while Armando slashed his ([Edgardo]) throat.

Q: Did you see the weapon used in slashing the throat of [Edgardo]?

A: Yes, sir.

Q: What was that?

A: A knife.

Q: Would you be able to tell this court how long is that knife?

A: About this size (witness demonstrated by placing his hands apart from each other with the length of about 1 and ½ feet.)

Q: Now, what happened next to [Edgardo] after his throat was slashed?

A: He was already dead, but still his throat was slashed and then after that, he was thrown to the sea.<sup>49</sup>

The three Informations docketed as Criminal Case Nos. 2001-5446, 2001-5447 and 2001-5448 charged the accused-appellants with the crime of Murder, for shooting and killing Edgardo, Benjamin and Carlito, which circumstance was attended by treachery defined and punished by Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, *viz*:

Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

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<sup>48</sup> Id. at 45-47.

<sup>49</sup> TSN, November 26, 2001, pp. 19-20.

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity[.]

To successfully prosecute the crime of murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide.<sup>50</sup>

In this case, the prosecution was able to clearly establish that (1) Edgardo, Benjamin and Carlito were shot and killed; (2) the accused-appellants were three of the eight perpetrators who killed them; (3) Edgardo, Benjamin and Carlito's killing was attended by the qualifying circumstance of treachery as testified to by prosecution eyewitness, Roger; and (4) the killing of Edgardo, Benjamin and Carlito were neither parricide nor infanticide.

Paragraph 16, Article 14 of the Revised Penal Code defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.<sup>51</sup> In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.<sup>52</sup> These elements are extant in the facts of this case and as testified to by Roger above-quoted.

To emphasize, the victims, Roger, Edgardo, Benjamin and Carlito, were caught off guard when the accused, including the accused-appellants, in the dead of night, arrived at the fishpen and climbed the same, and without warning, opened fire at the sleeping/resting victims to disable them. Upon disabling the victims, the accused and the accused-appellants continued shooting at the victims – accused Armando and accused-appellant Rolando shot Edgardo and Carlito; accused-appellants Jimmy and Merwin and accused Freddie shot Benjamin; and accused Renato, Salvador and Gilberto shot Roger. Accused Armando even slashed Edgardo's throat after

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<sup>50</sup> *People v. Gabrino*, G.R. No. 189981, March 9, 2011, 645 SCRA 187, 196; citing *People v. De la Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746.

<sup>51</sup> *People v. Lagman*, G.R. No. 197807, April 16, 2012, 669 SCRA 512, 524; citing *People v. Tomas, Sr.*, G.R. No. 192251, February 16, 2011, 643 SCRA 530, 553; *People v. Rosas*, 591 Phil. 111, 126 (2008).

<sup>52</sup> *People v. Lagman*, id.

shooting him and threw his body out to the sea<sup>53</sup> – the stealth, swiftness and methodical manner by which the attack was carried out gave the four victims no chance at all to evade the bullets and defend themselves from the unexpected onslaught. Thus, there is no denying that the collective acts of the accused and the accused-appellants reek of treachery.

### Conspiracy

Article 8 of the Revised Penal Code states that “conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.”<sup>54</sup> It does not need to be proven by direct evidence and may be inferred from the conduct – before, during, and after the commission of the crime – indicative of a joint purpose, concerted action, and concurrence of sentiments as in conspiracy. In conspiracy, the act of one is the act of all.<sup>55</sup>

That there was conspiracy among the accused and accused-appellants is a matter not in issue. Both trial courts and the Court of Appeals deduced the conspiracy among the accused/accused-appellants from the mode and manner in which they perpetrated the killings. This Court is satisfied that their deduction was warranted. Proof of the actual agreement to commit the crime need not be direct because conspiracy may be implied or inferred from their conduct – before, during, and after the commission of the crime – indicative of a joint purpose, concerted action, and concurrence of sentiments as in conspiracy. In this case, all the accused/accused-appellants were convincingly shown to have acted in concert to achieve a common purpose of assaulting their unarmed victims with their guns. Their acting in concert was manifest not only from their going together to the fishpen located offshore on board the same boat, but also from their joint attack commenced simultaneously, firing successive shots at the four victims and immediately followed by clambering up the platform and resuming their shooting of Roger, Edgardo, Benjamin and Carlito. It was also significant that they fled together on board the boat that they arrived in as soon as they had achieved their common purpose. Their conduct – before, during, and after the commission of the crime – indicated a joint purpose, concerted action, and concurrence of sentiments. Hence, conspiracy attended the commission of the crimes.

As to the Information docketed as Criminal Case No. 2001-5445, the accused-appellants were indicted with the crime of Frustrated Murder for shooting Roger, which was also attended by treachery, punished by Article 250 also of the Revised Penal Code, in relation to Article 248 thereof, reading:

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<sup>53</sup> TSN, November 26, 2001, pp. 16-20.

<sup>54</sup> REVISED PENAL CODE, Article 8.

<sup>55</sup> *People v. Pantaleon, Jr.*, 600 Phil. 186, 223 (2009).



*Article 250. Penalty for frustrated parricide, murder or homicide.*

– The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provisions of Article 50.

In the same way that the murder was proved, to establish frustrated murder, the prosecution must show that the accused performed all the acts of execution which would kill the victim, but which, nevertheless, did not produce it by reason of causes independent of the offender's will.<sup>56</sup> Here, the only survivor, Roger, recounted that accused Renato, Salvador and Gilberto shot him on the face, chest and buttock using a .38 gun and then left him for dead. Had it not been for the timely medical treatment of his injuries, they would have been fatal. As confirmed by Dr. Lopez, who testified that:

ATTY. LAGUNA:

Q: Mr. witness, your first finding here is "gunshot wound face right side, how were you able to find this out?

A: There is a bullet hole on the face right side.

Q: What happened to the bullet?

A: Together with that we took an x-ray examination of the skull and we found the bullet just behind the orbit of the left eye.

Q: To your knowledge, doctor, where is that bullet now?

A: I don't know. We refer the patient for that purpose to the BRTH.

Q: What is that BRTH?

A: In Legaspi City Bicol Regional Training Hospital.

Q: As a doctor, would you be able to say whether or not this particular wound is fatal?

A: That particular wound may not be immediately fatal but it could lead to the death of the patient if neglected.

Q: And when you say neglected, what do you mean by that, doctor?

A: Without medical attention or assistance extended to the patient.<sup>57</sup>

Thus, the prosecution proved beyond reasonable doubt that frustrated murder was committed. In view of the preceding discussion, there is no more reason to entertain the issue raised by the accused-appellants that the charge of frustrated murder be downgraded to attempted murder.

And although only the three accused-appellants were apprehended, they shall be held liable for the acts of their five other co-accused since the prosecution similarly established conspiracy with respect to the frustrated murder case – the act of one is the act of all.

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<sup>56</sup> REVISED PENAL CODE, Articles 6 and 248.

<sup>57</sup> TSN, April 2, 2002, pp. 6-7.

### *Defenses of denial and alibi*

The twin defenses of denial and alibi raised by the accused-appellants must fail in light of the positive identification made by one of their victims, Roger. Alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused as in this case. It is also axiomatic that positive testimony prevails over negative testimony.<sup>58</sup> The accused-appellants' alibis that they were at different places at the time of the shooting, and that family members and or their friends vouched for their whereabouts are negative and self-serving assertions and cannot not be given more evidentiary value vis-à-vis the affirmative testimony of a credible witness. The accused-appellants and Roger, at one point, resided in the same *barangay* and, are, therefore, familiar with one another. Therefore, Roger could not have been mistaken on the accused-appellants' identity, including the five other accused who remained at large.

Further, it has been held that for the defense of alibi to prosper, the accused must prove the following: (i) that he was present at another place at the time of the perpetration of the crime; and (ii) that it was physically impossible for him to be at the scene of the crime during its commission. Physical impossibility involves the distance and the facility of access between the crime scene and the location of the accused when the crime was committed. The accused must demonstrate that he was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.<sup>59</sup> Here, the accused-appellants utterly failed to satisfy the above-quoted requirements. As held by the Court of Appeals, "[j]udicial notice was taken of the fact that Barangay Bitan-o in Sorsogon City where the accused claimed they were at the time of the shooting and the area of the sea adjacent to the municipality of Castilla where the incident took place are neighboring sites that can be negotiated with the use of a banca in one hour or less."<sup>60</sup> Certainly, the distance was not too far as to preclude the presence of accused-appellants at the fishpen, and/or for them to slip away from where they were supposed to be, unnoticed.

Finally, the defense failed to show any ill motive on the part of the prosecution's witnesses to discredit their testimonies. Absent any reason or motive for a prosecution witness to perjure himself, the logical conclusion is that no such motive exists, and his testimony is, thus, worthy of full faith and credit.<sup>61</sup>

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<sup>58</sup> *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 802-803.

<sup>59</sup> *People v. Ramos*, G.R. No. 190340, July 24, 2013, 702 SCRA 204, 217.

<sup>60</sup> *Rollo*, p. 8.

<sup>61</sup> *People v. Lacaden*, *supra* note 58 at 803.

### The Penalties

From the foregoing discussion, the Court is convinced beyond reasonable doubt that the accused-appellants are guilty of three counts of Murder and Frustrated Murder.

For Criminal Case Nos. 2001-5446, 2001-5447 and 2001-5448 (for Murder), the prosecution successfully established the presence of the qualifying circumstance of treachery in the killing of Edgardo, Benjamin and Carlito. The crime of murder qualified by treachery is penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, with *reclusion perpetua* to death. There being no other mitigating or aggravating circumstance in the commission of the felony, the accused-appellants were correctly meted the penalty of *reclusion perpetua*, for each separate count of Murder, conformably to Article 63(2) of the Revised Penal Code.

On the other hand, for Criminal Case No. 2001-5445 (for Frustrated Murder), the indeterminate penalty imposed by the trial court in this case is *eight (8) years and one (1) day of prision mayor, as **minimum**, to twelve (12) years, five (5) months and eleven (11) days of reclusion temporal, as **maximum***. The period is incorrect in so far as the maximum penalty is concerned.

Article 61, paragraph 2 of the Revised Penal Code provides that the penalty of frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*. *Reclusion temporal* has a range of twelve (12) years and one (1) day to twenty (20) years. There being no modifying circumstance in the commission of the frustrated murder and applying the Indeterminate Sentence Law, the **maximum** of the indeterminate penalty should be taken from *reclusion temporal in its medium period*, and the **minimum** of the indeterminate penalty shall be taken from the *full range of prision mayor*, which is one degree lower than *reclusion temporal*, ranging from six (6) years and one (1) day to twelve (12) years.<sup>62</sup> Since the RTC imposed the minimum term of **8 years and 1 day** of *prision mayor*, which is correctly within the range of *prision mayor* under the Revised Penal Code, the Court will no longer disturb the minimum term fixed. However, the maximum term must be taken from *reclusion temporal* in its medium period, or **fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months**.

### The Proper Indemnities

In Criminal Case Nos. 2001-5446 to 5448 (for three counts of Murder), the RTC awarded in each case the amounts of ₱50,000.00 as civil indemnity and ₱30,000.00 as moral damages to the victims' heirs. But to

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<sup>62</sup>

*People v. Maglente*, G.R. No. 201445, November 27, 2013.

conform to recent jurisprudence, the foregoing awards must be raised as follows: ₱75,000.00 as civil indemnity, and another ₱75,000.00 as moral damages.<sup>63</sup> The Court notes, however, that both the RTC and the Court of Appeals overlooked the award of exemplary damages. When a crime is committed with an aggravating circumstance either as qualifying or generic, an award of exemplary damages is justified under Article 2230 of the Civil Code.<sup>64</sup> Thus, conformably with the above, the legal heirs of each victim are also entitled to an award of exemplary damages in the amount of ₱30,000.00.<sup>65</sup>

And in Criminal Case No. 2001-5445 (for Frustrated Murder) the RTC awarded to Roger ₱25,000.00 as moral damages. But current jurisprudence dictates that the same must be increased to ₱40,000.00.<sup>66</sup> Moreover, Roger is also entitled to exemplary damages in the amount of ₱20,000.00, in view of the presence of treachery as above reasoned.

Further, an interest at the rate of six percent (6%) per annum shall be imposed on all the damages awarded, to earn from the date of the finality of this judgment until fully paid, in line with prevailing jurisprudence.<sup>67</sup>

**WHEREFORE**, premises considered, the Court of Appeals consolidated Decision dated December 22, 2009 in CA-G.R. CR.-H.C. No. 00401 and in CA-G.R. CR No. 28975, affirming the Decisions promulgated by the Regional Trial Court of Sorsogon, Sorsogon, Branch 52, in Criminal Case Nos. 2001-5446 (Murder), 2001-5447 (Murder), 2001-5448 (Murder), and Branch 53 in Criminal Case No. 2001-5445 (Frustrated Murder), finding accused-appellants Rolando Las Piñas, Jimmy Delizo and Merwin Las Piñas **GUILTY** beyond reasonable doubt of three counts of Murder and Frustrated Murder, is hereby **AFFIRMED with MODIFICATION** as follows:

In Criminal Case Nos. 2001-5446, 2001-5447 and 2001-5448, where the conviction of the accused-appellants for three separate counts of Murder and the penalty of *reclusion perpetua*, for each count of Murder, are **AFFIRMED** –

- (1) The award of civil indemnity is increased to ₱75,000.00;
- (2) Moral damages is increased to ₱75,000.00; and
- (3) Exemplary damages in the amount of ₱30,000.00 is awarded.

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<sup>63</sup> *People v. Sanchez*, G.R. No. 188610, June 29, 2010, 622 SCRA 548, 569.

<sup>64</sup> Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

<sup>65</sup> *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236, 249.

<sup>66</sup> *People v. Baldomar*, G.R. No. 197043, February 29, 2012, 667 SCRA 415, 419.


<sup>67</sup> *People v. Domingo*, 599 Phil. 589, 611 (2009).

In Criminal Case No. 2001-5445, the conviction of the accused-appellants for Frustrated Murder is likewise **AFFIRMED**. But while the Court affirms their conviction, the indeterminate penalty to be imposed instead is eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period, as maximum. Further, the amount of damages awarded are adjusted –

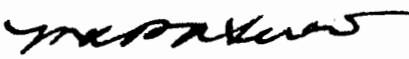
- (1) Moral damages is increased to ₱40,000.00; and
- (2) Exemplary damages in the amount of ₱20,000.00 is awarded.

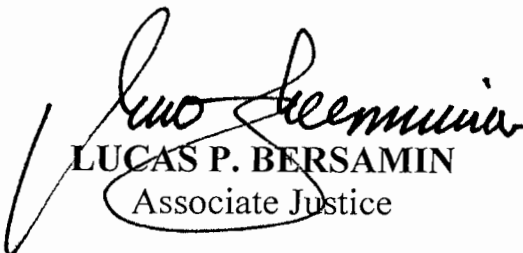
The accused-appellants are **ORDERED** to pay legal interest on all damages awarded in this case at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

**SO ORDERED.**

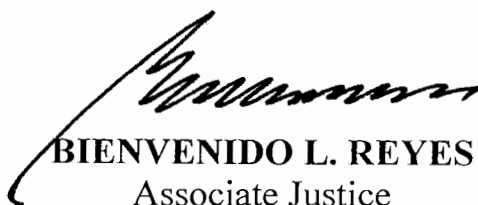
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**BIENVENIDO L. REYES**  
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