Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOSE ESPINELI a.k.a. DANILO ESPINELI, *Petitioner,*	**G.R. No. 179535**
	Present:
- versus -	CARPIO, *Chairperson,* BRION, DEL CASTILLO, PEREZ, *and* PERLAS-BERNABE, *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondent.*	Promulgated: JUN 0 9 2014

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RESOLUTION

DEL CASTILLO, *J.*:

Jurisprudence teaches us that "for circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent x x x."[1] Thus, conviction based on circumstantial evidence can be upheld provided that the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person.[2]

Assailed in the present Petition for Review on *Certiorari*[3] is the July 6, 2007 Decision[4] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02252 which modified the August 31, 1999 Decision[5] of the Regional Trial Court (RTC) of Imus, Cavite, Branch 90, by finding petitioner Jose Espineli a.k.a. Danilo "Danny" Espineli (petitioner) guilty of the crime of homicide instead of murder.

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1 *People v. Lopez*, 371 Phil. 852, 860 (1999).
2 *People v. Abdulah*, 596 Phil. 870, 876 (2009).
3 *Rollo*, pp. 10-39.
4 CA *rollo*, 119-142; penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Noel G. Tijam and Sesinando S. Villon.
5 Records, pp.183-196; penned by Executive Judge Dolores L. Español.

Also questioned is the CA's September 14, 2007 Resolution[6] denying petitioner's Motion for Reconsideration.[7]

Factual Antecedents

On June 24, 1997, an Information[8] charging petitioner with the crime of murder was filed before the RTC,[9] the accusatory portion of which reads as follows:

> That on or about the 15th day of December, 1996 in the Municipality of Imus, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with one (1) Sotero Paredes and three (3) other unidentified persons, whose real names, identities and whereabouts are still unknown, said Sotero Paredes having been earlier charged with the same offense, and is now undergoing trial before Branch 90, of the Regional Trial Court of Cavite, then armed with firearms, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation and taking advantage of superior strength, did then and there, willfully, unlawfully and feloniously, attack, assault and shoot one Alberto Berbon y Downie with the use of said firearms, thereby inflicting upon the latter multiple gunshot wounds on his head and different parts of his body which caused his instantaneous death, to the damage and prejudice of the heirs of said Alberto Berbon y Downie.
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> CONTRARY TO LAW.[10]

Petitioner was arrested on July 1, 1997 and when arraigned on July 7, 1997 with the assistance of counsel, entered a plea of not guilty.[11]

The facts show that in the early evening of December 15, 1996, Alberto Berbon y Downie (Alberto), a 49-year old Senior Desk Coordinator of the radio station DZMM, was shot in the head and different parts of the body in front of his house in Imus, Cavite by unidentified malefactors who immediately fled the crime scene on board a waiting car.

Meanwhile, the group of Atty. Orly Dizon (Atty. Dizon) of the National Bureau of Investigation (NBI) arrested and took into custody one Romeo Reyes (Reyes) for the crime of Illegal Possession of Deadly Weapon. Reyes confided to the group of Atty. Dizon that he was willing to give vital information regarding the Berbon case. In due course, NBI Agent Dave Segunial (NBI Agent Segunial) interviewed Reyes on February 10, 1997 and reduced his statement into writing

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6 CA *rollo*, p. 164
7 Id. at 147-152.
8 Records, pp. 1-2.
9 Later docketed as Criminal Case No. 4898-97.
10 Records, p. 1.
11 Id. at 30, 32.

whereby Reyes claimed that on December 15, 1996, he saw petitioner and Sotero Paredes (Paredes) board a red car while armed with a .45 caliber firearm and armalite, respectively; and that petitioner told Paredes that "*ayaw ko nang abutin pa ng bukas yang si Berbon.*"[12] Subsequently, Reyes posted bail and was released on February 14, 1997. Thenceforth, he jumped bail and was never again heard of. NBI Agent Segunial testified on these facts during the trial.

The victim's widow, Sabina Berbon (Sabina) likewise testified. According to her, sometime in the third week of February 1997 Reyes sought financial help so he could transfer his family to the province and protect them from any untoward consequence that may result from his giving information to the NBI regarding the death of Sabina's husband. Sabina gave him the total amount of ₱1,500.00 and promised to help him in applying for the witness protection program. This was affirmed on the witness stand by Sabina's brother, Bartolome Pakingan. After that, however, Reyes never came back.

Another prosecution witness, Rodolfo Dayao (Rodolfo), testified that he sold his red Ford Escort car to three persons who came to his residence in the afternoon of September 1, 1996. He later identified the said car from the photographs presented to him by the police officers.

Dr. Ludivino J. Lagat (Dr. Lagat), the NBI Medico-Legal Officer who conducted a post-mortem examination on Alberto, declared in his Autopsy Report that the victim suffered multiple gunshot wounds in the head and body. He also stated that based on the size of the gunshot wounds or entrance, high-powered guns were used in the killing.

Petitioner, on the other hand, did not adduce evidence for his defense. Instead, he filed a Demurrer to Evidence[13] without leave of court. As no action whatsoever was taken thereon by the trial court, petitioner just moved that the case be deemed submitted for decision.

Ruling of the Regional Trial Court

In its Decision[14] dated August 31, 1999, the trial court adjudged petitioner guilty of murder, thus:

> WHEREFORE, premises considered, accused JOSE ESPINELI a.k.a. DANILO "Danny" ESPINELI, is found guilty beyond reasonable doubt of committing the crime of "Murder" as charged. He is, therefore, sentenced to

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12 Id. at 36.
13 Id. at 133-136.
14 Id. at 183-196.

> suffer the penalty of RECLUSION PERPETUA, and is likewise ordered to pay the heirs of Alberto Berbon y Downie, the civil indemnity of ₱50,000.00, and actual and compensatory damages in the total amount of ₱135,000.00 as funeral expenses (Exhibit "H"), interment fee of ₱8,360.00 (Exhibit "C"), medical expenses in the total amount of ₱1,519.45 (Exhibit[s] "D", "D-1" and "D-2") and for the contract fees of Memorial Park Care the amount of ₱15,700.00 (Exhibit "E").
>
> Furthermore, considering that he is a high risk prisoner, his transfer to the National Penitentiary at Muntinlupa City, Metro Manila, is immediately ordered.
>
> SO ORDERED.[15]

Petitioner seasonably appealed his conviction before this Court. Pursuant, however, to the Court's pronouncement in *People v. Mateo*,[16] the case was ordered transferred to the CA for appropriate action and disposition through a Resolution[17] dated March 22, 2006.

Ruling of the Court of Appeals

In its Decision[18] promulgated on July 6, 2007, the CA affirmed with modification the findings of the trial court. It ratiocinated that since none of the prosecution witnesses saw how the killing of the victim was perpetrated, the qualifying circumstance of abuse of superior strength cannot be appreciated. Neither can nighttime serve as an aggravating circumstance as the time of the commission of the crime was not even alleged in the Information. In view thereof, the CA found petitioner guilty only of homicide instead of murder. The decretal portion of the appellate court's Decision reads:

> WHEREFORE, premises considered, the present appeal is hereby DISMISSED. The appealed Decision dated August 31, 1999 of the Regional Trial Court of Imus, Cavite, Branch 90 is hereby AFFIRMED with MODIFICATION in that accused-appellant is hereby found GUILTY beyond reasonable doubt of the crime of Homicide and is hereby sentenced to an indeterminate prison term of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.
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> In all other respects, the said decision STANDS.
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> In the service of his sentence, accused-appellant shall be credited in full with the period of his preventive imprisonment.
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> With costs against the accused-appellant.

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15 Id. at 196.
16 G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
17 CA *rollo*, pp. 39-40.
18 Id. at 119-142.

SO ORDERED.[19]

Dissatisfied, petitioner filed a Motion for Reconsideration[20] which the CA denied in its Resolution[21] dated September 14, 2007.

Hence, this Petition.

Arguments of the Parties

Petitioner posits that the CA should not have affirmed the Decision of RTC as the latter erred:

> 1. x x x [in admitting, considering and giving] probative value to Exhibit "A", the "Sinumpaang Salaysay" of [Reyes] because [he] was not presented in court to confirm, affirm and authenticate the contents of his sworn statement. It resulted in the denial of petitioner's constitutional right to confront and cross-examine his accusers.[22]
>
> 2. x x x [in convicting] the [petitioner] based on unproven, inadmissible circumstantial evidence.[23]
>
> 3. x x x in not acquitting the petitioner for failure of the prosecution to prove [his guilt] beyond reasonable doubt x x x.[24]

In sum, petitioner anchors his quest for the reversal of his conviction on the alleged erroneous admission in evidence of the *Sinumpaang Salaysay*[25] of Reyes for being hearsay and inadmissible. He avers that the said sworn statement should not have been given probative value because its contents were neither confirmed nor authenticated by the affiant. Thus, all circumstances emanating from or included in the sworn statement must be totally brushed aside as lacking any evidentiary and probative value. Petitioner emphasizes that as found by the courts below, there was no direct evidence linking him to the crime; therefore, he wants this Court to review the sufficiency of the circumstantial evidence upon which his conviction was based as he believes that the same failed to establish his guilt beyond reasonable doubt.

For its part, the Office of the Solicitor General (OSG), representing respondent People of the Philippines, concurs with the petitioner and recommends

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19 Id. at 141.
20 Id. at 147-152.
21 Id. at 164.
22 *Rollo*, p. 29.
23 Id. at 32.
24 Id. at 35.
25 Records, pp. 36-37.

his acquittal.[26] It is also of the view that the prosecution failed to discharge its burden of proving petitioner's guilt beyond reasonable doubt.

The Court's Ruling

The Petition is devoid of merit.

Truly, "direct evidence of the commission of a crime is not the only basis from which a court may draw its finding of guilt."[27] The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. Circumstantial evidence is that evidence "which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established."[28] Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence would be sufficient to convict the offender "if i) there is more than one circumstance; ii) the facts from which the inference is derived are proven; and iii) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt."[29] All the circumstances must be consistent with one another, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent. Thus, conviction based on circumstantial evidence can be upheld provided that the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others as the guilty person.[30]

In this case, the circumstances found by the CA as forming an unbroken chain leading to one fair and reasonable conclusion that petitioner, to the exclusion of all others, is the guilty person are the following:

1. In the morning of December 15, 1996, petitioner was heard telling his co-accused Sotero Paredes (Sotero) "*ayaw ko nang abutin pa ng bukas yang si Berbon*" before boarding a red car. Sotero was holding an armalite rifle while petitioner was armed with a .45 caliber pistol;

2. The said red car was identified or recognized by prosecution witness Rodolfo to be the same car he had sold to Sotero for ₱10,000.00 in September 1996;

3. The victim Alberto was fatally shot later in the day (December 15, 1996) by unidentified gunmen who thereafter immediately fled riding a red car; and

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26 See the OSG's Manifestation and Motion in Lieu of Comment, *rollo*, pp. 142-157.
27 *People v. Manchu*, 593 Phil. 398, 406 (2008).
28 *People v. Osianas*, 588 Phil. 615, 627 (2008).
29 *People v. Gaffud, Jr*., 587 Phil. 521,530 (2008).
30 *People v. Abdulah*, supra note 2.

4. Post-mortem examination of the victim's body showed that he sustained multiple gunshot wounds, the nature, severity and characteristics of which indicate that they were inflicted using high-powered guns, possibly an armalite rifle and .22 caliber pistol.[31]

The records reveal that there was no eyewitness to the actual killing of Alberto. Thus the courts below were forced to render their verdict of conviction on circumstantial evidence as sanctioned under Section 4, Rule 133[32] of the Rules of Court. The central issue now confronting this Court is whether the prosecution has amply proved by circumstantial evidence petitioner's guilt beyond reasonable doubt.

The circumstantial evidence relied upon by the Court of Appeals sufficiently support petitioner's conviction.

The Court has carefully scrutinized the evidence presented in this case in the light of the standards discussed above and finds the foregoing circumstantial evidence sufficient to support a judgment of conviction. Several reasons deserve our acceptance of the circumstances upon which petitioner's conviction was based, to wit:

First, NBI Agent Segunial testified that he had investigated Reyes and reduced the latter's statement into writing declaring, among others, that in the morning of December 15, 1996, he (Reyes) overheard petitioner telling Sotero "*Ayaw ko nang abutin pa ng bukas yang si Berbon*" and saw them armed with .45 caliber pistol and an armalite, respectively, before boarding a red car. The CA gave weight to Reyes' sworn statement in this wise:

> The probative value of Romeo Reyes' sworn statement as to the words spoken by appellant to his co-accused Sotero Paredes in the morning of December 15, 1996 cannot be disputed. x x x[33]

Petitioner takes vigorous exception to the said findings, insisting that the said sworn statement belongs to the category of hearsay evidence and therefore inadmissible. He asserts that its contents were never confirmed or authenticated by Reyes, thus, it lacks probative value.

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31 CA *rollo*, pp. 138-139.

32 *Circumstantial evidence, when sufficient.* – Circumstantial evidence is sufficient for conviction if:
(a) There is more than one circumstance;
(b) The facts from which the inference are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

33 CA *rollo*, p. 139.

The Court is unconvinced.

The hearsay evidence rule as provided under Section 36, Rule 130 of the Rules of Court states:

> Sec. 36. *Testimony generally confined to personal knowledge; hearsay excluded*. – A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

Evidence is hearsay when its probative force depends in whole or in part on the competency and credibility of some persons other than the witness by whom it is sought to produce. However, while the testimony of a witness regarding a statement made by another person given for the purpose of establishing the truth of the fact asserted in the statement is clearly hearsay evidence, it is otherwise if the purpose of placing the statement on the record is merely to establish the fact that the statement, or the tenor of such statement, was made. Regardless of the truth or falsity of a statement, when what is relevant is the fact that such statement has been made, the hearsay rule does not apply and the statement may be shown. As a matter of fact, evidence as to the making of the statement is not secondary but primary, for the statement itself may constitute a fact in issue or is circumstantially relevant as to the existence of such a fact.[34] This is known as the doctrine of independently relevant statements.[35]

In the present case, the testimony of NBI Agent Segunial that while he was investigating Reyes, the latter confided to him that he (Reyes) heard petitioner telling Sotero *"Ayaw ko nang abutin pa ng bukas yang si Berbon"* and that he saw the two (petitioner and Sotero) armed with a .45 caliber pistol and an armalite, respectively, before boarding a red car, cannot be regarded as hearsay evidence. This is considering that NBI Agent Segunial's testimony was not presented to prove the truth of such statement but only for the purpose of establishing that on February 10, 1997, Reyes executed a sworn statement containing such narration of facts. This is clear from the offer of the witness' oral testimony.[36] Moreover, NBI Agent Segunial himself candidly admitted that he is incompetent to testify on the truthfulness of Reyes' statement.[37] Verily then, what the prosecution sought to be admitted was the fact that Reyes made such narration of facts in his sworn statement and not necessarily to prove the truth thereof. Thus, the testimony of NBI Agent Segunial is in the nature of an independently relevant statement where what is relevant is the fact that Reyes made such statement and the truth and falsity thereof is immaterial. In such a case, the statement of the witness is admissible as

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34 *Republic v. Heirs of Felipe Alejaga, Sr.*, 441 Phil. 656, 672 (2002).
35 Id.
36 TSN, August 1, 1993, p. 3.
37 Id. at 25.

evidence and the hearsay rule does not apply.[38] Moreover, the written statement of Reyes is a notarized document having been duly subscribed and sworn to before Atty. Cesar A. Bacani, a supervising agent of the NBI. As such, it may be presented in evidence without further proof, the certificate of acknowledgment being a *prima facie* evidence of the due execution of this instrument or document involved pursuant to Section 30 of Rule 132 of the Rules of Court. As held in *Gutierrez v. Mendoza-Plaza*,[39] a notarized document enjoys a *prima facie* presumption of authenticity and due execution which must be rebutted by clear and convincing evidence. Here, no clear and convincing evidence was presented by petitioner to overcome such presumption. Clearly, therefore, the CA did not err in its appreciation of Reyes' sworn statement as testified to by NBI Agent Segunial.

Second, the identification and recognition through photograph by Rodolfo of the 1971 Ford Escort red colored car as the same car he had sold to Sotero in September 1996 clearly and convincingly prove that it was the very same red car used in the killing of Alberto on December 15, 1996.

Third, Alberto was shot and killed on December 15, 1996 and the gunmen immediately fled the scene riding a red car which was identified as the same car previously sold by Rodolfo to Sotero.

Fourth, though the testimony of Dr. Lagat was limited to the post-mortem examination of the cadaver of Alberto, his findings that the victim suffered multiple gunshot wounds and that the same were caused by high-powered guns, served as corroborative evidence and contributed in a significant way in establishing the level of proof that the law requires in convicting petitioner.

Lastly, petitioner's escape from detention on August 26, 1998 while the case was pending can also be considered as another circumstance since it is a strong indication of his guilt.

All told, this Court finds the concordant combination and cumulative effect of the alleged established circumstances, which essentially were the same circumstances found by the trial court and the appellate court, to have satisfied the requirement of Section 4, Rule 133 of the Rules of Court. Indeed, the incriminating circumstances, when taken together, constitute an unbroken chain of events enough to arrive at the conclusion that petitioner was responsible for the killing of the victim.

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38 *People v. Gumimba*, 545 Phil. 627, 652 (2007).

39 G.R. No. 185477, December 4, 2009, 607 SCRA 807,817.

Besides, it is "[a]n established rule in appellate review x x x that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the CA,"[40] as in this case.

The Crime Committed and the Proper Penalty.

The Court agrees with the CA that petitioner is guilty only of the crime of homicide in view of the prosecution's failure to prove any of the alleged attendant circumstances of abuse of superior strength and nighttime. As aptly observed by the appellate court:

> The circumstance of abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime. However, as none of the prosecution witnesses saw how the killing was perpetrated, abuse of superior strength cannot be appreciated in this case. Neither can nighttime serve as an aggravating circumstance, the time of the commission of the crime was not even alleged in the Information.[41] (Citations omitted)

The penalty prescribed by law for the crime of homicide is *reclusion temporal*.[42] In view of the absence of any mitigating or aggravating circumstance and applying the Indeterminate Sentence Law, the maximum of the sentence should be within the range of *reclusion temporal* in its medium term which has a duration of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum should be within the range of *prision mayor* which has a duration of six (6) years and one (1) day to twelve (12) years. Thus, the imposition by the CA of an indeterminate prison term of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, is in order.

Petitioner's Civil liability

While the CA correctly imposed the amount of ₱50,000.00 as civil indemnity, it failed, however, to award moral damages. These awards are

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40 *People v. Villasan*, 618 Phil. 240, 251 (2009).

41 CA *rollo*, p. 140.

42 REVISED PENAL CODE, Article 249.

Art. 249. *Homicide*. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide.[43] Thus, for moral damages, the award of ₱50,000.00 to the heirs of the victim is only proper.

Anent the award of actual damages, this Court sees no reason to disturb the amount awarded by the trial court as upheld by the CA since the itemized medical and burial expenses were duly supported by receipts and other documentary evidence.

The CA did not grant any award of damages for loss of earning capacity and rightly so. Though Sabina testified as to the monthly salary of the deceased, the same remains unsubstantiated. "Such indemnity cannot be awarded in the absence of documentary evidence except where the victim was either self-employed or a daily wage worker earning less than the minimum wage under current labor laws."[44] The exceptions find no application in this case.

In addition and in conformity with current policy, an interest at the legal rate of 6% *per annum* is imposed on all the monetary awards for damages from date of finality of this judgment until fully paid.

WHEREFORE, in light of all the foregoing, the Petition is hereby **DENIED**. The Decision dated July 6, 2007 and Resolution dated September 14, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 02252 are **AFFIRMED** with the **MODIFICATIONS** that petitioner JOSE ESPINELI a.k.a. DANILO "DANNY" ESPINELI is further ordered to pay the heirs of the victim ALBERTO BERBON *y* DOWNIE ₱50,000.00 as moral damages as well as interest on all the damages assessed at the legal rate of 6% *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

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43 *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417,437-438.
44 *People v. Mamaruncas*, G.R. No. 179497, January 25, 2012, 664 SCRA 182, 202.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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