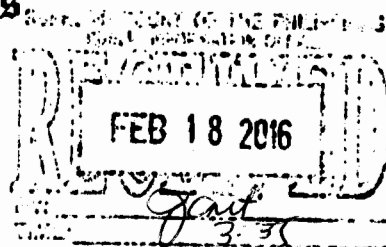




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION



PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 195666

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
JARDELEZA, *JJ.*

- versus -

FE ABELLA y BUHAIN,
Accused-Appellant.

Promulgated:

JAN 20 2016

X-----X

DECISION

LEONARDO-DE CASTRO, *J.*:

For Our consideration is an appeal from the Decision¹ dated September 30, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03974, which affirmed with modification the Decision² dated March 26, 2009 of the Regional Trial Court (RTC), Manila City, Branch 52, in Criminal Case No. 04-225062, which found accused-appellant Fe Abella y Buhain (Abella) guilty of Illegal Recruitment in Large Scale.

The Information³ reads:

That in or about and during the period comprised between October 8, 2003 and March 18, 2004, inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating with another whose true name, real identity and present whereabouts is still unknown, and mutually helping each other, representing herself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, unlawfully, and feloniously for a fee, recruit and promise employment/job placement to the following persons:

¹ Rollo, pp. 2-31; penned by Associate Justice Celia C. Libre-Leagogo with Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias concurring.
² CA rollo, pp. 14-26; penned by Presiding Judge Antonio M. Rosales.
³ Records, pp. 1-2.

Mary Jean Mateo y Sanchez
Grace Marcelino y dela Peña
Nobella Castro y Fernandez
Imelda Miguel y Factor
Lolita Pansoy y Garcia
Ester Castro y Pamisttan
Janice Belvis y Morales
Ruby Badua y Cabacungan
Visitacion Rosete y Cedron
Generoso Gumpal y Bangloy
Fernando Callang y Buhanget
Joselito Danver Huta y Cataño

as Laundrywomen/Laundrymen and Waiter in Istanbul, Turkey and Dubai, without first having secured the required license or authority from the Department of Labor and Employment, charged or accept directly or indirectly from said complainants amounts which are in excess of or greater than those specified in the schedule of allowable fees prescribed by the Department of Labor and Employment under Memorandum Order No. 5, Series of 1985 and having failed to deploy aforesaid complainants, continuously fails to reimburse despite demands, the expenses they incurred in connection with the documentation and processing for their deployment.

Upon arraignment, Abella, assisted by counsel, pleaded not guilty to the offense charge.

In the course of the trial, the prosecution presented Imelda F. Miguel (Miguel), Grace P. Marcelino (Marcelino), Fernando B. Callang (Callang), Mildred Versoza (Versoza), and Senior Police Officer (SPO) 1 Jaime Bunag (Bunag) as witnesses.

Miguel testified that she came to know Abella through Zeny Agpalza (Agpalza) and Lina Mateo (Mateo), who informed her that Abella could help her get work abroad. Interested, Miguel met Abella at the latter's office, bearing the name Rofema Business Consultancy (RBC), at 1807 Nakpil St., Barangay 697, Malate, Manila. During their meeting, Abella offered Miguel work as a laundrywoman in Istanbul, Turkey, with a salary of \$600.00 to \$700.00 but Miguel must undergo training in laundry service and pay a placement fee of ₱100,000.00. Miguel, however, was able to raise and pay only ₱30,000.00⁴ as placement fee on November 17, 2003 for which Abella issued a cash voucher signed by Abella herself in Miguel's presence. Miguel also claimed that she underwent training in laundry service for five days at the Executive Technical Consultants Trade Test and Training Center, valued at ₱5,000.00, which was sponsored by Abella. Miguel was issued a certification after said training. Abella discussed with Miguel the details of the latter's job abroad and provided Miguel with a photocopy of their written agreement, together with the certificate evidencing registration by Abella of the business name of RBC. Until the day that Miguel gave her testimony before the RTC, Abella, contrary to her representation and promise, was not

⁴

Id. at 27.

able to deploy Miguel as a laundrywoman in Istanbul, Turkey, and neither did Abella return the placement fee of ₱30,000.00 which Miguel had paid.⁵

Marcelino narrated that she came to know Abella through Rosette Danao (Danao). Danao first recruited Marcelino to work as a domestic helper in Saipan, but later turned over Marcelino's application to Agpalza who was in charge of those applying for jobs in Turkey. Danao and Agpalza both referred to Abella as their Manager. Marcelino paid a total of ₱50,000.00⁶ for the processing of her papers in four installments: ₱10,000.00 on November 24, 2003; ₱15,000.00 on December 3, 2003; ₱10,000.00 on December 23, 2003, and ₱15,000.00 on January 15, 2004, all personally received by Abella either at the RBC office or at McDonald's, Ermita, and evidenced by vouchers signed by Abella. Nothing happened to Marcelino's application and the amounts she had paid to Abella were not returned to her.⁷

According to Callang, he was recruited by Danao, Abella's agent, who brought him to the RBC office in Malate, Manila. At the RBC office, Abella told Callang of the job order for laundryman in Istanbul, Turkey with a monthly salary of \$600.00 and for which the placement fee was ₱65,000.00. Callang paid to Abella ₱10,000.00 on November 17, 2003; ₱10,000.00 on December 23, 2003; and ₱20,000.00 on January 9, 2004, for a total of ₱40,000.00,⁸ evidenced by a voucher signed by Abella in Callang's presence. The first two payments were made at the RBC office while the last payment was at McDonald's, Ermita. Callang was not deployed for employment abroad, neither was he able to recover the amount he paid to Abella.

Versoza was an employee at the Licensing Division of the Philippine Overseas Employment Administration (POEA). Versoza recounted that upon the instruction of Yolanda Paragua (Paragua), Officer-in-Charge (OIC) of the POEA Licensing Division, she verified from the database and other records of their office whether Abella/RBC had license to recruit workers for employment abroad. Versoza found out that Abella/RBC had no such license and she prepared a Certification to that effect, which was signed by OIC Paragua in her presence. In compliance with the *subpoena duces tecum* issued by the RTC, Versoza personally appeared before the trial court to identify OIC Paragua's signature on the Certification.⁹

SPO1 Bunag was the investigator assigned to the case and affirmed on the witness stand that he was the one who took down the private complainants' *Sinumpang Salaysay Pag-aresto*, and prepared Abella's

⁵ TSN, November 9, 2004, pp. 1-30.

⁶ Records, p. 22.

⁷ TSN, December 16, 2004, pp. 5-22.

⁸ Records, p. 24.

⁹ TSN, May 24, 2005, pp. 6-12.

Booking Sheet and Arrest Report and letter of referral for inquest dated March 19, 2004.

Only Abella herself testified for the defense.

Before Abella took the witness stand, her counsel, Atty. Rodrigo Mariñas, moved that the following private complainants: Mary Jean S. Mateo, Nobella F. Castro, Lolito G. Pansoy, Ester P. Castro, Janice M. Belvis, Ruby C. Badua, Generoso B. Gumpal, and Joselito Danver C. Huta, be provisionally dropped as such from the Information for their repeated failure to appear and testify in support of their complaints.¹⁰ Without objection from Assistant City Prosecutor Francisco L. Salomon, the RTC granted the defense's motion, thus, leaving Miguel, Marcelino, and Callang as private complainants.

Abella anchored her defense on denial. Abella alleged that she had been working as a cashier since November 11, 2004 at RBC, a travel agency registered with the Department of Trade and Industry. As cashier at RBC, Abella's main duty was to receive payments from clients for which she issued cash vouchers. Abella claimed that she did not personally meet the clients nor did she directly receive money from them, as the clients coursed their payments through Agpalza, an RBC agent. Agpalza would then turn over the payments to Abella, for which the latter issued cash vouchers; and Abella would subsequently hand over the payments to RBC owner, Elizabeth Reyes (Reyes). Abella disputed private complainants' assertion and insisted that she did not promise private complainants employment abroad. During her re-direct examination, Abella refuted her purported arrest and confrontation with private complainants. Abella maintained that she voluntarily went with Agpalza to the police headquarters and that she and Agpalza were detained at the second floor while private complainants were kept at the ground floor of the police headquarters.

On March 26, 2009, the RTC rendered a Decision with the following verdict:

WHEREFORE, the Court finds the accused FE ABELLA y BUHAIN guilty beyond reasonable doubt of the crime of Illegal Recruitment in large scale and imposes upon her the penalty of life imprisonment and a fine of Php100,000.00.

FE ABELLA y BUHAIN is also ordered to return to, or refund the sums of money she had received from the following private complainants: a) Imelda Miguel the sum of Php30,000.00; b) Fernando Callang the amount of Php40,000.00; and c) Grace Marcelino the amount of Php50,000.00.

With costs against the accused.¹¹

¹⁰ Records, p. 228.

¹¹ CA *rollo*, p. 26.

Aggrieved, Abella appealed before the Court of Appeals.

The Court of Appeals, in a Decision dated September 30, 2010, affirmed the RTC judgment of conviction but with the modification increasing the amount of fine imposed against Abella. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated 26 March 2009 of the Regional Trial Court of Manila, Branch 52, in Criminal Case No. 04-225062 finding accused-appellant Fe Abella y Buhain guilty beyond reasonable doubt of illegal recruitment in large scale, sentencing her to suffer the penalty of life imprisonment and ordering her to pay a fine and to return to private complainants Imelda Miguel, Fernando Callang and Grace Marcelino the amounts of Php30,000.00, Php40,000.00 and Php50,000.00, respectively, is hereby **AFFIRMED** with **MODIFICATION** in that the amount of fine is increased from Php100,000.00 to Php500,000.00. Costs against accused-appellant.¹²

Hence, the present appeal.

In her Supplemental Brief, Abella contends that the prosecution failed to prove her guilt beyond reasonable doubt as the first element of illegal recruitment in large scale, *i.e.*, the accused undertook a recruitment activity under Article 13(b) of the Labor Code or any prohibited practice under Article 34 of the same Code, is wanting. Abella points out that: (a) it was not Abella who enticed private complainants to apply for work overseas given that by private complainants' own testimonies, they learned about the job opportunities abroad not from Abella, but from Agpalza, Mateo, and Danao, who were so persuasive that private complainants travelled from their respective provinces to Manila just to meet Abella; (b) if it were true that Abella received money from private complainants, she would have already fled after getting private complainants' money so as to evade arrest; and (c) the prosecution presented a mere photocopy of the handwritten agreement supposedly executed by Abella in Miguel's favor, and considering that the contents of such agreement are in issue in this case, the RTC wrongfully accorded much weight to such evidence.

We find no merit in the instant appeal.

To constitute illegal recruitment in large scale, three elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment placement of workers; (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the same Code (now Section 6 of Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995); and (c) the offender

¹² Rollo, p. 27.

committed the same against three or more persons, individually or as a group.¹³

Article 13(b) of the Labor Code defines “recruitment and placement” as “any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not.” It also provides that “any person or entity which, in any manner, offers or promises for a fee, employment to two or more persons shall be deemed engaged in recruitment and placement.”

Article 38 of the same Code particularly defines “illegal recruitment” as follows:

ART. 38. *Illegal Recruitment.* – (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority, shall be deemed illegal and punishable under Article 39 of this Code. The Department of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

Republic Act No. 8042 broadened the concept of illegal recruitment under the Labor Code and provided stiffer penalties, especially if it constitutes economic sabotage, either illegal recruitment in large scale or illegal recruitment committed by a syndicate. Under Section 6 of Republic Act No. 8042, the following acts constitute “illegal recruitment”:

SEC. 6. *Definition.* – For purposes of this Act, illegal recruitment shall mean **any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority** contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:*

¹³ *People v. Gamboa*, 395 Phil. 675, 684 (2000).

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take

place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. **It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.** (Emphases ours.)

The elements of illegal recruitment in large scale are all obtaining in this case and that the prosecution had sufficiently proved that Abella is guilty of said offense.

First, it is undisputed that neither Abella nor RBC was licensed as a recruitment agency. The Certification¹⁴ dated May 17, 2005 signed by OIC Paragua of the POEA Licensing Division states that “per available records of this Office, Fe Abella y Buhain, in her personal capacity, and ROFEMA BUSINESS CONSULTANCY with address at 1807 Nakpil St., Brgy. 697, Malate, Manila, are not licensed by this Administration to recruit workers for overseas employment. Any recruitment activity undertaken by the above-named person/entity is deemed illegal.” Versoza, the POEA Licensing Division employee who actually perused the database and other records of their office, prepared the Certification for OIC Paragua’s signature, and personally witnessed OIC Paragua signing the said Certification, appeared as witness before the RTC to authenticate the Certification as one of the documentary evidence for the prosecution. A POEA certification is a public document issued by a public officer in the performance of an official duty; hence, it is *prima facie* evidence of the facts therein stated pursuant to Section 23, Rule 132 of the Rules of Court.¹⁵ Public documents are entitled to a presumption of regularity, consequently, the burden of proof rests upon the person who alleges the contrary. Abella does not negate the contents of the Certification but merely argues that it has no bearing on whether or not she represented herself to the private complainants as someone authorized to recruit for overseas employment.

Second, both the RTC and the Court of Appeals found that Abella had engaged in recruitment activities. The trial and appellate courts accorded weight and credence to the consistent testimonies of private complainants Miguel, Marcelino, and Callang that at separate instances, Agpalza, Mateo, and/or Danao brought private complainants to the RBC office and introduced them to Abella, and it was Abella herself who offered and promised private complainants jobs in Istanbul, Turkey, in consideration of placement fees. Miguel’s testimony is further supported by a handwritten

¹⁴ Records, p. 135.

¹⁵ Sec. 23. *Public documents as evidence.* – Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

agreement¹⁶ signed by Abella, stating in detail the terms of Miguel's alleged overseas employment, and we quote:

1. Salary is \$400 excluding overtime. There is a probationary period of 3 months.
2. Free board and lodging, one yr. contract renewable, 8 working hrs.
3. Total placement is ₱100TH, ₱50TH cash out and ₱50TH salary deduction. Training fee of ₱4,500 & PDOS is included in the placement fee.
4. Downpayment of ₱25,000 to be used in the stamping of visa in the passport. After 1 week, applicant will receive a xeroxed copy of his/her passport with stamped visa.
5. After downpayment, applicant will start training for 5 days, 8:00 AM-5:00 PM.
6. Remaining balance of ₱25TH will be given upon signing of the contract.
7. Downpayment is refundable in case of failure to process papers within the time frame agreed upon which is within 2 months time. In case of refund certain charges will be deducted so the applicant cannot get the full amount of downpayment.
8. Every payday, the applicant should deposit certain amount which they can afford to the ATM account of the company.
9. Before departure, an Attorney's Affidavit will be prepared signed by Ms. Fe Abella, the applicant, one member of the applicant[']s family particularly the nearest kin and the Agent handling the applicant. In case the applicant does not comply with the payment of the remaining placement (₱50TH), the member of the family will be answerable for his/her obligation.
10. Ms. Fe Abella will be the one answerable for expired medical certificate.
11. In case problems arise in Turkey, applicant should approach the Philippine Embassy.

Abella is challenging the probative value of the above handwritten agreement on the ground that it is a mere photocopy. Abella reasons that since the contents of said agreement are in issue, the best evidence rule applies. The original of the agreement is the best evidence of Abella making representations that she had the power to send private complainants abroad to work.

The non-presentation of the original copy of the handwritten agreement is not fatal to the prosecution's case. Miguel personally testified

¹⁶ Records, p. 88.

before the RTC as to the circumstances of her recruitment by Abella. Abella made verbal, and not only written, promises to Miguel of employment abroad. The handwritten agreement merely substantiates Miguel's testimony at best. In *People v. Pabalan*,¹⁷ we affirmed the sufficiency of testimonial evidence to prove receipt by therein accused-appellant of placement fees, even in the absence of documentary evidence such as receipts issued by accused-appellant, thus:

[T]he absence of receipts for some of the amounts delivered to the accused did not mean that the appellant did not accept or receive such payments. Neither in the Statute of Frauds nor in the rules of evidence is the presentation of receipts required in order to prove the existence of a recruitment agreement and the procurement of fees in illegal recruitment cases. Such proof may come from the testimonies of witnesses.¹⁸

Abella denies representing to private complainants that she was capable of deploying workers to Istanbul, Turkey. Abella avows that she was a mere cashier at RBC who issued vouchers for payments made by clients and that she subsequently turned over such payments to Reyes, the true owner of RBC.

We are not swayed by Abella's bare allegations, which conspicuously lacked any corroborative evidence. If Abella was really a mere employee at RBC, then she could have presented basic evidence of her employment, such as appointment papers, an identification card, or payslips. Also, the vouchers for the placement fees paid by private complainants were issued and signed by Abella herself, without any indication that she issued and signed the same on behalf of Reyes, the purported true owner of RBC. There is likewise absence of any proof of Abella's turnover to or Reyes's receipt of the amounts received from private complainants.

In contrast, the private complainants Miguel, Marcelino, and Callang were positive and categorical in their testimonies that Abella promised them employment abroad in exchange for their payment of placement fees. Abella herself provided Miguel with a Certification proving Abella's registration of the business name RBC; hence, negating Abella's claim that RBC is actually owned by another person, Reyes. The private complainants' testimonies were consistent and corroborative of one another on material points, such as the placement fees asked of them, the nature of work available, and their employment destination, which is, Istanbul, Turkey.

Well-settled is the rule that the trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies. Abella's mere denial cannot prevail over the positive and categorical testimonies of the private complainants. The findings of the trial court are accorded great respect

¹⁷ 331 Phil. 64, 77-78 (1996).

¹⁸ *People v. Alvarez*, 436 Phil. 255, 273 (2002).

unless the trial court has overlooked or misconstrued some substantial facts, which, if considered, might affect the result of the case. Furthermore, factual findings of the trial court, when affirmed by the Court of Appeals, are deemed binding and conclusive.¹⁹

Lastly, it was established that there were at least three victims in this case, namely, Miguel, Marcelino, and Callang, who all testified before the RTC in support of their respective complaints.

Based on the foregoing, there is no doubt, as the RTC found and the Court of Appeals affirmed, that Abella is guilty of illegal recruitment in large scale, which constitutes economic sabotage under the last paragraph of Section 6 of Republic Act No. 8042.

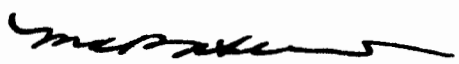
Section 7(b) of Republic Act No. 8042 provides that “[t]he penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.” Hence, we sustain the penalty of life imprisonment and a fine of ₱500,000.00 imposed on Abella by the Court of Appeals.

WHEREFORE, we **AFFIRM *in toto*** the Decision dated September 30, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03974.

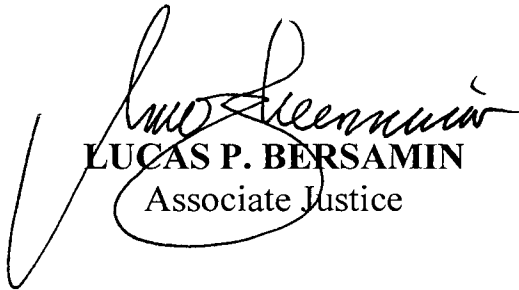
SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


¹⁹ *People v. Tolentino*, G.R. No. 208686, July 1, 2015.



LUCAS P. BERSAMIN
Associate Justice




ESTELA M. PERLAS-BERNABE
Associate Justice



FRANCIS H. JARDELEZA
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