



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ELIZABETH HORCA,
Petitioner.

G.R. No. 224316

Present:

HERNANDO,
Acting Chairperson,

- versus -

INTING,
ZALAMEDA,*
LOPEZ, M.V**, and
GAERLAN, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

NOV 10 2021

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DECISION

HERNANDO, J.:

Petitioner Elizabeth Horca (Horca) assails through this Petition for Review on *Certiorari*¹ the November 13, 2015 Decision² of the Court of Appeals (CA) in CA-G.R. CR No. 36346, which affirmed the May 7, 2012 Decision³ of the Regional Trial Court (RTC), Branch 36, Manila in Criminal Case No. 04-224896 convicting petitioner of the crime of Theft, while the assailed February 18, 2016 Resolution⁴ denied the petitioner's motion for reconsideration.

* Designated additional Member per October 31, 2021 Raffle vice J. Dimaampao who had prior participation in the CA proceedings.

** Designated additional Member per September 22, 2021 Raffle. Senior Associate Justice Estela M. Perlas-Bernabe took no part as her former staff is counsel for petitioner.

¹ *Rollo*, pp. 3-12.

² CA *rollo*, pp. 85-102. Penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Japar B. Dimaampao and Franchito N. Diamante.

³ Id. at 34-46. Penned by Presiding Judge Emma S. Young.

⁴ Id. at 115-117.

The Factual Antecedents:

On January 21, 2004, petitioner was charged with the crime of Theft through an Information⁵ which alleges:

That in (sic) or about and during the period x x x August 29, 2001 and October 3, 2001, inclusive, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully, and feloniously, with intent to gain and without the consent of the owner thereof, take, steal and carry away cash money amounting to P1,005,626.50 in the following manner, to wit: the said accused received from the Sisters of Providence, represented by Sister Linda Jo Reynolds the total amount of P1,005,626.50 under the express obligation of delivering 19 Swiss Air plane tickets for Rome to the complainant, but herein accused failed to do so and did not return the same to the complainant, and once in possession of the aforestated amount and despite demand, she instead misappropriated and converted the same to her own personal use and benefit to the damage and prejudice of Sisters of Providence in the amount of P1,005,626.50, Philippine Currency.

Contrary to law.⁶

When arraigned on August 3, 2004, petitioner entered a plea of “not guilty.”⁷ After the termination of the pre-trial, trial on the merits subsequently ensued.

The prosecution presented as witness Sister Linda Jo Reynolds (Sister Reynolds), a member of the Sisters of Providence, which is a religious congregation of women of the Roman Catholic Church.⁸ As the secular treasurer, Sister Reynolds had the duty and responsibility to oversee the financial matters of the Sisters of Providence.⁹ She claimed that she procured the services of petitioner to be the group’s travel agent for a trip to Rome, Italy scheduled in October 2001.¹⁰ A couple of months before the trip, Sister Reynolds ordered from petitioner 19 airline tickets and issued two BPI checks amounting to ₱502,813.25 each, or in the total amount of ₱1,005,626.50, as payment therefor.¹¹ Although the agency, through Horca, acknowledged and issued an official receipt for the payment of the 19 tickets, Sister Reynolds only received four and was informed that the other 15 tickets were stolen.¹² Further, the four tickets could not be used and had to be returned to petitioner because the flight covered by the said tickets was cancelled.¹³ Because of this, Sister Reynolds had to make arrangements anew with another airline with the

⁵ Records, p. 1.

⁶ Id.

⁷ Id. at 53.

⁸ TSN, December 7, 2004, pp. 2-5.

⁹ Id. at 4.

¹⁰ Id. at 5-6.

¹¹ Id. at 6-7.

¹² Id. at 7-8.

¹³ Id.

help of the other sisters in Montreal, Canada so as to be able to push through with their flight.¹⁴

Sister Reynolds made several demands for petitioner to return the amount of ₱1,005,626.50, as evinced by four demand letters respectively dated May 20, 2002, October 7, 2002, November 29, 2002, and July 24, 2003.¹⁵ However, despite her promise to pay back Sister Reynolds the full amount, petitioner was only able to return ₱90,000.00, thus, prompting the nun to file the complaint before the RTC.¹⁶

For petitioner's part, she averred that she was a consultant for Expert Travel and Tours Inc. (Expert Travel) tasked to assist clients in booking flights and processing their visa and other documents.¹⁷ She confirmed that she knew Sister Reynolds and her congregation because she was their travel agent.¹⁸ Petitioner likewise confirmed that she received two checks from Sister Reynolds with the total amount of ₱1,005,626.50 on August 29, 2001, under the agreement that she was to book 19 Swiss Air plane tickets for them.¹⁹ To facilitate and accomplish the transaction covered by their agreement, petitioner admitted that she was given sufficient authority by the travel agency to collect the checks and obtain the tickets from Swiss Air and to turn over the tickets to the Sisters of Providence.²⁰ Further, petitioner admitted that after receiving the payment, she gave Sister Reynolds the official receipt.²¹

Despite giving the receipt, however, she was not able to deliver all of the tickets to the Sisters of Providence because the airline company which issued them filed for bankruptcy and the flight was eventually cancelled.²² Petitioner claimed that Swiss Air refunded the value of the checks to Expert Travel but she was unable to get the money from the agency.²³ Wanting to save face and thinking that the travel agency would reimburse her,²⁴ petitioner voluntarily refunded Sister Reynolds the amount of ₱90,000.00, with the rest of the amount to be paid on installment and the interest amortized.²⁵ However, Expert Travel did not reimburse petitioner because it was already going to close and stop operations.²⁶ Consequently, she could not pay Sister Reynolds the whole amount.²⁷

¹⁴ TSN, January 5, 2005, p. 4.

¹⁵ Records, pp. 132-138.

¹⁶ TSN, January 5, 2005, pp.7-11.

¹⁷ TSN, May 21, 2008, p. 6.

¹⁸ Id.

¹⁹ Id. at 8-14.

²⁰ TSN, April 12, 2010, pp. 11-12.

²¹ Id. at 53-54.

²² Id. at 22-23.

²³ Id at 39-40.

²⁴ Id. at 38 and 49.

²⁵ Id. at pp. 31-32.

²⁶ Id. at 49.

²⁷ Id. at 39-40.

Ruling of the Regional Trial Court:

The RTC rendered its Decision holding that all the elements of the crime of Theft were present.²⁸ It also ruled that petitioner's defense of denial, in contrast with the prosecution's presentation of credible witnesses who testified on affirmative matters, was negative, self-serving, and undeserving of weight in law.²⁹ Thus, the trial court found petitioner guilty beyond reasonable doubt of the crime charged and sentenced her as follows:

WHEREFORE, judgment is rendered finding the accused ELIZABETH HORCA guilty beyond reasonable doubt of the crime of Theft defined and penalized under Art. 308 of the Revised Penal Code, and hereby sentenced her to suffer the maximum penalty of twenty (20) years imprisonment applying Art. 309 (1) of the Revised Penal Code and to reimburse the private complainant the amount of ₱915,626.50 plus interest of twelve percent (12%) until the actual amount is totally paid.

SO ORDERED.³⁰

Petitioner filed her motion for reconsideration. However, it was denied by the RTC.³¹

Aggrieved, petitioner elevated the case to the CA.

Ruling of the Court of Appeals:

The appellate court affirmed the ruling of the RTC and found that the prosecution successfully proved petitioner's guilt beyond reasonable doubt. Similar to the trial court, the CA also ordered petitioner to indemnify the Sisters of Providence the amount of ₱915,626.50. However, it modified the interest rate to six percent (6%) per *annum* from the date of finality of the decision until the said amount is fully paid, instead of the twelve percent (12%) interest per *annum* previously imposed by the RTC.³² The dispositive portion of the assailed Decision states:

WHEREFORE, the Appeal is **DENIED**. The Decision dated May 7, 2012 of the Regional Trial Court, Branch 36, Manila in Criminal Case No. 04-224896 finding accused-appellant Elizabeth Horca guilty beyond reasonable doubt for the crime of Theft is hereby **AFFIRMED** with the **MODIFICATION** that the rate of interest is six percent (6%) per *annum* from the date of finality of this Decision until fully paid.

SO ORDERED.³³

²⁸ CA *rollo*, p. 42.

²⁹ *Id.* at 45.

³⁰ *Id.* at 46.

³¹ *Id.* at 52.

³² CA *rollo*, p. 101.

³³ *Id.*

In her Motion for Reconsideration,³⁴ petitioner insisted that the crime charged is not supported by the evidence on record and that her liability is merely civil in nature. Further, petitioner raised a new argument and claimed that the crime charged should have been estafa and not theft. In denying the motion, the CA reiterated its ruling that the elements of theft had been sufficiently established by the prosecution. Anent petitioner's estafa argument, the appellate court noted that it was raised for the first time on appeal and thus did not give it any due consideration.³⁵

Hence, this petition.

Issue

The sole issue for resolution is whether petitioner is guilty beyond reasonable doubt of the crime of Theft under Article 308 of the Revised Penal Code (RPC).

Our Ruling

Before proceeding to the merits of the case, this Court deems it necessary to discuss certain procedural matters.

First, the Verification and Certification of Non-Forum Shopping³⁶ attached to the petition is defective. Having signed and prepared the instant petition, petitioner's counsel, Atty. Ajay Noreen D.S. Reyes, is disqualified from notarizing the Verification portion of the petition.³⁷ The 2004 Rules on Notarial Practice clearly states that a notary public is disqualified from performing a notarial act if he is a party to the instrument or document that is to be notarized.³⁸ Given that the petition lacks a proper verification, it ought to be treated as an unsigned pleading.³⁹

Second, it bears stressing that a petition for review on *certiorari* under Rule 45 is limited only to questions of law. Factual questions are beyond the purview of this mode of review. Well-settled is the general rule that the jurisdiction of this Court in cases brought before it from the CA is limited to reviewing errors of law.⁴⁰ In the case at bar, the petition raises not only questions of law but also of facts. This Court is being asked to analyze or weigh all over again the evidence already considered in the proceedings below. On this score alone, the petition is dismissible.⁴¹

³⁴ Id. at 103-106.

³⁵ CA *rollo*, pp. 116-117.

³⁶ *Rollo*, p. 11.

³⁷ *Ramos v. Baldo*, G.R. No. 199196, March 20, 2012 (Notice).

³⁸ Id., citing 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC, Rule IV, Sec. 3(a).

³⁹ RULES OF COURT, Rule 7, Section 4.

⁴⁰ *Pideli v. People*, 568 Phil. 793, 803-804 (2008).

⁴¹ Id.

Notwithstanding the foregoing, this Court is inclined to adopt a liberal stance and decide the present petition on its merits rather than on a procedural technicality. In any rate, an appeal in a criminal case opens the entire case for review.

After a judicious scrutiny of the records, We find the petition to be impressed with merit and accordingly acquit Horca of the crime charged.

At the outset, We reject petitioner's contention that the crime charged should have been estafa and not theft. In her Motion for Reconsideration dated December 14, 2015, Horca raised for the first time the argument that the allegations in the Information constitute estafa as it contains the following statement: "she instead misappropriated and converted the same to her own personal use and benefit to the damage and prejudice of Sisters of Providence in the amount of ₱1,005,626.50, Philippine Currency."

It is axiomatic that issues raised for the first time on appeal should not be entertained because to do so would be anathema to the rudiments of fairness and due process.⁴² In *S.C. Megaworld v. Parada*,⁴³ this Court ruled that:

It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel.⁴⁴

Nonetheless, even if We were to entertain such argument, the same is without merit because not all misappropriation is estafa. *Pideli v. People*⁴⁵ (*Pideli*) instructs, to wit:

Although there is misappropriation of funds here, petitioner was correctly found guilty of theft. As early as *U.S. v. De Vera*, the Court has consistently ruled that not all misappropriation is *estafa*. Chief Justice Ramon C. Aquino, in his commentary on the Revised Penal Code, succinctly opined:

The principal distinction between the two crimes is that in theft the thing is taken while in *estafa* the accused receives the property and converts it to his own use or benefit. However, there may be theft even if the accused has possession of the property. If he was entrusted only with the material or physical (natural) or *de facto* possession of the thing, his misappropriation of

⁴² *Punongbayan-Visitacion v. People*, 823 Phil. 212, 222-223 (2018).

⁴³ 717 Phil. 752,760 (2013).

⁴⁴ *Id.*; Emphasis and italics omitted.

⁴⁵ *Pideli v. People*, supra note 40, at 806-807.

the same constitutes theft, but if he has the juridical possession of the thing, his conversion of the same constitutes embezzlement or *estafa*.

In *De Vera*, the accused, Nieves de Vera, received from Pepe, an Igorot, a bar of gold weighing 559.7 grams for the purpose of having a silversmith examine the same, and bank notes amounting to P200.00 to have them exchanged for silver coins. Accused appropriated the bar of gold and bank notes. The Court ruled that the crime committed was theft and not *estafa* since the delivery of the personal property did not have the effect of transferring the juridical possession, thus such possession remained in the owner; and the act of disposal with gainful intent and lack of owner's consent constituted the crime of theft.⁴⁶

In *Pideli*, the Court proceeded to enumerate and discuss several other cases which demonstrated the conviction of an accused of the crime of theft despite the presence of misappropriation.⁴⁷

Applying the above jurisprudence in the instant case, Horca was properly charged with the crime of Theft because she was merely entrusted with the material or physical possession of the sum of money which she was supposed to use for the purchase of the 19 airline tickets. Juridical possession, which means a possession that gives the transferee a right over the thing transferred and that which he may set up even against the owner, was never shown to have been transferred to petitioner.⁴⁸

In any case, this Court rules to acquit Horca based on reasonable doubt.

Under Article 308 of the RPC, the crime of theft is committed when the following elements concur: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) the taking be accomplished without the use of violence, intimidation, or force upon persons or things.⁴⁹

⁴⁶ Id.

⁴⁷ Id. at 807-808, citing *People v. Trinidad*, 50 Phil. 65 (1927); *People v. Locson*, 57 Phil. 325 (1932); *People v. Isaac*, 96 Phil. 931 (1955); *Roque v. People*, 486 Phil. 288 (2004).

⁴⁸ *Reside v. People*, G.R. No. 210318, July 28, 2020.

⁴⁹ REV. PEN. CODE, Art. 308:

Article 308. *Who are liable for theft.* - Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and
3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.

It is a cardinal principle that, in all criminal prosecutions, it is the prosecution that bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging such burden, the prosecution has the duty to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or any other crime that is necessarily included therein. Further, the prosecution likewise carries the burden to prove the participation of the accused in the commission of the offense. Corollary thereto, it is essential that the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense. This burden of proof placed upon the prosecution is anchored on the presumption of innocence granted in favor of the accused, which no less than our Constitution has guaranteed.⁵⁰

In the case at bar, We find that there is reasonable doubt as to the guilt of the petitioner because the prosecution failed to sufficiently prove the crucial element of taking with intent to gain.

Animus lucrandi, or intent to gain, is an internal act which can be established through the overt acts of the offender and can be presumed from the unlawful taking.⁵¹ In the case before Us, however, the prosecution failed to adduce any concrete evidence which would show that Horca had taken the cash for her own personal gain. On the contrary, the records show that Horca actually used the money covered by the checks for its intended purpose, *i.e.*, to purchase the airline tickets, albeit only four were initially delivered to Sister Reynolds. This is apparent from Sister Reynolds' testimony where she disclosed that Horca had given her fax copies of the airline tickets prior to the scheduled flight:

Q: Were you part of the group going to Rome?

A: Yes, I was.

Q: And did you come to know what airline company that these 19 tickets were supposed to use?

A: Yes, those tickets were for SwissAir. We received fax copies of the tickets from Mrs. Horca.

Q: Are you saying Sister that you were shown at least the photocopies of these tickets that were purchased by accused Horca?

A: We received the fax copies of those and one evening four (4) tickets were delivered in my residence. The other fifteen (15) tickets were never delivered.⁵²

⁵⁰ *People v. Claro*, 808 Phil. 455, 468-469 (2017).

⁵¹ *People v. Pideli*, *supra* note 40, at 805.

⁵² TSN, April 3, 2006, pp. 5-6.

In her complaint-affidavit, Sister Reynolds claimed that Horca deceived her when she told her that the 15 tickets were stolen from one of the agency's employees who was tasked to deliver them and that Horca never intended to deliver all of the tickets.⁵³ However, this was not adequately proven during trial or was it even discussed at all. It is thus unclear from the prosecution evidence how these tickets were stolen or if Horca had taken the money intended for the purchase of the tickets and that she kept it for her own benefit.

For her part, Horca explained that while she was able to buy the tickets for the Sisters of Providence, the remaining 15 tickets were not delivered to Sister Reynolds because the flight was cancelled since there was a strike due to Swiss Air's bankruptcy. Contrary to Sister Reynolds' claim, Horca did not aver that the tickets were not delivered because they were stolen but because of the strike in connection to Swiss Air's bankruptcy, to wit:

Q: How many tickets were actually issued?

A: They were a group going to Rome. However, on the day of their departure, Swiss Air had a strike. So, they could not leave.

Q: The Swiss Air had a strike, what was the cause of the strike?

A: I think, bankruptcy.

Q: But you mentioned... did you inform the sisters about this bankruptcy?

A: Both of us, Sister Jo and I were on the telephone and they were supposed to leave but they could not leave because of that strike.

Q: But I understand that you already showed the sisters a copy of their tickets, right?

A: Yes, sir.⁵⁴

x x x x

Q: So, Mrs. Witness, you are saying right now that the tickets were not stolen? So, you are saying that categorically that tickets were not stolen?

x x x x

A: The tickets were not stolen.

x x x x

Q: But the Swiss Air Company, the airline got bankrupt?

A: Yes, sir.

Q: And the bankruptcy caused the strike?

A: Yes, sir.⁵⁵

⁵³ Records, pp. 6-8.

⁵⁴ TSN, April 12, 2010, pp. 12-14.

⁵⁵ Id. at 20-22.

From the foregoing, it cannot be conclusively stated that Horca took the money for her own account when there is evidence which suggests that she used the checks for the purpose it was given.

Moreover, it is also not established from the records if Horca took or received the money after Swiss Air reimbursed the amount to the travel agency. Per petitioner's account, when the flight was cancelled, Swiss Air refunded the money to Expert Travel and not to petitioner:

Q: The money was given by Swiss Air to Expert Travel?

A: Yes, your honor.

Q: But the Expert Travel was not able to give you the money to pay the sisters?

A: Yes, your honor.

Q: So, Mrs. Witness, from the time that Swiss Air refunded the amount to Expert Travel, you did not make efforts to refund the money from Expert Travel?

A: I tried a lot of time. I really tried my best. If I can only pay them the whole amount.⁵⁶

It bears to note that there was no clear evidence presented to prove that the money reimbursed by Swiss Air landed in the hands of Horca. While it was established that Horca was given sufficient authority by the travel agency to collect the checks from the client, to obtain the tickets from the airline ticketing office, and to turn over the tickets to the Sisters of Providence, this cannot be interpreted to mean that Horca was also given the authority by the agency to take possession of the reimbursed amount. Apart from Horca's assertions, the records are bereft of any showing as to whom the money was refunded to or whether Horca was able to get a hold of the money when Swiss Air returned the same to Expert Travel after the flight was cancelled.

Given the circumstances, We are of the view that Horca ought to be acquitted on the ground of reasonable doubt. However, her acquittal does not necessarily amount to her absolution from civil liability. In *Dayap v. Sendiong*,⁵⁷ this Court held that:

The acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. However, the civil action based on delict may

⁵⁶ TSN, April 12, 2010, pp. 39-40.

⁵⁷ 597 Phil. 127 (2009).

be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him.⁵⁸

Conformably with the foregoing, the civil aspect of the criminal case can survive an acquittal when it is based on reasonable doubt. In this scenario, even though the evidence presented does not establish the fact of the crime with moral certainty, the civil action can still prevail as long as preponderant evidence tilts in favor of a finding of liability. "This means that while the mind of the court cannot rest easy in penalizing the accused for the commission of a crime, it nevertheless finds that he or she committed or omitted to perform acts which serve as a separate source of obligation. There is no sufficient proof that the act or omission is criminal beyond reasonable doubt, but there is a preponderance of evidence to show that the act or omission caused injury which demands compensation."⁵⁹

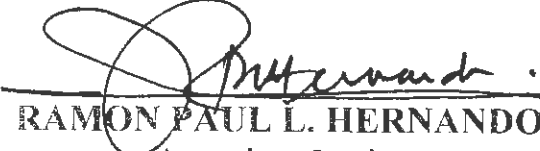
As applied in this case, there is reason for this Court to believe that Horca should be held civilly liable to the Sisters of Providence. The fact remains that Sister Reynolds and her congregation was prejudiced when they paid for the tickets but did not get reimbursed when the flight was cancelled. This is also supported by Horca's own acts when she acknowledged the need to return the money and when she actually paid Sister Reynolds the amount of ₱90,000.00 to partially cover for the airline tickets. To the Court, this essentially amounts to an admission of her liability to return the said amount. Concomitantly, while this Court acquits petitioner because reasonable doubt exists anent her guilt, We adjudge Horca to be civilly accountable considering that preponderant evidence exists to establish her liability.

WHEREFORE, the petition is **GRANTED**. The November 13, 2015 Decision and February 18, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36346 are **REVERSED AND SET ASIDE**. Petitioner Elizabeth Horca is hereby **ACQUITTED** on the ground of reasonable doubt. However, petitioner is **ORDERED TO PAY** the private complainant the sum of ₱915,626.50, subject to interest at the rate of six percent (6%) per *annum* from the date of finality of this judgment until fully paid.


⁵⁸ Id. at 141.

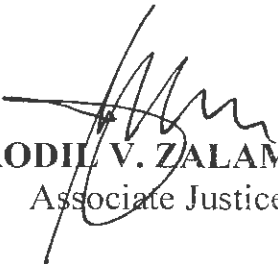
⁵⁹ *Dy v. People*, 792 Phil. 672, 685 (2016).

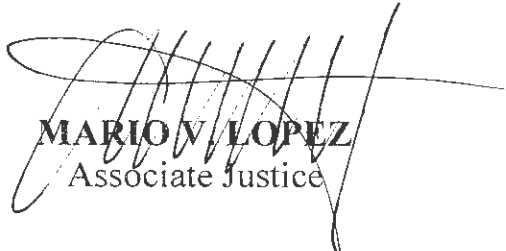
SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

WE CONCUR:


HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice


MARIO N. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

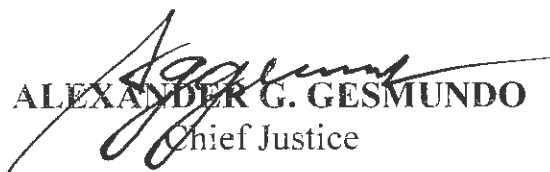
ATTESTATION

I attest 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.


RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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.


ALEXANDER G. GESMUNDO
Chief Justice