Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LETICIA I. KUMMER,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 174461

Present:

CARPIO, *J., Chairperson,*
BRION,
PEREZ,
PERLAS-BERNABE, and
LEONEN,* *JJ.*

Promulgated:
SEP 11 2013

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DECISION

BRION, *J.:*

We decide the appeal filed by petitioner Leticia I. Kummer assailing the April 28, 2006 decision[1] of the Court of Appeals (*CA*) in CA – G.R. CR No. 27609. The CA decision affirmed the July 27, 2000 judgment[2] of the Regional Trial Court (*RTC*), Branch 4, Tuguegarao City, Cagayan, finding the petitioner and her co-accused Freiderich Johan I. Kummer guilty beyond reasonable doubt of the crime of homicide in Criminal Case No. 1130.

The Facts

The prosecution's evidence revealed that on June 19, 1988, between 9:00 and 10:00 p.m., Jesus Mallo, Jr., accompanied by Amiel Malana, went to the house of the petitioner. Mallo knocked at the front door with a stone and identified himself by saying, "Auntie, ako si Boy Mallo."

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* In lieu of Associate Justice Mariano C. del Castillo per Raffle dated September 4, 2013.

1 *Rollo*, pp. 11-28; penned by Associate Justice Vicente S. E. Veloso, and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Amelita G. Tolentino.

2 Id. at 85-94; penned by Judge Lyliha L. Abella-Aquino.

The petitioner opened the door and at this point, her son and co-accused, Johan, using his left hand, shot Mallo twice using a gun about six (6) inches long.[3] Malana, who was with Mallo and who witnessed the shooting, immediately ran towards the west, followed by Mallo. When Malana turned his back, he saw the petitioner leveling and firing her long gun at Mallo, hitting the latter's back and causing him to fall flat on the ground.[4]

Thereafter, the petitioner went inside the house and came out with a flashlight. Together with her co-accused, she scoured the pathway up to the place where Mallo was lying flat.[5] At that point, the petitioner uttered, "Johan, patay na," in a loud voice.[6] The petitioner and her co-accused put down the guns and the flashlight they were holding, held Mallo's feet and pulled him to about three (3) to four (4) meters away from the house. Thereafter, they returned to the house and turned off all the lights.[7]

The following morning, policeman Danilo Pelovello went to the petitioner's house and informed her that Mallo had been found dead in front of her house. Pelovello conducted an investigation through inquiries among the neighbors, including the petitioner, who all denied having any knowledge of the incident.

The prosecution filed an information[8] for homicide on January 12, 1989 against the petitioner and Johan, docketed as Criminal Case No. 1130. Both accused were arraigned and pleaded not guilty to the crime charged. They waived the pre-trial, and the trial on the merits accordingly followed.

The petitioner denied the charge and claimed in her defense that she and her children, Johan, Melanie and Erika, were already asleep in the evening of June 19, 1988. She claimed that they were awakened by the sound of stones being thrown at their house, a gun report, and the banging at their door.

Believing that the noise was caused by the members of the New People's Army prevalent in their area, and sensing the possible harm that might be inflicted on them, Johan got a .38 cal. gun from the drawer and fired it twice outside to scare the people causing the disturbance. The noise continued, however, with a stone hitting the window and breaking the glass; another stone hit Melanie who was then sick. This prompted Johan to get the shotgun placed beside the door and to fire it. The noise thereafter stopped and they all went back to sleep.

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3 TSN, November 21, 1989, p. 6.
4 Id. at 11.
5 Id. at 12.
6 Id. at 13.
7 Ibid.
8 *Rollo*, p. 82.

In its judgment dated July 27, 2000, the RTC found the prosecution's evidence persuasive based on the testimonies of prosecution eyewitnesses Ramon Cuntapay and Malana who both testified that the petitioner shot Mallo. The testimonial evidence, coupled by the positive findings of gunpowder nitrates on the left hand of Johan and on the petitioner's right hand, as well as the corroborative testimony of the other prosecution witnesses, led the RTC to find both the petitioner and Johan guilty beyond reasonable doubt of the crime charged.

Johan, still a minor at the time of the commission of the crime, was released on the recognizance of his father, Moises Kummer. Johan subsequently left the country without notifying the court; hence, only the petitioner appealed the judgment of conviction with the CA.

She contended before the CA that the RTC committed reversible errors in its appreciation of the evidence, namely: (1) in giving credence to the testimonial evidence of Cuntapay and of Malana despite the discrepancies between their sworn statements and direct testimonies; (2) in not considering the failure of the prosecution to cite the petitioner's motive in killing the victim; (3) in failing to consider that the writer of the decision, Judge Lyliha L. Abella-Aquino, was not the judge who heard the testimonies; and (4) in considering the paraffin test results finding the petitioner positive for gunpowder residue.

The CA rejected the petitioner's arguments and affirmed the RTC judgment, holding that the discrepancies between the sworn statement and the direct testimony of the witnesses do not necessarily discredit them because the contradictions are minimal and reconcilable. The CA also ruled that the inconsistencies are minor lapses and are therefore not substantial. The petitioner's positive identification by the eyewitnesses as one of the assailants remained unrefuted. The CA, moreover, held that proof of motive is only necessary when a serious doubt arises on the identity of the accused. That the writer of the decision was not the judge who heard the testimonies of the witnesses does not necessarily make the decision erroneous.

In sum, the CA found Malana and Cuntapay's positive identification and the corroborative evidence presented by the prosecution more than sufficient to convict the petitioner of the crime charged.

On further appeal to this Court, the petitioner submits the issue of whether the CA committed a reversible error in affirming the RTC's decision convicting her of the crime of homicide.

In essence, the case involves the credibility of the prosecution eyewitnesses and the sufficiency of the prosecution's evidence.

Our Ruling

We find the petition devoid of merit.

The petitioner's conviction is anchored on the positive and direct testimonies of the prosecution eyewitnesses, which testimonies the petitioner submits to be both inconsistent and illogical. The petitioner essentially impugns the credibility of the witnesses on these grounds. The petitioner moreover claims that her conviction was based on doctrinal precepts that should not apply to her case.

Variance between the eyewitnesses' testimonies in open court and their affidavits does not affect their credibility

In her attempt to impugn the credibility of prosecution eyewitnesses Malana and Cuntapay, the petitioner pointed to the following inconsistencies: *First*, in paragraph 7 of Malana's July 21, 1988 affidavit, he stated that after hearing two gunshots, he dived to the ground for cover and heard another shot louder than the first two. This statement is allegedly inconsistent with his declaration during the direct examination that he saw the petitioner and Johan fire their guns at Mallo. *Second*, the July 22, 1988 affidavit of Cuntapay likewise stated that he heard two burst of gunfire coming from the direction of the petitioner's house and heard another burst from the same direction, which statement is allegedly inconsistent with his direct testimony where he claimed that he saw the petitioner shoot Mallo. *Third*, in his affidavit, Malana declared that he ran away as he felt the door being opened and heard two shots, while in his testimony in court, he stated that he ran away after Mallo was already hit. According to the petitioner, these and some other trivial and minor inconsistencies in the testimony of the two witnesses effectively destroyed their credibility.

We find these claims far from convincing. The Court has consistently held that inconsistencies between the testimony of a witness in open court, on one hand, and the statements in his sworn affidavit, on the other hand, referring only to minor and collateral matters, do not affect his credibility and the veracity and weight of his testimony as they do not touch upon the commission of the crime itself. Slight contradictions, in fact, even serve to strengthen the credibility of the witnesses, as these may be considered as badges of truth rather than indicia of bad faith; they tend to prove that their testimonies have not been rehearsed. Nor are such inconsistencies, and even improbabilities, unusual, for no person has perfect faculties of senses or recall.[9]

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[9] *People v. Perreras*, 414 Phil. 480, 488 (2001).

A close scrutiny of the records reveals that Malana and Cuntapay positively and firmly declared in open court that they **saw** the petitioner and Johan shoot Mallo. The inconsistencies in their affidavit, they reasoned, were due to the oversight of the administering official in typing the exact details of their narration.

It is oft repeated that affidavits are usually abbreviated and inaccurate. Oftentimes, an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court. Generally, the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them.[10] Worse, the process of affidavit-taking may sometimes amount to putting words into the affiant's mouth, thus allowing the whole statement to be taken out of context.

The court is not unmindful of these on-the-ground realities. In fact, we have ruled that the discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since *ex parte* affidavits are generally incomplete.[11] As between the joint affidavit and the testimony given in open court, the latter prevails because affidavits taken *ex-parte* are generally considered to be inferior to the testimony given in court.[12]

In the present case, we find it undeniable that Malana and Cuntapay positively identified the petitioner as one of the assailants. This is the critical point, not the inconsistencies that the petitioner repeatedly refers to, which carry no direct bearing on the crucial issue of the identity of the perpetrator of the crime. Indeed, the inconsistencies refer only to minor details that are not critical to the main outcome of the case. Moreover, the basic rule is that the Supreme Court accords great respect and even finality to the findings of credibility of the trial court, more so if the same were affirmed by the CA, as in this case.[13] We find no reason to break this rule and thus find that both the RTC and the CA were correct in giving credence to the testimonies of Malana and Cuntapay.

It is not necessary for the validity of the judgment that it be rendered by the judge who heard the case

The petitioner contends that the CA, in affirming the judgment of the RTC, failed to recognize that the trial court that heard the testimonies of Malana and Cuntapay was not the same court that rendered the decision.[14]

We do not share this view.

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10 *People v. Quiming*, G.R. No. 92847, May 21, 1993, 222 SCRA 371, 376.
11 *People v. Dumpe*, G.R. Nos. 80110-11, March 22, 1990, 183 SCRA 547, 552.
12 *People v. Marcelo*, G.R. No. 105005, June 2, 1993, 223 SCRA 24, 36.
13 *People v. Lucero*, G.R. No. 179044, December 6, 2010, 636 SCRA 533, 540.
14 *Rollo*, p. 351.

The rule is settled that the validity of a judgment is not rendered erroneous solely because the judge who heard the case was not the same judge who rendered the decision. In fact, it is not necessary for the validity of a judgment that the judge who penned the decision should actually hear the case in its entirety, for he can merely rely on the transcribed stenographic notes taken during the trial as the basis for his decision.[15]

Thus, the contention - that since Judge Lyliha L. Abella-Aquino was not the one who heard the evidence and thereby did not have the opportunity to observe the demeanor of the witnesses - must fail. It is sufficient that the judge, in deciding the case, must base her ruling completely on the records before her, in the way that appellate courts do when they review the evidence of the case raised on appeal.[16] Thus, a judgment of conviction penned by a different trial judge is not erroneous if she relied on the records available to her.

Motive is irrelevant when the accused has been positively identified by an eyewitness

We agree with the CA's ruling that motive gains importance only when the identity of the assailant is in doubt. As held in a long line of cases, the prosecution does not need to prove the motive of the accused when the latter has been identified as the author of the crime.[17]

Once again, we point out that the petitioner was positively identified by Malana and Cuntapay. Thus, the prosecution did not have to identify and prove the motive for the killing. It is a matter of judicial knowledge that persons have been killed for no apparent reason at all, and that friendship or even relationship is no deterrent to the commission of a crime.[18]

The petitioner attempts to offer the justification that the witnesses did not really witness the shooting as their affidavits merely attested that they heard the shooting of Mallo (and did not state that they actually witnessed it). We find this to be a lame argument whose merit we cannot recognize.

That Malana and Cuntapay have been eyewitnesses to the crime remains unrefuted. They both confirmed in their direct testimony before the RTC that they **saw** the petitioner fire a gun at Mallo. This was again re-affirmed by the witnesses during their cross examination. The fact that their respective affidavits merely stated that they heard the gunshots does not automatically foreclose the possibility that they also saw the actual shooting as this was in fact what the witnesses claimed truly happened. Besides, it has been held that the claim that "whenever a witness discloses in his testimony

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15 *People v. Cadley*, 469 Phil. 515, 524 (2004).
16 *Villanueva v. Judge Estenzo*, 159-A Phil. 674, 681 (1975).
17 *People v. Canceran*, G.R. No. 104866, January 31, 1994, 229 SCRA 581, 587.
18 *People v. Paragua*, 326 Phil. 923, 929 (1996).

in court facts which he failed to state in his affidavit taken *ante litem motam*, then an inconsistency exists between the testimony and the affidavit" is **erroneous**. If what were stated in open court are but details or additional facts that serve to supplement the declarations made in the affidavit, these statements cannot be ruled out as inconsistent and may be considered by the court.

Thus, in light of the direct and positive identification of the petitioner as one of the perpetrators of the crime by not one but two prosecution eyewitnesses, the failure to cite the motive of the petitioner is of no moment.

At any rate, we find it noteworthy that the lack or absence of motive for committing the crime does not preclude conviction where there are reliable witnesses who fully and satisfactorily identified the petitioner as the perpetrator of the felony, such as in this case.

There is no absolute uniformity nor a fixed standard form of human behavior

The petitioner imputes error to the CA in giving credence to the testimonies of Malana and Cuntapay on the claim that these are riddled not only by inconsistencies and contradictions, but also by improbabilities and illogical claims. She laboriously pointed out the numerous improbabilities that, taken as a whole, allegedly cast serious doubt on their reliability and credibility.

She alleged, among others: (1) that it was abnormal and contrary to the ways of the farmers in the rural areas for Cuntapay to go home from his corral at about 9:00 p.m., while everybody else goes home from his farm much earlier, as working late in the farm (that is, before and after sunset) is taboo to farming; (2) that the act of the petitioner of putting down her gun in order to pull the victim away does not make any sense because a criminal would not simply part with his weapon in this manner; (3) that it is highly incredible that Malana, who accompanied Mallo, was left unharmed and was allowed to escape if indeed he was just beside the victim; (4) that it is unbelievable that when Malana heard the cocking of guns and the opening of the door, he did not become scared at all; (5) that Malana and Cuntapay did not immediately report the incident to the authorities; (6) that it was highly improbable for Malana to turn his head while running; and (7) that it was unusual that Cuntapay did not run away when he saw the shooting.

We rule, without descending to particulars and going over each and every one of these claims, that without more and stronger indicators, we cannot accord them credit. Human nature suggests that people may react differently when confronted with a given situation. Witnesses to a crime cannot be expected to demonstrate an absolute uniformity and conformity in action and reaction. People may act contrary to the accepted norm, react

differently and act contrary to the expectation of mankind. There is no standard human behavioral response when one is confronted with an unusual, strange, startling or frightful experience.[19]

We thus hold that the CA was correct in brushing aside the improbabilities alleged by the petitioner who, in her present plight, can be overcritical in her attempt to seize every detail that can favor her case. Unfortunately, if at all, her claims refer only to minor and even inconsequential details that do not touch on the core of the crime itself.

Public documents are admissible in court without further proof of their due execution and authenticity

A public document is defined in Section 19, Rule 132 of the Rules of Court as follows:

> SEC. 19. *Classes of Documents.* – For the purpose of their presentation [in] evidence, documents are either public or private.
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> Public documents are:
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> **(a) <u>The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;</u>**
>
> (b) Documents acknowledge[d] before a notary public except last wills and testaments; and
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> (c) Public records, kept in the Philippines, [or] private documents required by law to [be] entered therein.
>
> All other writings are private. [emphasis and underscore ours]

The chemistry report showing a positive result of the paraffin test is a public document. As a public document, the rule on authentication does not apply. It is admissible in evidence without further proof of its due execution and genuineness; the person who made the report need not be presented in court to identify, describe and testify how the report was conducted. Moreover, 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 stated therein.[20]

In the present case, notwithstanding the fact that it was Captain Benjamin Rubio who was presented in court to identify the chemistry report and not the forensic chemist who actually conducted the paraffin test on the petitioner, the report may still be admitted because the requirement for authentication does not apply to public documents. In other words, the

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19 *People v. Roncal*, 338 Phil. 749, 755 (1997).

20 RULES OF COURT, Rule 132, Section 23.

forensic chemist does not need to be presented as witness to identify and authenticate the chemistry report. Furthermore, the entries in the chemistry report are *prima facie* evidence of the facts they state, that is, of the presence of gunpowder residue on the left hand of Johan and on the right hand of the petitioner. As a matter of fact, the petitioner herself admitted the presence of gunpowder nitrates on her fingers, albeit ascribing their presence from a match she allegedly lighted.[21] Accordingly, we hold that the chemistry report is admissible as evidence.

On the issue of the normal process versus the actual process conducted during the test raised by the petitioner, suffice it to say that in the absence of proof to the contrary, it is presumed that the forensic chemist who conducted the report observed the regular procedure. Stated otherwise, the courts will not presume irregularity or negligence in the performance of one's duties unless facts are shown dictating a contrary conclusion. The presumption of regularity in favor of the forensic chemist compels us to reject the petitioner's contention that an explanation has to be given on how the actual process was conducted. Since the petitioner presented no evidence of fabrication or irregularity, we presume that the standard operating procedure has been observed.

We note at this point that while the positive finding of gunpowder residue does not conclusively show that the petitioner indeed fired a gun, the finding nevertheless serves to corroborate the prosecution eyewitnesses' testimony that the petitioner shot the victim. Furthermore, while it is true that cigarettes, fertilizers, urine or even a match may leave traces of nitrates, experts confirm that these traces are minimal and may be washed off with tap water, unlike the evidence nitrates left behind by gunpowder.

Change in the date of the commission of the crime, where the disparity is not great, is merely a formal amendment, thus, no arraignment is required

The petitioner claims that she was not arraigned on the amended information for which she was convicted. The petitioner's argument is founded on the flawed understanding of the rules on amendment and misconception on the necessity of arraignment in every case. Thus, we do not see any merit in this claim.

Section 14, Rule 110 of the Rules of Court permits a formal amendment of a complaint even after the plea but only if it is made with leave of court and provided that it can be done without causing prejudice to the rights of the accused. Section 14 provides:

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21 *Rollo*, p. 50.

> Section 14. Amendment or substitution. A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. **After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.**
>
> However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.
>
> If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused [would] not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. [emphasis and underscore ours]

A mere change in the date of the commission of the crime, if the disparity of time is not great, is more formal than substantial. Such an amendment would not prejudice the rights of the accused since the proposed amendment would not alter the nature of the offense.

The test as to when the rights of an accused are prejudiced by the amendment of a complaint or information is when a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, when any evidence the accused might have would no longer be available after the amendment is made, and when any evidence the accused might have would be inapplicable to the complaint or information, as amended.[22]

In *People, et al. v. Borromeo, et al.*,[23] we ruled that the change of the date of the commission of the crime from June 24, 1981 to August 28, 1981 is a **formal amendment** and would not prejudice the rights of the accused because the nature of the offense of grave coercion would not be altered. In that case, the difference in the date was only about two months and five days, which difference, we ruled, would neither cause substantial prejudice nor cause surprise on the part of the accused.

It is not even necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense.[24] The act may be alleged to have been committed at any time as near as to the actual date at which date the offense

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22 *People v. Casey*, No. L-30146, February 24, 1981, 103 SCRA 21, 31-32.
23 208 Phil. 234, 237-238 (1983).
24 RULES OF COURT, Rule 110, Section 11.

was committed, as the information will permit. Under the circumstances, the precise time is not an essential ingredient of the crime of homicide.

Having established that a change of date of the commission of a crime is a formal amendment, we proceed to the next question of whether an arraignment is necessary.

Arraignment is indispensable in bringing the accused to court and in notifying him of the nature and cause of the accusations against him. The importance of arraignment is based on the constitutional right of the accused to be informed.[25] Procedural due process requires that the accused be arraigned so that he may be informed of the reason for his indictment, the specific charges he is bound to face, and the corresponding penalty that could be possibly meted against him. It is at this stage that the accused, for the first time, is given the opportunity to know the precise charge that confronts him. It is only imperative that he is thus made fully aware of the possible loss of freedom, even of his life, depending on the nature of the imputed crime.[26]

The need for arraignment is equally imperative in an amended information or complaint. This however, we hastily clarify, pertains only to substantial amendments and not to formal amendments that, by their very nature, do not charge an offense different from that charged in the original complaint or information; do not alter the theory of the prosecution; do not cause any surprise and affect the line of defense; and do not adversely affect the substantial rights of the accused, such as an amendment in the date of the commission of the offense.

We further stress that an amendment done after the plea and during trial, in accordance with the rules, does not call for a second plea since the amendment is only as to form. The purpose of an arraignment, that is, to inform the accused of the nature and cause of the accusation against him, has already been attained when the accused was arraigned the first time. The subsequent amendment could not have conceivably come as a surprise to the accused simply because the amendment did not charge a new offense nor alter the theory of the prosecution.

Applying these rules and principles to the prevailing case, the records of the case evidently show that the amendment in the complaint was from July 19, 1988 to June 19, 1988, or a difference of only <u>one month</u>. It is clear that consistent with the rule on amendments and the jurisprudence cited above, the change in the date of the commission of the crime of homicide is a formal amendment - it does not change the nature of the crime, does not affect the essence of the offense nor deprive the accused of an opportunity to meet the new averment, and is not prejudicial to the accused. Further, the defense under the complaint is still available after the amendment, as this

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25 Id., Rule 115, Section 1(b).

26 *Borja v. Judge Mendoza*, 168 Phil. 83, 87 (1977).

was, in fact, the same line of defenses used by the petitioner. This is also true with respect to the pieces of evidence presented by the petitioner. The effected amendment was of this nature and did not need a second plea.

To sum up, we are satisfied after a review of the records of the case that the prosecution has proven the guilt of the petitioner beyond reasonable doubt. The constitutional presumption of innocence has been successfully overcome.

WHEREFORE, premises considered, the appealed decision dated April 28, 2006, convicting the petitioner of the crime of homicide, is hereby **AFFIRMED**. Costs against petitioner Leticia I. Kummer.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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