



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 197813

Present:

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

- versus -

EDWIN IBAÑEZ y ALBANTE and
ALFREDO (FREDDIE) NULLA y
IBAÑEZ,
Accused-appellants.

Promulgated:

SEP 25 2013

X-----X

DECISION

PEREZ, J.:

Before us is an appeal *via* a Notice of Appeal from the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04051.¹ The appellate court affirmed *in toto* the Decision² of the Regional Trial Court (RTC), Branch 18, Malolos, Bulacan which convicted accused-appellants Edwin Ibañez y Albante (Edwin) and Alfredo Nulla y Ibañez (Alfredo) of Murder in Criminal Case No. 3517-M-2004.

* Per Special Order No. 1560 dated 24 September 2013.

¹ Penned by Associate Justice Magdangal M. De Leon with Associate Justices Mario V. Lopez and Rodil V. Zalameda, concurring. *Rollo*, pp. 2-16.

² Presided by Presiding Judge Victoria C. Fernandez-Bernardo. *Records*, pp. 271-290.

Appellants Edwin and Alfredo, with Jesus Monsillo y Taniarés (Jesus), were all charged in an Information for Murder under Article 248 of the Revised Penal Code, which reads:

The undersigned Asst. Provincial Prosecutor accuses Jesus Montisillo y Taniarés @ Dodong, Edwin Ibañez y Albante and Alfredo (Freddie) Nulla y Ibañez of the crime of murder, penalized under the provisions of Article 248 of the Revised Penal Code, committed as follows:

That on or about the 29th day of August, 2004, in the municipality of Bocaue, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a soil digger (bareta) and with intent to kill one Wilfredo Atendido y Dohenog, conspiring, confederating and helping one another did then and there willfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and hit with the said soil digger (bareta) the said Wilfredo Atendido y Dohenog, hitting the latter on his head, thereby inflicting upon him serious physical injuries which directly caused his death.³

During arraignment, Edwin and Alfredo pleaded not guilty. Jesus, on the other hand, remained at large; the case against him was archived. Thereafter, trial ensued.

The prosecution's version was testified to by the victim's wife and daughter, in succession.

On that fateful day, Wilfredo Atendido y Dohenog (Wilfredo) was invited by Alfredo to a drinking session with Jesus and Edwin making them a party of four. Rachel, Wilfredo's daughter, an adolescent at the time, was underneath the house (*silong* in the vernacular) of a neighbor, three (3) meters away from the place where Wilfredo and his companions were ostensibly in merrymaking.

Rachel saw her father step away from the group to urinate. While Wilfredo relieved himself, Edwin snatched a t-shirt from a nearby clothesline, and hooded the t-shirt over the head and face of Wilfredo. Robbed of vision as his head was fully covered, Wilfredo was wrestled and pinned down by Edwin, while Alfredo boxed the left side of Wilfredo's chest. Jesus, armed with a long iron bar, swung at and hit Wilfredo in the head. Terrified, Rachel stood immobilized as she watched the attack on her

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Id. at 2.

father. Thereafter, she saw her mother running out of their house and crying for help.

On that same auspicious date, 29 August 2004, Rowena, Wilfredo's wife and Rachel's mother, was inside their house taking care of their youngest daughter. She heard a commotion coming from the neighboring house, about eight (8) steps away, so she rushed in that direction. Once outside their house, she saw Wilfredo prostrate on the ground covered with blood on his face and forehead. Upon reaching Wilfredo, Rowena saw accused Jesus, standing one meter away from Wilfredo, holding an iron bar. Edwin and Alfredo stood beside Jesus; Edwin held a white shirt. Forthwith, Jesus and Alfredo ran away while Edwin went home. Rowena asked for help to bring Wilfredo to the hospital. However, Wilfredo did not reach the hospital alive and was pronounced dead on arrival.

Expectedly, the defense mainly of Edwin and Alfredo, proffered an altogether different version of the events.

The two accused-appellants pointed to Jesus as the sole culprit, proclaimed their innocence and professed to being at the scene of the crime only because of their curiosity for what had occurred.

Allegedly, on that day, the two buddies were having their regular drinking session at Edwin's house when they heard a commotion outside. Curious about the ruckus, they approached and saw Wilfredo prostrate on the ground; Jesus, held an iron bar and was being held back by his sister who was shouting, "*Tama na[!] Tama na[!]*." Edwin then called for a tricycle so Wilfredo could be brought to a hospital and given medical attention. Alfredo stood by and merely watched as events transpired.

To corroborate their claim of innocence, the defense called Aniceta Dosil (Aniceta) to the witness stand who testified as follows:

- (1) She sold doormats for a living which she peddled on the road;
- (2) On 29 August 2004, Rachel helped her in selling the doormats;
- (3) On that day, they finished at around 6:00 p.m. and headed to their respective residences along the railroad track;
- (4) Upon arriving at their vicinity, Aniceta witnessed the immediate aftermath of the purported fight between Jesus and Wilfredo;
- (5) At that juncture, Jesus was being embraced by his sister, Marilou, and the two were two meters away from the body of Wilfredo;

- (6) Marilou recounted to Aniceta that Jesus had hit Wilfredo with an iron bar, a preemptive move because Wilfredo was about to stab Jesus;
- (7) While Aniceta and Marilou discussed the incident, Rachel stood and listened to them;
- (8) At that time, only the four of them, Jesus, Marilou, Aniceta and Rachel, were at the place of the incident;
- (9) After learning the entirety of what had transpired, Aniceta, who was afraid to get involved, and Rachel, ran to their respective houses;
- (10) For the duration of the day, Aniceta did not step out of her house, neither did she volunteer information to the police when the case was investigated in the following days; and
- (11) Aniceta only came forward to testify at the request of Adela Ibañez, wife of Edwin.

As previously adverted to, the trial court convicted Edwin and Alfredo of Murder. It disposed of the case, to wit:

WHEREFORE, accused Edwin Ibañez y Albante and Alfredo (Freddie) Nulla y Ibañez are hereby found GUILTY beyond reasonable doubt of the crime of murder and are hereby sentenced to suffer imprisonment of *reclusion perpetua* and to indemnify the heirs of Wilfredo D. Atendido in the amount of:

- a) Fifty Thousand Pesos (₱50,000.00) as civil indemnity;
- b) Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages;
- c) Fifty Thousand Pesos (₱50,000.00) as moral damages;
- d) Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages; and
- e) One Million Nine Hundred Forty-Six Thousand and One Hundred Eighty Pesos (₱1,946,180.00) for the unearned income of Wilfredo Atendido.⁴

On appeal, Edwin and Alfredo found no reprieve. The Court of Appeals did not deviate from the RTC's ruling and affirmed *in toto* its finding of guilt.

In this appeal, Edwin and Alfredo assign the following as errors:

I

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Id. at 289-290.

THE [LOWER COURTS] GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE ALLEGED PROSECUTION EYEWITNESS.

II

THE [LOWER COURTS] GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE DEFENSE[‘S] EVIDENCE.

III

THE [LOWER COURTS] GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS WHEN THEIR GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.⁵

In sum, the issue is whether the accused are guilty of murder.

Edwin and Alfredo maintain their innocence and point to Jesus as the sole perpetrator of the crime. They insist that they were at the scene of the crime only because they wanted to know what the commotion was all about. They claim that, in fact, Edwin called for a tricycle so Wilfredo could be brought to a hospital. To discredit the eyewitness testimony of Rachel, they presented Aniceta who testified that she and Rachel were out on that day selling doormats and only returned at 6:00 p.m. Thus, Rachel could not have witnessed the murder of Wilfredo.

Both lower courts, however, found the testimony of Rachel credible:

This Court finds the testimony of Rachel clear and convincing. The testimony flows from a person who was present in the place where the killing occurred. They are replete with details sufficient to shift the burden of evidence to appellants. We have no reason to doubt Rachel’s credibility. Her candid account of the incident, standing alone, clearly established the components of the crime of murder. Appellants’ defense of denial, not sufficiently proven, cannot overcome the conclusions drawn from said evidence. We find no cogent reason to deviate from the findings and conclusions of the trial court. Rachel’s testimony was delivered in a firm, candid, and straightforward manner. There is no showing that Rachel wavered from the basic facts of her testimony, even when she was subjected to a rigorous examination.

Rachel was only ten (10) years old when she witnessed the murder of the victim. She testified in open court two (2) years later. Thus, she cannot be expected to give an error-free narration of the events that happened two years earlier. The alleged inconsistencies between her sworn statement and testimony referred to by appellants do not affect her

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CA rollo, p. 42.

credibility. What is important is that in all her narrations she consistently and clearly identified appellants as the perpetrators of the crime. Inconsistencies between the sworn statement and the testimony in court do not militate against witness' credibility since sworn statements are generally considered inferior to the testimony in open court.⁶

We find no error in the lower courts' disposal of the issue.

Well-entrenched in jurisprudence is that the trial court's evaluation of the testimony of a witness is accorded the highest respect because of its direct opportunity to observe the witnesses on the stand and to determine if they are telling the truth or not.⁷ This opportunity enables the trial judge to detect better that thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. Thus, the trial judge's evaluation of the competence and credibility of a witness will not be disturbed on review, unless it is clear from the records that his judgment is erroneous.⁸

We have scrutinized the testimony of lone eyewitness, Rachel. Throughout her testimony, in her direct, cross and re-direct and re-cross examinations, she candidly recounted the events surrounding the killing of her father as follows:

PROS. LAGROSA:

Your Honor please, may we invoke the right of the child the provisions (*sic*) under the child witness wherein we can ask leading questions and in Tagalog.

COURT:

Anyway, the questions can be interpreted.

PROS. LAGROSA:

Only the leading questions, your Honor.

Q: You said that your father came from sleeping in your house, did you know what time of the day your father [went] to sleep?

A: I do not know because I do not know how to read time.

⁶ *Rollo*, p. 12.

⁷ *People v. Cawaling*, G.R. No. 157147, 17 April 2009, 586 SCRA 1, 23-24.

⁸ *Id.*

x x x x

Q: But do you know whether or when your father went to sleep[?] It was morning, noon or afternoon or nighttime or daytime?

A: "*Hapon po.*" (In the afternoon.)

Q: Early afternoon, late afternoon or mid-afternoon?

A: Late in the afternoon, Your Honor. ("*bandang hapon-hapon po.*")

Q: Was it already dark?

A: Not yet, your Honor.

PROS. LAGROSA:

Q: According to you[,] your father went to sleep, where were you when your father went to sleep?

A: I was in the house, ma'am.

x x x x

Q: And when your father woke up, were you still in the house?

A: Yes, ma'am.

Q: Also inside the house?

A: Yes, ma'am.

Q: When your father woke up, what did he do?

A: All of us ate rice, ma'am. ("*Kumain po kaming lahat ng kanin.*")

Q: Can you tell us if that is already dark or still daytime?

A: It was still daytime, ma'am.

x x x x

Q: After eating rice, will you tell us what happened, if you still remember?

A: My father was called by his *compadre*, ma'am.

Q: And who was that *compadre* who called your father?

A: Freddie, ma'am.

Q: Do you know the full name of this Freddie?

A: Freddie Nulla, ma'am.

Q: Why do you know Freddie Nulla?

A: He is a *compadre* of my father, ma'am.

Q: Did you often see him in your place?

A: Yes, ma'am.

Q: Is Freddie Nulla now here in court?

A: Yes, ma'am.

Q: Will you look around and point to him?

INTERPRETER:

Witness pointed to a detention prisoner (*sic*) when asked to identify himself answered FREDDIE NULLA.

Q: Now, you said that Freddie Nulla, the *compadre*, called your father, do you still remember how he was called?

A: Yes, ma'am.

Q: How?

A: "*Pare. Pare.*"

Q: And when your father was called, what did your father do?

A: My father followed Freddie at the back of the house of *Kuya* Edwin.

Q: At the time your father followed Freddie at the back of the house of your *Kuya* Edwin, where were you?

A: I was under the house of *Kuya* Unyo, ma'am.

Q: Now, you mentioned that your father followed Freddie at the back of the house of *Kuya* Edwin, who is this *Kuya* Edwin?

INTERPRETER:

Witness pointing to a detention prisoner who identified himself as EDWIN IBÁÑEZ.

PROS. LAGROSA:

Q: You said that at that time you were under the house of *Kuya* Unyo, what is the full name of this *Kuya* Unyo, if you know?

A: I do not know, ma'am.

Q: What were you doing under the house of *Kuya* Unyo?

A: I was throwing stones, ma'am.

Q: And this house of *Kuya* Unyo, is that near or far from your house?

A: Just near our house, ma'am.

Q: Can you point a place here where you are now sitted (*sic*) up to this courtroom to show the distance between your house and the house of *Kuya* Unyo?

PROS. LAGROSA

The witness pointed up to the wall.

ATTY. MALLILLIN[:]

Can we estimate, your Honor.

A: Just near, ma'am, 3 to 4 meters.⁹

x x x x

Q: Rachel, last time you testified that your father followed Freddie Nulla at the back of the house of *Kuya* Unyo and at that time you were under the house of *Kuya* Unyo, do you remember having stated that last time?

A: Yes, ma'am.

Q: While you were at the house of *Kuya* Unyo, do you remember anything unusual that happened at that time?

A: When my father was being killed, ma'am.

Q: You said that your father was being killed or "*pinapatay na po si papa ko[,]*" who killed your father?

A: *Kuya* Edwin, *Kuya* Freddie and *Kuya* Dodong, ma'am.

Q: You said that *Kuya* Freddie, *Kuya* Edwin and *Kuya* Dodong were killing your father, how did *Kuya* Edwin[,] how was he killing your father as you said?

A: "*Pinuluputan po sa mukha ng damit ni Kuya* Edwin."
(*Kuya* Edwin put around a piece of cloth)[.]

Q: You said that *Kuya* Edwin put around a piece of cloth on your papa, in what part of your father's body (*sic*) that cloth being put around by *Kuya* Edwin?

A: He put it around all over the face and the head, ma'am.

PROS. LAGROSA:

The witness was demonstrating by making a circling movement or motion of her hand all over the head and the face.

Q: And then what happened when *Kuya* Edwin put around that piece of cloth all over the head and face of your papa?

A: "*Itinumba po siya.*"

Q: You said "*itinumba po siya[,]*" who caused your father to tumble down?

A: After *Kuya* Edwin had put around the piece of cloth on my father[,] he tumbled him down.

Q: And when your father tumbled down, what else happened?

A: *Kuya* Freddie boxed him, ma'am.

⁹ TSN, 26 April 2006, pp. 4-9.

Q: Did you see in what part of your father's body was he boxed by *Kuya* Freddie?

A: Yes, ma'am.

Q: What part of his body was boxed?

A: On the left portion of the shoulder blade, ma'am.

Q: And how about *Kuya* Dodong when *Kuya* Edwin put around a piece of cloth and when *Kuya* Freddie boxed your father, where was *Kuya* Dodong at that time?

A: He was also there, ma'am.

Q: And what was he doing[,] if he was doing anything at that time?

A: "*Binareta na po 'yong papa ko sa ulo.*"

COURT:

Q: What did he use *noong* "*binareta*"?

A: It is a long iron bar used in digging soil?

PROS. LAGROSA:

Q: Now, what happened after *Kuya* Dodong "*binareta*" (*sic*) your father on the head?

A: "*Nandoon pa po ako sa silong nila Kuya Unyo nakita ko nalang po nandoon na po ang nanay ko pati po mga kapatid ko tsaka na po ako lumabas.*"¹⁰

As the lower courts have done, we accord full faith and credence to Rachel's testimony. She was young and unschooled, but her narration of the incident was categorical, without wavering. It has no markings of a concocted story, impressed upon her by other people.

The defense, accused-appellants herein, tried to further discredit Rachel's testimony by arguing that Rachel was a mere child who had studied only until the first grade of elementary school and could barely read, and did not know how to tell time.

We cannot take Rachel's testimony lightly simply because she was a mere child when she witnessed the incident and when she gave her testimony in court. There is no showing that her mental maturity rendered her incapable of testifying and of relating the incident truthfully.

¹⁰

TSN, 10 May 2006, pp. 2-4.

With exceptions provided in the Rules of Court,¹¹ all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. That is even buttressed by the Rule on Examination of a Child Witness which specifies that every child is presumed qualified to be a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competence. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child.¹² Thus, petitioners' flimsy objections on Rachel's lack of education and inability to read and tell time carry no weight and cannot overcome the clear and convincing testimony of Rachel as to who killed her father.

We likewise note that the line of questioning of the defense during cross-examination on the competency of Rachel to read and tell time did not distract her in recollecting how her father was attacked by accused-appellants. From her position underneath the house of her "*Kuya* Unyo," she saw her father, Wilfredo, attacked by accused-appellants. Although she was astonished as the happening unfolded, her ability to perceive, remember, and make known her perception was not diminished.

As regards Aniceta's version of the events that Jesus was the sole perpetrator of the crime who attacked Wilfredo only in self-defense, we easily see the fatal flaw: Aniceta arrived **after** the supposed fight between Wilfredo and Jesus, and what transpired was merely relayed to her by Jesus' sister, Marilou.

Quite apparent from Aniceta's narration of events is that she has no personal knowledge of Wilfredo's killing. Aniceta's testimony is mainly hearsay, specially on the purported fight between Wilfredo and Jesus that ended in Wilfredo's death. Aniceta's testimony as such carries no probative weight. At best, Aniceta's testimony is an independent relevant statement: offered only as to the fact of its declaration and the substance of what had been relayed to Aniceta by Marilou, not as to the truth thereof.¹³

Section 36 of Rule 130 of the Rules of Court explicitly provides:

¹¹ Rules of Court, Rule 130, Secs. 20 and 21.

¹² *People v. Hermosa*, 417 Phil. 132, 144-145 (2001).

¹³ See *People v. Silvano*, 431 Phil. 351, 363 (2002).

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.

We detect a clever, albeit transparent ploy, to pin Jesus who had already fled and is temporarily out of reach of the law. Thus, with Jesus temporarily shielded from punishment, accused-appellants freely accuse and point to him as the sole perpetrator of the crime. This cannot trump the solid testimony of Rachel on accused-appellants' direct participation in killing Wilfredo.

We likewise affirm the lower courts' appreciation of the aggravating circumstance of treachery:

[T]he essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor. Treachery attended the killing of the victim because he was unarmed and the attack on him was swift and sudden. He had not means and there was no time for him to defend himself. Indeed, nothing can be more sudden and unexpected than when [petitioners] Edwin and Alfredo attacked the victim. The latter did not have the slightest idea that he was going to be attacked because he was urinating and his back was turned from his assailants. The prosecution was able to establish that [petitioners'] attack on the victim was without any slightest provocation on the latter's part and that it was sudden and unexpected. This is a clear case of treachery.¹⁴

Finally, we affirm the lower court's award of damages consistent with jurisprudence:¹⁵ (1) ₱50,000.00 as civil indemnity; (2) ₱25,000.00 as temperate damages; and (3) ₱50,000.00 as moral damages. Consistent with current jurisprudence, we increase the award of exemplary damages from ₱25,000.00 to ₱30,000.00.¹⁶ However, we delete the award of ₱1,946,180.00 representing the unearned income of Wilfredo.

To obviate confusion on the award of loss of earning capacity, we reiterate herein that compensation for lost income is in the nature of damages and as such requires due proof of the damages suffered; there must be unbiased proof of the deceased's average income.¹⁷ In this case, we only had

¹⁴ *Rollo*, p. 14.

¹⁵ *People v. Molina*, G.R. No. 184173, 13 March 2009, 581 SCRA 519, 542-543.

¹⁶ *People v. Barde* G.R. No. 183094, 22 September 2010, 631 SCRA 187, 220.

¹⁷ *People v. Ereño*, 383 Phil. 30, 46 (2000).

the testimony of Wilfredo’s spouse, Rowena, who claimed that Wilfredo earned ₱400.00 to ₱500.00 daily as a doormat vendor.

On more than one occasion, we have held that the bare testimony of a deceased’s mother or spouse as to the income or earning capacity of the deceased must be supported by competent evidence like income tax returns or receipts.¹⁸

In *People v. Caraig*,¹⁹ we have drawn two exceptions to the rule that “documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity,” and have thus awarded damages where there is testimony that the victim was either (1) *self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available*; or (2) *employed as a daily-wage worker earning less than the minimum wage under current labor laws*.”

Although Wilfredo’s occupation as a doormat vendor may fall under the first exception, the minimum wage for Region III, which includes the province of Bulacan, is below ₱400.00 as per the National Wages and Productivity Commission Regional Daily Minimum Wage Rates as of August 2013.²⁰ Regrettably, except for the bare assertion of Rowena,

¹⁸ Id.
¹⁹ 448 Phil. 78, 97 (2003).
²⁰ See Wage Order No. 17, effective on 11 October 2012:

SUMMARY OF CURRENT REGIONAL DAILY MINIMUM WAGE RATES			
Non-Agriculture, Agriculture			
As of August 2013			
(In pesos)			
NON- AGRICULTURE	AGRICULTURE		
	Plantation	Non-Plantation	
285.00 - 336.00	270.00 - 306.00	258.00 - 290.00	

http://www.nwpc.dole.gov.ph/pages/statistics/stat_current_regional.html; last visited 9 September 2013.

Wilfredo's spouse, we have nothing to anchor the award for loss of earning capacity. Thus, we delete the award for loss of earning capacity in the amount of ₱1,946,180.00.


WHEREFORE, the appeal is **DISMISSED**. The Decisions of the Court of Appeals in CA-G.R. H.C. No. 04051 and the Regional Trial Court, Branch 18, Malolos, Bulacan in Criminal Case No. 3517-M-2004 are **AFFIRMED with MODIFICATION**. The award of exemplary damages is increased from ₱25,000.00 to ₱30,000.00 and we delete the award for loss of earning capacity in the amount of ₱1,946,180.00.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

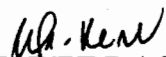
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

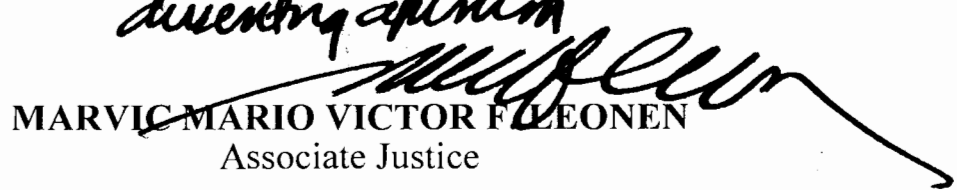


MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

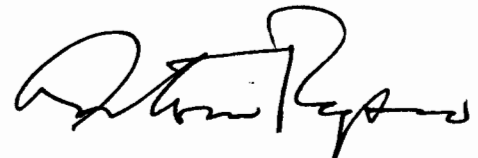
*separate concurring and
dissenting opinion*



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, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.



MARIA LOURDES P. A. SERENO
Chief Justice