Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CECILIA RIVAC, Petitioner,	**G.R. No. 224673**
- versus -	Present:
PEOPLE OF THE PHILIPPINES, Respondent.	CARPIO, *J.*, Chairperson, PERLAS-BERNABE, CAGUIOA, TIJAM,* and REYES, JR., *JJ.*
	Promulgated: 22 JAN 2018

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 11, 2016 and the Resolution[3] dated April 14, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 34247, which affirmed the conviction of petitioner Cecilia Rivac (Rivac) for the crime of *Estafa*, defined and penalized under Article 315 (1) (b) of the Revised Penal Code (RPC).

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* Designated additional member per raffle dated December 13, 2017.

1 *Rollo*, pp. 10-29.

2 Id. at 32-47. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion concurring.

3 Id. at 50-51.

The Facts

The instant case stemmed from an Information[4] filed before the Regional Trial Court of Laoag City, Ilocos Norte, Branch 14 (RTC), charging Rivac of the crime of *Estafa*, the accusatory portion of which reads:

> That on about the 4th day of August 2007, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the herein accused received for sale on consignment from Asuncion C. Fariñas the following pieces of jewelry as follows:
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1. One (1) set diamante	₱125,000.00
2. One (1) set heart shape with titus	85,000.00
3. One (1) pc. 7 days bangle	80,000.00
4. One (1) pc. bracelet w. charm	55,000.00
5. One (1) set rositas w. bagets	45,600.00
6. One (1) pc. charm tauco w. pendant	48,900.00
Total	₱439,500.00
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> with a total value of FOUR HUNDRED THIRTY NINE THOUSAND FIVE HUNDRED PESOS (₱439,500.00) under the express obligation to remit the proceeds of the sale or if not sold, to return the pieces of jewelry to Asuncion C. Fariñas not later than August 11, 2007, but far from complying with her obligation and despite repeated demands, said accused did then and there willfully, unlawfully and feloniously misappropriate and convert to her own personal use and benefit the pieces of jewelry, to the damage and prejudice of Asuncion C. Fariñas in the aforestated amount.
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> Contrary to law.[5]

The prosecution alleged that on August 4, 2007, Rivac went to the jewelry store owned by private complainant Asuncion C. Fariñas (Fariñas) where she received from the latter several pieces of jewelry in the aggregate amount of ₱439,500.00, which were meant for her to sell on consignment basis,[6] as evidenced by a document called jewelry consignment agreement (consignment document).[7] Fariñas and Rivac agreed that after seven (7) days, Rivac was obligated to either remit the proceeds of the sold jewelry or return the unsold jewelry to Fariñas should she fail to sell the same. However, despite the lapse of the aforesaid period, Rivac failed to perform what was incumbent upon her, causing Fariñas to send her a demand letter.[8] This prompted Rivac to go to Fariñas's store and offer her a parcel of land covered by Original Certificate of Title (OCT) No. 0-936[9] as partial payment for the jewelry. However, Fariñas refused the offer as she discovered that the

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4 Not attached to the *rollo*.
5 See id. at 33.
6 See id. at 34.
7 Not attached to the *rollo*.
8 See id. at 34.
9 Not attached to the *rollo*.

property was involved in a land dispute, and instead, reiterated her demand that Rivac return the pieces of jewelry or pay their value in cash.[10]

During arraignment, Rivac pleaded "not guilty" and maintained that her liability is only civil, and not criminal, in nature. She narrated that she asked Fariñas for a loan as she badly needed money for her husband's dialysis, to which the latter agreed. As such, she went to Fariñas's store and handed over OCT No. 0-936 and other supporting documents to the latter as collateral.[11] In turn, Fariñas gave her the amount of ₱150,000.00 and asked her to sign a blank consignment document.[12] She further averred that she was able to pay interest for several months but was unable to pay the entire loan. According to Rivac, Fariñas told her that she would foreclose the collateral. Thereafter, she sent her a letter demanding payment of the principal amount of ₱280,000.00 plus interest.[13]

The RTC Proceedings

In a Judgment[14] dated September 30, 2010, the RTC found Rivac guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of imprisonment for the indeterminate period of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and ordered her to pay Fariñas the amount of ₱439,500.00 and the costs of suit.[15]

The RTC found that the prosecution was able to establish all the elements of the crime charged, under the following circumstances: (*a*) Rivac received the pieces of jewelry from Fariñas, as evidenced by the consignment document which contains her signature; and (*b*) she failed to either return said jewelry or remit its proceeds to Fariñas after the lapse of the seven (7)-day period agreed upon by them, to the latter's prejudice. In this regard, the RTC did not give credence to Rivac's theory that she was only made to sign the consignment document as proof of her loan to Fariñas, ratiocinating that absent any of the allowed exceptions to the parol evidence rule, she is not allowed to present evidence to modify, explain, or add to the terms of the said document.[16] It further pointed out that the only reason why Fariñas had possession of OCT No. 0-936 was because Rivac herself offered the same as partial payment, but the former ultimately decided against accepting it as such.[17]

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10 Id. at 34-35.
11 Id. at 35.
12 Id.
13 Id.
14 Id. at 53-64. Penned by Presiding Judge Francisco R. D. Quilala.
15 Id. at 64.
16 See id. at 58-59.
17 Id. at 59-60.

After the promulgation of the aforesaid Judgment and before it lapsed into finality, Rivac moved to reopen proceedings on the ground that she intends to present the testimonies of Fariñas and a certain Atty. Ma. Valenie Blando (Atty. Blando) to prove the true nature of her transaction with Fariñas.[18] In an Order[19] dated January 6, 2011, the RTC, *inter alia*, partly granted the motion insofar as Fariñas's testimony was concerned, as the apparent revision of her recollection of events could not have been anticipated during the course of the trial.[20] It, however, denied the same as to Atty. Blando's testimony, opining that there was no showing that Rivac could not present her during the trial proper.[21] Consequently, the Court re-took Fariñas's testimony, where she "clarified" that she now remembered that the consignment document never became effective or enforceable as she did not allow Rivac to take the jewelry because she has yet to pay her outstanding loan obligation plus interest.[22]

In an Order[23] dated April 18, 2011, the RTC affirmed its assailed Judgment.[24] It held that Fariñas's testimony was in the nature of a recantation, which is looked upon with disfavor by the courts. Moreover, the RTC pointed out that there have been various circumstances prior to the promulgation of the assailed Judgment where she could have "correctly recollected" and revised her testimony, such as when she: (*a*) sent a demand letter to Rivac; (*b*) reiterated her demand during barangay conciliation; (*c*) executed her complaint-affidavit for the instant case; (*d*) paid the filing fee for the case; and (*e*) testified before the court.[25] Further considering that the retraction does not jibe with Rivac's testimony, the RTC found the same to be unworthy of credence.[26]

The CA Ruling

In a Decision[27] dated January 11, 2016, the CA upheld Rivac's conviction.[28] Preliminarily, it held that the RTC erred in allowing the reopening of the case, since it had already promulgated a ruling therein.[29] In this regard, the CA opined that the RTC proceedings after the promulgation of its ruling can be likened to a new trial, which is likewise improper as the grounds for its allowance are not extant.[30]

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18 See Motion to Reopen Proceedings dated October 14, 2010; id. at 78-79.
19 Id. at 65-69.
20 Id. at 67.
21 Id.
22 See id. at 72.
23 Id. at 70-77.
24 Id. at 77.
25 See id. at 74-75.
26 Id. at 76.
27 Id. at 32-47.
28 See id. at 40.
29 Id. at 45.
30 Id.

Anent the merits, the CA held that all the elements of *Estafa* defined and penalized under Article 315 (1) (b) of the RPC are present, as the prosecution had established that Rivac misappropriated the proceeds of the sale of the jewelry consigned to her by Fariñas, considering her failure to either return the jewelry or remit its proceeds at the end of the agreed period, obviously to the prejudice of Fariñas.[31] Notably, the CA stated that Fariñas's recantation is not only looked upon with disfavor for being exceedingly unreliable, but also that the same does not necessarily vitiate her original testimony.[32]

Undaunted, Rivac moved for reconsideration,[33] but the same was denied in a Resolution[34] dated April 14, 2016; hence, this petition.[35]

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly: (*a*) ruled that it was improper for the RTC to reopen its proceedings; and (*b*) upheld Rivac's conviction for the crime of *Estafa*.

The Court's Ruling

The petition must be denied.

I.

Section 24, Rule 119 of the 2000 Revised Rules on Criminal Procedure governs the reopening of criminal cases for further trial. It states in verbatim: "**At any time before finality of the judgment of conviction**, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings **to avoid a miscarriage of justice**. The proceedings shall be terminated within thirty (30) days from the order granting it." In *Cabarles v. Maceda*,[36] the Court expounded on the novelty, nature, and parameters of this rule, to wit:

> A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage. This lack of a specific provision covering motions to reopen was remedied by the Revised Rules of Criminal Procedure which took effect on December 1, 2000.

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31 Id. at 40-42.
32 Id. at 42-43.
33 Motion for Reconsideration is not attached to the *rollo*.
34 Id. at 50-51.
35 Id. at 10-29.
36 545 Phil. 210 (2007).

> x x x Section 24, Rule 119 and existing jurisprudence stress the following requirements for reopening a case: **(1) the reopening must be before the finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order.**
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> Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, and in the furtherance of justice, may allow new evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and even after promulgation but before finality of judgment and the only controlling guideline covering a motion to reopen is the paramount interest of justice.** This remedy of reopening a case was meant to prevent a miscarriage of justice.[37] (Emphases and underscoring supplied)

In this light, the CA clearly erred in holding that: (*a*) it was improper for the RTC to reopen its proceedings because the latter court had already promulgated its judgment; and (*b*) assuming *arguendo* that what it did was a new trial, there were no grounds for its allowance. To reiterate, a motion to reopen may be filed even after the promulgation of a judgment and before the same lapses into finality, and the only guiding parameter is to "avoid the miscarriage of justice." As such, the RTC correctly allowed the reopening of proceedings to receive Fariñas's subsequent testimony in order to shed light on the true nature of her transaction with Rivac, and potentially, determine whether or not the latter is indeed criminally liable.

II.

Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[38] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[39]

Guided by this consideration, the Court affirms Rivac's conviction with modification as to the penalty, as will be explained hereunder.

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[37] Id. at 217-218; citations omitted.

[38] *People v. Dahil*, 750 Phil. 212, 225 (2015); citation omitted.

[39] See *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521; citation omitted.

Article 315 (1) (b) of the RPC states:

> Article 315. *Swindling (Estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> x x x x
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> 1. With unfaithfulness or abuse of confidence, namely:
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> x x x x
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> (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

The elements of *Estafa* under Article 315 (1) (b) of the RPC are as follows: (*a*) the offender's receipt of money, goods, or other personal property in trust or on commission, or for administration, or under any other obligation involving the duty to deliver or to return the same; (*b*) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (*c*) the misappropriation, conversion or denial is to the prejudice of another; and (*d*) demand by the offended party that the offender return the money or property received.[40] In *Cheng v. People*,[41] the Court further elucidated:

> **The essence of this kind of *estafa* is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made.** The words "convert" and "misappropriate" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. **In proving the element of conversion or misappropriation, the legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.**[42] (Emphases and underscoring in the original)

In this case, the facts clearly show the existence of all the elements of the crime charged, considering that: (*a*) Rivac received various pieces of jewelry from Fariñas on a sale-on-consignment basis, as evidenced by the consignment document; (*b*) Rivac was under the obligation to either remit the proceeds of the sale or return the jewelry after the period of seven (7)

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40 *Cheng v. People*, G.R. No. 174113, January 13, 2016, 780 SCRA 374, 382; citing *Pamintuan v. People*, 635 Phil. 514, 522 (2010).

41 Id.

42 Id. at 382-383, citing *Pamintuan v. People*, 635 Phil. 514, 522 (2010).

days from receipt of the same; (*c*) Rivac failed to perform her obligation, prompting Fariñas to demand compliance therewith; and (*d*) Rivac failed to heed such demand, thereby causing prejudice to Fariñas, who lost the pieces of jewelry and/or their aggregate value of ₱439,500.00.[43]

In an attempt to absolve herself from liability, Rivac moved to reopen the proceedings. Upon the partial grant thereof, Rivac presented the testimony of no less than Fariñas, who then testified that she now remembers that the consignment document never became effective nor enforceable, as she did not allow Rivac to take the jewelry because she has yet to pay her outstanding loan obligation plus interest.[44]

However, as correctly ruled by the courts *a quo*, Fariñas's testimony partakes of a recantation, which is aimed to renounce her earlier statement and withdraw the same formally and publicly. Verily, recantations are viewed with suspicion and reservation. The Court looks with disfavor upon retractions of testimonies previously given in court. It is settled that an affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention. The rationale for the rule is obvious: affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable as there is always the probability that it will later be repudiated. Only when there exist special circumstances in the case which, when coupled with the retraction, raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld.[45] In *People v. Lamsen*,[46] the Court made a thorough discussion on the nature and probative value of recantations, as follows:

> Indeed, it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses.
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> This Court has always looked with disfavor upon retraction of testimonies previously given in court. The asserted motives for the repudiation are commonly held suspect, and the veracity of the statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt.
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> x x x **Especially when the affidavit of retraction is executed by a prosecution witness after the judgment of conviction has already been rendered, "it is too late in the day for his recantation without portraying himself as a liar." At most, the retraction is an afterthought which should not be given probative value.**

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43 *Rollo*, pp. 40-41.
44 See id. at 72.
45 *People v. Lamsen*, 721 Phil. 256, 259 (2013); citations omitted.
46 Id.

> Mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. The rule is settled that in cases where previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. **A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons or motives for the change, discriminatingly analyzed.** The unreliable character of the affidavit of recantation executed by a complaining witness is also shown by the incredulity of the fact that after going through the burdensome process of reporting to and/or having the accused arrested by the law enforcers, executing a criminal complaint-affidavit against the accused, attending trial and testifying against the accused, the said complaining witness would later on declare that all the foregoing is actually a farce and the truth is now what he says it to be in his affidavit of recantation. And in situations, like the instant case, **where testimony is recanted by an affidavit subsequently executed by the recanting witness, we are properly guided by the well-settled rules that an affidavit is hearsay unless the affiant is presented on the witness stand and that affidavits taken *ex-parte* are generally considered inferior to the testimony given in open court.**[47] (Emphases and underscoring in the original)

Here, Fariñas's testimony during the reopened proceedings was supposedly her "correct recollection" of the events that transpired in connection with the instant criminal case filed against Rivac. However, after a scrutiny of the same, the Court sees no sufficient reason to overturn Rivac's conviction for the crime charged. As aptly observed by the RTC, Fariñas had various opportunities to make a "correct recollection" of her testimony, and yet she did not do so. Thus, Fariñas's act of making a complete turnaround in her testimony at the time when a judgment of conviction had already been promulgated is suspect. Coupled with the RTC's observation that the retraction is highly inconsistent with Rivac's own testimony, Fariñas's recantation should be seen as nothing but a last-minute attempt to save the latter from punishment.[48] Clearly, Rivac's conviction of the crime charged must be upheld.

III.

Anent the proper penalty to be imposed on Rivac, it is worthy to point out that pending resolution of this case before the Court, Republic Act No. (RA) 10951[49] was enacted into law. As may be gleaned from the law's title, it adjusted the values of the property and damage on which various penalties

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47 Id. at 259-260; citing *Firaza v. People*, 547 Phil. 573, 584-586 (2007).

48 See id. at 260; citing *Firaza v. People*, 547 Phil. 573, 586 (2007).

49 Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE', AS AMENDED," approved on August 29, 2017.

are based, taking into consideration the present value of money, as opposed to its archaic values when the Revised Penal Code was enacted in 1932.[50] While it is conceded that Rivac committed the crime way before the enactment of RA 10951, the newly-enacted law expressly provides for retroactive effect if it is favorable to the accused, as in this case.

Section 85 of RA 10951 adjusted the graduated values where penalties for *Estafa* are based. Portions pertinent to this case read:

> Section 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is further amended to read as follows:
>
> Article 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> x x x x
>
> 3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty Thousand Pesos (₱40,000.00) but does not exceed One million two hundred thousand pesos (₱1,200,000.00).
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> x x x x

Thus, applying the provisions of RA 10951, as well as the Indeterminate Sentence Law, and taking into consideration that the aggregate value of the misappropriated jewelry is ₱439,500.00, Rivac must be sentenced to suffer the penalty of imprisonment for the indeterminate period of three (3) months of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum, there being no aggravating and mitigating circumstances present in this case.

Finally, Rivac must be ordered to pay the value of the misappropriated pieces of jewelry, plus legal interest at the rate of six percent (6%) per annum from the finality of this ruling until fully paid.[51]

WHEREFORE, the petition is **DENIED**. The Decision dated January 11, 2016 and the Resolution dated April 14, 2016 of the Court of Appeals in CA-G.R. CR No. 34247 finding petitioner Cecilia Rivac **GUILTY** beyond reasonable doubt of the crime of *Estafa*, defined and penalized under Article 315 (1) (b) of the Revised Penal Code, are hereby **AFFIRMED** with **MODIFICATION**, sentencing her to suffer the penalty of imprisonment for the indeterminate period of three (3) months of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum, and ordering her to pay private complainant

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50 See Article 1 of the RPC.

51 See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 390-391.

Asuncion C. Fariñas the amount of ₱439,500.00 plus legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
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, 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