



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 236301

Present:

PERALTA, C.J., Chairperson,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

- versus -

WARREN IVERO y MABUTAS,  
Accused-Appellant.

Promulgated:

NOV 03 2020

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DECISION

PERALTA, C.J.:

This is an appeal from the August 24, 2017 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08564, which affirmed with modification the July 5, 2016 Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 207, Muntinlupa City, finding accused-appellant Warren M. Ivero (*Ivero*) guilty of Murder.

On January 25, 2013, Ivero was charged with the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act (R.A.) No. 7659. The accusatory portion of the Information reads:

That on or about the 24th of January, 2013, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who had a dating relationship with Sheila (sic) Cumahig y Clamor with whom he has two (2) children, armed with a kitchen knife, with intent to kill, with treachery, without risk from the

<sup>1</sup> Penned by Associate Justice Ramon R. Garcia, with Associate Justices Edwin D. Sorongon and Maria Filomena D. Singh concurring, *rollo*, pp. 2-19.

<sup>2</sup> CA *rollo*, pp. 43-52.

victim to raise a defense, such that when accused WARREN IVERO y MABUTAS arrived at their house, the latter, did then and there, willfully, unlawfully and feloniously attack, assault, with abuse of superior strength repeatedly stab said Shiela Cumahig y Clamor, on the different parts of her body, thereby inflicting upon the latter mortal wounds which directly caused her death, all to the damage and prejudice of her surviving heirs.

CONTRARY TO LAW.<sup>3</sup>

### Version of the Prosecution

Afdal Sidic (*Sidic*), a neighbor who lives next door to the house where victim Shiela Cumahig (*Cumahig*) was then staying, testified that at around 8:00 o'clock in the evening of January 24, 2013, while having dinner with his family, he heard the victim shout "*Tulongan niyo po ako, sinasaksak po ako ng asawa ko,*" three times. He went downstairs where he saw the victim crawling on the ground, crying and asking for help. At that point, the victim's body was already covered with blood. With the help of the neighbors, the victim was brought to the Alabang Medical Clinic. While the victim was being treated, he stayed beside her. When the doctor asked the victim, "*Sino po ang sumaksak sa iyo?*" the victim replied, "*Yung asawa ko po.*" Those were the last words uttered by the victim before she passed away. While he admitted that he only came to know the name of the victim's husband as Warren Ivero at the hospital, he was nevertheless very familiar with the latter's face.<sup>4</sup>

Rose Permites (*Permites*) testified that Ivero and her niece Cumahig were live-in partners with two children. Five days prior to the incident, Cumahig asked her, "*Tiya, pwede bang makitira muna ako sa inyo ng mga anak ko?*" She allowed Cumahig and the children to temporarily stay in her house at San Guillermo St., Bayanan, Muntinlupa City. At around 3:00 o'clock in the afternoon of January 24, 2013, she received a call from Cumahig telling her, "*Tiya, nandito po si Warren sa bahay*" in a trembling voice. She suddenly felt uneasy since Ivero had beaten Cumahig several times in the past and even made threats to kill her. At about 9:30 o'clock in the evening of the same day, Sidic told her over the phone, "*Rose, madali ka kasi si Cumahig sinaksak siya ng asawa niya.*" She rushed to the hospital where she saw her niece profusely bleeding and no longer breathing. When she returned to their house, she found a knife stained in blood and contorted on the floor just behind the door. Blood stains scattered all over the place and Cumahig's two (2) children were crying. She then brought the knife to the Women's Desk of the police station in Muntinlupa City.<sup>5</sup>

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<sup>3</sup> Records, p. 1.

<sup>4</sup> *Rollo*, p. 4.

<sup>5</sup> *Id.*

Herbert Malate (*Malate*) narrated that at the time of the incident, he was outside his house, about to pee, when Ivero, who was in a hurry and acting suspiciously, suddenly bumped into him. He then heard a woman shout "*Tulongan niyo ako sinaksak ako ng asawa ko.*" Curious, he proceeded to the area where Ivero came from and saw the victim lying on the ground with multiple stab wounds. He decided to go after Ivero with Billy Lee. They followed where Ivero was headed and eventually found him on-board a tricycle. They flagged down the tricycle, threatened to hit Ivero with a stone and told the latter, "*Huwag ka [nang] papalag baka kung ano lang mangyari sa'yo.*" Ivero surrendered thereafter.<sup>6</sup>

Billy Lee Dullavin (*Dullavin*) testified that while he was ferrying his tricycle, he was flagged down by his neighbor, Malate, who told him that he was running after a murder suspect. Upon boarding the tricycle, they searched the area and found Ivero. He immediately grabbed Ivero, who was then very anxious. Ivero readily admitted to them that he stabbed the victim because he was jealous. They then brought Ivero to the police station.<sup>7</sup>

Dr. Diana Nitural of the Alabang Medical Clinic testified that on January 24, 2013, she was on duty when the victim was brought to the emergency room with multiple stab wounds. The victim sustained five (5) fatal stab wounds in the trunk area. During the course of the treatment, she asked the victim who stabbed her to which the latter answered, "*Yung asawa ko.*" On even date, Dr. Nitural issued a Medical Certificate stating that Cumahig's cause of death was cardio-pulmonary arrest, secondary to hypovolemic shock.<sup>8</sup>

### Version of the Defense

Ivero proffered the defenses of denial and frame-up. He claimed that he and the victim were live-in partners for five (5) years with two (2) common children. On January 18, 2013, Permites forcibly took Cumahig and his children without his consent. At around 5:00 o'clock in the afternoon of January 24, 2013, he and his older daughter were at the public market in Rosario, Cavite when he received a text message from Cumahig asking him to buy food stuff for his young child. After buying grocery items, they proceeded to Muntinlupa City. Upon alighting from the tricycle, he saw Dullavin and Malate standing in front of Permites' house. He noticed that the door was blocked with something heavy then it opened. He saw Cumahig covered with blood and she told him, "*Sinaksak ako ni Jovy.*" Cumahig gestured through her lips that someone was behind the door.

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<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*



When he looked towards that direction, Jovy suddenly hit him with an object then a fight ensued. Jovy fled the crime scene prompting him to run after the former while shouting “*Tulong, ang asawa ko sinaksak.*” When they reached the tricycle terminal by the bridge, Malate poked him with a swiss knife, while Dullavin took his money and cellphone. He was, thereafter, beaten by several persons. On cross-examination, he admitted that he refers to Cumahig as his wife and Cumahig also acknowledges him as her husband. Further, he has no conflict with Malate and Dullavin. Neither does he know of any ill-motive on their part to falsely testify against him.<sup>9</sup>

On July 5, 2016, the RTC of Muntinlupa City, Branch 207, rendered its decision convicting Ivero of the crime of murder, the dispositive portion of which reads:

WHEREFORE, the Court finds Warren Ivero y Mabutas guilty beyond reasonable doubt of the crime of murder and is hereby sentenced to *reclusion perpetua* without eligibility for parole. His full preventive imprisonment is credited in his favor. He is further ordered to pay the heirs of Shiela Cumahig y Clamor P75,000.00 as and for civil indemnity; P75,000.00 as and for moral damages, and P30,000.00 as and for temperate damages, all with 6% interest per annum from finality of this decision.

The Jail Warden, Muntinlupa City is directed to transfer the custody of Warren Ivero y Mabutas to the New Bilibid Prison for the service of his sentence.

SO ORDERED.<sup>10</sup>

This prompted Ivero to appeal before the CA. On August 24, 2017, the CA denied Ivero's appeal and affirmed the RTC Decision with modifications, thus:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated July 5, 2016 of the Regional Trial Court (RTC), Branch 207, Muntinlupa City is AFFIRMED with MODIFICATIONS as follows:

- 1) Accused-appellant Warren Ivero y Mabutas is hereby sentenced to suffer the penalty of *reclusion perpetua*;
- 2) The award of temperate damages in the amount of Thirty Thousand Pesos (P30,000.00) is increased to Fifty Thousand Pesos (P50,000.00);
- 3) Accused-appellant Warren Ivero y Mabutas is further ordered to pay Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity; Seventy-Five Thousand Pesos (P75,000.00) as moral damages; and Seventy-Five Thousand Pesos (P75,000.00) as exemplary damages; and

<sup>9</sup> *Id.* at 16.

<sup>10</sup> CA rollo, p. 52.

- 4) All damages awarded shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid,

SO ORDERED.<sup>11</sup>

Ivero filed his Notice of Appeal insisting that the Decision of the CA is contrary to facts, laws and applicable jurisprudence.

### **Ruling of the Court**

The appeal has no merit.

Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case.<sup>12</sup> Said rule finds an even more stringent application where the said findings are sustained by the CA, as in the instant case:

Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.<sup>13</sup>

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<sup>11</sup> *Rollo*, pp. 18-19.

<sup>12</sup> *People v. Salvador Tulagan*, G.R. No. 227363, March 12, 2019.

<sup>13</sup> *Id.*, citing *People v. Gahl*, 727 Phil. 642, 658 (2014).

Murder is defined and penalized under Article 248 of the Revised Penal Code (*RPC*), as amended by R.A. No. 7659. To successfully prosecute the crime, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the *RPC*; and (4) that the killing is not parricide or infanticide.<sup>14</sup>

In the present case, the prosecution was able to establish the first element of the offense by the testimony of Dr. Nitural, who conducted the post-mortem examination and who issued the medical certificate that stated the cause of death.

With regard the second element, the dying declaration of Cumahig is sufficient to prove the fact that it was Ivero who killed his live-in partner. While witnesses, in general, can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation."<sup>15</sup>

Four requisites must concur in order that a dying declaration may be admissible, thus: *First*, the declaration must concern the cause and surrounding circumstances of the declarant's death. This refers not only to the facts of the assault itself, but also to matters both before and after the assault having a direct causal connection with it. Statements involving the nature of the declarant's injury or the cause of death; those imparting deliberation and willfulness in the attack, indicating the reason or motive for the killing; justifying or accusing the accused; or indicating the absence of cause for the act are admissible. *Second*, at the time the declaration was made, the declarant must be under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the personal feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending. *Third*, the declarant is competent as a witness. The rule is that where the declarant would not have been a competent witness had he survived, the proffered declarations will not be admissible. Thus, in the absence of evidence showing that the declarant could not have been competent to be a witness had he survived, the

<sup>14</sup> *People v. Racal*, 817 Phil. 665, 677 (2017).

<sup>15</sup> *People v. Umapas*, 807 Phil. 975, 985 (2017).

presumption must be sustained that he would have been competent. *Fourth*, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.<sup>16</sup>

In the present case, all the requisites of a dying declaration were met. Cumahig was able to communicate her dying statements to both her neighbor Sidic and the attending physician Dr. Nitural as to the person who stabbed her. The declarations made by Cumahig were correctly assessed as uttered during moments where she felt an impending death due to the gravity of the wounds. She would have testified on the incident had she survived and would have been a competent witness. Lastly, the declarations were offered in a criminal indictment for murder against Ivero.

The testimonies of witnesses Sadic and Dr. Nitural clearly established all the requisites of a dying declaration, the testimonies are herein quoted:

**Excerpts of the testimony of prosecution witness Afdal Sadic<sup>17</sup>**

**Q** Nung araw at nung gabing yon, nung Enero 24, 2013, meron ka bang natatandaang kaibang pangyayari na tumawag sa iyong pansin?

**A** Meron na po. Bigla pong may narinig po akong sumigaw. Humingi po ng saklolo. **Tulungan niyo po ako, sinasaksak po ako ng asawa ko.**

**Q** Saan nanggaling yung sinasabi mong narinig mo na humihingi ng tulong sa iyo?

**A** Nanggaling po kay Shiela, yung biktima po.

**Q** Shiela nanggaling ang sigaw ng paghingi ng tulong na iyon?

**A** Sa kanya po talaga. Sinisigaw po, humihingi po siya ng saklolo. **Tulungan niyo po ako kasi sinasaksak po ako ng asawa ko.** Agad naman po akong bumaba. Nakita ko lang po si Shiela gumagapang po.

**Q** Bakit mo nasabing kay Shiela nanggaling ang sigaw ng paghingi ng tulong na iyon?

**A** Sa kanya po talaga. Sinisigaw po, humihingi po siya ng saklolo. Tulungan nyo po ako kasi sinasaksak po ako ng asawa ko. Agad naman po akong bumaba. Nakita ko lang po si Shiela gumagapang po.

**Q** So, nung sinasabi mong kumakain ka, bumaba ka para tignan kung sinong humihingi ng tulong si Shiela, ano ang nangyari pagkatapos mong bumaba, kung meron man?

**A** Nakita ko lang po siya, gumagapang lang po siya.

**Q** Saan siya gumagapang?

**A** Doon po sa baba ng bahay naming, sa may sahig po.

**Q** Sa sinasabi mong bahay mo, maari mo bang isalarawan sa hukumang ito kung anong parte ng bahay niyo nakita si Shiela na gumagapang at humihingi ng tulong?

<sup>16</sup> *Id.* at 985-986.

<sup>17</sup> Records, pp. 50-52.

A Kasi magkatabi lang po yong pintuan naming. Ngayon, pagbaba ko po, nakita ko po si Shiela gumagapang po siya, humihingi po ng tulong.

Q Ang ibig mo bang sabihin sa labas ng bahay niya, o sa loob?

A Sa labas po ng bahay niya.

Q Ngayon, nung nakita mo si Shiela na humihingi ng tulong, maaari mo bang isalarawan uli sa ating kagalang-galang na hukom kung ano ang itsura ni Shiela nung siya ay nakita mo?

A Nakita ko lang po siya parang napapaiyak siya at parang hindi maano, parang umiiyak po siya, humihingi po siya ng tulong.

Q Bukod sa pag-iyak at humihingi ng tulong, meron ka pa bang napansin sa kapaligiran?

A Yung katawan niya po duguan po siya. Naliligo po siya sa sariling dugo.

Q Bukod sa iyo, Mr. Witness, sino pa ang nasa lugar na yon habang nakita mo si Shiela na duguan at humihingi ng tulong?

A Yung mga kapitbahay po namin.

Q Kanina sabi mo narinig mong may humihingi ng tulong. Maari mo bang sabihin sa amin ngayon kung gaano kalakas ang kanyang boses? nung humihingi siya ng tulong?

A Malakas po talaga. **Sabi niya tulungan niyo po ako kasi sinasaksak po ako ng asawa ko. Tatlong beses po niya nasabi yon.**

Q Ngayon, nung nakita mo ang kalagayan ni Shiela, anong sunod na ginawa mo kung meron man?

A Naghingi po ako ng tulong sa aking mga kapitbahay. Tulungan niyo po ako para dalhin si Shiela sa ospital.

x x x

x x x

xxx

**Portions of the testimony of prosecution witness Dr. Diana Nitural<sup>18</sup>**

x x x

x x x

xxx

Q Now, in your answer doctor and as a medical doctor, would you say that the patient is already conscious of an impending death?

A Yes. Actually, the patient was asking for her children, she was asking for people she knows and family. Because unfortunately, the only one is there were her neighbors and the bystanders who were just trying to help and she was surrounded by an aura of eminent doom.

Q Thank you doc. Now, my question to you in annex doctor is was there any conversation between you and the patient while you were treating her?

A Yes.

Q What was the conversation all about?

A Yes, the initial conversation we had was my first question was what happened to you?

Q What was her reply?

A She said, she was stabbed.

<sup>18</sup>

*Id.* at 97-99.

Q And after that, any other conversation?

A Yes, I asked, Who stabbed you?

Q What was her reply doctor?

A She said, Yung asawa ko.

Q Did you come to know the name of her husband?

A Unfortunately, not.

Q Was he there at the time you treated, the husband that the patient was referring to, was he there at the time you are treating the patient?

A No, the husband wasn't there.

Q The husband was not there. Now, after she told you that the circumstances surrounding the incident, what happened next?

A So, there, when I left there, I left the, she was at the ER bed already, so, I made sure after the conversation, I instructed the nurse several order so that we could start the fluids and vasopressors immediately cause at that time there was already signs that she could go into an arrest anytime soon so that's why I told the nurse, you have to watch her closely because with the signs that she's having she could have a cardiopulmonary arrest anytime.

Q That risk of having a cardiopulmonary arrest doctor and your fear that she might be suffering a cardiopulmonary arrest, did it happen?

A Yes. Actually, she arrested, roughly before an hour, her heart rate stopped and her respiration, her spontaneous breathing stopped, so we did CPR on this patient, but, unfortunately, we're not able to revive the patient because of the massive shock that she obtained from the multiple stab wounds that she got, it was very hard for us to resuscitate already.

Q Now doctor, from your testimony, from your answers, from your explanation to this honorable court, can you kindly tell us what could be the reason of the untimely death of the victim Shiela Cumahig?

A Yes, that's very evident. The patient Shiela Cumahig died because of the multiple stab wounds that she got and then she bled out almost all her blood and this could have led to the hypovolemic shock that I was telling about, which led to her arrest and eventually her death.

As regards the third element, the trial court aptly appreciated the qualifying circumstance of treachery or *alevosia*. In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.<sup>19</sup>

The requisites for treachery are present in the killing of Cumahig. The prosecution was able to establish the fact that at the time of the attack Cumahig was unarmed and in the comforts of their home with their common

<sup>19</sup> *People v. Bugarin*, 807 Phil. 588, 600 (2017).

children. In this case, the swift and sudden stabbing done by Ivero left Cumahig with no sufficient means to put up a defense as there were no items found in the scene of the crime other than the kitchen knife used by Ivero. Cumahig was rendered helpless by the situation and all she could do is muster the strength to seek succor from her neighbors after the stabbing incident. The suddenness of the attack may be inferred from the testimony of Sadic, the neighbor separated by a thin piece of plywood, who only heard the cry for help of the victim only after the stabbing. The absence of any verbal or physical squabble prior to the attack proves that Cumahig was not able to put up a fight and did not provoke the attack of the accused. Further, the fact that there was no defense wound bolsters the fact that the attack was unexpected.

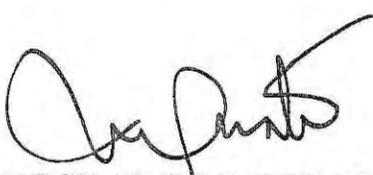
Also, the fact that all the five stab wounds were frontal does not negate treachery. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.<sup>20</sup> In fact, treachery may still be appreciated even when the victim was forewarned of the danger to his or her person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or herself or to retaliate.<sup>21</sup>

As to the fourth element, it was clearly established that Cumahig is not the lawful wife of Ivero even if the former referred to her as “*asawa*” in her dying declarations. So, the nomenclature used by the State of the crime committed was correct.

Lastly, we agree with the trial court in rejecting the defense of denial and frame-up. Ivero’s testimony that it was a different person that stabbed her wife was uncorroborated and, thus, is self-serving. Likewise, his demeanor after the incident of not asking for help from his neighbor and not bringing her common-law spouse to the hospital negates his excuse as this is not the common reaction of a concerned innocent person.

**WHEREFORE**, premises considered, the Court **AFFIRMS** the Decision dated August 24, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08564 finding Warren Ivero y Mabutas guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code, sentencing him to suffer the penalty of *reclusion perpetua*.

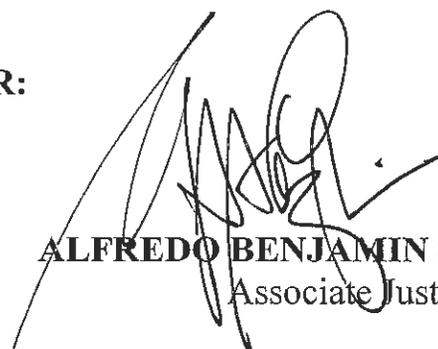
**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Chief Justice

<sup>20</sup> *Id.*

<sup>21</sup> *People v. Pulgo*, 813 Phil. 205, 217 (2017).

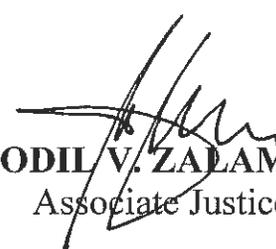
**WE CONCUR:**



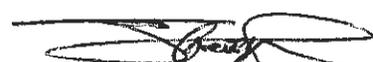
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ROSMARIE D. CARANDANG**  
Associate Justice



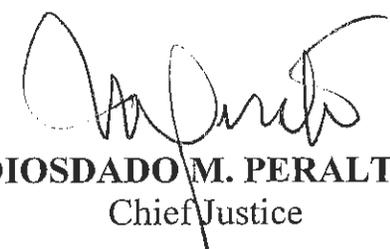
**RODIL V. ZALAMEDA**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Chief Justice