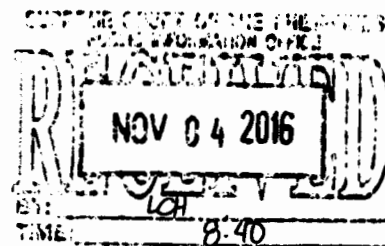




Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**



**BENJAMIN RUSTIA, JR.,  
BENJAMIN RUSTIA, SR., and  
FAUSTINO "BONG" RUSTIA,**  
Petitioners,

**G.R. No. 208351**

Present:

\***SERENO, C.J.,  
LEONARDO-DE CASTRO,**  
Acting Chairperson,  
**BERSAMIN,  
PERLAS-BERNABE, and  
CAGUIOA, JJ.**

- versus -

**PEOPLE OF THE PHILIPPINES,**  
Respondent.

Promulgated:

**OCT 05 2016**

X-----X

**DECISION**

**BERSAMIN, J.:**

In a criminal prosecution for murder qualified by the attendant circumstance of treachery, the means, method, or form of the attack must be shown to have been consciously and deliberately adopted by the offender before the same can be considered to qualify the killing. Otherwise, the killing amounts only to homicide.

**The Case**

This appeal is taken by all the accused from the decision promulgated on July 16, 2013 in CA-G.R. CR-H.C. No. 04864,<sup>1</sup> whereby the Court of Appeals (CA) affirmed with modification the judgment rendered on November 25, 2010 by the Regional Trial Court (RTC) in Santiago City<sup>2</sup> finding petitioner Benjamin Rustia, Jr. (Benjamin, Jr.) guilty as principal in

\* On official business.

<sup>1</sup> *Rollo*, pp. 57-76, penned by Associate Justice Michael P. Elbinias (retired/deceased), and concurred in by Associate Justice Isaias P. Dicedican (retired) and Associate Justice Nina G. Antonio-Valenzuela.

<sup>2</sup> *Id.* at 81-99; penned by Judge Fe Albano Madrid.

the crime of murder qualified by treachery, and his co-petitioners Benjamin Rustia, Sr. (Benjamin, Sr.) and Faustino Rustia (Faustino) guilty as accomplices in the crime of murder.

### **Antecedents**

The petitioners were charged with murder for the killing of the late Ambrocio Cristin (Ambrocio) under the amended information that reads:

That on or about the 14<sup>th</sup> day of June, 2008, at Brgy. Malvar, City of Santiago, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with malice aforethought and with deliberate intent to take the life of AMBROCIO CRISTIN, did then and there willfully, unlawfully, feloniously, and treacherously shot the defenseless victim [sic] AMBROCIO CRISTIN which mode of attack BENJAMIN RUSTIA JR consciously adopted, with an unknown firearm, inflicting gunshot wounds upon AMBROCIO CRISTIN being necessarily mortal, that eventually caused the death of the said AMBROCIO CRISTIN” [sic]

That in the course of the killing of said AMBROCIO CRISTIN said Benjamin Rustia, Sr., and Faustino Rustia, knowing of the criminal design of Benjamin Rustia, Jr., concur with the latter in his purpose, did then and there willfully, unlawfully and feloniously cooperate in the execution of the crime of murder by their simultaneous and collective acts of grappling and restraining the victim until Benjamin Rustia, Jr., was able to wrest possession of the gun from the victim thereby supplying both material and moral aid in the execution of the said crime of murder.

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

The CA summarized the evidence adduced at trial as follows:

The prosecution presented Lilia Cristin (“Lilia” for brevity), Steve Pablo (“Pablo” for brevity), Ferdinand Samin (“Samin” for brevity), Rolando Sanchez Buenaventura (“Buenaventura” for brevity), and Dr. Jeffrey Demano (“Dr. Demano” for brevity), in order to prove the following:

On June 14, 2008, at around 1:30 in the afternoon, the victim Ambrocio Cristin (“victim” or “Cristin” for brevity) went to the Barangay Hall of Malvar, Santiago City to meet accused-appellants Rustia, Jr., Rustia, Sr., and Faustino, in order to talk to them about the land that victim Cristin had bought from a certain Agcaoile.

Since the Barangay Captain was out, accused-appellants and victim Cristin left the Barangay Hall. They were arguing.

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<sup>3</sup> Id. at 79.

Accused-appellant Rustia, Jr. suddenly restrained the victim Cristin on his waist. Accused-appellants Rustia, Sr. and Faustino helped accused-appellant Rustia, Jr. restrain both hands of the victim. They all “grappled”, and fell on the ground.

When the victim was lying on the ground, accused-appellant Rustia, Jr. took the victim’s gun that was tucked inside the victim’s waist. Accused-appellant Rustia, Jr. then cocked the gun and pointed it at the victim Cristin. The latter immediately raised his arms to surrender, saying, “Madinak lumaban” (I will not fight). However, accused appellant Rustia, Jr. shot the victim Cristin. Accused-appellant Rustia, Jr. started to walk away, but returned and fired another shot at the victim. Accused-appellants Rustia, Jr., Rustia, Sr., and Faustino then boarded their tricycle, and left the place. The events were witnessed by [Buenaventura], Pablo and Samin.

Afterwards, the witnesses Buenaventura and Samin brought the victim Cristin to the Flores Hospital.

According to the victim Cristin’s wife, Lilia when her husband was at the Flores Hospital, the victim was able to tell her that accused-appellant Rustia, Jr. was the one who shot him.

Victim Cristin was then transferred to the De Vera Medical Center for further treatment.

As testified to by Dr. Demano, who was the doctor who examined the victim on June 18, 2008 at the De Vera Medical Center, the cause of death of victim Cristin was a gunshot wound on the victim’s neck. According to Dr. Demano, the gunshot wound’s entry point was at the anterior neck area, and the exit point was at the posterior area of the skull at the back.

On June 24, 2008, the victim Cristin died as a result of that gunshot wound on his neck.

The defense, on the other hand, presented the sole testimony of accused-appellant Rustia, Jr., in order to prove the following:

On June 14, 2008 at about 2:00 in the afternoon, accused-appellant Rustia, Jr., together with his father, accused-appellant Rustia, Sr., and his brother, accused-appellant Faustino were at the Barangay Hall in Malvar, Santiago City to talk to the victim Cristin about the land of accused-appellant Rustia, Sr., which land was being occupied by the victim Cristin. The barangay captain was not around at that time.

Accused-appellant Rustia, Sr. talked to the victim Cristin in order for the latter to return the land of accused-appellant Rustia, Sr. However, victim Cristin refused to return the land, and got angry. He uttered “fukkenenam”, which meant “vulva of your mother”.

Accused-appellant Rustia, Jr. saw that victim Cristin had a gun tucked in his waist, so, he, together with his father, accused-appellant Rustia, Sr., and brother, accused-appellant Faustino “tried to avoid” the victim.

When accused-appellant Rustia, Sr. was about to leave the Barangay Hall, accused-appellant Rustia, Jr. saw the victim Cristin draw his gun. Accused-appellant Rustia, Jr. grabbed the victim Cristin, causing all of them to fall down. Rustia, Jr. and the victim Cristin grappled for the possession of the victim's gun. Accused-appellant Rustia, Jr. was able to take the victim's gun. Then, accused-appellant Rustia, Jr. shot the victim twice.

After having shot the victim Cristin, accused-appellants Rustia, Jr., Rustia, Sr., and Faustino left. Accused-appellant Rustia, Jr. then threw the gun.<sup>4</sup>

On November 25, 2010, the RTC rendered judgment finding and pronouncing Benjamin, Jr. guilty as principal in murder, and Rustia, Sr. and Faustino guilty as accomplices in murder, disposing:

WHEREFORE in light of the foregoing considerations the Court finds the accused Benjamin Rustia, Jr. GUILTY beyond reasonable doubt of murder and hereby sentences him to the penalty of *reclusion perpetua*. The Court also finds the two other accused Benjamin Rustia, Sr. and Faustino Bong Rustia GUILTY as accomplices to the crime of murder and hereby sentences each of them to an indeterminate penalty of eight (8) years, eight (8) months and one (1) day of *prision mayor* as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum. In addition the accused are ORDERED TO PAY jointly and solidarily, to the widow of the deceased Ambrocio Cristin the sum of One hundred three thousand two hundred eighty one pesos (P103, 281.00) as actual damages; Twenty five thousand pesos (₱25,000.00) as temperate damages; Fifty thousand pesos (₱50,000.00) as death indemnity; Fifty thousand pesos (₱50, 000.00) as moral damages; and, Twenty five thousand pesos (₱25,000.00) as exemplary damages.<sup>5</sup>

### Decision of the CA

On appeal, the petitioners assailed the adverse findings of the RTC, asserting that they had only acted in self-defense; that the RTC had disregarded Benjamin, Jr.'s testimony showing that Ambrocio had been reaching for the gun tucked in his waist; that Benjamin, Jr. had only reacted to defend himself by the instinct of self-preservation; and that Benjamin, Sr. and Faustino had not been sufficiently identified by the Prosecution's witnesses.

In its now assailed decision, the CA ruled that because Benjamin, Jr. had invoked self-defense, the burden of evidence had shifted to him; that such defense was not established because no unlawful aggression could be attributable to the victim; that even assuming that the victim had been perceived to have been about to draw his gun, as the petitioners insisted, that

<sup>4</sup> Id. at 58-61.

<sup>5</sup> Id. at 98-99.

act by itself could not be considered an act of unlawful aggression because the danger from him had ceased once Benjamin, Jr. had successfully wrested the gun from the victim; that the victim had already raised his hands to indicate his surrender just before he had been shot; and that the number, location, and severity of the wounds inflicted on the victim further negated the claim of self-defense; that treachery had been attendant because the attack against the victim had been unexpected, precise, and sudden, rendering the victim unable to defend himself; and that Benjamin, Sr. and Faustino had been accomplices to the crime.

The CA modified the civil liability by deleting the temperate damages; and increasing the exemplary damages from ₱25,000.00 to ₱30,000.00.<sup>6</sup>

### Issues

In this appeal, the petitioners insist that:

#### I

THE AMENDED INFORMATION FAILS TO SPECIFICALLY ALLEGE THE FACTUAL CIRCUMSTANCES OR PARTICULAR ACTS THAT CONSTITUTE TREACHERY.

#### II

THE COURT OF APPEALS GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY

#### III

THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING PETITIONER BENJAMIN RUSTIA, JR. OF MURDER INSTEAD OF HOMICIDE.

#### IV

THE COURT OF APPEALS ERRED IN CONVICTING PETITIONERS BENJAMIN RUSTIA, SR. AND FAUSTINO RUSTIA AS ACCOMPLICES.

#### V

THE TRIAL COURT AND THE COURT OF APPEALS SHOULD HAVE CONSIDERED INCOMPLETE SELF-DEFENSE AS A SPECIAL MITIGATING CIRCUMSTANCE.<sup>7</sup>

In short, the decisive query is whether or not the offense committed was murder, qualified by treachery.

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<sup>6</sup> Id. at 75.

<sup>7</sup> Id. at 22-23.

In its comment, the Office of the Solicitor General points out that the petitioners took issue with the perceived insufficiency of the amended information on the circumstance of treachery being raised only for the first time on appeal to this Court.

### **Ruling of the Court**

The petition is partly meritorious.

Treachery as an attendant circumstance must be alleged and established beyond reasonable doubt. The lower courts ruled herein that treachery was attendant based on the fact that the attack had been unexpected and sudden because it had been mounted at a time when Ambrocio was lying on the floor with his hands raised in surrender. Treachery exists when the following elements are present: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.<sup>8</sup> Thus, it is not sufficient that the victim was unable to defend himself. The Prosecution must show that the accused consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself.<sup>9</sup>

The incident was precipitated by the heated argument between the petitioners and the victim. Tempers were already high when the four of them were leaving the barangay hall. At that point, Benjamin, Jr. grappled with Ambrocio for control of the gun that Ambrocio had brought with him. While the shooting was sudden, Ambrocio could not be said to have been defenseless at that point. According to the RTC, he was then struggling and fighting back.<sup>10</sup> During the grappling, his gun was still tucked in his waist. Even so, it cannot be concluded that their scuffle was without risk to Benjamin, Jr. in as much as there was then no guarantee that Benjamin, Jr. would come out on top with control of the gun. Only the subsequent intervention of Benjamin, Sr. and Faustino that Benjamin, Jr. succeeded in bringing Ambrocio down to the ground and secure control of the firearm. The CA and the RTC considered Ambrocio as defenseless after he had been brought down with his hands up.

Taking into consideration everything leading up to that moment of Ambrocio being defenseless on the ground, we cannot justifiably state that Benjamin, Jr. had consciously and deliberately sought and brought about that situation to be advantageous to him. In our view, such situation was rather from pure happenstance, having resulted from their physical

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<sup>8</sup> *People v. Villarico, Sr.*, G.R. No. 158362, April 4, 2011, 647 SCRA 43, 63.

<sup>9</sup> *People v. Vilbar*, G.R. No. 186541, February 1, 2012, 664 SCRA 749, 766.

<sup>10</sup> *Rollo*, p. 97.

grappling. This persuades us to somehow undo the conclusion reached by both lower courts to the effect that Benjamin, Jr. had consciously and deliberately adopted the means, method, or form of the fatal shooting in order to ensure the execution of the criminal design to kill.

Furthermore, all the circumstances in the record indicated that the killing of Ambrocio had been done in the heat of the moment. It is quite clear that Benjamin, Jr. had not set out to kill Ambrocio when they both agreed to meet in order to discuss their land dispute. The fact also remains that it was the victim who had brought the gun to the meeting. In contrast, Benjamin, Jr. did not appear to have prepared his own weapon to commit the crime. To establish the attendance of treachery in such an environment, the State's evidence must competently and convincingly show that the accused made some preparation to kill the victim; hence, a killing done at the spur of the moment cannot be treacherous.<sup>11</sup> Even where the victim was shot from behind, if the shooting was done in the course of a heated argument between the victim and the assailant, treachery should not be appreciated, for in that situation, the assailant was filled with anger and rage and excitement, and had no time to reflect on his actions; in other words, he could not be shown to have consciously adopted the mode of attacking the victim from behind to facilitate the killing without risk to himself.<sup>12</sup>

In the same manner, the petitioner's claim of incomplete self-defense must fail for being unsupported by the evidence. This privileged mitigating circumstance requires the indispensable element of unlawful aggression, the nature of which we have explained in *People v. Dulin*:<sup>13</sup>

x x x The test for the presence of unlawful aggression under the circumstances is whether or not the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least imminent; and (c) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of

<sup>11</sup> *People v. Nitcha*, G.R. No. 113517, January 19, 1995, 240 SCRA 283, 295-296.

<sup>12</sup> *People v. Rivera*, G.R. No. 117471, September 3, 1998, 295 SCRA 99, 114.

<sup>13</sup> G.R. No. 171284, June 29, 2015, 760 SCRA 413, 425-426.

the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

The burden of proving unlawful aggression belonged to the petitioners. According to them, unlawful aggression manifested itself when Ambrocio reached for the gun tucked in his waist. Yet, they did not thereby establish that Ambrocio had really reached for his gun and actually taken it out. What we have on this defense was instead the sole recollection of Benjamin, Jr., which, being uncorroborated even by the other petitioners, was accorded scant consideration by both the RTC and the CA. It is remarkable at least that none of the three disinterested eyewitnesses saw Ambrocio reaching for the gun first. Thus, the claim of incomplete self-defense is rejected.

There being no treachery, the crime committed by Benjamin, Jr. was only homicide. Article 249 of the *Revised Penal Code* defines homicide and penalizes it with *reclusion temporal*. Applying the *Indeterminate Sentence Law*, and in the absence of any modifying circumstances, the maximum of the indeterminate sentence is taken from the medium period of *reclusion temporal* (from 14 years, eight months and one day to 17 years and four months), while the minimum is taken from *prision mayor*, the penalty next lower (from six years and one day to 12 years). Accordingly, the indeterminate sentence of eight years of *prision mayor*, as minimum, to 14 years, eight months and one day of *reclusion temporal*, as maximum, is hereby imposed.

Anent the criminal liability of Benjamin, Sr. and Faustino as accomplices, we grant the petition for review.

Article 18 of the *Revised Penal Code* provides that accomplices are the persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts. The principals included in Article 17 are: (1) those who take a direct part in the execution of the act; (2) those who directly force or induce others to commit it; and (3) those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

In order that a person may be considered an accomplice, three elements must be shown to concur, namely: (1) that there be a community of design, that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an



efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice.<sup>14</sup>

The cooperation that the law punishes is the assistance knowingly or intentionally rendered that cannot exist without previous cognizance of the criminal act intended to be executed.<sup>15</sup> But it cannot be said that Benjamin, Sr. and Faustino knew that Benjamin, Jr. would shoot the victim. As earlier observed, the fatal shooting was done in the heat of the moment, not premeditated or preconceived. Their group was making its way out of the barangay hall when Benjamin, Jr. suddenly grabbed Ambrocio around the waist, and the two of them started to wrestle with each other. Up to that point, nothing indicated that Benjamin, Jr. intended to grab Ambrocio's gun and use it against him. From their point of view, Benjamin, Sr. and Faustino were witnessing their closest of kin suddenly engaged in the physical struggle with Ambrocio whom they knew was armed with a gun. Going to the aid of Benjamin, Jr. was but their most natural reaction. That their going to the latter's aid might have enhanced the chances of Benjamin, Jr. in gaining control of the victim's firearm, but such did not unavoidably mean that they had themselves intended such outcome. Nor did they contemplate such outcome in the absence of any clear showing that they deliberately went to his aid to ensure his seizure of the firearm from Ambrocio. As things stood, their acts could also mean that they were only trying to stop the grappling from escalating into violence. Until the time when Benjamin, Jr.'s intention became known to them – that is, when he finally had full control of the gun, he cocked it and pointed it at the victim – nothing in the records established that Benjamin, Sr. and Faustino continued to provide material and moral aid to Benjamin, Jr.

Under the established circumstances, whether or not Benjamin, Sr. and Faustino were cognizant of Benjamin, Jr.'s felonious intention is unclear. At the very least, such lack of clarity raises doubt about their cooperation in the commission of the crime by Benjamin, Jr. We resolve the doubt in their favor, and decide to absolve them of criminal liability as accomplices.

Nonetheless, we adjust the civil damages awarded to conform with prevailing jurisprudence in respect of crimes that result in the death of the victim and the penalty consists of divisible penalties, like homicide.<sup>16</sup> The heirs of the victim herein are entitled to civil indemnity of ₱50,000.00, moral damages of ₱50,000.00, and ₱50,000.00 as exemplary damages. The actual damages of ₱103,281.00 are also maintained because no issue was raised in relation thereto.

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<sup>14</sup> *People v. Gambao*, G.R. No. 1727070, October 1, 2013, 706 SCRA 508, 529.

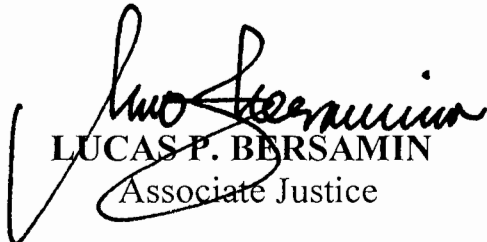
<sup>15</sup> *People v. Eljorde*, G.R. No. 126531, April 21, 1999, 306 SCRA 188, 197.

<sup>16</sup> *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

Finally, current judicial policy requires the imposition of interest at the legal rate of 6% *per annum* on all the damages from the finality of this decision until fully paid.<sup>17</sup>

**WHEREFORE**, the Court **PARTIALLY GRANTS** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on July 16, 2013 by the Court of Appeals subject to the **MODIFICATIONS** that petitioner **BENJAMIN RUSTIA, JR.** is **FOUND AND PRONOUNCED GUILTY BEYOND REASONABLE DOUBT** of **HOMICIDE**, and, **ACCORDINGLY, SENTENCES** him to suffer the **INDETERMINATE PENALTY** of eight years of *prision mayor*, as minimum, to 14 years, eight months and one day of *reclusion temporal*, as maximum, with full credit of his preventive imprisonment; **ORDERS** petitioner **BENJAMIN RUSTIA, JR.** to pay to the heirs of the late Ambrocio Cristin the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱103,281.00 as actual damages, with interest at the legal rate of 6% *per annum* from the finality of this decision until fully paid; **ACQUITS** petitioners **BENJAMIN RUSTIA, SR.** and **FAUSTINO RUSTIA** for insufficiency of evidence; and **DIRECTS** petitioner **BENJAMIN RUSTIA, JR.** to pay the costs of suit.

**SO ORDERED.**


  
LUCAS P. BERSAMIN  
Associate Justice

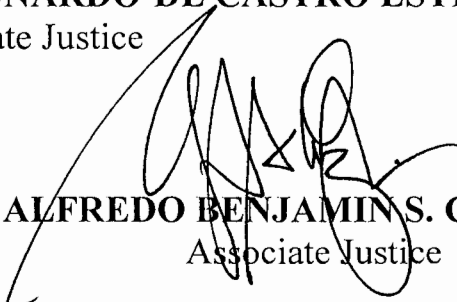
**WE CONCUR:**

(On Official Business)

**MARIA LOURDES P. A. SERENO**  
Chief Justice

  
TERESITA J. LEONARDO-DE CASTRO ESTELA  
Associate Justice

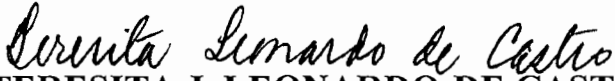
  
M. PERLAS-BERNABE  
Associate Justice

  
ALFREDO BENJAMIN S. CAGUIOA  
Associate Justice

<sup>17</sup> *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.

## 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.

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Acting Chairperson, First Division

## CERTIFICATION

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

  
**ANTONIO T. CARPIO**  
Acting Chief Justice