



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Welford E. Lopez
WELFORD V. LUTYAN
Division Court of Appeals
Cebu City

FEB 06 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 205440

Present:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

- versus -

YOLANDO B. PANERIO alias
JOHN "Yolly" LABOR and ALEX
(JOJO) F. ORTEZA,
Accused,

Promulgated:

YOLANDO B. PANERIO,
Accused-Appellant.

January 15, 2018

Welford E. Lopez

X ----- X

DECISION

MARTIRES, J.:

On appeal is the 24 February 2011 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00707-MIN, which affirmed with modification the 4 February 2009 Decision² of the Regional Trial Court of Davao City, Branch 12, in Criminal Case No. 22,247-91, finding accused-appellant Yolando B. Panerio alias John "Yolly"³ (*Panerio*) and accused Alex (Jojo) F. Orteza (*Orteza*) guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code (RPC).

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¹ *Rollo*, pp. 4-13; penned by Associate Justice Edgardo A. Camello, and concurred in by Associate Justice Leoncia R. Dimagiba, and Associate Justice Nina G. Antonio-Valenzuela.

² Records, pp. 179-195; penned by Judge Pelagio S. Paguican.

³ Also referred to as "alias Yoli" in some parts of the records.

THE FACTS

On 23 February 1991, Panerio and Orteza were charged with the crime of murder committed upon the person of one Elesio⁴ Ung (*Elesio*) in an Information⁵ which reads:

That on or about February 18, 1991, in the City of Davao, Philippines, the said accused, conspiring, confederating and helping one another did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of ELESIO UNG by then and there stabbing him on the different parts of his body with the use of a fan-knife (*balisong*) and ice pick, thereby inflicting upon the said Elesio Ung mortal wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.⁶

On 29 April 1991, Panerio and Orteza, with the assistance of counsel, were arraigned and pleaded not guilty to the charge.⁷ Trial on the merits thereafter ensued.

Evidence for the Prosecution

The prosecution presented six (6) witnesses, namely: Virgilio Olivar (*Olivar*), Exipher C. Rebosura (*Rebosura*), Police Officer Gualberto Callos (*PO Callos*), Police Officer Wenifredo Dutano (*PO Dutano*), Patrolman George Alojado (*Alojado*), and Antonio Ung. Their combined testimonies tended to establish the following:

On 18 February 1991, at around 10:00 o'clock in the evening, at the billiard hall of a certain Piatos in Mintal, Davao City, Panerio and Orteza, both drunk, scattered the billiard balls causing disruption of the billiard games going on there; thus, the games stopped. Thereafter, Panerio and Orteza left the billiard hall,⁸ and saw Elesio on the road. While under the influence of alcohol, Panerio and Orteza repeatedly stabbed Elesio. Panerio, using a fan knife or *balisong*, was in front of the victim; while Orteza, using an ice pick, was at the victim's back.⁹



⁴ Also referred to as "Eliseo" in some parts of the records.

⁵ Records, p. 1.

⁶ Id.

⁷ Id. at 22.

⁸ TSN, dated 25 February 1992, pp. 3-4.

⁹ Id. at 4.

After stabbing Elesio, the two assailants ran towards the nearby elementary school. Witness Olivar brought Elesio to the hospital but he expired the following day.¹⁰

Meanwhile, at about 11:00 o'clock of the same evening, Rebosura who was then on guard duty at the Mintal public market located in front of the billiard hall, was approached by Panerio and Orteza. The accused told Rebosura that somebody, whom they did not know, was stabbed and killed. Rebosura then was advised by his superior to report the matter and refer Panerio and Orteza to the police.¹¹ Thus, Rebosura, together with Panerio and Orteza, went to the Tugbok police station in Davao City, where they met with Alojado, a police officer Dodong Molve, and Andoy Bintad (*Bintad*), a member of the Citizens Armed Forces Geographical Unit. Thereafter, the police officers and Bintad accompanied Rebosura and the two accused to the place where the stabbing incident occurred.¹²

On their way to the crime scene, Alojado noticed bloodstains on the hands of Panerio and Orteza. When asked about it by Alojado, the two replied that they helped the victim and tried to bring him to a hospital.¹³ At this juncture, Alojado frisked the two accused and recovered a fan knife from Panerio and an ice pick from Orteza.¹⁴ After marking the fan knife and ice pick, Alojado turned these over to PO Dutano, the desk officer of the Tugbok police station.¹⁵ PO Dutano, in turn, endorsed the confiscated items to PO Callos, the Exhibit Custodian of the Tugbok police station. PO Callos identified the fan knife and ice pick in open court.¹⁶

The post-mortem findings¹⁷ revealed that Elesio sustained a total of eleven (11) stab and puncture wounds. The cause of death was hemorrhage secondary to multiple stab wounds.

Evidence for the Defense

On 23 November 1992, Panerio and Orteza escaped from their guards while on their way back to detention prison from a court trial.¹⁸ Thus, on 24 November 1992, the trial court ordered that the case be archived pending the arrest of the accused.¹⁹

¹⁰ Id. at 4-5.

¹¹ TSN, dated 12 March 1992, p. 5.

¹² Id. at 6.

¹³ Id. at 6-7.

¹⁴ TSN, dated 8 September 1992, p. 10.

¹⁵ TSN, dated 21 July 1992, p. 3.

¹⁶ TSN, dated 20 July 1992, pp. 2-3.

¹⁷ Records, p. 131, Exhibit "A."

¹⁸ Id. at 139, Letter, dated 24 November 1992.

¹⁹ Id. at 140.

On 14 April 2008, Panerio was re-arrested and re-committed to the Davao City Jail, while Orteza remained at large.²⁰ Trial resumed thereafter.

The defense presented Panerio as its sole witness. In his testimony, Panerio offered the exculpatory circumstance of self-defense and narrated his version of the incident, as follows:

On the night of 18 February 1991, Panerio, together with Orteza, went out to buy food. They walked by the store of Piatos where they saw two persons, including Elesio, drinking. Elesio and his companion called them and offered them drinks but they refused.²¹ Feeling disrespected, Elesio got mad and boxed Panerio.²² When Panerio fell to the ground, Elesio rushed towards him and attempted to stab him with a knife twice, but missed. Elesio tried to stab Panerio for a third time, but the latter was able to hit the former's hand causing the knife to fall.²³ Panerio picked up the knife off the ground and stabbed Elesio with it three times.²⁴ After stabbing Elesio, Panerio, prompted by his guilt, immediately surrendered to Rebosura, the guard on duty at the nearby Mintal public market. Rebosura brought Panerio to the police station where he was detained.²⁵

Regarding his escape, Panerio claimed that such was not his intention. He averred that it was Orteza's idea; he was merely dragged by him as they were handcuffed together.²⁶

The RTC Ruling

In its decision, dated 4 February 2009, the RTC found Panerio and Orteza guilty beyond reasonable doubt of the crime of murder. The trial court deemed Orteza had waived his right to present evidence because he escaped detention.

The trial court found Panerio's uncorroborated testimony unconvincing and insufficient to show that he had acted in self-defense. With respect to Orteza, the trial court opined that the prosecution witnesses were able to positively identify him as one of the assailants. It also considered Panerio and Orteza's escaped from detention as indicative of

²⁰ Id. at 143-145.

²¹ TSN, dated 8 December 2008, pp. 4-5.

²² Id. at 6.

²³ Id. at 7.

²⁴ Id. at 8 and 10.

²⁵ Id. at 8-9.

²⁶ Id. at 10.



their guilt. The trial court likewise ruled that Panerio and Orteza conspired in killing Elesio. The dispositive portion of the decision reads:

WHEREFORE, premises considered, JUDGMENT is hereby rendered finding Accused YOLANDO B. PANERIO alias JOHN "Yolly" LABOR and ALEX (Jojo) F. ORTEZA guilty of the crime of Murder defined and penalized under Art. 248 of the Revised Penal Code and hereby sentences the said Accused to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of [Elesio] Ung jointly and severally the sum of Fifty Thousand (₱50,000.00) Pesos as civil indemnity and Fifty Thousand (₱50,000.00) Pesos, as moral damages.

Considering that Accused ALEX (Jojo) F. ORTEZA is at large, let the promulgation of the Judgment of this case be made by recording the Judgment in the criminal docket and furnishing him a copy of the Judgment at his last known address pursuant to Rule 120, Sec. 6 of the Revised Rules of Criminal Procedure.

SO ORDERED.²⁷

Aggrieved, Panerio appealed before the CA.²⁸

The CA Ruling

In its appealed decision, dated 24 February 2011, the CA affirmed with modification the 4 February 2009 RTC decision. The appellate court concurred with the trial court that Panerio failed to sufficiently show that he acted in self-defense. It noted that the sheer number, nature, and location of the stab wounds sustained by the victim is telling of the determined effort of Panerio and Orteza to kill Elesio. Thus, it opined that Panerio's account of the incident does not inspire belief. The appellate court likewise appreciated the attendance of the qualifying circumstance of treachery. It noted that the two accused repeatedly stabbed the victim until he died.

With respect to the civil aspect of the case, the appellate court deemed it proper to further award temperate damages in the amount of ₱30,000.00, and exemplary damages in the amount of ₱25,000.00, considering that the qualifying circumstance of treachery attended the commission of the felony.

The *fallo* of the appealed decision provides:



²⁷ Records, pp. 194-195.

²⁸ Id. at 198.

FOR THESE REASONS, the appealed judgment convicting the accused-appellant YOLANDO B. PANERIO alias JOHN “Yolly” LABOR and co-accused ALEX (Jojo) F. ORTEZA of Murder is AFFIRMED with the MODIFICATION that they are jointly and severally ORDERED to pay the heirs of the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages, and ₱30,000.00 as temperate damages. *Costs de officio*.

SO ORDERED.²⁹

Hence, this appeal.

THE ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED WHEN THEY FAILED TO APPRECIATE THE JUSTIFYING CRICUMSTANCE OF SELF-DEFENSE IN FAVOR OF THE ACCUSED-APPELLANT.

OUR RULING

The appeal lacks merit.

Self-defense not established

The plea of self-defense is as much a confession as it is an avoidance. By invoking self-defense, the accused admits having killed or having deliberately inflicted injuries on the victim, but asserts that he has not committed any felony and is not criminally liable therefor.³⁰ Thus, the plea of self-defense can be described as a double-edged sword which can either bring favorable or unfavourable consequences to the accused.

To bring about a result favorable to the accused in the form of exculpation from criminal liability, jurisprudence teaches that the accused must establish the essential requisites of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means used to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the person defending himself.³¹ The accused has the burden to prove these requisites by clear and convincing evidence. In doing so, he must rely on the strength of his evidence and not on the

²⁹ *Rollo*, p. 13.

³⁰ *Garcia v. People*, 469 Phil. 179, 188 (2004).

³¹ *People v. Ramelo*, G.R. No. 224888, 22 November 2017.



weakness of that of the prosecution because it could no longer be denied that he admitted to be the author of the victim's death or injuries.³²

After careful review of the records of the case, the Court is convinced of Panerio's failure to prove that he acted in self-defense when he and Orteza killed Elesio.

Most important among the requisites of self-defense is unlawful aggression which is the condition *sine qua non* for upholding self-defense as justifying circumstance. Unless the victim commits unlawful aggression against the accused, self-defense, whether complete or incomplete, cannot be appreciated, for the two other essential elements of self-defense would have no factual and legal bases without any unlawful aggression to prevent or repel.³³

As aptly stated by the trial court, Panerio's uncorroborated testimony regarding the incident is unclear and unconvincing. His assertion that Elesio, then drunk, boxed him and attempted to stab him is unsubstantiated by any convincing proof. Moreover, Panerio's account on how many times he stabbed the victim is miserably inconsistent with the post-mortem findings on the deceased.

On the other hand, eyewitness testimony shows that Panerio and Orteza were the ones who were drunk. Olivar's account that Panerio and Orteza, as if looking for trouble, disrupted the billiard games while under the influence of alcohol, and his positive testimony that the two accused stabbed Elesio numerous times, are worthy of full credence. Not only is his version of the incident consistent with the corroborating testimonies of the other prosecution witnesses, Olivar's testimony is confirmed by the post-mortem findings on the deceased.

In sum, Panerio's self-serving testimony that Elesio mounted an unlawful aggression must fail when weighed against the positive, straightforward, and overwhelming evidence of the prosecution.

Even on the assumption that Elesio was the unlawful aggressor, self-defense cannot be appreciated on account of the evident lack of reasonable means employed necessary to repel it. To recall, the post-mortem findings reveal that Elesio sustained eleven (11) stab and puncture wounds, to wit:



³² *People v. Delima and Areo*, 452 Phil. 36, 44 (2003).

³³ *People v. Dulin*, 762 Phil. 24, 36 (2015).

On autopsy, pertinent findings are:

- (1) Stab wound – 1.2 cm. by 0.5 cm., single-edge[d] sharp slanting across and near the right anterior axillary line, directed medially **puncturing the right lung;**
- (2) Stab wound – 3 cm. by 1 cm., single-edge[d] sharp slanting across the right chest, just above the nipple, directed posteriorly, slightly upwards and **medially hitting the middle lobe of the right lung;**
- (3) Stab wound – 2 cm. by 1 cm., single-edge[d] sharp, slanting across the epigastrium, slightly right to the mid line directed posteriorly **puncturing the liver;**
- (4) Incised wound – 0.5 cm. by 0.3 cm., across proximal base of the right thenar prominence;
- (5) Incised wound – 1 cm. by 0.5 cm., across the proximal portion of the right palm;
- (6) Stab wound – 3 cm. by 1 cm., single-edge[d] sharp, slanting across the left mid clavicular line on the level of the 3rd ICS directed posteriorly **puncturing the heart;**
- (7) Stab wound – 1 cm. by 0.5 cm., single-edge[d] sharp, across the left anterior axillary line on the level of the 4th ICS directed medially and posterior **puncturing the left lung;**
- (8) Stab wound – 2 cm. by 1 cm., single-edge[d] sharp, across the upper mid portion of the epigastrium, directed posteriorly **hitting the liver;**
- (9) Stab wound – 3 cm. by 1 cm., single-edge[d] sharp, along the mid line, just above the navel, directed posteriorly **hitting some loops of intestine;**
- (10) Punctured wound shallow – 0.5 cm. by 0.2 cm., at the upper medial quadrant of the right gluteal region;
- (11) Punctured wound shallow – 0.5 cm. by 0.3 cm., at the mid portion of the right gluteal region.

Cause of death: Hemorrhage secondary to multiple stab wounds.³⁴ (emphases supplied)

Of the eleven (11) stab and puncture wounds, at least seven (7) are deemed fatal having been inflicted over vital organs such as the heart, the lungs, the liver, and the intestines. The large number of wounds sustained by the victim negates any claim of self-defense. Rather than imply an effort for self-defense, the presence of multiple stab wounds on the victim strongly indicates a determined effort to kill the victim.³⁵ Considering the quantity, nature, and location of the wounds sustained by Elesio, the Court finds Panerio's plea of self-defense incredible.

***The crime committed is homicide;
treachery was not established.***

Although the guilt of Panerio and Orteza for the death of Elesio is unquestioned, the Court is of the considered view that the accused may only

³⁴ Records, p. 131.

³⁵ *People v. More*, 378 Phil. 1153, 1161 (1999).

be convicted of homicide, not murder. The prosecution failed to prove that the crime was committed with treachery or with any other qualifying circumstance.

Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in its execution, tending directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.³⁶ For treachery to be appreciated, the concurrence of two conditions must be established: *first*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and *second*, the means of execution was deliberately or consciously adopted.³⁷ Moreover, in order to qualify the killing as murder, treachery must be proved by clear and convincing evidence or as conclusively as the killing itself.³⁸ The presence of treachery cannot be presumed.³⁹

In this case, only Olivar personally witnessed the stabbing incident which he narrated in this wise:

PROS. ALBARRACIN:

Q. What, if anything, transpired while you were playing billiards?

A. [Yo]Lando and Alex arrived and they scattered the balls causing disruption of our games, Sir.

Q. Why did they scatter the balls and interrupt the games?

A. They were drunk, Sir.

Q. What else transpired?

A. The games were stopped. They left and I proceeded home, Sir.

Q. What happened next?

A. **When I was on my way home, I saw the accused Yolando Panerio and Alex Orteza stabbing Elesio Ung.**⁴⁰ (emphasis supplied)

The testimony of Olivar clears the fact that he only witnessed the incident when Elesio was already being stabbed by Panerio and Orteza. He did not witness how the incident started and he had no idea what moved the two accused to stab Elesio to death. All that could be gleaned from Olivar's account was that Panerio and Orteza were both under the influence of

³⁶ *People v. De Leon*, 428 Phil. 556, 581 (2002).

³⁷ *People v. De Gracia*, 765 Phil. 386, 396 (2015).

³⁸ *People v. Lopez*, 371 Phil. 852, 864 (1999).

³⁹ *People v. Calinawan*, G.R. No. 226145, 13 February 2017.

⁴⁰ TSN, dated 25 February 1992, pp. 3-4.

alcohol; and that they stabbed Elesio, presumably when they met him on the road.

In this regard, it has been held that even where all indicia tend to support the conclusion that the attack was sudden and unexpected, yet no precise data on this point exists, treachery cannot be taken into account.⁴¹ Thus, when the witness did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence. Mere probabilities cannot substitute for proof required to establish each element necessary to convict.⁴²

From the foregoing, the Court finds without any basis the trial and appellate courts' conclusion that treachery attended the commission of the crime. In fact, the trial court merely concluded that the crime committed was murder without a single mention of any aggravating circumstance that supposedly qualified the crime. Similarly, the appellate court simply concurred with the trial court and ruled that the attack was treacherous because it was sudden and unexpected, without citing any evidence showing that the attack was indeed done so.

Penalties and monetary awards

In the absence of any qualifying aggravating circumstance, the crime committed by Panerio and Orteza is Homicide, the penalty for which is *reclusion temporal* as provided in Article 249 of the RPC. Considering that there is neither aggravating nor mitigating circumstances, the penalty should be imposed in its medium period pursuant to Article 64(1) of the RPC. Applying the Indeterminate Sentence Law, Panerio and Orteza should be sentenced to an indeterminate penalty, the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, that is, *prision mayor* (6 years and 1 day to 12 years); and the maximum of which should be within the range of *reclusion temporal* in its medium period (14 years 8 months and 1 day to 17 years and 4 months). Accordingly, the Court imposes upon each of the two accused the indeterminate penalty ranging from twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.



⁴¹ *People v. Silva*, 378 Phil. 1267, 1276 (1999).

⁴² *People v. Santiago*, 396 Phil. 200, 207 (2000).

In *People v. Jugueta*,⁴³ the Court summarized the amounts of damages which may be awarded for different crimes. In said case, the Court held that for the crime of homicide, the following amounts may be awarded: (1) ₱50,000.00, as civil indemnity; and (2) ₱50,000.00, as moral damages. Further, the Court deems it proper to delete the awards of exemplary and temperate damages considering that no aggravating circumstance attended the felony. Although exemplary damages, being corrective in nature, may be awarded even if in the absence of aggravating circumstance,⁴⁴ the Court sees no reason for such award in this case.

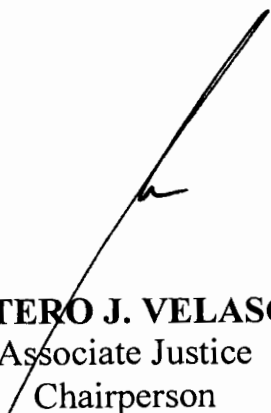
WHEREFORE, accused-appellant Yolando B. Panerio and accused Alex F. Orteza are found GUILTY beyond reasonable doubt of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code. They are each sentenced to suffer the indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

Accused-appellant Yolando B. Panerio and accused Alex F. Orteza are further ordered to pay jointly and severally the heirs of the deceased Elesio Ung the following amounts: (1) ₱50,000.00, as civil indemnity; and (2) ₱50,000.00, as moral damages. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until its full payment.⁴⁵

SO ORDERED.


SAMUEL R. MARTIRES
Associate Justice

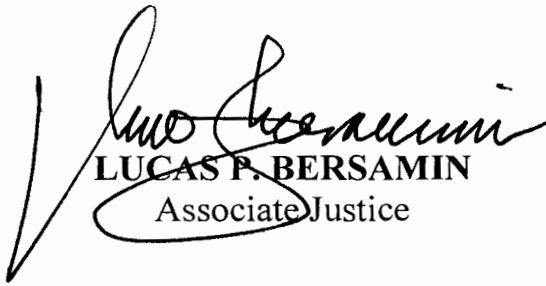
WE CONCUR:

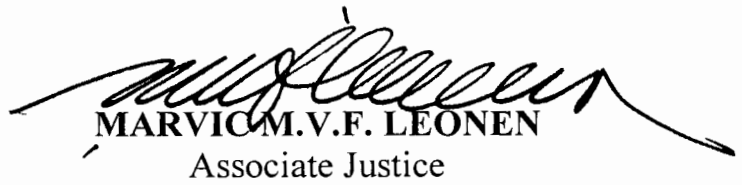

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

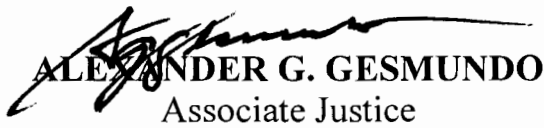
⁴³ G.R. No. 202124, 05 April 2016, 788 SCRA 331.

⁴⁴ *People v. Ronquillo*, G.R. No. 214762, 20 September 2017.

⁴⁵ *People v. Combate*, 653 Phil. 487, 518 (2010).

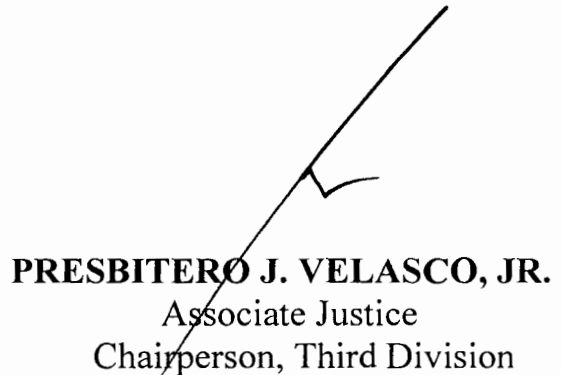

LUCAS P. BERSAMIN
 Associate Justice


MARVIC M. V. F. LEONEN
 Associate Justice


ALEXANDER G. GESMUNDO
 Associate Justice

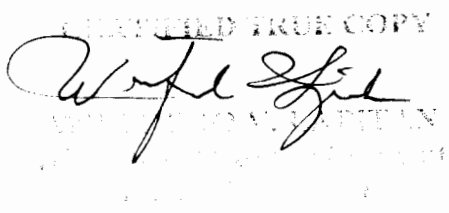
ATTESTATION

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.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third 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.

CERTIFIED TRUE COPY

 Welfel
 CLERK OF COURT
 OFFICE OF THE CLERK OF COURT
 SUPREME COURT OF THE PHILIPPINES
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MARIA LOURDES P. A. SERENO
 Chief Justice