

SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

ESTHER ABALOS y PUROC,
 Petitioner,

G.R. No. 221836

Present:

CARPIO, J., *Chairperson*,*
 CAGUIOA,
 REYES, J. JR.,
 LAZARO-JAVIER, and
 ZALAMEDA, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

14 AUG 2019

X ----- X

DECISION

REYES, J. JR., J.:

The Case

Petitioner Esther P. Abalos (petitioner) comes to this Court appealing¹ her conviction for the crime of Estafa rendered by the Court of Appeals (CA) in its Decision dated May 20, 2015,² in CA-G.R. CR No. 35633, which affirmed the indeterminate penalty of four years and two months of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum and actual damages of ₱232,500.00 imposed by the Regional Trial Court (RTC), but modified the legal interest at 6% per annum from finality of the decision until fully paid.

* On official leave.

¹ By way of Petition for Review on *Certiorari* under Rule 45, *rollo*, pp. 7-25.

² Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Isaias P. Dicedican and Elihu A. Ybañez, concurring; *id.* at 55-69.

The Version of the Prosecution

In April 2011, petitioner, who introduced herself as “Vicenta Abalos,” accompanied by Christine Molina (Molina), went to the office of private complainant Elaine D. Sembrano (Sembrano) at Manulife, Baguio City and offered to her two EastWest Bank checks for rediscounting.³ The checks were signed by petitioner in Sembrano’s office, as follows:

| Check No. | Dated | Amount |
|-----------|--------------|---------------------------|
| 0370031 | May 31, 2011 | ₱ 17,500.00 |
| 0370032 | June 1, 2011 | <u>250,000.00</u> |
| | | ₱ 267,500.00 ⁴ |

Sembrano agreed to rediscount the checks upon assurance of petitioner and her companion, Molina, that they were good checks.⁵ Sembrano gave the amount of ₱250,000.00 less 7% as interest. Sometime later, she learned from friends that petitioner’s name was Esther and not “Vicenta.”⁶ When Sembrano presented the checks for payment on due dates, the checks were dishonored.⁷ Sembrano then engaged the services of Benguet Credit Collectors to collect from petitioner. Petitioner failed to make good the checks such that a demand letter was sent to petitioner which she received on October 23, 2011.⁸ Despite the said demand, petitioner made a promise to pay, but up to this date, nothing was received by Sembrano.⁹ For failure to pay her loans, a complaint for estafa under Article 315 of the Revised Penal Code (RPC) was filed against petitioner.

The Version of the Defense

Petitioner denied the accusations. She claimed that the checks were issued only as a collateral for a loan together with the title to a property in the name of “Vicenta Abalos.”¹⁰ She stated that she did not personally transact with Sembrano¹¹ and that it was Molina who transacted with her and she merely accompanied Molina to Sembrano’s office in April 2011.¹² As a requirement for the release of the loan, petitioner was asked to present as collateral an original certificate of title and a check, which she agreed.¹³ When she was informed that the loan was ready, she together with Molina

³ Id. at 58.

⁴ Id. at 56.

⁵ Id. at 27.

⁶ Id. at 58.

⁷ Id.

⁸ Id. at 59.

⁹ Supra note 5.

¹⁰ Supra note 8.

¹¹ Supra note 5.

¹² Supra note 8.

¹³ Supra note 5.

proceeded to the office of Sembrano purposely to receive the money.¹⁴ Before taking the money from Sembrano, petitioner was asked to sign a real estate mortgage offering the title as a collateral to the loan.¹⁵ After she and Molina received the money from Sembrano, they went to a convenience store where Molina gave petitioner ₱100,000.00 and petitioner handed back to Molina ₱20,000.00 as commission.¹⁶ Petitioner insists that the checks she issued were merely to serve as collateral for the loan and not for the purpose of rediscounting the same.¹⁷

The Ruling of the RTC

On November 29, 2012, the RTC rendered a Decision¹⁸ finding petitioner guilty, viz.:

WHEREFORE, all premises duly considered, the [c]ourt finds the accused, GUILTY as charged. Applying the provisions of the Indeterminate Sentence Law, there being no aggravating and mitigating circumstance, the accused is hereby sentenced to suffer the penalty of imprisonment of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

The accused is likewise found to be civilly liable to pay the private complainant the amount of Php232,500.00 as and by way of actual damages, with legal interest thereon to be computed from the date of the filing of this case, until the same is fully paid.

SO ORDERED.¹⁹

The Ruling of the CA

On appeal, the CA affirmed the conviction, but fixed the rate of interest at 6% per annum, thus:

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Decision dated November 29, 2012 of the Regional Trial Court, Branch 60, Baguio City, in Criminal Case No. 32571-R, finding [appellant] guilty of [Estafa] is **AFFIRMED with MODIFICATION** that appellant is directed to pay private complainant the amount of ₱232,500.00 as and by way of actual damages, with legal interest at **six percent (6%) per annum from finality of this Decision until fully paid**.

SO ORDERED.²⁰

The CA is convinced that the false pretense of petitioner is apparent when she, together with her companion knowingly and intelligently

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Penned by Judge Edilberto T. Claravall; id. at 26-30.

¹⁹ Id. at 29-30.

²⁰ Id. at 68.

misrepresented herself as “Vicenta Abalos” by showing to Sembrano a Transfer Certificate of Title in the name of Vicenta Abalos, a BIR ID Card, a Community Tax Certificate all bearing the name of Vicenta Abalos, and by signing the subject checks as “Vicenta Abalos.” These pieces of evidence assured Sembrano that petitioner can make good the checks she issued as she has the means to do so prompting her to part with her money. The CA likewise ruled that mere issuance of a check and its subsequent non-payment is a *prima facie* evidence of deceit.

Dissatisfied, petitioner filed the instant appeal.

The Issue

Petitioner submits for the Court’s consideration the lone issue that —

THE [CA] ERRED IN FINDING THAT PETITIONER IS GUILTY OF ESTAFA CONSIDERING THAT THE REAL TRANSACTION BETWEEN THE PARTIES, AS DEFINED BY LAW, IS NOT CRIMINAL IN NATURE, BUT CIVIL ONLY.²¹

Petitioner insists that not all elements of estafa were established. The element of deceit and/or false pretenses are lacking because the issuance of the checks was not the factor that induced private complainant to grant the loan, but the intercession made by Molina and the interest to be earned on the money lent.²² It was Molina who maneuvered the transaction with private complainant by assuring the latter that petitioner will pay the loan.²³

Petitioner also zeroed-in on the irreconcilable conflict between Sembrano’s affidavit and her testimony in open court. In her affidavit, Sembrano stated that the checks were offered to her for rediscounting, while her testimony in open court, she admitted that the checks were used for collaterals.²⁴ This inconsistency put doubt on the testimony of Sembrano, but strengthened petitioner’s claim that the checks were meant to be collaterals of the loan which are supposed to be encashed only upon non-payment.²⁵

The Ruling of the Court

As can be inferred from the records, petitioner was convicted of estafa under Article 315, paragraph 2(d) of the RPC,²⁶ which provides:

²¹ Id. at 15.

²² Id. at 18.

²³ Id. at 19.

²⁴ Id. at 20-21.

²⁵ Id. at 17 & 22.

²⁶ Id. at 56-57; Information dated December 6, 2011, reads:

That sometime in the month of April 2011, prior and/or subsequent thereto, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit, committed prior to or simultaneous with the commission of fraud, did then and there willfully, unlawfully and feloniously defraud

ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x

- (d) By [postdating] a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. [No.] 4885, approved June 17, 1967.)

This kind of estafa is committed by any person who shall defraud another by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud. The elements are: (1) postdating or issuing a check in payment of an obligation contracted at the time the check was issued; (2) lack of sufficient funds to cover the check; (3) knowledge on the part of the offender of such circumstances; and (4) damage to the complainant.²⁷

The prosecution was able to establish beyond reasonable doubt all the aforesaid elements of estafa.

ELAINE D. SEMBRANO, in the following manner, to wit: the said accused induced the complainant to have the following EastWest Bank Baguio Branch

| Check No. | Dated (sic) | Amount |
|-----------|--------------|-------------------|
| 0370031 | May 31, 2011 | ₱ 17,500.00 |
| 0370032 | June 1, 2011 | <u>250,000.00</u> |
| | | ₱ 267,500.00 |

be rediscounted although knowing fully well that said checks are not good or backed up with sufficient funds and the offended party believing and relying on the false pretenses and misrepresentation of the accused, delivered the total amount of ₱267,500.00 to the accused, but when the checks were presented for payment with the drawee bank on the due dates or soon thereafter, the same were dishonored for having been drawn against "Account Closed" and despite demands for her to pay the value of the aforesaid checks, the accused failed or refused to do so. Thereby misapplying, misappropriating and converting to her own personal use and benefit the amount of Php267,500.00, to the damage and prejudice of the offended party in the aforementioned amount of TWO HUNDRED SIXTY SEVEN THOUSAND FIVE HUNDRED (₱267,500.00) PESOS, Philippine Currency.

CONTRARY TO LAW.

²⁷ *People v. Dimalanta*, 483 Phil. 56, 64 (2004).

There is no question that petitioner issued two checks in the total amount of ₱267,500.00 in payment for an obligation. The issued checks have insufficient funds as proven by the fact that they were dishonored for the reason “account closed.” Because petitioner knew too well that she was not the owner of the check, petitioner had no knowledge whether the checks were sufficiently funded to cover the amount drawn against the checks. Petitioner did not inform Sembrano about the insufficiency/lack of funds of the checks. Thus, upon presentment for payment, the checks were eventually dishonored causing damages to Sembrano in the total amount of ₱267,500.00,²⁸ as what was reflected in the issued checks.

What sets apart the crime of estafa from the other offense of this nature (*i.e.*, Batas Pambansa Bilang 22) is the element of deceit. Deceit has been defined as “the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.”²⁹

In *Juaquico v. People*,³⁰ the Court reiterated that in the crime of estafa by postdating or issuing a bad check, deceit and damage are essential elements of the offense and have to be established with satisfactory proof to warrant conviction. To constitute estafa, deceit must be the efficient cause of the defraudation, such that the issuance of the check should be the means to obtain money or property from the payer³¹ resulting to the latter’s damage. In other words, the issuance of the check must have been the inducement for the surrender by the party deceived of his money or property.³²

The element of deceit was established from the very beginning when petitioner misrepresented herself as Vicenta Abalos, the owner of the check. To fortify the misrepresentation, petitioner issued and signed the checks in front of Sembrano³³ presumably to show good faith on her part. Petitioner also showed Sembrano documents such as an Identification Card and Community Tax Certificate to prove that she is Vicenta Abalos. And lastly, she showed a transfer certificate of title of a land registered under the name of “Vicenta Abalos” presumably guaranteeing her capability to pay. As observed by the RTC, at the outset, petitioner’s fraudulent scheme was already evident.

The misrepresentation of petitioner assured Sembrano that she is indeed dealing with Vicenta Abalos who has sufficient means and property, and the capacity to make good the issued checks. It is safe to say that Sembrano was induced to release the money to petitioner relying on the latter’s false pretense and fraudulent act. Evidently, petitioner’s act of issuing a worthless check

²⁸ TSN, July 10, 2012, p. 6.

²⁹ *Batac v. People*, G.R. No. 191622, June 6, 2018.

³⁰ G.R. No. 223998, March 5, 2018.

³¹ *Ilagan v. People*, 550 Phil. 791, 801 (2007).

³² *People v. Cuyugan*, 440 Phil. 637, 647 (2002).

³³ *Rollo*, p. 122.

belonging to another who appears to have sufficient means is the efficient cause of the deceit and defraudation. Were it not for the said circumstance, Sembrano would not have parted with her money. At any rate a *prima facie* presumption of deceit arises when the drawer of the dishonored check is unable to pay the amount of the check within three days from receipt of the notice of dishonor.³⁴

In its last ditch effort to enfeeble the case against her, petitioner pointed out the inconsistency in the evidence of the prosecution specifically with the testimonies of Sembrano herself. In her affidavit, Sembrano stated that the checks were offered to her for rediscounting, while her testimony in open court, she admitted that the checks were used for collaterals.³⁵ For a discrepancy to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused. An inconsistency, which has nothing to do with the elements of the crime, cannot be a ground to reverse a conviction.³⁶ The inconsistency referred to in this case does not attach upon the very element of the crime of estafa.

While it was indeed admitted by Sembrano that the checks were collaterals, this only lends credence to the fact that the said checks were the reason why Sembrano parted with her money. Sembrano was assured that the loan contracted was secured by the checks issued. Notwithstanding that the said checks were merely used to guarantee a loan, the fact remains that petitioner committed deceit when she failed to make known to Sembrano that the checks she issued were not hers and they were not sufficiently funded. Sembrano will not accede to an arrangement of issuing unfunded checks to secure the loan. It is against ordinary human behavior and experience for a person to accept a check, even as a mere guaranty for a supposed loan or obligation, if one knew beforehand that the account against which the check was drawn was already closed.³⁷ The check would not even serve its purpose of guaranty because it can no longer be encashed.³⁸

While it is true that no criminal liability under the RPC arises from the mere issuance of postdated checks as a guarantee of repayment,³⁹ this is not true in the instant case where the element of deceit is attendant in the issuance of the said checks. The liability therefore is not merely civil, but criminal.

As to the penalty imposed, we take into consideration the amendment embodied in R.A. No. 10951⁴⁰ which modifies the penalty in swindling and estafa cases. Section 100 of the said law, however, provides that it shall have

³⁴ *Hisoler v. People*, G.R. No. 237337, June 6, 2018 (Unsigned Resolution).

³⁵ *Rollo*, pp. 20-21.

³⁶ *People v. Almazan*, 417 Phil. 697, 705 (2001).

³⁷ *Hisoler v. People*, supra note 34.

³⁸ *Id.*

³⁹ See *People v. Cuyugan*, supra note 31, at 648.

⁴⁰ Republic Act No. 10951, 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, approved on August 29, 2017.

retroactive effect only insofar as it is favorable to the accused. This necessitates a comparison of the corresponding penalties imposable under the RPC and R.A. No. 10951.

The penalty imposed by the RPC in estafa committed under Section 315, paragraph 2(d) are as follows:

ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

Considering that the penalty prescribed by law is composed only of two periods, pursuant to Article 65 of the RPC, the same must be divided into three equal portions of time included in the penalty prescribed, forming one period for each of the three portions,⁴¹ to wit:

Maximum — 6 years, 8 months, 21 days to 8 years;

Medium — 5 years, 5 months, 11 days to 6 years, 8 months, 20 days; and

Minimum — 4 years, 2 months, 1 day to 5 years, 5 months, 10 days.⁴²

Since the amount involved in this case is ₱232,500.00⁴³ which is beyond the ₱22,000.00 ceiling set by law, the penalty to be imposed upon the petitioner should be taken within the maximum period of the penalty prescribed which is eight years; and from there should be added the incremental penalty of 21 years (₱232,500.00 less ₱22,000.00 divided by 10). However, the law only provides the highest allowable duration which is 20 years. Therefore, the maximum period of indeterminate penalty is 20 years.

Applying the Indeterminate Sentence Law, the minimum term should be within the penalty next lower in degree of the penalty prescribed, which is, *prision correccional* in its minimum and medium periods or anywhere from six months and one day to four years and two months. If only to be beneficial to the accused, the lowest term possible that can be imposed is six months and one day.

⁴¹ *Hisoler v. People*, supra note 34.

⁴² *Id.*

⁴³ Actual amount handed to petitioner.

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Hence, under the RPC, the penalty of estafa (of the amount of ₱232,500.00) ranged from six months and one day as minimum to 20 years as maximum.

On the other hand, R.A. No. 10951 provides:

SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

ART. 315. *Swindling (estafa)*. — x x x

x x x x

Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) hereof shall be punished by:

4th. The penalty of *prision mayor* in its medium period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

Considering that the actual amount involved in this case is ₱232,500.00, the proper imposable penalty is *prision mayor* in its medium period. Since the penalty prescribed by law is a penalty composed of only one period, Article 65 of the RPC requires the division of the time included in the penalty into three portions, thus:

Maximum: 9 years, 4 months and 1 day to 10 years
Medium: 8 years, 8 months and 1 day to 9 years and 4 months
Minimum: 8 years and 1 day to 8 years and 8 months⁴⁴

Under Article 64 of the RPC, the penalty prescribed shall be imposed in its medium period when there are neither aggravating nor mitigating circumstances. Considering the absence of any modifying circumstance in this case, the maximum penalty should be anywhere within the medium period of eight years, eight months and one day to nine years and four months.

Applying the Indeterminate Sentence Law (ISL), the minimum term, which is left to the sound discretion of the court, should be within the range of the penalty next lower than the aforementioned penalty, which is left to the sound discretion of the court.⁴⁵ Thus, the minimum penalty should be one degree lower from the prescribed penalty of *prision mayor* in its medium period, or *prision mayor* in its minimum period.⁴⁶ The minimum term of the indeterminate sentence should be anywhere from six years and one day to 10 years.

⁴⁴ *Hisoler v. People*, supra note 34.

⁴⁵ *Batac v. People*, supra note 29.

⁴⁶ *Hisoler v. People*, supra.

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Under R.A. No. 10951, therefore, the petitioner is liable to suffer the indeterminate penalty of imprisonment ranging from six years and one day of *prision mayor*, as minimum, to eight years, eight months and one day of *prision mayor*, as maximum.⁴⁷

It appears, however, that the imposable penalty under the RPC, which is six months and one day to 20 years, presents a lower minimum period, but a higher maximum period of imprisonment compared to that imposable under R.A. No. 10951, which is six years and one day to eight years, eight months and one day. In the case of *Hisoler v. People*,⁴⁸ the Court has ruled that since the penalty under the RPC is more beneficial to the accused, thus, it is the proper penalty to be imposed. It ratiocinated as follows:

At any rate, even if the maximum period imposable upon the petitioner under the RPC in this case is higher than that under R.A. No. 10951, the Court finds that the benefits that would accrue to the petitioner with the imposition of a lower minimum sentence outweighs the longer prison sentence and is more in keeping with the spirit of the Indeterminate Sentence Law.

In fixing the indeterminate penalty imposable upon the accused, the Court should be mindful that the basic purpose of the Indeterminate Sentence Law is to “uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness.” Simply, an indeterminate sentence is imposed to give the accused the opportunity to shorten the term of imprisonment depending upon his or her demeanor, and physical, mental, and moral record as a prisoner. The goal of the law is to encourage reformation and good behavior, and reduce the incidence of recidivism. While the grant of parole after service of the minimum sentence is still conditional, the flexibility granted upon the petitioner to immediately avail of the benefits of parole considering the much shorter minimum sentence under the RPC should inspire the petitioner into achieving the underlying purpose behind the Indeterminate Sentence Law.⁴⁹

It is clear, therefore, that if R.A. No. 10951 would be given retroactive effect, the same will prejudice petitioner. The penalty under the RPC, insofar as it benefits the petitioner must prevail. Hence, the penalty imposed by the RTC and the CA, which is four years and two months of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum, is correct as it is within the proper penalty imposed by law.

The legal rate of interest of 6% per annum on the monetary award of ₱232,500.00 (the actual damage sustained by Sembrano), from the date of finality of this Decision until fully paid, as imposed by the CA, is modified as follows: the monetary award shall earn interest at the rate of 12% per annum

⁴⁷ Id.

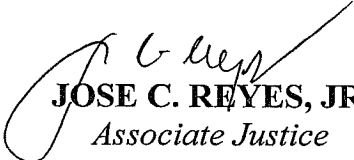
⁴⁸ Id.

⁴⁹ Id.

from the filing of the Information until June 30, 2013 and 6 % per annum from July 1, 2013 until the finality of the decision. The total amount of the foregoing shall, in turn, earn interest at the rate of 6% per annum from the finality of the decision until full payment of the same.⁵⁰

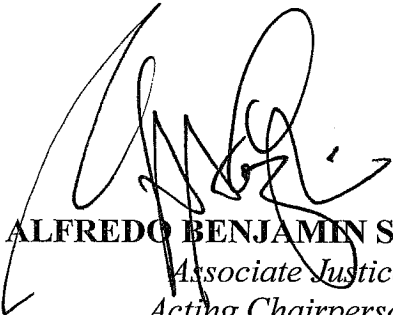
WHEREFORE, the Decision dated May 20, 2015 of the Court of Appeals in CA-G.R. CR No. 35633 sentencing petitioner to four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum is **AFFIRMED** with **MODIFICATION** in that the monetary award of ₱232,500.00 shall be subject to interest rate of 12% per annum from the filing of the Information until June 30, 2013 and 6% per annum from July 1, 2013 until the finality of the decision, and the total amount of the foregoing shall, in turn, earn interest at the rate of 6% per annum from the finality of the decision until full payment thereof.

SO ORDERED.

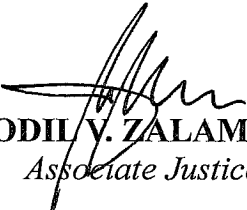

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

(On Official Leave)
ANTONIO T. CARPIO
Senior Associate Justice
Chairperson


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson

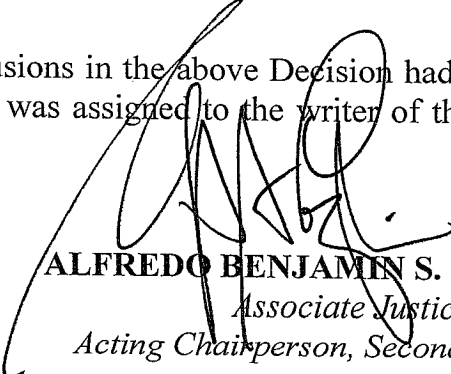

AMY C. LAZARO-JAVIER
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

⁵⁰ See Resolution dated October 3, 2018 of the Second Division.

ATTESTATION

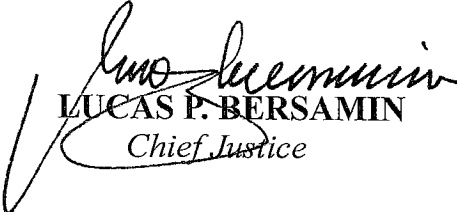
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

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



LUCAS P. BERSAMIN
Chief Justice