



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**

**G.R. No. 216056**

*Plaintiff-Appelle,*

Present:

- versus -

PERALTA, *CJ.*, Chairperson  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, *JJ.*

**ROBERTO BERNARDO y  
FERNANDEZ,**

Promulgated:

*Accused-Appellant.*

**DEC 02 2020**

X

X

**DECISION**

**ZALAMEDA, J.:**

Truth often lies in the lips of a dying man. A person aware of a forthcoming death is generally considered truthful in his words and credible in his accusation. A dying man's statements, given under proper circumstances, are treated with highest weight and credence.<sup>1</sup>

**The Case**

Before this Court is an appeal seeking the reversal of the Decision<sup>2</sup> dated 20 May 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04486, which affirmed the conviction of accused-appellant Roberto Bernardo (accused-appellant) for the crime of murder.

<sup>1</sup> See *People v. Manguera*, G.R. No. 139906, 05 March 2003, 446 Phil. 808 (2003) [Per J. Vitug]; *People v. Lariosa*, G.R. No. L-38652, 31 July 1981, 193 Phil. 540 (1981) [Per J. De Castro].

<sup>2</sup> *Rollo*, pp. 2-12; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Hakim S. Abdulwahid and Romeo F. Barza of the Court of Appeals, Manila.

### Antecedents

In an Information<sup>3</sup> dated 26 July 2001, accused-appellant was charged with the crime of murder under Article 248 of the Revised Penal Code (RPC), as amended by Section 6 of Republic Act No. (RA) 7659. The accusatory portion of the Information reads as follows:

That on or about May 25, 2001, in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused Roberto Bernardo y Fernandez, armed with a gun, with intent to kill, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one, Roger Arquero y Cudiamat Alias Rolando, inflicting upon him fatal gunshot wounds on the different parts of his body which caused his death.

That in the commission of the offense the special aggravating circumstance of use of an unlicensed firearm was present.

Contrary to law.

During arraignment on 06 February 2002, accused-appellant pleaded not guilty.<sup>4</sup>

Trial on the merits ensued after the pre-trial conference.

### Version of the Prosecution

The facts, as culled from the testimony of the prosecution witnesses, are as follows:

On 25 May 2001, at around 6:00 a.m., the victim, Roger Arquero (Arquero), fetched his brother-in-law, Rolando Licupa (Licupa)<sup>5</sup> to go to the rice field. While they were walking towards the other side of the rice paddy, accused-appellant suddenly appeared from the hilly portion of the field and shot Arquero once using a homemade shotgun, hitting the latter on the lower abdomen.<sup>6</sup> Accused-appellant ran away, while Licupa shouted for help. Dionisio Evangelista (Evangelista) arrived.<sup>7</sup>

<sup>3</sup> Records, p. 18.

<sup>4</sup> *Id.* at 33.

<sup>5</sup> TSN dated 22 July 2005, p. 5.

<sup>6</sup> *Id.* at 6 and 11.

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



Licupa and Evangelista carried Arquero using a sledge and brought him to Pedro Arquero's house before taking him to St. Paul Hospital.<sup>8</sup> Policemen arrived to investigate. Arquero died the same day.<sup>9</sup>

During trial, Licupa testified that he knew accused-appellant because he is Arquero's nephew.<sup>10</sup> On the other hand, Mercilyn Arquero, the victim's widow, testified that Arquero told her that accused-appellant was the one who shot him.<sup>11</sup> She identified a list of expenses incurred due to the victim's hospitalization and death, but did not present receipts.<sup>12</sup>

Meanwhile, Dr. Honorario Reyes (Dr. Reyes), the medico-legal officer testified that the victim's wounds perforated his small intestines, colon, and urinary bladder.<sup>13</sup>

### Version of the Defense

Accused-appellant testified that in the morning of 25 May 2001, he was with his family at their house in Sitio Masin, Iraga, Solana, Cagayan.<sup>14</sup> They were sleeping when Arquero, Loreto Arquero, Licupa, Dionisio Arquero, Ambot Soriano and a certain Amboy fired gunshots at his house.<sup>15</sup> He surmised that the attack was motivated by revenge because in 1991, he was convicted for killing Arquero's brothers.<sup>16</sup> He also stated that prior to the shooting, the assailants ordered his wife and children to go out of the house.<sup>17</sup> When accused-appellant was the only one left inside, the assailants open fired. Accused-appellant testified that he was able to avoid the bullets because he dropped to the ground.<sup>18</sup> He claimed, however, that the victim was shot by his companion, Licupa,<sup>19</sup> and that he even reported the shooting incident to the police.<sup>20</sup>

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<sup>8</sup> *Id.* at 10.

<sup>9</sup> *Id.* at 11.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> TSN dated 11 July 2007, p. 7.

<sup>12</sup> *Id.* at 9.

<sup>13</sup> TSN dated 31 July 2009, pp. 10-11.

<sup>14</sup> TSN dated 27 August 2009, p. 4.

<sup>15</sup> *Id.* at 5.

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

<sup>17</sup> *Id.* at 5-6.

<sup>18</sup> *Id.* at 6.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> *Id.* at 8.

### **Ruling of the RTC**

In a Decision<sup>21</sup> dated 24 May 2010, the Regional Trial Court (RTC) convicted accused-appellant for the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua* without possibility of parole. He was also ordered to pay Arquero's heirs the amounts of Php75,000.00 as civil indemnity, Php25,000.00 as temperate damages, Php50,000.00 as moral damages, and Php25,000.00 as exemplary damages, all with interest of six percent (6%) *per annum* from finality of the decision until full payment.

### **Ruling of the CA**

On 20 May 2014, the CA issued a Decision,<sup>22</sup> affirming the RTC *in toto*.

It gave credence to the testimony of Licupa, as well as the victim's statement to the police and his wife that accused-appellant shot him. It also appreciated the presence of the qualifying circumstance of treachery, and the special aggravating circumstance of use of unlicensed firearm.

### **Issues**

For purposes of this appeal, the Office of the Solicitor General<sup>23</sup> (OSG) and the Public Attorney's Office<sup>24</sup> (PAO) manifested they were no longer filing their respective supplemental briefs, and prayed the briefs submitted to the CA be considered in resolving the appeal.

In his brief, accused-appellant claims that the physical evidence is consistent with his version of the events. He points to the fact that the victim sustained nine (9) gunshot wounds, contrary to Licupa's testimony that he only heard one gun shot.<sup>25</sup>

With this argument, the Court is tasked to determine whether the CA erred in affirming accused-appellant's conviction for murder.

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<sup>21</sup> CA rollo, pp. 14-21; penned by Presiding Judge Marivic A. Cacatian-Beltran.

<sup>22</sup> *Supra* at note 2.

<sup>23</sup> Rollo, pp. 21-24.

<sup>24</sup> *Id.* at 34-36.

<sup>25</sup> CA rollo, pp. 54-56.



### Ruling of the Court

*Accused-appellant failed to assail the sufficiency of the allegations of the Information*

Preliminarily, this Court would address the sufficiency of the allegations in the Information.

Part of the constitutional rights guaranteed to an accused in a criminal case is to be informed of the nature and cause of the charge against him. Correlatively, the State has the obligation to sufficiently allege the circumstances constituting the elements of the crime. Thus, the Information must correctly reflect the charge against the accused before any conviction may be made.<sup>26</sup>

In *People v. Valdez*,<sup>27</sup> this Court made a pronouncement that in criminal cases, the State must specify in the information the details of the crime and any circumstance that may qualify the crime or aggravate an accused's liability. Hence, it is no longer sufficient to merely allege the qualifying circumstances of "treachery" or "evident premeditation" without including supporting factual averments. The prosecution must now specify in the information the acts and circumstances constituting the alleged attendant circumstance in the crime committed.

In this case, this Court notes that the Information merely alleged "with evident premeditation and treachery"<sup>28</sup> without supporting factual allegations on how the accused-appellant had deliberately adopted means of execution that denied to the victim the opportunity to defend himself, or to retaliate; or that the accused-appellant had consciously and deliberately adopted the mode of attack to ensure himself from any risk from the defense that the victim might make.<sup>29</sup>

Ordinarily, the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail, and the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged

<sup>26</sup> See *Reyes v. People*, G.R. No. 232678, 03 July 2019 [Per J. Peralta].

<sup>27</sup> See *People v. Valdez*, G.R. No. 175602, 18 January 2012, 679 Phil. 279 (2012) [Per J. Bersamin].

<sup>28</sup> *Supra* at note 3.

<sup>29</sup> See *People v. Petalino*, G.R. No. 213222, 24 September 2018 [Per J. Bersamin].



included in the offense proved.<sup>30</sup> Nonetheless, this Court finds the defect in the allegations of the Information insufficient to cause the downgrade of the accused-appellant's conviction, for his failure to timely assert his right in the proceedings before the RTC and CA.

There are various procedural remedies available to an accused who believes that the information is vague or defective. Section 9 of Rule 116 of the Rules of Court provides that the accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial.<sup>31</sup> Likewise, Rule 117 thereof allows an accused to file a motion to quash a patently insufficient or defective information.<sup>32</sup> In both instances, Our procedural rules require the accused to avail of these remedies prior to arraignment. Hence, in order to successfully object to the information, the objection must not only be meritorious, but must also be timely exercised.

According to the guidelines set by the Court in *People v. Solar*,<sup>33</sup> when an information failed to state the ultimate facts relating to a qualifying or aggravating circumstance, the accused should file a motion to quash or a motion for a bill of particulars. Otherwise, his right to question the defective statement is deemed waived:

Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3 (e) (*i.e.*, that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.

Failure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.

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For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has

<sup>30</sup> *People v. Valdez*, G.R. No. 175602, 18 January 2012, 679 Phil. 279 (2012) [Per J. Bersamin].

<sup>31</sup> *Romualdez v. Sandiganbayan*, G.R. No. 152259, 29 July 2004, 479 Phil. 265 (2004) [Per J. Panganiban].

<sup>32</sup> See *People v. Sandiganbayan*, G.R. No. 160619, 09 September 2015, 769 Phil. 378 (2015) [Per J. Jardeleza]; *Los Baños v. Pedro*, G.R. No. 173588, 22 April 2009, 604 Phil. 215 (2009) [Per J. Brion].

<sup>33</sup> G.R. No. 225595, 06 August 2019 [Per J. Caguioa].

already waived his right to question the defective statement of the aggravating or qualifying circumstance in the Information, (i.e., whether he previously filed either a motion to quash under Section 3 (e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.<sup>34</sup>

In this case, it does not appear that accused-appellant raised any objection to the sufficiency of the allegations in the information at any stage of the case. Not only did accused-appellant fail to move for a bill of particulars or quash the information before his arraignment, he also participated in the trial. Obviously, it is too late in the proceedings to invalidate the information without unduly prejudicing the State, which was also deprived of the opportunity to amend the information<sup>35</sup> or submit a bill of particulars in the trial court.<sup>36</sup>

We now proceed to review the propriety of accused-appellant's conviction.

This Court agrees with the RTC and CA that the crime committed was murder. The elements of murder are: (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.

*The prosecution established that accused-appellant shot Arquero*

There is no doubt that accused-appellant was the person who shot Arquero to death. He was identified by Licupa and the victim through his dying declaration to his wife.

In his testimony, Licupa was clear that accused-appellant suddenly appeared from the hilly portion of the farm to shoot Arquero while he and Licupa were walking along the rice paddy. He even prepared a sketch to show the relative locations of the rice field and the spot where accused-appellant emerged from. Interestingly, accused-appellant has not put forth any convincing argument for this Court to disregard the substance of Licupa's testimony.

Moreover, the victim himself told his wife that accused-appellant shot

<sup>34</sup> *Id.*

<sup>35</sup> Section 4, Rule 117 of the Rules of Court.

<sup>36</sup> *Enrile v. People*, G.R. No. 213455, 11 August 2015, 766 Phil. 75 (2015) [Per J. Brion].

him. Such statement constitutes as a dying declaration sufficient to justify a conviction.

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>37</sup> Jurisprudence<sup>38</sup> elaborates on the requisites of a dying declaration. For its admissibility, the following should concur:

- 1) 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;
- 2) 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;
- 3) 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 presumption must be sustained that he would have been competent; and
- 4) the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.

All the above requisites are present in this case. Arquero's statement that it was accused-appellant who shot him pertained to the identity of the

<sup>37</sup> *People v. Umapas*, G.R. No. 215742, 22 March 2017, 807 Phil. 975 (2017) [Per J. Peralta].

<sup>38</sup> *People v. Mercado*, G.R. No. 218702, 17 October 2018 [Per J. Caguioa].



shooter. Further, considering the nature of Arquero's wounds, nine (9) in all, this Court presumes that he must be aware of his likely death. Indeed, the victim died the same day of the shooting. This Court also notes that the victim immediately told his wife of the assailant's identity before he was brought to the hospital. Thus, there was no opportunity for the victim to deliberate and to fabricate a false statement.<sup>39</sup> Neither is there evidence to show that Arquero would have been disqualified to testify had he survived. Lastly, his declaration was offered in a murder case where he was the victim.

The fact that Arquero sustained nine (9) gunshot wounds do not lessen the credibility of the prosecution's evidence. This Court has previously recognized that a single shot from a shot gun can produce multiple injuries because of several pellets in one single shell.<sup>40</sup>

*The qualifying circumstances of treachery and use of unlicensed firearm were sufficiently proven*

From the evidence, and as found by the RTC and affirmed by the CA, this Court likewise rules that treachery was established. Paragraph 16 of Article 14 of the Revised Penal Code (RPC) defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to ensure its execution, without risk to the offender arising from the defense which the offended party might make. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.<sup>41</sup> The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.<sup>42</sup>

Accused-appellant has not presented contrary evidence to dispute the uniform findings of the RTC and CA that he hid behind the hilly portion of the ricefield and suddenly fired at Arquero while the latter was walking thereat. By adopting the said method, accused-appellant facilitated the success of his evil motive without risk to himself and depriving the victim a

<sup>39</sup> See *People v. Umapas*, G.R. No. 215742, 22 March 2017, 807 Phil. 975 (2017) [Per J. Peralta].

<sup>40</sup> *Rollo* pp. 8-9; see also *People v. Domingo*, G.R. No. 184958, 17 September 2009, 616 Phil. 261 (2009) [Per J. Velasco, Jr.].

<sup>41</sup> *People v. Jaurigue*, G.R. No. 232380, 04 September 2019 [Per J. Perlas-Bernabe].

<sup>42</sup> *Id.*

chance to put up a defense. Certainly, Arquero had no clue nor an actual opportunity to evade the attack.

Likewise, the special aggravating circumstance of use of unlicensed firearm was correctly appreciated. Under Section 1 of RA 8294, "[i]f homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance." There are two (2) requisites to establish such circumstance, namely: (a) the existence of the subject firearm; and (b) the fact that the accused who owned or possessed the gun did not have the corresponding license or permit to carry it outside his residence. The *onus probandi* of establishing these elements as alleged in the Information lies with the prosecution.<sup>43</sup>

In the past, this Court has ruled that the existence of the firearm can be established by testimony even without the presentation of the firearm.<sup>44</sup> In this case, Licupa categorically narrated that accused-appellant used a homemade shotgun in killing the victim. Moreover, the prosecution presented a Certification<sup>45</sup> dated 07 April 2009, issued by the Firearms and Explosive Division of the Philippine National Police stating that accused-appellant is not a licensed firearm holder.

*Penalties and damages to be imposed  
on accused-appellant should be  
modified*

In sum, the Court upholds the accused-appellant's conviction for the crime of murder. Under Article 248 of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. Article 63 of the same Code provides that, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating circumstance. In this case, the special aggravating circumstance of use of an unlicensed firearm was alleged in the Information and proven during the trial. The presence of such aggravating circumstances warrants the imposition of the death penalty. However, in view of the enactment of RA 9346, the death penalty should be reduced to *reclusion perpetua* "without eligibility for parole" pursuant to A.M. No. 15-08-02-SC.<sup>46</sup>

<sup>43</sup> *Ramos v. People*, G.R. Nos. 218466 & 221425, 23 January 2017, 803 Phil. 775 (2017) [Per J. Perlas-Bernabe].

<sup>44</sup> *People v. Salahuddin*, G.R. No. 206291, 18 January 2016, 778 Phil. 529 (2016) [Per J. Peralta]; *People v. Dulay*, G.R. No. 174775, 11 October 2007, 561 Phil. 764 (2007) [Per J. Carpio].

<sup>45</sup> Records, p. 281.

<sup>46</sup> *People v. Salahuddin*, G.R. No. 206291, 18 January 2016, 778 Phil. 529 (2016) [Per J. Peralta].

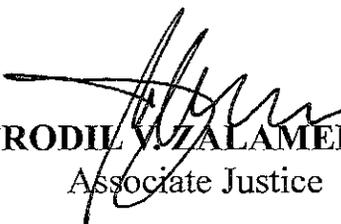
Lastly, this Court resolves to modify the damages. In line with the recent jurisprudence<sup>47</sup>, accused-appellant is also liable to pay the Arquero's heirs Php100,000.00 as civil indemnity, Php100,000.00 as moral damages, and Php100,000.00 as exemplary damages. Since no receipts or documentary evidence of burial or funeral expenses was presented in court, the amount of Php50,000.00 as temperate damages is, likewise, proper.<sup>48</sup>

**WHEREFORE**, the Decision dated 20 May 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 04486 is hereby **AFFIRMED with MODIFICATIONS**. Accused-appellant **ROBERTO BERNARDO y FERNANDEZ** is found **GUILTY** beyond reasonable doubt of the crime of Murder with the use of Unlicensed Firearm. He is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay the heirs of Roger Arquero the sums of Php100,000.00 as civil indemnity, Php100,000.00 as moral damages, Php100,000.00 as exemplary damages and Php50,000.00 as temperate damages.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.<sup>49</sup>

In the service of his sentence, accused-appellant, who is a detention prisoner, shall be credited with the entire period of his preventive imprisonment.

**SO ORDERED.**

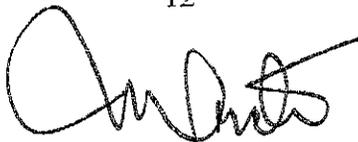
  
**RODIL V. ZALAMEDA**  
Associate Justice

**WE CONCUR:**

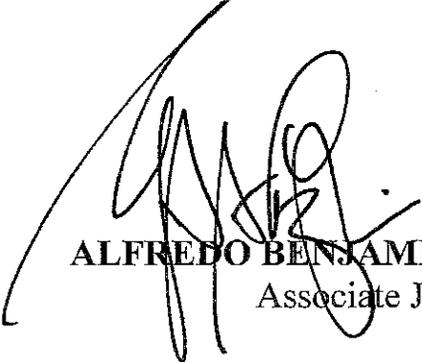
<sup>47</sup> *People v. Jugueta*, G.R. No. 202124, 05 April 2016, 783 Phil. 806 (2016) [Per J. Peralta]; *People v. Gaborne*, G.R. No. 210710, 27 July 2016 [Per J. Perez].

<sup>48</sup> *Id.*

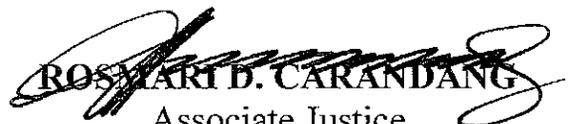
<sup>49</sup> *Nacar v. Gallery Frames*, G.R. 189871, 13 August 2013, 716 Phil. 267 (2013) [Per J. Peralta]; *Lara's Gift and Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, 28 August 2019 [Per J. Carpio].



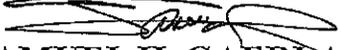
**DIOSDADO M. PERALTA**  
Chief Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ROSALARI D. CARANDANG**  
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

