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Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 224301

Present:

- versus -

BERNIE RAGURO y BALINAS,  
JONATHAN PEREZ y DE  
MATEO, ERIC RAGURO y  
BALINAS, ELMER DE  
MAKILING, TEODULO PANTI,  
JR., and LEVIE\* DE MESA,  
Accused,

BERSAMIN, C.J.,  
JARDELEZA,  
GESMUNDO,  
CARANDANG, and  
INTING, JJ.

Promulgated:

BERNIE RAGURO y BALINAS,  
JONATHAN PEREZ y DE  
MATEO, ERIC RAGURO y  
BALINAS, TEODULO PANTI,  
JR., and LEVIE DE MESA,  
Accused-Appellants.

JUL 30 2019

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DECISION

BERSAMIN, C.J.:

To successfully impute criminal liability on the ground of conspiracy, the Prosecution must show that each of the accused performed at least an overt act that showed his concurrence in the criminal design. The mere presence of any accused in the crime scene, as well as the showing of his inaction to prevent the commission of the crime, will not make him a co-conspirator because such are not of the nature of overt acts essential to incurring criminal liability under the umbrella of a conspiracy.

\* "Levy" in some parts.

### The Case

The accused-appellants all appeal the decision promulgated on April 14, 2015,<sup>1</sup> whereby the Court of Appeals (CA) affirmed their conviction for murder and frustrated murder meted by the Regional Trial Court (RTC), Branch 81, in Quezon City through the judgment rendered on September 24, 2013 in Criminal Case No. Q-02-111754, Q-02-111755, Q-03-115204 and Q-04-128398.<sup>2</sup>

### Antecedents

Several informations for murder and frustrated murder arising from the criminal assault committed against the late Avelino Morales y Sornil and his brother Manuel Morales y Sornil were filed against the accused-appellants, as follows:

#### Criminal Case No. Q-02-111754

The undersigned accuses BERNIE RAGURO Y BALINAS and JONATHAN PEREZ Y DE MATEO @ BORNOK of the crime of Murder, committed as follows:

That on or about the 25<sup>th</sup> day of August, 2002, in Quezon City, Philippines, the said accused, conspiring together, confederating with several other accused, whose true identities and whereabouts has not as yet been ascertained and mutually helping one another, did then and there wilfully, unlawfully and feloniously with intent to kill, taking advantage of superior strength, with evident premeditation and treachery, attack[,] assault and employ personal violence upon the person of AVELINO MORALES y SORNIL by then and there armed with bladed weapons and hard objects stabbed and clubbed him on the different parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of Avelino Morales y Sornil.

CONTRARY TO LAW.

#### Criminal Case No. Q-02-111755

The undersigned accuses BERNIE RAGURO Y BALINAS @ TOTO and JONATHAN PEREZ Y DE MATEO @ BORNOK of the crime of Frustrated Murder, committed as follows:

<sup>1</sup> *Rollo*, pp. 2-33; penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justice Stephen C. Cruz and Associate Justice Ramon Paul L. Hernando (now a Member of this Court).

<sup>2</sup> *CA rollo*, pp. 56-68; penned by Presiding Judge Madonna C. Echiverri.

That on or about the 25<sup>th</sup> day of August, 2002, in Quezon City, Philippines, the said accused, conspiring together, confederating with several other accused, whose true identities and whereabouts has not as yet been ascertained and mutually helping one another, with intent to kill, with treachery and qualified by evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of MANUEL MORALES y SORNIL by then and there armed with bladed weapons stabbed him on his back, thereby inflicting upon him serious and grave wounds the offender thus performing all the acts of execution which would have produced the crime of Murder as a consequence but nevertheless did not produce it by reason of cause independent of the will of the perpetrator, that is the timely and able medical intervention, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.

#### Criminal Case No. Q-03-115204

The undersigned accuses ERIC RAGURO Y BALINAS, ELMER DE MAKING [sic], TEODOLO PANTI, JR., LEVY DE MESA and JONATHAN PEREZ of the crime of Frustrated Murder, committed as follows:

That on or about the 25<sup>th</sup> day of August, 2002, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping one another, with intent to kill, with treachery and qualified by evident premeditation and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of MANUEL MORALES by then and there clubbing him with a hard object and stabbing him with bladed weapon, hitting him at the back, thereby inflicting upon his [sic] serious and mortal wounds, the offender thus performing all the acts of execution which would have produced the crime of Murder as a consequence but nevertheless did not produce it by reason of cause independent of the will of the perpetrator, that is the timely medical intervention, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.

#### Criminal Case No. Q-04-128398

The undersigned accuses ERIC (TITO) RAGURO, JR., TEODULO PANTI, ELMER DIMAKILING, and LEVIE DE MESA, of the crime of Murder, committed as follows:

That on or about the 25<sup>th</sup> day of August 2003, in Quezon City, Philippines, the said accused, conspiring together, confederating with BERNIE RAGURO and JONATHAN PEREZ, who were charged before the Regional Trial Court, branch 81, this City under Criminal Case No. Q-02-111754, of the same offense, and helping one another, with intent to kill, attended by the qualifying circumstance of treachery, and superior

strength, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of AVELINO SERNIL MORALES, by then and there stabbing him with a bladed weapon on the different parts of his body, as a result of which said victim sustained serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said victim.

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

The CA summarized the factual and procedural antecedents in the following manner:

In the afternoon of August 25, 2002, around 2:00 P.M., Manuel Morales and his brother, Avelino Morales, attended the birthday celebration of their nephew, Bienvenido Morales, Jr., at the latter's shop at G. Araneta Avenue, Meralco Site, Brgy. Doña Imelda, Quezon City. Avelino Morales and Manuel Morales, together with Bienvenido Morales, the celebrator's father, and accused-appellant Bernie Raguro, had a drinking spree. In the course thereof, accused-appellant Bernie Raguro, who was already drunk, hurled invectives at Avelino Morales, Manuel Morales and Bienvenido Morales. Avelino Morales got angry and asked accused-appellant Bernie Raguro to leave the house.

Around 7:00 P.M., the rain started to pour, prompting the group to transfer to Marietta Ofalla's house located across the street. Thereafter, accused-appellant Bernie Raguro came back with accused-appellants Eric Raguro, Teodulo Panti, Jr. and Elmer Dimakiling, who were all armed with bladed weapons. They called on Avelino Morales to come. When Avelino Morales came out from the house, accused-appellant Bernie Raguro stabbed him on the lower left side of his chest. Accused-appellants Eric Raguro and Teodulo Panti, Jr. also stabbed Avelino Morales, while accused Elmer Dimakiling, who was coming from behind Avelino Morales, stabbed Avelino Morales on the clavicle. Avelino Morales fell to the ground and vomited blood. Avelino Morales' fourteen year old son, Arvin Morales, witnessed the incident as he was behind Avelino Morales during the incident. Marietta Ofalla also witnessed the incident, as she was about only two (2) arms length away from them.

After stabbing Avelino Morales, accused-appellant Bernie Raguro turned to Manuel Morales and stabbed him. Manuel Morales was also stabbed at the back by two (2) other persons, whom he identified as accused Elmer Dimakiling and one Juvel Beredo. On the other hand, accused-appellant Jonathan Perez appeared from behind with a 2x2 piece of wood and hit Avelino Morales at the back and Manuel Morales on his right buttocks. Marietta Ofalla, shouted for help which prompted all of accused-appellants to run away.

Avelino Morales and Manuel Morales were both rushed to Delos Santos Hospital. Avelino Morales died on that fateful night due to multiple stab wounds on his trunk. Manuel Morales, on the other hand, sustained two (2) fatal stab wounds at the back and was admitted at the same hospital where he underwent surgery.

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<sup>3</sup> *Rollo*, pp. 5-9.

x x x x

Upon arraignment on September 18, 2002, accused-appellants Bernie Raguro and Jonathan Perez entered their respective pleas of “**not guilty**.” After pre-trial, trial on the merits ensued.

On November 5, 2002, an information was filed charging accused-appellants Eric Raguro, Teodulo Panti, Jr., Levie de Mesa and Jonathan Perez and accused Elmer Dimakiling with *Frustrated Murder*. Thus:

x x x x

Accused-appellant Eric Raguro was arraigned on May 4, 2004 while accused-appellants Teodulo Panti, Jr., Levie de Mesa and Jonathan Perez were arraigned on February 21, 2005. All of them entered their respective pleas of “**not guilty**.”

Meanwhile, on June 1, 2004, another information was filed charging accused-appellants Eric Raguro, Teodulo Panti, Jr., and Levie de Mesa and accused Elmer Dimakiling with the crime of *Murder*. Thus:

x x x x

Accused-appellants Eric Raguro, Teodulo Panti, Jr. and Levie de Mesa were arraigned on June 23, 2005. All of them entered their respective pleas of “**not guilty**.” On the other hand, accused Elmer Dimakiling, who was considered at-large by the trial court in its Order dated July 1, 2003, still remained at-large despite issuance of alias warrant of arrest against him.

On May 25, 2005, *Criminal Cases Nos. Q-03-115204* and *Q-04-128398* were consolidated with *Criminal Cases Nos. Q-02-111754* and *Q-02-111755*. Considering, however, that *Criminal Cases Nos. Q-02-111754* and *Q-02-111755* were already at the stage of presentation of defense evidence at that time, *Criminal Cases Nos. Q-03-115204* and *Q-04-128398* were tried separately.

Presented as witnesses for the prosecution were Marietta Ofalla, Arvin Morales, Manuel Morales, Dr. Romeo Salem and Dr. Edwin Paul Magalona. The witnesses for the defense were Benny Rivera, Roel del Rosario, Jennifer Panti, accused-appellants Teodulo Panti, Jr., Bernie Raguro[,] Jonathan Perez, Levie de Mesa and Eric Raguro.<sup>4</sup>

### Judgment of the RTC

After trial, the RTC rendered judgment on September 24, 2013,<sup>5</sup> disposing thus:

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<sup>4</sup> Id. at 3-10.

<sup>5</sup> CA rollo, pp. 56-68

WHEREFORE, judgment is hereby rendered as follows:

- 1) In Crim Case No. 111754 this court finds BERNIE RAGURO y Balinas and JONATHAN PEREZ y De Mateo GUILTY beyond reasonable doubt of the crime of Murder and they are both sentenced to suffer the penalty of Reclusion Perpetua. Both accused are ordered to pay the heirs of Avelino Morales y Sornil jointly and solidarily, the amount of Seventy Five Thousand Pesos (Php75,000.00) as civil indemnity, Fifty Thousand Pesos (Php50,000.00) as moral damages and Twenty Thousand Pesos (Php20,000.00) as exemplary damages;
- 2) In Crim Case No. 111755, this court finds BERNIE RAGURO y Balinas and JONATHAN PEREZ y De Mateo GUILTY beyond reasonable doubt of the crime of Frustrated Murder and they are both sentenced to suffer a jail term of six (6) years and One day of *Prision Mayor* as minimum to Seventeen (17) years and Four (4) months of *Reclusion Temporal*, as maximum. Both accused are ordered to pay jointly and solidarily the private complainant MANUEL MORALES y Sornil the amount of Thirty Thousand Pesos (Php30,000.00) as actual damages;
- 3) In Crim Case No. 115204, this court finds ERIC RAGURO, TEODULO PANTI, LEVIE DE MESA and JONATHAN PEREZ GUILTY beyond reasonable doubt of the crime of Frustrated Murder and they are all sentenced to a jail term of Six (6) years and One day of *Prision Mayor* as minimum to Seventeen (17) years and Four (4) months of *Reclusion Temporal*, as maximum. They are ordered to pay jointly and solidarily the private complainant MANUEL MORALES y Sornil the amount of Thirty Thousand Pesos (Php30,000.00) as actual damages; and
- 4) In Crim Case No. 128398 this court finds ERIC (TITO) RAGURO, Jr., TEODULO PANTI and LEVIE DE MESA GUILTY beyond reasonable doubt of the crime of Murder and they are all sentenced to suffer the penalty of Reclusion Perpetua and they are ordered to pay the heirs of Avelino Morales y Sornil jointly and solidarily, the amount of Seventy Five Thousand Pesos (Php75,000.00) as civil indemnity, Fifty Thousand Pesos (Php50,000.00) as moral damages and Twenty Thousand Pesos (Php20,000.00) as exemplary damages.

The case against ELMER de MAKILING [*sic*] who has remained at-large is ordered ARCHIVED. Let an Alias Warrant of Arrest be issued against Elmer de Makiling.

SO ORDERED.<sup>6</sup>

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<sup>6</sup> Id. at 67-68.

### Decision of the CA

On April 14, 2015, the CA promulgated the assailed decision affirming the RTC.<sup>7</sup> It rejected the accused-appellants' argument regarding the allegedly faulty identification made by the witnesses, and pointed out that the three witnesses had consistently detailed the exact participation of each of the accused-appellants in the commission of the crimes. The *fallo* of the decision reads:

**WHEREFORE**, the Decision dated September 24,<sup>8</sup> 2013 of the trial court is **AFFIRMED**, subject to the modification that (i) in *Criminal Cases Nos. Q-02-111754* and *Q-04-128398*, the award [for] civil indemnity is decreased to ₱50,000.00 in each case, and the award of exemplary damages is increased to ₱30,000.00 in each case, and, (ii) in *Criminal Cases Nos. Q-02-111755* and *Q-03-115204*, moral damages in the amount of ₱40,000.00 and exemplary damages in the amount of ₱20,000.00, are awarded in each case.

**SO ORDERED.**<sup>8</sup>

Hence, this appeal.

### Issue

The accused-appellants argue that the Prosecution miserably failed to prove their guilt beyond reasonable doubt; that Marietta Ofalla, one of the main Prosecution's witnesses, was not credible because she had harbored ill-feelings towards them; that the testimony of Manuel Morales should not also be given credence considering that he, being drunk at the time of the incident, had been unable to perceive the events correctly; and that the poor lighting conditions had contributed to their doubtful identification by the witnesses, as borne out by the erroneous identification by Arvin Morales during the out-of-court identification.

Did the CA err in affirming the conviction of the accused-appellants of the crimes charged?

### Ruling of the Court

The Court affirms the conviction of all the accused-appellants but acquits accused-appellant Levie de Mesa for lack of evidence showing his commission of any overt act to further the criminal design.

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<sup>7</sup> *Rollo*, pp. 2-33.

<sup>8</sup> *Id.* at 32.

The findings of the RTC with regard to accused-appellants Bernie Raguro and Eric Raguro, Jonathan Perez and Teodulo Panti, Jr. were fully supported by the evidence on record. Their group attack against Avelino and Manuel reflected one continuous criminal design to kill attended by abuse of superior strength. Each of them was competently shown to have performed specific overt acts that showed actual participation in the assault. Hence, even if Eric was not shown to have inflicted any specific fatal injury on Manuel, he was nonetheless liable for frustrated murder on the basis of conspiracy considering that it was sufficiently established that he had himself taken an active part in attacking Avelino with his bladed weapon. That part was enough to demonstrate that he had conspired with the attackers of Avelino and Manuel.

In *People v. Natividad*,<sup>9</sup> we discoursed as follows:

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To establish conspiracy, direct evidence is not required. It is not even essential that there be proof of the agreement to commit the felony. Proof of concerted action of the accused before, during and after the crime which demonstrates their unity of design and objective is sufficient. This Court had consistently ruled that conspiracy may be inferred when by their acts, two or more persons proceed towards the accomplishment of the same felonious objective, with each doing his act, so that their acts though seemingly independent were in fact connected, showing a closeness of former association and concurrence of sentiment. To hold one as a co-principal by reason of conspiracy, it must be shown that he performed an overt act in pursuance of or in furtherance of the conspiracy, although the acts performed might have been distinct and separate. This overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting a moral ascendancy over the other co-conspirators by moving them to execute or implement the criminal plan. Once conspiracy is established, all the conspirators are answerable as co-principals regardless of their degree of participation, for in the contemplation of the law, the act of one becomes the act of all. It matters not who among the accused inflicted the fatal blow to the victim.

As such, once the CA properly affirmed the RTC's findings, such findings generally become conclusive and binding upon this Court, and should remain undisturbed unless there were compelling and exceptional reasons to do so. No such reasons were presented herein by the accused-appellants concerned.

<sup>9</sup> G.R. No. 151072, September 23, 2003, 411 SCRA 587, 593-594.



As to accused-appellant de Mesa, the CA observed as follows:

It would appear that by the acts of the herein accused, none of them did any overt act to prevent or dissociate themselves from the others and by their acts it is apparent that they agree to commit the felony and as such, they are liable for the death of AVELINO and injury of MANUEL. Indeed, mere presence at the scene of the incident by itself, is not a sufficient ground to hold a person liable as a conspirator. However, conspiracy may be inferred from proof of facts and circumstances which when taken together indicate that they are part of the scheme to commit the crime. **Although MANUEL testified that ERIC did not hurt him or that no overt act was attributed to LEVIE who was also present at the time of the felony, their overt acts of keeping themselves around served no other purpose than to lend moral support by ensuring that no one could give succor to the victims. Their presence at the scene has no doubt encouraged their co-accused and increased the odds against the victim. One who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetuation thereof is criminally responsible to the same extent as the actual perpetrator.**<sup>10</sup>

In our view, the CA erred in affirming the conviction of de Mesa. His incrimination as a co-conspirator was based on pure speculation and conjecture. There was no proof adduced to show that he had at least lent moral support to his co-accused-appellants when they attacked Avelino and Manuel. Conspiracy could not be deduced from his being merely present at the scene of the crime. He must be shown at least to have committed an overt act that indicated his concurrence in the common criminal design to kill their victims that had animated the attack by the others. Such overt act by de Mesa, to be sufficient to implicate him as a co-conspirator, must be beyond a merely preparatory act.

The character of the *overt act* is well explained in *People v. Lizada*:<sup>11</sup>

An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. **The *raison d'être* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal**

<sup>10</sup> *Rollo*, p. 30.

<sup>11</sup> G.R. No. 143468-71, January 24, 2003, 396 SCRA 62, 94-95.

**quality remains, no one can say with certainty what the intent of the accused is.** It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." **The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.** (Bold underscoring supplied for emphasis)

In view of the absence of any factual or legal basis to implicate de Mesa in the conspiracy to assault Avelino and Manuel, the Court acquits him for failure of the Prosecution to establish his guilt beyond reasonable doubt.

Nonetheless, we modify the civil liability of the remaining accused-appellants to make the awards conform with the pronouncement in *People v. Jugueta*.<sup>12</sup> For the murder of Avelino Morales, the civil indemnity, moral damages and exemplary damages to be granted to his heirs are each increased to ₱75,000.00. The Court further grants the amount of ₱50,000.00 as temperate damages in lieu of compensatory damages for funeral expenses. For the injuries suffered by Manuel Morales, the moral and exemplary damages are each increased to ₱50,000.00. In addition, Morales is granted ₱50,000.00 as civil indemnity. All the awards shall earn interest of 6% *per annum* from the finality of this decision until full payment.

**WHEREFORE**, the Court:

(a) **DISMISSES** the appeal of accused-appellants **BERNIE RAGURO Y BALINAS, JONATHAN PEREZ Y DE MATEO, ERIC RAGURO Y BALINAS**, and **TEODULO PANTI, JR.**; and **AFFIRMS** with **MODIFICATIONS** the decision promulgated on April 14, 2015 by granting to the heirs of the late Avelino Morales civil indemnity, moral damages and exemplary damages each in the increased amount of ₱75,000.00, plus the amount of ₱50,000.00 as temperate damages;

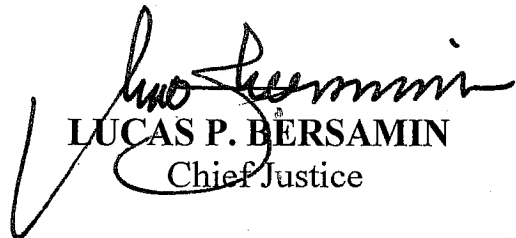
(b) **DISMISSES** the appeal of accused-appellants **BERNIE RAGURO Y BALINAS, JONATHAN PEREZ Y DE MATEO, ERIC RAGURO Y BALINAS**, and **TEODULO PANTI, JR.**; and **AFFIRMS** with **MODIFICATIONS** the decision promulgated on April 14, 2015 by granting moral and exemplary damages each in the increased amount of ₱50,000.00, plus the amount of ₱50,000.00 as temperate damages;

<sup>12</sup> G.R. No. 202124, April 5, 2016, 788 SCRA 331.


(c) **IMPOSES** on all the above stated monetary awards interest at the rate of 6% per cent *per annum* from the date of finality of this decision until full payment; and

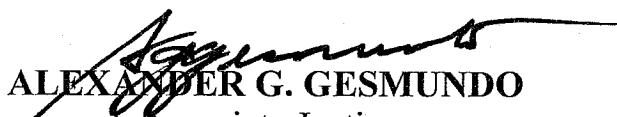
(d) **ACQUITS** accused-appellant **LEVIE DE MESA** for failure of the Prosecution to prove his guilt beyond reasonable doubt; **ORDERS** his immediate release from the National Penitentiary unless there are other lawful causes warranting his continued confinement thereat; and **DIRECTS** the Director of the Bureau of Corrections to implement the release of **LEVIE DE MESA** in accordance with this decision, and to report compliance within five days from receipt of this decision.

**SO ORDERED.**


  
LUCAS P. BERSAMIN  
Chief Justice

**WE CONCUR:**

  
FRANCIS H. JARDELEZA  
Associate Justice

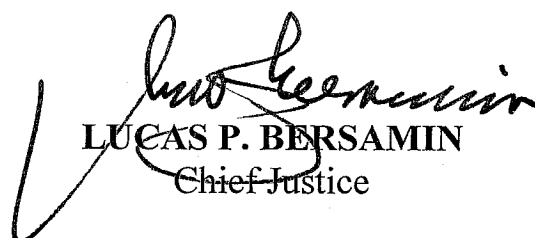
  
ALEXANDER G. GESMUNDO  
Associate Justice

  
ROSMARID. CARANDANG  
Associate Justice

  
HENRI JEAN PAUL B. INTING  
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.

  
LUCAS P. BERSAMIN  
Chief Justice