



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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BY:
TIME:

JANICE L. TEOLOGO and
JENNIFER DELOS SANTOS,*

Petitioners,

- versus -

PEOPLE OF THE
PHILIPPINES,

Respondent.

G.R. No. 238388

Present:

LEONEN, J., Chairperson,

LAZARO-JAVIER,

LOPEZ, M.

LOPEZ, J., and

KHO, JR., JJ.

Promulgated:

APR 02 2025

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DECISION

KHO, JR., J.:

Assailed in this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court are the Decision² dated May 18, 2017 and the Resolution³ dated March 21, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 37486, which affirmed with modification the Decision⁴ dated December 23, 2014 of Branch 67, Regional Trial Court of Binangonan, Rizal (RTC) finding Janice L. Teologo (Teologo) and Jennifer Delos Santos (Delos Santos; collectively petitioners) guilty beyond reasonable doubt of qualified theft.

* Petitioners are likewise referred to as "Janice Licup-Teologo" and "Jennifer De Los Santos" in some parts of the *rollo*.

¹ *Rollo*, pp. 3-35.

² *Id.* at 44-57. The May 18, 2017 Decision in CA-G.R. CR No. 37486 was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan of the Sixth Division, Court of Appeals, Manila.

³ *Id.* at 59-59-A. The March 21, 2019 Resolution in CA-G.R. CR No. 37486 was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan of the Former Sixth Division, Court of Appeals, Manila.

⁴ CA *rollo*, pp. 100-101.

The Facts

The case stemmed from an Information charging petitioners, together with Diony Mesina (Mesina) and Jedalyn Mira (Mira) with qualified theft, the accusatory portion of which reads:

That, in (sic) or about and sometime during the period from June 2009 to October 2009, in the Municipality of Angono, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the managers of complainant BIG G PHILFOODS & ENTERTAINMENT, INC., the franchise holder of SHAKEY'S ANGONO-RIZAL, herein represented by ESMERALDA D. SEVILLA, and as such had free access to the company of the latter and enjoyed the trust and confidence reposed upon them by their employer, in conspiracy with one another, acting as an organized/syndicated crime group, with intent to gain and grave abuse of confidence and without knowledge and consent of the owner thereof, did, then and there willfully, unlawfully and feloniously take, steal and carry away service charges of the complainant's employees, in the total amount of Php21,943.71, belonging to the said Big G Philfoods & Entertainment, Inc., to the damage and prejudice of the latter, the offense charged having been attended by the qualifying circumstances of grave abuse of trust and confidence, thereby raising the offense to qualified theft.⁵

Upon arraignment, petitioners pleaded not guilty. Mesina and Mira remain at large.⁶

The prosecution alleged that petitioners are the store managers at Shakey's Angono, Rizal owned by Big G Philfoods & Entertainment (Big G). One of their duties as managers is to give the employees their salaries and shares in the service charges. From July 2009 to October 2009, Big G issued checks to Mesina for encashment and distribution of the employees' share in the service charges collected from the previous months, viz.:

BDO Check No.	Date Issued	Amount	Purpose
0008737 ⁷	July 5, 2009	22,452.00	For service charges collected in June 2009
0008768 ⁸	August 7, 2009	17,665.85	For service charges collected in July 2009
0008794 ⁹	September 5, 2009	17,040.13	For service charges collected in August 2009
0008831 ¹⁰	October 5, 2009	9,704.20	For service charges collected in September 2009

⁵ RTC records, p. 1.

⁶ CA rollo, p. 100.

⁷ RTC records, p. 193.

⁸ *Id.* at 195.

⁹ *Id.* at 197.

¹⁰ *Id.* at 199.

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On September 10, 2009, Lorna Alvarez (Alvarez), Big G's accountant, received a text message from an unknown sender inquiring where the service charges go if these were not distributed to the employees. This prompted Alvarez and Esmeralda D. Sevilla (Sevilla) to ask Mesina for the list of service charges distribution.¹¹

Sevilla then asked Ingimar Buenaventura (Buenaventura), an employee, if he received the amount appearing in the list. Buenaventura hesitantly replied that he did not. Sevilla then called for a meeting and asked the employees to submit reports about the distribution of the service charges. The employees,¹² including Buenaventura and Mark Christopher Quetua (Quetua) submitted their handwritten reports stating that they were made to sign the payrolls even if they did not receive their shares in the service charges.¹³ The four managers, composed of petitioners, Mesina and Mira, were placed under preventive suspension and were eventually dismissed. Sevilla found that the managers, in collusion with each other, implemented an unsanctioned policy of withholding the payment of an employee's share in service charges.¹⁴

During the trial, Quetua testified that, upon being re-hired, he did not receive his share in the service charges for four months – PHP 107.91 for June 2009, PHP 1,656.92 for July 2009, PHP 2,310.93 for August 2009 and PHP 2,241.02 for September 2009, and that Teologo, Delos Santos and Mesina were the ones who asked him to sign the payrolls¹⁵ covering that period.¹⁶

Buenaventura likewise testified that he did not receive his share in the service charges for two months, i.e., PHP 1,388.89 for August 2009 and PHP 1,864.09 for September 2009, but he was made to sign the service charge payroll pursuant to an alleged company policy and that the store managers informed him of said policy.¹⁷

In defense, Teologo testified that it was Alvarez who computes the service charges and sends the service charge computation sheet to Mesina, who forwards the computation sheet to Sevilla. Once approved, Sevilla issues the check to Mesina. Teologo alleged that Quetua received his service charges for June to September 2009 as shown by his signatures in the computation sheet.¹⁸ Teologo also alleged that Buenaventura had inconsistent statements regarding his claim of unpaid service charges.¹⁹ On cross-examination,

¹¹ *Rollo*, pp. 45–47.

¹² *Id.* at 48. The other employees who were made to sign the monthly payrolls but who did not receive their shares in the service charges are: (1) Carina Gialogon, (2) Francis Quintana, and (3) Vincent Zoleta.

¹³ *Id.* at 47.

¹⁴ *Id.*

¹⁵ RTC records, pp. 192, 194, 196, and 198.

¹⁶ TSN, Mark Christopher Quetua, May 23, 2012, pp. 5–8.

¹⁷ TSN, Ingimar Buenaventura, October 18, 2012, pp. 6–9.

¹⁸ TSN, Janice L. Teologo, May 29, 2013, p. 21.

¹⁹ TSN, Janice L. Teologo, May 29, 2013, p. 25.

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Teologo testified that some employees did not receive the service charges because they failed to submit certain requirements and that she made the re-computation. She also testified that she did not report the re-computation of the service charges to management; and that she did not mention who were the recipients of the re-computed service charges.²⁰ Delos Santos corroborated Teologo's testimony.²¹

The RTC Ruling

In a Decision dated December 23, 2014, the RTC found petitioners guilty beyond reasonable doubt of the crime of qualified theft, and accordingly, sentenced each of them to suffer the penalty of imprisonment for an indeterminate period of seven years, four months, and one day of *prision mayor*, as minimum, to 10 years and one day of *prision mayor*, as maximum; and ordered petitioners to pay Big G the sum of PHP 9,920.44.²²

In convicting petitioners, the RTC found that the prosecution was able to establish that petitioners, as store managers, abused Big G's trust and confidence, by failing to distribute the shares of the employees' service charges. The RTC noted that, while it was alleged in the Information that the service charges that were stolen from five employees amounted to PHP 21,943.71, only two of them—Quetua and Buenaventura testified and proved that they did not receive their service charges.²³ The RTC found petitioners' defense that the service charges were re-computed and withheld from employees who have incomplete requirements and instead distributed to those who have complete requirements was unavailing as petitioners did not identify the employees who received the service charges.²⁴

Aggrieved, petitioners appealed to the CA.

The CA Ruling

In a Decision dated May 18, 2017, the CA affirmed their conviction with modification, adjusting the indeterminate period of imprisonment to six years and one day of *prision mayor*, as minimum, to 12 years and one day of *reclusion temporal*, as maximum.²⁵

The CA held that the elements of qualified theft were proven. The CA found the existence of conspiracy between petitioners, Mesina and Mira as the prosecution witnesses unanimously identified them as the persons who

²⁰ TSN, Janice L. Teologo, August 7, 2013, pp. 3--7.

²¹ *Rollo*, p. 51.

²² *CA rollo*, p. 101.

²³ *Rollo*, p. 52.

²⁴ RTC records, p. 377.

²⁵ *Rollo*, p. 56.

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implemented the policy regarding the withholding of service charges from employees with incomplete requirements. The CA noted that petitioners who are store managers, enjoyed a high degree of confidence and were responsible for all money received and dispensed for store operations.²⁶

Petitioners sought reconsideration, which was denied in a Resolution dated March 21, 2018.²⁷ Aggrieved, petitioners filed the instant Petition, to which the People, as represented by the Office of the Solicitor General (OSG), filed a Comment.²⁸

The Issue Before the Court

The core issue for the Court's resolution is whether or not petitioners are guilty beyond reasonable doubt of qualified theft.

The Court's Ruling

The Petition is partly meritorious.

At the onset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.²⁹

Guided by the foregoing consideration, the Court modifies petitioners' conviction to simple theft only, as will be discussed hereunder.

Articles 308 and 310 of the Revised Penal Code (RPC), which define and punish the crimes of theft and qualified theft, respectively, provide:

Article 308. Who are liable for theft.—Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

²⁶ *Id.* at 54–55.

²⁷ *Id.* at 59–59A.

²⁸ *Id.* at 195–208.

²⁹ *People v. Bernardo*, 890 Phil. 97, 110 (2020) [Per J. Perlas-Bernabe, Second Division], citing *Arambulo v. People*, 857 Phil. 828, 836 (2019) [Per J. Perlas-Bernabe, Second Division].

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1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and

3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and, without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

Article 310. Qualified theft.— The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

The essential elements of theft are: (1) the taking of personal property; (2) the property belongs to another; (3) the taking away was done with intent of gain; (4) the taking away was done without the consent of the owner; and (5) the taking away is accomplished without violence or intimidation against person or force upon things.³⁰ Theft becomes qualified when the taking under Article 308 is committed under any of the circumstances enumerated in Article 310 of the RPC, i.e., with grave abuse of confidence.³¹

Here, all the elements for theft are obtaining. The *first* and *second* elements of taking of property belonging to another are undeniably present as Quetua and Buenaventura did not receive the service charges that rightfully belonged to them.

Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage.³² There is "taking" of personal property, and theft is consummated when the offender unlawfully acquires possession of personal property even if for a short time; or if such property is under the dominion and control of the thief.³³ To establish the element of taking, actual or constructive possession of personal property must be proven: *first*, by its owner or lawful possessor; and *second*, the subsequent unlawful acquisition thereof by the accused.³⁴ In this regard, constructive possession is defined as control or dominion over a property

³⁰ *Canceran v. People*, 762 Phil. 558, 566–567 (2015) [Per J. Mendoza, Second Division].

³¹ *Dueñas v. People*, 933 Phil. 80, 90 (2023) [Per J. Kho, Jr., Second Division].

³² *Canceran v. People*, 762 Phil. 558, 567 (2015) [Per J. Mendoza, Second Division].

³³ *Laurel v. Abrogar*, 518 Phil. 409, 435–436 (2006) [Per J. Callejo, Sr., First Division].

³⁴ *Imperial v. People*, 906 Phil. 424, 433 (2021) [Per J. Gaerlan, First Division].

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without actual possession or custody of it,³⁵ or the subjection of the thing to one's control and management.³⁶

In this case, the subject of the unlawful taking was the employees' shares in the service charges. The record shows that Big G issued four separate checks for encashment and distribution of the employees' share in the service charges collected for the months of June 2009 to September 2009. Big G also prepared a monthly payroll showing the computation of the service charges that each employee shall receive. Given these circumstances, it is the Court's view that Buenaventura and Quetua, upon seeing the actual amounts earmarked for them and after affixing their signatures in the payrolls, have acquired constructive possession of their respective shares in the service charges as their right to receive them has become a certainty. Even without the actual release of the money to them, they already gained the right to control, including the right to allocate the amount. The record also shows that petitioners deprived Buenaventura and Quetua of their monthly shares in the service charges.

On the *third* element, in *People v. Tan*,³⁷ the Court defined felonious taking as the "act of depriving another of the possession and dominion of movable property without his privity and consent and without *animus revertendi*. An unlawful taking takes place when the owner or juridical possessor does not give his consent to the taking; or, if the consent was given, it was vitiated[.]" Here, the consent of Quetua and Buenaventura is wanting as they were made to believe that the withholding of the service charges was done pursuant to a company policy.

On the *fourth* element, petitioners' intent to gain is evident from their acts of withholding the service charges of Quetua and Buenaventura and their failure to account for them.

On the *fifth* element, petitioners did not employ intimidation or violence against Buenaventura and Quetua as they implemented an unsanctioned policy by which petitioners were able to withhold the service charges from Quetua and Buenaventura.

However, contrary to the findings of the courts *a quo*, the Court finds that the element of abuse of confidence under Article 310 to qualify the crime of theft is not present in this case. Admittedly, petitioners, as managerial employees, held positions that require the trust and confidence of their employer, Big G. Petitioners were thus charged of betraying that trust and confidence reposed on them by Big G. However, and as already adverted to above, it is worth pointing out that **the crime was committed, not against Big**

³⁵ BLACK'S LAW DICTIONARY 1201 (8th ed, 2004).

³⁶ *Fajardo v. People*, 654 Phil. 184, 202 (2011) [Per J. Nachura, Second Division].

³⁷ 379 Phil. 999 (2000) [Per C.J. Davide, First Division].

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G, but against Quetua and Buenaventura who were the ones actually deprived of their shares in the service charges. To be sure, the relationship between managerial and rank-and-file employees does not involve nor require the element of trust and confidence. On this score, the qualifying element of abuse of confidence cannot be appreciated in this case. Absent this qualifying element, petitioners must only be convicted of theft in its simple form.

As regards petitioners' participation in the commission of theft, the prosecution was able to establish conspiracy between them. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Where all the accused acted in concert at the time of the commission of the offense, and it is shown by such acts that they had the same purpose or common design and were united in its execution, conspiracy is sufficiently established.³⁸ In this case, there is testimonial evidence proving conspiracy in the commission of the crime. As Buenaventura testified, although he signed the payrolls for August and September 2009, he did not receive his shares in the service charges as he was told by the Shakey's store managers Teologo, Delos Santos, Mira, and Mesina that pursuant to a company policy, he is not entitled to said benefit for the first two months of his contract.³⁹ Quetua similarly did not receive his shares in the service charges from June 2009 to September 2009 but the store managers still asked him to sign the payroll.⁴⁰

As such, the Court affirms the RTC and CA findings, although with modification in that petitioners are only guilty of simple theft.

Based on the payrolls⁴¹ for the service charges collected for each month of June 2009 to September 2009, petitioners withheld the following amounts from Quetua and Buenaventura, to wit:

	June	July	August	September
Quetua	PHP 107.91	PHP 1,656.92	PHP 2,310.93	PHP 2,241.02
Buenaventura			PHP 1,388.89	PHP 1,864.09
Total			PHP 3,699.82	PHP 4,105.11

At this juncture, Associate Justice Mario V. Lopez correctly pointed out that a continuous crime, which envisages a single crime committed through a series of acts arising from one criminal intent or resolution,⁴² is present in this case. In *People v. De Guzman*,⁴³ the Court defined continuous crime as a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division. For it to exist there should be

³⁸ *People v. Palada*, 747 Phil. 628, 637 (2019) [Per C.J. Bersamin, First Division].

³⁹ TSN, Ingimar Buenaventura, October 18, 2012, pp. 5-7.

⁴⁰ TSN, Mark Christopher Quetua, May 23, 2012, pp. 4-8.

⁴¹ RTC Records, pp. 192, 194, 196 and 198.

⁴² *Paera v. People*, 664 Phil. 630, 636-637 (2011) [Per J. Carpio, Second Division].

⁴³ 297 Phil. 993 (1993) [Per J. Vitug, Third Division].

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plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim.

Additionally, in *Ambagan v. People*,⁴⁴ the Court held that “the primary considerations in adjudging whether a series of criminal acts should be considered a continuous crime, are: [1] the singularity in criminal intent and penal law violation, and [2] the period of time the act was committed. Verily, when the criminal acts are performed on various dates, the presumption is that every act is performed on the motivation of separate criminal intents. Thus, the tendency is for the Court to treat each act as a separate and independent criminal violation. However, this is not a hard and fast rule but is merely a guideline. Ultimately, whether or not a continuous crime exists depends on the circumstances of each case.”⁴⁵ Further in *Ambagan*, the Court cited instances involving the crime of theft where the concept of continuous offense was opportunely applied, viz.:

(1) The theft of 13 cows belonging to two different owners committed by the accused at the same time and at the same period of time (*People v. Tumlos*, 67 Phil. 320 [1939]).

(2) The theft of six roosters belonging to two different owners from the same coop and at the same period of time (*People v. Jaranillo*, 55 SCRA 563 [1974]).

(3) The theft of two roosters in the same place and on the same occasion (*People v. De Leon*, 49 Phil. 437 [1926]).

Here, there is also a plurality of acts and a singularity of criminal intent when petitioners unlawfully withheld the service charges of the employees. Although there were successive takings of service charges belonging to different owners, only one crime of theft was committed as this was the result of one criminal intent which is to deprive the employees of their monthly shares in the service charges.

Corollarily, it must be pointed out that Republic Act No. 10951,⁴⁶ which has retroactive application, adjusted the value of the property and the amount of damage on which various penalties are based.⁴⁷ Section 81 thereof provides:

⁴⁴ 844 Phil. 270 (2018) [Per J. A. Reyes, Second Division].

⁴⁵ *Id.* at 282–283.

⁴⁶ 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, Amending for the Purpose Act No. 3815, otherwise known as The Revised Penal Code, As Amended (August 29, 2017).

⁴⁷ See *Dueñas v. People*, G.R. No. 211701, January 11, 2023 [J. Kho, Jr., Second Division].

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Section 81. Article 309 of the same Act is hereby amended to read as follows:

ART. 309. *Penalties.* – Any person guilty of theft shall be punished by:

4. *Arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of the property stolen is over Five thousand pesos ([PHP] 5,000[.00]) but does not exceed Twenty thousand pesos ([PHP] 20,000[.00]).

Applying the above provision on the unlawful taking of service charges from June 2009 to August 2009 in the aggregate amount of PHP 9,569.76, the Court imposes the penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period. Considering that no mitigating or aggravating circumstance was alleged or proven in this case, the penalty shall be imposed in its medium period, which is four months and one day to six months of *arresto mayor*. Considering further that the Indeterminate Sentence Law does not apply if the maximum term of imprisonment does not exceed one year, petitioners are sentenced to suffer a straight penalty of six months of *arresto mayor*.⁴⁸

As regards the monetary awards, the Court finds it necessary to modify the RTC and CA rulings. As discussed above, the real private complainants here are the Shakey's employees—Quetua and Buenaventura, not Big G. Hence, petitioners should be ordered to pay Quetua and Buenaventura the amounts that they withheld from them. Based on the payrolls for June 2009 to September 2009, the service charges that were withheld from Quetua and Buenaventura amount to PHP 6,316.78 and PHP 3,252.98, respectively. Finally, these amounts shall earn legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment pursuant to prevailing jurisprudence.⁴⁹

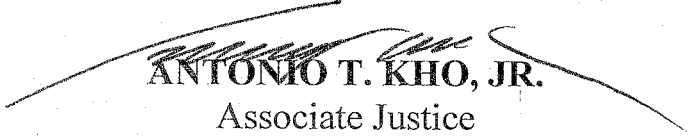
ACCORDINGLY, the Petition is **PARTLY GRANTED**. The Decision dated May 18, 2017 and the Resolution dated March 21, 2018 of the Court of Appeals are **AFFIRMED with MODIFICATION** in that petitioners Janice L. Teologo and Jennifer Delos Santos are found **GUILTY** beyond reasonable doubt of the crime of theft, and consequently, are sentenced to suffer imprisonment for a straight period of six months of *arresto mayor*. Petitioners are further ordered to pay jointly and severally Mark Christopher Quetua and Ingimar Buenaventura the amounts of PHP 6,316.78 and PHP 3,252.98, respectively, with legal interest at the rate of 6% per annum from the date of finality of this Decision until full payment.

⁴⁸ *People v. Catacutan*, 935 Phil. 1124, 1144–1145 (2023) [Per J. Lazaro-Javier, Second Division].

⁴⁹ *See Albotra v. People*, 890 Phil. 160 (2020) [Per J. Hernandez, Third Division].

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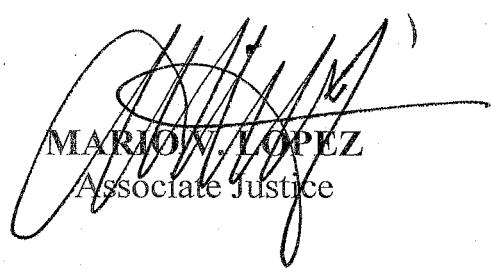
SO ORDERED.


ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice
Division Chairperson


AMY C. LAZARO-JAVIER
Associate Justice


MARION W. LOPEZ
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

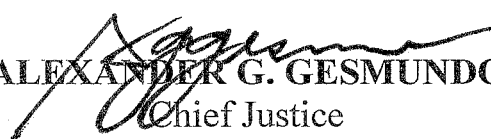
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division



CERTIFICATION

Pursuant to Article VIII, Section 13 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.


ALEXANDER G. GESMUNDO
Chief Justice

Atty