

REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff.

- versus -

SB-10-CRM-0104 to 0105

For: Violation of Section 3(b), R.A. 3019

MAJ. GEN. JOSE T. BARBIETO (SG-28),
SSGT. ROSELLER A. ECHIPARE (SG-14),
Philippine Army Headquarters
Fort Bonifacio, Taguig City

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,

Plaintiff.

- versus -

SB-10-CRM-0106

For: Malversation of Public Funds

MAJ. GEN. JOSE T. BARBIETO (SG-28),
Philippine Army Headquarters
Fort Bonifacio, Taguig City

Accused.

PRESENT:

Cabotaje-Tang, *Presiding Justice*
and Chairperson

Martires, J.

Quiroz, J.

PROMULGATION:

JULY 8, 2016

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RESOLUTION

QUIROZ, J.:

On 13 October 2015,¹ the Court rendered its Decision finding both accused Barbieto and Echipare guilty beyond reasonable doubt of direct bribery in SB-10-CRM-0104. They were, however, acquitted in SB-10-CRM-0105 for the same charge on the basis of reasonable doubt. The Court also absolved accused Barbieto from malversation of public funds in SB-10-CRM-0106.

The accused and the prosecution are now asking the Court to reconsider its findings in SB-10-CRM-0104 and SB-10-CRM-0106, respectively. Thus, the following motions:

- i. Accused Barbieto's *Motion for Reconsideration* dated 26 October 2015;²
- ii. Accused Echipare's *Motion for Reconsideration (to Decision Promulgated on October 13, 2015)* dated 25 October 2015;³

¹ Records, Volume III, pp. 5 – 47.

² Records, Volume III, pp. 58 – 72.

³ Records, Volume III, pp. 73 – 78.

- iii. Prosecution's *Motion for Partial Reconsideration Re Decision dated 13 October 2015* dated 28 October 2015⁴
- iv. Accused Barbieto's *Opposition to Motion for Partial Consideration*⁵ dated 15 November 2015
- v. Prosecution's *Consolidated Opposition Re Accused Jose T Barbieto's Motion for Reconsideration Dated 26 October 2015 and Accused Roseller A. Echipare's Motion for Reconsideration Dated 25 October 2015*⁶ dated 23 November 2015
- vi. Accused Barbieto's *Reply to Consolidated Opposition* dated 30 November 2015⁷; and
- vii. Accused Echipare's *Reply to Consolidated Opposition* dated 7 December 2015.⁸

Accused Barbieto assails his conviction for direct bribery on the ground of lack of evidence to support a finding of acceptance of a bribe and of the conspiracy to commit a crime. He avers further that even assuming that the presence of conspiracy had been established, it cannot be appreciated because the same was not for the purpose of the commission of a felony. Barbieto also disputes the validity of the criminal information on the basis of lack of allegation of any act not constituting a crime in the context of direct bribery. Lastly, accused assigns error in the application by the Court of the ruling in *Lauro G. Soriano, Jr. v. Sandiganbayan*.

Similarly, accused Echipare impugns the findings of the Court on the existence of conspiracy and finds error in its reliance on the uncorroborated testimony of prosecution witness Staff Sergeant Allan Joel N. Timbal which he claims to be insufficient to warrant his conviction.

The Prosecution, for its part, asserts that, contrary to the findings of the Court in SB-10-CRM-0106, it was accused Barbieto who had control over the *Balik Baril* funds.

The arguments fail to persuade.

In Re: SB-10-CRM-0104

From the evidence arrayed by the Prosecution, all the elements required to prove the crime of direct bribery as charged in the information have been successfully established, to wit: that accused Maj. Gen. Jose T. Barbieto is a public officer being then the Commanding General of the 4th Infantry Division; that he conspired with accused Ssgt. Roseller A. Echipare, his close-in security and also a member of the Philippine Army for the receipt of payment from Ssgt. Allan Joel N. Timbal in the amount of Twenty Thousand Pesos (Php20,000.00); *third*, that payment was received in exchange for the enlistment of Ronald Raut Ragmac, a candidate soldier to the Philippine Army

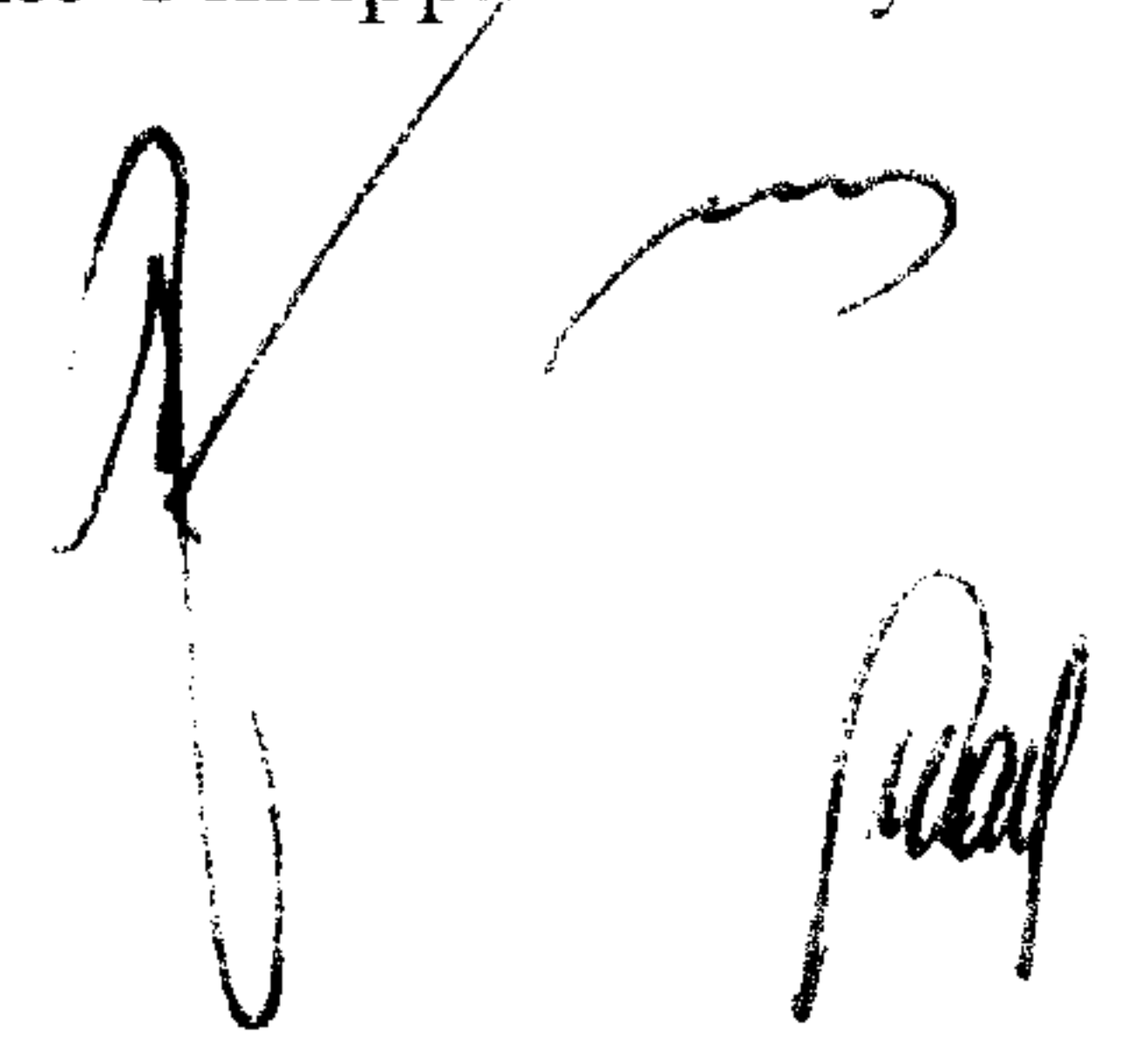
⁴ Records, Volume III, pp. 79 – 82.

⁵ Records, Volume III, pp. 91 – 100.

⁶ Records, Volume III, pp. 101 – 106.

⁷ Records, Volume III, pp. 111 – 126.

⁸ Records, Volume III, pp. 131 – 135.



who is the brother-in-law of Ssgt. Timbal; and, *fourth*, that the enlistment of Ragmac was committed by taking advantage of Maj. Gen. Barbieto's position as the Commanding General of the 4th Infantry Division. Contrary to the claim of the accused, these findings as well as the existence of conspiracy were not based solely on any one testimony, but from the appreciation of all the testimonial and documentary evidence adduced.

The accused also discredits reliance of the Court on the case of *Lauro G. Soriano v. Sandiganbayan*⁹ on the argument that the facts of the case are not in all fours with their case. We, however, find no merit on this assertion considering that reference to the case of Soriano was for the purpose of defining a "transaction" in the context of Section 3(b) of R.A. No. 3019. In other words, the Soriano case was utilized as horizontal *stare decisis*, more particularly as a statutory *stare decisis*. In *Ting v. Velez-Ting*,¹⁰ the Supreme Court cited the dissenting opinion of Chief Justice Reynato S. Puno in *Lambino v. Commission on Elections*¹¹ to explain *stare decisis* and its classifications. Thus –

The latin phrase *stare decisis et non quieta movere* means stand by the thing and do not disturb the calm. The doctrine started with the English Courts. Blackstone observed that at the beginning of the 18th century, it is an established rule to abide by former precedents where the same points come again in litigation. As the rule evolved, early limits to its application were recognized: (1) it would not be followed if it were plainly unreasonable; (2) where courts of equal authority developed conflicting decisions; and, (3) the binding force of the decision was the actual principle or principles necessary for the decision; not the words or reasoning used to reach the decision.

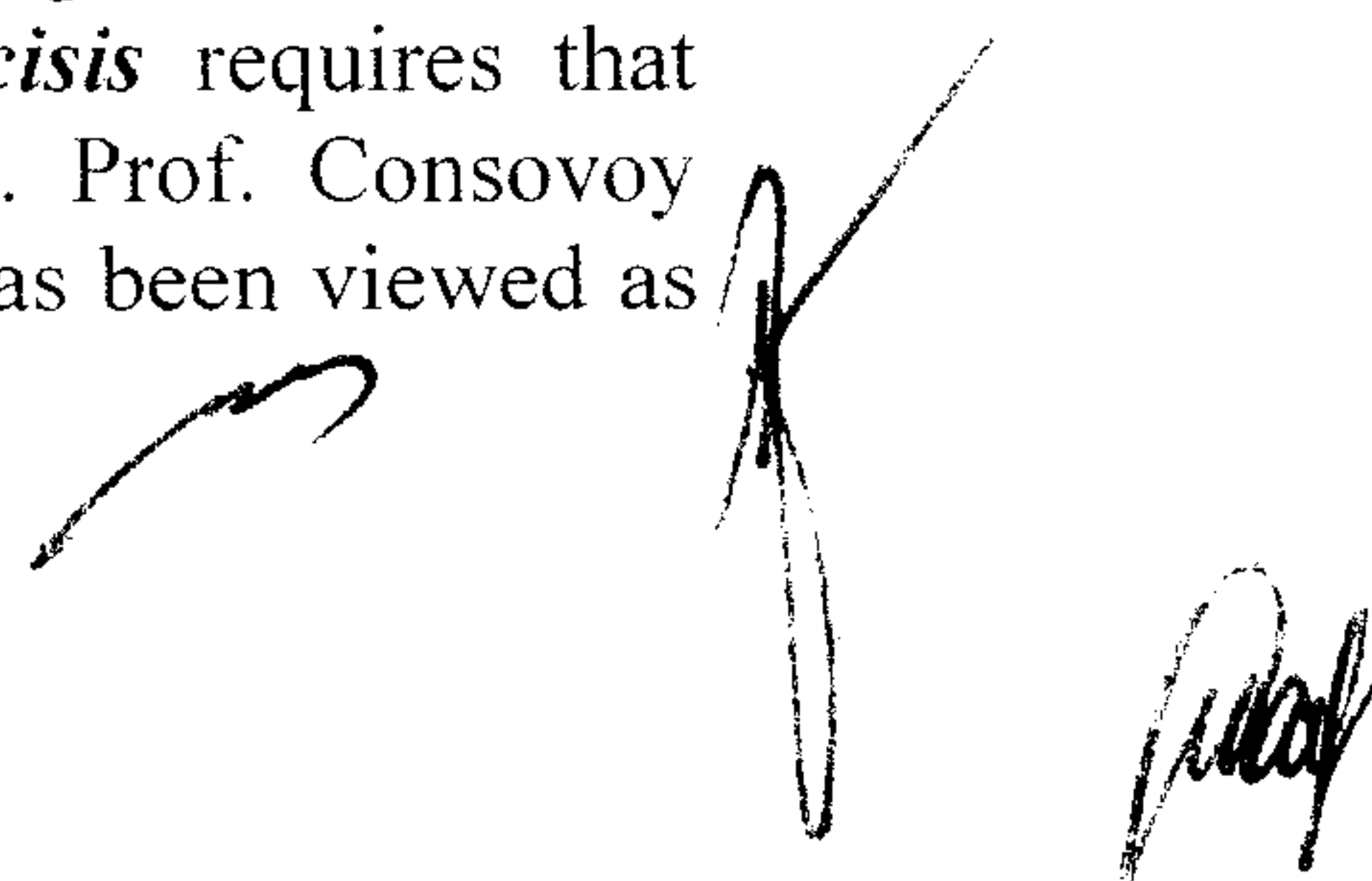
The doctrine migrated to the United States. It was recognized by the framers of the U.S. Constitution. According to Hamilton, strict rules and precedents are necessary to prevent arbitrary discretion in the courts. Madison agreed but stressed that x x x once the precedent ventures into the realm of altering or repealing the law, it should be rejected. Prof. Consovoy well noted that Hamilton and Madison disagree about the countervailing policy considerations that would allow a judge to abandon a precedent. He added that their ideas reveal a deep internal conflict between the concreteness required by the rule of law and the flexibility demanded in error correction. It is this internal conflict that the Supreme Court has attempted to deal with for over two centuries.

Indeed, two centuries of American case law will confirm Prof. Consovoy's observation although *stare decisis* developed its own life in the United States. Two strains of *stare decisis* have been isolated by legal scholars. The first, known as **vertical *stare decisis*** deals with the duty of lower courts to apply the decisions of the higher courts to cases involving the same facts. The second, known as **horizontal *stare decisis*** requires that high courts must follow its own precedents. Prof. Consovoy correctly observes that vertical *stare decisis* has been viewed as

⁹ G.R. No. L-65952, 31 July 1984, 131 SCRA 184.

¹⁰ G.R. No. 166562, 31 March 2009, 582 SCRA 694.

¹¹ G.R. Nos. 174153 and 174299, October 25, 2006, 505 SCRA 160.



an obligation, while horizontal *stare decisis*, has been viewed as a policy, imposing choice but not a command. Indeed, *stare decisis* is not one of the precepts set in stone in our Constitution.

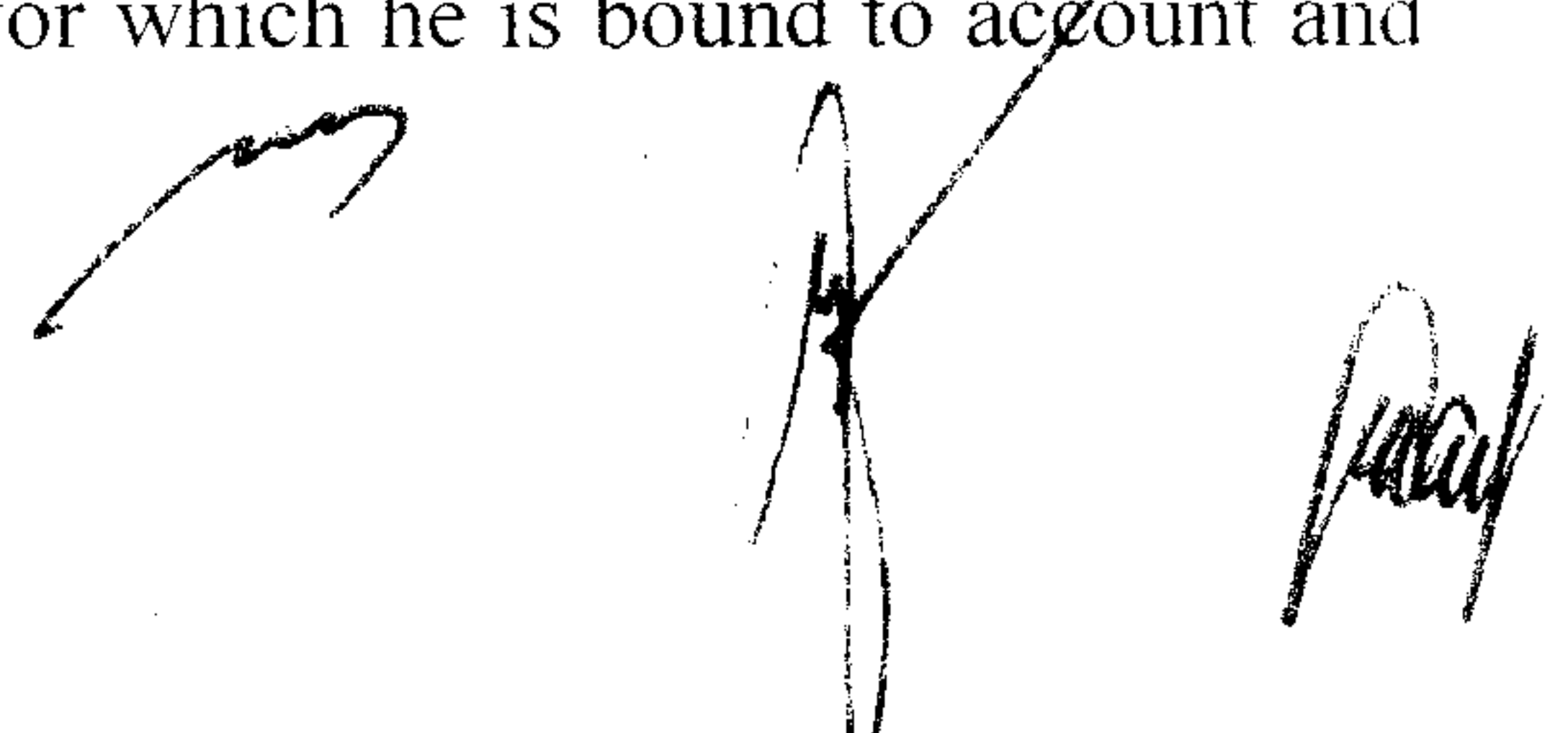
It is also instructive to distinguish the two kinds of horizontal *stare decisis* constitutional *stare decisis* and statutory *stare decisis*. **Constitutional *stare decisis*** involves judicial interpretations of the Constitution while **statutory *stare decisis*** involves interpretations of statutes. The distinction is important for courts enjoy more flexibility in refusing to apply *stare decisis* in constitutional litigations. Justice Brandeis' view on the binding effect of the doctrine in constitutional litigations still holds sway today. In soothing prose, Brandeis stated: *Stare decisis* is not . . . a universal and inexorable command. The rule of *stare decisis* is not inflexible. Whether it shall be followed or departed from, is a question entirely within the discretion of the court, which is again called upon to consider a question once decided. In the same vein, the venerable Justice Frankfurter opined: the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it. In contrast, the application of *stare decisis* on judicial interpretation of statutes is more inflexible. As Justice Stevens explains: after a statute has been construed, either by this Court or by a consistent course of decision by other federal judges and agencies, it acquires a meaning that should be as clear as if the judicial gloss had been drafted by the Congress itself. This stance reflects both respect for Congress' role and the need to preserve the courts' limited resources. (emphasis in the original)

The claim of the accused is perhaps rooted from the fact that Lauro G. Soriano was similarly found guilty of direct bribery despite having been charged with violation of Section 3(b) of R.A. No 3019. The similarity, however, ends there as this Court had to make its own determination if the accused can be held liable for direct bribery under the facts and evidence obtaining.

In Re: SB-10-CRM-0106

A charge for malversation of public funds requires the concurrence of the following elements – **one**, that the offender is a public officer; **two**, that he has the custody or control of funds by reason of the duties of his office; **three**, that the funds or property involved are public funds or property for which he is accountable; and, **lastly**, that he has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property.

An “**accountable officer**” within the purview of Article 217 of the Revised Penal Code is “one who has custody or control of public funds or property by reason of the duties of his office. The nature of the duties of the public officer or employee, the fact that as part of his duties he received public money for which he is bound to account and



failed to account for it, is the factor which determines whether or not malversation is committed by the accused public officer or employee."¹²

In *Querijero v. People of the Philippines*,¹³ the Supreme Court further clarified who is an accountable officer by citing Section 101 (1) of the Government Auditing Code of the Philippines which defined the term to be "every officer of any government agency whose duties permit or require the possession or custody of government funds or property and who shall be accountable therefor and for the safekeeping thereof in conformity with law. In the determination of who is an accountable officer, it is the nature of the duties which he performs - the fact that, as part of his duties, he received public money for which he was bound to account, and not the nomenclature or the relative importance the position held - which is the controlling factor."

In so far as the evidence presented in Court is concerned anent the charge for malversation, it has been shown that it is Capt. Brigen Martinez-Bitoy who is the Special Disbursing Officer of the 4th Infantry Division. Accused Maj. Gen. Barbieto cannot be collaterally attacked by virtue of the claim that he must be so considering that he holds the highest position in the infantry division. The fact is, demand from the internal audit for the turnover of the funds in question were directed to Capt. Bitoy who is, ultimately, the officer who will be held accountable for the funds.

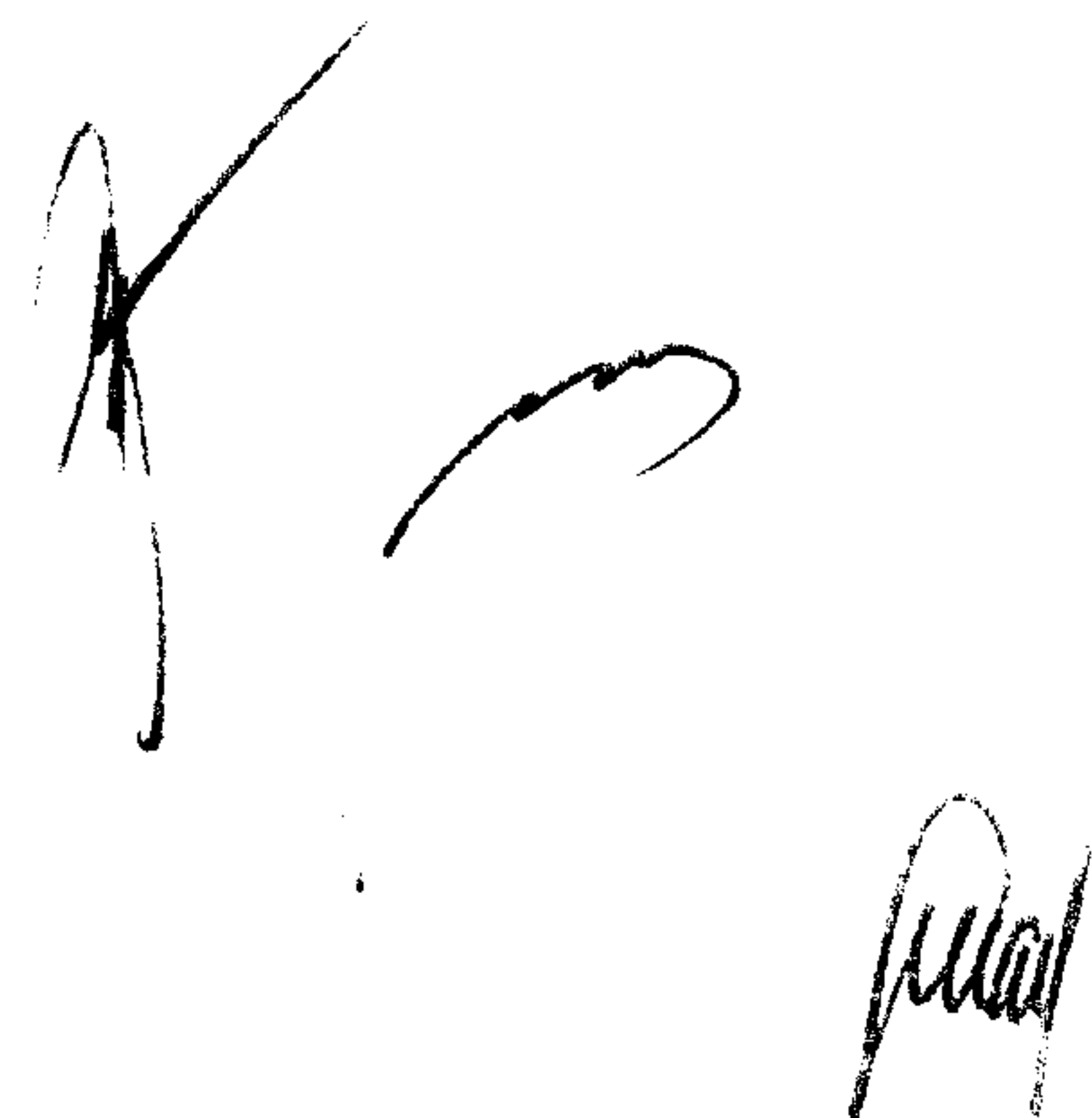
The discussion on who is the accountable officer is nonetheless deemed moot and academic considering that the *Balik Baril* funds, as discussed by the Court in its Decision, have been completely accounted for upon demand.

All told, We see no reason to disturb our findings.

WHEREFORE, premises considered, accused Jose T. Barbieto's *Motion for Reconsideration* dated 26 October 2015, accused Roseller A. Echipare's *Motion for Reconsideration (to Decision Promulgated on October 13, 2015)* dated 25 October 2015 and the Prosecution's *Motion for Partial Reconsideration Re Decision dated 13 October 2015* dated 28 October 2015 are hereby **DENIED**.

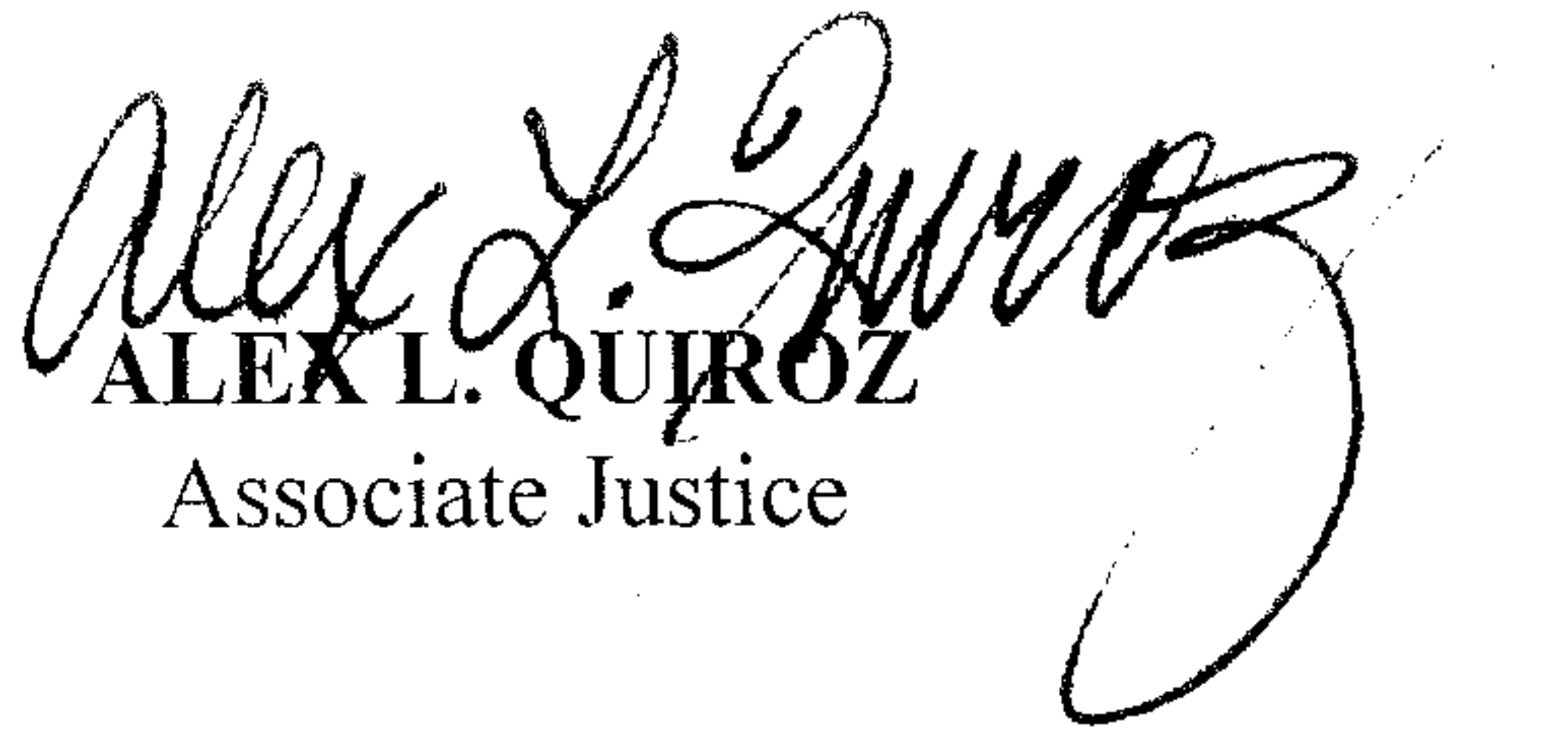
SO ORDERED.

Quezon City, Philippines, 1 June 2016.

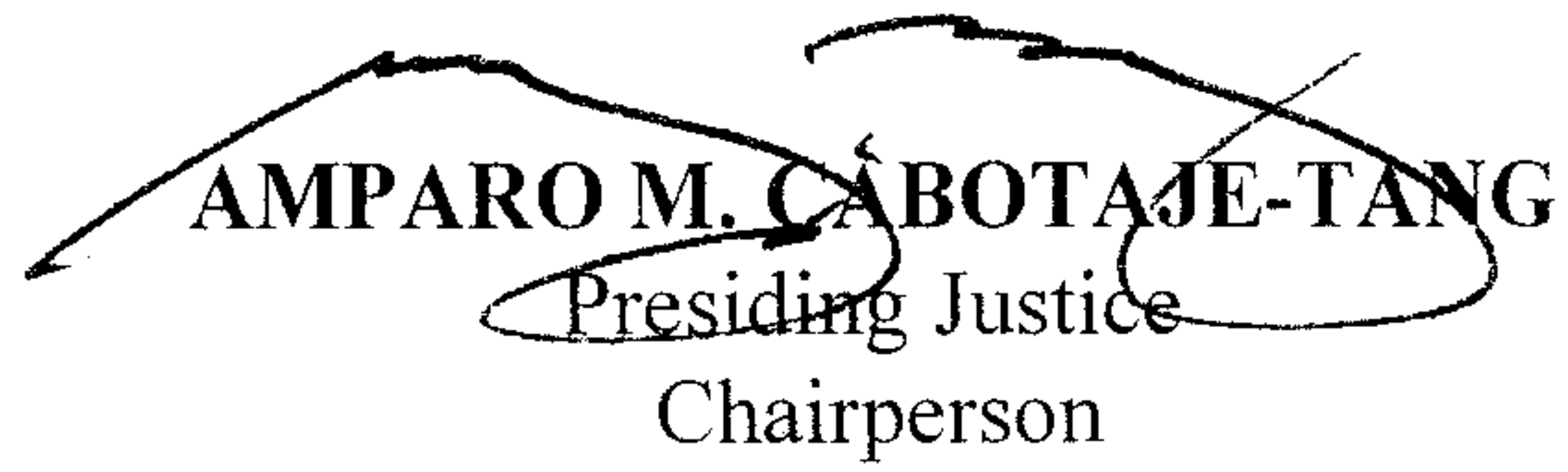


¹² *Jesus Torres v. People of the Philippines*, G.R. No. 175074 31 August 2011, 656 SCRA 486.

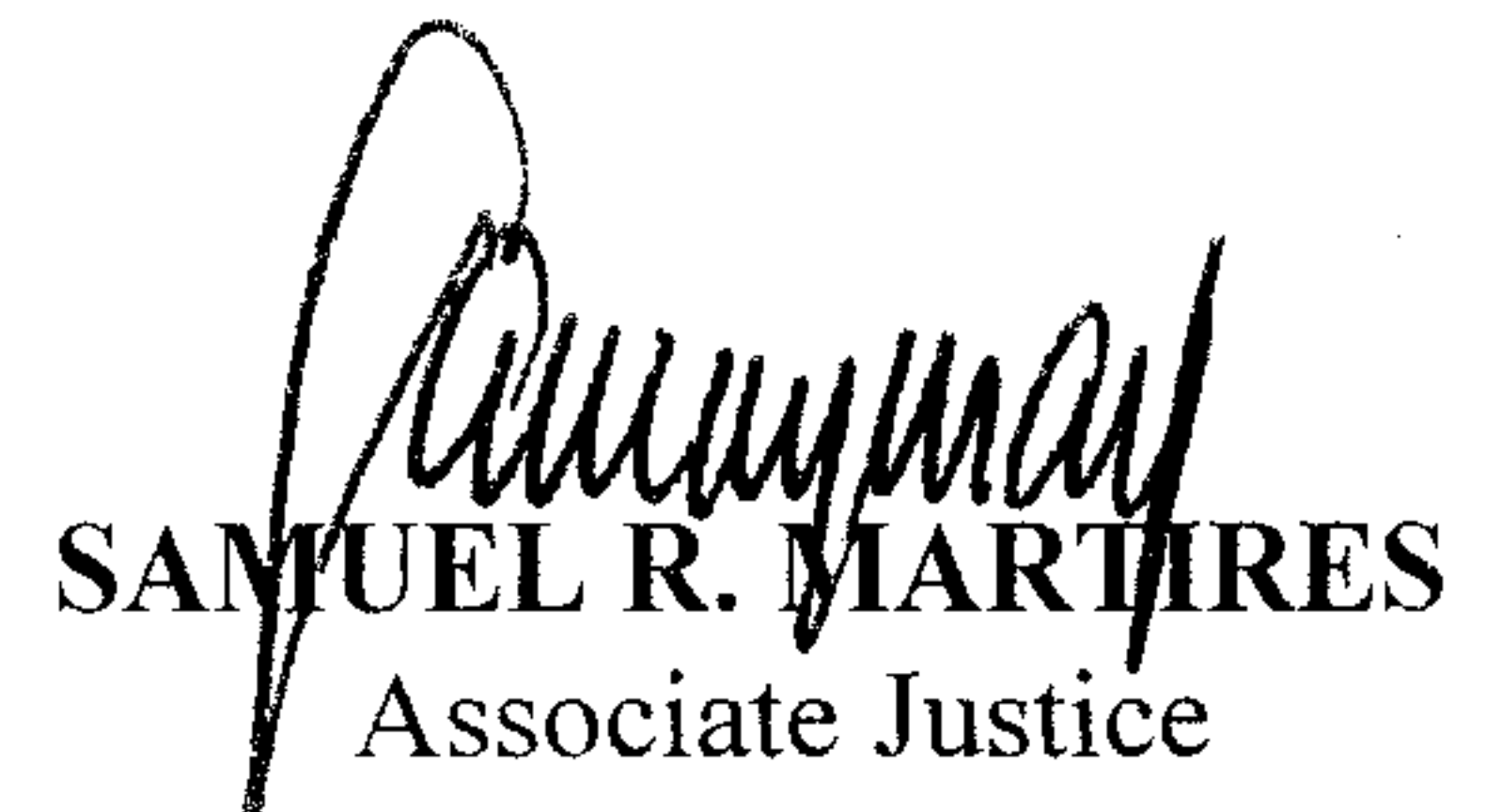
¹³ G.R. No. 153843, 14 February 2003, 397 SCRA 465.



ALEX L. QUIROZ
Associate Justice



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson



SAMUEL R. MARTIRES
Associate Justice