

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

**CRIM. CASE NO. 28362 to
28374**

*For: Violation of Section 3(e) of
Republic Act No. 3019*

- versus -

FELICIDAD B. ZURBANO,

Accused.

Present:

HERRERA, JR., J., Chairperson

MUSNGI, J., Associate Justice

PAHIMNA, J., Associate Justice

June 15, 2017

Promulgated

RESOLUTION

MUSNGI, J.:

The Court resolves the following:

1. *Very Urgent Motion for Reconsideration (On the Resolution promulgated by the Honorable Court on 21 February 2017)*¹ filed by the prosecution on 09 March 2017;
2. *Manifestation & Additional Comment/Opposition to Motion for Reconsideration dated March 8, 2017 [With prayer to admit]*² filed by accused Felicidad B. Zurbano (“Zurbano”) on 28 March 2017;
3. *Comment and/or Opposition (To Prosecution’s Very Urgent Motion for Reconsideration)*³ filed by accused Zurbano on 17 April 2017; and
4. *Reply (to the Manifestation & Additional Comment/Opposition To Motion for Reconsideration dated March 8, 2017 [With Prayer to*

¹ Sandiganbayan Records, Vol. 3, pp. 1166-1180.

² *Ibid.*, pp. 1187-1193.

³ *Ibid.*, pp. 1199-1209.

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Admit] dated March 25, 2017)⁴ filed by the prosecution on 17 April 2017;

5. *Prosecution's Supplemental Reply (to accused Felicidad Zurbano's another Comment and/or Opposition [to Prosecution's Very Urgent Motion for Reconsideration] dated 12 April 2017)*⁵ filed on 10 May 2017; and
6. *Rejoinder (To Prosecution's Reply)*⁶ filed by accused Zurbano on 12 May 2017.

The prosecution moves for reconsideration of the Court's *Resolution*⁷ dated 21 February 2017, which reversed and set aside the judgment of conviction rendered in the *Decision*⁸ promulgated on 12 April 2016. The dispositive portion thereof reads, thus:

“WHEREFORE, in light of the foregoing, the *Motion for Reconsideration* and *Supplemental Motion for Reconsideration* filed by accused Felicidad B. Zurbano are hereby **GRANTED**. The accused is hereby **ACQUITTED** of the offenses charged. The property or cash bonds posted by the accused for her provisional liberty is ordered returned, subject to the usual accounting and auditing procedures.’

‘SO ORDERED.’

Essentially, the prosecution imputes error on the part of the Court in acquitting accused Zurbano based on its asserted failure to appreciate the existence of the second element of a violation of Section 3(h) of Republic Act No. 3019 (“**R.A. No. 3019**”), and makes the following assignments of error:

1. “Error in the application of the second element of the violation of Section 3 (h) of R.A. 3019, as amended, *vis-à-vis* the facts and circumstances obtaining in these thirteen cases;’
2. ‘Evident failure on the part of the Honorable Court to reasonably distinguish and differentiate between the modes or means by which the second element of aforesaid law could be committed, that is, **either** by having DIRECT *or* INDIRECT financial or pecuniary interest;’

⁴ *Ibid.*, pp. 1210-1218.

⁵ *Ibid.*, pp. 1223-1230.

⁶ *Ibid.*, pp. 1237-1240.

⁷ *Ibid.*, pp. 1152-1159.

⁸ *Ibid.*, pp. 997-1042.

Conf *QJM*

3. 'Erroneous imputation by the Honorable Court of the alleged failure on the part of the prosecution to prove the second element of DIRECT financial or pecuniary interest, when, in fact, what had been clearly alleged in common in the **thirteen (13) informations** is INDIRECT financial or pecuniary interest;'
4. 'Error in the application in these cases of the ruling of the Honorable Supreme Court in *Jaime H. Domingo vs. Sandiganbayan, et al.*,⁹ which particularly refers to the commission of Section 3 (h) of R.A. 3019 by a public officer **DIRECTLY** having financial or pecuniary interest in government transactions;' and
5. 'Error in not applying in these cases the ruling of the High Court in the case of *Republic vs. Tuvera, et al.*,¹⁰ which particularly refers to the commission of Section 3 (h) of R.A. 3019 by a public officer **INDIRECTLY** having financial and pecuniary interest in government transactions.'

Ruling

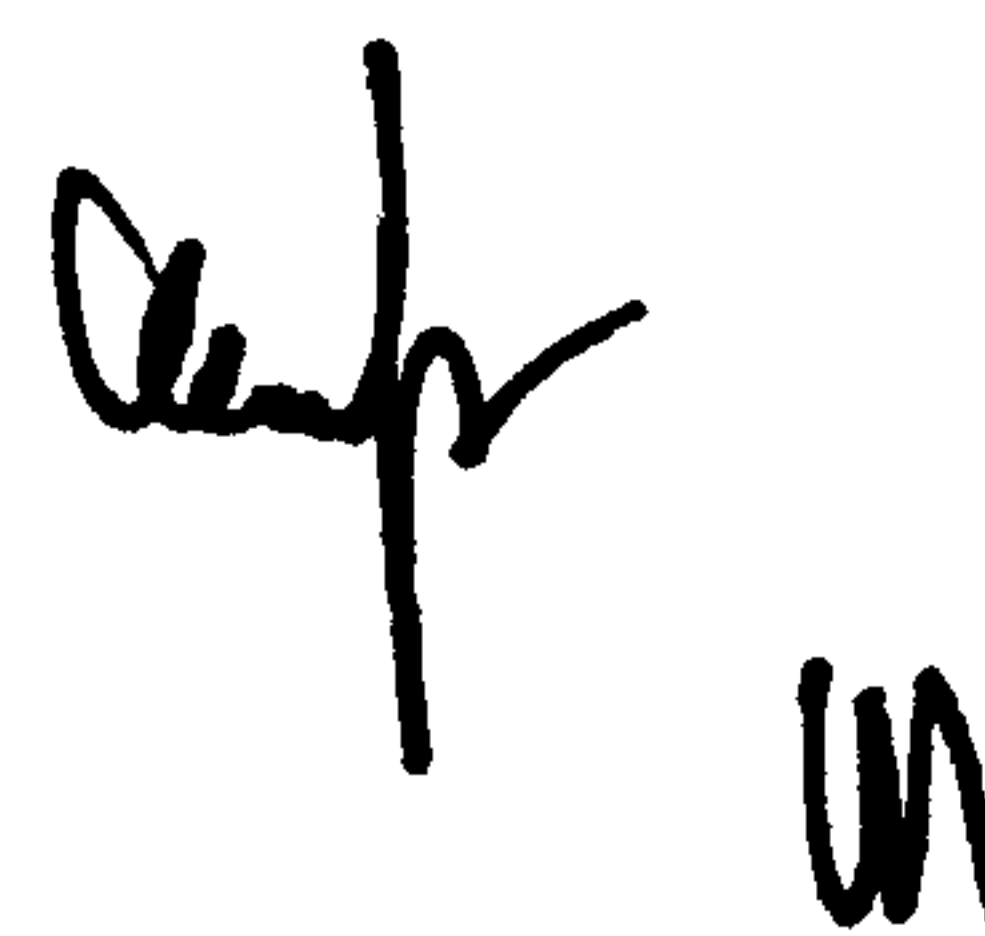
The instant motion is denied for lack of merit.

A careful perusal of the prosecution's *Motion* as well as the records of the case shows that there are no cogent reasons to set aside the Court's *Resolution* dated 21 February 2017.

The Court finds no error in the appreciation of the second element of a violation of Section 3(h) of R.A. No. 3019 in this case. Undoubtedly, the thirteen (13) *Informations* charge accused Zurbano with having "an indirect financial or pecuniary interest in the contract with CDZ Enterprises." Nevertheless, contrary to the prosecution's assertion, there is no confusion in the distinction between the two (2) means by which the second element of the offense charged may be committed. In finding that the prosecution failed to prove beyond reasonable doubt all the elements of a violation of Section 3(h) of R.A. No. 3019, the Court pronounced in its assailed *Resolution*, thus:

⁹ G.R. No. 149175, 25 October 2005.

¹⁰ G.R. No. 148246, 16 February 2007.

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“x x x”

‘Indeed, the accused personally intervened in the procurement of office supplies in order to ensure that her sister, who was the sole proprietor of CDZ Enterprises, would be granted the contracts. The accused also admitted that CDZ Enterprises became a supplier of TESDA-Cavite only during her incumbency as Provincial Director. Therefore, it appears that the accused took advantage of her position and used her knowledge of the prices of the other suppliers to safeguard the bid of CDZ Enterprises. Since CDZ Enterprises would end up with the lowest prices for the supplies, then the BAC will eventually grant the contracts to said company. Nonetheless, Section 3(h) of R.A. No. 3019 primarily requires the existence of a direct or pecuniary interest on the part of the accused on the contracts with CDZ Enterprises to which she intervened in. unfortunately, the prosecution failed to show how the accused is connected with CDZ Enterprises or how this intervention led to her acquisition of any financial interest or benefit.’

‘Moreover, even if the accused’s driver was ordered by the accused to collect and follow up on the checks of CDZ Enterprises with the Financial Analyst of TESDA-Cavite and that the checks were then physically turned over to the accused, the checks were still under the name of CDZ Enterprises. The prosecution did not present any other evidence that would link the accused to CDZ Enterprises. The totality of evidence and circumstances fails to convince this Court that the accused has direct or indirect pecuniary interest in the subject contracts.’

‘x x x’

‘In view of the foregoing, it is apparent that the prosecution failed to prove beyond reasonable doubt all the elements of the crime charged. The documentary and testimonial evidence presented by the prosecution failed to prove with moral certainty that the accused public officer has direct or indirect pecuniary interest in the subject contracts to which she intervened in. x x x...” (emphasis supplied)

Evidently, it has been categorically ruled that the prosecution failed to prove the direct or indirect pecuniary interest of accused Zurbano in the subject contract of this case. Hence, the Court did not unreasonably search from the evidence of the prosecution proof of the second element of direct financial and pecuniary interest only.

More importantly, a reconsideration of the Court’s *Resolution* acquitting accused Zurbano would constitute a violation of the constitutional proscription against double jeopardy. All the elements of double jeopardy¹¹ are present in this case. First, the thirteen (13) *Informations* filed against the accused are sufficient in form and substance to sustain a conviction. Second,

¹¹ Sec. 7, Rule 117 of the Revised Rules of Criminal Procedure.

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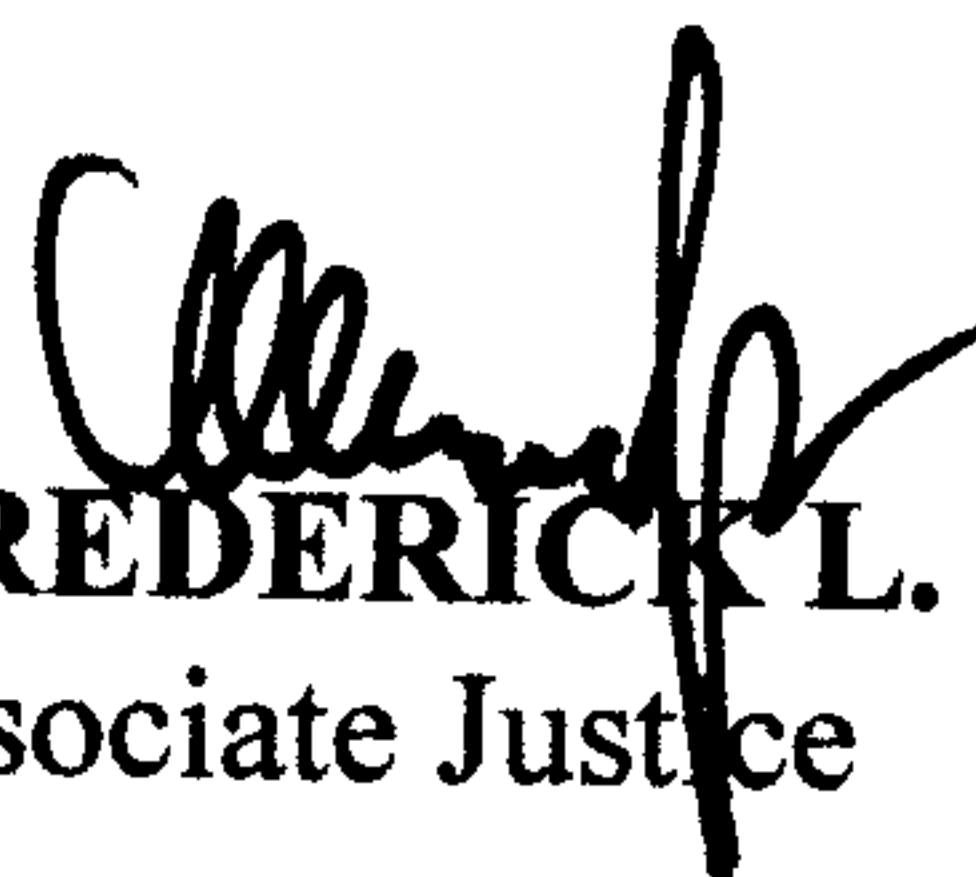
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the Court has jurisdiction over the instant case. Third, accused Zurbano entered a plea of not guilty upon arraignment on 13 July 2006. Lastly, the accused was acquitted for failure of the prosecution to prove beyond reasonable all the elements of the offense charged.

“In order to give life to the rule on double jeopardy, our rules on criminal proceedings require that a judgment of acquittal, whether ordered by the trial or appellate court, is final, unappealable, and immediately executory upon its promulgation. This is referred to as the ‘finality-of-acquittal’ rule.”¹²

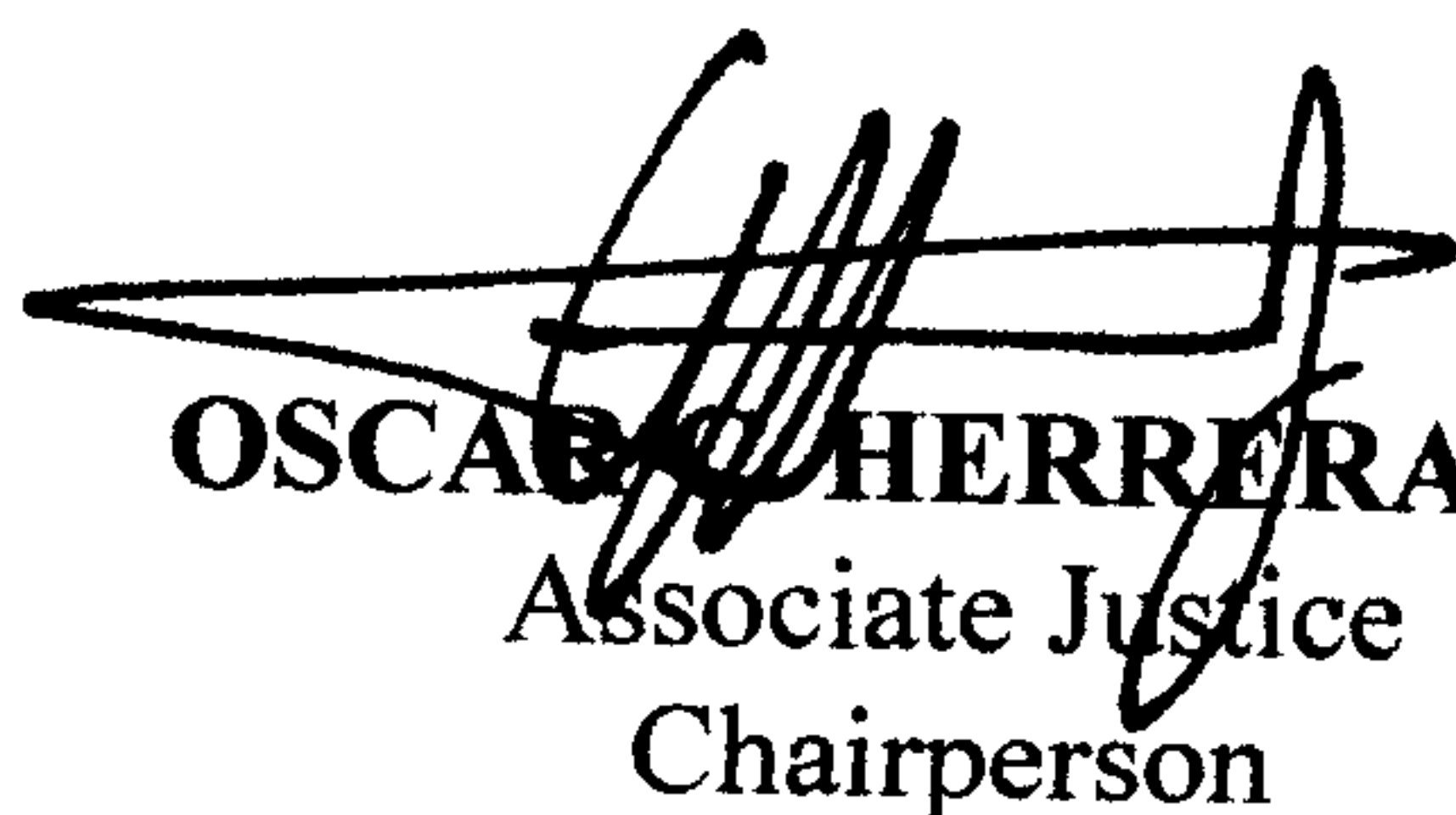
WHEREFORE, in light of the foregoing, the *Very Urgent Motion for Reconsideration (On the Resolution promulgated by the Honorable Court on 21 February 2017)* filed by the prosecution is hereby **DENIED** for lack of merit.

SO ORDERED.

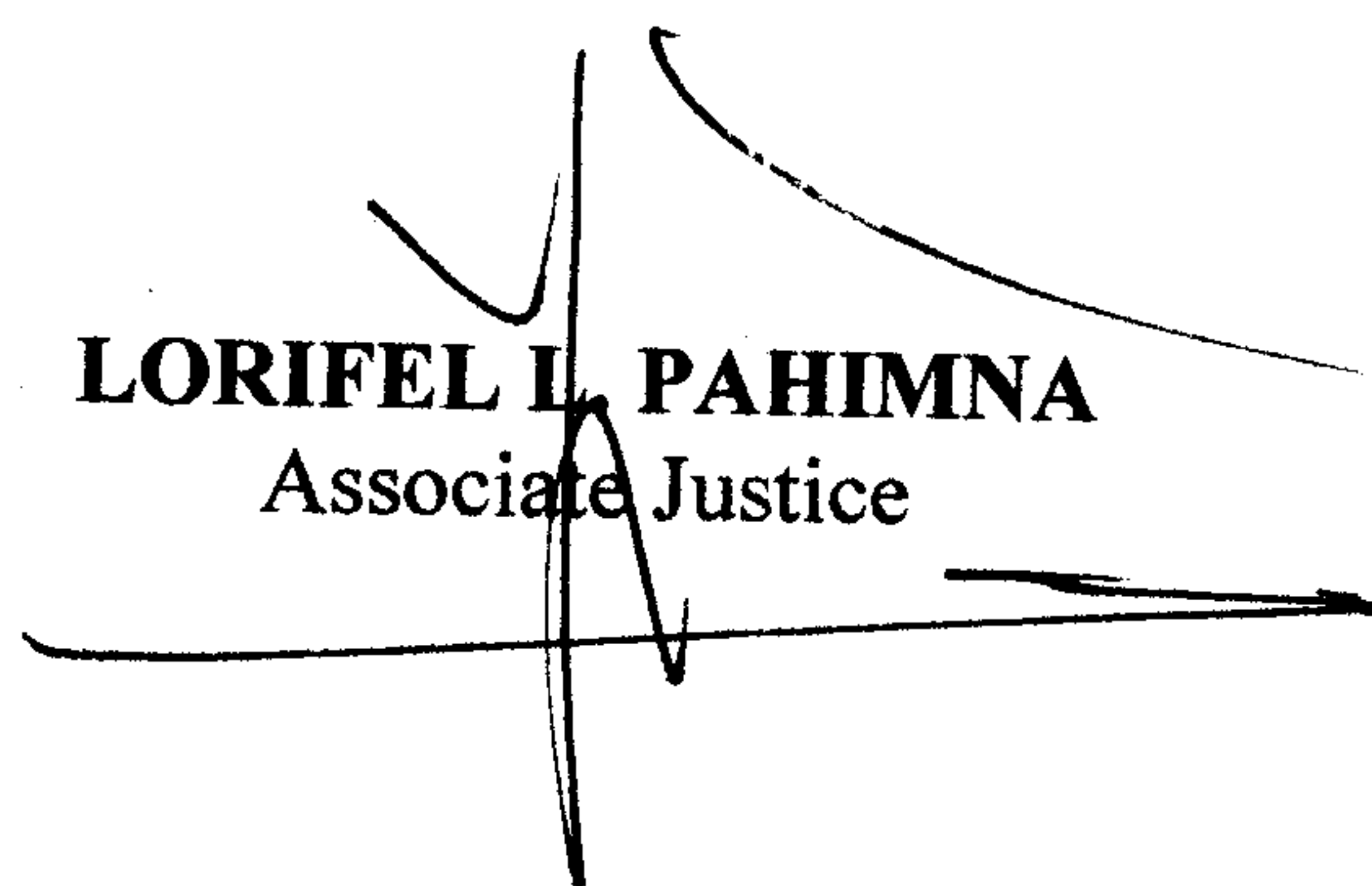


MICHAEL FREDERICK L. MUSNGI
Associate Justice

WE CONCUR:



OSCAR HERRERA, JR.
Associate Justice
Chairperson



LORIFEL I. PAHIMNA
Associate Justice

¹² Wilfred N. Chiok vs. People of the Philippines and Rufina Chua, G.R. No. 179814, 07 December 2017.