



**REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY**

**SPECIAL THIRD DIVISION**

**PEOPLE  
OF  
PHILIPPINES,**

**OF**

**THE**

**Plaintiff,**

**Criminal Case No. SB-17-  
CRM-2081**

For: Violation of Section 3(e) of  
Republic Act (R. A.) No. 3019,  
as amended

**-versus -**

**TOMASA LUGA GUARDO, et  
al.,**

**Accused.**

*Present:*

**CABOTAJE-TANG, PJ  
FERNANDEZ, B., J. and  
CORPUS-MAÑALAC.,<sup>1</sup> J.**

*Promulgated*

JULY 20, 2018 

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**RESOLUTION**

**CABOTAJE-TANG, P.J.:**

For resolution is the *Omnibus Motion (To Quash Information and To Defer Arraignment)* dated February 26, 2018, filed by accused Augusto M. Duero, Marilou C. Cosmiano, Ruben A. Liwagon, D.U. Pasco, George R. Arreza, Anita L.

<sup>1</sup> Sitting as a Special Member per Administrative Order No. 183--2018 dated April 4, 2018.



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Paradiang, Reynaldo A. Orpina, Marlyn R. Plaza, Luis A. Daano and Eutemio P. Urbiztondo.<sup>2</sup>

In their subject motion, the accused-movants pray for the quashal of the *Information* on the ground that the officer who filed the *Information* allegedly had no authority to do so. They also argue that the “undue injury” contemplated under Section 3(e) of R.A. No. 3019 is not attendant to this case.<sup>3</sup>

In support of their motion to quash Information, the accused-movants argue that the unexplained delay reckoned from the fact-finding investigation up to the filing of the Information in Court constitutes a violation of their right to a speedy disposition of cases guaranteed by the constitution.<sup>4</sup> They make the following claims:<sup>5</sup>

5.5c The incidents subject of this case transpired way back in 2005, when the accused-movants were still under the employ of the Municipality of Cantilan, Surigao del Sur. The initial investigation was commenced by the Commission on Audit (COA) with the issuance of its Audit Observation Memorandum on 30 June 2005. The resultant COA Decision was adopted by the Office of the Ombudsman in the filing of a complaint on 10 December 2012, that is, more than seven (7) years thereafter. Worse, it was finally disposed of indicting the accused-movants with the filing of the Information on 13 October 2017. There were no explanations proffered for the delay reckoned from the filing of the complaint up to the disposition of the case.

They argue that they cannot be faulted for the delay because after “the filing of their respective Counter-Affidavits, they have not played any participation in the process of Preliminary Investigation that may have been the cause of the delay.” They further assert that they were prejudiced by reason of this case because of the constant threat against their liberty; that they have to endure the hardship for several years since

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<sup>2</sup> pp. 262-305, Vol. II, Record

<sup>3</sup> pp. 1-5, Omnibus Motion; pp. 264-266, Vol. II, Record

<sup>4</sup> p. 14, Omnibus Motion; p. 275, Vol. II, Record

<sup>5</sup> p. 37, Omnibus Motion; p. 298, Vol. II, Record



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the Court is located far away from Surigao del Sur where they are based.<sup>6</sup>

The accused-movants likewise invoke their right to equal protection of the law and pray that the Information be quashed on the ground of inordinate delay similar to the dispositions made by the other Divisions of the court in cases which also involved the so-called "fertilizer scam."<sup>7</sup>

The accused-movants also argue that the Information is insufficient allegedly because there is no "undue injury" to speak of; hence, the quashal of the Information is warranted. According to the accused-movants, the amount of two hundred twenty thousand pesos (P220,000.00) alleged in the Information as the "undue injury" suffered by the government was lifted from the Decision of the Commission on Audit (COA) Central Office; and, that, it is settled jurisprudence that undue injury is interpreted as actual damage. However, based on the said COA's Decision, the amount of P220,000.00 was not the actual amount. It was only an estimate made by the COA because it was not able to obtain any price data for a tractor of similar specifications subject of the Information:<sup>8</sup>

Consequently, the Commission Proper, this Commission directed the Technical Service Office (TSO), Special Service Sector, this Commission, to evaluate the price of the delivered tractor. However, the TSO was not able to obtain any price data for a farm tractor of similar specifications. The only price it obtained for a farm tractor was P2,499,750.00 which is higher that the purchase price of P2,200,000.00 in the herein case.

For this reason, the allowable price variance of ten percent (10%) may be applied by analogy in the herein case. Hence, the Municipality should pay Golden Harvest the amount of P1,9800,000.00 (P2,200,000.00 less 10% allowance price variance of P220,000.00.<sup>9</sup>

<sup>6</sup> pp. 37-38, Omnibus Motion; pp. 298-299, Vol. II, Record

<sup>7</sup> pp. 30-35, Omnibus Motion; pp. 291-296, Vol. II, Record

<sup>8</sup> pp. 22-29, Omnibus Motion; pp 283-290, Vol. II, Record

<sup>9</sup> emphasis theirs



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The accused-movants further assert that the 10% variance is applicable only to infrastructure contracts and that the 10% threshold variance has long been superseded by COA Resolution No. 2015-014.<sup>10</sup>

Finally, they maintain that at the time of the public bidding for the acquisition of 65hp farm tractor, there were no trainings and seminars held regarding R.A. No. 9184. Thus, they claim that it is unfair that they are being charged with violation of the provisions of the said Act. Their mistake allegedly lies in the construction and application of a newly-enacted law which are beyond their competence; hence, the same is an exception to the legal maxim that ignorance of the law excuses no one from compliance therewith. They conclude then that such mistake of fact or excusable neglect negates any criminal liability on their part.<sup>11</sup>

The prosecution filed its Motion for Leave of Court to Admit Opposition. According to the prosecution, it filed a motion for an extension of three (3) days from April 2, 2018 within which to file its opposition or comment on the subject motion. However, the Court has not yet ruled on the said motion for extension of time.<sup>12</sup>

In its Minute Resolution dated April 6, 2018, the Court granted the motion to admit and admitted the attached opposition.<sup>13</sup>

The prosecution argues that the chronology of events prior to the filing of the Information shows that there was no inordinate delay. The delay, if any, was necessary to afford the accused-movants the full opportunity to ventilate their defenses; it was occasioned by the steady stream of cases being handled by the Office of the Ombudsman as well as the complexity and sensitivity of this case. The prosecution points out that the accused-movants did not assert their right to speedy disposition of cases during the preliminary investigation.<sup>14</sup>

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<sup>10</sup> pp. 27-29, Omnibus Motion; pp. 288-290, Vol. II, Record

<sup>11</sup> pp. 38-40, Omnibus Motion; pp. 299-301, Vol. II, Record

<sup>12</sup> pp. 495-497, Vol. II, Record

<sup>13</sup> p. 322, Vol. III, Record

<sup>14</sup> pp. 2-5, Opposition; pp. 499-502, Vol. II, Record

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Anent the issue on the alleged insufficiency of the Information, the prosecution claims that all the elements of violation of Section 3(e) of R.A. No. 3019 are clearly spelled out in the Information. The arguments of the accused-movants in assailing the sufficiency of the Information are evidentiary in nature that should be established in a full-blown trial.<sup>15</sup>

The prosecution further argues that the accused-movants' right to equal protection of the law was not violated. According to the prosecution, they simply compared this case to other cases disposed of in the other Divisions of the Court based on mathematical computation of the time that elapsed from the conduct of preliminary investigation. Citing several jurisprudence, it argues that mere mathematical reckoning of the time involved is not sufficient basis for dismissing a case on the ground of inordinate delay.<sup>16</sup>

**THE RULING OF THE COURT**

***I. There was no inordinate delay in the termination of the preliminary investigation in this case; hence, there was no violation of the accused-movants' right to speedy disposition of their case.***

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The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. For this reason, a balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial

<sup>15</sup> pp. 8-10, Opposition; pp. 505-507, Vol II, Record

<sup>16</sup> p. 12, Opposition; p; 509, Vol. II, Record



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cases on an *ad hoc* basis.<sup>17</sup> The conduct of both the prosecution and defendant are weighed *apropos* the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however, is either a necessary or sufficient condition. They are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.<sup>18</sup>

Applying the balancing test, the Court finds that the accused-movants' right to a speedy disposition of their case was not violated.

In its opposition, the prosecution enumerates the chronology of events that transpired prior to the filing of the Information on October 13, 2017, to wit:

- January 27, 2006 - The Commission on Audit (COA) issued RLA Decision 2006-001
- August 3, 2007 - The COA issued LAS -Local Decision No. 2007-126
- March 24, 2011 - The Field Investigation Office (FIO) issued a *subpoena duces tecum* to the COA to submit documents
- August 2, 2012 - The COA Central Office rendered a Decision
- March 5, 2013 - The Field Investigation Office (FIO) filed a complaint with the Office of the Deputy Ombudsman for Luzon.
- April 17, 2013 - The OMB-Luzon issued an Order to all accused to file their respective counter-affidavits.
- May to July 2013 - Except for accused Sy, who failed to receive the aforesaid Order, all the

<sup>17</sup> *Almeda vs. Office of the Ombudsman (Mindanao)*, 798 SCRA 131 (2016)

<sup>18</sup> *Spouses Uy vs. Adriano*, 505 SCRA 625 (2006)



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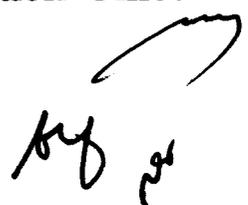
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- accused filed their respective counter-affidavits.
- March 2015 - Except for accused Sy, the accused filed their respective position papers in the corresponding administrative case
  - May 27, 2016 - This case, then docketed as OMB-C-C-13-0059, was assigned to GIPO Joyrich Golangco.
  - August 31, 2016 - GIPO Golangco prepared the OMB Resolution.
  - January 26, 2017 - The Ombudsman approved OMB Resolution dated August 31, 2016.
  - April 5, 2017 - Accused Ronaldo Gruyal filed a motion for reconsideration of the aforesaid OMB Resolution.
  - July 5, 2017 - GIPO Golangco prepared the Order denying accused Gruyal's motion for reconsideration.
  - August 1, 2017 - The Ombudsman approved the Order dated July 5, 2017 denying accused Gruyal's motion for reconsideration.
  - October 13, 2017 - The Information was filed with the Sandiganbayan.

The above chronology of events shows that the preliminary investigation in this case was terminated after more than four (4) years, reckoned from the time the complaint was filed by the Field Investigation Office (FIO) on March 5, 2013, until the Information was filed with the Court on October 13, 2017.

It also appears from the documents attached to the Resolution dated August 31, 2016, issued by the Office of the Ombudsman, that the fact-finding investigation started on March 24, 2011, the date when the Field Investigation Office



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issued a *subpoena duces tecum* against the Regional Director of the Commission on Audit (COA). The *subpoena* was in connection with the P5 million fund allocation for the 1<sup>st</sup> District of Surigao del Sur, particularly in the Municipality of Cantillan, which was derived from the P728 Million fertilizer fund of the *Ginintuang Masaganang Ani* (GMA) program of the Department of Agriculture for the purchase of farm inputs and implements.<sup>19</sup>

The mere fact that it took the Office of the Ombudsman more than six (6) years to conclude the preliminary investigation, including the fact-finding investigation, does not automatically amount to a violation of the accused-movants' right to a speedy disposition of their case. To repeat, the concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.<sup>20</sup>

Also, the concept of speedy disposition is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.<sup>21</sup>

Here, the preliminary investigation involved fifteen (15) respondents. There were five (5) separate counter-affidavits filed by the respondents from May 2013 to June 2013.<sup>22</sup> The respondents were also allowed to file their respective position papers. Necessarily, these counter-affidavits, together with the complaint and several documents attached thereto,<sup>23</sup> had to be examined and studied by the Graft Investigator.

After the investigation, the Office of the Ombudsman issued a Resolution dated August 31, 2016, finding probable cause to indict thirteen (13) accused for violation of Section 3(e) of R. A. No. 3019, and dismissed the case against Rodriguez for lack of merit, and against Miranda by reason of death. On April 5, 2017, accused Ronaldo Gruyal filed a motion for

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<sup>19</sup> pp. 111-112, Vol. 1, Record

<sup>20</sup> *Almeda vs. Office of the Ombudsman (Mindanao)*, *supra* note 21

<sup>21</sup> *Caballero vs. Alfonso, Jr.*, 153 SCRA 153 (1987)

<sup>22</sup> pp. 7-8, Resolution dated August 31, 2016; pp. 25-26, Record

<sup>23</sup> pp. 35-310, Vol. 1, Record



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reconsideration of the said resolution. The same was denied by the Office of the Ombudsman in its Order dated July 5, 2017.

Notably, the Resolution and the Order issued by the Office of the Ombudsman went through different levels of review. The Graft Investigator submitted the resolution and/or order to the team leader for review, then to the Deputy Ombudsman for recommendation, and, finally to the Ombudsman for approval or disapproval. The number of the accused involved, the documents to be examined and the different levels of review that the case underwent certainly contributed to the "delay" in terminating the preliminary investigation.

Under the obtaining facts, the Court finds that the delay in the termination of the preliminary investigation was not unreasonable or oppressive. The chronology of events shows that the accused were merely given ample opportunity to ventilate their defenses in the interest of justice. There is no showing that the prosecution deliberately delayed the proceedings to gain an advantage or for other impermissible reasons. The delay was reasonable being part of the ordinary processes of justice as the prosecution correctly points out:<sup>24</sup>

First, the delay, if there was any, was necessary to afford the accused in this case the full opportunity to clearly and exhaustively ventilate their defenses in observance of the due process clause. In fact, they were still afforded the opportunity to submit their respective position papers to which they did so sometime in March 2015. They were also given the chance to file motion for reconsideration to which accused Ronaldo Gruyal has filed one on April 5, 2017. And to be fair, the Office of the Ombudsman also waited for reasonable time for complainant FIO to respond to the said motion for reconsideration of accused Gruyal before the same motion was submitted for resolution.

Further, the accused-movants did not assert their right to a speedy disposition of cases during the preliminary investigation.

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<sup>24</sup> at p. 3, Opposition; p. 776, Vol. 1, Record 

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Jurisprudence instructs that the assertion of the right to a speedy trial is entitled to strong evidentiary weight in determining whether defendant is being deprived thereof. Failure to claim the right will make it difficult to prove that there was a denial of a speedy trial.<sup>25</sup> In this case, it is only now that the accused-movants are asserting their right to speedy disposition of cases.

Concededly, the Supreme Court has also ruled that it is not the duty of a respondent/accused to follow-up his or her case in a preliminary investigation proceeding. However, the High Court has similarly held that the right to speedy disposition of cases may be considered waived if not promptly invoked. Thus:

The right to a speedy trial, as well as other rights conferred by the Constitution or statute, may be waived except when otherwise expressly provided by law. **One's right to the speedy disposition of his case must therefore be asserted. Due to the failure of petitioner to assert this right, he is considered to have waived it.**<sup>26</sup>

The concept of "prejudice" as one of the factors to be considered and balanced in determining whether there is a violation of the right to speedy disposition of cases was explained in **Perez vs. People**,<sup>27</sup> as follows:

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to

<sup>25</sup> Spouses Uy vs. Adriano, *supra* note 17

<sup>26</sup> **Barcelona vs. Lim**, 724 SCRA 433 (2014); emphasis supplied

<sup>27</sup> 544 SCRA 532 (2008), citing *Barker vs. Wingo*, 407 US 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972)

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prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.

In this case, it cannot be said that the accused-movants were unduly prejudiced by the "delay" given the fact that they immediately posted bail bond upon the filing of the cases.<sup>28</sup>

On the other hand, anxiety, stress and expenses accompany criminal charges. However, anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge to be a ground to decry a violation of the right to speedy disposition of cases.<sup>29</sup> There is no affirmative showing of the obtainment of this circumstance in the case of the accused-movants.

**II. The Information sufficiently alleges all the elements of violation of Section 3(e) of R. A. No. 3019; hence, there is no ground to quash the same.**

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The accused-movants challenge the sufficiency of the Information on the ground that that the amount of undue injury alleged in the Information is not an actual amount but merely an estimate made by the COA. Thus, they argue that the Information should be quashed allegedly because of the absence of the element of "undue injury."

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<sup>28</sup> pp. 36-187, Vol. II, Record

<sup>29</sup> Separate Concurring Opinion of Justice Josue N. Bellosillo in *People vs. Lacson*, 400 SCRA 267 (2003)



The Court finds the argument bereft of merit.

A motion to quash information is the mode by which an accused assails the validity of a criminal complaint or information filed against him for insufficiency on its face in point of law, or for defects which are apparent in the face of the information. It is a hypothetical admission of the facts alleged in the information. The fundamental test in determining the sufficiency of the material averments in an Information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde* or matters extrinsic of the information are not to be considered.<sup>30</sup>

Here, the element of “undue injury” is alleged in the Information as follows: “*thereby causing undue injury to the government in the amount of Two Hundred and Twenty Thousand Pesos (PhP220,000.00).*”

The issue on whether the said amount is correct is an evidentiary matter that can only be established at the trial. Section 6, Rule 110 of the Rules of Criminal Procedure requires, the Information to state only the ultimate facts; the evidentiary and other details can be provided during the trial.<sup>31</sup>

At any rate, the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. It is not proper, therefore, to resolve the issue right at the outset without the benefit of a full-blown trial. This issue requires a fuller ventilation and examination.<sup>32</sup>

**III. The accused-movants’ invocation of their right to equal protection of the law as a ground to dismiss this case is misplaced.**

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<sup>30</sup> People vs. Odtuhan, 701 SCRA 506 (2013)

<sup>31</sup> People vs. Romualdez, 559 SCRA 492 (2008)

<sup>32</sup> Braza vs. Sandiganbayan, 691 SCRA 471 (2013)



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Invoking their right to equal protection of the law, the accused-movants pray that they be accorded similar treatment to those charged with the same and similar offenses where the different Divisions of the Court dismissed the cases against them on account of inordinate delay.

The Court finds the argument bereft of merit.

Equal protection simply provides that all persons or things similarly situated should be treated in a similar manner, both as to rights conferred and responsibilities imposed.<sup>33</sup>

While the accused-movants allege that the said cases, which were dismissed by the other Divisions of the Court on the ground of inordinate delay, involved also the so-called "fertilizer scam," still the circumstances in each case are different. It must be stressed that in determining whether there is a violation of the right to speedy disposition of a case, the peculiar circumstances in each case must be considered. For this reason, a balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.<sup>34</sup>

Moreover, and as the prosecution correctly claims, the accused-movants merely compared this case with the alleged cases dismissed by the other Divisions on the ground of inordinate delay based on a simple computation of the time involved. It is well-settled that the concept of speedy disposition of cases is relative or flexible. A simple mathematical computation of the time involved is insufficient. The facts and circumstances peculiar to each case must be examined.<sup>35</sup>

Furthermore, the Sandiganbayan functions in Divisions of three (3) Justices each and each Division functions independently of the other.<sup>36</sup> The Supreme Court had the occasion to declare that while a ruling of a particular division of the Court of Appeals may be taken cognizance of in some cases, it cannot bind or prejudice a ruling of another division thereof, the former being a co-ordinate authority.<sup>37</sup> Applying this ruling

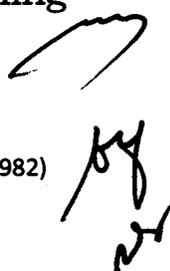
<sup>33</sup> *Ocampo vs. Enriquez*, 807 SCRA 223 (2016)

<sup>34</sup> *Almeda vs. Office of the Ombudsman (Mindanao)*, 798 SCRA 131 (2016)

<sup>35</sup> *Tilendo vs. Ombudsman*, 533 SCRA 331 (2007)

<sup>36</sup> *Preagido vs. Sandiganbayan*, 476 SCRA 143 (2005), citing *De Guzman vs. People*, 119 SCRA 337 (1982)

<sup>37</sup> *Francisco vs. Rojas*, 723 SCRA 423 (2014)



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by analogy to the Sandiganbayan, the rulings of the other divisions of this Court therefore have no binding force on this Division. Further, it must be stressed that the only judicial decisions that form part of our legal system are the decisions of the Supreme Court.<sup>38</sup>

**IV. The accused-movants cannot claim that they are not familiar with the Procurement Law.**

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The accused-movants are members of the Bids and Awards Committee and are local government officials. Because of their positions, they are expected to be aware of and familiar with the Procurement Law; hence, they cannot hide behind the cloak of lack of knowledge or familiarity with the said Law.

**WHEREFORE**, the Court **DENIES** the *Omnibus Motion (To Quash Information and To Defer Arraignment)* dated February 26, 2018, filed by accused Augusto M. Duero, Marilou C. Cosmiano, Ruben A. Liwag, D.U. Pasco, George R. Arreza, Anita L. Paradiang, Reynaldo A. Orpina, Marlyn R. Plaza, Luis A. Daano and Eutemio P. Urbiztondo, for lack of merit.

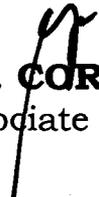
**SO ORDERED.**

Quezon City, Metro Manila.

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice  
Chairperson

**WE CONCUR:**

  
**BERNELITO R. FERNANDEZ**  
Associate Justice

  
**MARYANN E. CORPUS-MAÑALAC**  
Associate Justice

<sup>38</sup> Quasha Peña Ancheta & Nolasco Law Office vs. Court of Appeals, 607 SORA 712 (2009)