



REPUBLIC OF THE PHILIPPINES

*Sandiganbayan*

Quezon City

SIXTH DIVISION

**PEOPLE OF THE PHILIPPINES,** **SB-18-CRM-0428 and 0429**  
Plaintiff, For: Violation of Sec. 3(e)  
of R.A. No. 3019

- versus -

**MARCELINO C. LIBANAN,**  
**ET AL.,**

Accused.

*Present*

**FERNANDEZ, SJ, J.,**  
Chairperson  
**MIRANDA, J. and**  
**VIVERO, J.**

*Promulgated:*

**OCT 05 2020**

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**RESOLUTION**

**FERNANDEZ, SJ, J.**

This resolves the following:

1. *Motion for Reconsideration [Re: August 13, 2020 Resolution]*<sup>1</sup> filed by accused Marcelino C. Libanan and Jesus A. Agda;
2. *Motion for Reconsideration*<sup>2</sup> filed by accused Necitas A. Ponferrada;
3. *Motion for Reconsideration [of the Resolution dated August 13, 2020]*<sup>3</sup> filed by accused Ma. Vilma B. Bormate; and.

<sup>1</sup> Dated August 21, 2020 and filed by electronic mail on August 24, 2020

<sup>2</sup> Dated August 23, 2020 and filed by electronic mail on August 24, 2020

<sup>3</sup> Dated August 24, 2020 and filed by electronic mail on August 25, 2020

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4. The prosecution's *Consolidated Comment/Opposition (To Accused Ponferrada's Motion for Reconsideration dated 23 August 2020, Accused Libanan and Agda's Motion for Reconsideration dated 21 August 2020, and Accused Bormate's Motion for Reconsideration dated 24 August 2020)*.<sup>4</sup>

In their *Motion for Reconsideration*, accused Libanan and Agda pray that they be given leave to submit their demurrer proper. They aver:

1. There should be an overt act that would justify the accused' inclusion in the charge of conspiracy.
2. The conspiracy should be proved beyond reasonable doubt.
3. As to accused Libanan:
  - a. The prosecution failed to prove any active participation on his part.
  - b. He was the incumbent Representative of the lone district of the province of Eastern Samar. His office was not part of the LGU of Eastern Samar.
  - c. Applying the *Arias* doctrine, his passive knowledge about the project, assuming he had any, is not sufficient to drag him into the prosecution's conspiracy theory.
4. As to accused Agda, the prosecution failed to support its contention that at the time material to the subject procurement, he was still connected with the LGU of Eastern Samar as Provincial Agriculturist, and that he participated in the bidding.

In her *Motion for Reconsideration*, accused Ponferrada similarly prays that the Court give another look at her request for leave to file her Demurrer, and that she be granted leave to file the same. She avers:

1. She is not being charged with Estafa thru Falsification of Official/Public Documents, as erroneously stated in the assailed Resolution.
2. The prosecution's evidence is grossly insufficient to establish a *prima facie* case of violation of R.A. No. 3019

<sup>4</sup> Dated August 29, 2020 and filed by electronic mail on September 1, 2020

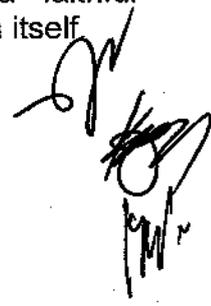
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3. The second element of Violation of Sec. 3(e) of R.A. No. 3019 is conspicuously absent insofar as she is concerned.
4. The prosecution failed to present even an iota of evidence to prove that she acted with a predisposition towards AKAME. Neither did it show any dishonest or conscious wrongdoing, nor any willful and intentional indifference to consequences on her part.
5. The prosecution's witnesses identified the pieces of documentary evidence. However, said documents do not prove manifest partiality, evident bad faith or gross inexcusable negligence.
6. Granting leave to file a Demurrer may inadvertently result in a temporary reprieve in the settings for the reception of the defense's evidence, but it does not equate to accomplishing nothing but delay. On the contrary, it will give the accused the opportunity to prove and argue that the prosecution's evidence is insufficient to convict the accused.
  - a. In its Motion dated July 9, 2020, the prosecution sought for a postponement of the hearings in the present cases on the grounds of the serious threat of the COVID-19 virus, and OMB Office Circular No. 13 Series of 2020 directing the filing of motions for cancellation of hearings.
  - b. Practically all defense witnesses are from Region VIII. Travel restrictions and the suspension of in-court hearings may result in some delay.
  - c. The resultant delay, if any, in the presentation of evidence for the defense may no longer be a matter of consequence, but of necessity.
7. Even if the Court considers the prosecution's documentary evidence, the incompleteness of the procurement documents subject of the audit is too glaring to be ignored.
  - a. The testimony of prosecution witness Lea C. Gargando would show that it is highly probable that exculpatory evidence was intentionally suppressed.
  - b. The 2006 COA Audit Report which was the basis for the complaint has not been established as a faithful reproduction of the original being incomplete in itself.



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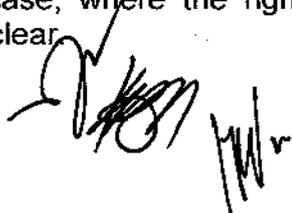
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8. The prosecution failed to prove the conspiracy among the accused.
  - a. There is no proof of bias, fraud, or neglect on her part when she signed the BAC Resolution and Notice of Award. Such acts were merely recommendatory.
  - b. The Court must apply the ruling in *Ingco v. Sandiganbayan*, wherein it was held that the role of therein vice president was confined to evaluation and study, and thereafter, making a recommendation.
9. Even assuming that there was partiality, bad faith, or negligence, it was not shown that the same was manifest, evident, or grossly inexcusable.
10. An accused enjoys the constitutional right to be presumed innocent. Hence, the prosecution must rely on the strength of its own evidence, and not on the weakness of the defense.

In her *Motion for Reconsideration*, accused Bormate prays that her Motion be granted, and that she be allowed to file a demurrer to evidence with leave, in accordance with Sec. 23, Rule 119 of the Rules of Criminal Procedure. She avers:

1. The assailed Resolution denying her Motion for Leave did not state the facts and law upon which it was based.
  - a. Although the grant or denial of a demurrer to evidence is left to the sound discretion of the Court, the assailed Resolution should have discussed the facts and the law on which it is based, considering that it involves a determination of the accused' rights and purported criminal liability.
  - b. When an accused has successfully proved that the prosecution has failed to prove the crime charged, there remains no reason to hold said accused for trial. Instead of prolonging the proceedings, it will necessarily truncate and abbreviate the same.
  - c. The accused has the right to be protected against a hasty and oppressive prosecution, and the right to be spared from the trouble, expenses and anxiety of a public trial. The State must also be spared of the unnecessary expenses and resources to be devoted in litigating a case, where the right of an accused to a demurrer is clear.



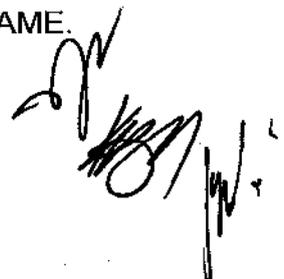
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- d. In *Bernardo v. Court of Appeals*, the rationale behind the denial of the motion for leave to file demurrer was discussed in open court. It was clear that the motion for leave was merely dilatory.
  - e. Similar to a demurrer to evidence, a motion for leave to file a demurrer is an objection and challenge by the accused to the sufficiency of the evidence presented by the prosecution. The Court must resolve the issue of whether there is sufficient evidence to support a guilty verdict.
2. The prosecution's evidence is insufficient to show that the accused violated Sec. 3(e) of R.A. No. 3019.
    - a. The prosecution failed to prove that the resort to direct contracting was highly irregular. Its evidence would also show that both AKAME and NBEM-21 were accredited and registered with the FPA.
    - b. The prosecution failed to present any document or competent witness with personal knowledge to substantiate the alleged irregularities.
      - i. The prosecution's documentary evidence would, at most, prove (a) the fact of procurement; (b) that the procurement underwent a process; and (c) that the accused made a determination that AKAME is the exclusive distributor of NBEM-21.
      - ii. The testimonies of the resident COA auditors were limited to the custody and existence of the originals of the procurement documents. They did not testify on the alleged irregularities.
      - iii. The resident COA auditors did not issue any Audit Observation Memorandum (AOM) and/or Notice of Disallowance (ND) in relation to the subject procurement.
    - c. The prosecution's reliance on the COA Reports is misplaced because said reports are highly unreliable and inaccurate, as shown by the testimony of Ms. Teodora Pelotos, the COA Auditor who conducted the investigation and issued said reports.
    - d. The prosecution failed to prove that the accused extended unwarranted benefits in favor of AKAME.



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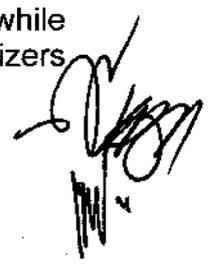
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- i. Contrary to the allegation in the Information, AKAME is duly accredited with the FPA.
- ii. The prosecution also failed to show that she was remiss in her duties as BAC Chairperson for choosing to award the contract to AKAME.
- e. There is no evidence to show the undue injury caused to the government.
  - i. The fertilizers were delivered and duly received.
  - ii. There is no credible evidence that an alternative of the same nature and quality was available for a cheaper amount.

In its *Consolidated Comment/Opposition*, the prosecution counters:

1. Accused Ponferrada's Motion for Reconsideration:
  - a. Accused Ponferrada's role as member of the BAC was not confined to making recommendations. She had the responsibility of ensuring that the procuring entity abides by the standards set forth in R.A. No. 9184 and its Implementing Rules and Regulations (IRR).
  - b. The exceptional recourse to any of the alternative methods of procurement must be justified based on the provisions of the law. The act of recommending the use of any of the alternative methods of procurement carries with it the duty to justify the same.
    - i. Accused Ponferrada and the other accused BAC members recommended the procurement of NBEM-21 fertilizers from AKAME through direct contracting, on the basis that AKAME was the exclusive distributor of NBEM-21 fertilizers.
    - ii. It turned out that AKAME was not the exclusive distributor of NBEM-21 fertilizers.
    - iii. NBEM-21 Activator and NBEM-21 Organic Fertilizer were registered under J.P. BYM Food Mix Co.
    - iv. The evidence would show that J.P. BYM Food Mix Co. was licensed to sell NBEM-21 Activator and NBEM-21 Organic Fertilizer nationwide, while AKAME was licensed to distribute and sell fertilizers



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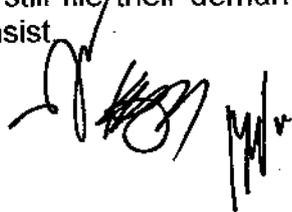
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only within Region X. It was not authorized to sell and/or distribute fertilizers in Region VIII.

- c. The prosecution did not suppress exculpatory evidence.
  - i. The exhibits offered by the prosecution consist of public documents secured from legal custodians of the concerned government agencies. The accused may secure copies of the same, and compel the appearance of the custodians to testify as their own witnesses.
  - ii. Accused Ponferrada did not even specify which exculpatory evidence was suppressed. If such evidence exists, she has the burden to present the same.
  - iii. The prosecution has the prerogative to choose the evidence or witness it wishes to present. The decision on which pieces of evidence to present cannot be dictated by the accused or by the trial court.
- d. The prosecution was able to prove conspiracy.
  - i. The accused' combined acts are so interrelated and irregularly performed that any reasonable person will conclude that their acts were concerted for the common purpose of awarding the contracts for the procurement of NBEM-21 fertilizers to AKAME, and implementing the same without public bidding, and without any legal basis for an alternative mode of procurement.
  - ii. The BAC facilitated the award of the procurement contract to AKAME when it recommended the purchase of NBEM-21 fertilizers to AKAME.
- e. The power to grant leave of court to the accused to file a demurrer to evidence is addressed to the sound discretion of the trial court, for the purpose of determining whether the accused is merely stalling the proceedings.
- f. The Court determined that granting the accused leave to file their demurrer to evidence will merely delay the proceedings. They were not deprived of the opportunity to prove the insufficiency of the prosecution's evidence because they may still file their demurrer without leave of court if they so insist.

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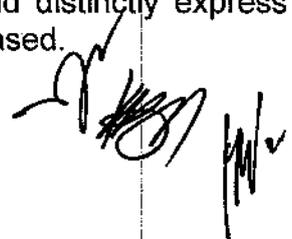
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### 2. Accused Libanan and Agda's Motion for Reconsideration

- a. The *Arias* doctrine does not apply for accused Libanan. He had knowledge of the questioned procurement of fertilizers. He also had direct participation in its implementation.
  - i. As the proponent of the Farm Inputs Farm Implements (FIFI) Program of the Department of Agriculture (DA), he exercised control over, and was accountable for, the ₱5 million FIFI funds. He entered into a Memorandum of Agreement (MOA) with DA Region VIII and the LGU of the Province of Eastern Samar for the implementation of said program. He had the obligation to coordinate with DA Region VIII for the proper utilization of funds, and to assist in monitoring the progress of the project implementation.
  - ii. Accused Libanan, through Atty. Norman Tansiangco, prepared a request for the purchase of 3,332 sacks of NBEM Farm Inputs with an estimated cost of ₱5 million, which was later approved by accused Salazar.
  - iii. The BAC members, together with accused Agda, recommended the procurement of NBEM-21 fertilizers from AKAME through direct contracting. Accused Libanan and Salazar approved the recommendation.
  - iv. Accused Libanan and Salazar also approved the award of the contract to supply and deliver NBEM-21 fertilizers to AKAME.
- b. Accused Agda's claim that he was already retired and/or not a member of the BAC at the time of the questioned transaction is belied by the documents showing his signature. Moreover, it is a matter of defense which must be established during the presentation of his evidence.

### 3. Accused Bormate's Motion for Reconsideration

- a. The denial of a motion for leave to file demurrer to evidence is interlocutory in nature. The assailed Resolution need not clearly and distinctly express the facts and law on which it was based.



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- b. The other grounds cited by accused Bormate are mere reiterations of the points raised in her *Motion for Leave to File Demurrer*, and had already been considered and passed upon by the Court.

THE COURT'S RULING

The Court notes the error in the caption of the Resolution dated August 13, 2020, pointed out by accused Ponferrada, *i.e.*, that the crime charged was indicated as "Estafa thru Falsification of Official/Public Documents," instead of "Violation of Sec. 3(e) of R.A. No. 3019." Notwithstanding said clerical error, which was overlooked, it is clear from the body that the present cases are for Violation of Sec. 3(e) of R.A. No. 3019, there being no mention of "Estafa thru Falsification of Official/Public Documents."

The Court resolves to deny the respective *Motions for Reconsideration* of accused Libanan and Agda, accused Ponferrada, and accused Bormate.

First, on accused Bormate's contention that the factual and legal bases should have been clearly stated in the assailed Resolution. Sec. 14, Art. VIII of the Constitution reads:

**Section 14.** No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

(underscoring supplied)

A cursory reading of the aforequoted provision would show that the first paragraph, which requires that the facts and the law on which it is based be clearly and distinctly stated, pertains to decisions. It is apparent that the same does not apply to this Court's Resolution dated August 13, 2020 because it is not a decision.

In *Nicos Industrial Corporation v. Court of Appeals*,<sup>5</sup> the Supreme Court explained the rationale behind Sec. 14, Art. VIII of the

<sup>5</sup> G.R. No. 88709, February 11, 1992

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Constitution, and further clarified that said provision does not apply to interlocutory orders. Viz.:

It is a requirement of due process that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to a higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.

It is important to observe at this point that the constitutional provision does not apply to interlocutory orders, such as one granting a motion for postponement or quashing a subpoena, because it "refers only to decisions on the merits and not to orders of the trial court resolving incidental matters." x x x

(underscoring supplied)

In determining whether an order is interlocutory or final, the Supreme Court's discussion in *Aranas v. Mercado*<sup>6</sup> is instructive. To wit:

The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: does the order or judgment leave something to be done in the trial court with respect to the merits of the case? If it does, the order or judgment is interlocutory; otherwise, it is final.

Applying the test in *Aranas v. Mercado*, there is no question that the assailed Resolution is an interlocutory order.

As this Court held in said Resolution, in resolving motions for leave to file a demurrer to evidence, the Court only determines

<sup>6</sup> G.R. No. 156407, January 15, 2014

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whether the accused is merely stalling the proceedings—which the Court did after carefully examining the prosecution's evidence and the accused' arguments in their respective Motions. After denying the accused' respective Motions on the ground that granting them leave to file their demurrers will merely cause delay in the proceedings, this Court directed them to adduce evidence in their defense, or in the alternative, file their demurrers without leave of court. Only after the presentation of the accused' evidence or the filing of their respective demurrers without leave of court will the Court render its judgment on the merits in the present cases and dispose of the same. The assailed Resolution being an interlocutory order, Sec. 14, Art. VIII of the Constitution does not apply.

Next, accused Ponferrada's averment that granting the accused leave to file their demurrers to evidence will not unduly delay the proceedings because delay will necessarily result from the suspension of in-court proceedings, and from the prosecution's Motion seeking postponement of the hearings.

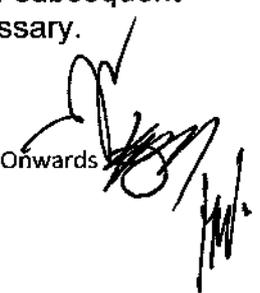
This Court must clarify that there is no blanket suspension of in-court proceedings. On the contrary, the Supreme Court, in Administrative Circular No. 45-2020<sup>7</sup> dated August 18, 2020, directed the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals, to conduct all hearings in-court, and under exceptional circumstances, through videoconference. Paragraph 6 of said Administrative Circular reads:

**COURT OF APPEALS, SANDIGANBAYAN,  
COURT OF TAX APPEALS**

x x x

6. The Court of Appeals, Sandiganbayan, and Court of Tax Appeals shall continue to resolve and decide cases pending before them. All hearings shall be fully in-court, except under exceptional circumstances where at least one Justice may join remotely through videoconferencing with prior approval from the Presiding Justice, and subsequent submission of a weekly report to the Office of the Chief Justice. In partially-remote videoconferencing hearings where all the Justices will be in-court, prior approval from the Presiding Justice and subsequent report to the Office of the Chief Justice are not necessary.

<sup>7</sup> Court Operations During General Community Quarantine From 19 August 2020 Onwards



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(underscoring supplied)

Furthermore, the *Interim Guidelines for Sandiganbayan Remote Hearings*<sup>8</sup> authorize the conduct of remote hearings, under extraordinary circumstances, and upon motion of any of the parties or *motu proprio* order of the court. The pertinent provisions thereof read:

x x x

4. As a rule, hearings in all its stages shall be in-court, except in the following instances when a remote hearing may be had:
- a. In cases involving Persons Deprived of Liberty (PDLs);
  - b. In cases where extraordinary circumstances warrant a hearing *via* videoconference, as may be determined by the members of the Division;
  - c. When allowed by the Supreme Court.

x x x

**V. Procedure**

**1. Motion to Conduct Remote Hearings**

- a. Remote Hearings may be conducted upon motion of any of the parties for purposes of arraignment, pre-trial, bail application, trial, promulgation of decision, or during any other stage of the proceedings, or for the hearing of any motion in relation thereto requiring the presence of the accused, or upon motu proprio order of the court. Any motion for remote hearing should be filed at least fifteen (15) days before the intended hearing date.

(underscoring supplied)

The rest of the accused' arguments are a mere reiteration or rehash of their arguments in their respective Motions for Leave to File Demurrer to Evidence.

In *Mendoza-Ong v. Sandiganbayan*,<sup>9</sup> it was held:

Concerning the first ground abovesited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit.

<sup>8</sup> Approved in A.M. No. 20-06-05-SB dated July 14, 2020

<sup>9</sup> G.R. Nos. 146368-69, October 18, 2004

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Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.

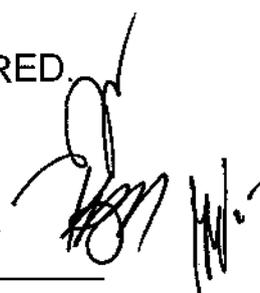
This Court had already considered the accused' arguments, together with the prosecution's evidence, when it concluded that granting them leave to file their respective demurrers will merely cause delay in the proceedings. The Court finds nothing that would warrant the reversal of the assailed Resolution.

**WHEREFORE**, the respective *Motions for Reconsideration* of accused Libanan and Agda, accused Ponferrada, and accused Bormate are hereby DENIED for lack of merit.

As provided in Sec. 23, Rule 119<sup>10</sup> of the Rules of Court, they may adduce evidence in their defense, or in the alternative, they may file their demurrers to evidence without leave of court.

Said accused are given five (5) days from receipt of this Resolution to file their respective manifestations, by personal service or registered mail, and electronically, to inform this Court whether they are submitting their respective demurrers to evidence without leave of court. To give the accused time to prepare, the hearings for the initial presentation of the defense evidence set on October 20 and 21, 2020 are CANCELLED and RESET to November 17 and 18, 2020. Said hearings will be considered cancelled upon receipt by this Court of said accused' manifestations that they intend to submit their demurrer to evidence without leave of court.

SO ORDERED.



<sup>10</sup> Sec. 23. *Demurrer to evidence.* – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

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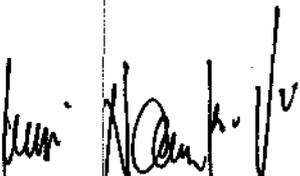
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**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**We Concur:**

  
**KARL B. MIRANDA**  
Associate Justice

  
**KEVIN NARCE B. VIVERO**  
Associate Justice