



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

FOURTH DIVISION

**PEOPLE OF THE PHILIPPINES,**

*Plaintiff,*

**Crim. Case No. 25933**

For: *Violation of Sec. 3(e) of  
R.A. No. 3019, as amended*

- versus -

Present:

ANTONIO P. BELICENA,  
ULDARICO P. ANDUTAN, JR.,  
MONICO V. JACOB,  
CELSO L. LEGARDA,  
ABDULAZIZ F. AL-KHAYYAL,  
APOLINARIO G. REYES,  
REYNALDO V. CAMPOS,  
RAFAEL S. DIAZ, JR., and  
DAUMONGUILLER E. TUMANGAN,  
*Accused.*

Quiroz, J., *Chairperson*  
Pahimna, J.  
Jacinto, J.

Promulgated on:

**JAN 21 2021**

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**RESOLUTION**

**JACINTO, J.:**

The rule is that a private individual may be indicted and held liable for violation of Section 3(e) of Republic Act (R.A.) No. 3019<sup>1</sup> if such person acts in conspiracy with a public officer or officers.<sup>2</sup> In this connection, it is also well-settled that conspiracy must be established by positive and conclusive evidence, and that the same degree of proof required to establish the crime is necessary to support a finding of conspiracy.<sup>3</sup> *Pareño v. Sandiganbayan*<sup>4</sup> instructs that conspiracy must be proved by evidence of actual agreement between the accused to commit the crime, or of their concerted acts indicative of a common objective to commit the crime.

<sup>1</sup> THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, AS AMENDED.

<sup>2</sup> *People v. Go*, G.R. No. 168539, 25 March 2014.

<sup>3</sup> *People v. Berroya*, G.R. No. 122487, 12 December 1997.

<sup>4</sup> G.R. Nos. 107119-20, 17 April 1996.


We resolve the *Demurrer to Evidence* dated 10 July 2020<sup>5</sup> filed with prior leave of Court<sup>6</sup> by accused **DAUMONGUILLER E. TUMANGAN**<sup>7</sup> in accordance with the foregoing principles.

### ANTECEDENTS

Accused Tumangan is charged with violation of Sec. 3(e) of R.A. No. 3019, said to have been committed in conspiracy with public officials of the Department of Finance (DOF) and other private persons from Petron Corporation (Petron) and carried out as follows:<sup>8</sup>

That, during the period from 24 December 1993 to 07 March 1994, or sometime prior or subsequent thereto, in the City of Manila, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned first two (2) accused Antonio P. Belicena and Uldarico P. Andutan, Jr., both public officers, being then Assistant Secretary/Administrator, and Deputy Executive Director, respectively, of the One Stop Shop Inter-Agency Credit & Duty Drawback Center, Department of Finance, Manila, while in the performance of their official functions and acting with evident bad faith and manifest partiality, conspiring and confederating with each other, together with accused Monico V. Jacob, Cesar L. Legarda,<sup>9</sup> Abdulaziz F. Al-Khayyal, Apolinario G. Reyes, Reynaldo V. Campos and Rafael S. Diaz, Jr., all officials of Petron Corporation, and Guiller E. Tumangan, Sr., Vice-President of Unisol Industries & Mfg. Corp., did then and there wilfully, unlawfully and criminally recommend and approve the transfer of the following Tax Credit Certificates purportedly issued to Unisol Industries & Mfg. Corp., to wit:

<u>TCC No.</u>	<u>Amount</u>
17230	P1,545,889.00
18187	<u>3,242,803.00</u>
Total	<u>P4,788,692.00</u>



from Unisol Industries & Mfg. Corp., represented by accused Guiller E. Tumangan, Sr., unto and in favor of Petrol Corp., represented by accused Monico V. Jacob, Cesar L. Legarda, Abdulaziz F. Al-Khayyal, Apolinario G. Reyes, Reynaldo V. Campos and Rafael S. Diaz, Jr., without legal basis and proper/required documentation, thereby causing undue injury and damage to the government in the aforesated amount and at the same time giving unwarranted benefit, preference or advantage to the said private firm.

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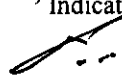
<sup>5</sup> Records, Vol. 36, pp. 302-281.

<sup>6</sup> Pursuant to the Court's Resolution dated 10 September 2020, granting his *Motion for Leave to File Demurrer to Evidence* dated 10 July 2020, id., Vol. 38, pp. 39-41.

<sup>7</sup> Initially indicated in the body of the Information as "Guiller E. Tumangan" and was corrected in open court on 30 August 2018 per Order of same date, id., Vol. 32, pp. 417-418.

<sup>8</sup> Information dated 27 March 2000, id., Vol. 2, pp. 2-4.

<sup>9</sup> Indicated as "Celso" in the caption and body of the Information.



CONTRARY TO LAW.

The case as against the accused Petron officials was dismissed in a Resolution dated 2 March 2017, while it was archived as against the accused public officials.

Accused Tumangan, on the other hand, posted bail on 11 April 2000, and was conditionally arraigned on 25 May 2000 in connection with his pending motion to travel abroad.<sup>10</sup> He entered a conditional plea of "Not Guilty."

He initially filed a Motion to Quash<sup>11</sup> on the grounds that the facts charged do not constitute an offense and that the criminal action or liability, if any, has been extinguished, but the same was denied in a Resolution dated 12 December 2003.<sup>12</sup> His motion for reconsideration<sup>13</sup> was similarly denied in a Resolution dated 13 April 2004.<sup>14</sup>

He again filed an Omnibus Motion,<sup>15</sup> praying for the dismissal of the case against him, but the same was also denied in a Resolution dated 4 June 2018.<sup>16</sup> His motion for reconsideration<sup>17</sup> was also denied in a Resolution dated 10 August 2018.<sup>18</sup>

On 30 August 2018,<sup>19</sup> accused's plea was made permanent and pre-trial proceedings commenced. The parties, however, did not enter into stipulations and merely submitted separate pre-trial briefs.<sup>20</sup> On 29 May 2019, we issued the Pre-trial Order.<sup>21</sup>

Proceeding to trial, on 4 July 2019 the prosecution called to the stand Ms. **Joanna Mae E. Alberto**, Records Custodian at the Office of the Ombudsman (OMB). Her testimony, however, was dispensed with in view of the following stipulations made by the parties:<sup>22</sup>

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<sup>10</sup> Certificate of Arraignment and Order dated 15 May 2000, Records, Vol. 1, pp. 76 & 77, respectively.

<sup>11</sup> Filed on 30 May 2002, id., pp. 286-351.

<sup>12</sup> Id., pp. 490-496.

<sup>13</sup> Filed on 22 January 2004, id., pp. 498-506.

<sup>14</sup> Id., pp. 530-536.

<sup>15</sup> Dated 28 December 2017, id., Vol. 31, pp. 111-126.

<sup>16</sup> Id., Vol. 32, pp. 193-196.

<sup>17</sup> Id., pp. 278-292.

<sup>18</sup> Id., pp. 387-390.

<sup>19</sup> Order dated 30 August 2018, supra Note 7.

<sup>20</sup> Records, Vol. 32, 398-404 and Vol. 33, pp. 614-621.

<sup>21</sup> Id., Vol. 32, pp. 38-45.

<sup>22</sup> Id., Vol. 34, pp. 448-449.

RESOLUTION

*People v. Antonio P. Belicena, et al.*

Crim. Case No. 25933

Page 4 of 11

1. The intended witness for Criminal Case No. 25932 and 25933, in the person of Joanna Mae E. Alberto, being the Records Custodian of the Office of the Ombudsman, has no personal knowledge about the execution and preparation of the documents in her possession as well as the contents thereof;

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2. With respect to Criminal Case No. 25933, as against accused Daumonguiller E. Tumangan, the only original document in her possession is the Complaint Affidavit marked as Exhibit "A".

The prosecution presented no other witness, and instead proceeded to file its *Formal Offer of Exhibits*,<sup>23</sup> offering the following documentary evidence to prove its case against accused:

Exh.	Description	Purpose
A	Complaint-Affidavit dated 15 October 1999 filed by the Fact-Finding Investigation Bureau, Office of the Ombudsman	<ol style="list-style-type: none"> <li>1. The Fact-Finding Intelligence Bureau (FFIB) of the Office of the Ombudsman conducted an investigation pertaining to the issuance of two (2) Tax Credit Certificates (TCCs) in favor of Unisol Industries and Manufacturing Corporation (Unisol) with an aggregate value of PhP 4,788,692.00 in 1992;</li> <li>2. The investigation conducted by the FFIB was focused on the determination of the legality and validity of the transfer of the said TCCs from Unisol to Petron Corporation (Petron);</li> <li>3. The investigation revealed the following:               <ol style="list-style-type: none"> <li>a. Blatant disregard for the mandatory requirements imposed by existing rules and regulations, specifically the Memorandum of Agreement (MOA) between the Bureau of Investments (BOI) and the Department of Finance (DOF) dated August 29, 1989 implementing Article 21 of the Executive Order NO. 226 regarding the transferability of tax credits;</li> <li>b. The transfer of the subject TCCs was without the required documentation; and,</li> <li>c. Petron was not a material supplier of Unisol.</li> </ol> </li> <li>4. After the conduct of its investigation, the FFIB filed a complaint-affidavit against the accused for violation of Republic Act No. 3019.</li> </ol>
B	Fact-Finding Investigation Report dated October 6, 1999	Same as Exhibit A.
C	Tax Certificate No. 017230 issued on September 3, 1992	The exhibit is being offered to prove that upon application by Unisol, the Department of Finance-One Stop Shop Inter-Agency Tax Credit and Duty

<sup>23</sup> Dated 18 November 2019, Records, Vol. 35, pp. 89-255.

RESOLUTION

*People v. Antonio P. Belicena, et al.*

Crim. Case No. 25933

Page 5 of 11

	in favor of Unisol in the amount of Php 1,545,889.00	Drawback Center (DOF-OSS) issued TCC Nos. 017230 and 018187 in favor of Unisol in the aggregate amount of Php 4,788, 692.00 in 1992.
D	Tax Certificate No. 018187 issued on November 11, 1992 in favor of Unisol. in the amount of Php 3,242,803.00	Same as Exhibit C.
E	Deed of Assignment dated December 24, 1993 executed by and between Unisol and Petron	The exhibit is being offered to prove the following: <ol style="list-style-type: none"> <li>1. A Deed of Assignment was executed between Unisol and Petron where the former assigned/transferred to the latter TCC Nos. 017230 and 018187 it earlier secured from the DOF-OSS Center;</li> <li>2. Unisol assigned its TCCs to Petron in payment of the petroleum products sold on credit by the latter to the former;</li> <li>3. Petron intended to use the said TCCs in payment of its tax and duty obligations due from its own importation of crude oil, petroleum products and manufacture of petroleum products; and,</li> <li>4. Accused Tumangan, in his capacity as Senior Vice-President, represented Unisol in said Deed of Assignment and is a signatory thereto.</li> </ol>
F	Tax Debit Memo with TDM No. 94-0355-R-I dated March 7, 1994 (TCC No. 017230)	The exhibit is being offered to prove the following: <ol style="list-style-type: none"> <li>1. Petron requested the DOF-OSS Center for the approval of the transfer of the subject TCCs;</li> <li>2. The DOF-OSS Center officials approved the said transfer despite the same being tainted with serious irregularities as the transfer violated existing law and regulations regarding transfer of TCCs, more particularly the MOA between BOI and DOF.</li> </ol>
G	Tax Debit Memo with TDM No. 94-0354-R-I dated March 7, 1994 (TCC No. 018187)	Same as Exhibit F.
H	Letter dated March 21, 1994 from Petron to the Bureau of Internal Revenue (BIR)	Same as Exhibit F.
I	BIR Memorandum dated March 23, 1994	Same as Exhibit F.
J	BIR Tax Debit Memo with SN 010883 dated March 22, 1994 (TCC No. 017230)	Same as Exhibit F.
K	BIR Tax Debit Memo with SN 010884 dated March 22, 1994 (TCC No. 018187)	Same as Exhibit F.
L	Authority to Accept Payment for Excise Taxes with SN 011868	Same as Exhibit F.

In a Resolution dated 25 June 2020, we admitted Exhibit "A" into evidence but excluded Exhibits "B" to "L," *thus*:<sup>24</sup>

After due consideration, the Court resolves to ADMIT Exhibit "A" for the purpose for which it is offered, but EXCLUDES Exhibits "B" to "L" for being mere photocopies. In the absence of any clear showing that the original copies of these documents have been lost or destroyed or cannot be produced in court, such photocopied documents must be disregarded, being inadmissible evidence and barren of probative weight. (citations omitted)

Accused Tumangan thereafter filed a *Motion for Leave to File Demurrer to Evidence* dated 10 July 2020,<sup>25</sup> which we granted in our 10 September 2020 Resolution,<sup>26</sup> despite the prosecution's opposition.<sup>27</sup> The prosecution was thereafter given a non-extendible period of ten (10) days from notice to file its Comment/Opposition to accused's *Demurrer* dated 10 July 2020,<sup>28</sup> which was attached to his Motion for Leave. The prosecution, however, opted not to file one.

### **THE DEMURRER TO EVIDENCE**

Accused argues that with the exclusion of Exhibits "B" to "L," the prosecution failed to prove the following facts that are necessary if he were to be held liable:

- (a) the existence of TCC Nos. 17230 and 18187;
- (b) Unisol is a holder of TCC Nos. 17230 and 18187;
- (c) accused is the responsible officer of Unisol who supposedly effected the transfer of TCC Nos. 17230 and 18187 to Petron;
- (d) accused participated in the transfer of TCC Nos. 17230 and 18187 to Petron; and
- (e) that said transfer of the subject TCCs from Unisol to Petron caused undue injury and damage to the government, and gave unwarranted benefit, preference or advantage to Petron.

Accused argues that since the only evidence against him is the Complaint-Affidavit of the OMB's Fact-Finding Intelligence Bureau (FFIB) and no other, the prosecution was unable to submit sufficient proof to sustain

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<sup>24</sup> Records, Vol. 36, pp. 155-156.

<sup>25</sup> Id., pp. 191-202.

<sup>26</sup> Supra at note 2.

<sup>27</sup> Records, Vol. 36, pp. 426-433.

<sup>28</sup> Id., pp. 302-281.

RESOLUTION

*People v. Antonio P. Belicena, et al.*

Crim. Case No. 25933

Page 7 of 11

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the charge against him, and thus, the Information against him should be dismissed without need for him to present evidence in his defense.<sup>29</sup>

He further points out that the Complaint-Affidavit, by itself, is hearsay evidence and has no probative weight since it was not identified in court by the affiant thereof.<sup>30</sup> Moreover, while it was identified by the OMB's records custodian, she was incompetent to testify on its contents for lack of personal knowledge.<sup>31</sup>

In addition, he argues that the prosecution failed to prove the existence of the Tax Credit Certificates (TCCs) that were alleged to have been transferred from Unisol Industries and Manufacturing Corporation (Unisol) to Petron, or that its transfer lacked legal basis, especially since Exhibits "B" to "L" were not admitted into evidence. In the same light, there is no proof of undue injury or damage to the Government, or the conferment of unwarranted benefit, preference, or advantage to Petron in view of the Supreme Court's ruling in *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,<sup>32</sup> which held that the 1989 Memorandum of Agreement between the Board of Investments and the DOF is inapplicable to third parties, and as such never repealed the existing Implementing Rules and Regulations of Executive Order No. 226.

Finally, accused argues that the prosecution failed to prove the existence of conspiracy between himself and his co-accused. There is no evidence of his participation in the subject transactions, particularly: that he was a representative of Unisol in the supposed transfer of the TCCs to Petron, or that he participated in the application for and recommendation of the supposed transfer of TCCs in favor of Petron. The prosecution likewise failed to prove that he induced any of his co-accused public officers to commit the acts alleged in the Information.

In sum, he argues that the lack of evidence against him, as well as the lack of evidence to prove the charge itself, merits the dismissal of the case against him.

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<sup>29</sup> Citing *Katigbak v. Sandiganbayan*, G.R. No. 140183, 10 July 2003 and *Borje v. Sandiganbayan*, G.R. No. L-55436, 25 November 1983.

<sup>30</sup> Citing *Dantis v. Manghinang*, G.R. No. 191696, 10 April 2013; *Republic v. Barraca*, G.R. No. 215009, 23 January 2017; and *Asilo, Jr. v. People*, G.R. Nos. 159017-18 & 159059, 9 March 2011.

<sup>31</sup> Citing *Republic v. Marcos-Manotoc*, G.R. No. 171701, 8 February 2012.

<sup>32</sup> G.R. No. 172598, 21 December 2007.

**RULING**

Sec. 3(e) of R.A. No. 3019, provides as follows:

Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx                      xxx                      xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense are as follows: (i) the accused is a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officers; (ii) the accused acted with manifest partiality, evident bad faith, or inexcusable negligence; and (iii) accused's action caused any undue injury to any party, including the Government, or he or she gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.<sup>33</sup>

The Information alleges that accused Tumangan, as Vice President of Unisol, conspired with accused public officials of the DOF, Antonio P. Belicena and Uldarico P. Andutan, Jr., and several officers of Petron in the unlawful transfer of two TCCs by means of facilitating the same *sans* any legal basis and absent the proper or required documentation thereto. As a result, there was undue injury and damage to the Government, and the conferment of unwarranted benefit, preference, or advantage to Petron.

The prosecution sought to prove said allegations by submitting into evidence two classes of documents: (i) documents showing the investigation conducted by FFIB-OMB, which resulted in the filing of the Complaint and Information against herein accused; and (ii) documents evidencing the existence of the TCCs and their transfer from Unisol to Petron. After the prosecution rested its case, however, the only admissible evidence left was the FFIB-OMB's Complaint-Affidavit. The same, however, has no evidentiary value to prove the offense charged.

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<sup>33</sup> *People v. Naciongayo*, G.R. No. 243897, 8 June 2020.



RESOLUTION

*People v. Antonio P. Belicena, et al.*

Crim. Case No. 25933

Page 9 of 11

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Among the powers conferred unto the OMB by Sec. 15 of R.A. No. 6770<sup>34</sup> is the dual-function of investigating and prosecuting criminal and administrative cases against government officials. In the performance of its investigatory powers, the OMB may conduct fact-finding investigations to determine whether there is evidence of any unlawful act committed by public officials. Should it find that such evidence exists, the investigatory body may file a complaint-affidavit against such official. Upon the receipt of a Complaint-Affidavit from its fact-finding body, the OMB thereafter performs its quasi-judicial role to determine whether there is sufficient evidence to hold such public official administratively liable and/or there is probable cause to indict the respondent government official before the Courts.<sup>35</sup>

Specific to cases brought before this Court, therefore, the value of a Complaint-Affidavit is to show how the proceedings for the determination of probable cause were initiated before the OMB. By itself, the affidavit's only import is to show how the OMB took cognizance of the case and how it henceforth made a determination that probable cause exists before filing the corresponding Information.

Under the proper circumstances, a Complaint-Affidavit may likewise serve to supplement the testimony of an investigation officer, substantiate the results of his or her investigation, and provide context to the prosecution's object or documentary evidence. However, this requires the presentation of the officer who executed the same. Absent an open-court identification of the affidavit and an affirmation of its contents by its affiant, the averments therein are considered as hearsay, and the Court cannot accord any probative value to its contents or give any independent consideration to the documents attached thereto.<sup>36</sup>

In this case, the original copy of the FFIB-OMB's Complaint-Affidavit dated 15 October 1999 stands as the prosecution's lone evidence to prove its charge against accused Tumangan. As discussed above, given the prosecution's failure to present the affiant thereof, its sole value is to show how the proceedings were initiated before the OMB.

Thus, as correctly claimed by accused Tumangan, a demurrer to evidence is proper at this instance.

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<sup>34</sup> OMBUDSMAN ACT OF 1989.

<sup>35</sup> Administrative Order No. 7, RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule II.

<sup>36</sup> See *RODCO Consultancy and Maritime Services Corp. v. Ceniza*, A.C. No. 7599 (Notice), 4 September 2019; *Unchuan v. Lozada*, G.R. No. 172671, 16 April 2009; and *Carlos A. Gothong Lines, Inc. v. NLRC*, G.R. No. 96685, 15 February 1999.

RESOLUTION

*People v. Antonio P. Belicena, et al.*

Crim. Case No. 25933

Page 10 of 11

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The function of a demurrer to evidence is to allow an accused to move for the dismissal of the case against him or her on the ground that the prosecution's evidence is insufficient to prove his or her guilt beyond reasonable doubt.<sup>37</sup> This is in keeping with the constitutionally-conferred right that every person who stands accused shall enjoy the presumption of innocence, as well as the principle that it is the prosecution's sole burden to prove an accused's guilt beyond reasonable doubt.

Considering the state of evidence in this case as discussed above, there is absolutely no proof to substantiate any of the factual averments in the Information, much less the elements of the offense charged. In fact, there is no evidence of the existence of any document that accused Tumangan allegedly signed in the first place. This is the exact the situation contemplated in Sec. 23, Rule 119 of the Rules on Criminal Procedure, and as such, calls for the dismissal of the case against herein accused at this stage of the proceedings.

**WHEREFORE**, based on the foregoing, the *Demurrer* dated 10 July 2020 filed by accused **DAUMONGUILLER E. TUMANGAN** is hereby **GRANTED**. The Information dated 27 March 2000 in **Criminal Case No. 25933** is dismissed as against him.

The cash bond posted by accused for his provisional liberty is hereby ordered **RELEASED** and the Hold Departure Order issued against him in this case is ordered **RECALLED**.

**SO ORDERED.**

  
**BAYANI H. JACINTO**  
*Associate Justice*

**WE CONCUR:**

  
**ALEX L. QUIROZ**  
*Associate Justice*  
*Chairperson*

  
**LORIFEL LACAP PAHIMNA**  
*Associate Justice*

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<sup>37</sup> See also *Singian, Jr. v. Sandiganbayan*, G.R. Nos. 195011-19, 30 September 2013 and *De Guzman y Aguilar v. People*, G.R. No. 240475, 24 July 2019.

RESOLUTION

*People v. Antonio P. Belicena, et al.*

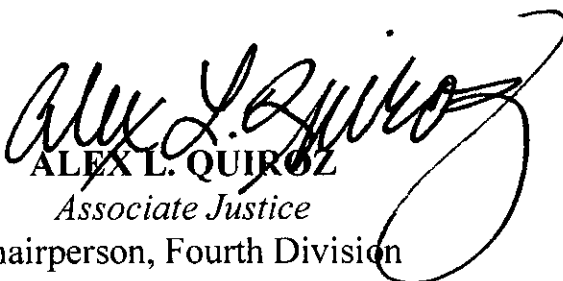
Crim. Case No. 25933

Page 11 of 11

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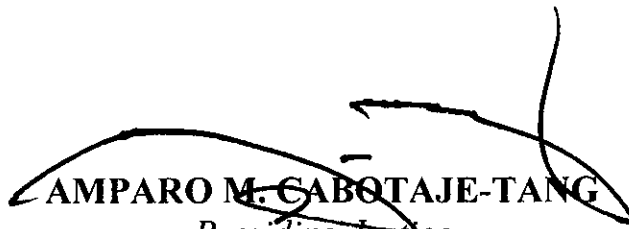
### ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation with the Justices of the Court's Division.

  
ALEX L. QUIROZ  
*Associate Justice*  
Chairperson, Fourth Division

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
AMPARO M. GABOTAJE-TANG  
*Presiding Justice*