



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-17-CRM-0642 to 0643
For: Violation of Section 3(e)
of R.A. No. 3019, as
amended.

-versus-

SB-17-CRM-0644
For: Malversation of Public
Funds through Falsification.


**MARC DOUGLAS CHAN CAGAS
IV, VANIE E. SEMILLANO,
ANTONIO YRIGON ORTIZ,
DENNIS LACSON CUNANAN,
MARIA ROSALINDA
MASONGSONG LACSAMANA,
CONSUELO LILIAN REYES
ESPIRITU, MARIVIC VILLALUZ
JOVER, JOHANNE EDWARD B.
LABAY, ARNOLFO M. REYES,
AILEEN F. CARRASCO**

Accused.

SB-17-CRM-0645
For: Malversation of Public
Funds.

Present:

CABOTAJE-TANG, A.M.
P.J.,
Chairperson,
FERNANDEZ, B.R., J. and
MORENO, R.B. J.

Promulgated: JANUARY 29, 2024 

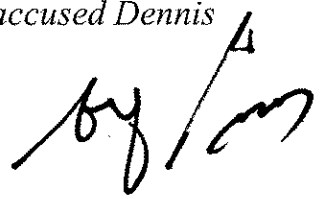
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RESOLUTION

Moreno, J.:

For resolution are the following: (1) accused Dennis L. Cunanan's ("Cunanan") "*Motion for Reconsideration*" received through email on October 23, 2023;¹ and (2) prosecution's "*Opposition (To accused Dennis*

¹ Record, Vol. VII, pp. 402-415.



L. Cunanan's Motion for Reconsideration dated October 23, 2023)" filed on November 15, 2023.²

Accused Cunanan's "Motion for Reconsideration"

Accused Cunanan moved for reconsideration of the Court's *Decision* dated October 6, 2023,³ based on the following arguments:

First, the elements of the crime charged against him were not proven beyond reasonable doubt. According to accused Cunanan, the last element of a violation of Section 3(e) of R.A. No. 3019, as amended cannot exist because the Court mainly relied on the evidence that he signed the disbursement voucher. He avers that the mere fact of affixing the signature cannot consummate the crime charged because other steps must be taken before the actual release of the PDAF-drawn funds.

Second, accused Cunanan was not part of any conspiracy, his signature on one disbursement voucher does not show his participation as a co-conspirator. According to him, affixing his signature to the disbursement voucher is not an overt act tantamount to acquiesce, cooperation, or acting in unison with his other co-accused since such an act is part of his function as the Deputy Director General.

Third, there was no showing that he is a public officer as defined under Article 217 of the Revised Penal Code ("RPC"). Accused Cunanan opines that Section 101 of the Government Auditing Code of the Philippines does not apply to him since his function neither involves the handling of cash for PDAF transactions nor auditing.

Lastly, the record shows that the prosecution failed to prove beyond reasonable doubt that it was part of accused Cunanan's duty as Deputy Director General of TRC to accredit the NGO partner, and/or implement the PDAF-funded projects.

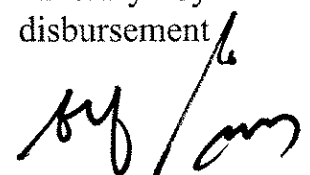
Prosecution's "Opposition (To accused Dennis L. Cunanan's Motion for Reconsideration dated October 23, 2023)"

In response, the prosecution filed its *Opposition* refuting the arguments raised by accused Cunanan. In support thereto, the prosecution maintains that:

(1) Accused Cunanan cannot escape criminal liability by downplaying his role as a signatory to Box "A" of the disbursement

² Record, Vol. VII, pp. 473-482.

³ Record, Vol. VII, pp. 160-264.



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voucher. According to the prosecution, as then the Deputy Director General, he was the second highest ranking official of the TRC charged with the responsibility of co-signing disbursement vouchers and making reports to the Board of Trustees about its transactions and recommendations about its policies.

(2) Despite knowing that FDC is not among the implementing agencies of the PDAF-funded livelihood projects and non-compliance with the relevant laws, rules, and regulations, accused Cunanan proceeded to sign Box "A" of the subject disbursement voucher, attesting to their legality and regularity.

(3) The acts of accused Cunanan, when taken together with the acts of his co-accused, are so connected and closely interrelated demonstrating that they acted in concert and cooperated to achieve the very same unlawful objective of defrauding the government. Thus, he is equally liable with his conspirators regardless of whether he participated in each and every stage of the commission of the offenses charged.

(4) Lastly, in view of the findings of conspiracy among the accused, accused Cunanan was correctly convicted of malversation.

RULING OF THE COURT

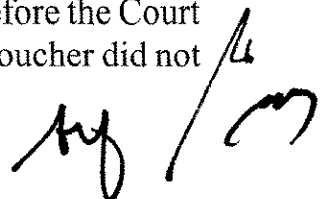
After due consideration, the Court denies the *Motion for Reconsideration* filed by accused Cunanan.

The aforementioned grounds relied upon by accused Cunanan are not novel. The lengthy discussions on the said motion are essentially the same points raised during the trial which have been thoroughly and assiduously passed upon by the Court in the assailed *Decision*.

Notwithstanding, the Court deems it necessary to discuss the following matters raised in the present motion.

I. The Court maintains its findings that the prosecution was able to prove beyond reasonable doubt all the elements of a violation of Section 3(e) of R.A. No. 3019, as amended.

In his *Motion for Reconsideration*, accused Cunanan argues that the last element of a violation of Section 3(e) of R.A. No. 3019, as amended, cannot exist with respect to him. In other words, he argues before the Court that the action of affixing his signature to the disbursement voucher did not



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cause undue injury to any party including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

Anent the third element, the Court holds that the same was adequately established in this case. In *Cabrera v. People*,⁴ the Supreme Court explained:

The third element refers to two (2) separate acts that qualify as a violation of Section 3(e) of R.A. No. 3019. An accused may be charged with the commission of either or both. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) or R.A. No. 3019.

The first punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be "some reasonable basis by which the court can measure it." Aside from this, the loss or damage must be substantial. It must be "more than necessary, excessive, improper or illegal."

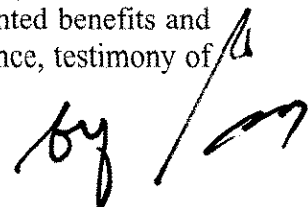
The second punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of the extent or quantum of damage is not thus essential. It is sufficient that the accused has given "unjustified favor or benefit to another."

Here, the Court found that the prosecution was able to prove beyond reasonable doubt that accused Cunanan, together with his co-accused, committed both modes constituting the third element of a violation of Section 3(e) of R.A. No. 3019, as amended. The pertinent portions of the assailed *Decision* states:

The *Informations* charge the accused under both modes. Under the first, mode, the Court finds that the prosecution was able to prove that the scheme designed and executed by the accused caused undue injury to the Government in the amount of Six Hundred Thousand Pesos (Php600,000.00) and Four Million Eight Hundred Thousand Pesos (Php4,800,000.00). The injury to the government is apparent considering that the prosecution was able to prove that the accused made irregular disbursements for the soap-making seminars in San Agustin and Hagonoy, and that the rest of the PDAF-funded livelihood projects listed in the Work and Financial Plan (*Exhibit "B-17"*) were not implemented.

As to the second mode, the Court finds that the prosecution has sufficiently proved that herein accused gave unwarranted benefits and advantages to FDC. Based on the documentary evidence, testimony of

⁴ *Cabrera v. People*, G.R. Nos. 191611-14, July 29, 2019.



the prosecution's witnesses, and admissions of some accused, accused Cagas used his official function as the Congressman of the 1st District of Davao del Sur to directly participate in the implementation of his PDAF-funded livelihood projects by unilaterally selecting FDC as the "project partner" despite the clear and unambiguous special provision in the PDAF Article of the GAA and the GPPB Resolution No. 12-2007. Furthermore, accused Cunanan, Lacsamana, Espiritu, and Jover allowed FDC to participate in the utilization of the PDAF-drawn public funds and the implementation of the spurious PDAF-funded livelihood projects despite apparent violations of applicable laws, rules, and regulations.⁵

The Supreme Court, in a line of cases, has already found that the act of signing the disbursement voucher is not a mere ministerial and ceremonial act as it involves attestation to the legality and regularity of the transaction therein and that the signatory had checked all the supporting documents before affixing his or her signature therein.

In the case of *People v. Umipig*,⁶ the Supreme Court found the accused therein guilty of the crime charged relying only on his act of signing Box "A" of the disbursement voucher. According to the Supreme Court, had the accused therein made the proper inquiries, the unlawful disbursement would have been prevented. The Supreme Court also found accused therein to have acted with gross negligence by making the presumption that everything was in order and in failing to scrutinize the documents in violation of the accounting rules.

In the recent case of *Magaso v. The Commission on Audit*,⁷ the Supreme Court sitting *en banc* ruled that the signatures of officials as approvers or certifiers in an accountable form, such as the disbursement voucher, were not meant to be mere rubber stamps and that their duty as such is not ministerial. In the said case, the Supreme Court found the signatory of Box "B" of the disbursement voucher liable for her participation in a disallowed transaction considering that she did not raise questions and demand additional documents despite suspicious circumstances surrounding the transaction indicated therein.

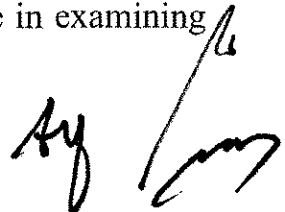
In *Caballes v. People*,⁸ the Supreme Court ruled that a signatory of the disbursement voucher is liable for violation of Section 3(e) of R.A. No. 3019, as amended when he failed to inquire into the transactions before affixing his signature despite glaring anomalies. According to the Supreme Court, the damage or injury to the government could have been avoided, had the officers involved exercised prudence and diligence in examining

⁵ Decision dated October 6, 2023, p. 84; Record, Vol. VII, p. 243.

⁶ *People v. Umipig*, G.R. No. 171359. July 18, 2012

⁷ *Magaso v. The Commission on Audit*, G.R. No. 219425. January 10, 2023

⁸ *People v. Caballes*, G.R. Nos. 250367 & 250400-05, August 31, 2022.

A handwritten signature in black ink, appearing to be 'Ay' followed by a stylized flourish.

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the supporting documents before approving and signing the disbursement vouchers.

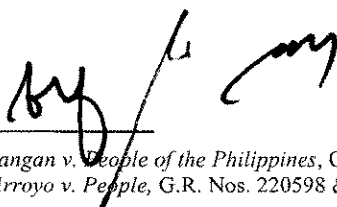
While it is true that accused Cunanan's act of affixing his signature in the disbursement voucher cannot consummate the crime charged and that he was neither a negotiator to the memorandum of agreement nor a signatory to the checks, the Court found that his actions are essential to the completion of the offense.

II. The Court maintains its findings that the prosecution was able to prove beyond reasonable doubt that accused Cunanan conspired with his co-accused in the commission of the crimes charged.

Accused Cunanan also avers that his signature as appearing in the disbursement voucher is not an overt act tantamount to acquiescence, cooperation, or acting in unison with his other co-accused. He argues that there is nothing unusual or sinister in his act of signing "Box A" of the disbursement voucher, as it is part of his function as the Deputy Director General to approve certain transactions.

Accused Cunanan is mistaken. An implied conspiracy exists when two or more persons are shown to have aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative.⁹ However, to be held liable as a co-principal there must be a showing of an overt act in furtherance of the conspiracy, either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy.¹⁰

Based on the records, accused Cunanan, as the Deputy Director General of TRC signed Box "A" of Disbursement Voucher No. 012008030583, representing the release of Php4,800,000.00 PDAF-drawn funds from TRC to FDC. Contrary to the assertions made by accused Cunanan, his acts of signing box "A" of the disbursement voucher, although appearing independent from the overt acts committed by his co-accused, nevertheless indicate "closeness of personal association" and "a concurrence of sentiment".



⁹ See *Ben Manangan v. People of the Philippines*, G.R. No. 218570, November 22, 2017.

¹⁰ *Macapagal-Arroyo v. People*, G.R. Nos. 220598 & 220953, July 19, 2016, 790 PHIL 367-556.

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As found by the Court, accused Cunanan's implied consent to the grand scheme to defraud the government is apparent considering the mode or manner of the commission of the offense, and from his acts before, during, and after the commission of the crime. The pertinent portions of the *Decision* are herein quoted as follows:

"The acts of accused Cunanan, Lacsamana, Espiritu, and Jover in affixing their signatures in the disbursement vouchers are governed by the Government Accounting and Auditing Manual and the COA Circular No. 92-389. The Government Accounting and Auditing Manual provides the following basic requirements applicable to all classes of disbursements that shall be complied with:

(a) Certificate of Availability of Fund. – Existence of lawful appropriation, the unexpended balance of which, free from other obligations, is sufficient to cover the expenditure, certified as available by an accounting officer or any other official required to accomplish the certificate. Use of moneys appropriated solely for the specific purpose for which appropriated, and for no other, except when authorized by law or by a corresponding appropriating body;

(b) Approval of claim or expenditure by head of office or his duly authorized representative;

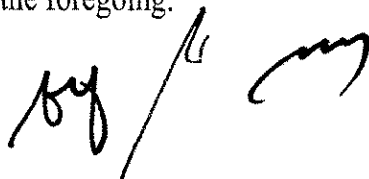
(c) Documents to establish validity of claim. – submission of documents and other evidence to establish the validity and correctness of the claim for payment;

(d) Conformity of the expenditure to existing laws and regulations; and

(e) Proper accounting treatment.

Pursuant to COA Circular No. 92-389 dated November 3, 1992, Box A shall be signed by "the responsible Officer having direct supervision and knowledge of the facts of the transaction." Accused Cunanan and Lacsamana, as the signatories of Box "A" of Disbursement Voucher No. 012008030583 (*Exhibit "B-6"*), and Disbursement Voucher No. 012008071766, (*Exhibit "B-22"*), respectively, caused the release of a total of Php5,400,000.00 to FDC, certifying that such expenses are "necessary, lawful," and incurred under their direct supervision. By making such certifications, accused Cunanan and Lacsamana, attested to the legality and regularity of the transaction, which signified that they checked all the supporting documents and the applicable laws, rules, and regulations before affixing their signatures.

As admitted by accused Cunanan in his *Judicial Affidavit*, that at the time he signed the disbursement voucher, he was well aware of the PDAF Article of the GAA which designates TRC as the implementing agency of the PDAF-funded livelihood projects of the legislators. The following exchanges in the *Judicial Affidavit* point to the foregoing:

The image shows two handwritten signatures in black ink. The signature on the left is more stylized and appears to be 'Cunanan', while the signature on the right is more fluid and appears to be 'Lacsamana'. Both signatures are written in a cursive, slanted style.

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37. Q: During those times that you signed the DVs, what was or were your impressions, if any, of the PDAF projects that involved TLRC/TRC?

A: During that time, I assumed the PDAF-funded projects to be regular and legitimate projects because they were recognized as a source of income for TRC. TRC collected Management, Product and Services Fees. Also, TRC was authorized by no less than the General Appropriations Act – a law – to be designated implementing agency for PDAF.

Moreover, during his cross-examination, accused Cunanan admitted that he is likewise familiar with pertinent laws, rules, and regulations related to PDAF like GPPB Resolution No. 12-2007, *to wit*:

PROS. CORPUZ:

Q: As Deputy General and concurrent Chief Operating Officer of TRC, did you not see the need, Sir, to acquaint yourself with pertinent laws, rules and regulations related to PDAF matters like GPPB Resolution No. 12-2007?

ACCUSED CUNANAN:

A: We were quite apprised, Ma'am, during the process.

Q: But you were not familiar with this GPPB Resolution?

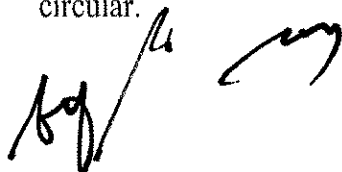
A: I may have encountered it before but I'm not familiar anymore.

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Here, accused Cunanan and Lacsama were cognizant of the PDAF Article of the GAA. Despite the clear provision of the law, they still proceeded to affix their signatures in the Box "A" of the disbursement vouchers, certifying the legality of the said disbursement. Besides, accused Lacsamana was aware that FDC failed to submit a document showing that it has an equity equivalent to 20% of the total project cost but despite such failure, she proceeded with the issuance of the Memorandum dated March 3, 2008 (*Exhibit "5" for Lacsamana*), endorsing the release of the PDAF-funded public funds of accused Cagas to FDC.

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In fact, COA Circular No. 92-389, was embodied in TRC Office Circular No. 00FN0056 (*Exhibit "4-Espiritu"*), which was part of the *Judicial Affidavit* of accused Espiritu and Jover. According to accused Espiritu, since its effectivity on July 18, 1995, the Circular was observed by the TRC in the preparation and processing of disbursement vouchers. On the other hand, accused Jover admitted that in making the certification in Box "B" of the disbursement vouchers, she faithfully followed the procedures and requirements laid down in the said office circular.



Additionally, accused Cunanan, Lacsamana, Espiritu, and Jover cannot also invoke the provisions of TRC Office Circular No. 00OP0099 dated September 3, 2007 (*Exhibit "2-Cunanan*) and TRC Office Circular No. 00OP0100 dated November 27, 2007 (*Exhibit "3-Cunanan*) as part of their defense. It is clear under TRC Office Circular No. 00OP0099 that there are initial documents required before an NGO becomes eligible as an implementor of the PDAF-funded livelihood projects. However, despite the absence of some documents, particularly, the Certificate of Good Standing/Reportorial Compliance, Corporate Profile including List of Beneficiaries, and the Audited Financial Statements, herein accused still allowed FDC to be the implementor of the projects. Moreover, TRC Office Circular No. 00OP0099 further requires the submission of official receipts and delivery receipts upon the completion of the projects. Despite such requirement, herein accused allowed FDC to submit Certificates of Service Rendered and Acknowledgments Receipts without inquiring as to the veracity of such documents.¹¹

Based on the foregoing, it is clear that accused Cunanan's act of signing "Box A" of the Disbursement Voucher No. 012008030583, despite having knowledge of the irregularities and apparent violations of the relevant laws and regulations, is considered an overt act in furtherance of the grand scheme to defraud the government.

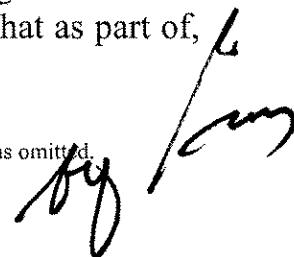
Contrary to accused Cunanan's view, the degree or character of his participation is immaterial given the existence of the conspiracy. Thus, he is considered a co-principal by conspiracy even if he did not participate in the actual commission of every act constituting the offense.

III. The Court maintains its findings that accused Cunanan is a public officer as defined under Article 217 of the RPC.

Lastly, accused Cunanan argues that he is not an accountable officer under the purview of Article 217 of the RPC. According to him, the definition of an accountable officer under Sec. 101 of the Government Auditing Code of the Philippines does not apply to him since he did not have custody or control of any PDAF-related amount.

An accountable public officer, within the purview of Article 217 of the RPC, is one who has custody or control of public funds or property by reason of the duties of his office. To be liable for malversation, an accountable officer need not be a bonded official. The name or relative importance of the office or employment is not the controlling factor. What is decisive is the nature of the duties that he performs and that as part of,

¹¹ Decision dated October 6, 2023, pp. 94-98; Record, Vol. VII, pp. 253-257. Citations omitted.



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and by reason of, said duties, he receives public money or property, which he is bound to account for.¹²

With respect to PDAF-drawn public funds, the Court takes heed from the landmark case of *Belgica v. Ochoa*,¹³ where it had been held that in a Congressional Pork Barrel System, the legislator exercises actual custody of the PDAF share allocated to him by the appropriations statute.

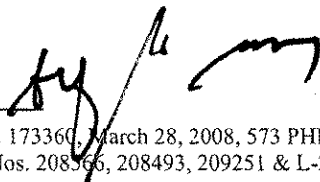
It must be noted, however, that accused Cunanan voluntarily affixed his signature under Box "A" of the subject disbursement voucher wherein he expressly certified that the expenses described therein are necessary, lawful, and "incurred under his direct supervision". By attesting that the expenses are "incurred under his direct supervision", he is now estopped from claiming that he exercised no certain control over the amount indicated in the disbursement voucher. Sec. 2(a), Rule 131 of the Revised Rules on Evidence¹⁴ states that "[w]henever a party has, by his or her own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he or she cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."

Moreover, there being an allegation of conspiracy, such element of accountability and control attaches to the individual acts of the conspiring actors if such conspiracy is shown because the act of each, when tale together, lends facility in the commission of the crime of misappropriation.

In the case of *Barriga v. Sandiganbayan*,¹⁵ the Supreme Court held that a public officer who is not in charge of public funds or property by virtue of their official function, or even a private individual, may be liable for malversation or illegal use of public funds or property if such public officer or private individual conspires with an accountable officer to commit malversation or illegal use of public funds or property.

Taken in such light, accused Cunanan is still liable under an allegation and finding of conspiracy even if we assume that his functions as Deputy Director General of TRC did not relate to custody or control over the subject funds.

All told, the Court finds no cogent or compelling reason to warrant a reconsideration of its *Decision*.



¹² *Alejo v. People*, G.R. No. 173360, March 28, 2008, 573 PHIL 451-471.

¹³ *Belgica v. Ochoa*, G.R. Nos. 208566, 208493, 209251 & L-20768, November 19, 2013, 721 PHIL 416-732.

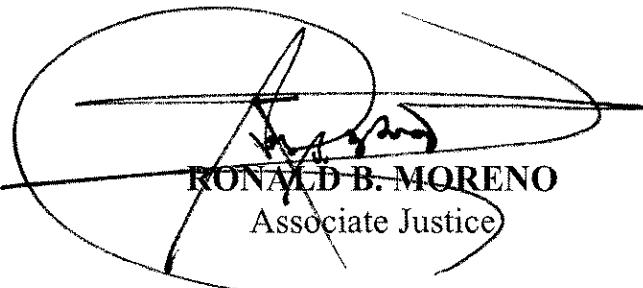
¹⁴ 2019 Proposed Amendments to the Revised Rules on Evidence, A.M. No. 19-08-15-SC, May 1, 2020.

¹⁵ *Barriga v. Sandiganbayan*, G.R. Nos. 161784-86, April 26, 2005, 496 PHIL 764-777.

WHEREFORE, accused Dennis L. Cunanan's ("Cunanan")
"Motion for Reconsideration" is hereby **DENIED** for lack of merit.

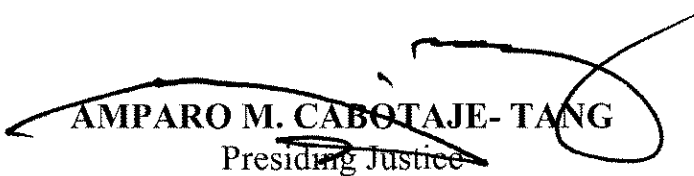
SO ORDERED.

Quezon City, Metro Manila, Philippines.

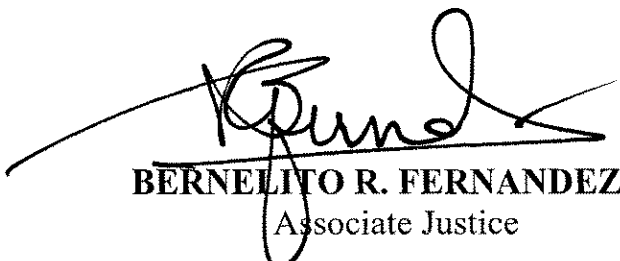


RONALD B. MORENO
Associate Justice

WE CONCUR:



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson



BERNELITO R. FERNANDEZ
Associate Justice