



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY

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FIFTH DIVISION

PEOPLE OF THE  
PHILIPPINES,

Plaintiff,

Crim. Case No. SB-14-  
CRM-0256 to 0266  
For: Violation of Sec. 3(e) of  
R.A. 3019

-vs-

JOSE "JINGGOY" EJERCITO  
ESTRADA, ET AL,  
Accused.

*Present:*

LAGOS, J., Chairperson  
MENDOZA-ARCEGA, J.,  
and CORPUS-MAÑALAC, J.

*Promulgated:*

February 12, 2024.  
*Julzyl D. San*

X-----X

RESOLUTION

**MENDOZA-ARCEGA:**

This resolves the **MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE** (Section 3(e) of R.A. No. 3019)<sup>1</sup>, filed by accused, Jose "Jinggoy P. Ejercito Estrada (Estrada), through counsel, on November 20, 2023; **MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE**<sup>2</sup>, filed by accused, Dennis L. Cunanan (Cunanan), through counsel, on November 20, 2023; **JOINT**

<sup>1</sup> Record, Vol. 48, pp. 317-332; 416-431.

<sup>2</sup> Record, Vol. 48, pp. 333-353.

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**MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE<sup>3</sup>**, filed by accused, Mario L. Relampagos (Relampagos) , Marilou D. Bare (Bare), Rosario S. Nuñez (Nuñez), and Lalaine N. Paule (Paule), through counsel, on November 21, 2023; and **CONSOLIDATED OPPOSITION<sup>4</sup>**, filed by the People of the Philippines (Plaintiff), through the Special Prosecutor, Office of the Ombudsman, dated December 15, 2023.

In his Motion for Leave to File Demurrer to Evidence, Estrada purported that the prosecution failed to prove beyond reasonable doubt that he (Estrada) violated Section 3 (e) of R.A. No. 3019 or that he conspired with the other accused to violate Section 3 (e). He continued that there is no proof that he committed the acts imputed to him in the Informations, acts which he supposedly committed with manifest partiality and/or bad faith and which acts supposedly caused undue injury to the government and gave unwarranted benefits and advantage to private individuals. Moreover, the facts and circumstances of the case negate criminal intent and conspiracy. Specifically, he asserted that: 1. he never met with accused Janet Lim Napoles (Napoles), John Raymund De Asis (De Asis), or the other accused to discuss and agree on commissions and/or kickbacks; 2. he categorically denied alleged meeting with Benhur Luy (Luy); 3. he claims that the release of his Priority Development Assistance Fund (PDAF) for the years 2004 to 2012 followed the recognized, stringent institutional legal process. In support of his claim, he said that the Department of Budget and Management (DBM) witness confirmed that the documents he submitted and processed by the DBM complied with the General Appropriations Act (GAA); 4. his role is to choose from the projects listed in the project menu, which contains three (3) categories: the priority are or particulars, the program or projects to be funded, and the implementing agency. He emphasized that the duty to implement the PDAF-funded projects belongs to the Implementing Agencies; 5. it was the purported whistleblowers, Marina Sula (Sula), Merlina Suñas (Suñas), Mary Arlene Baltazar (Baltazar), and Luy, who prepared, drafted, and falsified the liquidation documents which were submitted to the Implementing Agencies. He did not sign nor authorized anyone and has denied signing or authorizing anyone to sign any of the endorsement letters, the Memorandum of Agreement (MOA) with the Non-governmental organizations (NGOs) and the Implementing Agencies, the Inspection and Disbursement Reports, Certificates of Completion and Final Accomplishment Reports that were allegedly submitted for liquidation purposes; 6. the endorsement letters and MOAs are private documents, thus they should have been authenticated in accordance with Rule 132, Section 20 and 22 of the Revised Rules on Evidence. The failure to authenticate the endorsement letters should further be seen in the light of evidence that the whistleblowers themselves forged and falsified other such endorsement letters as part of their operations and that when approached to discuss the PDAF Projects, he

<sup>3</sup> Record, Vol. 48, pp. 354-375; 432-452.

<sup>4</sup> Record, Vol. 49, pp. 97-120.

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declined and then refused to engage with accused Napoles regarding the PDAF Projects; 7. evidence against accused Pauline Therese Mary C. Labayen (Labayen) is not evidence against him. The mere fact that Labayen is his Appointment Secretary does not mean that the sums must have necessarily passed through her. Furthermore, it is the position of the accused that the prosecution failed to prove beyond reasonable doubt the presence of manifest partiality, evident bad faith, or gross inexcusable negligence. Also, the prosecution failed to present evidence to establish actual injury or damage. First, the prosecution failed to establish the exact amount supposedly received by him as kickbacks, commissions and rebates. Second, there is no evidence that will prove beyond reasonable doubt that he caused injury to the government by receiving commissions, kickbacks, either personally and/or through her representative. In fact, not one of the one hundred seventeen (117) witnesses testified that accused received a single centavo of ill-gotten wealth. Third, the Anti-Money Laundering Council's (AMLC) Bank Inquiry Report does not categorically determine the underlying business transactions for the transfer of funds to his bank accounts. The prosecution's failure to identify the underlying business transactions to the subject transfer of funds would highlight the weakness of its claims that he received commissions and/or kickbacks. Fourth, the prosecution failed to prove beyond reasonable doubt that Luy delivered the purported commissions and or kickbacks. He alleged that the Daily Disbursement Reports (DDR) are unreliable and untrustworthy evidence. It was Luy's only basis of his supposed delivery of commissions and/or kickbacks. The said DDRs are mere unsigned Excel format, unsigned printouts that came from the personal external hard drive of Luy. The entries do not refer to any Special Allotment Release Order (SARO) number and were not attached to any of Luy's sworn statements. The Summary of Rebates is likewise unreliable and untrustworthy evidence for being hearsay. Luy created the summary of transactions long after the transactions in question. The prosecution similarly failed to present the external hard drive and the computer from which the contents of the external hard drive were copied. No witness was presented to testify that the external drive was not tampered. The accused also claims that Luy is not a credible witness. His testimony on the principal points is uncorroborated.

On November 20, 2023, Cunanan, through his counsel, filed a Motion for Leave to File Demurrer to Evidence, where he said that the evidence presented by the prosecution is not sufficient to prove that he is guilty beyond reasonable doubt of the charges filed against him. He alleged that the prosecution failed to establish his participation in the commission of the crimes charged against him. Mainly, he claims that the prosecution failed to prove the third elements of the crime. No evidence was presented showing that he had any participation in selecting the NGO, Social Development Program for Farmers Foundation, Inc. (SDPFFI). The prosecution hinges its argument on the supposed irregularities in the accreditation of the NGOs. However, it did not establish by the required evidence that he participated in the supposed irregularities or that he consciously and fraudulently signed the

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subject disbursement voucher to pursue self-interest. Undue injury was also not present as the prosecution failed to prove that the subject PDAF-funded project was not implemented. More importantly, there was no proof that he benefitted from any of the transactions at all. The only overt act that links him to the offense charged is his alleged signature in the Technology and Livelihood Resource Center (TLRC) disbursement voucher. He emphasized that his act of signing the disbursement voucher is a ministerial function, done in the regular course of his work as then Deputy Director General of TLRC, and in accordance with the lawful orders of his superior Antonio Ortiz. He also is not a signatory of the checks in question. There is therefore no basis for the prosecution's argument that he authorized and caused the release of said checks. As to the lack of bidding, he said that even if the lack of public bidding for the questioned transaction is unjustified, no other evidence was presented to establish that his actions were animated by malicious motive or fraudulent intent to defraud the government. Citing the case of Sabaldan, Jr. v. Ombudsman<sup>5</sup>, he said that, the record shows that the prosecution failed to prove that it was part of his duties to accredit the NGO-partner, and/or implement the PDAF-funded projects, it was he who gave unwarranted preference to the NGO, that there was undue injury caused by his actions or that he acted with manifest partiality, evident bad faith, or gross inexcusable negligence when he signed the disbursement voucher. He also has no participation with the selection of the specific NGO that will facilitate the implementation of the PDAF project of accused Estrada. The drafting, negotiation and signing of the MOA was by and between Estrada and/or his office, SDPFFI Antonio Ortiz, then Director General of TLRC. He was not a negotiator nor a party to the agreement. He elucidated that the prosecution did not present proof that he had any participation in the recommendation or selection of the NGO, SDPFFI. In addition, he did not use the funds for his personal benefit, or that he consented to the taking thereof by another person. He alleged that he is not a part of any conspiracy. His signature in one disbursement voucher does not show his participation as co-conspirator. Finally, with his participation and cooperation in the COA's investigation, it cannot be said that he is part of any conspiracy, thus he prays for leave to file his Demurrer to Evidence.

On November 21, 2023, accused, Relampagos, Bare, Nuñez, and Paule, filed their Joint Motion for Leave of Court to File Demurrer to Evidence. They alleged that the prosecution failed to establish their guilt beyond reasonable doubt. It was stressed that the case against accused involves SARO Nos. ROCS-08-01697, ROCS-08-01698, ROCS-08-03116, ROCS-09-01612, ROCS-08-06025, ROCS-09-02769, G-09-07579, F-09-09579, G-09-07076, and ROCS-09-02770 which were not signed by accused Relampagos. Moreover, in all the exhibits of the plaintiff, herein accused were not mentioned among those recommended for prosecution. As to the respective Notices of Cash Allocation (NCAs) and Advice of NCA Issued (ANCAI) of the SAROs, they follow a course upon the issuance of a SARO and if they were signed

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<sup>5</sup> G.R. No. 238014, June 15, 2020.

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by Relampagos, the same was ministerial. Also, there was no evidence presented to show irregularity, illegality of the processing by the technical bureaus. When Luy was cross-examined, he admitted that none of the accused were mentioned in the documents offered. Luy also said that herein accused did not receive any kickback and that this statement is consistent with the account made during the September 12, 2013, Senate Blue Ribbon Committee hearing where he admitted twice that no part of the PDAF went to the DBM. Moreover, the prosecution failed to establish the elements of the offense charged. The allegations of facilitating with undue haste the processing of the SAROs and the corresponding NCAs had no leg to stand on as the plaintiff did not present the time frame for the processing of the SARO or NCA. Likewise, the processing was not done in the office of herein accused but by the Regional Operations Coordination Service (ROCS) which found no irregularity therein. The subject SAROs (ROCS-08-01697, ROCS-08-01698, ROCS-08-03116, ROCS-09-01612, ROCS-08-06025, ROCS-09-02769, G-09-07579, F-09-09579, G-09-07076, and ROCS-09-02770) were not signed by accused Relampagos, nor were the respective NCAs and ANCAIs marked by the plaintiff as exhibits. As to the conspiracy allegation, the accused said that the pieces of evidence presented by the prosecution do not point to the single overt act as a contribution to the crimes allegedly committed, much less establish conspiracy clearly and convincingly as the commission of the alleged offenses themselves. The prosecution failed to prove conspiracy beyond reasonable doubt. As applied to the case, signing the SARO, is not the concrete and overt acts before, during and after the commission of the crime charged indicative of a common design as this action involved the very functions he had to discharge in the performance of his official duties. Correspondingly, the DBM Secretary for Operations, accused Relampagos was authorized to sign the SAROs, NCAs, and ANCAIs as substitute signatory in the absence of the DBM Secretary. The mentioned documents passed several and rigorous reviews by the officials of DBM. There was nothing on record that shows bad faith on the part of accused Relampagos, Bare, Nuñez, and Paule, as they only performed their official duty, which the prosecution failed to rebut.

In response, the Plaintiff filed a Consolidated Opposition, wherein it said that the motions seeking for leave of court to file demurrer to evidence are based on similar grounds as follows:

*Estrada*

That the prosecution failed to prove beyond reasonable doubt that Estrada violated Section 3 (e) of R.A. 3019 or that he conspired with the other accused to violate Section 3 (e); that the facts and circumstances of the case negate criminal intent and conspiracy on the part of Estrada; that the prosecution failed to prove beyond reasonable doubt the presence of manifest partiality, evident bad faith, or gross inexcusable negligence and; that the prosecution failed to present evidence to establish actual injury or damage.

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*Cunanan*

That the prosecution's evidence has not established beyond reasonable doubt all the elements of the crimes charged, in so far as Cunanan is concerned; the prosecution failed to establish Cunanan's participation in the commission of the crimes charged against him; there is no proof beyond reasonable doubt that Cunanan is guilty of violating R.A. 3019; and the evidence presented by the prosecution did not prove conspiracy beyond reasonable doubt; or even assuming ad arguendo that there was one, neither was there proof presented beyond reasonable doubt that Cunanan participated in any such conspiracy.

*Relampagos, Bare, Nuñez, and Paule*

That the prosecution failed to establish accused's guilt beyond reasonable doubt; that the prosecution failed to establish the elements of the crime charged; and that the prosecution failed to prove conspiracy beyond reasonable doubt.

The prosecution claims that all the submitted motions failed to specifically allege the grounds upon which they anchor the same. The aforementioned accused merely made general allegations that there is no evidence to prove that they committed the offense charged and that there is no sufficient evidence to prove conspiracy. Moreover, it is the prosecution's position that the documentary and testimonial evidence on record unequivocally demonstrate the existence of sufficient and competent evidence to sustain the Information or to support a guilty verdict.

Accused Estrada submits that it has more than amply established the criminal liability of the accused during trial. It was shown through testimonial and documentary evidence that he acted in concert with his co-accused and united in their common criminal design. He played active and distinct roles in setting the modus operandi in motion and in later bagging the proceeds of the crime.

Under the context and purpose of the PDAF, Estrada determined how such funds were released and utilized. Estrada's acts of making and sending endorsement letters to the IAs designating the NGOs which would be his partners-implementers relative to his PDAF-funded projects is not part and parcel of the process. Instead, government issuances, particularly COA Circular No. 2007-001 and GPB Resolution No. 12-2007 mandate that NGOs should be chosen in a public bidding. Thus, his endorsement letters designating the NGOs not only facilitated the release of the PDAF but they likewise expedited the payments of his kickbacks and/or commissions. As to his claim of forgery of his signatures in the Endorsement Letters, Estrada should present proof that entails presenting evidence during trial. Lastly, as to the reference to the whistleblowers purported admission that they forged and falsified endorsement letters, the same cannot bolster Estrada's claim of forgery as the statement of the whistleblowers refer to the act of signing liquidation documents. Anent Estrada's claim that the endorsement letters and MOAs are private documents

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in view of the purported admissions of forgery by the whistleblowers, and that they should have been authenticated as such in conformity with the Rules. Estrada tries to undermine the testimony of Luy and the DDRs and the Summary of Rebates (SOR). But contrary to his claims, Luy's testimony, by itself, taken together with the testimonies of Susan Garcia of COA and Ruby Tuason, clearly establish his criminal liability. Also, the Supreme Court, in similar cases, ruled that the testimonies of Luy and other whistleblowers on the PDAF scam were consistent, clear, and corroborative of each other. The fact that Luy did not deal directly with Estrada is of no moment. Such fact does not weaken the probative value of their respective testimonies detailing how they operated, upon the instruction of Napoles, to implement the pork barrel scam to the detriment of the Filipino people. Luy's testimony provided the necessary backdrop for the entire modus operandi to be appreciated fully, and once that is done, Estrada's culpability becomes even more evident. The DDRs reflecting all the transactions of Napoles were prepared by Luy who admitted that he himself, in the performance of his functions as finance officer of JLN Corporation, encoded the entries in the DDRs. Also, the DDRs and the SOR, being computer printouts, are electronic documents conformably with the Rules on Electronic Evidence (REE). It is beyond cavil that the DDRs and SOR fall within the ambit of an electronic document, and that, being computer printouts, the same are considered as originals in accordance with Section 1, Rule 4 of the Rules on Electronic Evidence. Moreover, the entries in the DDRs and SOR were spontaneously explained by Luy, which was corroborated by Sunas, Sula and Baltazar of their own personal knowledge. The transactions reflected on the DDRs were said to be kickbacks, commissions or rebates of Estrada and Labayen in consideration of the former's endorsement of Napoles' NGO created purposely to funnel Estrada's PDAF. On Estrada's view of the AMLC Bank Inquiry Report ratiocinating that it does not categorically determine the underlying transactions of the fund transfers to his bank account, the prosecution is firm that it does not emasculate the definitive findings that the Landbank of the Philippines (LBP) accounts of Napoles' owned and controlled NGOs, MAMFI and SDPFFI, were only temporary repository of funds, and that the withdrawals from said accounts had to be confirmed first with Napoles notwithstanding that the accounts were not under her name. This circumstance is consistent with the testimonies of Luy, Sula, Sunas and Baltazar that as soon as the check of the PDAF proceeds were encashed, Napoles directed them or any of her trusted employees to withdraw the same. Also, upon the instructions of Napoles, her employees prepared project proposals, lists of beneficiaries, accomplishment reports, receipts, reports of disbursements, inspection and acceptance reports and certificates of acceptance to make it appear that the PDAF-funded projects of accused Estrada were implemented when in fact and as testified by said whistleblowers, no such implementation was ever made. The Ombudsman, upon verification with the purported beneficiaries, were able to confirm that said projects were indeed ghosts or fictitious.

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Meanwhile, Cunanan played an indispensable role in the conspiracy to commit the offense charged in the Information. His role in the release of the amount of Two Million Five Hundred Thousand Pesos (Php2,500,000.00) to SDPFFI by signing the disbursement voucher was not contested. In his motion, he repeatedly admitted that he signed the disbursement voucher, and he never challenged his signature appearing therein. As the Deputy Director General of TLRC, he is a signatory of Box A of the Disbursement Voucher (DV) No. 012009020257 marked as Exhibit D-23, in the amount of Two Million Five Hundred Thousand Pesos (Php2,500,000.00) representing the release of 10% retention fee from PDAF of Estrada for the implementation of livelihood projects under SARO No. ROCS008-01698. Box A thereof reflects the words "CERTIFIED: expenses/cash advance necessary, lawful and incurred under my supervision." In certifying the necessity and the lawfulness of the expenses, Cunanan should have ensured the accreditation and qualifications of SDPFFI to which the funds would be disbursed in accordance with COA Circular No. 96-003. His function entails a careful evaluation and review of the qualification of SDPFFI. Since he certified that he exercised direct supervision in incurring the said expenses, he should have personally verified and validated the required documents, but he failed to do so in complete disregard of his functions as the signatory of Box A in the disbursement voucher. His contention that his act of signing the DV is ministerial is misplaced as it requires an exercise of prudence and strict discretion to ensure that the public funds released thereby will not go to waste. Failing to follow COA Circular No. 96-003 made him guilty of committing manifest partiality, evident bad faith, or at least, gross inexcusable negligence, in allowing the illegal disbursement of funds to SDPFFI. The evidence on record likewise proves the existence of conspiracy among the accused. His participation is crucial, considering that without his signature and certification, the release of funds to SDPFFI, which was subsequently found by the COA to have been attended with irregularities and in violation of applicable laws, would not have been consummated. Evidence shows that instead of implementing the PDAF-funded projects, Cunanan, together with other accused TLRC officials, facilitated processed and approved the disbursement of the PDAF, diverting it to an unqualified NGO owned and controlled by Napoles.

In the case of Relampagos, being a fugitive from justice, having jumped bail in the course of the proceedings, there is no basis for the Court to recognize the pleading filed by his counsel. Relampagos who is a fugitive from justice as a consequence waived his right to adduce evidence and denied himself the opportunity to dispute the charges against him. Accused Relampagos with other officials of the Department of Budget and Management (DBM), namely Nuñez, Paule and Bare, was indicted for having facilitated with undue haste the processing of the pertinent SARO and the corresponding NCAs in these cases. The accused DBM officials all took part in the wheel of conspiracy where they consciously contributed in giving favor/advantage and preference or benefit to the NGOs owned and controlled by



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Napoles, which resulted to the misuse government funds. The release of the SAROs through the IAs is not in accordance with existing rules because it was not supported by project profile and endorsement by such agency indicating that the projects are within its mandate functions, as required by DBM National Budget Circular (NBC) No. 476 dated September 20, 2001. In these cases, the IAs failed to submit any project profile and endorsement to the DBM to warrant the release of the funds covered by the SARO. All the matters raised by the accused tending to prove lack of culpability on their part are matters of defense which should be ventilated during the trial where herein accused will be given full opportunity to present their evidence in their defense and allow the court to resolve these cases based on the evidence presented by both parties.

Thus, this resolution.

A demurrer to evidence is filed by a party "in an action to the effect that the evidence his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue."<sup>6</sup> The party filing the demurrer "challenges the sufficiency of the whole evidence to sustain a verdict."<sup>7</sup>

When a demurrer to evidence is filed, the trial court ascertains whether there is competent or sufficient evidence to issue a judgment. Thus, a demurrer's resolution belongs to the court's sound discretion.<sup>8</sup> In *People v. Sandiganbayan*:<sup>9</sup>

Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court. Thus, in resolving the accused's demurrer to evidence, the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt. The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion.<sup>10</sup>

After a careful examination of the totality of the evidence presented by the prosecution, both testimonial and documentary, the Court resolves to grant the present motion of herein accused, to sufficiently provide them an opportunity to challenge the sufficiency of the prosecution's evidence establishing the material elements of the offense charged to support a judgment of guilt.

**WHEREFORE**, in view of the foregoing, the MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE filed by accused Jose P. Ejercito Estrada; MOTION FOR LEAVE TO FILE DEMURRER filed by accused Dennis L. Cunanan; and JOINT MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE filed by

<sup>6</sup> *Katigbak v. Sandiganbayan*, 453 Phil. 515, 535 (2003) [Per J. Corona, Third Division].

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 426 Phil. 453 (2002) [Per J. Sandoval-Gutierrez, Third Division].

<sup>10</sup> *Id.* at 457.

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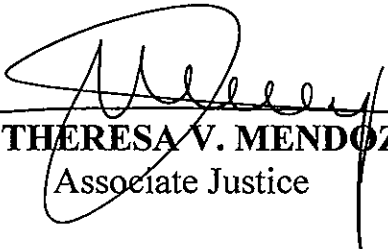
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accused Mario L. Relampagos, Marilou D. Bare, Rosario S. Nuñez, and Lalaine N. Paule, are hereby **GRANTED**.

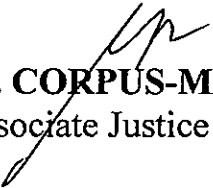
Accordingly, the accused are given a non-extendible period of ten (10) calendar days from receipt of this Resolution within which to file their Demurrer to Evidence, while the prosecution is given the same period from receipt of the Demurrer to Evidence within which to file its Comment thereto. Thereafter, the incident shall be deemed submitted for resolution.

**SO ORDERED.**

  
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**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

**WE CONCUR:**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice

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