



Republic of the Philippines
Supreme Court
Manila

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

G.R. No. 168539

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,* and
LEONEN,* JJ.

- versus -

HENRY T. GO,

Respondent.

Promulgated:

March 25, 2014

X-----X

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* assailing the Resolution¹ of the Third Division² of the Sandiganbayan (SB) dated June 2, 2005 which quashed the Information filed against herein respondent for

* On leave.

¹ Annex "A" to petition, *rollo*, p. 59.

² Composed of Associate Justice Godofredo L. Legaspi as Chairman, with Associate Justices Efren N. De La Cruz and Norberto Y. Goraldez (now deceased), as members.

alleged violation of Section 3 (g) of Republic Act No. 3019 (*R.A. 3019*), otherwise known as the Anti-Graft and Corrupt Practices Act.

The Information filed against respondent is an offshoot of this Court's Decision³ in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.* which nullified the various contracts awarded by the Government, through the Department of Transportation and Communications (*DOTC*), to Philippine Air Terminals, Co., Inc. (*PIATCO*) for the construction, operation and maintenance of the Ninoy Aquino International Airport International Passenger Terminal III (*NAIA IPT III*). Subsequent to the above Decision, a certain Ma. Cecilia L. Pesayco filed a complaint with the Office of the Ombudsman against several individuals for alleged violation of R.A. 3019. Among those charged was herein respondent, who was then the Chairman and President of PIATCO, for having supposedly conspired with then DOTC Secretary Arturo Enrile (*Secretary Enrile*) in entering into a contract which is grossly and manifestly disadvantageous to the government.

On September 16, 2004, the Office of the Deputy Ombudsman for Luzon found probable cause to indict, among others, herein respondent for violation of Section 3(g) of R.A. 3019. While there was likewise a finding of probable cause against Secretary Enrile, he was no longer indicted because he died prior to the issuance of the resolution finding probable cause.

Thus, in an Information dated January 13, 2005, respondent was charged before the SB as follows:

On or about July 12, 1997, or sometime prior or subsequent thereto, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the late ARTURO ENRILE, then Secretary of the Department of Transportation and Communications (*DOTC*), committing the offense in relation to his office and taking advantage of the same, in conspiracy with accused, **HENRY T. GO**, Chairman and President of the Philippine International Air Terminals, Co., Inc. (*PIATCO*), did then and there, willfully, unlawfully and criminally enter into a Concession Agreement, after the project for the construction of the Ninoy Aquino International Airport International Passenger Terminal III (*NAIA IPT III*) was awarded to Paircargo Consortium/PIATCO, which Concession Agreement substantially amended the draft Concession Agreement covering the construction of the NAIA IPT III under Republic Act 6957, as amended by Republic Act 7718 (*BOT law*), specifically the provision on Public Utility Revenues, as well as the assumption by the government of the liabilities of PIATCO in the event of the latter's default under Article IV, Section 4.04 (b) and (c) in relation to Article 1.06 of the Concession Agreement, which terms are more beneficial to PIATCO while

³ G.R. Nos. 155001, 155547 and 155661, May 5, 2003, 402 SCRA 612.

manifestly and grossly disadvantageous to the government of the Republic of the Philippines.⁴

The case was docketed as *Criminal Case No. 28090*.

On March 10, 2005, the SB issued an Order, to wit:

The prosecution is given a period of ten (10) days from today within which to show cause why this case should not be dismissed for lack of jurisdiction over the person of the accused considering that the accused is a private person and the public official Arturo Enrile, his alleged co-conspirator, is already deceased, and not an accused in this case.⁵

The prosecution complied with the above Order contending that the SB has already acquired jurisdiction over the person of respondent by reason of his voluntary appearance, when he filed a motion for consolidation and when he posted bail. The prosecution also argued that the SB has exclusive jurisdiction over respondent's case, even if he is a private person, because he was alleged to have conspired with a public officer.⁶

On April 28, 2005, respondent filed a Motion to Quash⁷ the Information filed against him on the ground that the operative facts adduced therein do not constitute an offense under Section 3(g) of R.A. 3019. Respondent, citing the show cause order of the SB, also contended that, independently of the deceased Secretary Enrile, the public officer with whom he was alleged to have conspired, respondent, who is not a public officer nor was capacitated by any official authority as a government agent, may not be prosecuted for violation of Section 3(g) of R.A. 3019.

The prosecution filed its Opposition.⁸

On June 2, 2005, the SB issued its assailed Resolution, pertinent portions of which read thus:

Acting on the Motion to Quash filed by accused Henry T. Go dated April 22, 2005, and it appearing that Henry T. Go, the lone accused in this case is a private person and his alleged co-conspirator-public official was already deceased long before this case was filed in court, for lack of jurisdiction over the person of the accused, the Court grants the Motion to

⁴ Annex "B" to petition, *rollo*, pp. 61-62.

⁵ Annex "C" to petition, *id.* at 64.

⁶ See Annex "F" to petition, *id.* at 74-82.

⁷ Annex "G" to petition, *id.* at 84-88.

⁸ Annex "H" to petition, *id.* at 90-101.

Quash and the Information filed in this case is hereby ordered quashed and dismissed.⁹

Hence, the instant petition raising the following issues, to wit:

I

WHETHER OR NOT THE COURT A *QUO* GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW OR APPLICABLE JURISPRUDENCE IN GRANTING THE DEMURRER TO EVIDENCE AND IN DISMISSING CRIMINAL CASE NO. 28090 ON THE GROUND THAT IT HAS NO JURISDICTION OVER THE PERSON OF RESPONDENT GO.

II

WHETHER OR NOT THE COURT A *QUO* GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW OR APPLICABLE JURISPRUDENCE, IN RULING THAT IT HAS NO JURISDICTION OVER THE PERSON OF RESPONDENT GO DESPITE THE IRREFUTABLE FACT THAT HE HAS ALREADY POSTED BAIL FOR HIS PROVISIONAL LIBERTY

III

WHETHER OR NOT THE COURT A *QUO* GRAVELY ERRED WHEN, IN COMPLETE DISREGARD OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION, IT QUASHED THE INFORMATION AND DISMISSED CRIMINAL CASE NO. 28090¹⁰

The Court finds the petition meritorious.

Section 3 (g) of R.A. 3019 provides:

Sec. 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:

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The elements of the above provision are:

(1) that the accused is a public officer;

⁹ Annex “A” to petition, *id.* at 59.

¹⁰ *Rollo*, p. 27.

- (2) that he entered into a contract or transaction on behalf of the government; and
- (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.¹¹

At the outset, it bears to reiterate the settled rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto.¹² This is the controlling doctrine as enunciated by this Court in previous cases, among which is a case involving herein private respondent.¹³

The only question that needs to be settled in the present petition is whether herein respondent, a private person, may be indicted for conspiracy in violating Section 3(g) of R.A. 3019 even if the public officer, with whom he was alleged to have conspired, has died prior to the filing of the Information.

Respondent contends that by reason of the death of Secretary Enrile, there is no public officer who was charged in the Information and, as such, prosecution against respondent may not prosper.

The Court is not persuaded.

It is true that by reason of Secretary Enrile's death, there is no longer any public officer with whom respondent can be charged for violation of R.A. 3019. It does not mean, however, that the allegation of conspiracy between them can no longer be proved or that their alleged conspiracy is already expunged. The only thing extinguished by the death of Secretary Enrile is his criminal liability. His death did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and private respondent. Stated differently, the death of Secretary Enrile does not mean that there was no public officer who allegedly violated Section 3 (g) of R.A. 3019. In fact, the Office of the Deputy Ombudsman for Luzon found probable cause to indict Secretary Enrile for infringement of Sections 3 (e)

¹¹ *Go v. Fifth Division, Sandiganbayan*, 549 Phil. 783, 799 (2007).

¹² *Gregorio Singian, Jr. v. Sandiganbayan, et al.*, G.R. Nos. 195011-19, September 30, 2013; *Santillano v. People*, G.R. Nos. 175045-46, March 3, 2010, 614 SCRA 164; *Go v. Fifth Division, Sandiganbayan, supra*; *Singian, Jr. v. Sandiganbayan*, 514 Phil. 536 (2005); *Domingo v. Sandiganbayan*, G.R. No. 149175, October 25, 2005, 474 SCRA 203; *Luciano v. Estrella*, G.R. No. L-31622, August 31, 1970, 34 SCRA 769.

¹³ See *Go v. Fifth Division, Sandiganbayan, supra* note 11.

and (g) of R.A. 3019.¹⁴ Were it not for his death, he should have been charged.

The requirement before a private person may be indicted for violation of Section 3(g) of R.A. 3019, among others, is that such private person must be alleged to have acted in conspiracy with a public officer. The law, however, does not require that such person must, in all instances, be indicted together with the public officer. If circumstances exist where the public officer may no longer be charged in court, as in the present case where the public officer has already died, the private person may be indicted alone.

Indeed, it is not necessary to join all alleged co-conspirators in an indictment for conspiracy.¹⁵ If two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor.¹⁶ This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them and it makes no difference whether the actual actor is alive or dead, sane or insane at the time of trial.¹⁷ The death of one of two or more conspirators does not prevent the conviction of the survivor or survivors.¹⁸ Thus, this Court held that:

x x x [a] conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more persons. **Yet, it does not follow that one person cannot be convicted of conspiracy. So long as the acquittal or death of a co-conspirator does not remove the bases of a charge for conspiracy, one defendant may be found guilty of the offense.**¹⁹

The Court agrees with petitioner's contention that, as alleged in the Information filed against respondent, which is deemed hypothetically admitted in the latter's Motion to Quash, he (respondent) conspired with Secretary Enrile in violating Section 3 (g) of R.A. 3019 and that in conspiracy, the act of one is the act of all. Hence, the criminal liability incurred by a co-conspirator is also incurred by the other co-conspirators.

Moreover, the Court agrees with petitioner that the avowed policy of the State and the legislative intent to repress "acts of public officers and

¹⁴ Records, vol. 1, p. 106.

¹⁵ 15 C.J.S. Conspiracy § 82, p. 1115.

¹⁶ §14 16 Am Jur 2d, pp. 134-135.

¹⁷ *Id.*

¹⁸ §19 16 Am Jur 2d, pp. 137-138.

¹⁹ *Villa v. Sandiganbayan*, G.R. Nos. 87186, 87281, 87466 and 87524, April 24, 1992, 208 SCRA 283, 297-298, citing *U.S. v. Remigio*, 37 Phil. 599 (1918). (Emphasis supplied)

private persons alike, which constitute graft or corrupt practices,"²⁰ would be frustrated if the death of a public officer would bar the prosecution of a private person who conspired with such public officer in violating the Anti-Graft Law.

In this regard, this Court's disquisition in the early case of *People v. Peralta*²¹ as to the nature of and the principles governing conspiracy, as construed under Philippine jurisdiction, is instructive, to wit:

x x x A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Generally, conspiracy is not a crime except when the law specifically provides a penalty therefor as in treason, rebellion and sedition. The crime of conspiracy known to the common law is not an indictable offense in the Philippines. An agreement to commit a crime is a reprehensible act from the view-point of morality, but as long as the conspirators do not perform overt acts in furtherance of their malevolent design, the sovereignty of the State is not outraged and the tranquility of the public remains undisturbed. However, **when in resolute execution of a common scheme, a felony is committed by two or more malefactors, the existence of a conspiracy assumes pivotal importance in the determination of the liability of the perpetrators.** In stressing the significance of conspiracy in criminal law, this Court in *U.S. vs. Infante and Barreto* opined that

While it is true that the penalties cannot be imposed for the mere act of conspiring to commit a crime unless the statute specifically prescribes a penalty therefor, nevertheless the existence of a conspiracy to commit a crime is in many cases a fact of vital importance, when considered together with the other evidence of record, in establishing the existence, of the consummated crime and its commission by the conspirators.

Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law *the act of one is the act of all*. The foregoing rule is anchored on the sound principle that "when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone." Although it is axiomatic that no one is liable for acts other than his own, "when two or more persons agree or conspire to commit a crime, each is responsible for all the acts of the others, done in furtherance of the agreement or conspiracy." The imposition of collective liability upon the conspirators is clearly explained in one case where this Court held that

²⁰ See R.A. 3019, Sec. 1.

²¹ G.R. No. L-19069, October 29, 1968, 25 SCRA 759.

x x x it is impossible to graduate the separate liability of each (conspirator) without taking into consideration the close and inseparable relation of each of them with the criminal act, for the commission of which they all acted by common agreement x x x. The crime must therefore in view of the solidarity of the act and intent which existed between the x x x accused, be regarded as the act of the band or party created by them, and they are all equally responsible x x x

Verily, the moment it is established that the malefactors conspired and confederated in the commission of the felony proved, collective liability of the accused conspirators attaches by reason of the conspiracy, and the court shall not speculate nor even investigate as to the actual degree of participation of each of the perpetrators present at the scene of the crime. Of course, as to any conspirator who was remote from the *situs* of aggression, he could be drawn within the enveloping ambit of the conspiracy if it be proved that through his moral ascendancy over the rest of the conspirators the latter were moved or impelled to carry out the conspiracy.

In fine, the convergence of the wills of the conspirators in the scheming and execution of the crime amply justifies the imputation to all of them the act of any one of them. It is in this light that conspiracy is generally viewed not as a separate indictable offense, but a rule for collectivizing criminal liability.

x x x x

x x x A time-honored rule in the *corpus* of our jurisprudence is that once conspiracy is proved, all of the conspirators who acted in furtherance of the common design are liable as co-principals. This rule of collective criminal liability emanates from the ensnaring nature of conspiracy. The concerted action of the conspirators in consummating their common purpose is a patent display of their evil partnership, and for the consequences of such criminal enterprise they must be held solidarily liable.²²

This is not to say, however, that private respondent should be found guilty of conspiring with Secretary Enrile. It is settled that the absence or presence of conspiracy is factual in nature and involves evidentiary matters.²³ Hence, the allegation of conspiracy against respondent is better left ventilated before the trial court during trial, where respondent can adduce evidence to prove or disprove its presence.

²² *Id.* at 771-777. (Italics in the original; emphasis supplied)

²³ *People v. Dumlao*, G.R. No. 168918, March 2, 2009, 580 SCRA 409, 432; *Heirs of the late Nestor Tria v. Obias*, G.R. No. 175887, November 24, 2010, 636 SCRA 91, 116.

Respondent claims in his Manifestation and Motion²⁴ as well as in his Urgent Motion to Resolve²⁵ that in a different case, he was likewise indicted before the SB for conspiracy with the late Secretary Enrile in violating the same Section 3 (g) of R.A. 3019 by allegedly entering into another agreement (Side Agreement) which is separate from the Concession Agreement subject of the present case. The case was docketed as *Criminal Case No. 28091*. Here, the SB, through a Resolution, granted respondent's motion to quash the Information on the ground that the SB has no jurisdiction over the person of respondent. The prosecution questioned the said SB Resolution before this Court via a petition for review on *certiorari*. The petition was docketed as *G.R. No. 168919*. In a minute resolution dated August 31, 2005, this Court denied the petition finding no reversible error on the part of the SB. This Resolution became final and executory on January 11, 2006. Respondent now argues that this Court's resolution in *G.R. No. 168919* should be applied in the instant case.

The Court does not agree. Respondent should be reminded that prior to this Court's ruling in *G.R. No. 168919*, he already posted bail for his provisional liberty. In fact, he even filed a Motion for Consolidation²⁶ in *Criminal Case No. 28091*. The Court agrees with petitioner's contention that private respondent's act of posting bail and filing his Motion for Consolidation vests the SB with jurisdiction over his person. The rule is well settled that the act of an accused in posting bail or in filing motions seeking affirmative relief is tantamount to submission of his person to the jurisdiction of the court.²⁷

Thus, it has been held that:

When a defendant in a criminal case is brought before a competent court by virtue of a warrant of arrest or otherwise, in order to avoid the submission of his body to the jurisdiction of the court he must raise the question of the court's jurisdiction over his person at the very earliest opportunity. ***If he gives bail, demurs to the complaint or files any dilatory plea or pleads to the merits, he thereby gives the court jurisdiction over his person.*** (State ex rel. John Brown vs. Fitzgerald, 51 Minn., 534)

X X X X

As ruled in *La Naval Drug vs. CA* [236 SCRA 78, 86]:

²⁴ *Rollo*, pp. 176-180.

²⁵ *Id.* at 186-192.

²⁶ Annex "J" to petition, *id.* at 112.

²⁷ *Miranda v. Tuliao*, 520 Phil. 907, 918 (2006), citing *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 643; *Cojuangco v. Sandiganbayan*, 360 Phil. 559, 581 (1998); *Velasco v. Court of Appeals*, 315 Phil. 757, 770 (1995).

“[L]ack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. If he so wishes not to waive this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court; otherwise, he shall be deemed to have submitted himself to that jurisdiction.”

Moreover, “[w]here the appearance is by motion for the purpose of objecting to the jurisdiction of the court over the person, it must be for the sole and separate purpose of objecting to said jurisdiction. **If the appearance is for any other purpose, the defendant is deemed to have submitted himself to the jurisdiction of the court. Such an appearance gives the court jurisdiction over the person.**”

Verily, petitioner’s participation in the proceedings before the Sandiganbayan was not confined to his opposition to the issuance of a warrant of arrest but also covered other matters which called for respondent court’s exercise of its jurisdiction. Petitioner may not be heard now to deny said court’s jurisdiction over him. x x x.²⁸

In the instant case, respondent did not make any special appearance to question the jurisdiction of the SB over his person prior to his posting of bail and filing his Motion for Consolidation. In fact, his Motion to Quash the Information in *Criminal Case No. 28090* only came after the SB issued an Order requiring the prosecution to show cause why the case should not be dismissed for lack of jurisdiction over his person.

As a recapitulation, it would not be amiss to point out that the instant case involves a contract entered into by public officers representing the government. More importantly, the SB is a special criminal court which has exclusive original jurisdiction in all cases involving violations of R.A. 3019 committed by certain public officers, as enumerated in P.D. 1606 as amended by R.A. 8249. This includes private individuals who are charged as co-principals, accomplices or accessories with the said public officers. In the instant case, respondent is being charged for violation of Section 3(g) of R.A. 3019, in conspiracy with then Secretary Enrile. Ideally, under the law, both respondent and Secretary Enrile should have been charged before and tried jointly by the Sandiganbayan. However, by reason of the death of the latter, this can no longer be done. Nonetheless, for reasons already discussed, it does not follow that the SB is already divested of its jurisdiction over the person of and the case involving herein respondent. To rule otherwise would mean that the power of a court to decide a case would no longer be based on the law defining its jurisdiction but on other factors, such as the death of one of the alleged offenders.


²⁸

Cojuangco v. Sandiganbayan, *supra*, at 582-583. (Emphasis supplied; citations omitted)


Lastly, the issues raised in the present petition involve matters which are mere incidents in the main case and the main case has already been pending for over nine (9) years. Thus, a referral of the case to the Regional Trial Court would further delay the resolution of the main case and it would, by no means, promote respondent's right to a speedy trial and a speedy disposition of his case.

WHEREFORE, the petition is **GRANTED**. The Resolution of the Sandiganbayan dated June 2, 2005, granting respondent's Motion to Quash, is hereby **REVERSED** and **SET ASIDE**. The Sandiganbayan is forthwith **DIRECTED** to proceed with deliberate dispatch in the disposition of Criminal Case No. 28090.


SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

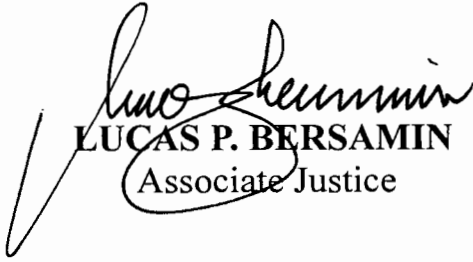
No part, former counsel in related cases

MARIA LOURDES P. A. SERENO
Chief Justice

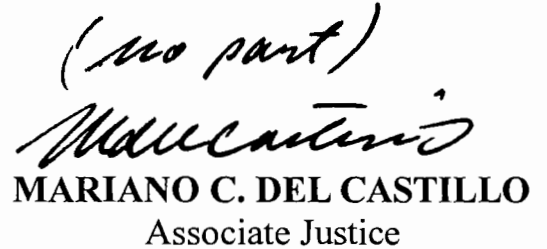

ANTONIO T. CARPIO
Associate Justice

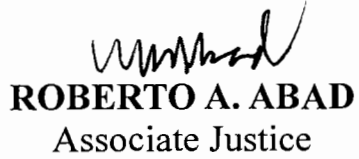

PRESBITERO J. VELASCO, JR.
Associate Justice

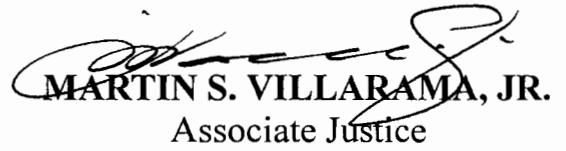

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice


LUCAS P. BERSAMIN
Associate Justice

(no part)

MARIANO C. DEL CASTILLO
Associate Justice


ROBERTO A. ABAD
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

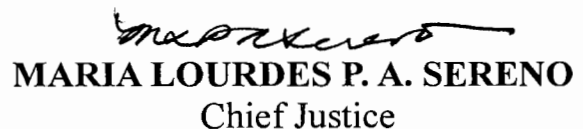

BIENVENIDO L. REYES
Associate Justice

On leave
ESTELA M. PERLAS-BERNABE
Associate Justice

On leave
MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
Chief Justice