

FIRST DIVISION

**NESTOR A. BERNARDINO
and CELEDONIA N. TOMAS,**

Petitioners,

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

X ----- X

EUGELIO G. BARAWID,

Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

X ----- X

G.R. No. 170453

Present:

Panganiban, C.J. (Chairperson),
Ynares-Santiago,
Austria-Martinez,
Callejo, Sr., and
Chico-Nazario, JJ.

G.R. No. 170518

Promulgated:

October 30, 2006

DECISION

YNARES-SANTIAGO, J.:

Assailed in these consolidated petitions for review are the September 19, 2005 Decision^{1[1]} of the Sandiganbayan which found petitioners guilty of falsification of public document in Criminal Case No. 27548 and its November 18, 2005 Resolution^{2[2]} denying petitioners' motion for new trial.

^{1[1]} *Rollo* of G.R. No. 170518, pp. 9-47. Penned by Associate Justice Rodolfo A. Ponferrada and concurred in by Associate Justices Gregory S. Ong and Jose R. Hernandez.

^{2[2]} *Id.* at 67-84.

The facts show that petitioner **Nestor A. Bernardino (Bernardino)** was the former Municipal Mayor of Guimba, Nueva Ecija and Chairman of the PreQualification Bid and Awards Committee (PBAC) for the construction of the extension of the public market of Guimba; while petitioner **Eugelio G. Barawid (Barawid)**, a Municipal Treasurer was a member of the PBAC. Petitioner **Celedonia N. Tomas (Tomas)** was the PBAC's acting Secretary. The other members of the PBAC were Municipal Councilors, Ernesto T. Mateo and Benito A. Rillo; Municipal Planning and Development Coordinator Efren N. Fronda; Municipal Budget Officer Abraham P. Coloma; Municipal Engineer Jose F. Mateo; Municipal Accountant Renato L. Esquivel; and non-government organization representatives Paulino G. Quindara and Luis F. Rendon, Jr.

The "**Minutes of the opening of bids**"^{3[3]} show that on December 8, 1997, the PBAC members convened at the Municipal Library of Guimba, Nueva Ecija. The Acting Chairman, assisted by Commission on Audit (COA) representative Rolando E. Ronquillo (Ronquillo), assessed the qualifications of the four bidders who participated and thereafter awarded the project to Mascom Design and Engineering International (MASCOS) whose bid was determined to be the lowest and most advantageous to the government of Guimba. The Minutes was signed by petitioner Tomas in her capacity as the acting Secretary of the PBAC.

On the same date, petitioners Bernardino and Barawid and the other PBAC members signed a "**Prequalification Bid and Award Committee**"^{4[4]} stating that "after due deli[b]eration, the committee resolved as it is hereby resolved, to recommend [the] Award [of the] Contract [to MASCOS] for offering the lowest [bid]." Their signatures also appear in an "**Abstract of Bidding**"^{5[5]} and "**Abstract of Proposal**"^{6[6]} both reflecting the names of the four bidders and their respective bids.

Meanwhile, prior to the construction of the public market extension, prosecution witness Jose Lucius Pocholo Dizon (Mayor Dizon) was elected Municipal Mayor of Guimba,

^{3[3]} *Id.* at 197-198.

^{4[4]} *Id.* at 199.

^{5[5]} *Id.* at 200.

^{6[6]} *Id.* at 201.

Nueva Ecija in the May 1998 local elections. He thereafter conducted a public bidding for the construction of the same extension of the public market and awarded the project to KYRO Builder as the lowest bidder. Consequently, MASCOM filed before the Office of the Ombudsman a criminal complaint against Mayor Dizon and petitioner Barawid for violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

In his Rejoinder-Affidavit,^{7[7]} Mayor Dizon contended that the award to KYRO is proper because the project could not be validly given to MASCOM as there was in fact no competitive public bidding held on December 8, 1997. In support thereof, he attached the similarly dated June 27, 2000 affidavits^{8[8]} of former PBAC members, namely, Luis F. Rendon, Jr., Paulino G. Quindara, Renato L. Esquivel, Jose F. Mateo, Ernesto T. Mateo, Efren N. Fronda and Abraham P. Coloma, Jr., stating that no public bidding was held in connection with the construction of the Guimba public market extension nor was the local PBAC convened on December 8, 1997. Affiants also declared that the documents in connection with the alleged bidding were delivered to their residence/office; and that they signed the same upon the representation of MASCOM's representative that the documents were necessary for the Philippine National Bank loan application of the municipality in connection with the construction of the public market.^{9[9]}

On the basis of the admission of the said affiants, the Office of the Ombudsman dismissed the case against Mayor Dizon and petitioner Barawid and instead filed the instant case for falsification of public documents under Article 171, paragraph 2 of the Revised Penal Code against all the members of the PBAC members including the herein petitioners.

The Information charged petitioners and the PBAC members of falsification by making it appear in the "Minutes of the opening of bids," "Prequalification Bid and Award Committee," "Abstract of Proposal," and "Abstract of Bidding," that they and COA representative conducted

^{7[7]} *Id.* at 207

^{8[8]} *Id.* at 215-227.

^{9[9]} Except for Renato L. Esquivel and Ernesto T. Mateo, the other 5 members of the PBAC claimed the MASCOM representative made such representation.

a public bidding on December 8, 1997, participated in by four bidders, when no such bidding was in fact conducted, to wit:

That sometime on December 8, 1997, or immediately prior or subsequent thereto, in Guimba, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, accused Celedonia N. Tomas, Acting Secretary of the Prequalification, Bids and Award Committee (PBAC) of the Municipal Government of Guimba, Nueva Ecija; Nestor A. Bernardino, then Mayor and PBAC Chairman; and the PBAC members, namely: Benito A. Rillo and Ernesto T. Mateo, both members of the Sangguniang Bayan; Eugelio G. Barawid, Municipal Treasurer; Efren N. Fronda, Municipal Planning and Development Coordinator; Abraham P. Coloma, Municipal Budget Officer; Jose F. Mateo, Municipal Engineer; Renato L. Esquivel, Municipal Accountant; and Paulino G. Quindara and Luis [F.] Rendon, Jr., NGO representative, while in the performance of and taking advantage of their official positions, conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously prepare and make it appear in the 'ABSTRACT OF BIDDING', the 'ABSTRACT OF PROPOSAL', the MINUTES OF THE OPENING OF BIDS' and the 'PBAC RECOMMENDATION', that a public bidding for the construction of the New Guimba Public Market Extension (wet market) was concluded, that four (4) firms, to wit:

1. Bounty Builders
2. M.O.M Enterprise
3. F.L. Reguyal Construction
4. MASCOM Design and Engineering International

purportedly participated therein and submitted their bids, that a COA representative was supposedly present during the opening of the bids, and that the PBAC supposedly convened and deliberated on the purported bids when, in truth and in fact, the aforesaid firms and the COA representative did not so participate and the PBAC did not actually convene and deliberate on the purported bids, as in fact, no such public bidding was conducted and said documents were executed to justify the award of the contract to build the aforesaid public market extension to MASCOM Design and Engineering International to the damage and prejudice of the government.

CONTRARY TO LAW.^{10[10]}

^{10[10]} *Rollo* of G.R. No. 170518, p. 10.

Upon arraignment, petitioners and the other PBAC members, except for Benito A. Rillo who died on December 5, 2001, pleaded not guilty.

At the trial, prosecution witness and COA representative Ronquillo declared that he did not attend any public bidding regarding the construction of the Guimba public market on December 8, 1997.^{11[11]} He admitted, however, that he has no personal knowledge whether or not a bidding was truly conducted on said date.^{12[12]} The same declaration was made by prosecution witness Mayor Dizon who admitted that he does not know whether the PBAC conducted a public bidding.^{13[13]}

The prosecution also offered in evidence the affidavits of PBAC members, Luis F. Rendon, Jr., Paulino G. Quindara, Renato L. Esquivel, Jose F. Mateo, Ernesto T. Mateo, Efren N. Fronda and Abraham P. Coloma, Jr., in support of its theory that no public bidding was held by the PBAC on December 8, 1997. Counsel for the said affiants admitted the genuineness of the signature appearing in the affidavits.^{14[14]}

Petitioners and the PBAC members filed their separate motions for leave to file demurrer to evidence but were denied. They were, however, given a 10 day period within which to file their respective demurrer to evidence without prior leave of court, subject to the legal consequences under Section 23, Rule 119 of the Rules of Court. Nevertheless, petitioners and the PBAC members filed separate demurrer to evidence.

On September 19, 2005, the Sandiganbayan rendered the assailed judgment of conviction holding that the Affidavits of Luis F. Rendon, Jr., Paulino G. Quindara, Renato L. Esquivel, Jose F. Mateo, Ernesto T. Mateo, Efren N. Fronda and Abraham P. Coloma, Jr., as corroborated by the testimonies of COA representative Ronquillo and Mayor Dizon proved

^{11[11]} *Id.* at 12-13.

^{12[12]} *Id.* at 55.

^{13[13]} *Rollo* of G.R. No. 170453, pp. 98-99.

^{14[14]} *Rollo* of G.R. No. 170518, pp. 50-52.

beyond reasonable doubt that no public bidding was conducted by the PBAC on December 8, 1997. The dispositive portion thereof, states:

WHEREFORE, judgment is hereby rendered finding accused Nestor A. Bernardino, Ernesto T. Mateo, Eugelio G. Barawid, Efren [N.] Fronda, Abraham [P.] Coloma, Jr., Jose F. Mateo, Renato [L.] Esquivel, Paulino [G.] Quindara, Luis [F.] Rendon, Jr. and Celedonia N. Tomas guilty beyond reasonable doubt of the offense charged in the Amended Information and, with the application of the Indeterminate Sentence law and without any mitigating or aggravating circumstance, hereby sentencing each of them to suffer the indeterminate penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to EIGHT (8) YEARS and ONE DAY of prision mayor as maximum with the accessories thereof and to pay a fine of TWO THOUSAND PESOS (P2,000.00) with costs against the accused.

SO ORDERED.^{15[15]}

Petitioners Bernardino and Tomas filed a motion for new trial^{16[16]} on the basis of the alleged newly discovered evidence consisting of the affidavits executed in 2003 to 2005 by Renato L. Esquivel, Ernesto T. Mateo, Efren N. Fronda, Jose F. Mateo, Abraham P. Coloma, Jr., Eugelio G. Barawid,^{17[17]} Luis F. Rendon, Jr.,^{18[18]} and Paulino G. Quindara,^{19[19]} in connection with a separate administrative case filed against said affiants for dishonesty and grave misconduct before the Office of the Ombudsman. Affiants stated in the said affidavits that there was in fact a public bidding held on December 8, 1997; and that they executed their June 27, 2000 affidavit stating that no bidding occurred, because of the fear and intimidation employed by Mayor Dizon who needed said affidavits to bolster his defense in the case for violation of the Anti-Graft and Corrupt Practices Act filed against him. Petitioners Bernardino and Tomas claimed they were not party to the said administrative case against the affiants and that it was only after the promulgation of the decision in the falsification case that affiants apologized and informed them of the existence of said 2003 and 2005 affidavits.

^{15[15]} *Id.* at 45 to 46.

^{16[16]} *Rollo* of G.R. No. 170453, pp. 84-106.

^{17[17]} *Id.* at 110-123

^{18[18]} *Id.* at 137-140.

^{19[19]} *Id.* at 141-142.

Petitioner Barawid and the other PBAC members also filed their separate motion for new trial^{20[20]} on the ground of alleged errors of law and irregularities in the trial of their case.

On November 18, 2005, the Sandiganbayan denied the separate motions for new trial.^{21[21]} Renato Esquivel, Jose Mateo, Efren Fronda, Luis Rendon, Jr., and Paulino Quindara filed a petition before this Court docketed as G.R. No. 170499 but was denied in a Resolution dated June 26, 2006. Their motion for reconsideration was denied with finality on September 18, 2006.

Petitioner Barawid filed a separate petition docketed as G.R. No. 170518 which was consolidated with the petition of Bernardino and Tomas in G.R. No. 170453.^{22[22]}

The issue is whether the guilt of petitioners was proven beyond reasonable doubt.

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. To justify the conviction of the accused, the prosecution must adduce the quantum of evidence sufficient to overcome the constitutional presumption of innocence. The prosecution must stand or fall on its evidence and cannot draw strength from the weakness of the evidence of the accused. Accordingly, when the guilt of the accused-appellants have not been proven with moral certainty, it is our policy of long standing that their presumption of innocence must be favored and their exoneration be granted as a matter of right.^{23[23]}

In the instant case, petitioners were charged with falsification under paragraph 2, Article 171 of the Revised Penal Code, by causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate. Its elements are: (1) that the offender is a public officer, employee or notary public; (2) that he takes advantage of his official position;

^{20[20]} *Rollo* of G. R. No. 170518, pp. 48-66.

^{21[21]} *Id.* at 67- 84.

^{22[22]} *Id.* at 260.

^{23[23]} *People v. Lim*, 435 Phil. 640, 664-665 (2002).

(3) that he falsifies a document by causing it to appear that a person or persons have participated in any act or proceeding when they did not in fact so participate.^{24[24]}

The evidence presented by the prosecution to establish that no bidding was conducted on December 8, 1997 were the June 27, 2000 affidavits of Luis F. Rendon, Jr., Paulino G. Quindara, Renato L. Esquivel, Jose F. Mateo, Ernesto T. Mateo, Efren N. Fronda and Abraham P. Coloma, Jr. The testimonies of COA representative Ronquillo and Mayor Dizon could not be considered for purposes of determining whether a public bidding was indeed held on that day because of their admission that they do not have personal knowledge whether or not said bidding was indeed conducted.

Pertinent portions of the similarly worded affidavit of Luis F. Rendon, Jr., and Paulino G. Quindara, reads:

5) That the truth of the matter is that no public bidding for the contract to construct the new public market [extension] x x x of the Municipality of Guimba, Nueva Ecija was actually held or conducted on 08 December 1997 nor was the Local PBAC convened in connection therewith, and that bidding documents relative thereto purporting to show that a public bidding was conducted in accordance with the applicable laws, rules and regulations on public bidding and award of contracts were hand delivered to me in my residence by a representative of Mascom, a certain Caloy Santos for my signature.

6) That I have no knowledge of and/or participation in the preparation of the subject bidding documents, except my signature thereon.^{25[25]}

Renato L. Esquivel deposed that:

3. That no actual public bidding was held and/or conducted on 08 December 1997 in connection with the contract for the construction of the new public market [extension] x x x of the Municipality of Guimba, Nueva Ecija as supported by the following:

^{24[24]} Reyes, The Revised Penal Code, Vol. II, Fourteenth Edition, p. 215.

^{25[25]} *Rollo* of G. R. No. 170518, pp. 215 and 217.

a. The Office of the Municipal Accountant of the Municipality of Guimba, Nueva Ecija, was not furnished any communication/letters/notice stating that such public bidding will be conducted which is normally done before any public bidding is held.

b. The covering public bidding documents were personally delivered to me in my residence by a representative of Mascom Design & Engineering International for my signature.

c. I have no knowledge of and/or participation in the preparation of the covering public bidding documents allegedly held on 08 December 1997, except for my signature thereon.

d. The covering public bidding documents were not signed by the assigned Commission on Audit representative.^{26[26]}

Jose F. Mateo, Efren N. Fronda and Abraham P. Coloma, Jr., similarly averred that:

3. That no actual public bidding was held and/or conducted on 08 December 1997 in connection with the contract for the construction of the new public market [extension] x x x of the Municipality of Guimba, Nueva Ecija.

4. That the covering bidding documents for the public bidding allegedly held on 08 December 1997 were hand delivered to me by a representative of Mascom Design & Engineering International (Mascom for brevity) in my office for signature.^{27[27]}

Likewise the Affidavit of Ernesto T. Mateo, reads:

3) That no actual public bidding was held/conducted on 08 December 1997 in connection with the contract for the construction of the new public market [extension] x x x of the Municipality of Guimba, Nueva Ecija.

4) That the covering bidding documents for the alleged public bidding conducted on 08 December 1997 were signed by me in my residence.^{28[28]}

^{26[26]} *Id.* at 219.

^{27[27]} *Id.* at 221, 224 and 226.

^{28[28]} *Id.* at 223.

As can be gathered from the foregoing, the affiants declared that no public bidding was held on December 8, 1997. However, said declaration is merely an expression of an opinion and not a fact considering that like prosecution witnesses Ronquillo and Mayor Dizon, they also have no personal knowledge as to whether or not a bidding was indeed conducted at the Municipal Library of Guimba, Nueva Ecija on December 8, 1997. Pursuant to Section 48, Rule 130 of the Rules of Court, the opinion of witnesses, as in the instant case, is not admissible. Since affiants were not in the place where the alleged bidding was held, they are not in the position to declare with moral certainty that no such bidding in fact occurred. Their statements that they signed the documents showing that they participated in the determination of the lowest bidder with knowledge that they did not in fact so participate therein, bind only them and not petitioners whose whereabouts on December 8, 1997 were not established to be known to said affiants. And while the Information alleged conspiracy such that the acts of the affiants may be attributed as well to petitioners Bernardino and Tomas, the same cannot be considered against said petitioners inasmuch as no evidence was presented by the prosecution to establish conspiracy. Conspiracy must be established by positive and conclusive evidence. It cannot be based on mere conjectures but must be established as a fact.^{29[29]}

Under Section 36, Rule 130 of the same Rules, witnesses can testify only to those facts which they know of their personal knowledge, that is, which is derived from their own perception, except as otherwise provided by the rules. They are not generally allowed to testify on their opinions or conclusions but must state facts within their knowledge as it is the province of the court to make deductions from pertinent facts placed in evidence and to decide matters directly in issue. Their testimony must be confined to statements of concrete facts within their own observation, knowledge, and recollection – that is, facts perceived by the use of their own senses – as distinguished from their opinions, inferences, impressions and conclusions drawn from such facts, which are incompetent and inadmissible.^{30[30]} While there are exceptions^{31[31]}

^{29[29]} *People v. Berroya*, 347 Phil. 410, 429-430 (1997).

^{30[30]} Francisco, *The Revised Rules of Evidence in the Philippines*, Vol. II, Part I, 1997 Edition, p. 635.

^{31[31]} Sections 49 and 50 of Rule 130 of the Rules of Court, read:

SEC. 49. Opinion of expert witness. – The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

to the rule on inadmissibility of opinions, the subject declarations in the instant case is not one of them.

Moreover, the evidence showing that seven members of the PBAC did not attend the public bidding does not prove beyond reasonable doubt that petitioner Tomas as acting Secretary and the other three members, that is, the deceased Benito A. Rillo, and herein petitioners Bernardino and Barawid, did not convene on December 8, 1997. Otherwise, stated, the absence of the seven PBAC members did not eliminate the possibility that the rest of the members convened and carried out the public bidding with four participating bidders. Under the equipoise rule, where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof, which in this case is the prosecution, loses. The equipoise rule finds application if, as in the present case, the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, for then the evidence does not fulfill the test of moral certainty, and does not suffice to produce a conviction.^{32[32]}

In sum, the Court finds that petitioners Bernardino and Barawid must be acquitted considering that the prosecution failed to prove their guilt beyond moral certainty. The law, to guard against injustice, requires that the offense be established by evidence beyond reasonable doubt. It is a serious matter, not only to a party, but to the state as well, to take a person from the ordinary avocations of life, brand him a felon, and deprive him of his liberty, appropriate his labor, and cast a cloud upon his future life, and humiliate his relatives and friends. To authorize the state in doing this, there must be no reasonable doubt on the accused's guilt.^{33[33]}

SEC. 50. Opinion of ordinary witnesses. – The opinion of a witness for which proper basis is given, may be received in evidence regarding –

- a) The identity of a person about whom he has adequate knowledge;
- b) A handwriting with which he has sufficient familiarity; and
- c) The mental sanity of a person with whom he is sufficiently acquainted.

The witness may also testify on his impression of the emotion, behavior or appearance of a person.

^{32[32]} *Dado v. People*, 440 Phil. 521, 537 (2002).

^{33[33]} *Dela Cruz v. People*, G.R. No. 150439, July 29, 2005, 465 SCRA 190, 216.

However, the same cannot be said with respect to petitioner Tomas. Even if we assume that all the PBAC members attended the bidding, including those who executed an affidavit to the contrary, petitioner Tomas is still liable for falsification. Note that she was the only one who signed the “Minutes of the opening of bids” which stated, among others, that COA representative Ronquillo attended the public bidding on December 8, 1997. As acting Secretary of the PBAC she has the duty to prepare or intervene in the preparation of the Minutes of the meetings of the PBAC which should be recorded pursuant to Section 37^{34[34]} of the Local Government Code. In making it appear that COA representative Ronquillo attended the bidding when the latter categorically testified that he never attended a public bidding in the Municipality of Guimba, Nueva Ecija on December 8, 1997, petitioner Tomas took advantage of her official position,^{35[35]} rendering her liable for falsification under Article 171 paragraph 2 of the Revised Penal Code. Finding the testimony of COA representative Ronquillo to be convincing and there being no ill motive shown that would impel him to perjure himself, the Court gives credence to his declaration and sustains the judgment of conviction against petitioner Tomas.

In the same vein, petitioner Tomas’ motion for new trial was correctly denied by the Sandiganbayan. The evidence presented in support of said motion was that a public bidding was truly conducted and that the PBAC members attended the same. However, this has no bearing on the culpability of petitioner Tomas which is predicated on her untruthful declaration that the COA representative attended the bidding, regardless of the presence or absence of the PBAC members.

^{34[34]} Pertinent portion thereof, reads:

SECTION 37. Local Prequalification, Bids and Awards Committee (Local PBAC)–

x x x x

(c) All meetings of the committee shall be held in the provincial capitol or the city or municipal hall. The minutes of such meetings of the committee and any decision made therein shall be duly recorded, posted at a prominent place in the provincial capitol or the city or municipal hall, and delivered by the most expedient means to the elective officials concerned.

^{35[35]} *Adaza v. Sandiganbayan*, G.R. No. 154886, July 28, 2005, 464 SCRA 460, 478-479.

Under Article 171 of the of the Revised Penal Code, falsification is punishable with *prision mayor* and a fine not to exceed P5,000.00. There being no modifying circumstance in the instant case, the penalty of petitioner Tomas shall be imposed in its medium period, ranging from 8 years and 1 day to 10 years. Applying the Indeterminate Sentence Law,^{36[36]} she is entitled to an indeterminate penalty the minimum of which may be fixed anywhere within the range of the penalty next lower in degree to *prision mayor*, which is *prision correccional* with a duration of 6 months and 1 day to 6 years. Petitioner Tomas is therefore sentenced to suffer the penalty of 6 months and 1 day of *prision correccional* to 8 years and 1 day of *prision mayor*.

WHEREFORE, the September 19, 2005 Decision of the Sandiganbayan in Criminal Case No. 27548 is **REVERSED and SET ASIDE** with respect to petitioners Nestor A. Bernardino and Eugelio G. Barawid who are **ACQUITTED** of the crime of falsification under Article 171 paragraph 2 of the Revised Penal Code on the ground of reasonable doubt.

Insofar as petitioner Celedonia N. Tomas is concerned, the September 19, 2005 Decision of the Sandiganbayan in Criminal Case No. 27548 finding her guilty of the crime of falsification under Article 171 paragraph 2 of the Revised Penal Code is **AFFIRMED with MODIFICATION** as to the indeterminate penalty which is fixed at 6 months and 1 day of *prision correccional* to 8 years and 1 day of *prision mayor*.

^{36[36]} Section 1 of Act No. 4103, as amended by Act No. 4225, otherwise known as the Indeterminate Sentence Law, provides:

SECTION 1, Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x

SO ORDERED.

CONSUELO YNARES-SANTIAGO
Associate Justice

WE CONCUR:

ARTEMIO V. PANGANIBAN
Chief Justice
Chairperson

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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's Division.

ARTEMIO V. PANGANIBAN
Chief Justice