REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. O-674 & O-675
For: Violation of Section 255, in relation to Sections 253 and 256 of the NIRC of 1997, as amended

-versus-

Members:
DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

JOSEPH DERRICK B. YAMBAO,
Accused.

Promulgated:
NOV 07 2019 ; 2:20 pm

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RESOLUTION

For this Court's determination is the *Motion for Leave of Court to file Demurrer to Evidence* and *Demurrer to Evidence* posted by the accused on September 9, 2019 without plaintiff's comment despite due notice as per Records Verification Report dated October 3, 2019. The aforesaid motion prays for the admission of the *Demurrer to Evidence* and consequently, the dismissal of the case on the ground that the prosecution failed to prove his guilt beyond reasonable doubt.

The accused was charged under Informations both dated June 16, 2017 docketed as Criminal Case Nos. O-674 and O-675 for failure to pay deficiency income tax (IT) and value-added tax (VAT) for taxable year 2006 in the amount of Php157,987,925.11 and 107,798,935.09, respectively, committed as follows:

CRIMINAL CASE NO. O-674

> "That sometime in 2012 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused JOSEPH DERRICK B. YAMBAO, being the President and responsible corporate officer of FDI FOREFRONT II TRADING CORPORATION, did then and there willfully and unlawfully fail to pay deficiency income tax for taxable year 2006, in the amount of P157,987,925.11 exclusive of interest and surcharges, despite final assessment notice, including prior and post notices and demand to pay before suit issued by the BIR on February 13, 2012, to the damage and prejudice of the government."
>
> Contrary to law."

CRIMINAL CASE NO. O-675

> "That sometime in 2012 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused JOSEPH DERRICK B. YAMBAO, being the President and responsible corporate officer of FDI FOREFRONT II TRADING CORPORATION, did then and there willfully and unlawfully fail to pay deficiency value-added tax (VAT) for taxable year 2006, in the amount of P107,798,935.09 exclusive of interest and surcharges, despite final assessment notice, including prior and post notices and demand to pay before suit issued by the BIR on February 13, 2012, to the damage and prejudice of the government.
>
> Contrary to law."

Warrants of Arrest were issued against accused Joseph Derrick B. Yambao for Criminal Case Nos. O-674 and O-675 on July 2, 2019 and July 6, 2019, respectively.[1]

Accused Joseph Derrick B. Yambao voluntarily surrendered and submitted himself to the jurisdiction of the Court and also posted the required cash bail bond in the amount of Php20,000.00 for each case, for his provisional liberty.

[1] Court Docket of Crim Case No. O-674, page 116 and Court Docket of Crim Case No. O-675 (no page numbers)

A Resolution was issued by the First Division of this Court on July 6, 2018 for Crim. Case No. O-674 lifting the Warrant of Arrest issued against accused Joseph Derrick B. Yambao.

The Second Division of this Court likewise issued a Resolution on July 6, 2019 for Crim. Case No. O-675 lifting the Warrant of Arrest issued against accused Joseph Derrick B. Yambao.

Meanwhile, an *Urgent Ex-Parte Motion for Consolidation and Joint Trial* was filed by the Assistant State Prosecutor on July 16, 2018 praying for the consolidation of CTA Crim. Case Nos. O-674 and O-675, considering that the parties and witnesses of both cases are the same.[2]

In an Order dated August 1, 2018, the Court granted the consolidation of Crim. Case No. O-674 with Crim. Case No. 675.[3]

Upon arraignment for Crim. Case Nos. O-674 and O-675 which was held on August 1, 2018, accused Joseph Derrick B. Yambao assisted by counsel, entered a plea of "Not Guilty" to the charges filed against him.

A preliminary conference was held on August 22, 2018.

Pre-trial for the consolidated cases was held on September 5, 2018.

A Pre-trial Order was issued by the Court on November 13, 2018.[4]

In the said Pre-Trial Order, it was stated that the plaintiff will present witnesses Eden C. Caniño and James L. Layaoen to establish its case against the accused. However, only Eden C. Caniño was able to testify for the prosecution because the other witness, James L. Layaoen was not able to testify due to medical reasons.

On January 31, 2019, plaintiff filed a *Motion to Cancel and Reset Hearing with Prayer for Suspension of Proceedings* praying for the suspension of the trial on the ground that his witness,

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[2] Court Docket, pp. 141-142.
[3] Court Docket, pp. 154-155.
[4] Court Docket, pp. 227-233.

James L. Layaoen, underwent an eye operation and will take at least three (3) months to recuperate.

The Court denied plaintiff's *Motion to Cancel and Reset Hearing with Prayer for Suspension of Proceedings* in a Resolution dated February 22, 2019.[5]

Plaintiff's *Motion for Reconsideration* of the Resolution dated February 22, 2019 was denied by the Court on the ground that further delay in the presentation of the evidence of the prosecution will result to giving the accused an insufficient period to present its own evidence, considering the limited period of 180 days for presentation of evidence of both parties.[6] Due to reasons stated by the Court in the said Resolution, witness for the prosecution, James L. Layaoen was not able to testify for the prosecution.

Plaintiff formally offered its exhibits on June 21, 2019, marked as Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-12-2", "P-13", "P-13-2", "P-13-4", "P-13-5", "P-14", "P-15", "P-16", "P-17", "P-18", "P-18-1" which were all admitted by the Court as evidence for the plaintiff in the Resolution dated August 14, 2019. In this same Resolution, the Court directed the accused, if he so desires, to move for leave of court to file a demurrer to evidence and to subsequently file a demurrer to evidence within ten (10) days from receipt of notice and directed the plaintiff to file its comment or objection to the motion and demurrer within ten (10) days from receipt thereof.

Accused filed the instant *Motion for Leave of Court to file Demurrer to Evidence* and *Demurrer to Evidence* on September 18, 2019.

The Records Verification Report dated October 3, 2019 noted that plaintiff failed to file its comment to accused's *Motion for Leave of Court to file Demurrer to Evidence* and *Demurrer to Evidence,* hence this Resolution.

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[5] Court Docket of Crim. Case No. O-674, pp. 292-295.
[6] Court's Resolution dated June 4, 2019, Court Docket of Crim. Case No. O-674, pp. 314-316.

Allegations of the Accused:

Accused based his *Demurrer to Evidence* on the following grounds:

1. The prosecution utterly failed to prove that the accused is the President and/or responsible officer of FDI Forefront II Trading Corp. during the taxable year 2006 from which the alleged deficiency taxes arose.

2. The prosecution's sole witness aside from not being authorized to conduct the audit and/or assessment, was also not the one who personally conducted the audit and/or assessment.

On the first ground, accused avers that plaintiff failed to prove that the accused Joseph Derrick B. Yambao, is the President or a responsible corporate officer of FDI Forefront II Trading Corp. According to the accused, the sole witness of the prosecution failed to identify him as the President or a responsible corporate officer of the corporation and even admitted that she had no personal knowledge of the alleged connection of the accused to the corporation.

On the second ground, accused alleges that revenue officer, Eden C. Caniño was not the one authorized under the Letter of Authority (LOA) to conduct the audit and/or assessment and was not the one who personally conducted the audit/assessment of the books and other accounting records of the corporation. Accused cites a basic rule of the Law on Evidence that a witness may only testify on matters which he or she knows from his or her personal knowledge. According to the accused, the sole witness of the prosecution, Eden C. Caniño, was not the one who personally conducted the audit and/or assessment and her participation was limited to the preparation of the Post-Reporting Notice, hence she lacked the personal knowledge to testify on matters related to the audit and/or assessment.

Evidence Presented by Plaintiff

Plaintiff's sole witness, Revenue Officer Eden C. Caniño testified that she was the one who conducted the audit/examination of the accounting and business records of FDI Forefront II Trading Corporation for taxable year 2006 pursuant to LOA No. 00066079 dated September 3, 2007. That upon re-assignment of the case to her, she proceeded to review the BIR records where she learned that the First, Second, Third and Final Notice for Presentation of Books and Other Accounting Records as well as the Third and Final Notice for Issuance of *Subpoena Duces Tecum* were all prepared and issued against the corporation. She also testified that no documents were submitted by the corporation, in spite of numerous requests, so that their office decided to issue and serve upon the corporation a Post Reporting Notice and thereafter submitted a Memorandum Report recommending the issuance of a Notice of Assessment against the corporation.

The recommendation was granted which resulted to the issuance of a Preliminary Assessment Notice (PAN) against the corporation. She further testified that a Formal Letter of Demand (FLD) with Details of Discrepancies and Final Assessment Notices (FANs) for income tax (IT), value-added tax (VAT), documentary stamp tax (DST) for loans payable and DST for increase in capital were sent to the address of the orporation.

Upon direct examination, Ms. Eden C. Caniño testified that the foregoing documents were served through registered mail to the address of the corporation. Ms. Caniño stated that after service of the FLD and the assessment notices, the case of the corporation was endorsed to the Collection Division of Revenue Region No. 7, Quezon City for failure to make a timely and valid protest. The Collection Division then issued a Preliminary Collection Notice, a follow up collection letter and a warrant of distraint and/or levy against the corporation. Thereafter, the case was endorsed to the Legal Division which issued a Demand Before Suit dated February 13, 2012. After the issuance of the Demand Before Suit, a criminal case was filed against the corporation for taxable year 2006 with the Department of Justice (DOJ) as authorized by the Letter Referral and Joint-Complaint Affidavit filed with the DOJ.

Finally, witness Eden C. Caniño identified her Judicial Affidavit as Exhibit "P-18."

On cross-examination, witness Eden C. Caniño testified that she is not the revenue officer named in the original LOA because she was still assigned at another district office at the time of its issuance. According to her testimony, she proceeded to conduct the examination of the corporation's books and other accounting records when she was transferred to Revenue District Office No. 38. Witness also admitted that she is not the officer named in the First Request for Presentation of Records nor in the Second Request for Presentation of Records. When asked further by accused's counsel, witness admitted that she is also not named in the Third and Final Notice for Presentation of Records nor in the recommendation for the issuance of a *Subpoena Duces Tecum*. She however confirmed that she is the revenue officer named in the Post Reporting Notice dated August 22, 2018.

The documentary evidence admitted pursuant to the Court's Resolution dated August 14, 2019 are the following:

EXHIBIT	DESCRIPTION
"P-1"	Referral Letter dated June 2, 2016
"P-2"	Name and signature of the Commissioner of Internal Revenue
"P-3"	Joint Complaint-Affidavit dated June 2, 2016
" P-4"	Letter of Authority No. 2001 00066079 dated September 3, 2007
"P-5"	First Request for Presentation of Records
"P-6"	Second Request for Presentation of Books and other Accounting Records
"P-7"	Third and Final Notice
"P-8"	Recommendation for issuance of a Subpoena Duces Tecum
"P-9"	Subpoena Duces Tecum dated April 14, 2009
"P-10"	Post-Reporting Notice
"P-11"	Memorandum Report
"P-12"	Preliminary Assessment Notice dated November 11, 2009
"P-12-2"	Transmittal of Preliminary Assessment Notices sent through registered mail

"P-13"	Formal Letter of Demand
"P-13-2"	Details of Discrepancies
"P-13-3"	Assessment Notice for deficiency income tax dated December 11, 2009.
"P-13-4"	Assessment Notice for deficiency value-added tax dated December 11, 2009.
"P-13-5"	Transmittal of Final Assessment Notices/Formal Letters of Demand sent through registered mail.
"P-14"	Preliminary Collection Notice dated June 8, 2010
"P-15"	Collection Letter dated February 16, 2011
"P-16"	Warrant of Distraint and/or Levy
"P-17"	Demand Before Suit dated February 13, 2012
"P-18"	Judicial Affidavit of Revenue Officer Eden C. Caniño
"P-18-1"	Name and signature of Revenue Officer Eden C. Caniño

RULING OF THE COURT

The procedure for filing a demurrer to evidence is governed by Section 23, Rule 119 of the Revised Rules of Court, and we quote:

> "Section 23. *Demurrer to evidence.* – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
>
> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the

case for judgment on the basis of the evidence for the prosecution.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment."

A demurrer to evidence is an objection of one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[7]

The accused is charged for violation of Section 255 of the 1997 National Internal Revenue Code (1997 NIRC), as amended, quoted as follows:

SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who *willfully fails to pay such tax*, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (underscoring supplied)

In relation thereto, Sections 253 (d) and 256 of the 1997 NIRC, as amended, are quoted below:

"Section 253. **General Provisions.**

[7] Gutib vs. CA, G.R. No. 131209, August 13, 1999.

> d. In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, **president**, general manager, branch manager, **treasurer,** officer-in-charge and the employees responsible for the violation." (emphasis supplied)
>
> "Section 256. *Penal Liability of Corporations.* – Any corporation, association or general co-partnership liable for any acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (Php50,000) but not more than One hundred thousand pesos (Php100,000)."

The following are the elements of the crime of violation of the aforequoted Section 255 in relation to Sections 253 (d) and 256 of the same Code, thus:

1. That a corporate taxpayer is required under the 1997 NIRC, as amended, to pay any tax;

2. That the corporate taxpayer failed to pay the required tax at the time or times required by law or rules and regulations;

3. Such failure to pay was willful;

4. That the accused is the responsible officer of the corporate taxpayer.

It is well-settled that the burden of proof is on the prosecution, and unless it discharges this burden, the accused need not even offer evidence in his behalf and he would be entitled to an acquittal.[8]

Based on the provisions of Section 253 (d) of the 1997 NIRC, as amended, the penal liability for the violation of Section 255 of the same Code devolves on the responsible officers of the corporation.

A careful review of the documentary exhibits presented by plaintiff shows that the official notices such as the First, Second and Third and Final Notice as well as the Post Reporting Notice PAN and the FLD/FANs of this case were all addressed to FDI

[8] Nilo Macayan, Jr. vs. People of the Philippines, G.R. No. 175842, March 18, 2015.

Forefront II Trading Corp., without including the accused Joseph Derrick B. Yambao as its responsible officer.[9]

It was also revealed that plaintiff did not present evidence to disclose the names of the responsible officers of the corporation at the time the crime was allegedly committed. Plaintiff did not present the Articles of Incorporation (AOI) and the General Information Sheet (GIS) of accused FDI Forefront II Trading Corp. to show that the accused Joseph Derrick B. Yambao is its responsible officer at the time the crime was allegedly committed in the year 2012 nor in 2006, the taxable year from which the alleged deficiency taxes arose.

Further, the sole witness of the plaintiff, Eden C. Caniño failed to identify or pinpoint the accused Joseph Derrick B. Yambao as a responsible officer of the corporation FDI Forefront II Trading Corp.

We quote portions of the testimony of Revenue Officer Eden C. Caniño during cross-examination in the hearing held on December 5, 2018:

> Q. As to question, you identified the president of FDI Forefront is a certain Mr. Yamambao (*sic*). Was he President of FDI in 2006? Would you know?
>
> A. I have no personal idea, ma'am, but it is indicated in the docket, in the notices.
>
> Q. What about ma'am, in the years prior to 2006? Do you have any knowledge if Mr. Quiambao (*sic*) is also president or an officer during that time?
>
> A. No.
>
> xxx xxx xxx

The Informations filed against the accused identified Joseph Derrick B. Yambao as the president of FDI Forefront II Trading Corp. but plaintiff, during trial, failed to adduce proof of his designation as such officer at the time the crime was allegedly committed in 2012 nor in 2006. In fact, it did not adduce any proof to identify any of the officers of the corporation.

[9] Exhibits "P-5", "P-6", "P-7", "P-10", "P-12", "P-13", "P-13-3", "P-13-4".

Without any proof of his role or designation/position in the corporation, accused Joseph Derrick B. Yambao cannot be held criminally liable for the alleged acts of FDI Forefront II Trading Corp. committed sometime in 2012.

Under Section 23, Rule 119 of the Revised Rules of Court, the Court is required to ascertain whether the evidence presented by the prosecution is sufficient to support a verdict of guilt against the accused. In the instant case, plaintiff was not able to establish the guilt of the accused as it failed to prove that he is one of the responsible officers in the corporation.

Further, we agree with the accused that revenue officer, Eden C. Caniño was not competent to testify on the details of its alleged tax deficiencies because, on her admission, upon inquisition and clarifications made by Justices Esperanza Fabon-Victorino and Catherine T. Manahan, she admitted that she was not the person authorized in the LOA to conduct the examination of the books of accounts and other accounting records of the corporation and that she did not actually conduct the audit of the corporation's accounting records but was only responsible to prepare the Post Reporting Notice based on the financial statements and income tax returns of the corporation. Her role in the actual investigation is unclear and conflicting as shown in her testimony, portions of which are quoted below:

> Justice Victorino – What was your authority to review the documents in this case?
>
> A. Your Honors, when I reported sometime in 2009, at RDO 38, Quezon City, this case was assigned to me and I think there was a referral notice issued to me. I just don't know where it is now.
>
> Justice Victorino- You only think. So you are effectively telling the Court that you are not sure whether there was a referral letter or any authority given to you to continue the conduct of examination?
>
> A. Sorry, your Honors. But I was, since that case was assigned to me. I proceeded to (interrupted)
>
> Justice Victorino – How was it assigned to you?
>
> A. I was told by my immediate supervisor. Ms. Estrella Manalo, to make the audit based on the financial statement, your Honors.
>
> Justice Victorino- There was no written document giving you the authority (interrupted).

A. I think there was.

xxx xxx xxx

Justice Victorino – What is it? Do you have it with you?

A. If I remember it right, it was a referral notice.

Justice Victorino – Where is that?

A. It is attached to the docket, I think.

Upon clarification by Justice Catherine T. Manahan, it was revealed that the witness Eden C. Caniño did not actually conduct the examination of the corporation's books of accounts and other accounting records but merely prepared the Post Reporting Notice, and we quote:

> Justice Manahan: So Ms. Witness, following the line of questioning of my Honorable, esteemed colleague, Justice Victorino, what stages of investigation did you come in? At what stage, because previously, when the counsel of the accused propounded her cross-examination questions and referred to several exhibits and asked you to confirm whether your name appears in those documents and you said no, because (*sic*) were still assigned in another BIR office, what stage of the investigation of this taxable year 2006 of the accused did you participate. Did you come in?
>
> A. I was tasked to prepare the Post Reporting Notice, your Honors.
>
> Justice Manahan – So, in other words, at your end, there was no more active contact or examination of the records of the taxpayer but you were just asked to prepare a Post Reporting Notice?
>
> A. Yes, your Honors.
>
> Justice Manahan. What was the basis of your report?
>
> A. Yes, your Honors, because based on the records, your Honors, the taxpayer FDI Forefront II Trading Corporation did not submit any document, so, we resorted to the, in the docket which is the financial statements, your Honors, and the Income Tax Returns.

Based on the above disquisitions of the plaintiff's witness, the alleged tax deficiencies of the corporation were not clearly established, being based solely on an evaluation of its financial statements and income tax returns. Further, the method of study and evaluation to come up with a solid conclusion was weak and was described by a person who was not even authorized to conduct the examination of the corporation's books of accounts and other accounting records. The LOA presented as Exhibit "P-4" listed down the names of revenue officers Cecilia Gallardo and Manolo Estrella without any mention of the name of witness Eden C. Caniño.[10]

It is basic that an audit or examination of books to be lawful, must be based on a valid LOA. We quote Section 13 of the 1997 NIRC, as amended, thus:

> "Section 13. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district** in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the same acts could have been performed by the Revenue Regional Director himself." (emphasis supplied)

Based on the aforequoted testimony of plaintiff's witness, Eden C. Caniño, she was not authorized by an LOA and that she conducted the so-called examination of the corporation's records based on a mere referral letter or notice. It must be noted that the referral notice or letter referred to by witness Eden C. Caniño and offered by plaintiff as Exhibit "P-1" is the Referral Letter dated June 2, 2016 and signed by the Commissioner of Internal Revenue which mentions the names of the BIR lawyers and the revenue officers (including Eden C, Caniño) who recommended the criminal prosecution of FDI Forefront II Trading Corporation and accused Joseph Derrick B. Yambao as its responsible corporate officer.[11] This is different from an LOA authorizing the revenue officers named therein to conduct the examination and investigation of a taxpayer's books of accounts and other accounting records for a specific taxable year. This Referral Letter was issued *after* the audit has been conducted and an assessment notice has already been issued and is one of the supporting documents submitted in filing a criminal complaint in this Court. An LOA is issued *prior* to conducting an audit and issuance of an assessment notice.

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[10] Court Docket of Crim. Case No. O-675. Page 77.
[11] Court Docket of Crim. Case No. O-674, pp. 68-69.

Further, the pieces of evidence adduced by plaintiff do not also prove the existence of the element of willful failure to pay a tax under Section 255 of the 1997 NIRC, as amended, because they did not sufficiently establish that the corporation is required to pay the assessed deficiency income and value-added taxes for taxable year 2006.

Overall, the evidence presented by the prosecution is weak and cannot be used to establish the guilt of the accused.

The presumption of innocence of an accused in a criminal case is a basic constitutional principle and the prosecution has the burden of proving otherwise.[12]

When guilt is not proven with moral certainty, exoneration must be granted as a matter of right.[13]

In view of the foregoing, the *Motion for Leave of Court to file Demurrer to Evidence* posted by the accused on September 9, 2019 is hereby **GRANTED**.

Accused's *Demurrer to Evidence* is also **GRANTED.**

Accordingly, CTA Criminal Case Nos. O-674 and O-675 are **DISMISSED** on the ground of insufficiency of evidence.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[12] People of the Philippines vs. Zafra Maraorao y Macabalang, G.R. No. 174369, June 20, 2012.
[13] Violeta Bahilidad vs. People of the Philippines, G.R. No. 185195, March 17, 2010.