REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

TAHA CALI,
MARGARITA SANTIAGO,
MARIA TERESA AGGABAO, and
VISITACION DIFUNTORUM,
Accused.

CTA Crim. Case No. O-370
For: Violation of Section 3604 (Statutory Offenses of Officials & Employees) of the Tariff and Customs Code of the Philippines as amended by R.A. No. 9135

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

MANOLO ANTONIO M. MEDEL,
ALLAN JAY DE VERA GAHON,
TAHA CALI,
MARGARITA SANTIAGO,
MARIA TERESA AGGABAO, and
VISITACION DIFUNTORUM,
Accused.

CTA Crim. Case No. O-371
For: Violation of Sec. 3601 (Unlawful Importation) in rel. to sec. 3602 (Various Fraudulent Practices Against Customs Revenues) in rel. to Sec. 2530, 1(4) and (5) in rel. to sec. 1403(d), (e), (f), (g) and (h) of the TCCP, as amended.

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

DEC 1 1 2017 10:05 am

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D E C I S I O N

MANAHAN, *J.:*

This Decision is limited to accused Allan Jay De Vera Gahon, Taha Cali, Margarita Santiago, Maria Teresa Aggabao, and Visitacion Difuntorum. Considering that no jurisdiction over the person of accused Manolo Antonio M. Medel was acquired, the Court cannot pass upon said accused's guilt or innocence.

Antecedents

These are consolidated cases[1] for alleged violations of the Tariff and Customs Code of the Philippines (TCCP), as amended, involving an alleged importation of "white rice" which was allegedly fraudulently and intentionally misdeclared as "mung beans".

In CTA Crim. Case No. O-370, accused Taha Cali, Margarita Santiago, Maria Teresa Aggabao, and Visitacion Difuntorum are charged before this Court for violation of Section 3604 (Statutory Offenses of Officials and Employees) paragraph (h) of the TCCP, as amended by Republic Act No. 9135, in an Information[2] dated November 7, 2013, which partly reads:

> "That on or about June 18, 2010 in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, accused Taha Cali, Margarita Santiago, Maria Teresa Aggabao, Visitasion(*sic*) Difuntorum, all public officers, they being Acting Customs Operations Officer, Customs Examiner, Principal Customs Examiner, and Principal Customs Appraiser, respectively, at the Port of Manila, Bureau of Customs, duly assigned to conduct 100% physical examination of the 20x20 footer container, process the import entry pertaining thereto, charge(*sic*) with the enforcement of the provisions of the TCCP, as amended while in the performance of their official functions and taking advantage of their public positions and committing the offense in relation to their office did then and there willfully, unlawfully and feloniously conspire or collude with their co-accused Manolo Antonio Medel, sole proprietor and owner of Full Story Source Marketing to defraud the customs revenue in the amount of **NINE MILLION FOUR HUNDRED TWENTY THOUSAND THREE HUNDRED FORTY SIX PESOS (Php9,420,346.00)** by allowing the release of the 20x20 containers of "White Rice" to *Full Story Source Marketing* without reporting or recommending to their superior officer as required by law the seizure of the subject shipments for misdeclarations, lack of permit from the

[1] CTA Crim. Case No. O-371, docket, Resolution dated May 14, 2014, pp. 453-454.
[2] CTA Crim. Case No. O-370, docket, Vol. 1, pp. 8-11.

> National Food Authority (NFA) and for failure to pay the corresponding proper duties and taxes and revenues, to the damage and prejudice of the government in the aforesaid amount."
>
> CONTRARY TO LAW.

In CTA Crim. Case No. O-371, accused Manolo Antonio M. Medel, Allan Jay De Vera Gahon, Taha Cali, Margarita Santiago, Maria Teresa Aggabao, and Visitacion Difuntorum are charged before this Court for violation of Section 3601 (Unlawful Importation) in relation to Section 3602 (Various Fraudulent Practices Against Customs Revenues), Section 2530 and Section 1403 paragraphs (d), (e), (f), (g), and (h) of the TCCP, as amended, in an Information[3] dated November 7, 2013, which partly reads:

> "That on or about June 18, 2010 in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, with evident intent to defraud the government of the Republic of the Philippines of the legitimate duties accruing to it from merchandise imported into this country, did then and there willfully, unlawfully and knowingly fraudulently import or bring into the Philippines, or assist in so doing contrary to law, the following merchandise, to wit: declared as eight thousand (8,000) bags of "*Mung Beans*" in *Import Entry Declaration Form No. 62321* covering 20x20 containers but found to contain "White Rice 25% broken" and "White Rice 5% broken" as shown by the Inward Foreign Manifest submitted by the shipping line to the Pier Inspection Division, Port of Manila, on board the vessel "M/T Bella J" without the requisite import permit from the National Food Authority (NFA) and with estimated taxes and duties amounting to **NINE MILLION FOUR HUNDRED TWENTY THOUSAND PESOS & THREE HUNDRED FORTY SIX PESOS (Php9,420,346.00)**, to the damage and prejudice of the government in the aforementioned amount."
>
> CONTRARY TO LAW. *cm*

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[3] CTA Crim. Case No. O-371, docket, pp. 8-11.

On April 11, 2014, Warrants of Arrest for CTA Crim. Case Nos. O-370 and O-371 were issued.[4] Accused Gahon,[5] Cali,[6] Santiago,[7] Aggabao,[8] and Difuntorum[9] all voluntarily surrendered and submitted to the jurisdiction of the Court.

Upon their arraignment on May 14, 2014, accused Gahon, Cali, Santiago, Aggabao, and Difuntorum all pleaded "NOT GUILTY".[10] Accused Difuntorum, upon arraignment on May 26, 2014, also pleaded "NOT GUILTY".[11]

After preliminary conference[12] and pre-trial,[13] the Pre-Trial Order[14] was issued on July 3, 2014.

Trial ensued with respect to accused Gahon, Cali, Santiago, Aggabao, and Difuntorum. The prosecution presented seven (7) witnesses: Atty. Larribert T. Hilario, Nomie V. Gonzales, Conrado Q. Dizon, Jr., Atty. Nicky Earle L. Hortillas, Alex B. Padlan, Dennis P. Barona, and Atty. Jemina M. Sy-Flores.

On March 20, 2015, prosecution filed its Submission and Prosecution's Formal Offer of Documentary Exhibits,[15] which was resolved in the Court's Resolution[16] dated May 26, 2015.

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[4] CTA Crim. Case No. O-370, docket, Vol. 1, pp. 182-185; CTA Crim. Case No. O-371, docket, pp. 275-280.
[5] CTA Crim. Case No. O-371, docket, Resolution dated April 25, 2014, p. 396.
[6] CTA Crim. Case No. O-370, docket, Vol. 1, Resolution dated April 25, 2014, p. 257; CTA Crim. Case No. O-371, docket, Resolution dated April 25, 2014, p. 396.
[7] CTA Crim. Case No. O-370, docket, Vol. 1, Resolution dated April 15, 2014, p. 203; CTA Crim. Case No. O-371, docket, Resolution dated April 15, 2014, p. 298.
[8] *Id.*
[9] CTA Crim. Case No. O-370, docket, Vol. 1, Resolution dated May 15, 2014, p. 308; CTA Crim. Case No. O-371, docket, Resolution dated May 15, 2014, p. 456.
[10] CTA Crim. Case No. O-370, docket, Vol. 1, Minutes of Hearing held on May 14, 2014, Identity Admission of the Accused, and Certificates of Arraignment, pp. 260-272; CTA Crim. Case No. O-371, docket, Minutes of Hearing held on May 14, 2014, Identity Admission of the Accused, and Certificates of Arraignment, pp. 435-451.
[11] CTA Crim. Case No. O-370, docket, Vol. 1, Minutes of Hearing held on May 26, 2014, Certificate of Arraignment, and Identity Admission of the Accused, pp. 309-311; CTA Case No. O-371, docket, Minutes of the Hearing held on May 26, 2014, Certificate of Arraignment, and Identity Admission of the Accused, pp. 457-459.
[12] CTA Crim. Case No. O-370, docket, Vol. 1, Minutes of Preliminary Conference conducted on June 23, 2014, pp. 343-350.
[13] Docket, Vol. 1, Minutes of Hearing dated July 3, 2014, p. 368.
[14] Docket, Vol. 1, pp. 371-379.
[15] Docket, Vol. 2, pp. 635-643.
[16] Docket, Vol. 2, pp. 791-792.

Accused Santiago, Aggabao, and Difuntorum filed for leave to file demurrer to evidence,[17] which was granted in the Court's Resolution dated July 31, 2015.[18] The Demurrer to Evidence,[19] with prosecutions Comments/Opposition,[20] was denied in the Court's Resolution dated November 16, 2015.[21]

Thereafter, accused proceeded with the presentation of their evidence. The following were called to the witness stand: Margarita D. Santiago, Nomie V. Gonzales, Ma. Teresa Aggabao, Allan Jay De Vera Gahon, Taha Cali, and Visitacion B. Difuntorum.

On June 16, 2017, accused Santiago, Aggabao, and Difuntorum filed their Motion to Mark/Re-Mark Documentary Exhibits with Formal Offer of Evidence Ad Cautelam,[22] which the Court resolved on July 25, 2017, and thereafter granting the parties thirty days within which to file their respective memoranda.[23] Accused Cali and Gahon failed to file their formal offers of evidence.[24]

On September 6, 2017, accused Cali[25] and Gahon[26] filed their respective Memoranda. Within the extended period granted,[27] accused Santiago, Aggabao, and Difuntorum filed their Memorandum.[28] On the other hand, the prosecution failed to file its memorandum.[29]

Thus, on September 20, 2017, the instant case was deemed submitted for decision.[30]

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[17] Docket, Vol. 2, Motion for Leave to File and For the Court to Admit the Herein-Attached Demurrer to Evidence Ad Cautelam filed through registered mail on June 9, 2015, pp. 796-803
[18] Docket, Vol. 2, pp. 826-829.
[19] Docket, Vol. 3, pp. 869-913.
[20] Docket, Vol. 3, pp. 928-949.
[21] Docket, Vol. 3, pp. 954-978, with Dissenting Opinion of Associate Justice Caesar A. Casanova at pp. 979-1004.
[22] Docket, Vol. 5, pp. 1706-1718.
[23] Docket, Vol. 5, Resolution dated July 25, 2017, pp. 1782-1785.
[24] Docket, Vol. 5, Records Verification dated July 7, 2017, p. 1781.
[25] Docket, Vol. 5, pp. 1793-1808.
[26] Docket, Vol. 5, pp. 1809-1830.
[27] Docket, Vol. 5, Resolution dated September 8, 2017, p. 1832.
[28] Docket, Vol. 5, pp. 1833-1888.
[29] Docket, Vol. 5, Records Verification dated September 18, 2017, p. 1889.
[30] Docket, Vol. 5, Resolution, p. 1890.

Issues[31]

The parties stipulated the following issues:

Factual Issues:

1. Whether or not the above-mentioned accused jointly committed the criminal offense of violation of Section 3601 (Unlawful Importation), Section 3602 (Various Fraudulent Practices Against Customs Revenues) and Section 3604 (Statutory Offenses of Officials and Employees) as amended by Republic Act No. 9135 of the Tariff and Customs Code of the Philippines in relation to Section 2530, 1(4) and (5) in relation to Section 1403(d), (e), (f), (g), and (h) of the TCCP, as amended.

2. Whether or not the Actual Contents of the Subject Shipments are White Rice.

Legal Issue:

1. Whether or not all accused are liable for the offenses charged in the Informations.

Evidence presented by the prosecution

Prosecution presented seven (7) witnesses who testified as follows:

1) Atty. Larribert T. Hilario

Atty. Hilario testified by way of Judicial Affidavit[32] that he was formerly assigned at the Legal Service, Revenue Collection and Monitoring Group (RCMG) and concurrently as a Run After the Smugglers (RATS) lawyer and investigator at the Bureau of Customs.

He testifies as to the circumstances giving rise to the instant Informations, as follows:

[31] Docket, Vol. 1, Pre-Trial Order dated July 3, 2014, pp. 373-374.
[32] Docket, Vol. 2, Exhibit "P-20", pp. 397-404.

Q15: By the way Mr. Witness, as one of the complainants in these cases why were the above-named accused charged by the Bureau of Customs (BOC) before the DOJ for violation of Section 3601 (Unlawful Importation) and Section 3604 (Statutory Offenses of Officials and Employees)?

A: Based on our investigation, they were involved in the unlawful and fraudulent importation of eight thousand (8,000) bags of White Rice 25% broken with an estimated dutiable value of Php8,799,176.42 which arrived at the Port of Manila on June 18, 2010 from Vietnam on board the vessel "M/T Bella J" and which was fraudulently and intentionally misdeclared as "Mung Beans" by the accused Manolo Antonio Medel and Allan Jay De Vera Gahon in Import Entry Declaration Form No. 62321 covering 20x20 containers but was found to contain "White Rice" 25% broken as shown by the Inward Foreign Manifest and House Bill of Lading which were submitted by the shipping line to the Pier Inspection Division, Port of Manila. Accused Taha Cali, Margarita Santiago, Maria Teresa Aggabao and Visitacion Difuntorum who were then assigned at the Formal Entry Division, Port of Manila as *Document Processor, Customs Examiner* and *Customs Appraiser*, respectively processed its customs cargo clearance knowing its conflicting import documents and fully aware that the actual contents of the shipments were "White Rice 5% broken" and not "Mung Beans" as declared by the importer and broker.

Q12(*sic*): How did they commit the unlawful and fraudulent importation of eight thousand (8,000) bags of White Rice in such huge amount?

A: Based on the records such as *Inward Foreign Manifest* and *House Bill of Lading* issued by the shipping lines, the importer Full Story Source Marketing aided by its broker Allan Jay De Vera Gahon fraudulently made it appear in the Import Declaration Form No. C-62321 that the goods on board the vessel "M/T Bella J" and consigned to Full Story Source Marketing are "Mung Beans" when in truth and in fact the goods where "White Rice" 5% broken. After proper investigation, we also found out that the subject importation of 8,000 bags of White Rice by Full Story Source Marketing have no corresponding import permit from the National Food Authority (NFA). While the accused claim that one of them conducted a physical random examination of the subject cargoes and have actually found out that the shipment consists of "Mung Beans", the *Law Division of Port of Manila* issued a

> Certification that no amendment was caused to the Inward Foreign Manifest to conform to its actual declaration of "Mung Beans" by the importer and broker. In cahoots of the importer and broker, Taha Cali, Margarita Santiago, Maria Teresa Aggabao and Visitacion Difuntorum who were employees of Bureau of customs assigned at the Formal Entry Division, Port of Manila further processed and allowed the release of the shipments despite its conflicting and irreconcilable import documents. Said accused were grossly remised (*sic)* of their duties when they failed to make any return as Customs Examiners and Appraisers of the defects in the import documents of Full Story Source Marketing to any of their superiors.[33]

On cross-examination, Atty. Hilario admitted that he looked at the records in the computer database, from which he was furnished the SAG[34] which reflects the import entry that has been lodged by the license broker.[35] Upon the Court's clarification, Atty. Hilario said that he did not actually see if the import entry was submitted.[36] Upon further cross-examination, Atty. Hilario further admitted that he has never seen the original working copy of Import Entry No. 62321,[37] and that he has no personal knowledge whether the shipments were white rice or mung beans.[38]

2) Nomie V. Gonzales

Ms. Gonzales testified by way of Judicial Affidavit[39] that she is presently designated as *Chief of the Technical Support Division*, of the Bureau of Customs; that she was the one who personally printed and certified the copies of *Import Entry No. 62321* covering the importation of Full Story Source Marketing and *its accompanying Manifest Waybill from the BOC E2M system*; and, that she was able to print the same by logging into the E2M server.[40]

On cross-examination, Ms. Gonzales stated that her only responsibility with respect to the printout was to retrieve the

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[33] Docket, Vol. 2, Exhibit "P-20" at pp. 399-400.
[34] Should be SAD for "Single Administrative Document".
[35] Transcript of Stenographic Notes (TSN), September 10, 2014, p. 34.
[36] *Id.*
[37] TSN, September 29, 2014, pp. 12-13.
[38] *Id.* at p. 45-46.
[39] Docket, Vol. 2, Exhibit "P-21", pp. 514-517.
[40] *Id.* at p. 514.

data from the database.[41] She stated that the assigned Customs Examiner will retrieve the electronic entry in the E2M and counter check against the hard copy and other documents; and she confirmed that in order to determine whether or not there is a discrepancy, the examiner should have on hand both the hard copy as well as the electronic copy.[42] She also stated that the names and signatures of the examiners do not appear in the electronic copies, but that the hard copies have to be signed by them.[43] She also affirmed that the Single Administrative Document is separate from the import entry.[44]

3) Conrado Q. Dizon, Jr.

Mr. Dizon testified by way of Judicial Affidavit[45] that he is presently employed at the BOC as Principal Examiner assigned at the Formal Entry Division. Prior to his present assignment, he was assigned as Examiner/Appraiser, where he performed the tasks of examining the correct computation of taxes and duties on imported goods specifically white rice. He further testified that he was instructed to compute the taxes and duties on the quantity of white rice imported by Full Story Source Marketing, which he reduced into writing by preparing a Discrepancy Report.

On cross-examination, Mr. Dizon confirmed that the Discrepancy Report was just based on the assumption that it was white rice that was actually imported, that he has not seen the subject import entries, and that he has no way to confirm that what was imported were not mung beans.[46]

4) Atty. Nicky Earle L. Hortillas

Atty. Hortillas testified by way of Judicial Affidavit[47] that he is the Chief of the Law Division at the Port of Manila. He issued a Certification that importers, Plum Blossom Import-Export Food Corporation and Full Story Source Marketing have not filed an amendment to their Inward Forward Manifest before the Law Division, Port of Manila.

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[41] TSN, October 15, 2014, pp. 18-19.
[42] *Id.*, p. 21.
[43] *Id.*, p. 24.
[44] *Id.*, p. 34.
[45] Docket, Vol. 2, Exhibit "P-22", pp. 543-547.
[46] TSN, November 12, 2014, pp. 16-17.
[47] Docket, Vol. 2, Exhibit "P-23", pp. 681-683.

On cross-examination, Atty. Hortillas stated that there was no record submitted to their office and that the Certification was issued at the request of the Office of the Commissioner.[48] He also stated that they only amend if there is a request coming from the consignee;[49] or, if it involves an entry in the inward foreign manifest, it is the deputy collector of operation who will refer whether there is a need for amendment.[50] Further, Atty. Hortillas stated that the non-filing of an amendment is an administrative case and not criminal.[51]

5) Alex B. Padlan

Mr. Padlan testified by way of Judicial Affidavit[52] that he is the Claims and Documentation Manager of Ben Line Agencies Philippines, Inc. responsible for overseeing the daily transactions of his department. His duties also include being the Chief Custodian of documents and signing and printing relevant documents from his department. According to him, he printed the printouts of Bill of Lading No. HCMSC7517 and Inward Foreign Manifest covering the importation of 8,000 bags of white rice by Full Story Source Marketing from the computer records of Ben Line Agencies Philippines, Inc. He explained that the details contained in the Bill of Lading and Inward Foreign Manifest are provided by their principal, T.S. Lines, at the port of loading. T.S. Lines, on the other hand, gets the information from those provided by the shipper. T.S. Lines will generate a draft copy of the Bill of Lading for confirmation of the shipper. Once the Bill of Lading and Inward Foreign Manifest are confirmed to be correct by the shipper, T.S. Lines shall issue the final/original Bill of Lading.

T.S. Lines will then send/transmit the documents prior to the arrival of the sea vessel at the port of discharge, which in this case is Manila. As the Port of Discharge Agent, Ben Line Agencies Philippines, Inc. will "extract, upload the data from the TSL server and convert it to conform with the usual custom requirements in submitting the relevant Inward Manifest." Ben Line Agencies will then issue the corresponding Delivery Order to the consignees.

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[48] TSN, December 3, 2014, p. 13.
[49] *Id.*, pp. 17-18
[50] *Id.*, p. 19.
[51] *Id.*, p. 21.
[52] Docket, Vol. 2, Exhibit "P-24", pp. 701-704.

On cross-examination, Mr. Padlan admitted that he did not prepare the Bill of Lading or entered the information in said document. Instead, he merely generated a copy thereof.[53] With respect to the Inward Foreign Manifest, Mr. Padlan stated that he was the one who prepared the same, by copying the information contained in the Bill of Lading.[54]

He reiterated his Judicial Affidavit with respect to the participation of T.S. Lines and the shipper in the preparation of the Bill of Lading.[55] He further explained that there is now a system wherein the original Bill of Lading is no longer sent, but instead they receive an electronic copy of the Bill of Lading.[56]

Mr. Padlan further stated that the consignee of the goods was Metropolitan Bank and Trust Company and that the name of Full Story Marketing and of the other accused do not appear in the Bill of Lading.[57]

On re-direct examination, Mr. Padlan explained that he cannot qualify if there is any erroneous detail given by the shipper considering that they do not know the actual contents of the container vans.[58]

On re-cross examination, he admitted that he did not see and cannot determine what the actual cargo subject of the Bill of Lading was.[59]

6) Dennis P. Barona

Mr. Barona testified by way of Judicial Affidavit[60] that he is employed at the Grains Marketing Department-Foreign Operations Division of the National Food Authority (NFA). He stated that his superior, Assistant Administrator Joseph De la Cruz. Issued a Certification that importer Full Story Source Marketing as per records in their office, has not applied for nor has been granted an import permit by the NFA for its Rice Importation Program for 2010.

[53] TSN, February 11, 2014 (should be 2015), pp. 23-24.
[54] *Id.*, p. 24.
[55] *Id.*, pp. 25-28.
[56] *Id.*, pp. 33-34.
[57] *Id.*, pp. 38-39.
[58] *Id.*, pp. 45-46.
[59] *Id.*, p. 51.
[60] Docket, Vol. 2, Exhibit "P-25", pp. 708-711.

On cross-examination, Mr. Barona confirmed that the NFA only issued permit authority for rice and not mung beans.[61] He further admitted that he did not see this white rice that arrived in the Port of Manila on June 17, 2010, nor can he confirm whether or not the subject of this cargo is indeed white rice.[62]

7) Atty. Jemina M. Sy-Flores

Atty. Flores testified by Judicial Affidavit[63] that she is an Attorney III at the BOC assigned at the Account Management Office (AMO). She issued a Certification from the Intelligence Group, AMO and the Client Profile Registration System (CPRS) which stated that there is no file folder for Full Story Source Marketing. However, records of Full Story Source Marketing appear in the CPRS. She further testified that the sole proprietor of Full Story Source Marketing is Manolo Antonio M. Medel.

Atty. Flores was no longer subjected to cross-examination.

Evidence presented by the defense

The defense presented six (6) witnesses:

1) Margarita D. Santiago

Ms. Santiago testified by way of Judicial Affidavit[64] and Supplemental Judicial Affidavit[65] that she is a Customs Operations Officer III designated as Examiner of the BOC with the duty and responsibility to take samples and examine the goods and cargoes imported into the country, and recommends whether these goods and cargoes should be released or seized or levied. She testified that she was not assigned to process the import entry subject of instant case nor to conduct the physical examination of the subject goods. She further testifies that her name, signature, and assigned password do not appear in any of the documents presented by the prosecution; that such assigned password also serves as their electronic signature.

She testified on the processing and release of goods as follows: the shipping line transmits the Inward Foreign Manifest

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[61] TSN, February 11, 2014 (should be 2015), p. 59.
[62] *Id.*
[63] Docket, Vol. 2, Exhibit "P-26", pp. 718-723.
[64] Docket, Vol. 3, Exhibit "A-6", pp. 1086-1098.
[65] Docket, Vol. 4, Exhibit "A-12", pp. 1554-1559.

and Bill of Lading to the Risk Management Office which makes the initial verification of the documents; the importer, either thru its representative or broker, accomplishes the necessary forms and administrative documents, and likewise enters the said information in the computer system; the computer system will make an automatic verification of the information lodged by the importer and if the information entered does not match the ones contained in the inward foreign manifest and the bill of lading, the same is automatically rejected; if the documents pass the automatic verification, the hard copies of the said entries and its supporting documents are filed with the Entry Processing Unit (EPU) where the Manifest Clerk makes an initial review of the documents; the Manifest Clerk of the EPU determines whether the entries in the computer system match the information stated in the hard copies filed with the EPU; if the information match, the EPU's Document Processor checks the completeness and authenticity of the said documents and determines that all requirements, such as licenses, permits and clearances, have been complied with; a final review is made by the EPU Chief, after which the entry documents are transmitted to the Formal Entry Division (FED); the FED Section Receiving Clerk receives the hard copies of the entry documents and enters the details thereof in his receiving logbook; the entry documents are then transmitted either to the Principal Appraiser or to the Principal Examiner, who shall then assign the entry to a Customs Examiner; after the Customs Examiner determines that the goods are subject to release, the goods may actually be released. She further stated that the duty of checking the validity of the entry documents reside with the EPU, and if any discrepancy was discovered by the EPU, the entries would have been put on hold and not transmitted to the FED.

In her Supplemental Judicial Affidavit, Ms. Santiago testified that a certain Gamal P. Derogongan examined Import Entry No. 62321.

On cross-examination, Ms. Santiago testified that after the cases were filed, she never bothered to access the E2M System to determine if she was the examiner in the subject import entries; and, that at that time, many cases were filed and they all just assumed that she was the one who processed the subject entry. She was also questioned as to how she determined that Gamal P. Derogongan was the examiner of the subject import entry, as follows:

PROSEC. MENDOZA:
Q. I refer to your answer to Question No. 22, the last page of the Supplemental Judicial Affidavit, can you please go over that Supplemental Judicial Affidavit. Do you confirm having said that?

MS. SANTIAGO:
A. Yes.

PROSEC. MENDOZA:
Q. And what made you conclude that it was Gamal P. Derogongan because his name appears?

MS. SANTIAGO:
A. Appears.

PROSEC. MENDOZA:
Q. Can you please point to this Honorable Court if you can find the name, Gamal P. Derogongan?

MS. SANTIAGO:
A. Here.

PROSEC. MENDOZA:
Q. Under the heading "Who", am I correct, Madame Witness?

MS. SANTIAGO:
A. Yes. Yes, sir.

xxx

PROSEC. MENDOZA:
Q. Madame Witness, I am showing you again this document, will you kindly read this document and tell the Honorable Court if you find the word "Customs Examiner", opposite the name or under the name Gamal P. Derogongan? Would you find anything there that he is the Examiner?

MS. SANTIAGO:
A. Sir, I will tell you, this is highly technical, your Honors, and it will not be indicated there but...

JUSTICE CASTAÑEDA:
All right, so why will it not be indicated there and please explain? Answer my question, why would it not be indicated there, and then please explain as simply as you can. cm

MS. SANTIAGO:
A. I think, I am not...I am not knowledgeable on that aspect of the computer system. It would be the best person to ask that question is the person from MISTIG because I would not know. For us, we assumed when we checked the SAD finder. We assumed that the examiner and the Chief of the division, of the section rather would be the ones that will be reflected here. But I don't know how the MISTIG would be able to tell who the examiner is or the Chief. It will just appear.[66]

2) Nomie V. Gonzales

Ms. Gonzales testified by way of Judicial Affidavit[67] that she is presently the Chief of the Management Information Systems Technology of the BOC; and that she received a *subpoena duces tecum* and *ad testificandum* from the Court of Tax Appeals ordering her to bring the SAD Finder Detail Information of Import Entry No. 62321. She explained the E2M System as a BOC e-Customs Project which aims to enhance the BOC's core and support ICT systems nationwide; that through internet-based and wireless technology, the system will streamline imports and exports processing and improve trade facilitation among BOC, other government agencies and its stakeholders anywhere, anytime; that it contains information relevant to the cargo clearing process like import entry and revenue declaration forms which is called Single Administrative Document (SAD). She explains that SAD is the electronic equivalent of BC Form 236 or the Import Entry and Revenue Declaration (IEIRD). SAD is signed digitally by the broker, examiner and appraiser only, while the IEIRD is notarized and signed physically by the broker, examiner, appraiser and other authorized personnel where the IEIRD pass thru depending on the color selectivity of the SAD. She further testified that based on the SAD for Import Entry No. 62321, the examiner is Gamal P. Derogongan.

On cross-examination, Ms. Gonzales testified that the first level of encoding is done by the declarant through the front-end system; that there is an import assessment module wherein the examiners have to log-in to review the information encoded in the computer by the declarant versus the hardcopy document and other documents submitted either by the shipping lines or

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[66] TSN, August 3, 2016, pp. 19-21.
[67] Docket, Vol. 4, pp. 1544-1551.

the forwarder. She further testified that she personally opened the system and printed the copy of the SAD Finder Detail; and that she did not meet or know any of the accused in the instant case.

On re-direct examination, Ms. Gonzales explained:

ATTY. YBANEZ:
Q. How does the... in the system of the Bureau of Customs, how do you determine the accuracy of the information stated therein?

MS. GONZALES:
A. For every steps being done, the data was superseded by the previous action done. Always the reason why there is every transaction entered here, the m ore the person who processed the entry, the more it will have transaction. So it will be taken as the 1st layer done by the broker. The hit selectivity, this is a system-generated informing that this particular entry is selected. And then, the examiner, the re-routed green is the process of the appraiser.[68]

On re-cross examination, Ms. Gonzales explained that the hard copy, the original one, pass through several people; but in the E2M system, only three (3) persons will have their digital signatures: the broker, examiner, and appraiser; and that the hard copy are those with the physical signature and notarized document.

3) Ma. Teresa Aggabao

Ms. Aggabao testified by way of Judicial Affidavit[69] that she is presently a Customs Operation Officer V at the Formal Entry Division (FED), Manila International Container Port; that on June 18, 2010 she reported for duty at the Manila International Container Port located at Isla Puting Bato, Tondo, Manila discharging her duties and functions as Principal Appraiser; that after assuming her promotion, she was immediately reassigned to the FED of the Port of Manila; and, that she was not involved in the processing of Import Entry No. 62321 since she was not at the Port of Manila at that time.

[68] TSN, August 3, 2016, pp. 31-32.
[69] Docket, Vol. 5, pp. 1618-1624.

4) Allan Jay De Vera Gahon

Mr. Gahon testified by way of Judicial Affidavit[70] that he is a registered customs broker and as such, he prepares, signs, files, and processes the Import Entry and Internal Revenue Declarations (IEIRD) covering shipments imported into the Philippines; that he fills up the IEIRD based on the shipping documents supplied by the foreign supplier/shipper such as the invoice, packing list and bill of lading which he attaches to the hard copy; and, that he has no opportunity to first examine and verify the actual contents of the containers prior to the preparation, filing, and processing of the import entries. He further testified that the Inward Foreign Manifest is not one of the required documents to be attached to the Import Entry, and was not one of the documents provided to him.

On cross-examination, Mr. Gahon testified that the inward foreign manifest is not attached and that the required documents to be attached to the declaration of entry are usually the invoice, packing list and bill of lading; that he does the declaration based on good faith that the documents are all correct; and, that the nature of his duty as a broker is to declare the shipment based on the documents submitted by the importer such as the bill of lading, invoice and packing list. He further testified that as far as he knows, the shipping line submitted the inward foreign manifest to the BOC; and, that it is the importer who gives him the documents.

5) Taha Cali

Mr. Cali testified by way of Judicial Affidavit[71] that he was formerly employed by the BOC as Customs Document Processor in the Entry Processing Unit (EPU)-Formal Entry Division (FED), Port of Manila; that as Customs Document Processor, he processed the original copies of entries duly declared by the importer or broker under oath; that he checks that the entry has its original corresponding documents such as bill of lading, commercial invoice, packing list, and clearances; that he affixes his signature on the original working copy of the entry if all the corresponding documents are attached; and, that he does not physically examine the contents of the shipment. He further

[70] Docket, Vol. 5, pp. 1641-1645.
[71] Docket, Vol. 5, pp. 1646-1649.

testified that inward foreign manifest is not one of the required documents needed to be attached to the import entry.

On cross-examination, he reiterated that inward foreign manifest is not a part of the entry.

6) Visitacion B. Difuntorum

Ms. Difuntorum testified by way of Judicial Affidavit[72] that she retired from the BOC in January 2011; that at around June 18, 2010 she was a Customs Operation Officer V-Principal Appraiser at the FED of the BOC, Port of Manila; that her duties were only the inspection of documents coming from the EPU and Risk Management Office (RMO). She explained that the RMO is the office which handles the documents presented by the shipping company and makes an initial verification of said documents; that the importer or broker computes that taxes and duties of the imported goods and enters the information into the E2M system; and, that if the information entered by the broker or importer does not match the information contained in the documents of the RMO, the system automatically rejects the entry. With respect to the EPU, she explained that the EPU receives the hard copies of the entry from the RMO; at the EPU, the manifest clerk reviews whether the entries in the computer system matches the information stated in the hard copies filed with the EPU; after that, the EPU's Document Processor checks the completeness and authenticity of the import documents; the EPU Chief makes a final review of the documents, before the same are transmitted to the FED. Ms. Difuntorum also explained that if the EPU finds a discrepancy or irregularity, the EPU will not release the documents to the FED.

At the FED, the hard copies are received by the Section Receiving Clerk who enters the details in a receiving log book, the documents are then transmitted to Ms. Difuntorum as Principal Appraiser, or to the Principal Examiner; that upon transmitted, Ms. Difuntorum will assign a Customs Examiner who will handle the matter and again inspect the documents; after which the documents are returned to Ms. Difuntorum for final assessment. During final assessment, Ms. Difuntorum checks the system if the importer has already paid the required fees for the shipment or if the same can be debited from the importer's account, then Ms. Difuntorum clears the entry for payment of *arrastre* fees. After clearance, the imported goods

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[72] Docket, Exhibit "A-12", pp. 1681-1691.

may then be loaded into their respective trucks, at this stage, the assigned Customs Examiner may make a random physical examination of the goods if the same are tagged by the RMO.

On cross-examination, Ms. Difuntorum testified that bill of lading is part of the documents which she reviewed but not the inward foreign manifest; and, that she cannot recall the subject import entry No. 62321.

Ruling of the Court

In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense of which the accused is charged with; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to an acquittal. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or the degree of proof which produces conviction in an unprejudiced mind.[73]

The Court finds that prosecution failed to discharge this burden.

<u>CTA Crim. Case No. O-370</u>

The provision of law under which the accused are charged in CTA Crim. Case No. O-370 is quoted below:

> Sec. 3604. *Statutory Offenses of Officials and Employees.* – Every official, agent or employee of the Bureau or of any other agency of the government charged with the enforcement of the provisions of the Code, who is guilty of any delinquency herein below indicated shall be punished with a fine of not less than Five thousand pesos nor more than Fifty thousand pesos and imprisonment of not less than one year nor more than ten years and perpetual disqualification to hold public office, to vote and to participate in any public election:
>
> (a) Those guilty of extortion or willful oppression under color of law; cmn

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[73] Darvin vs. Hon. Court of Appeals, et al., G.R. No. 125044, July 13, 1998; Rule 133, Section 2, Revised Rules of Court.

(b) Those who knowingly demand other or greater sums than are authorized by law or receive any fee, compensation, or reward except as by law prescribed, for the performance of any duty;
(c) Those who willfully neglect to give receipts, as required by law for any sum collection in the performance of duty, or who willfully neglect to perform any of the duties enjoined by law;
(d) Those who conspire or collude with another or others to defraud the customs revenue or otherwise violate the law;
(e) Those who willfully make opportunity for any person to defraud the customs revenue or who do or fail to do any act with intent to enable any person to defraud said revenue;
(f) Those who negligently or designedly permit the violation of the law by any other person;
(g) Those who make or sign any false entry or entries in any book, or make or sign any false certificate of return in any case where the law requires the making by them of such entry, certificate of return;
(h) Those who, having knowledge or information of a violation of the Tariff and Customs Law or any fraud committed on the revenue collectible by the Bureau, fail to report such knowledge or information to their superior official or to report as otherwise required by law;
(i) Those who, without the authority of law, demand or accept or attempt to collect directly or indirectly as payment or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law; or
(j) Those who, without authority of law, disclose confidential information gained during any investigation or audit, or use such information for personal gain or to the detriment of the government, the Bureau or third parties.

In alleging the violation of the foregoing provision, the Information stated that the accused Cali, Santiago, Aggabao, and Difuntorum:

> ...duly assigned to conduct 100% physical examination of the 20x20 foot container, process the import entry pertaining thereto, charge[d] with the enforcement of the provisions of the TCCP, as amended, while in the performance of their official functions and taking advantage of their public positions and

> committing the offense in relation to their office did then and there willfully, unlawfully and feloniously conspire or collude...to defraud the customs revenue...by allowing the release of the 20x20 containers of "White Rice"...without reporting or recommending to their superior officer as required by law the seizure of the subject shipments for misdeclarations, lack of permit from the National Food Authority (NFA) and for failure to pay the corresponding proper duties and taxes and revenues, to the damage and prejudice of the government in the aforesaid amount.[74]

CTA Crim. Case No. O-371

The provisions of law under which the accused are charged in CTA Crim. Case No. O-371, are quoted as follows:

> Sec. 3601. *Unlawful Importation.* – Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:
>
> xxx
>
> In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer the additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.
>
> When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section.

[74] Docket, Vol. 1, Information, p. 9-10.

> Sec. 3602. *Various Fraudulent Practices Against Customs Revenue.* – Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission shall, for each offence, be punished in accordance with the penalties prescribed in the preceding section.

In alleging the violation of the foregoing legal provisions, the Information for CTA Crim. Case No. O-371 states that the accused Gahon, Cali, Santiago, Aggabao, and Difuntorum:

> ...conspiring, confederating and mutually helping and aiding one another, with evident intent to defraud the government of the Republic of the Philippines of the legitimate duties accruing to it from merchandise imported into this country, did then and there wilfully, unlawfully and knowingly fraudulently import or bring into the Philippines, or assist in so doing contrary to law, the following merchandise, to wit: declared as eight thousand (8,000) bags of "Mung Beans" in Import Entry Declaration Form No. 62321 covering 20x20 containers but found to contain "White Rice 25% broken" and "White Rice 5% broken" as shown by the Inward Foreign Manifest submitted by the shipping line...to the damage and prejudice of the government in the aforementioned amount.[75]

In every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged

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[75] Docket, CTA Crim. Case No. O-371, pp. 9-10.

and the complicity or participation of the accused.[76] In the instant cases, the prosecution had to prove the following beyond reasonable doubt:

1) That there was an importation of "White Rice" covered by Import Entry No. 62321;

2) That, in conspiracy with one another:

   a. In CTA Crim. Case No. O-370, accused Cali, Santiago, Aggabao, and Difuntorum allegedly allowed the release of said imported white rice without reporting or recommending to their superior officer as required by law the seizure of the subject shipments for misdeclarations, lack of permit from the National Food Authority (NFA) and for failure to pay the corresponding proper duties and taxes and revenues; and

   b. In CTA Crim. Case No. O-371, accused Gahon, Cali, Santiago, Aggabao, and Difuntorum processed the entry which declared the alleged importation as eight thousand (8,000) bags of "Mung Beans" in Import Entry Declaration Form No. 62321 covering 20x20 containers but found to contain "White Rice 25% broken" and "White Rice 5% broken" as shown by the Inward Foreign Manifest submitted by the shipping line.

However, the prosecution failed to prove that the subject shipments indeed contained white rice. The following testimonies of prosecution witnesses Atty. Hilario and Mr. Padlan are revealing and damaging:

1. Testimony of Atty. Larribert Hilario on cross-examination:

Q Now, Mr. witness, did you yourself verify whether or not these goods were mung beans or rice?

A We asked from the NFA whether...

Q I am not asking the NFA. Did you personally verify?

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[76] People of the Philippines vs. Zafra Maraorao, G.R. No. 174369, June 20, 2012, citing People vs. Limpangog, G.R. Nos. 141438-40, February 3, 2003.

A We just relied in the inconsistent declaration of the documents because when this case was investigated, it would be impossible for us to actually see the...

Q So you did not verify.

A We never saw the exact item.[77]

2. Testimony of Alex Padlan on cross-examination

Q Did you see personally the cargo which is the subject of this Bill of Lading?

A No, sir.

Q So you cannot determine what are the actual cargoes therein?

A No, sir.[78]

Considering that the prosecution failed to prove that the importation and cargo actually released were white rice, prosecution thus failed to prove the charge in CTA Crim. Case No. O-370 that the accused Cali, Santiago, Aggabao, and Difuntorum caused the release of white rice. Thus, on this ground alone, all the accused should be acquitted in CTA Crim. Case No. O-370.

With respect to the charge in CTA Crim. Case No. O-371, proving that the subject shipment was actually white rice is important for this Court to determine that there was indeed an importation of white rice which was fraudulently misdeclared as mung beans.

It is true that there are discrepancies in the declared items in the documentary pieces of evidence presented by the prosecution. "White rice" is declared in the Inward Foreign Manifest,[79] print-out of Bill of Lading[80] from Ben Line Agencies Phils., Inc., and Manifest Waybill[81] generated from the E2M system, while "Mung Beans" is declared in the Single Administrative Document (SAD)[82] generated from the E2M system. These discrepancies may be caused by either one of two

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[77] TSN, September 29, 2014, p. 34.
[78] TSN, February 11, 2014 (should be 2015), p. 51.
[79] Docket, Vol. 3, Exhibits "P-5" and "P-5-A", p. 676.
[80] Docket, Vol. 3, Exhibits "P-6" and "P-6-A", p. 677.
[81] Docket, Vol. 3, Exhibits "P-16" and "P-16-C", p. 694.
[82] Docket, Vol. 3, Exhibits "P-17" and "P-17-A", p. 695.

cases: (1) the importation involved white rice which was misdeclared in the E2M SAD as mung beans; or (2) the importation involved mung beans which was misdeclared in the supporting documents as white rice. Absent proof of what the shipment actually contained, the Court cannot determine either way, consequently, the prosecution also necessarily failed to prove that there was a misdeclaration of the alleged importation of white rice.

Furthermore, the prosecution failed to present the hard copy/working copy of the subject Import Entry which would have enabled the Court to see whether the same discrepancies, or any discrepancy at all, are present in the said hard copy/working copy of the subject Import Entry.

In addition to the foregoing, the Court finds that while conspiracy was alleged in both Informations, prosecution failed to prove the same. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.[83] Here, the prosecution failed to present evidence as to the conduct of all the accused before, during and after the commission of the offense charged which would indicate community of criminal design.

The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense.[84] In this case, prosecution's evidence failed to overcome the presumption of innocence, thus, the accused are entitled to an acquittal.

Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been

[83] Violeta Bahilidad vs. People of the Philippines, G.R. No. 185195, March 17, 2010.
[84] People of the Philippines vs. Zafra Maraorao, G.R. No. 174369, June 20, 2012, citing People vs. Lorenzo, G.R. No. 184760, April 23, 2010.

established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.[85]

WHEREFORE, premises considered, the Court rules as follows:

1) In CTA Crim. Case No. O-370, accused **Taha Cali**, **Margarita Santiago**, **Maria Teresa Aggabao**, and **Visitacion Difuntorum** are hereby **ACQUITTED** for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt.

2) In CTA Crim. Case No. O-371, accused **Allan Jay De Vera Gahon**, **Taha Cali**, **Margarita Santiago**, **Maria Teresa Aggabao**, and **Visitacion Difuntorum** are hereby **ACQUITTED** for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt.

   With respect to accused **Manolo Antonio M. Medel** in CTA Crim. Case No. O-371, who remains at large, let the case be **ARCHIVED** without prejudice to its revival immediately upon the apprehension of accused Manolo Antonio M. Medel.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[85] People of the Philippines vs. Zafra Maraorao, G.R. No. 174369, June 20, 2012, citing Fernandez vs. People, G.R. No. 138503, September 28, 2000.

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice