

**MEYNARDO C. POLICARPIO AND LOURDES POLICARPIO,
PETITIONERS, VS. HONORABLE COURT OF APPEALS, EVELYN Q.
CATABAS, ROMULO Q. CATABAS, AND CLEMENTE CATABAS,
RESPONDENTS.**

G.R. No. 94563. March 05, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition asks for the setting aside of the April 30, 1990 decision of the Court of Appeals in CA-GR Civil Case No. 16069 the dispositive portion of which reads:

"WHEREFORE, the appealed decision is SET ASIDE and in lieu thereof another one is hereby entered.

(1) Ordering appellees, (1) to authorize Philippine Commercial International Bank (PCIB) to release their mortgaged TCT No. 501812 upon payment by Urban Development Bank (URBAN Bank) of their mortgage loan obligation with said PCIB; and thereafter (2) to transfer the title in appellant's name;

(2) Ordering appellants, (1) to pay appellees a monthly rent of P2,500.00 for their use of the subject property during the period from December 18, 1983 to the filing of the complaint a quo on January 5, 1985 when the judicial demand was made on appellees, P31,250 for 125 months at 12% interest per annum; (2) to reimburse appellees P2,812.60 for the capital gains tax, stamps and other related expenses paid for by appellees; and (3) to pay and/or authorize Urban Bank to pay to appellees the proceeds of the loan granted to appellants to the extent of P145,000.00 (unpaid balance of the purchase price) less whatever amount is to be paid to PCIB for the outstanding mortgage loan obligation of appellees with said bank. (Rollo, p. 54)

On November 25, 1983, petitioners-spouses Meynardo C. Policarpio and Lourdes Policarpio and private respondents Evelyn, Romulo and Clemente, all surnamed Catabas executed a "Contract to Sell" whereby the private respondents agreed to buy and the petitioners-spouses to sell a residential lot of about 300 square meters with a house and other improvements located at Servillana Street, UE Village, Cainta, Rizal. The property is covered by Transfer Certificate of Title No. 501812 Registry of Deeds, Province of Rizal. The agreed purchase price was the amount of P270,000 payable as follows: (1) P10,000.00 upon signing of the Contract to Sell; and (2) the balance of P260,000.00 to be paid from the proceeds of the private respondents' PAG-IBIG loan thru its designated bank, the Urban Bank and which they guarantee and warrant to be approved and thereafter release on or before the first week of December 1983; and to deliver to the petitioners-spouses the whole amount of P260,000.00 on or before the first week of December 1983.

The "Contract to Sell" also provides that failure on the part of the vendees to pay the balance on the first week of December, 1983 will automatically annul the contract and the vendors shall immediately return the downpayment and that after full payment of the purchase price the vendors shall execute a deed of absolute sale in favor of the vendee.

The private respondents were not able to pay the balance price on the first week of December 1983. However, the

petitioners-spouses did not return the P10,000 downpayment. The private respondents continued to make partial payments which were received by the petitioners-spouses. All in all, the private respondents made partial payments of P75,000.00 broken down as follows: (1) P10,000.00 at the time of the execution of the Contract to Sell; (2) P50,000.00 on May 9, 1984; (3) P10,000.00 on June 4, 1984 and (4) P5,000.00 on June 7, 1984.

On April 9, 1984, the parties executed a deed of absolute sale over the subject property. Thereafter, the petitioners-spouses delivered physical possession of the property to the private respondents.

On March 1, 1985, the private respondents filed with the Regional Trial Court of Pasig, Metro Manila a case for specific performance and damages against the petitioners-spouses. They claimed that in view of the fact that their PAG-IBIG loan was not processed on time without fault on their part, the parties executed a Deed of Absolute Sale over the same property. They also claimed that the balance of P195,000.00 which is to be paid out of the proceeds of the PAG-IBIG loan was already processed, approved and ready for availment provided all the required documents and title to the property in the names of the private respondents are delivered to the Urban Bank. However, the petitioners-spouses motivated by a desire to increase the contract price refused to deliver and transfer the title of the property to the private respondents. They, therefore, prayed that the petitioners-spouses be ordered to confirm the transfer to the private respondents of Transfer Certificate of Title No. 501812 covering the property, subject matter of the "Deed of Absolute Sale" in order that the same may be used as collateral for the approved PAG-IBIG loan; to execute all other documents and furnish the private respondents certificate of clearance pursuant to existing laws so as to secure TCT No. 501812 in the name of the private respondents. In addition, the private respondents asked for damages.

On the other hand, the petitioners-spouses averred that the Contract to Sell was automatically cancelled when the private respondents violated the terms of the contract: (1) the balance of the purchase price was not paid on or before the first week of December 1983; (2) the capital gains tax and documentary stamps for the sale of the property were not paid by the private respondents. They, however, allowed the private respondents to occupy the property when the latter agreed to the following terms:

"a) The purchase price of the property shall be adjusted to P330,000.00 to cope with the adverse effects of devaluation and full payment of the remaining balance shall be on or before May 30, 1984.

b) That within one (1) month plaintiffs (private respondents) would secure from other private sources at least P90,000.00 so that defendants (petitioners) could pay their loan with the PCIB where the subject property is mortgaged to enable the plaintiffs to pursue their PAG-IBIG loan, if they still so desire with the defendants' title as security." (page 35, Rollo)

In accordance with the new terms, the parties allegedly executed the simulated Absolute Deed of Sale dated April 9, 1984 and the petitioners-spouses accepted additional partial payment of P50,000.00. The consideration stated in the deed of sale was undervalued to only P230,000.00 upon request of the private respondents in order to save on expenses related to the transactions and also upon the private respondents' representation that P230,000.00 was the maximum amount of loan they could obtain. However, the private respondents failed to pay the remaining balance on or before May 30, 1984. Nevertheless, the private respondents paid on two separate occasions the amount of P15,000.00 which the petitioners-spouses accepted when the former promised that full payment would be made within July, 1984, regardless of the outcome of their PAG-IBIG loan. The petitioners-spouses asserted that the private respondents' failure to obtain their PAG-IBIG loan was their own fault and that the private respondents have never acquired title or ownership of the subject property despite the Deed of Absolute Sale. They averred that the Deed is subject to the terms and conditions of the Contract to Sell and/or the additional agreement of the parties. They also filed a counterclaim for damages. After due trial, the trial court found for the petitioners-spouses. The complaint was dismissed. The dispositive portion of the decision reads:

"WHEREFORE, and in view of the foregoing considerations, decision is hereby rendered dismissing plaintiffs' Complaint and rendering judgment in favor of defendants on their compulsory counterclaim, as follows:

- 1) The Contract to Sell which has been superseded by a simulated Deed of Absolute Sale entered into by and between the parties are (sic) hereby declared of no further legal force and effect, provided that the P75,000.00 which the plaintiffs paid as downpayment for subject property shall, up to that amount, be applied to the pecuniary awards in favor of defendants, to wit:
- 2) Plaintiffs are directed to vacate defendants' house and lot No. 22, Block 5 Servillana St., UE Village, Cainta, Rizal, and to pay to defendants P2,500.00 monthly as reasonable value for the use and occupation of the same since December 18, 1983 until possession thereof shall have been restored to the defendants;
- 3) Plaintiffs shall reimburse defendants the sum of P6,500.00 paid by the latter as downpayment for a lot in Mandaluyong, which was, however, forfeited, with 12% interest thereon per annum from date said downpayment was made until the same shall have been fully reimbursed;
- 4) Plaintiffs shall pay to defendants P30,000.00 as moral damages; P20,000.00 as exemplary damages; P30,000.00 for and as attorney's fees; and
- 5) Costs of suit." (Rollo, pp. 91-92)

As stated earlier, the trial court's decision was reversed and set aside by the Court of Appeals. A motion for reconsideration was denied. Hence, this petition.

In view of the conflicting findings of facts of the trial court and the appellate court we have decided to review the evidence on record in order to arrive at the correct findings based on the record. (*Robleza v. Court of Appeals*, 174 SCRA 354 ([1989])).

It is to be observed that the parties' conflicting evidence centers on the Contract to Sell and Deed of Absolute Sale executed by the parties on April 9, 1984. The parties introduced conflicting testimonies regarding the true nature of the subject documents. This, in effect results in the non-application of the Parol Evidence Rule under Section 9, Rule 130 of the Rules of Court, to wit:

"SEC. 9 Evidence of written agreements. - When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement."

The record shows that neither of the parties objected to the different testimonies. Hence, the trial court had no option but to admit these conflicting testimonies. The issue was, therefore, reduced to the credibility of witnesses.

After a thorough examination of the record we are constrained to reverse the findings of the appellate court.

The appellate court's conclusion that the petitioners-spouses were at fault in the non-release of the private respondents' PAG-IBIG loan thru Urban Bank, has no factual basis.

The subject property was mortgaged to the Philippine Commercial and Industrial Bank (PCIB). This fact was known to the private respondents. In such a case, it may be assumed that the PCIB would not release the title of the land without first getting paid. Consequently, the petitioners-spouses' contention that payment of the balance price of the subject parcel of land was not dependent upon the release of their title from the PCIB which would be used as collateral by the private respondents to secure their PAG-IBIG loan thru Urban Bank, is more credible.

Moreover, the Urban Bank letter signed by Assistant Manager Ms. Liza M. de Los Reyes to PCIB dated July 2, 1984 (Exhibits G and G-1) shows that there is no basis for the conclusion that the petitioner-spouses "xxx reneged

on their agreement that Urban Bank would pay their mortgage loan obligation with PCIB so that their TCT No. 501812 over the subject property could be released free of encumbrance and transferred in appellants' name as the latter intended to use the title as collateral for their loan from Urban Bank." (page 45, Rollo) The pertinent portion of the letter reads:

"This is with reference to the real estate property of Meynardo C. Policarpio located at Servillana St., U.E. Employees Village, Cainta, Rizal more particularly described as Lot 22, Block 5 covered by TCT No. 501812, which is presently mortgaged in your favor to secure his loan with you.

Please be advised that Miss Evelyn Q. Catabas, who is purchasing the above-mentioned property has an approved Pag-Ibig loan with us, part of which shall be used to settle Mr. Policarpio's loan with you.

Per the request of our client, with the conformity of Mr. Policarpio herein given, we shall release to you the amount of NINETY SIX THOUSAND THREE HUNDRED THIRTY SEVEN & 94/100 (P96,337.94) PESOS upon transfer of title under the borrower's name, registration of mortgage in our favor and upon loan approval and take-out of National Home Mortgage Finance Corporation.

Any difference between the above-mentioned amount and the outstanding obligation shall be for the account of Miss Catabas and shall be transacted directly with you. This letter supersedes our letter of Guaranty to Mr. Policarpio on February 01, 1984.

We trust that this is satisfactory to you. Thank you.

Very truly yours,

URBAN DEVELOPMENT BANK." (Rollo, pp. 45--46)

We find no relation between the supposed agreement on the part of the petitioners-spouses to have the payment of the balance price dependent on the release of the PAG-IBIG loan and their alleged obligation to have the title released by PCIB. On the contrary, this letter enhances the stand of the petitioners-spouses that they signified their conformity to the letter upon the request of the private respondents to facilitate the release of the PAG-IBIG loan.

According to the appellate court, the letter also disproves petitioners-spouses' "claim that the appellants (private respondents) failed or refused to pay the defendants (petitioners-spouses) the P90,000.00 on time with which to pay the latter's PCIB loan resulting in the plaintiffs' (private respondents') failure to secure the release of their PAG-IBIG loan of P260,000.00 which is due the defendants (petitioner-spouses) on or before the first week of December, 1983 as stipulated in the Contract to Sell" (Paragraph 15, Answer, Record, p. 35). (Page 46, Rollo)

We find the appellate court's conclusion unwarranted. The evidence on record shows that the private respondents themselves did not blame the petitioners-spouses for the non-release of the PAG-IBIG loan on December 1983 and that it was "due to time constraint the loan was not approved and released before the deadline to pay the balance which expired the first week of December 1983." (page 82, Rollo) In fact in their Memorandum the private respondents stated that: "Private respondents failed to meet the "First Week of December 1983" deadline so that the "Contract to Sell" would have been cancelled as therein provided were it not for the fact that petitioners still pursued, the sale and private respondents were still willing to buy." (pp. 145-146, Rollo)

Moreover, the appellate court gave credence to the private respondents' contention that the petitioners-spouses' main reason for reneging on the inter-bank arrangement between Urban Bank and PCIB was due to the latter's insistence that the price of the subject property shall be increased to P330,000.00.

On the other hand, the petitioners-spouses maintain that there was an oral agreement between them and the private respondents as regards the increased price.

On this matter, we are inclined to give more credence to the trial court's findings as they are borne by the evidence on record, to wit:

"The Court finds credence in the defendants' claim that the parties verbally agreed to increase the consideration to P330,000.00. The price under the Contract to Sell which precluded transfer of possession to the plaintiffs until after full payment in effect, was P270,000.00. The default of the plaintiffs under the said contract, the non-availment by the defendants of the automatic cancellation clause when the plaintiffs defaulted; the moving of the plaintiffs into the premises on December 18, 1983 invariably necessitating the defendants to transfer elsewhere, the devaluation of the peso, the longer waiting period imposed upon the defendants, their conformity to the letter from Urban Bank (Exh. "G") to PCIB and, finally, the execution of the Deed of Absolute Sale even without plaintiffs paying for the price in full all taken together in their entirety, swing the pendulum of credibility towards the fact of agreement of the parties to increase the price. Besides, it is highly improbable that after all the rigors and the hassles the defendants had been exposed to, before and after the execution of the simulated Deed of Absolute Sale, the defendants would agree to lower the price of P270,000.00 in the Contract to Sell to P230,000.00 in the Deed of Absolute Sale." (Rollo, p. 89)

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"Furthermore the mere fact that the plaintiffs offered in their letter (Exh. "L") dated November 23, 1984 to pay P312,000.00 -- which the defendants rejected -- reinforces the truth of defendants' claim that the parties, indeed, verbally agreed to increase the price to P330,000.00. This intention must prevail and the eleventh-hour repudiation by the plaintiffs, who under the present situation would continue enriching themselves at the expense of the defendants cannot prevent its enforcement. At any rate, the Deed of Absolute Sale executed by and between the parties is admittedly simulated, whereupon it cannot be a valid basis as in this case, for an action for Specific Performance." (Rollo, p. 90)

It is to be noted that the appellate court questions the existence of Exhibit "L". The appellate court states:

"The trial court revealed the pivotal factor upon which it based its choice in reposing greater belief in appellee Meynardo Policarpio's testimony. It is this factor, the trial court said, that reinforced the truth of appellee's claim regarding the existence of an oral agreement to increase the purchase price. Said the trial court:

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Unfortunately, no such 'Exh. 'L' exists in the record. The actual 'Exh. 'L' included among the documentary evidence on record is a letter dated November 7, 1985 signed jointly by Urban Bank's Assistant Vice-President Prudeno L. Natividad and Mortgage Supervisor Marie Celine R. Gorres and addressed to appellee Evelyn Catabas." (Rollo, pp. 48-49)

The record, however, reveals the existence of Exhibit L. In fact, the private respondents' themselves confirm the existence of the November 23, 1984 letter which they reproduced in their Memorandum, to wit:

"We are aware of our mutual endeavor to exhaust all possible means to find a solution to our problem of finalizing our purchase of your house and lot here at Servillana Street, U.E. Village, Cainta, Rizal, more particularly described as Lot 22 Block 5, covered by TCT No. 501812, towards maintaining our friendly relation and avoiding a possible litigation for our mutual benefit. For our part therefore, to assuage your feeling which obviously is influenced by the present economic situation and for a higher price on said property, notwithstanding the agreed contract price of P270,000.00, we are offering our hand in friendship and propose to increase the price to a grand total of P312,000.00, no matter our difficulties, I have to confess, to be paid as follows:" (Rollo, p. 147)

The tone of the letter gives credence to the petitioners-spouses' contention that the Absolute Deed of Sale was only simulated, its execution only to facilitate the release of the private respondents' PAG-IBIG loan from Urban

Bank. It also gives credence to the petitioner-spouses' contention that they agreed to push thru with the sale provided the price would be raised to P330,000.00. For, why then, did the respondents refer to "xx our problem of finalizing our purchase xxx" and offer P312,000.00 which was beyond the initial price of the subject property of P270,000.00.

We rule that the findings of facts of the trial court which are at variance with those of the appellate court are more in consonance with the evidence on record. The trial court stated:

"The parties have common interests on the property. The defendants were interested to sell it in order to settle their obligation with PCIB and to be able to buy another property. The plaintiffs were interested to buy the property but were not ready to pay immediately the agreed consideration. Plaintiffs were depending on the loan that they jointly applied for with PAG-IBIG. In fact, if only to augment their resources for this purpose, plaintiff Clemente Catabas who used to work with the Philippine Long Distance Telephone Company had to prematurely retire in order to collect his retirement benefits.

Obviously, the defendants knew and took into consideration this financial handicap of the plaintiffs in the execution of the Contract to Sell. Hence, the grace period to pay the balance of P260,000.00 up to the first week of December 1983. By then, the plaintiffs were expecting the release of the loan they applied for which was being followed up by their acquaintance at Urban Bank. The deadline came and passed but no payment was made. The contract provided that failure to pay the balance will 'automatically cancel this contract and the vendor shall immediately return the downpayment of P10,000.00, to the Vendees' but the transaction was not called off nor the P10,000.00 returned. Evidently, the parties wanted the sale to go through. Defendant Meynardo Policarpio testified, and it was not denied, that the plaintiffs requested the defendants to wait a little longer as the person supposed to help hasten the release of the loan was busy since it was Christmas time then, and to that request, the defendants acceded. This is the logical explanation of the plaintiffs moving into the premises on December 18, 1983. It is at this point that the Court is impressed with the defendants' gesture of good faith and accommodation. For although the Contract to Sell provided: 'Vendees shall not take possession of the property until aforesaid balance of P260,000.00 shall have been paid' (emphasis supplied), the defendants, barely two (2) weeks after the contract should have been automatically cancelled for the non-payment of the balance, allowed the plaintiffs to move in even if they have to rent another place to stay.

Against this backdrop, there was no difficulty for the plaintiffs insuring the defendants' cooperation to accelerate the release of the loan. Hence, when defendants were told it was necessary for them to signify their conformity to the letter. (Exhs. "G", "6") sent by Urban Bank to PCIB, they readily obliged. The same alacrity was displayed regarding the Deed of Absolute Sale without which Urban Bank would not release the loan. Again, at this point, the defendants' good faith and implicit trust in the plaintiffs were generously portrayed. Although the consideration of P230,000.00 stated in the Deed of Absolute Sale was not fully paid (the plaintiffs had paid only P75,000.00, with the amounts of P10,000.00 and P5,000.00, being paid after April 9, 1984) the defendants executed the document. True, there was the motivation for the defendants to sign because of the plaintiffs' verbal conformity that the selling price would be increased to P330,000.00; but this was still a contingency wholly dependent on plaintiff's word of honor, while the defendants' leverage had become a fait accompli upon affixing their signatures due to the absolute nature of the sale and physical possession of the premises delivered to the plaintiffs.

Up to this stage, the defendants have done everything within their capability to help the plaintiffs effect the release of their loan. At this point, too, the only impediment to Urban Bank's release of the loan was the non-delivery of the title. It was a hitch that was later to spell the non-release of the loan which plaintiffs impute, was due to the fault of the defendants.

In the institution of the Complaint, the plaintiffs were of the impression that the delivery of the title to Urban Bank was the duty of the defendants which they failed to discharge and for which, consequently, they should be held accountable. This frame of mind while impressive at first blush, cannot be countenanced and finds no

support from the evidence adduced.

The plaintiffs fully knew from the inception of the transaction that the defendants' title was mortgaged with PCIB (Romulo Catabas, TSN, March 10, 1984, p. 20). Much as they would want to, the defendants could not just get the title from PCIB without the mortgage balance being paid. Precisely, the letter (Exh. 'G', also Exh. '6') itself of the Urban Bank bearing defendants' signatures affixed thereon, at the behest of the plaintiffs themselves, was directed to PCIB requesting the latter for the delivery of the title, among other things, before the former pays off the mortgage balance thereat as a pre-condition for the release of the loan. The plaintiffs are now in estoppel to assume -- just because it is expedient to do so -- a posture inconsistent with this clear narration of facts. To hold the defendants responsible for an act that PCIB alone could do is decidedly illogical and puerile." (Rollo, pp. 85-87)

Moreover, under the contract to sell, it is provided therein that failure on the part of the vendees (private respondents) to pay the balance of the price on the first week of December 1983 will automatically cancel the contract. The private respondents' obligation to pay was a suspensive condition to the obligation of the petitioners-spouses to sell and deliver the subject property. Since, admittedly, the private respondents failed on their obligation to pay, this rendered the contract to sell ineffective and without force and effect. (See *Spouses Eduardo and Ann Agustin v. Court of Appeals* G.R. No. 84751, June 6, 1990)

The subsequent execution of the deed of sale did not in any manner transfer ownership of the property to the private respondents. It is clear that the deed of sale was executed merely to facilitate the release of the private respondents' PAG-IBIG loan from the Urban Bank and not for the purpose of actually transferring ownership.

With these findings, we rule that the private respondents are not entitled to specific performance. The obligation in a contract of sale is reciprocal. (*Cortez v. Bibaño and Borromeo* 41 Phil. 298 [1920]). Since, the vendees admittedly had not paid the full price of the property which was their obligation under the subject contract they cannot now compel performance of the said contract.

Under the facts of the case, we agree with the trial court that the petitioners-spouses are entitled to moral damages, to wit:

"The defendants' claim of the trauma they suffered upon being sued by the plaintiffs inspires belief. After doing everything in good faith within their capability to help accelerate the release of plaintiffs' loan, their shock was understandable when the plaintiffs, in brazen disregard of their failure to comply with their contractual obligation, suddenly filed the instant complaint. Rather than being commended, as should have been expected, for walking the Biblical second mile in generous accommodation of the plaintiffs, the defendants were instead unceremoniously brought to Court. (Rollo, p. 90)

However, we find the award of P30,000.00 as moral damages excessive. In the case of *Prudenciado v. Alliance Transport System, Inc.* (148 SCRA 440 [1987]) cited in *Radio Communications of the Philippines, Inc. (RCPI), et al. v. Rodriguez*, G.R. No. 83768 February 28, 1990 we held that "xx moral damages are emphatically not intended to enrich a complainant at the expense of a defendant. They are accorded only to enable the injured party to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone by reason of the defendants' culpable action. The award of moral damages must be proportionate to the suffering inflicted." We rule that the amount of P15,000.00 as moral damages in favor of the petitioners-spouses would be reasonable considering the facts and circumstances of the case.

The award of P20,000.00 exemplary damages is not proper considering that there is no showing that the private respondents acted in "a wanton, fraudulent, reckless, oppressive, or malevolent manner." (Article 2232, Civil Code).

Finally, we find the award of attorney's fees in favor of the petitioners-spouses unwarranted. In the case of *Radio Communications of the Philippines, Inc. v. Rodriguez*, supra, citing the case of *Stronghold Insurance Company, Inc. v. Court of Appeals*, 173 SCRA 619 [1989] we ruled:

"In *Abrogar v. Intermediate Appellate Court* (G.R. No. 67970, January 15, 1988, 157 SCRA 57) the Court had occasion to state that '[t]he reason for the award of attorney's fees must be stated in the text of the court's decision, otherwise, if it is stated only in the dispositive portion of the decision, the same shall be disallowed on appeal.' (at p. 61, citing *Mirasol v. dela Cruz*, G.R. No. L--32552, July 31, 1978, 84 SCRA 337)."

Nowhere does the text of the decision of the trial court mention the reason for the award of attorney's fees. The trial court's decision failed to justify the award of P30,000.00 as attorney's fees. The award of attorney's fees must, therefore, be deleted. (See also *Spouses Eduardo and Ann Agustin v. Court of Appeals*, supra).

WHEREFORE, the questioned decision and Resolution of the Court of Appeals are REVERSED and SET ASIDE. The decision of the Regional Trial Court Pasig, Metro Manila is hereby REINSTATED except that the award for moral damages is reduced to P15,000.00 and the awards for exemplary damages in the amount of P20,000.00 and attorney's fees in the amount of P30,000.00 are deleted.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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