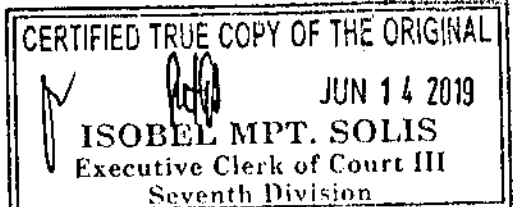




REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY



SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

**Case No. SB-17-CRM-2092
to 2093**

-versus -

Present:

**SIMEON AMPATUAN DATUMANONG
ET AL.,**

Trespeses, J., *Chairperson*
Hidalgo, J. and
Jacinto, J.¹

Accused.

X-----X

Promulgated:

June 14, 2019 *[Signature]*

DECISION

TRESPESES, J.:

Accused Mehol Kiram Sadain ("Sadain"), Aurora Ocular Aragon-Mabang ("Aragon-Mabang"), and Galay M. Makalinggan ("Makalinggan") respectively occupied the positions of Secretary/Commissioner, Acting Chief, and Director III of the National Commission on Muslim Filipinos. Meanwhile, accused Queenie E. Rodriguez ("Rodriguez") was the Project Manager/Assistant Treasurer of Maharlikang Lipi Foundation, Incorporated. They were charged with violation of Section 3 (e) of Republic Act No. 3019 ("R.A. No. 3019").

In SB-17-CRM-2092, the Information against Sadain, Aragon-Mabang and Rodriguez, among other accused, reads as follows:

In May 2012 to December 2012, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers **SIMEON AMPATUAN DATUMANONG** (Dumanong), Congressman of the Second (2nd) District of Maguindanao; **MEHOL KIRAM SADAIN** (Sadain), Secretary/Commissioner; **FEDELINA DUMALANTA ALDANESE** (Aldanese), Acting Chief Accountant; **AURORA OCULAR ARAGON-**

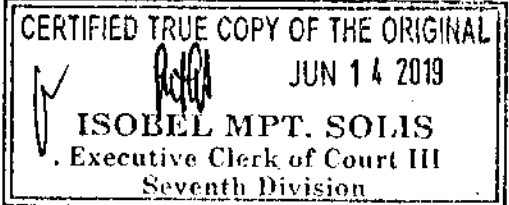
¹ Per Administrative Order No. 229-2019 dated June 7, 2019.

2. 7

DECISION

People v. Simeon Ampatuan Datumanong
SB-17-CRM-2092 to 2093

Page 2 of 10



MABANG (Mabang), Acting Chief; and **OLGA SAJISE GALIDO**, Cashier; all of the National Commission on Muslim Filipinos (NCMF); while in the performance of their administrative and/or official functions; conspiring with one another and with private individuals **GRACITA CECILIA MASCENON-SALES** (Sales), and **QUEENIE E. RODRIGUEZ** (Rodriguez), President and Project Manager/Assistant Treasurer, respectively, of Maharlikang Lipi Foundation, Incorporated (MLFI); acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence; did then and there willfully, unlawfully and criminally cause undue injury and/or give unwarranted benefits, advantage or preference to MLFI in the amount of **THREE MILLION FOUR HUNDRED TWENTY PESOS (Php3,420,000.000.00)**, through a scheme described as follows:

- a) **Datumanong** unilaterally chose and indorsed the MLFI, a non-government organization (NGO), as "NGO/Partner" in implementing the livelihood projects in his legislative district, which were funded by Datumanong's Priority Development Assistance Fund (PDAF) allocation covered by **Special Allotment Release Order (SARO) No. BMG-G-12-T-000002360**, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding or compliance with the requirements and procedure on the selection of NGO partners, as required under Republic Act No. 9184, its implementing rules and regulations, pertinent budget circulars and Commission on Audit (COA) rules;
- b) **Datumanong** authorized **Sadain** to release the fund to MLFI;
- c) **Datumanong**, **Sadain** and **Sales** then entered into a Memorandum of Agreement (MOA) on the purported implementation of Datumanong's PDAF-funded projects, which MOA was prepared and/or reviewed by accused NCMF officers/employees;
- d) **Sadain**, **Aldanese**, **Mabang** and **Galido**, prior to the execution of the MOA, unquestioningly and without the conduct of a competitive bidding or an NGO selection process as required by law, processed, signed or approved the unnumbered and undated Disbursement Voucher (DV) amounting to **Php3,420,000.00** and its supporting documents in favor of MLFI, and released Check No. 446187 dated 31 July 2012 to MLFI, signed by **Sadain** and **Galido**, without said accused NCMF officers/employees having carefully examined and verified the selection of MLFI as well as the transaction's supporting documents;
- e) **Rodriguez**, acting for and in behalf of the MLFI, received the above-described check from the NCMF;
- f) Accused NCMF officers/employees prepared the purported project accomplishment reports and certifications, which **Datumanong**, through his representative, signed or approved; and
- g) The above concerted acts by the accused public officials thus unwarrantedly allowed MLFI to divert said PDAF-drawn public funds to MLFI's control and benefit.

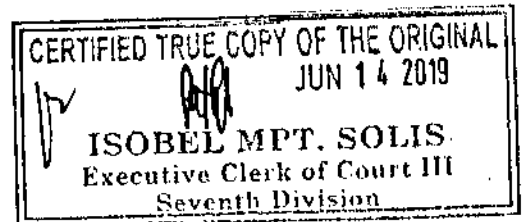
CONTRARY TO LAW.

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DECISION

People v. Simeon Ampatuan Datumanong
SB-17-CRM-2092 to 2093

Page 3 of 10



Meanwhile, in SB-17-CRM-2093, the Information against Sadain, Makalinggan (who was not impleaded in SB-17-CRM-2092), Aragon-Mabang and Rodriguez, among other accused, basically contain the same allegations, varying only in the following details:

Case Number	Date of the Offense	Disbursement Voucher	Check Details
SB-17-CRM-2092	May 2012 to December 2012	Undated, amounting to PhP3,420,000.00	Check No. 446187 dated 31 July 2012
SB-17-CRM-2093	May 2012 to February 2013	Dated 13 February 2013 amounting to PhP266,000.00	Check No. 84530 dated 14 February 2013

These cases were raffled to the Sandiganbayan Third Division. In a Resolution dated 2 November 2017, the Court issued warrants for the arrest of the accused and Hold Departure Orders against them after careful review of the records, and upon finding probable cause pursuant to Section 5, Rule 112 of the Revised Rules of Criminal Procedure.²

Accused Sadain,³ Aragon-Mabang,⁴ and Makalinggan,⁵ posted bail to secure their temporary liberty on various dates of November 2017. Roughly a year later or on 20 November 2018, accused Rodriguez also posted bail to secure her provisional liberty.⁶

In an Order dated 8 December 2017,⁷ the Court reset the arraignment of accused Sadain, Makalinggan and Aragon-Mabang, on the ground of the pendency of Sadain's motion to quash the Informations, which accused Aragon-Mabang and Makalinggan adopted. Meanwhile, accused Rodriguez subsequently adopted the motion to quash the Information filed by her co-accused, Mascenon-Sales.

In a Resolution dated 23 November 2018, the Court denied both of the motions to quash the Informations filed by accused Sadain and Mascenon-Sales.⁸

These cases were thereafter raffled to the Seventh Division of the Sandiganbayan.

² Records, Vol. I, pp. 281-282.

³ Records, Vol. I, p. 321.

⁴ Records, Vol. I, p. 336.

⁵ Records, Vol. I, p. 341.

⁶ Records, Vol. II, p. 204.

⁷ Records, Vol. I, pp. 453.

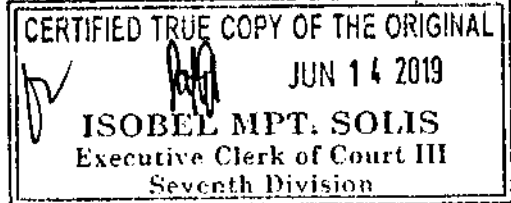
⁸ Records, Vol. II, pp. 212-217.

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DECISION

People v. Simeon Ampatuan Datumanong
SB-17-CRM-2092 to 2093

Page 4 of 10



On 11 January 2019, accused Sadain, Makalinggan, Aragon-Mabang and Rodriguez, upon arraignment, pleaded NOT GUILTY to the charges against them. They were directed to file their respective Pre-Trial Briefs and their counsels directed to attend the preliminary conferences. Pre-Trial of the cases was then set on 26 April 2019.⁹

However, Pre-Trial was cancelled in view of the Court's teambuilding activity set on 26 April 2019.¹⁰

Accused Sadain, Makalinggan and Aragon-Mabang filed their Pre-Trial Brief on 22 January 2019.¹¹ The prosecution filed its Pre-Trial Brief on 14 March 2019.¹² On the other hand, accused Mascenon-Sales and Rodriguez filed their Pre-Trial Brief on 29 March 2019.¹³

Upon motion of counsel for accused Sadain, Makalinggan, Aragon-Mabang, Aldanese and Galido, the cases were set for the continuation of preliminary conference on 4 June 2019.¹⁴

On 8 May 2018, the Court received the prosecution's Manifestation dated 7 May 2019,¹⁵ alleging that accused Sadain, Makalinggan, Aragon-Mabang, Mascenon-Sales and Rodriguez expressed through a letter their intention to enter into a plea bargaining for a lesser offense. The prosecution stated that the Office of the Ombudsman approved the same and authorized the prosecution to enter into plea agreement with the said accused for the lesser offense of Violation of Section 7(a) of R.A. No. 6713.¹⁶

Acting thereon, the Court, in an Order dated 9 May 2019, set the hearing of the cases on 14 June 2019 as requested by the prosecution.¹⁷

On 14 June 2019, a hearing was held to determine the proposed plea bargain. In open court, the prosecution manifested that it is willing to accept the plea bargain offer of accused Sadain, Makalinggan, Aragon-Mabang and Rodriguez. It manifested that the Office of the Special Prosecutor had secured

⁹ Records, Vol. III, pp. 22-23.

¹⁰ Records, Vol. III, p. 58.

¹¹ Records, Vol. III, pp. 29-38.

¹² Records, Vol. III, pp. 64-74.

¹³ Records, Vol. III, pp. 89-92.

¹⁴ Records, Vol. III, p. 110.

¹⁵ Records, Vol. III, pp. 122-125.

¹⁶ SECTION 7. Prohibited Acts and Transactions. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) Financial and material interest. — Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office. (Code of Conduct and Ethical Standards for Public Officials and Employees, Republic Act No. 6713, [February 20, 1989])

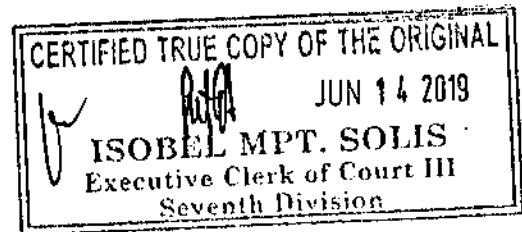
¹⁷ Records, Vol. III, p. 127.

7.41

DECISION

People v. Simeon Ampatuan Datumanong
SB-17-CRM-2092 to 2093

Page 5 of 10



authority from the Ombudsman to consent to the guilty plea offer of accused to a lesser offense of committing of Sec. 7 (a) of R.A. No. 6713.

The Court separately inquired from each of the said accused whether he/she has voluntarily offered to plea to a lesser offense and whether he/she understood the consequences of his/her plea. With the assistance of their respective counsels on record, accused individually manifested to the court that he/she has voluntarily offered to plead guilty to a lesser offense and that, with the help of his/her counsel, he/she fully understood the consequences of such plea.

RULING BY THE COURT

After evaluating the facts of the case and the manifestations by the parties to the case, the Court hereby allows the parties to enter into plea bargaining wherein each of the accused, with the consent of the Ombudsman, through the prosecution, is allowed to plead guilty to a lesser offense of Section 7 (a) of R.A. No. 6713.

In *Estipona, Jr. y Asuela v. Lobrigo*,¹⁸ the Court explained the nature of plea bargaining:

In this jurisdiction, plea bargaining has been defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval." There is give-and-take negotiation common in plea bargaining. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses. Properly administered, plea bargaining is to be encouraged because the chief virtues of the system — speed, economy, and finality — can benefit the accused, the offended party, the prosecution, and the court.

Considering the presence of mutuality of advantage, the rules on plea bargaining neither create a right nor take away a vested right. Instead, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.

The decision to plead guilty is often heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. In any case, whether it be to the offense charged or to a lesser crime, a guilty plea is a "serious and sobering occasion" inasmuch

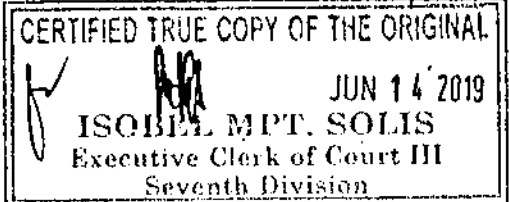
¹⁸ G.R. No. 226679, 15 August 2017.

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7

DECISION

People v. Simeon Ampatuan Datumanong
SB-17-CRM-2092 to 2093

Page 6 of 10



as it constitutes a waiver of the fundamental rights to be presumed innocent until the contrary is proved, to be heard by himself and counsel, to meet the witnesses face to face, to bail (except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong), to be convicted by proof beyond reasonable doubt, and not to be compelled to be a witness against himself.

Yet a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.

xxx

The plea is further addressed to the sound discretion of the trial court, which *may* allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged. The word *may* denotes an exercise of discretion upon the trial court on whether to allow the accused to make such plea. xxx

Plea bargaining is allowed during the arraignment, the pre-trial, or even up to the point when the prosecution already rested its case. xxx (Footnotes omitted.)

In *Daan v. Sandiganbayan*,¹⁹ the Court expounded on the legal basis of plea bargaining and when it could be seasonably made by the parties, thus:

Plea bargaining is authorized under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, to wit:

SEC. 2. *Plea of guilty to a lesser offense.* — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (sec. 4, cir. 38-98)

Ordinarily, plea bargaining is made during the pre-trial stage of the proceedings. Sections 1 and 2, Rule 118 of the Rules of Court,

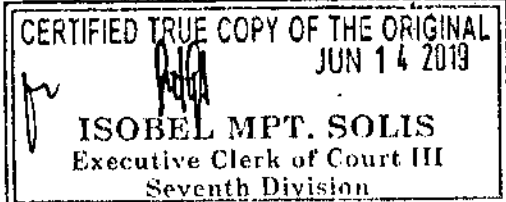
¹⁹ 573 Phil. 368-383 (2008).

2. 1. 8

DECISION

People v. Simeon Ampatuan Datumanong
SB-17-CRM-2092 to 2093

Page 7 of 10



require plea bargaining to be considered by the trial court at the pre-trial conference, viz.:

SEC. 1. *Pre-trial; mandatory in criminal cases.* — In all criminal cases cognizable by the *Sandiganbayan*, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) plea bargaining;
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

SEC. 2. *Pre-trial agreement.* — All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court. (Emphasis supplied)

But it may also be made during the trial proper and even after the prosecution has finished presenting its evidence and rested its case. Thus, the Court has held that it is immaterial that plea bargaining was not made during the pre-trial stage or that it was made only after the prosecution already presented several witnesses.

Under Section 1 of Rule 118, the parties are authorized to enter into plea bargaining after arraignment.

During their respective arraignments, accused Sadain, Makalinggan, Aragon-Mabang and Rodriguez entered a plea of not guilty to the charges of violation of Section 3 (e) of R.A. No. 3019. Considering that they have each entered into a plea bargaining agreement with the prosecution, they all move for the withdrawal of such pleas and, in lieu thereof, enter a guilty plea under Section 7 (a) of R.A. No. 6713 for the cases against them.

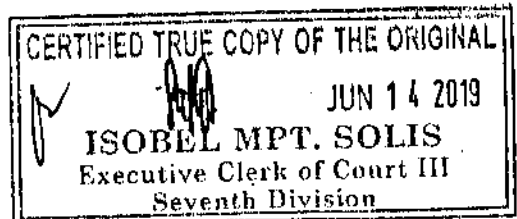
The prosecution manifested to the Court that they are not opposing the accused's change of plea. In fact, Prosecutor Joshua A. Tan informed the Court that the Honorable Ombudsman Samuel R. Martinez have authorized them to enter into a plea bargaining agreement with the accused. The Court

2. 1 1

DECISION

People v. Simeon Ampatuan Datumanong
SB-17-CRM-2092 to 2093

Page 8 of 10



deems the prosecution's manifestation as sufficient to allow the withdrawal of accused's former plea and to permit him to enter a plea of guilty to a lesser offense.

Pursuant to Section 2 of Rule 116²⁰ of the Revised Rules on Criminal Procedure, no amendment of the *Information* is necessary when withdrawing a plea of not guilty and pleading guilty to a lesser offense.

Thus, the motion of accused Sadain, Makalinggan, Aragon-Mabang and Rodriguez to withdraw their earlier plea of *not guilty* is **GRANTED**.

Upon re-arraignment on the Informations for the lesser offense of *Section 7 (a) of RA. 6713 – Prohibited Acts and Transactions*, accused Sadain, Makalinggan and Aragon-Mabang entered a plea of *guilty*. They were assisted by their counsel *de parte*, Atty. Jose P. Villamor, Jr.

Accordingly, let the plea of *guilty* be re-entered into the records of the accused Sadain, Makalinggan and Aragon-Mabang for the charges against them.

Similarly, upon re-arraignment on the Informations for the lesser offense of *Section 7 (a) of RA. 6713 – Prohibited Acts and Transactions*, accused Rodriguez entered a plea of *guilty*. She was assisted by her counsel *de parte*, Nicdao Law Office.

Let the plea of *guilty* be re-entered into the records of the accused Rodrigues for the charges against her.

Violation of Section 7 (a) of RA 6713 is penalized as follows:

SECTION 11. Penalties. — (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

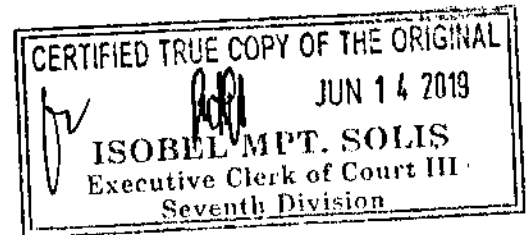
²⁰ Sec. 2. Plea of guilty to a lesser offense. — At arraignment, the accused, with the consent of the offended party and prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

7.1 r

DECISION

People v. Simeon Ampatuan Datumanong
SB-17-CRM-2092 to 2093

Page 9 of 10



Considering that accused have in their favor the mitigating circumstance of the plea of *guilty*, they are imposed the penalty of **FINE of FIVE THOUSAND PESOS (P5,000.00)** for each count of violation of Section 7 (a) of Republic Act No. 6713.

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In SB-17-CRM-2092, finding accused **MEHOL KIRAM SADAIN, AURORA OCULAR ARAGON-MABANG, and QUEENIE E. RODRIGUEZ** *guilty* beyond reasonable doubt of the lesser offense of *Prohibited Transactions* defined and penalized under Section 7 (a) of Republic Act No. 6713; and
2. In SB-17-CRM-2093, finding accused **MEHOL KIRAM SADAIN, AURORA OCULAR ARAGON-MABANG, GALAY MOKAMAD MAKALINGGAN and QUEENIE E. RODRIGUEZ** *guilty* beyond reasonable doubt of the lesser offense of *Prohibited Transactions* defined and penalized under Section 7 (a) of Republic Act No. 6713.

Appreciating the mitigating circumstance of the plea of *guilty*, accused **MEHOL KIRAM SADAIN, AURORA OCULAR ARAGON-MABANG, and QUEENIE E. RODRIGUEZ** are imposed a **FINE of FIVE THOUSAND PESOS (P5,000.00)** each in SB-17-CRM-2092 and SB-17-CRM-2093, or a **TOTAL FINE of TEN THOUSAND PESOS (P10,000.00)**.

Similarly, in view of the mitigating circumstance of the plea of *guilty*, accused **GALAY MOKAMAD MAKALINGGAN** is imposed a **FINE of FIVE THOUSAND PESOS (P5,000.00)** in SB-17-CRM-2093.

The cash bond posted by the accused shall be released to them or their representatives upon payment of the fine.

The Hold Departure Orders (HDO) issued against accused **MEHOL KIRAM SADAIN, AURORA OCULAR ARAGON-MABANG, GALAY MOKAMAD MAKALINGGAN and QUEENIE E. RODRIGUEZ** are **LIFTED**.

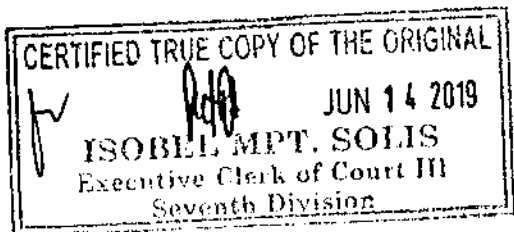
SO ORDERED.

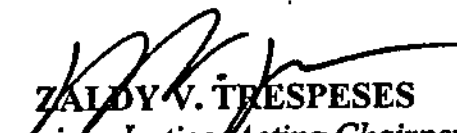
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DECISION

People v. Simeon Ampatuan Datumamong
SB-17-CRM-2092 to 2093

Page 10 of 10




ZALDY V. TRESPESSES
Associate Justice/Acting Chairperson

WE CONCUR:


GEORGINA D. HIDALGO
Associate Justice


BAYANI H. JACINTO
Associate Justice

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.


ZALDY V. TRESPESSES
Associate Justice/Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman'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.


AMPARO M. CABOTAJE-TANG
Presiding Justice