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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

XXX<sup>1</sup>

G.R. No. 243151

Petitioner,

Present:

- versus -

CARPIO, J., *Chairperson*,  
CAGUIOA,  
J. REYES, JR.,  
LAZARO-JAVIER, and  
ZALAMEDA, JJ.

PEOPLE OF THE  
PHILIPPINES,

Respondent.

Promulgated:

02 SEP 2019

X-----X  
*Handwritten signature: Cabalquinto*

DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*<sup>2</sup> filed by the petitioner XXX assailing the Decision<sup>3</sup> dated July 26, 2018 and Resolution<sup>4</sup> dated November 6, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 40229, which affirmed the Decision<sup>5</sup> dated July 12, 2016 of Branch 36, Regional Trial Court of Calamba City, Laguna (RTC) in Criminal Case Nos. 17538-2010, finding XXX guilty beyond reasonable doubt of violating Section 5(b) of Republic Act No. 7610 (R.A. 7610).

<sup>1</sup> The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>2</sup> *Rollo*, pp. 12-38.

<sup>3</sup> *Id.* at 42-58. Penned by Associate Justice Ramon R. Garcia with Associate Justices Myra V. Garcia-Fernandez and Germane Francisco D. Legaspi concurring.

<sup>4</sup> *Id.* at 60-61.

<sup>5</sup> *Id.* at 86-94. Penned by Presiding Judge Glenda R. Mendoza-Ramos.

1. The first part of the document is a list of names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are listed below each name. The list includes names such as Mr. J. H. Smith, Mr. W. B. Jones, and Mr. C. D. Brown, among others.

### The Facts

An Information was filed against XXX for doing lascivious acts against AAA,<sup>6</sup> which reads:

That sometime in the year 2005 at [YYY],<sup>7</sup> City of [ZZZ],<sup>8</sup> Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, through force, intimidation, and coercion, did then and there willfully, unlawfully and criminally, with lewd design, committed lascivious acts against [AAA], eight years old, a child subjected to other sexual abuse, by touching her breasts, and vagina and other parts of her body, against complainant's will and consent, to her damage and prejudice.

CONTRARY TO LAW.<sup>9</sup>

During the arraignment, XXX pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

The prosecution presented AAA, her older sister BBB,<sup>10</sup> and social welfare officer Nancy de Castro. The version of the prosecution, as summarized by the CA, is as follows:

Appellant is the common-law husband of private complainant's mother CCC. Private complainant, along with her mother CCC, her sisters DDD and EEE including her younger brother FFF, was living with appellant at [YYY], [ZZZ], Laguna.

Private complainant testified that sometime in 2005, when she was eight (8) years old, she was at home sleeping when she suddenly felt appellant touch her breasts and vagina. She was so afraid that all she could do was tremble. Worse, the incident was witnessed by her mother, who instead of coming to her aid, said "*kayo na lang ang magsama*". This statement proved hurtful to private complainant.

After the unfateful (*sic*) incident, private complainant tried to distance herself from appellant. However, she was repeatedly molested by appellant almost everyday. There were times when the lascivious conduct would occur during daytime while she was cooking rice and at nighttime while she was asleep. On one occasion, while she and younger brother FFF were in their room, appellant sexually abused her by touching her breasts and vagina. She tried to resist by screaming and attempting to jump out the window of their house but she was overpowered by appellant's strength. Upon witnessing the incident, her younger brother FFF ran and called their mother.

In order to avoid being sexually molested, private complainant left their house sometime in 2010. She then went to live with her older sister BBB at the Mornese Retreat House in Quezon City, where the latter works.

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<sup>6</sup> See note 1.

<sup>7</sup> See note 1.

<sup>8</sup> See note 1.

<sup>9</sup> Records, p. 1.

<sup>10</sup> See note 1.



Thereafter, private complainant recounted to her sister BBB the ordeals she suffered from appellant. This prompted BBB to file the instant case against appellant.

Private complainant's sister BBB testified that private complainant was born on September 1, 1997. They have the same biological parents but their father [had] already died. At the time of the incident, she was not living with her family because she was already working at the Mornese Retreat House in Quezon City. She further testified that private complainant presently lives with her at the Mornese Retreat House in Quezon City. Private complainant ran away from their house sometime in August 2010 because she was being sexually abused by appellant by touching her breasts and vagina.

The prosecution likewise presented private complainant AAA's Certificate of Baptism to establish that she was born on September 1, 1997 and Social Case Study Report dated December 1, 2011 concluding that private complainant was a victim of sexual abuse and recommending her for proper intervention.<sup>11</sup>

On the other hand, the version of the defense, as likewise summarized by the CA, is as follows:

Appellant was presented as the sole witness for the defense.

Appellant interposed the twin defenses of denial and alibi. He denied that he was living with private complainant's mother in the year 2005. He claims that he was then a construction worker assigned at the Tejeros Cavite Economic Zone. His working hours was from 8:00 a.m. to 4:00 p.m. After the end of his duty, he proceeds to the employee's barracks located at their job site. Moreover, while he admitted that he was romantically involved with private complainant's mother, he insisted that he never stepped into their house at [YYY], [ZZZ], Laguna. As a matter of fact, it was private complainant's mother who visited him in his rented house located at [WWW],<sup>12</sup> [ZZZ], Laguna. The distance between these two houses is about 2 kilometers or twenty (20) minutes away by means of a tricycle. Appellant also denied ever having personally met private complainant and claims that he only saw her through the pictures shown to him by her mother. Appellant further pointed out that private complainant holds a grudge against him because he was romantically involved with her mother.<sup>13</sup>

### Ruling of the RTC

After trial on the merits, in its Decision<sup>14</sup> dated July 12, 2016, the RTC convicted XXX of the crime charged. The dispositive portion of the said Decision reads:

<sup>11</sup> *Rollo*, pp. 44-45.

<sup>12</sup> *See* note 1.

<sup>13</sup> *Rollo*, p. 45.

<sup>14</sup> *Supra* note 5.



**WHEREFORE**, in view of the foregoing, the Court finds accused [XXX] **GUILTY** beyond reasonable doubt for violation of Section 5(b) of Republic Act 7610. He is hereby sentence (*sic*) to suffer the indeterminate penalty of EIGHT (8) years and ONE (1) day of *prision mayor* as minimum to SEVENTEEN (17) years, FOUR (4) months and ONE (1) day of *reclusion temporal*, as maximum, and to pay the amount of FIFTEEN THOUSAND PESOS (P15,000.00) as fine. Likewise, he is ordered to pay AAA the amount of TWENTY THOUSAND Pesos (P20,000.00) as civil indemnity FIFTEEN THOUSAND PESOS (P15,000.00) as moral damages; and FIFTEEN THOUSAND PESOS (P15,000.00) as exemplary damages, with subsidiary imprisonment in case of insolvency

SO ORDERED.<sup>15</sup>

The RTC found AAA's testimony to be candid and straightforward, with "no tinge of revenge or rancor"<sup>16</sup> and thus deserving of full faith and credit. The RTC found the five-year delay in reporting the incident to be insignificant, as the victim was only able to run away from her home five years after the incident complained of. The RTC added:

It is herein stressed that the accused failed to show an acceptable motive and the records show none for the private complainant to concoct a story and to testify falsely against him. His claim that private complainant did not want to have a relationship with her mother cannot overcome AAA's positive and forthright testimony which appears to be consistent even under cross-examination. It has been held that the best test of credibility is its compatibility with the common experience of man. A testimony deserves credence if it does not run counter to human knowledge, observation and experience.<sup>17</sup>

XXX thus appealed to the CA.

### **Ruling of the CA**

In the questioned Decision<sup>18</sup> dated July 26, 2018, the CA affirmed the RTC's conviction of XXX.

The CA held that AAA's testimony sufficiently established all the elements of the crime. It ruled that the RTC correctly accorded credence to the testimony of AAA after finding her answers to the questions on direct and cross-examination to be intelligible, candid, and unwavering.<sup>19</sup> The CA also noted that, contrary to XXX's claim, the prosecution was able to establish AAA's age at the time of the commission of the offense using AAA's baptismal certificate. Finally, the CA ruled against XXX's defenses of alibi and denial, for they were inherently weak as they could be easily contrived. Thus, the CA convicted XXX of the crime of "acts of lasciviousness under

<sup>15</sup> *Rollo*, p. 94.

<sup>16</sup> *Id.* at 90.

<sup>17</sup> *Id.* at 91.

<sup>18</sup> *Supra* note 3.

<sup>19</sup> *Rollo*, p. 52.





Article 336 of the Revised Penal Code [(RPC)] in relation to Section 5(b) of [R.A.] 7610.”<sup>20</sup>

XXX filed a motion for reconsideration of the Decision, however, the same was denied by the CA in a Resolution dated November 6, 2018.

Hence, the instant appeal.

### Issue

Proceeding from the foregoing, for resolution of the Court is the issue of whether the RTC and the CA erred in convicting XXX.

### The Court's Ruling

The appeal is partially granted. The Court modifies XXX's conviction from “acts of lasciviousness under Article 336 of the [RPC] in relation to Section 5(b) of [R.A.] 7610” to “Acts of Lasciviousness under Article 336 of the [RPC].”

The CA convicted XXX of “acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of [R.A.] 7610” because of its conclusion that the victim was only eight years old at the time of the commission of the act complained of. The CA was only following the prevailing jurisprudence on the matter, which states that “when the [victim] of lascivious conduct is under 12 years of age, the perpetrator shall be (1) prosecuted under Article 336 of the RPC, and (2) the penalty shall be *reclusion temporal* in its medium period.”<sup>21</sup>

Thus, while XXX was charged and convicted for the crime “in relation to [R.A.] 7610,” the elements of Acts of Lasciviousness under the RPC was what the prosecution essentially needed to prove — which it did so successfully. The only effect of relating the crime to R.A. 7610 was the imposition of *reclusion temporal* in its medium period as the penalty.

To convict XXX of the crime of Acts of Lasciviousness under the RPC, the prosecution, in turn, had to prove the following elements, to wit: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force and intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another

<sup>20</sup> Id. at 56.

<sup>21</sup> Separate Concurring Opinion of Associate Justice Diosdado M. Peralta in *Quimvel v. People*, 808 Phil. 889, 943 (2017). This is still the prevailing rule as it was upheld in the recent case of *People v. Tulagan*, G.R. No. 227363, March 12, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>>.



person of either sex.<sup>22</sup> The third element is immediately satisfied for the offended party is, naturally, a person of either sex.

The first element — that the offender commits any act of lasciviousness or lewdness — on the other hand, was satisfied through the testimony of AAA, the offended party. AAA testified:

Q You said that you were abused by [XXX] who is the accused, when did it happen?

A Year 2005, I was in Grade 1, sir.

Q And where did it happen?

A At home while I was sleeping, sir.

Q So, if you were at home and the accused was also at your house, why is he at your house?

A He is the husband of my mother, he is my step father, sir.

Q So, the accused is your step father?

A Yes, sir.

Q Now according to you [AAA], you were abused by the accused in the Year 2005 at your house in [ZZZ], now my question is how did the accused abuse you?

A He was touching my breast and other private parts of my body, sir.

Q Can you be more specific with respect to your private parts?

A He was touching my vagina, sir.

Q Now while he was doing it to you, what was your reaction?

A I was afraid sir, I was trembling.

Q And while he was also doing it to you, what was his reaction?

A Nothing, sir.

Q How long did the accused touch your private parts, for how long?

A He touched my body for a short time and after that he left, sir.

Q Was this incident repeated?

A Yes, sir.

Q How many times did this incident repeated (*sic*)?

A Almost everyday, sir.

Q Did you reveal this incident to a person?

A None, sir.

Q So when did this incident stopped (*sic*)?

A When I ran away, sir.<sup>23</sup>

<sup>22</sup> *Perez v. Court of Appeals*, 431 Phil. 786, 796 (2002).

<sup>23</sup> TSN dated May 25, 2011, pp. 5-6.



Upon cross-examination, AAA was only asked regarding (1) the lighting conditions in the room where the act complained of was done; (2) when AAA was able to run away from home and thus relay the incident to her sister, BBB; and (3) if AAA told her mom about the incident, in which she testified:

Q After the incident, you did not bother to inform your mom about the incident.

A No ma'am, she just saw the incident.

Q But is it true that you said a while ago that your mother slept at the other room, is that correct?

A Yes, ma'am. My mom is at the other room but she is seeing whenever he moves.

Q You said that your mother saw the incident yet you did not bother to confront her and even tell her what happened to you?

A My mother was able to see the incident and the following morning, she's the one telling me about that incident and she even joked "kami na lang daw po and (*sic*) magsama" and it hurts me.<sup>24</sup>

The RTC, as affirmed by the CA, noted that the foregoing testimony "deserves total credibility. It was candid, straight-forward, with no tinge of revenge or rancor."<sup>25</sup> In turn, it is well-settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.<sup>26</sup> In addition, when the case pivots on the issue of the credibility of the victim, the findings of the trial courts necessarily carry great weight and respect as they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial.<sup>27</sup> From the foregoing, it may thus be concluded that the first element of the crime charged has been proven by the prosecution beyond reasonable doubt.

For the second element, the RTC and the CA concluded that it was present because AAA was only eight years old at the time of the incident complained of. Coincidentally, because of this finding, the lower courts deemed R.A. 7610 to be applicable in light of recent jurisprudence.

XXX, however, argues in this appeal that AAA's age was not properly established as the Court's guidelines in *People v. Pruna*<sup>28</sup> (*Pruna*) were not followed. The *Pruna* guidelines are as follows:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

<sup>24</sup> TSN dated May 25, 2011, p. 10.

<sup>25</sup> *Rollo*, p. 90.

<sup>26</sup> *People v. Gerola*, 813 Phil. 1055, 1063-1064 (2017).

<sup>27</sup> *People v. Aguilar*, 565 Phil. 233, 247 (2007).

<sup>28</sup> 439 Phil. 440 (2002).



1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.<sup>29</sup>

The Court agrees with XXX's contention.

In the present case, the prosecution did not present AAA's birth certificate. Instead, they presented a photocopy of AAA's Baptismal Certificate, and both AAA and BBB testified as regards AAA's age. As pointed out by XXX, however, these pieces of evidence were not compliant with the *Pruna* guidelines and thus do not suffice to establish AAA's age.

The prosecution was unable to comply with the first guideline because, as mentioned, they did not present AAA's birth certificate which could have been the best evidence that she was only eight years old at the time of the

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<sup>29</sup> Id. at 470-471.





incident complained of. The second guideline was likewise not complied with, as the Baptismal Certificate<sup>30</sup> submitted in evidence was a mere photocopy and no one was presented to authenticate the same.

The third guideline was likewise not sufficiently complied with. While BBB, AAA's older sister, testified as to AAA's age, the resort to such testimony was not proper because the guideline provides that such testimony may be admitted only after the "certificate of live birth or authentic document is shown to have been **lost** or **destroyed** or **otherwise unavailable**."<sup>31</sup> In *People v. Hilarion*,<sup>32</sup> the Court did not appreciate the mother's testimony as to her daughter's age because her testimony failed to show how the birth certificate or other authentic documents were lost, destroyed, or were otherwise unavailable. The Court in the said case ruled:

In the present case, the records are completely devoid of evidence that the certificates recognized by law have been lost or destroyed or were otherwise unavailable. The mother simply testified without prior proof of the unavailability of the recognized primary evidence. Thus, proof of the victim's age cannot be recognized, following the rule that all doubts should be interpreted in favor of the accused.<sup>33</sup>

In this case, not only are the records devoid of evidence that the primary evidence was lost, destroyed, or otherwise unavailable, a perusal of the records even reveals that AAA's birth certificate could, in fact, be located and furnished the court if only someone exerted sufficient effort to secure the same. According to BBB's testimony, AAA's birth certificate was just in Cubao:

Q [BBB], your sister, is she older or younger to you?

A Much younger[,] Your Honor.

Q Do you know when she was born?

A September 1, 1997 Your Honor.

Q **Would you know whether she has Birth Certificate?**

A **Her Birth Certificate is in Cubao Your Honor.**<sup>34</sup> (Emphasis supplied)

Thus, resort to BBB's testimony to prove AAA's age was improper.

Lastly, the fourth guideline was similarly not complied with because although AAA testified as to her age, the said fact was not expressly and clearly admitted by XXX in accordance with the fourth guideline in *Pruna*.

<sup>30</sup> Records, p. 87.

<sup>31</sup> *People v. Pruna*, supra note 28.

<sup>32</sup> 722 Phil. 52 (2013).

<sup>33</sup> Id. at 58.

<sup>34</sup> TSN dated June 2, 2011, p. 6.





Considering the foregoing, it could thus be concluded that AAA's age was not properly proved by the prosecution. In *People v. Belen*,<sup>35</sup> the Court convicted the accused therein only of Simple Rape instead of Statutory Rape because the age of the victim was not sufficiently established. Applying the same principle in this case, the Court thus convicts XXX only of Acts of Lasciviousness, punished under Article 336 of the RPC, and **not in relation to Section 5(b), R.A. 7610** as required by recent jurisprudence on the matter. Verily, without proof of AAA's age, R.A. 7610 cannot be made to apply as the said law applies only when the victim is below 18 years old.

It must be clarified, however, that the Court still convicts XXX for Acts of Lasciviousness despite the failure of the prosecution to prove the victim's age, because all the elements of the crime are still present. To reiterate, the first element — that the offender commits any act of lasciviousness or lewdness — was sufficiently proved by the testimony of AAA as regards the incident complained of. The third element was, in turn, immediately satisfied as the offended party was a person of either sex.

The second element was likewise present because, although the prosecution failed to prove that AAA was only eight years old at the time of the incident, the acts committed by XXX are still considered done with force or intimidation by virtue of XXX's relationship with AAA. As the Court held in *People v. Corpuz*,<sup>36</sup> "in rape [or acts of lasciviousness] committed by a close kin, such as the victim's father, stepfather, uncle, or the **common-law spouse of her mother**, it is not necessary that actual force or intimidation be employed; **moral influence or ascendancy takes the place of violence or intimidation.**"<sup>37</sup>

All the elements of the crime of Acts of Lasciviousness are thus present.

With regard to the amount of damages, the Court deems it proper to adjust the award of damages in consonance with *People v. Tulagan*.<sup>38</sup> Thus, XXX is hereby ordered to pay AAA, the amount of Twenty Thousand Pesos (₱20,000.00) as civil indemnity, Twenty Thousand Pesos (₱20,000.00) as moral damages, and Twenty Thousand Pesos (₱20,000.00) as exemplary damages. Interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this Decision is likewise imposed to complete the quest for justice and vindication on the part of AAA.<sup>39</sup>

**WHEREFORE**, in view of the foregoing, the Decision dated July 26, 2018 and Resolution dated November 6, 2018 of the Court of Appeals in CA-G.R. CR No. 40229 is hereby **AFFIRMED WITH MODIFICATION**. The accused-appellant XXX is found **GUILTY** beyond reasonable doubt of the

<sup>35</sup> 803 Phil. 751 (2017).

<sup>36</sup> 597 Phil. 459 (2009).

<sup>37</sup> Id. at 467.

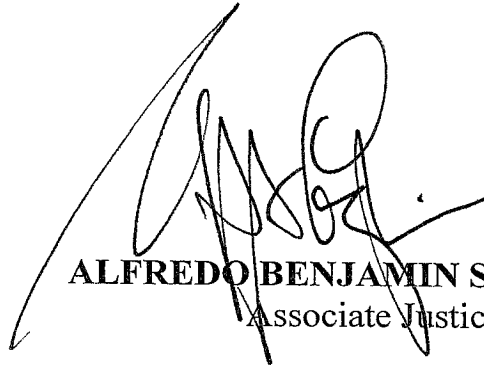
<sup>38</sup> G.R. No. 227363, March 12, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>>.

<sup>39</sup> *People v. Arcillas*, 692 Phil. 40, 54 (2012).




crime of Acts of Lasciviousness, defined and punished under Article 336 of the Revised Penal Code. He is sentenced to suffer the indeterminate penalty of imprisonment of four (4) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. He is likewise ordered to pay AAA the amounts of TWENTY THOUSAND PESOS (₱20,000.00) as civil indemnity, TWENTY THOUSAND PESOS (₱20,000.00) as moral damages, and TWENTY THOUSAND PESOS (₱20,000.00) as exemplary damages. Interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this Decision is likewise imposed.

**SO ORDERED.**

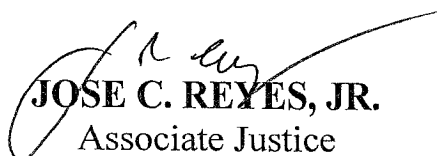


**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

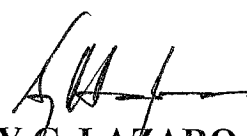
WE CONCUR:



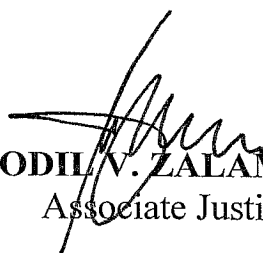
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**JOSE C. REYES, JR.**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice




**RODIL V. ZALAMEDA**  
Associate Justice



**ATTESTATION**

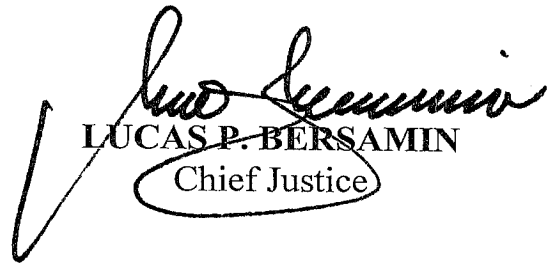
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

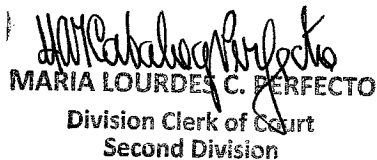
**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**LUCAS P. BERSAMIN**  
Chief Justice

**CERTIFIED TRUE COPY**



**MARIA LOURDES C. PERFECTO**  
Division Clerk of Court  
Second Division

