



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 232329

Present:

LEONEN, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J. Y., JJ.

- versus -

Promulgated:

ZZZ, *
Accused-Appellant.

April 28, 2021
MisADC Batt

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DECISION

HERNANDO, J.:

This is an appeal from the September 9, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR HC No. 07658 which affirmed the June 18, 2015 Judgment² of the Regional Trial Court (RTC), Branch 64 of Labo, Camarines Norte convicting accused-appellant ZZZ of two (2) counts of Rape and sentencing him to suffer the penalty of *reclusion perpetua* in Criminal Case Nos. 08-1636-37.

* Initials were used to identify the accused-appellant pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017 Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances issued on September 5, 2017.

¹ *Rollo*, pp. 2-18; penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser.

² *CA rollo*, p. 55-61; penned by Acting Presiding Judge Roberto A. Escaro.

ZZZ was charged with two (2) counts of Rape under Article 266-A of the Revised Penal Code (RPC) in relation to Republic Act No. 7610³ (RA 7610) in two Informations which read:

CRIM. CASE No. 08-1636

That sometime in the afternoon of May 3, 2008 in Brgy. ██████, Labo, Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and motivated by bestial lust and by means of force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of his 12-year old granddaughter AAA,⁴ without her consent, which acts debase, degrade her intrinsic worth as a child and is prejudicial to her growth and development, to her damage.

CONTRARY TO LAW.⁵

CRIM. CASE No. 08-1637

That sometime in the early part of 2008 in Brgy. ██████, Labo, Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and motivated by bestial lust and by means of force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of his 12-year old granddaughter AAA, without her consent, which acts debase, degrade her intrinsic worth as a child and is prejudicial to her growth and development, to her damage.

CONTRARY TO LAW.⁶

The cases against ZZZ were initially archived by the trial court since the warrant for his arrest was returned unserved.⁷ He was eventually arraigned on December 6, 2011 and pleaded not guilty to both charges.⁸

During trial, AAA testified that on two separate occasions in 2008, her grandfather, ZZZ, forcibly took her out of their house, brought her to a secluded place and raped her.⁹

³ Special Protection of children Against Child Abuse, Exploitation and Discrimination Act.

⁴ "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes, Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and their Children, effective November 15, 2004." (*People v. Dumadag*, 667 Phil. 664, 669 (2011).

⁵ Records (Crim. Case No. 08-1636), p. 1.

⁶ Records (Crim. Case No. 08-1637), p. 1.

⁷ CA rollo, p. 55.

⁸ Id. at 56.

⁹ Id.

AAA recounted that sometime in January to April 2008, ZZZ forcibly brought her to a big copra kiln where, after undressing them both, he mounted her and inserted his penis into her vagina. To prevent her from screaming, accused-appellant covered her mouth with his hand and inserted his penis into her vagina. After he removed his penis from her vagina, AAA's vagina was swollen with the presence of blood and a white sticky substance. ZZZ gave AAA ₱50.00 and instructed her not to tell her father about the incident.¹⁰

AAA further testified that in the afternoon of May 3, 2008, ZZZ fetched her from their house and dragged her towards the river. While crossing the river midway, AAA saw her siblings. However, ZZZ immediately covered her mouth to prevent her from shouting and calling their attention. As soon as they reached the side of the river, ZZZ undressed them both, mounted AAA and inserted his penis into her vagina. After he was done, accused-appellant once again told the victim not to report the incident to her father. This time, he threatened AAA with death should she inform her father. He also gave AAA ₱20.00.¹¹

Since she could no longer bear the pain in her swollen vagina, AAA told her father of what ZZZ had done to her. AAA and her father then went to the barangay to file a complaint.¹² AAA was also examined by Dr. Virginia Barasona who testified at the trial that her medical findings were consistent with AAA's claim of rape and that she had issued a medical certificate thereon.¹³

ZZZ was the sole witness for the defense. He claimed that he could not have raped his granddaughter, AAA, since he was already sixty-seven (67) years old in 2008 and his penis was no longer capable of erection due to a cyst near his inner thigh which caused chronic pain in his legs.¹⁴

Accused-appellant further testified that on May 3, 2008 he was at his house which is located some distance away from AAA's family home.¹⁵

On June 18, 2015, the trial court rendered its Judgment convicting ZZZ of the charges of rape, thus:

WHEREFORE, premised from the foregoing, and having found accused **ZZZ**, **GUILTY** beyond reasonable doubt for two (2) counts of **RAPE** in relation to RA 7610, he is hereby sentenced to suffer the penalty of **RECLUSION**

¹⁰ Id. at 56-57.

¹¹ Id.

¹² Id. at 57.

¹³ Id. at 57-58.

¹⁴ Id. at 58.

¹⁵ Id.

PERPETUA. Said accused is ordered to pay victim, AAA, for each count the following:

1. Php50,000.00 as civil indemnity; and
2. Php50,000.00 as moral and exemplary damages.

SO ORDERED.¹⁶

On appeal, ZZZ maintained his innocence and decried the trial court's finding of guilt despite the prosecution's failure to establish with particularity the date of commission of the rape and the inconsistent testimony of AAA.¹⁷ He argued that the trial court erred in not considering his defense of denial.¹⁸ In the alternative, assuming without admitting that he is guilty of raping his granddaughter, the penalty imposed should be that provided in Section 5(b), Article III of RA 7610.¹⁹

The appellate court sustained ZZZ's conviction for two counts of rape:

WHEREFORE, premises considered, the appeal is **DENIED**. The Judgment dated 18 June 2015 of Branch 64, Regional Trial Court of Labo, Camarines, Norte in Criminal Case Nos. 08-1636 and 08-1637 is **AFFIRMED** with **MODIFICATION**. Appellant [ZZZ] is hereby found **GUILTY** beyond reasonable doubt of two (2) counts of rape and is accordingly sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole for each count. Appellant is ordered to pay the private offended party as follows: P100,000.00 as civil indemnity, P100,000.00 as moral damages, and P100,000.00 as exemplary damages, also in each count. He is further ordered to pay interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this judgment.

SO ORDERED.²⁰

Hence, this appeal²¹ by ZZZ raising the same assignment of errors contained in his Appellant's Brief before the appellate court.²²

Our Ruling

The appeal is bereft of merit.

¹⁶ Id. at 61.

¹⁷ Id. at 36-38.

¹⁸ Id. at 44-45.

¹⁹ Id. at 45-51.

²⁰ *Rollo*, p. 17.

²¹ *CA rollo*, pp. 115-116.

²² *Rollo*, pp. 35-36; see Manifestation of the accused-appellant adopting his Appellant's Brief as his Supplemental Brief to the Supreme Court.

After a careful review of the evidence and testimony proffered by the prosecution, we rule that the trial court and the appellate court were correct in their assessment of the testimonies of AAA and ZZZ. The accused-appellant failed to show that the lower courts overlooked a material fact that otherwise would change the outcome of the case or misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses. Thus, we will not disturb the trial court's findings of fact as affirmed by the appellate court.

Accused-appellant insists that the prosecution failed to sufficiently establish the date of the commission of the rape. In particular, accused-appellant points to the Information in Criminal Case No. 08-1637 which specified the date of the rape charged as "sometime in the early part of 2008". Accused-appellant counters that this "irregular designation" violates Section 11,²³ Rule 110 of the Rules of Court.

This contention does not persuade. As correctly ruled by the appellate court, the date of commission of the crime is not an essential element thereof. In fact, the specific Rule cited by accused-appellant states that "it is not necessary to state in the Information the precise date the offense was committed **except when it is a material ingredient of the offense.**" The date of commission is not even an element of the crime of rape which elements are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [18] years of age at the time of the rape; (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.²⁴

We fully agree with the appellate court's ruling that -

[A]n Information is valid as long as it distinctly states the elements of the offense and the acts or omission constitutive thereof. The exact date of the commission of a crime is not an essential element of the crime charged. In a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The precise time of the crime has no substantial bearing on its commission. Therefore, it is not essential that it be alleged in the information with ultimate precision.

Further, it cannot be considered that appellant was deprived of his constitutional right to be informed of the nature and cause of the accusation against him. As cited in *People v. Ibañez*, the Supreme Court previously upheld complaints and informations in prosecutions for rape which merely alleged that

²³ Section 11. *Date of commission of the offense.* - It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

²⁴ *People v. Colentava*, 753 Phil. 361 (2015).

a rape has been committed “sometime in the month of April 1993,” for a rape which was committed in 1993; “on or about May 1998,” for a rape committed sometime in the first week of May 1998; and “sometime in the month of September 1998” for a rape committed on an evening in September 1998. Here, the allegation in the Information that appellant committed rape “sometime in the early part of 2008” was sufficient to inform appellant that he was being charged of rape committed against his granddaughter.

It bears emphasis that objections as to the form of the complaint or information cannot be made for the first time on appeal. If appellant found the Information insufficient, he should have moved before arraignment either for a bill of particulars, for him to be properly informed of the exact date of the alleged rape; or for the quashal of the Information, on the ground that it did not conform with the prescribed form. As appellant failed to pursue either remedy, he is deemed to have waived objection to any formal defect in the Information.²⁵

Moreover, the alleged inconsistencies in AAA’s testimony are understandable considering that she was still only a minor, 16 years old, at the time she testified before the trial court. In *People v. Lagbo*²⁶ we explained that:

x x x Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape. Such inconsistencies on minor details are in fact badges of truth, candidness and the fact that the witness is unrehearsed. These discrepancies as to minor matters, irrelevant to the elements of the crime, cannot, thus, be considered a ground for acquittal.²⁷

The testimony of AAA is consistent on material points. Slightly conflicting statements will not undermine her credibility or the veracity of her testimony. They in fact tend to buttress rather than impair their credibility as they erase any suspicion of rehearsed testimony.²⁸ The defense was not able to elicit significant contradictions in the testimony of the victim to render such as a fabrication prodded by her father who accused-appellant points to as the perpetrator of the rape of AAA. Even under rigid cross-examination, AAA remained consistent in her testimony that accused-appellant, her grandfather, raped her in two separate instances: one, where she was forcibly brought to the copra kiln, and two, by the river where she had just previously seen her siblings but was unable to cry out to them for help.

Carnal knowledge had also been proven in two instances. It is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she

²⁵ *Rollo*, p. 9.

²⁶ 780 Phil. 834 (2016).

²⁷ *Id.* at 844.

²⁸ *Id.*

says in effect all that is necessary to show that rape was indeed committed.²⁹ The testimony of AAA sufficiently describes her harrowing experience in the hands of ZZZ. It bears emphasis that accused-appellant resorted to force, threat and intimidation to consummate his lust. We have consistently ruled that rape is committed when intimidation is used on the victim, which includes moral intimidation or coercion.³⁰

We find to be unacceptable accused-appellant's contention that he could not have sexually abused AAA since he could no longer have an erection due to his old age, 67 years old at the time of the rape, and considering the cyst near his inner thigh. Suffice it to state that neither of the lower courts gave credence to accused-appellant's unsubstantiated claim. Accused-appellant did not present documentary evidence such as a medical certificate attesting to the physical impossibility of his having an erection and incapacity of raping AAA.

In the same vein, his defense of denial fails to persuade Us. Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law, as in this case.³¹ Ultimately, accused-appellant's conviction was not primarily based on the weakness of his defense of denial and his attempt to shift the accusation to AAA's father as the alleged actual perpetrator of the rape. Rather, accused-appellant was found guilty on the basis of AAA's consistent and steadfast testimony, even under rigid cross-examination, pointing to him as the one who despoiled her honor.

ZZZ next insists that he should be penalized under Section 5, Article III of RA 7160 and for the mitigating circumstance of old age to be applied in his favor.

We disagree.

Notably, the trial court found accused-appellant guilty beyond reasonable doubt of two (2) counts of "Rape in relation to RA 7610". The appellate court affirmed this ruling of the trial court.

At this point, it must be pointed out there is a need to fix the error in the nomenclature of ZZZ's crime. As corrected, accused-appellant should be held criminally liable for two (2) counts of Rape under Article 266-A,

²⁹ *People v. Eulalio*, G.R. No. 214882, October 16, 2019 citing *People v. Salaver*, G.R. No. 223681, August 20, 2018.

³⁰ *People v. Gacusan*, 809 Phil. 773 (2017) citing *People v. Servano*, 454 Phil. 256 (2003).

³¹ *People v. Molejon*, G.R. No. 208091, April 23, 2018.

Paragraph 1(a) penalized under Article 266-B (1) of the RPC.³² The correlation to RA 7610 is deleted.

*People v. Tulagan*³³ explains the *ratio* for this, *viz.*:

Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information – *e.g.*, carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1 (a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the Information under Section 3(f) of Rule 117 of the Rules of Court – and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, **while R.A. No. 7610 is a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty (*reclusion temporal medium to reclusion perpetua*) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.**

Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the more recent law, but also deals more particularly with all rape cases, hence, its short title "*The Anti-Rape Law of 1997*." R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of *reclusion perpetua* under Article 266-B of the RPC x x x³⁴(Emphasis supplied.)

Pursuant to the foregoing, accused-appellant's conviction for two (2) counts of Rape under Article 266, Paragraph 1(a) of the RPC is in order.

Moreover, the crime of Qualified Rape under paragraph 1, Article 266-A of the RPC is penalized under Article 266-B (1), which provides that the death penalty shall be imposed if the victim is under 18 years of age and the offender, among others, is the ascendant or a relative by consanguinity or affinity within the third civil degree. Applying RA 9346,³⁵ the appellate court correctly imposed the penalty of *reclusion perpetua* and without eligibility for

³² *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

³³ *Id.*

³⁴ *Id.*

³⁵ AN ACT PROHIBITING THE IMPOSITION OF THE DEATH PENALTY.

parole. When circumstances warranting the imposition of the death penalty are present but the death penalty could not be imposed because of RA 9346, the qualification “without eligibility for parole” shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to death had it not been for RA No. 9346.³⁶

The Court recently settled in *People v. Ejercito*³⁷ (*Ejercito*) that RA 8353³⁸ amending the RPC should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of RA 7610. We declared that while RA 7610 has been considered as a special law that covers the sexual abuse of minors, RA 8353 has expanded the reach of our rape laws. We thus clarified that these existing rape laws should not only pertain to the old Article 335 of the RPC but also to the provision on sexual intercourse under Section 5 (b) of RA No. 7610 which, applying the characterization in *Quimvel v. People*³⁹ of a child “exploited in prostitution or subjected to other abuse,” covers the rape of a minor.

*Ejercito*⁴⁰ instructs, thus:

It bears to emphasize that not only did RA 8353 re-classify the crime of Rape from being a crime against chastity to a crime against persons, it also provided for more particularized instances of rape and conjunctively, a new set of penalties therefor. Under RA 8353, Rape is considered committed not only through the traditional means of having carnal knowledge of a woman (or penile penetration) but also through certain lascivious acts now classified as rape by sexual assault:

Article 266-A. Rape: When and How Committed. — Rape is committed —

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a) Through force, threat, or intimidation;
 - b) When the offended party is deprived of reason or otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority; and
 - d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

³⁶ *People v. Molejon*, supra note 31.

³⁷ G.R. No. 229861, July 2, 2018.

³⁸ The Anti-Rape Law of 1997.

³⁹ 808 Phil. 889 (2017).

⁴⁰ Supra.

- 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. (Emphasis supplied)

Moreover, RA 8353 provides for new penalties for Rape that may be qualified under the following circumstances:

Article 266-B. Penalty. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall become *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

- 1) **When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;**

- 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

- 3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

- 4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

- 5) When the victim is a child below seven (7) years old;

- 6) When the offender knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

- 7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

X X X X

Significant to this case, the above-highlighted provisions of RA 8353 already accounted for the circumstance of minority under certain peculiar instances. The consequence therefore is a clear overlap with minority as an element of the crime of sexual intercourse against a minor under Section 5 (b) of RA 7610. However, as it was earlier intimated, RA 8353 is not only the more recent statutory enactment but more importantly, the more comprehensive law on rape; therefore, the Court herein clarifies that in cases where a minor is raped through sexual intercourse, the provisions of RA 8353 amending the RPC ought to prevail over Section 5 (b) of RA 7610 although the latter also penalizes the act of sexual intercourse against a minor.⁴¹

Finally, the damages awarded by the trial court and increased by the appellate court to ₱100,000.00 each for civil indemnity, moral damages and exemplary damages pursuant to *People v. Gambao*,⁴² as well as the imposition of interest, are correct and consistent with the ruling in *People v. Jugueta*.⁴³

WHEREFORE, the appeal is **DISMISSED**. The September 9, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 07658 is **AFFIRMED with MODIFICATION**. Accused-appellant ZZZ is held **GUILTY** of two (2) counts of Rape under Article 266-A, Paragraph 1(a) in relation to Article 266-B of the Revised Penal Code. He is hereby **SENTENCED** to suffer the penalty of *reclusion perpetua*. The correlation to Republic Act No. 7610 is **DELETED**. He is **ORDERED** to pay the victim AAA the following amounts: (i) ₱100,000.00 as civil indemnity; (ii) ₱100,000.00 as moral damages; and (iii) ₱100,000.00 as exemplary damages. All amounts due shall earn legal interest of six percent (6%) per *annum* from the date of the finality of this Decision until full payment.

⁴¹ Id.

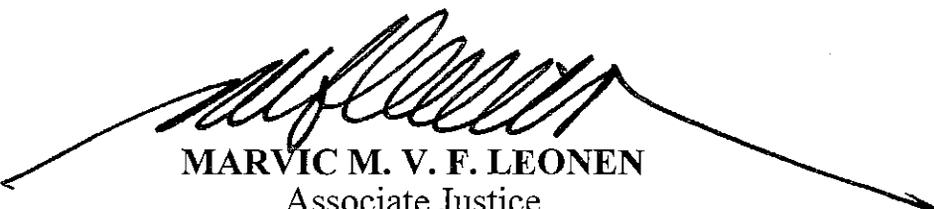
⁴² 718 Phil. 507 [2013].

⁴³ 783 Phil. 806 (2016).

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


MARVIC M. V. F. LEONEN
Associate Justice
Chairperson


HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO DELOS SANTOS
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

A T T E S T A T I O N

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.



MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

C E R T I F I C A T I O N

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.



ALEXANDER G. GESMUNDO
Chief Justice