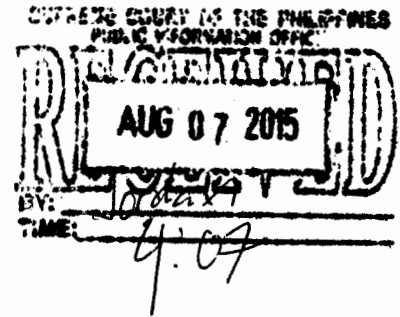




Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 22, 2015 which reads as follows:

“G.R. No. 205340 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. ALFREDO YAMOMO y IBANEZ, Accused-Appellant.

Under review is the modified affirmance of the conviction of the petitioner for three counts of rape, and two counts of rape by sexual assault by the Court of Appeals (CA) through the decision promulgated on March 30, 2012.¹ The victims were AAA and BBB,² the step-daughters of the accused who were then minors 13 years of age (AAA) and under 12 years of age (BBB) when the crimes were committed.

The accused was separately charged with the crimes in the Regional Trial Court (RTC) in Tuguegarao City, as follows:

Criminal Case No. 10040

That on or about the month [of] February, 2003 and subsequent thereto in the Municipality of Alcala, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused ALFREDO (sic) YAMOMO Y IBANEZ, step father of the herein complainant, AAA, a minor 13 years of age, the herein accused being the common-law-spouse of the mother of the complainant, thus, have moral ascendancy over the aforesaid complainant (sic), with lewd design and by the use of force and intimidation, did, then and there willfully, unlawfully and feloniously have sexual intercourse with the herein complainant, AAA, his own step-daughter and a minor 13 years of age against her will.

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¹ Rollo, pp. 2-16; penned by Associate Justice Francisco P. Acosta, and concurred in by Associate Justice Magdangal M. De Leon and Associate Justice Angelita A. Gacutan (retired).

² Pursuant to Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*), and its implementing rules, the real name of the victim and those of her immediate family or household members are withheld, and in their stead fictitious initials are used to represent them, to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

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CONTRARY TO LAW.³

Criminal Case No. 10041

That on or about the month of April, 2002, and subsequent thereto, in the Municipality of Alcala, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, ALFREDO YAMOMO Y IBANEZ, step-father of the complainant BBB a minor under 12 years old, the mother of the herein complainant being the common-law spouse of the accused, with lewd design, did, then and there, willfully, unlawfully and feloniously insert his fingers into the vagina of the offended party, BBB, step-daughter of the accused and a minor under 12 years of age against her will.

CONTRARY TO LAW.⁴

Criminal Case No. 10042

That on or about June 18, 2003, in the Municipality of Alcala, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused ALFREDO YAMOMO Y IBANEZ, step father of the herein complainant AAA, a minor 13 years of age, the herein accused being the common-law-spouse of the mother of the complainant, thus, have moral ascendancy over the aforesaid complainant, with lewd design and by the use of force and intimidation, did, then and there willfully, unlawfully and feloniously have sexual intercourse with the herein complainant AAA, his own step-daughter and a minor 13 years of age against her will.

CONTRARY TO LAW.⁵

Criminal Case No. 10043

That on or about June 22, 2003 and subsequent thereto in the Municipality of Alcala, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused ALFREDO YAMOMO Y IBANEZ, step father of the herein complainant, AAA, a minor 13 years of age, the herein accused being the common-law-spouse of the mother of the complainant, thus have moral ascendancy over the aforesaid complainant, with lewd design and by the use of force and intimidation, did, then and there willfully, unlawfully and feloniously have sexual intercourse with the herein complainant, AAA, his own step-daughter and a minor 13 years of age against her will.

CONTRARY TO LAW.⁶

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³ CA rollo, p. 24.

⁴ Id. at 24-25.

⁵ Id. at 25.

⁶ Id.

Criminal Case No. 10044

That on or about June 28, 2003, in the Municipality of Alcala, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, ALFREDO YAMOMO Y IBANEZ, step father of the complainant, BBB a minor under 12 years old, the mother of the herein complainant being the common-law-spouse of the accused, with lewd design, did, then and there, willfully, unlawfully and feloniously insert his fingers into the vagina of the offended party, BBB, step-daughter of the accused and a minor under 12 years of age against her will.

CONTRARY TO LAW.⁷

The evidence of the Prosecution was summarized by the CA thusly:

Private complainants AAA (in Crim. Cases Nos. 10040, 10042 and 10043) and BBB (in Crim. Cases Nos. 10041 and 10044) are the stepdaughters of herein accused as their mother CCC (referred to as CCC) is his common-law wife. CCC has four (4) daughters with his former husband and three (3) children with the accused. They all lived under one roof in Abbeg, Alcala, Cagayan.

AAA was sexually abused [by] the accused on three (3) separate occasions: In February 2003, June 22, 2003 and July 18, 2003.

In February 2003 at nighttime, she was sleeping with her siblings DDD, EEE and FFF on the cement floor of their house but she was awoken (*sic*) by the accused, then only wearing shirt, removed her short and panty, went on top of her and inserted his penis into her vagina. He likewise held her breast but she did not shout because she was threatened.

On June 22, 2003, at 9:00 in the morning, the accused pulled AAA inside their bathroom and there he removed his brief then pulled down her short and underwear. In standing position, accused inserted his penis into her vagina. He ordered her not to make a noise. That time her elder sister was doing a laundry although not so far from their house and the other siblings were in school.

The same thing happened on June 18, 2003 when accused did it again inside their bathroom. He warned her not to shout. That time her mother and sister were out of the house.

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⁷ Id. at 25-26.

On one occasion, her aunt GGG inquired from her if they were being treated well by their stepfather. That was the time when she divulged to her aunt that she was sexually ravaged by herein accused so the following day, July 1, 2003, GGG accompanied her and her sister BBB to the Alcala Police Station. BBB also reported that she was likewise sexually molested by their stepfather. AAA executed sworn statement before the police investigator of PNP Alcala, Cagayan x x x.

BBB was likewise sexually abused by the accused on April 22, 2002, June 22, 2003 and June 28, 2003. She was only 11 years old then as she was born on December 22, 1991 (the defense admitted her minority – page 4, Tsn., June 22, 2005).

Sometime in April 2002 at about 10:00 o'clock in the evening she was already sleeping in their house when she felt that somebody was touching her private part and was shocked to see her stepfather who inserted his two fingers inside her vagina; at that juncture, the accused threatened to kill her if she would report the matter. On June 28, 2003, she was in the room while her siblings were watching television and slept in the sal[a] when accused entered the room and again inserted his two fingers in her vagina. Her mother was not at home that time.

One time she saw her sister DDD sleeping with his step father. She sensed the unusual physical appearance of her sister. DDD was impregnated by the accused and gave birth in November 2000. She reported the abuses committed against her honor by her stepfather to his aunt GGG who accompanied her to the Police station of Alcala, Cagayan. BBB was examined by Dr. Rafael Sumabat, the Municipal Health Officer of Alcala, Cagayan, who issued medical certificate x x x.

DR. RAFAEL SUMABAT conducted the medical examination on AAA and BBB xxx. In the case on AAA, Dr. Sumabat found hymenal laceration at 3, 6, 9 and 11 o'clock position and her vagina admits one finger easily. There was no other evidence of trauma. As to BBB, the[re] were hymenal lacerations at 1, 3, 6, 9 and 10 o'clock positions and her vagina admits one finger easily. No other evidence of trauma was detected. The lacerations could have been caused by an insertion of a hard object like hardened penis. Actually, he examined patients-sisters and one of them was found to be pregnant.⁸

In its turn, the Defense presented as its sole witness CCC, the mother of AAA and BBB, whose testimony the CA summed up as follows:

[CCC] testified that during the school days of 2002 and 2003, both AAA and BBB went to school at 7 o'clock in the morning and arrived home at 5 o'clock in the afternoon. From April 2002 to February 2003, she did not notice anything unusual about her two daughters, including any change of behaviour. While they had the opportunity to communicate with her, there were likewise no reports from them of injury or problems during the same period.

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⁸ Rollo, pp. 5-7.

She accompanied her two daughters to one Atty. Pascua regarding the execution of a document which stated that they will no longer proceed with the trial against the accused.⁹

The RTC rendered its decision dated October 9, 2008 in the five criminal cases,¹⁰ disposing as follows:

ACCORDINGLY, this Court finds accused ALFREDO YAMOMO y Ibañez, **GUILTY BEYOND REASONABLE DOUBT** of three (3) counts of Rape in Criminal Cases Nos. 10040, 10042 and 10043 as defined and penalized under Article 266-A, No. 1 in relation to Article 266 B No. 1 of Republic Act No. 8353 amending Article 335 of the Revised Penal Code, and Two (2) counts of Rape in Criminal Cases Nos. 10041 and 10044 defined and penalized under Article 266 A No. 1(d) and No. 2 in relation to Article 266(B) No. 1 of the Revised Penal Code and Article 266-A, No. (a) in relation to Article 288-B No. 1 of Republic Act No. 8353 respectively and imposes upon him the penalty of RECLUSION PERPETUA in each case. He is likewise liable to pay AAA and BBB x x x in the respective amounts of Seventy Five Thousand (₱75,000.00) as moral damages for each case.

SO ORDERED.¹¹

On appeal, the CA affirmed the RTC,¹² observing as follows:

Well-settled is the rule that an accusation is not synonymous with guilt. As our Constitution puts it: *every accused is presumed innocent until the contrary is proved*. Hence, it is incumbent upon the prosecution to demonstrate the culpability of the accused and overthrow the presumption of innocence with proof beyond reasonable doubt, lest the Court should acquit him. However, once such crime is established, he must be impartially punished.

In Criminal Cases Nos. 10040, 10042 and 10043, the appellant avers that the prosecution failed to prove the existence of the elements of Rape under Article 266-A of the Revised Penal Code, thereby warranting his acquittal. Appellant further added that there is no established evidence of "force or intimidation" in this case such that it failed to clearly and categorically state that all these instances were accomplished through the appellant's employment of force or intimidation.

Appellant was charged with Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, to wit:

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⁹ Id. at 7.

¹⁰ CA *rollo*, pp. 24-29.

¹¹ Id. at 29.

¹² *Supra* note 1.

**ART. 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;

We have carefully scrutinized the records of this case and find no reversible error on the part of the court *a quo* in its findings that the evidence of the prosecution satisfies and substantiates the element of *force or intimidation*. The pertinent testimony of the victim AAA is quoted hereunder:

On direct examination:

Q: Do you remember any unusual incident that happened to you on February 2003?

A: Yes ma'am.

Q: And what is that?

A: I was rape(*sic*) by my step-father, ma'am.

Q: Where?

A: In our sala, ma'am.

x x x x

Q: Why did you not shout?

A: Because I was afraid, ma'am.

Q: What did he tell you, if any?

A: **He threatened me, ma'am.**

x x x x

Q: Was that the only time that he rape (*sic*) you on February?

A: I was rape (*sic*) again, ma'am.

Q: When?

A: July 18, 2003, ma'am.

x x x x

Q: He also kissed you on June 18, 2003?

A: No ma'am.

Q: He just inserted his penis?

A: Yes ma'am.

Q: **You did no shout?**

A: **He warned me not to shout, ma'am.**

Q: Was that the last time you were rape (*sic*) by your step-father?

A: He also abused me on June 22, 2003, ma'am.

x x x x

Q: How did he rape you on June 22, 2003?

A: It is the same as the second incident, ma'am, he pulled me inside the bathroom and then he removed his brief and he also removed my short and underwear. In standing position he also inserted his penis into my vagina. **And I was not able to shout because he told me not to make noise.**

x x x x (Emphasis Ours)

Indeed, the aforequoted testimony is clear, categorical and spontaneous. It has fully convinced Us that the victim was threatened or forced by the appellant to submit to his evil desires. It bears noting that in evaluating the presence of force or intimidation, it is the victim's interpretation of the accused's actuations that matter. In *People vs. Malicsi*, the Supreme Court ruled that:

“[R]ape is committed when intimidation is used on the victim and this includes the moral kind of intimidation or coercion. Intimidation is a relative term, depending on the age, size and strength of the parties, and their relationship with each other. It can be addressed to the mind as well. Moreover, the intimidation must be viewed in the light of the victim's perception and judgment at the time of rape and not by any hard and fast rule. It is therefore enough that it produces fear – fear that if the victim does not yield to the lustful demands of the accused, something would happen to her at the moment or thereafter. (Emphasis Ours)

Undoubtedly, in the instant case, the appellant, being the common-law spouse of the victim's mother, has influence and moral ascendancy over the victim and her siblings, thus it is not, in this, important that actual force or intimidation be established. This was the ruling of the Supreme Court in *People vs. Yatar*, thus:

“x x x in rape committed by close kin, such as the victim's father, step-father, 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 and intimidation.”

Appellant further argues that the prosecution failed to present proof of AAA's minority at the time of the incident. Thus, it was improper for the court *a quo* to impose the penalty of reclusion perpetua.

The records reveal otherwise.

In her testimony in open court dated 9 December 2004, AAA categorically stated, thus:

Q: You said Miss witness that you are fifteen (15) years old, when were you born?

A: I was born on July 29, 1989, ma'am.

Q: Do you have any proof that you were born on July 26, 1[9]89?

A: I have ma'am. (The witness presented a certificate of Live Birth).

Having established AAA's age, the court *a quo* correctly meted out the penalty of *reclusion perpetua* in accordance with Article 266-B of the Revised Penal Code, to wit:

Art. 266-B. Penalties. – x x x

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.

In Criminal Cases Nos. 10041 and 10044, the appellant contends that the prosecution failed to establish that BBB was below 12 years old when the sexual assaults were allegedly committed. Moreover, he avers that the court *a quo* erred in imposing the penalty of *reclusion perpetua* considering that the crime of sexual assault is punishable by *prision mayor* or *reclusion temporal* when aggravated by minority and relationship.

The arguments are delusive. Extant from the records is the clear and unequivocal admission by the appellant, through counsel, of BBB's certificate of live birth, *viz.*:

PROSECUTOR UGALE:

PROFFER:

Our witness, your honor, is BBB, by her testimony she is going to prove that she was raped on April 2000 to June 28, 2003; that at the same time, the private complainant was a minor; that she was 11 years old at the time she was raped; that she is going to identify the accused and such other matters relative to the case.

Q: You said witness that you are now 14 years old, When were you born?

A: December 22, 1991.

Q: Do you have any proof to show that indeed you were born on December 22, 1991?

A: Yes ma'am.

ATTY. DORAN: Your honor, we admit the birth certificate of the witness.

The above-quoted admission is clear and unequivocal. Hence, We have no choice but to uphold the court *a quo's* findings on BBB's minority. However, as correctly observed by the Office of the Solicitor General, the penalty imposed on each count of rape by sexual assault committed against BBB is erroneous.

The last paragraph of Article 266-B of the Revised Penal Code clearly states that *reclusion temporal* shall be imposed if rape by sexual assault is committed with any of the ten (10) aggravating/qualifying circumstances enumerated therein, that is, in this case, the victim is under eighteen (18) years of age and the offender is a step-parent. Consequently, the penalty of *reclusion temporal* shall be imposed on each of the rape through sexual assault committed by the appellant against BBB in Criminal Cases Nos. 10041 and 10044.

All told, the prosecution has sufficiently established with reasonable and moral certainty that degree of proof which produces conviction in an unprejudiced mind, that the appellant had inflicted his animal greed on the victims in a disgusting coercion of lust.

Surely, the victims would not have publicly disclosed that they had been raped by their own step-father and then undergo trial where they had to bare their traumatic and harrowing experience and be subjected to harassment, embarrassment and humiliation, unless they were really raped and their sole motive was to seek justice. The victims were minor, innocent, inexperienced, naïve when raped. It is highly improbable for them against whom no proof of sexual perversity or loose morality had been shown to fabricate charges, much more against their step-father. Thus, their credible testimonies alone are sufficient to sustain the conviction of their ravisher.

As the Supreme Court ruled in *People vs. Roberto Abordo*, thus:

“no woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and expose herself to humiliation as a result of a public trial if she is not motivated solely by a desire to vindicate her honor.”

Additionally, it is axiomatic that where there is no evidence to indicate that the principal witnesses for the prosecution were actuated by any improper motive, the presumption is that they were not so actuated and their testimonies are thus entitled to full faith and credit.¹³

Issue

The accused insists that his guilt for the crimes charged was not established beyond reasonable doubt.

Ruling of the Court

The appeal lacks merit.

We affirm the findings of fact of the lower courts because the CA and the RTC reached their respective conclusions after a thorough review of the evidence adduced during the trial. We particularly note that the trial judge found the evidence of the Prosecution credible and trustworthy. We cannot set aside such findings without compelling reasons because the trial judge personally heard the crucial testimonies of the victims. In this regard, we reiterate that the trial court is in the best position to assess the credibility of witnesses for having observed firsthand their demeanor, conduct and attitude under testing examination. Absent the showing of a fact or circumstance of weight and influence that would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of a witness made by the trial court remain binding on the Court as an appellate tribunal.¹⁴

We cannot find any improper motive on the part of AAA and BBB to impel them to falsely accuse the accused of the very serious crimes of raping them unless they were speaking the truth. The lack of improper motive on the part of the victims confirmed that they truthfully testified against their step-father.¹⁵

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¹³ Id. at 8-14.

¹⁴ *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Bricenio v. People*, G.R. No. 157804, June 20, 2006, 491 SCRA 489, 496.

¹⁵ *People v. Abatayo*, G.R. No. 139456, July 7, 2004, 433 SCRA 562, 579; *People v. Garin*, G.R. No. 139069, June 17, 2004, 432 SCRA 394, 406; *People v. Comadre*, G.R. No. 153559, June 8, 2004, 431 SCRA 366, 375.

In contrast, the only defense put up by the accused was CCC's not having noted or observed any unusual behavior on the part of AAA and BBB during the periods when the crimes were committed. Such a defense, which did not even deny the highly incriminating testimonies of the victims themselves, was worthless.

Moreover, it was puzzling that the accused did not himself testify in his own defense. His failure to stand in his own defense has deprived us of anything from him on the matter. We may concede now that it was his right to opt not to testify in his own defense, but that should not constrain us from construing his decision not to testify for his own defense as his admission of the incriminating details of the crimes imputed against him.

The CA modified the penalties prescribed by the RTC by imposing *reclusion perpetua* on each count of rape by carnal knowledge. We concur with the CA, except that we have to note that the accused committed three counts of *qualified rape* on account of the attendance of the qualifying circumstance of minority of the victim under 18 years of age and relationship between the victim and the accused, the latter being the common-law spouse of her mother. The qualifying circumstance was expressly alleged in the informations concerned. Under paragraph 1 of Article 266-B of the *Revised Penal Code*, the penalty for qualified rape is death. However, Republic Act No. 9346,¹⁶ which was meanwhile enacted in June 2006 to prohibit the death penalty, provides in its Section 2 that: (a) in lieu of the death penalty, *reclusion perpetua* shall be imposed when the law violated makes use of the nomenclature of the penalties of the *Revised Penal Code*; and (b) any person whose sentence is thus reduced shall not be eligible for parole under Act No. 4103 (*Indeterminate Sentence Law*), as amended. Indeed, Republic Act No. 9346 applies retroactively to the accused.¹⁷

As to rape through sexual assault, the CA prescribed the indeterminate sentence of nine years and eight months of *prision mayor*, as the minimum, to 15 years and four months of *reclusion temporal*, as the maximum, on each count of rape by sexual assault. The maximum of the indeterminate sentence was taken from the medium period of *reclusion*

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¹⁶ *An Act Prohibiting The Imposition of Death Penalty in The Philippines, repealing Republic Act 8177 otherwise known as the Act Designating Death By Lethal Injection, Republic Act 7659 otherwise known as the Death Penalty Law and all other laws, executive orders and decrees* (the law was signed on June 24, 2006).

¹⁷ *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 435; *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 745.

temporal, the proper penalty due to the absence of any aggravating circumstance. That indeterminate sentence penalty was correct considering that Article 266-B of the *Revised Penal Code* sets *reclusion temporal* as the penalty if the crime is committed with any of the 10 aggravating/qualifying circumstances mentioned therein. The qualifying circumstances were the victim's minority under 18 years and the fact that the accused was the common-law spouse of her mother.

We modify the civil liability. The RTC granted only ₱75,000.00 as moral damages in each of the crimes. The CA was silent on the civil liability, although it should have corrected the RTC thereon considering that the prevailing judicial policy is to also grant indemnity for every count of rape. Civil indemnity is mandatory upon the finding of the fact of rape, and such indemnity is not to be considered as moral damages, the latter being based on different jural foundations and are assessed by the court in its sound discretion.¹⁸ To correct the awards, the Court raises the amounts of moral damages for AAA to ₱100,000 for each count of qualified rape; retains the amounts of ₱75,000.00 for BBB for each count of rape through sexual assault; grants ₱100,000.00 to AAA as civil indemnity for each count of qualified rape, and ₱75,000.00 to BBB for each count of rape through sexual assault; and ₱100,000.00 and ₱75,000.00 as exemplary damages, respectively, to AAA and BBB for every count involving them. The exemplary damages are warranted under Article 2230 of the *Civil Code* because of the attendance of *at least* one aggravating circumstance.¹⁹

In addition, interest at the legal rate of 6% *per annum* is imposed on all items of civil liability in conformity with current judicial policy,²⁰ to be reckoned from the finality of this decision until their full payment.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on March 30, 2012, subject to the following **MODIFICATIONS**, to wit: (1) the penalty for each count of qualified rape (Criminal Case No. 10040, Criminal Case No. 10042, and Criminal Case No. 10043) is *reclusion perpetua*, and the accused shall not be eligible for parole under Act No. 4103 (*Indeterminate Sentence Law*), as amended; (2) the accused shall pay to AAA moral damages of ₱100,000, civil indemnity of ₱100,000.00 and exemplary damages of ₱100,000 for each count of qualified rape; (3) the accused shall pay to BBB moral damages of ₱75,000.00, civil indemnity of ₱75,000.00 and exemplary damages of ₱75,000.00 for each count of rape through sexual assault; and (4) the accused shall pay the costs of suit.

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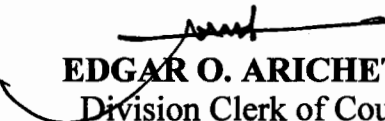
¹⁸ *People v. Bernaldez*, G.R. No. 132779-82, January 19, 2000, 322 SCRA 462, 472-473.

¹⁹ *People v. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

²⁰ *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

SO ORDERED.” SERENO, C.J., on official leave; **PERALTA, J.**, acting member per S.O. No. 2103 dated July 13, 2015. **LEONARDO-DE CASTRO, J.**, on official leave; **LEONEN, J.**, acting member per S.O. No. 2108 dated July 13, 2015.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court
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The Solicitor General (x)
Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR H.C. No. 03629)

The Hon. Presiding Judge
Regional Trial Court, Br. 4
Tuguegarao City 3500 Cagayan
(Crim. Case Nos. 10040-10044)

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