



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 200529

Present:

SERENO, C.J.,  
*Chairperson,*  
LEONARDO-DE CASTRO,  
BRION,\*  
BERSAMIN, and  
REYES, JJ.

- versus -

JUANITO GARCIA y GUMAY  
@ WAPOG,  
Accused-Appellant.

Promulgated:

19 SEP 2012

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DECISION

REYES, J.:

Before this Court for automatic review is the Decision<sup>1</sup> dated June 30, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04352, which affirmed the conviction of Juanito Garcia (Juanito) also known as “Wapog” for statutory rape and acts of lasciviousness in Criminal Case Nos. 3840-C and C-3838-C, respectively.

\* Acting member per Special Order No. 1305 dated September 10, 2012 *vice* Associate Justice Martin S. Villarama, Jr..

<sup>1</sup> Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Fernanda Lampas Peralta and Priscilla Baltazar-Padilla, concurring; *rollo*, pp. 2-23.

### **The Facts**

Juanito was charged before Branch 63 of the Regional Trial Court (RTC), Calauag, Quezon with three (3) counts of statutory rape under three (3) separate informations, to wit:

**Criminal Case No. 3840-C:**

That on or about the 30<sup>th</sup> day of April 2001 at Sitio Gamboa, Barangay Ligpit Bantayan, Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, his cousin within the third civil degree of consanguinity [sic], then a minor, 8 years old, against her will.

Contrary to Law.

**Criminal Case No. C-3838-C:**

That on or about the 1<sup>st</sup> day of May 2001 at Sitio Gamboa, Barangay Ligpit Bantayan, Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, his cousin within the third civil degree of consanguinity [sic], then a minor, 8 years old, against her will.

Contrary to Law.

**Criminal Case No. 3839-C:**

That on or about the 2<sup>nd</sup> day of May 2001 at Sitio Gamboa, Barangay Ligpit Bantayan, Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, his cousin within the third civil degree of consanguinity [sic], then a minor, 8 years old, against her will.

Contrary to Law.<sup>2</sup> (Citations omitted)

Juanito pleaded not guilty to the charges.

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<sup>2</sup>

Id. at 3-4.

During trial, the prosecution presented three (3) witnesses: (a) AAA, who was eleven (11) years old at the time she testified; (b) Rosalina Alcantara (Alcantara); and (c) Dr. Florentina Agno Vergara (Dr. Vergara).

AAA, an orphan under the care of her aunt BBB, testified that Juanito sexually abused her on three (3) successive occasions. The first time was at around 12 noon of April 30, 2001, while she was inside her aunt's *dampa*, sleeping. Awakened by movements on the floor, she saw Juanito standing in front of her and holding an axe. Juanito removed the blanket covering her, pointed the axe towards her and forcibly pulled her shorts and panty. Juanito kissed her cheeks, touched her vagina and, thereafter, forced his penis inside her vagina. She could tell that Juanito was drunk as she could smell alcohol in his breath. After a while, Juanito stopped and pulled out his penis. He stood up, raised his pants and threatened to kill her should she tell anyone of what happened.

The second incident took place on May 1, 2001, while she was inside her aunt's house preparing for bedtime. While the others were asleep, Juanito suddenly appeared in the dark and removed her blanket. He once again kissed her cheeks and touched her vagina. Done with the act, he left.

The third incident happened on May 2, 2001. While she was about to sleep, Juanito once again appeared. He kissed her cheeks and touched her vagina. He lowered his pants and inserted his penis in her vagina. Juanito thereafter left without saying anything to her.

She often felt sick, found it difficult to urinate and her stomach constantly ached. She walked oddly and frequented the restroom, which BBB eventually noticed. At BBB's prodding, she disclosed what Juanito did to her and that same day, they went to the police station and formally filed a complaint against him.<sup>3</sup>

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<sup>3</sup> CA rollo, pp. 27-29.

Alcantara, a Municipal Social and Welfare Development Officer of Guinayangan, Quezon, testified that she assisted in preparing AAA's and BBB's affidavits and in securing a copy of AAA's birth certificate.<sup>4</sup>

Dr. Vergara, who conducted a medical examination of AAA, testified that the latter had a healed hymenal laceration at 3 o'clock position, which indicated penile penetration. According to Dr. Vergara, the laceration was two (2) weeks old at the time of the examination and AAA could no longer be considered a virgin. Dr. Vergara noted, however, the absence of spermatozoa.<sup>5</sup>

For his defense, Juanito and his mother, Nancy Garcia (Nancy), testified. Essentially, Juanito testified that he and AAA are cousins and BBB is his aunt, being his mother's sister. He denied raping AAA but could not recall where he was during the subject dates. He could not explain why AAA would accuse him of raping her but supposed that the ongoing feud between his family and BBB's may have been the reason.

Nancy corroborated Juanito's testimony relative to the dispute between her family and BBB's, which allegedly arose from BBB's refusal to give her share in the land that they inherited from their parents. This conflict, Nancy claimed, motivated BBB to instigate AAA to falsely accuse Juanito of raping her.<sup>6</sup>

### **The RTC Decision**

On February 3, 2010, the RTC rendered a Decision<sup>7</sup> convicting Juanito of statutory rape in Criminal Case No. 3840-C and acts of lasciviousness in Criminal Case No. C-3838-C and acquitting him of

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<sup>4</sup> Id. at 30.

<sup>5</sup> Id.

<sup>6</sup> Id. at 31-33.

<sup>7</sup> Id. at 26-39.

statutory rape in Criminal Case No. 3839-C. The dispositive portion of the said decision states:

WHEREFORE, PREMISES CONSIDERED, this Court is morally convinced that the child, [AAA], was raped on the end of April, 2001 and that **JUANITO GARCIA** y Gumay, is the perpetrator thereof. The said accused is thus found **GUILTY** of one (1) count of **STATUTORY RAPE** beyond reasonable doubt. He is hereby sentenced to *Reclusion Perpetua*. He is likewise ordered to pay the offended party civil indemnity of PhP50,000.00 and another PhP50,000.00 for moral damages, plus costs hereof.

Said accused is likewise found **GUILTY** of **ACTS OF LASCIVIOUSNESS** for that offense committed on May 1, 2001. He is hereby sentenced to *Prision Correccional*.

Said accused is, however, **ACQUITTED** of the third charge of rape on reasonable doubt.

SO ORDERED.<sup>8</sup>

Finding Juanito guilty of raping AAA on April 30, 2001, the RTC found AAA's straightforward narration, as corroborated by the medical findings of Dr. Vergara, credible over which Juanito's denial cannot prevail. The RTC ruled that AAA's positive testimony cannot be discredited by Juanito's unsubstantiated denial and imputation of ill-motive.

In the case at bar, [AAA] positively identified in court the herein accused as the one who raped her while she was residing in the house of her Tita [BBB]; that, he is commonly known as "Wapog" whose real name is Juanito Garcia x x x. She said that Wapog touched her private parts on April 30, May 1 and May 2 but she could not recall the year it was x x x. She also said that aside from kissing her cheeks and touching her private parts, Wapog raped her ("Ni-rape po ako") x x x; that, Wapog threatened to kill her if she complains to anyone x x x; that, Wapog held her hand and poked a bolo at her that she got frightened x x x; that, she could even smell alcohol in his breath x x x; that, when Wapog removed her blanket that night, she said in a straightforward manner, "iniyot po ako" x x x.

Such testimony of the victim that she had been raped has been supported by medical findings of the medical doctor who examined her on May 20, 2001 x x x. According to the said medical certificate, there is a finding of "healed hymenal laceration at 3 o'clock". The medical doctor testified in court and explained that healed hymenal laceration means "bahaw na ang scar or marka ng sugat sa hymen ng pasyente; ibig sabihin

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<sup>8</sup>

Id. at 39.

ay two weeks na”; and that, at the time of examination, the victim is no longer a virgin. x x x

x x x x

The herein accused simply denied the accusations against him. He could not even remember where he was on April 30, May 1 and 2, 2001 (TSN, page 4, July 25, 2006). What he told the court was that there was a misunderstanding about land partition between his parents and the parents of [AAA]. But when confronted with the fact that the parents of [AAA] were already dead at [that] time, he only said “the one who have misunderstanding are my mother and her sister” (TSN, page 5). On cross-examination, he was made to admit that Sitio Gamboa, Barangay Ligpit Bantayan where [AAA] lives and Barangay Tulon where he resides are adjoining barangay that can be reached by foot within fifteen (15) minutes, more or less (TSN, page 6, July 25, 2006). In the case of *People vs. Audine*, 510 SCRA 531, the Supreme Court ruled: “Motives such as feuds, resentment, and revenge have never swayed the Court from giving full credence to the testimony of a minor complainant” x x x. In yet another case, *People vs. Espino*, G.R. No. 176742, June 17, 2008, the Supreme Court held: “Denial and alibi being weak defenses cannot overcome the positive testimony of the offended party. As this Court, has reiterated often enough, denial and alibi cannot prevail over positive identification of the accused by the complaining witness. In order to merit credibility, alibi must be buttressed by strong evidence of non-culpability. Verily, for the said defense to prosper, accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus criminis* or its immediate vicinity. The herein accused has dismally failed to discharge this *onus*.<sup>9</sup>

In Criminal Case No. C-3838-C, the RTC ruled that Juanito did not rape AAA on May 1, 2001 considering the absence of evidence that he actually attempted to force or forced his penis into AAA’s vagina, which is the overt act showing the intent to have sexual intercourse. However, kissing AAA’s cheeks and touching her vagina are overt acts of his lewd designs, which are penalized as acts of lasciviousness under Article 336 of the Revised Penal Code (RPC).

But she denied that she got raped the second time Wapog approached her on May 1:

Q. Noong ikalawang gabi, paano nangyari iyong sinasabi mo? x x x;

A. Matutulog na rin po ako.

Q. Tapos?

A. Ako po ay hinipuan.

Q. Saan ka hinipuan?

<sup>9</sup>

Id. at 34-37.

- A. Sa pipi po.  
 Q. Wala siyang sinasabi sa iyo?  
 A. Wala po.  
 Q. Ngayon, matapos ka niyang hinipuan, ano pa ang ginawa niya?  
 A. Hinalikan po.  
 Q. Noong hinalikan ka, noong hinipuan ka sa iyong ari, sabi mo hinalikan ka sa pisngi, pagkatapos ano pa ang ginawa niya?  
 A. Wala na po.  
 Q. Doon ba siya natulog sa tabi mo?  
 A. Hindi po. x x x  
 xxxxxx  
 Q. Doon sa ikalawa ay hinalikan ka lang, ang ibig sabihin hindi pinasok ang kanyang “otin” n sa iyong “puki” noong May 1?  
 A. Hindi po. x x x

Since the prosecution had established that therein accused kissed the victim and touched her private parts on May 1, Wapog must be held liable for the lesser crime of acts of lasciviousness. This latter crime is considered included or subsumed in the rape charge[.] Thus in *Dulla vs. Court of Appeals and People vs. Bon*, the Supreme Court convicted the accused with the crime of acts of lasciviousness even though the information charged the crime of rape (*People vs. Mendoza*, G.R. No. 180501, December 24, 2008).<sup>10</sup>

In Criminal Case No. 3839-C, the RTC ruled that the prosecution failed to prove beyond reasonable doubt that Juanito raped AAA on May 2, 2001.

Insofar as the third occasion of rape is concerned, the court finds it hard to appreciate the evidence to convict the accused with another rape. While it may have indeed happened, the prosecution failed to convince the court that such is the case. The questions and answers were overly generalized and lacked many specific details on how they were committed. Her bare statement that the herein accused raped her just like what he had done to her the first time is inadequate to establish beyond reasonable doubt the third incident of rape.<sup>11</sup>

The RTC refused to appreciate the aggravating circumstances of “use of a deadly weapon” and “relationship,” ratiocinating that:

Both the accused and [his] mother admitted the family relationship between the former and the herein offended party. Accused Juanito Garcia said that [AAA] is his cousin on the maternal side, his mother

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<sup>10</sup> Id. at 35.

<sup>11</sup> Id. at 36.

being the sister of [AAA's] mother. But the mother of Juanito testified that [AAA] is the daughter of her brother Ildefonso Gunay, Jr. The birth certificate of [AAA], however, showed that the father of the said child is unknown and her mother is Apolonia P. Gunay. In *People vs. Balbarona* which was cited by the Supreme Court in *People vs. Agustin*, G.R. No. 175325, February 27, 2008, the Supreme Court held that "the relationship of the accused to the victim cannot be established by mere testimony or even by the accused's very own admission of such relationship." In *People vs. Mangubat*, also cited in the *Agustin* case, the Supreme Court ruled: as a special qualifying circumstance raising the penalty for rape to death, the minority of the victim and her relationship to the offender must be alleged in the criminal complaint or information and **proved conclusively and indubitably as the crime itself** [(]emphasis and underscoring supplied)[.] Just the same, the alleged relationship does not qualify the offense. For the offense of rape to be qualified, the victim must be below 18 years of age and the offender is a relative by consanguinity or affinity within the third civil degree (Article 266-B (1), Revised Penal Code). Cousins are in the fourth degree (Article 966, New Civil Code).

The victim testified that her rapist threatened her with a weapon. But the same has not been alleged either in the complaint or in the information. Rule 110 of the 2000 Rules of Criminal Procedure is clear and unequivocal that both qualifying and aggravating circumstances must be alleged with specificity in the information.<sup>12</sup> (Underscoring and emphasis supplied)

### The CA Decision

The CA, in its assailed decision, affirmed Juanito's conviction. The CA ruled that the prosecution was able to prove the existence of all the essential elements of statutory rape beyond reasonable doubt. Juanito's denial and claim of ill-motive against AAA's aunt are mere self-serving assertions that are inherently weak compared to AAA's precise and undeviating testimony.

The CA, however, modified the award of civil indemnity and moral damages in Criminal Case No. 3840-C by increasing their respective amounts to ₱75,000.00 and awarded exemplary damages in the amount of ₱30,000.00. In Criminal Case No. C-3838-C, the CA, in observance of the Indeterminate Sentence Law, modified the penalty to imprisonment from six (6) months of *arresto mayor* as minimum term to four (4) years and two (2)

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<sup>12</sup>

Id. at 36-37.

months of *prision correccional* as maximum. The CA also imposed civil indemnity, moral damages and exemplary damages amounting to ₱20,000.00, ₱30,000.00 and ₱2,000.00, respectively.<sup>13</sup>

### **Issue**

Juanito prays for his acquittal, arguing that the CA erred in finding that his criminal culpability was proved beyond reasonable doubt.

### **This Court's Ruling**

This Court finds no merit in the present appeal for reasons to be discussed hereunder.

Statutory rape is committed by sexual intercourse with a woman below twelve years (12) of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary; they are not elements of statutory rape; the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.<sup>14</sup> As the records of Criminal Case No. 3840-C would show, the prosecution was able to prove the existence of all the elements of statutory rape.

*First*, as evidenced by her birth certificate,<sup>15</sup> which Juanito does not dispute, AAA was only eight (8) years old at the time she was sexually molested on April 30, 2001.

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<sup>13</sup> *Rollo*, pp. 22-23.

<sup>14</sup> *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509, 523-524.

<sup>15</sup> *CA rollo*, p. 31.

*Second*, the prosecution was able to prove that it was Juanito who raped AAA on April 30, 2001 by means of AAA's categorical and spontaneous testimony, which remained to be so under cross-examination. AAA's narration was likewise corroborated by Dr. Vergara's medical findings as to the existence of hymenal laceration, which is the best physical evidence of forcible defloration.<sup>16</sup>

This Court finds no cogent reason to reverse the RTC's assessment of AAA's credibility or of any of the prosecution's witnesses for that matter. Absent any evidence that it was tainted with arbitrariness or oversight of a fact of consequence or influence, the trial court's assessment is entitled to great weight, if not conclusive or binding on this Court. Time and again, this Court has emphasized that the manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the demeanor of witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. The assessment made by the trial court is even more enhanced when the CA affirms the same, as in this case.<sup>17</sup>

Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth

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<sup>16</sup> *People v. Balunsat*, G.R. No. 176743, July 28, 2010, 626 SCRA 77, 95, citing *People v. Clores, Jr.*, G.R. No. 130448, June 8, 2004, 431 SCRA 210.

<sup>17</sup> *People v. Dalipe*, G.R. No. 187154, April 23, 2010, 619 SCRA 426, 442.

and immaturity are generally badges of truth and sincerity.<sup>18</sup> A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.<sup>19</sup>

Nonetheless, in accordance with prevailing jurisprudence,<sup>20</sup> this Court deems it proper to reduce the amount of civil indemnity and moral damages to ₱50,000.00 each.

As regards Juanito's conviction for acts of lasciviousness, the Court finds no reason to disturb it. While the information in Criminal Case No. C-3838-C charged statutory rape, he can be held liable for the lesser crime of acts of lasciviousness as the latter is an offense subsumed or included in the former.

The elements of acts of lasciviousness, punishable under Article 336 of the RPC, are:

- (1) That the offender commits any act of lasciviousness or lewdness;
- (2) That it is done under any of the following circumstances:
  - a. By using force or 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 person of either sex.<sup>21</sup>

As the records of Criminal Case No. C-3838-C reveal, there is no evidence that Juanito attempted or commenced the act of sexual intercourse by inserting his penis into AAA's sexual organ. What was firmly established was that Juanito kissed AAA's cheeks and touched her vagina on May 1, 2001, which by any standards, are lewd acts. It is certainly morally

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<sup>18</sup> *People v. Araojo*, G.R. No. 185203, September 17, 2009, 600 SCRA 295, 307, citing *Llave v. People*, 522 Phil. 340 (2006) and *People v. Guambor*, 465 Phil. 671, 678 (2004).

<sup>19</sup> *Supra* note 17, at 444.

<sup>20</sup> *People v. Pacheco*, G.R. No. 187742, April 20, 2010; *People v. Mingming*, G.R. No. 174195, December 10, 2008.

<sup>21</sup> *Amplayo v. People*, 496 Phil. 747, 755 (2005), citing *People v. Abadies*, 433 Phil. 814, 822 (2002).

inappropriate, indecent, and lustful for Juanito to perform such acts on a young girl whilst taking advantage of her vulnerability given her minority, the darkness afforded by nighttime and the fact that she was practically alone as the others who were with her were sound asleep to notice. Nonetheless, not every act of sexual abuse constitutes carnal knowledge. Without proof that there was an attempt to introduce the male organ into the labia majora of the victim's genitalia, rape cannot be concluded. As ruled in *People v. Mendoza*,<sup>22</sup> the touching of a female's sexual organ, standing alone, is not equivalent to rape, not even an attempted one.

This Court concurs with the lower courts' refusal to give credence to Juanito's allegation of ill-motive. This Court finds such defenses tenuous, shallow, specious and downright incredulous. Not a few offenders in rape cases attributed the charges brought against them to family feuds, resentment or revenge, but such alleged motives cannot prevail over the positive and credible testimonies of complainants who remained steadfast throughout the trial.<sup>23</sup> The purported family feud is too flimsy a reason for an aunt to force her niece to accuse Juanito with serious crimes, publicly disclose that she was raped, and subject her to trauma, humiliation and anxiety concomitant to a rape trial in order to exact revenge. The revelation of an innocent child whose chastity has been abused deserves full credit, as her willingness to undergo the trouble and the humiliation of a public trial is an eloquent testament to the truth of her complaint. In so testifying, she could only have been impelled to tell the truth, especially in the absence of proof of ill motive.<sup>24</sup>

**WHEREFORE**, the appeal is **DENIED**. The Decision dated June 30, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 04352 is **AFFIRMED with MODIFICATION**. The Court finds Juanito "Wapog" Garcia guilty of:

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<sup>22</sup> G.R. No. 180501, December 24, 2008, 575 SCRA 616.

<sup>23</sup> *People v. Dalisay*, 455 Phil. 810, 824 (2003), citing *People v. Salalima*, 415 Phil. 414, 426-427 (2011).

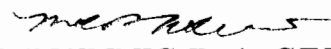
<sup>24</sup> *People v. Dimaano*, 506 Phil. 630, 641 (2005).


- (a) statutory rape under Article 266-B of the Revised Penal Code and sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay the victim Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and
- (b) acts of lasciviousness under Article 336 of the Revised Penal Code and sentencing him to suffer the indeterminate penalty of imprisonment for six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum and ordering him to pay the victim the amounts of Thirty Thousand Pesos (₱30,000.00) as moral damages, Twenty Thousand Pesos (₱20,000.00) as civil indemnity, and Two Thousand Pesos (₱2,000.00) as exemplary damages.

**SO ORDERED.**

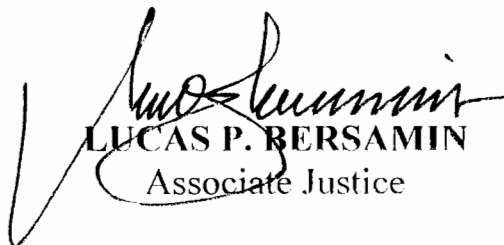
  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice


  
**ARTURO D. BRION**  
Associate Justice



**LUCAS P. BERSAMIN**  
Associate Justice

## **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.



**MARIA LOURDES P. A. SERENO**  
Chief Justice