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Welfredo V. Lapidan
WELFREDO V. LAPIDAN
 Division Clerk of Court
 Third Division

FEB 20 2018

Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 207666
 Plaintiff-appellee,

Present:

VELASCO, JR., J., *
 BERSAMIN,** *Acting Chairperson,*
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

-versus-

FLORIANO TAYABAN,
 Accused-appellant.

Promulgated:
 November 22, 2017

Welfredo V. Lapidan

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RESOLUTION

LEONEN, J.:

This resolves the appeal¹ from the Court of Appeals June 28, 2012 Decision² in CA-G.R. CR-HC No. 04580, affirming with modification the July 12, 2010 Decision³ of Branch 14, Regional Trial Court, Lagawe, Ifugao. The Regional Trial Court found the accused therein, Floriano Tayaban (Tayaban), guilty beyond reasonable doubt of the crime of rape. It imposed the penalty of *reclusion perpetua* and ordered Tayaban to pay the victim P50,000.00 as civil indemnity and P50,000.00 as moral damages. On

* On official leave.
 ** Designated Acting Chairperson per S.O. No. 2514 dated November 8, 2017.
¹ CA *rollo*, pp. 173-175. The appeal was filed under Rule 124, Section 13(c) of the Rules of Court.
² *Rollo*, pp. 2-20. The Decision was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Jose C. Reyes, Jr. and Priscilla J. Baltazar-Padilla of the Tenth Division, Court of Appeals, Manila.
³ CA *rollo*, pp. 22-34. The Decision, docketed as Crim. Case No. 1783, was penned by Presiding Judge Joseph P. Baguilat.

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appeal, the Court of Appeals affirmed the Regional Trial Court Decision, but imposed the penalty of *reclusion perpetua* without eligibility for parole.

In the Information dated August 20, 2008, accused-appellant Tayaban was charged with the crime of rape.⁴ It read, in part:

That sometime in May, 2008 at Rock Quarry, Poblacion North, Lagawe, Ifugao, hence, within the jurisdiction of this Honorable Court, the above-named accused DID then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a sixteen (16)[-]year[-]old mentally retardate.⁵

Upon arraignment on October 8, 2008, accused-appellant entered a plea of not guilty. Trial on the merits then ensued after the requisite pre-trial.⁶

The version of the prosecution was as follows:

AAA had been previously assessed to have moderate mental retardation, an intellectual disability.⁷ Sometime in May 2008, AAA went to the house of her uncle, accused-appellant Tayaban, at Rock Quarry, Poblacion North, Lagawe, Ifugao.⁸ While she was there, accused-appellant undressed her and removed his pants. He then inserted his penis in her vagina many times and bit her breast.⁹ Around three (3) months later¹⁰, Dr. Mae Codamon-Diaz (Dr. Diaz) physically examined AAA and found a healed laceration on her hymen, which she said could have occurred more than two (2) weeks earlier.¹¹

The version of the defense was as follows:

Accused-appellant was a farmer. In the first week of May 2008, he brought a carabao to Baguio for the last novena of his brother-in-law's father. He returned to Ifugao after six (6) to seven (7) days. He went to Lagawe to get his tools then proceeded to Sanafe, Lamut, which was about an hour away,¹² to fix a house where he could stay and work. He returned to Lagawe sometime around the end of May 2008 or the beginning of June 2008.¹³

⁴ *Rollo*, p. 3.

⁵ *Id.*

⁶ *Id.*

⁷ *CA rollo*, p. 24.

⁸ *Id.* at 23.

⁹ *Id.*

¹⁰ *Rollo*, p. 14.

¹¹ *CA rollo*, pp. 23-24.

¹² *Id.* at 29-30.

¹³ *Id.* at 24-25.

In its July 12, 2010 Decision,¹⁴ the Regional Trial Court found accused-appellant guilty beyond reasonable doubt of the crime of rape. It noted that although it was proven that accused-appellant was AAA's uncle, this aggravating circumstance was not alleged in the Information and could not be considered. Similarly, it could not consider the minority of the victim, as her age was not properly established during trial.¹⁵ The Regional Trial Court found AAA's testimony credible.¹⁶ It rejected accused-appellant's defense as a self-serving fabrication¹⁷ and noted that his defense was corroborated only by his wife.¹⁸ The dispositive portion of this Decision read:

WHEREFORE, premises considered, the Court finds accused guilty beyond reasonable doubt of the crime of rape and hereby sentences accused to suffer imprisonment of reclusion perpetua. The Court further orders accused to pay the complainant [AAA] in the amount of Fifty Thousand (Php50,000.00) Pesos as indemnity and another Fifty Thousand (Php50,000.00) as moral damages.

SO ORDERED.¹⁹

In its June 28, 2012 Decision,²⁰ the Court of Appeals affirmed the findings of the Regional Trial Court but modified the penalty. The dispositive portion of this Decision read:

WHEREFORE, premises considered, the assailed decision dated 12 July 2010 of the Regional Trial Court (RTC), Branch 14, Lagawe, Ifugao, in Crim. Case No. 1783 is AFFIRMED with modification in that accused-appellant is meted out an imprisonment of reclusion perpetua without eligibility for parole.

SO ORDERED.²¹

Thus, accused-appellant filed a Notice of Appeal with the Court of Appeals.²²

In compliance with its January 11, 2013 Resolution,²³ which gave due course to accused-appellant's notice of appeal, the Court of Appeals elevated

¹⁴ Id. at 22-34.

¹⁵ Id. at 32.

¹⁶ Id. at 31-32.

¹⁷ Id. at 30.

¹⁸ Id.

¹⁹ Id. at 34.

²⁰ *Rollo*, pp. 2-20.

²¹ Id. at 20.

²² *CA rollo*, pp. 173-175.

²³ Id. at 176.

the records of the case to this Court.²⁴ In its September 2, 2013 Resolution, the Court of Appeals notified the parties that they may file their respective supplemental briefs.²⁵ Both parties filed their respective manifestations in lieu of supplemental briefs on November 6, 2013.²⁶

After carefully considering the parties' arguments and the records of this case, this Court resolves to dismiss accused-appellant's appeal for failing to show reversible error in the assailed decision warranting this Court's appellate jurisdiction.

Article 266-A of the Revised Penal Code provides, in part:

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.

To sustain a conviction under Article 266-A(1) of the Revised Penal Code, it must be shown that a man had carnal knowledge of a woman, and that said carnal knowledge was under any of the following circumstances:

- a) Through force, threat or intimidation;
- b) The victim is deprived of reason;
- c) The victim is unconscious;
- d) By means of fraudulent machination;
- e) By means of grave abuse of authority;
- f) When the victim is under 12 years of age; or

²⁴ *Rollo*, p. 1.

²⁵ *Id.* at 26.

²⁶ *Id.* at 27-29, Manifestation of accused-appellant and *rollo*, pp. 30-34, Manifestation of plaintiff-appellee.

g) When the victim is demented.²⁷

In relation to the requirement that the victim should be under 12 years of age, it is the victim's mental age that is determinative of her capacity to give consent. In *People v. Corpuz y Flores*.²⁸

In *People v. Quintos y Badilla*, this Court emphasized that the conditions under Article 266-A should be construed in the light of one's capacity to give consent. Similarly, this Court clarified that an intellectually disabled person is not automatically deprived of reason. Thus,

We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented", however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." *An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility."* (Emphasis provided, citations omitted)

In *Quintos*, this Court also clarified that one's capacity to give consent depends upon his or her mental age and not on his or her chronological age.

Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. *Hence, a person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age.* Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A (1) (d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established. (Emphasis provided)

²⁷ *People v. Quintos y Badilla*, 746 Phil. 809, 821-822 (2014) [Per J. Leonen, Second Division].

²⁸ G.R. No. 208013, July 3, 2017, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/208013.pdf>> [Per J. Leonen, Second Division].

If a woman above 12 years old has a mental age of a child below 12, the accused remains liable for rape even if the victim acceded to the sordid acts. The reason behind the rule "is simply that if sexual intercourse with a victim under twelve years of age is rape, it must thereby follow that carnal knowledge of a woman whose mental age is that of a child below twelve years should likewise be constitutive of rape."²⁹ (Emphasis in the original, citations omitted)

The prosecution was able to prove carnal knowledge. AAA testified that accused-appellant inserted his penis into her vagina repeatedly.³⁰ Dr. Diaz's testimony corroborated that there had been carnal knowledge of AAA.³¹ The prosecution also proved that due to her intellectual disability, AAA's mental age was equivalent to someone under 12 years old. AAA's intellectual disability was established by the testimony of her teacher³² and was found by the Regional Trial Court, which itself was able to examine her demeanor:

The Court observed the victim even before she testified, that her demeanor is that of a two to three year old child. She looked at someone, then turn[ed] her head left and right and face[d] other people while shaking her head with a smile but without a word. Her actuations clearly and . . . obviously indicate that she is mentally retardate (sic). As a retardate, she falls under Paragraph 1 (B) of Article 266-A of the Revised Penal Code. In *PP vs. Rolando Magabo*, 350 SCRA 126, a mental retardate is classified as a person deprived of reason, not one who is demented. Carnal knowledge of a retardate person is considered rape under subparagraph B not D of 266-A(1) of the Revised Penal Code.³³

This claim has no merit.

The presentation of a psychologist is not essential in determining the intellectual condition of AAA. In this case, AAA's intellectual disability was established by the testimony of her teacher and the Regional Trial Court's observation of her conduct in court. Even accused-appellant himself admitted that he was aware of AAA's intellectual disability.³⁴ Moreover, a Psychological Report was issued by the Philippine Mental Health Association, Baguio-Benguet Chapter, Inc., showing that AAA's overall level of intellectual functioning is comparable to a three (3)-year-old child. Accused-appellant has failed to show any reason to reverse the finding of the lower courts. Thus, this Court quotes the Court of Appeals with approval:

Mental abnormality may be established by evidence other than medical evidence or psychiatric evaluation; it may be established by the

²⁹ Id. at 14-15.

³⁰ *CA rollo*, p. 23.

³¹ Id. at 23-24.

³² Id. at 24.

³³ Id. at 26.

³⁴ *Rollo*, p. 10.

testimonies of witnesses.

While the prosecution did not present a psychologist to prove that AAA was a mental retardate, the prosecution had established the mental retardation of AAA through the testimony of Gladys Marie Tobiagon (teacher of AAA at Lagawe Central SPED), thus:

....

PROS TUMAPANG ON DIRECT EXAMINATION:

Q Madam witness, do you know the private complainant, alleged victim in this case, AAA?

A Yes.

Q Why do you know her?

A She was my pupil in 2003.

....

Q What is that school?

A Lagawe Central SPED.

Q What is SPED all about?

A SPED Diagnose disability of children with malfunction mentally.

Q Are you saying these pupils are children whose mental development does not corresponds (sic) their biological age?

A Yes.

Q You mean children about 16 to 17, some of them have mental age of 4, 5[,] 6?

A Yes.

....

Q You are focused in their mental disability?

A My class is a multi class for mental disability.

Q You said you know AAA who is one of your pupils. Do you remember how old she is?

A That time in 2003, her birth date is June 20, 1991 so I think 14 years old.

Q Although 14 years old, how do you assess?

A She has poor assessment. She could not cope in her academic subjects.

....

Q She has mental ability less her age of 14?

A Yes.

Q Could you say capable for 2 or 3 grades?
A No.

Q Limited only to that special class?
A She cannot go on with her academic subjects. She cannot identify colors or members, even conversations or make a sentence.

Q She had to be stopped in that level?
A [Maybe] we could train them for some personal activity. For example, how to take a bath, personal hygiene or how to eat, to work with supervision.

Q Could she count up to 20?
A She could say but not identify.

Q She could add?
A No.

Q Could she remember if you ask her?
A She can.

Q Definitely, what is your conclusion?
A She has a poor assessment.

Q Mentally retarded?
A We have four classifications, three kinds of mentally retarded, mild, moderate, profound and severe and AAA falls under moderate. She can take a bath.

Q So she is just easy to manipulate?
A Yes. You say to her to work and she can do the work but not exactly the result you expected.

Q She cannot intelligently respond?
A Like sweeping, she just sweeps like that. Sometimes when she tells about the work, I cannot let her work well because she has a problem. She bumps or just falls down.

Q Definitely based on your assessment, she cannot give intelligently or give proposal to any sexual activity?
A She cannot.

....

Moreover, the accused-appellant himself admitted during cross-examination that he knew the mental condition of AAA, viz:

....

PROS TUMAPANG ON CROSS EXAMINATION

....

Q And despite her age, she was still studying in that SPED class because of her mental condition. Are you aware of that?

A Yes. She was studying there.

Q Because of her weak mental condition, are you aware of that?

A Of course, I know we are neighbors.

....

Moreover, in compliance with the trial court's Order dated 20 January 2009, the Office of the Municipal Social Welfare and Development of Lagawe, Ifugao, submitted a Psychological Report issued by the Philippine Mental Health Association, Baguio-Benguet Chapter, Inc., showing that AAA was diagnosed to be suffering from *Moderate Retardation* thus:

VI. TEST RESULTS & INTERPRETATIONS

Intellectual Evaluation

SB IV

AREA	SAS SCORE	CLASSIFICATION	AGE EQUIVALENT
VERBAL REASONING Vocabulary Comprehension	36	Moderate Retardation	3 years, 8 months 3 years, 2 months
ABSTRACT/ VISUAL REASONING Pattern Analysis	36	Moderate Retardation	2 years, 5 months
QUANTITATIVE REASONING Quantitative	36	Moderate Retardation	2 years, 5 months
SHORT-TERM MEMORY Bead Memory Memory for sentences	36	Moderate Retardation	3 years, 7 months 3 years, 1 month
OVERALL SCORE	36	Moderate Retardation	3 years, 1 month

The obtained IQ of [AAA] in the SB of 36 is estimated within the Moderate Retardation level of intellectual functioning and it equates to 3 years, 1 month old. Compared to her age-group, she is delayed in terms of solving novel problems utilizing adaptive strategies.

She performed poorly in all the areas assessed. Particularly, her ability to understand words and to use these to reason out is limited. As per observation at the time of testing, most of her responses are 'di ko alam.' Besides, her logical thinking, analysis and synthesis are

inadequate. In relation to her BGVMT score that corresponds to 4 years, 6 months old, she needs great deal of time in transferring her thoughts and perceptions into fine motor activities such as in writing and drawing.

Further, her numerical reasoning, counting and matching numbers is limited. Similarly, her immediate recall, processing and retrieval of visual and auditory stimuli are much lower than what is expected of her age.

In the VSMS, she obtained a Social Quotient that is classified within the Moderate retardation level of social adaptive functioning and it equates to 6 years, 5 months old. This implies a need for close supervision in going to places outside neighborhood, communication skills, taking a bath, buying from a store, looking at her hygiene and doing household chores.

Emotional Evaluation

Her projective tests are reflective of instability and poor integrative capacity that seems to be stemming from developmental lag, immaturity and neurological malfunctioning. As such, she may be impulsive. Her backaches confirm her somatic preoccupations. Socially, she tends to be withdrawn and to have difficulty reaching towards others.

With the foregoing, We are one with the court *a quo*'s findings that indeed AAA is a mentally retardate (sic).³⁵ (Citations omitted)

Accused-appellant also argued that even assuming AAA had an intellectual disability, her testimony was not credible. He claimed that because AAA required assistance from a Department of Social Welfare and Development employee when she took the witness stand, her testimony was heavily coached, and hence, not worthy of credence.³⁶

On this point, factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. When these have been affirmed by the Court of Appeals, this Court will generally not re-examine them.³⁷

Here, both the Court of Appeals and the Regional Trial Court examined the evidence presented by both parties and found AAA's testimony to be credible, clear, straightforward, and convincing. She testified:

³⁵ Id. at 7-12.

³⁶ CA rollo, pp. 59-60.

³⁷ See *People v. Castel*, 593 Phil. 288 (2003) [Per J. Reyes, En Banc].

COURT

Q - Do you know one Soriano?

A - Witness clarified the name of accused as Tulian.

PROSECUTOR:

Q - And this Tulian in Court?

A - Yes. (Witness points to a . . . man who said in the bench who when asked his name, he answered to the name of Floriano Tayaban.)

Q - Do you know this Floriano Tayaban also named as Tulian?

A - [Y]es[.]

COURT:

Q - Why do you know him?

A - (witness is facing left and right and just smiling.)

....

Q - Do you remember if any time in the past if your uncle did anything bad to you?

A - There is.

Q - Will you please tell us what bad thing your uncle did to you?

A - About his penis.

Q - What did he do with his pennis (sic) to you?

A - He inserted his pennies (sic) to my vagina.

Q - How about your breast, did he do something to your breast?

A - There is, he bit it.

Q - And what did you feel after he bit your breast?

A - He bit both of my breast[s].

Q - And did you felt (sic) pain?

A - Yes[,] it is painful.

Q - How about when he inserted his penning (sic) inside your vagina, did you felt (sic) pain?

A - Yes.³⁸ (Grammatical errors in the original)

The Court of Appeals and Regional Trial Court similarly appreciated as credible the testimony of Dr. Diaz, who examined AAA:

PROS. TUMAPANG ON DIRECT EXAMINATION:

PROS. TUMAPANG: (to the Witness)

Q Doctor, do you recall if you were [on] duty at the Ifugao Provincial Hospital on July 10, 2008?

A Yes, sir.

Q And do you recall having examined and treated one AAA who was

³⁸ Rollo, p. 13.

brought to the hospital for examination regarding her complaint of being allegedly sexually abused?

A Yes, Sir.

Q Would you please tell the Court what were your findings?

A The patient was brought to the hospital by the Social Worker, Mrs. Pantaleon and a policewoman and when I examined her she told me that she was abused by a relative, an uncle, and in fact it is not just once but several times and she was threatened not to tell anybody about the incident.

Q And did the patient mentioned (sic) the alleged abuser?

A An uncle, a certain Sorian.

Q And after getting the history of the patient what did you do?

A After getting the history I examined her whole body because she told me that she was also bit at the breast and this happened May, 2008 and she submitted herself for medical examination about three months after. Anyway, I examined her genital parts and there was a laceration about 3:00 o'clock at the area of her reproductive organ. It was healed because it happened three months ago. There are no other findings on her physical features.

Q And were your findings reduced into writing?

A Yes, Sir.

Q There is here a Medical Certificate having been issued by Dr. Mae Codamon-Diaz regarding the medical examination of a certain AAA, please go over and tell the Court if this is the document you issued?

A Yes, this is the one.

Q Is that your signature above the typewritten name Mae D. Codamon-Diaz?

A Yes, Sir.³⁹

Accused-appellant has failed to present any cogent reason to reverse the factual findings of the Court of Appeals and of the Regional Trial Court.

Under Section 266-B of the Revised Penal Code, when the offender committed the crime, knowing of the intellectual disability of the offended party, the death penalty shall be imposed. Considering that the imposition of the death penalty is prohibited,⁴⁰ the Court of Appeals properly imposed the penalty of *reclusion perpetua* without eligibility for parole instead.

However, in line with current jurisprudence, ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary

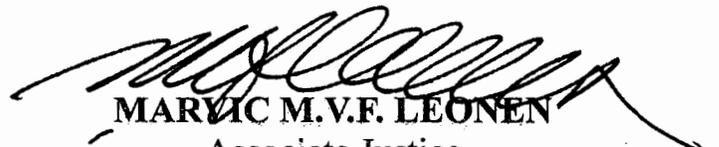
³⁹ Id. at 14-15.

⁴⁰ Rep. Act No. 9346 (2006) also known as An Act Prohibiting the Death Penalty in the Philippines.

damages shall be awarded to the victim.⁴¹

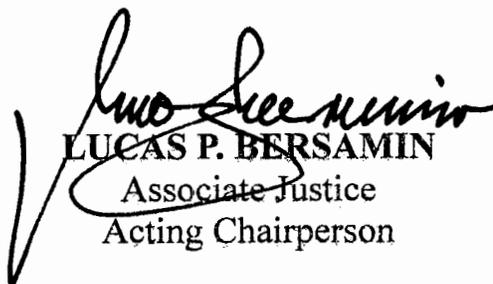
WHEREFORE, this Court **ADOPTS** the findings of fact and conclusions of law of the Court of Appeals June 28, 2012 Decision in CA-G.R. CR-HC No. 04580, which found accused-appellant Floriano Tayaban **GUILTY** beyond reasonable doubt of rape and sentenced him to *reclusion perpetua* without eligibility for parole. This assailed Decision is **AFFIRMED with MODIFICATION** in that the award of damages shall be increased to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. The award of damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of the judgment until fully paid.

SO ORDERED.

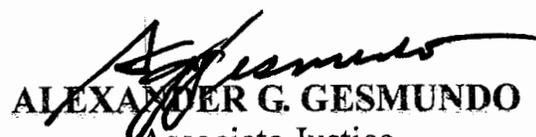

MARVIC M.V.F. LEONEN
 Associate Justice

WE CONCUR:

On official leave
PRESBITERO J. VELASCO, JR.
 Associate Justice


LUCAS P. BERSAMIN
 Associate Justice
 Acting Chairperson

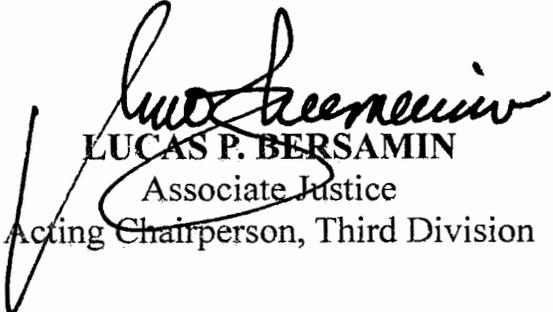

SAMUEL R. MARTIRES
 Associate Justice


ALEXANDER G. GESMUNDO
 Associate Justice

⁴¹ *People v. Jugueta*, G.R. No. 202124, April 5, 2016
 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf>> [Per J. Peralta, En Banc].

ATTESTATION

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



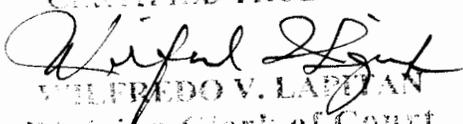
LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Resolution 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

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WILFREDO V. LAPID
Division Clerk of Court
Third Division

FEB 20 2018