



That on or about January 30, 2012, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating with one another with intent to gain and by means of violence or intimidation against person, willfully, unlawfully and feloniously took, stole and carried away by means of force an Italian Gold Necklace with pendant worth P18,000.00, belonging to private complainant CHARLOTTE CASIANO to the latter's damage and prejudice in the aforesaid

CONTRARY TO LAW.<sup>6</sup>

Upon arraignment, both Edwin and Roxan pleaded not guilty to the crime charged. However, before trial ensued, Roxan changed his mind and decided to withdraw his earlier plea.<sup>7</sup> He plea bargained the charge of consummated robbery to a lower offense of attempted robbery.<sup>8</sup> With the approval of the prosecution and with the conformity of Charlotte Diane<sup>9</sup> Evangelista Casiano (Charlotte), the private complainant, the RTC sentenced Roxan to suffer the straight penalty of six (6) months *arresto mayor*.<sup>10</sup>

As to Edwin, trial ensued thereafter.

### ***Version of the Prosecution***

In the afternoon of January 30, 2012, Charlotte and Kim Evangelista Casiano (Kim) flagged down a jeepney going to G-Mall.<sup>11</sup> After boarding said jeepney, two male persons, who were later identified to be Roxan and Edwin, also boarded the vehicle.<sup>12</sup> Roxan sat across Charlotte while Edwin sat on the side of Kim with a woman passenger in between them.<sup>13</sup>

While on board the jeepney, Charlotte and Kim heard Roxan and Edwin talking about who will pay the fare.<sup>14</sup> Upon reaching the corner of Quirino Street near the Villa Abrille Building, the jeepney stopped at a red light.<sup>15</sup> Kim saw Edwin giving the signal to Roxan and heard him say "*tirahi na nang babaye bai.*"<sup>16</sup> Thereafter, Roxan snatched the necklace of Charlotte, disembarked from the jeepney, and ran away. Edwin also disembarked.<sup>17</sup>

Charlotte shouted "*magnanakaw*".<sup>18</sup> She and Kim disembarked from the jeepney and tried to run after Roxan but they were unable to catch him.<sup>19</sup>

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<sup>6</sup> *Rollo*, p. 60.

<sup>7</sup> *Id.* at 117.

<sup>8</sup> *Id.*

<sup>9</sup> Also stated as "Dianne" in some parts of the records.

<sup>10</sup> *Rollo*, p. 117.

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

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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

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

<sup>18</sup> *Id.* at 37.

<sup>19</sup> *Id.*

They later learned that Roxan was apprehended.<sup>20</sup> With Roxan in custody, the police decided to conduct a follow-up operation.<sup>21</sup> PO3 Rizalito Clapiz III testified on cross-examination that Roxan provided the police with the information that his companion is a bald person.<sup>22</sup> The police went to the address of Edwin and upon Roxan's confirmation that he is his companion, Edwin was apprehended.<sup>23</sup>

On the same day, the police, at 10:00 in the evening, requested that Charlotte and Kim identify Edwin.<sup>24</sup> Due to health reasons, Charlotte and Kim were only able to go to the police station the next day.<sup>25</sup> They both identified Edwin as the bald person who was the companion of Roxan in the alleged robbery.<sup>26</sup>

### *Version of the Defense*

Edwin's defense was that of an alibi. The defense presented four witnesses, namely Victoriano Lumosad (Victoriano), Emilyn<sup>27</sup> Batulan (Emilyn), Henry Parreño, Sr.<sup>28</sup> (Henry) and Edwin himself.

Victoriano claimed that about 3:30 to 4:00 in the afternoon of January 30, 2012, he saw Edwin driving.<sup>29</sup> Emilyn also testified that she saw Edwin take his usual jeepney route on January 30, 2012 and that she saw him pass by her residence at 10:00 in the morning and at 3:00 to 4:00 in the afternoon.<sup>30</sup> Henry, who is the father-in-law of Edwin, also testified that he saw him on January 30, 2012 at about 2:00 in the afternoon driving his jeepney from Talomo going to downtown.<sup>31</sup>

The defense also averred that the prosecution's witnesses failed to give sufficient identification of Edwin.<sup>32</sup> Their arguments relied heavily on the fact that Charlotte only identified Roxan's companion as a bald person.<sup>33</sup> The defense argued that there was no description provided as to the companion's complexion, built, and other features. Thus, the description of Roxan's companion as a bald person is insufficient to properly identify Edwin as the perpetrator.

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<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> See id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Also stated as "Emelyn" in some parts of the records.

<sup>28</sup> Also stated as "Henry Parreno" in some parts of the records.

<sup>29</sup> *Rollo*, p. 119.

<sup>30</sup> Id. at 38, 119-120.

<sup>31</sup> Id. at 38, 120.

<sup>32</sup> Id. at 121.

<sup>33</sup> Id. at 40.

Additionally, the defense alleged that the in-court identification made by Charlotte and Kim was heavily tainted because even before they were able to identify Roxan's companion, the police already told them that the perpetrator has been arrested.<sup>34</sup>

### **Ruling of the RTC**

After trial on the merits, in its Decision<sup>35</sup> dated August 22, 2014, the RTC convicted Edwin of the crime charged. The RTC ruled that Edwin's alibi would not prosper because he was unable to comply with the requirements of time and place, since he was in Davao City. Hence, it was not physically impossible for him to be at the scene of the crime at the time of its commission.<sup>36</sup>

The dispositive portion of the said Decision reads:

**WHEREFORE, PREMISES CONSIDERED**, the Court finds the evidence sufficient to prove the guilt of accused **EDWIN DEL ROSARIO** beyond reasonable doubt. There being no mitigating nor aggravating circumstance and pursuant to paragraph 5 of Article 294 of the Revised Penal Code, the Court hereby sentences accused **EDWIN DEL ROSARIO** to suffer the indeterminate penalty, ranging from [s]ix (6) [m]onths and one (1) [d]ay, [p]rison correccional, as minimum, to six (6) [y]ears and [o]ne (1) [d]ay, [p]rison [m]ayor, as maximum.

No award of civil liability.

**SO ORDERED.**<sup>37</sup>

Aggrieved, Edwin appealed to the CA.

### **Ruling of the CA**

In the questioned Decision<sup>38</sup> dated May 12, 2017, the CA affirmed the RTC's conviction of Edwin. The CA explained that denial and alibi by Edwin cannot prevail over the positive and categorical testimony of the prosecution witnesses.<sup>39</sup> The CA also ruled that there was conspiracy because the commonality of criminal intent between Edwin and Roxan was apparent: (1) Edwin and Roxan rode the jeepney together; (2) Edwin said "*tirahi na ng babaye bai*"; (3) Roxan grabbed the necklace of Charlotte; and (4) both Roxan and Edwin disembarked from the jeepney and ran away.<sup>40</sup>

The CA, however, modified the penalty and disposed as follows:

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<sup>34</sup> Id.  
<sup>35</sup> Id. at 117-124.  
<sup>36</sup> Id. at 124.  
<sup>37</sup> Id.  
<sup>38</sup> Id. at 35-54.  
<sup>39</sup> Id. at 52.  
<sup>40</sup> Id. at 49-50.



WHEREFORE, the instant appeal is DENIED. The Decision of the Regional Trial Court, Branch 16, Davao City dated August 22, 2014 is Affirmed but Modified only as to the penalty imposed on the [prison] term which shall be six (6) months of arresto mayor as minimum to six (6) years of prision correccional as maximum.

SO ORDERED.<sup>41</sup>

### Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Edwin of the crime of robbery.

### The Court's Ruling

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.<sup>42</sup> The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>43</sup>

#### *Edwin's guilt was proven beyond reasonable doubt*

In the case at bar, the Court adopts the CA's findings and conclusion as to Edwin's guilt. The Court is convinced that the elements of taking of personal property which belongs to another person without his consent have been established and such taking was with intent to gain. The Court consistently held that intent to gain is a mental state whose existence is demonstrated by a person's overt acts.<sup>44</sup>

As to Edwin's allegation that the prosecution failed to prove beyond reasonable doubt the required identification that he was one of the persons responsible for the crime charged, the Court agrees with the CA when it ruled as follows:

Indeed, a perusal of the testimonies [of] both witnesses on direct and cross-examinations would show that they were consistent on their narrative of the incident and of the participation of appellant Del Rosario. Thus, there is no reason to depart from the findings of the trial court especially since "[t]he direct appreciation of testimonial demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified."<sup>45</sup>

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<sup>41</sup> Id. at 54.

<sup>42</sup> *Gamboa v. People*, 799 Phil. 584, 593 (2016).

<sup>43</sup> Id. at 593.

<sup>44</sup> *Briones v. People*, 606 Phil. 354, 366 (2009).

<sup>45</sup> *Rollo*, p. 48; citation omitted.

As a matter of fact, the testimonies of Kim and Charlotte demonstrate that they are certain that Edwin was the perpetrator:

[Kim's testimony:]

Q: Okay, are you positive that it is Del Rosario, who is in Court, who gave the signal to Cansancio?

A: Yes sir.

Q: How certain are you from 1 to 100%?

A: 101% sir.

Q: 101%?

A: Yes sir.

Q: 101%, your identification?

A: Yes sir.

Q: That means it is impossible for you to forget the face of accused Del Rosario?

A: Yes sir because it is our first time to meet this kind of incident.

x x x x

Q: x x x

What happened after you went to the San Pedro Police Station?

A: They made us identify the companion sir.

Q: Where (*sic*) you able to identify him?

A: Yes sir.

Q: Who was that?

A: Edwin Del Rosario sir.

Q: The Edwin del Rosario you just identified before this Court, what is his relation to the person you identified in San Pedro Police Station?

A: He is one and the same person sir.

Q: You are very sure that the person in Court who identified himself as Edwin Del Rosario is the same person, Edwin del Rosario you identified in San Pedro Police Station?

A: Very sure sir.<sup>46</sup>

[Charlotte's testimony:]

Q: What happened when you were in the police station?

<sup>46</sup> TSN, May 30, 2013, pp. 12-16.

A: At first, we were not able to see that person but they were detained there, they made us identify that person sir.

Q: Were you able to identify him?

A: Yes sir.

Q: Is he in Court?

A: Yes sir.

Q: If he is in Court, can you point to him?

A: Yes sir.

MR. MOLINA: Witness pointed to a person wearing a black t-shirt and when asked, identified himself as Edwin Del Rosario.

PROS. BELLO: He is the same person you saw boarded on the same jeepney?

A: Yes sir.

x x x x

PROS. BELLO: Madam Witness, after you went to the San Pedro Police Station, you identify the accused ...

COURT: Who among the accused?

PROS. BELLO: Accused del Rosario your Honor.

Is he the same person you saw in the puj you boarded earlier?

A: Yes sir.

Q: You are very certain of that?

A: Yes sir, I immediately identify him.

Q: You are very sure that he is the same person?

A: Yes sir.

May be because I was angry sir, it was stuck in my mind sir.

Q: Between the range from 1 to 10, what is [your] certainty of your identity?

A: 100% sir.<sup>47</sup>

***Crime committed is theft, not robbery***

From the foregoing, the Court notes that the material issue left to be addressed is whether the snatching of the necklace is robbery or theft. Did Edwin employ violence or intimidation upon persons, or force upon things,

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<sup>47</sup> Id. at 36-37, 45-46.



when he snatched Charlotte's necklace?

The elements of robbery are: (1) there is a taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is with violence against or intimidation of persons or with force upon things.<sup>48</sup> Theft, on the other hand, is committed by any person who, with intent to gain **but without violence against or intimidation of persons nor force upon things**, shall take the personal property of another without the latter's consent.<sup>49</sup>

Thus, the distinguishing element between the crimes of robbery and theft is the use of violence or intimidation as a means of taking the property belonging to another; the element is present in the crime of robbery and absent in the crime of theft.<sup>50</sup>

The testimonies of the witnesses reveal that the snatching of the necklace was without violence against or intimidation of persons or with force upon things. Kim, during his direct examination, testified as follows:

COURT: Okay what happened when these two men boarded the vehicle?

A: They have a conversation about the fare sir, as to who will pay the fare sir.

Q: Then?

A: The jeep stop[ped] briefly at Villa Abrille Building because there was a red light.

Q: So, what happen[ed]?

A: When I looked at them, they gave a signal.

Q: Who gave a signal?

A: Mr. Del Rosario sir.

Q: The one who is in court?

A: Yes sir.

Q: Okay, you just refer to him as Del Rosario. Del Rosario gave a signal?

A: Yes, sir.

Q: What kind of signal?

A: He said "tirahi na nang babaye bai" (Hit that lady baj).

<sup>48</sup> *Consulta v. People*, 598 Phil. 464, 471 (2009).

<sup>49</sup> REVISED PENAL CODE, Art. 308.

<sup>50</sup> *Briones v. People*, supra note 44, at 366.

- Q: So, upon hearing that message from Del Rosario, what did Cansancio do?
- A: He quickly snatched the necklace sir and then Cansancio ran away.
- Q: What about del Rosario?
- A: He was left in the jeep sir.
- Q: Then?
- A: I chased Cansancio sir and my sister disembark[ed] from the jeep and [s]he als[o] chased Cansancio.<sup>51</sup>

Such fact was also bolstered by Charlotte's testimony:

- Q: Madam Witness, what happened when the jeepney you were riding was already in motion?
- A: I was hinting something and there was a male person in front of me, in fact, the people who are also about to board a jeep was telling him to move towards the inside direction, but he did not move sir.
- Q: What happened?
- A: What I was able to recall was that I heard a person saying "you will be the one to pay the fare."
- x x x x
- Q: What else happened?
- A: After that sir, upon reaching the corner of Quirino, there was a red light so the jeepney stopped.
- Q: What happened when the red traffic light flashed?
- A: When the jeep was again about to move that male person in front of me suddenly grabbed my necklace.
- Q: What happened after he grabbed your necklace?
- A: I was weak at that time sir, coming from the hospital, I tried to hold on to my necklace but I was not able to prevent him from grabbing my necklace so he jumped and ran away and I also jumped and shouted "theft".
- Q: What did your brother do, if any?
- A: When I jumped off from the jeep, my brother also chased the person sir, we were shouting "magnanakaw" (theft).
- Q: What happened when your brother was chasing the person who grabbed your necklace?

<sup>51</sup> TSN, May 30, 2013, pp. 10-12.

- A: I was trying to look at the ground sir if there was something that fell your Honor, I return to the multicab sir I identified all those passengers then I followed my brother sir.
- Q: What happened to that person who grabbed your necklace?
- A: He was running, heading to the direction of Villa Abrille.
- Q: Then, what happened next, if any?
- A: When I arrived there, there were three civilian police who caught or apprehended that person sir.<sup>52</sup>

In the case of *People v. Concepcion*,<sup>53</sup> the Court ruled that when the complainant herself merely testified that the offender snatched her shoulder bag, without saying that such offender used violence, intimidation or force in snatching her shoulder bag, the snatching of the shoulder bag constitutes the crime of theft, not robbery.<sup>54</sup> The Court reached the same conclusion in the following cases:

In *People v. [De la] Cruz*,<sup>55</sup> this Court found the accused guilty of theft for snatching a basket containing jewelry, money and clothing, and taking off with it, while the owners had their backs turned.

In *People v. Tapang*,<sup>56</sup> this Court affirmed the conviction of the accused for frustrated theft because he stole a white gold ring with diamond stones from the victim's pocket, which ring was immediately or subsequently recovered from the accused at or about the same time it was stolen.

In *People v. Omambong*,<sup>57</sup> the Court distinguished robbery from theft. The Court held:

Had the appellant then run away, he would undoubtedly have been guilty of theft only, because the asportation was not effected against the owner's will, but only without his consent; although, of course, there was some sort of force used by the appellant in taking the money away from the owner.

X X X X

What the record does show is that when the offended party made an attempt to regain his money, the appellant's companions used violence to prevent his succeeding.

X X X X

The crime committed is therefore robbery and not theft, because personal violence was brought to bear upon

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<sup>52</sup> Id. at 28-31.

<sup>53</sup> 691 Phil. 542 (2012).

<sup>54</sup> See id. at 550.

<sup>55</sup> 76 Phil. 601 (1946).

<sup>56</sup> 88 Phil. 721 (1951).

<sup>57</sup> 34 O.G. 1853 (1936).



the offended party before he was definitely deprived of his money.<sup>58</sup>

In the strikingly similar case of *Ablaza v. People*,<sup>59</sup> the Court clarified that “for the requisite of violence to obtain in cases of simple robbery, the victim must have sustained less serious physical injuries or slight physical injuries in the occasion of the robbery.”<sup>60</sup> The Court added that the fact that the necklace was “grabbed” did not automatically mean that force attended the taking. The Court explained:

The OSG argues that the use of the word “grabbed”, by itself, shows that violence or physical force was employed by the offenders in taking Snyders’ necklaces. The Court, however, finds the argument to be a pure play of semantics. Grab means to take or seize by or as if by a sudden motion or grasp; to take hastily. Clearly, the same does not suggest the presence of violence or physical force in the act; the connotation is on the suddenness of the act of taking or seizing which cannot be readily equated with the employment of violence or physical force. Here, it was probably the suddenness of taking that shocked Snyder and not the presence of violence or physical force since, as pointed out by petitioner, Snyder did not at all allege that she was pushed or otherwise harmed by the persons who took her necklaces.<sup>61</sup>

Applying the foregoing in the case at bar, the crime committed by Edwin is thus clearly only theft, instead of robbery.

In arriving at this conclusion, the Court is aware that Edwin was indicted under a charge for robbery, not theft. The failure to specify the correct crime committed, however, will not bar Edwin’s conviction for the crime of theft. The character of the crime is not determined by the caption or preamble of the information, or by the specification of the provision of law alleged to have been violated.<sup>62</sup> The crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information.<sup>63</sup> In this case, the allegations in the Information are sufficient to make out a charge of theft.

### ***Proper Penalty to be imposed***

The CA imposed the penalty of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum. Under Republic Act No. 10951,<sup>64</sup> which was promulgated on August 29, 2017,

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<sup>58</sup> *People v. Concepcion*, supra note 53, at 549-550.

<sup>59</sup> G.R. No. 217722, September 26, 2018.

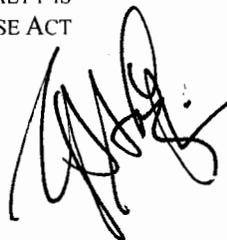
<sup>60</sup> Id. at 13.

<sup>61</sup> Id. at 10.

<sup>62</sup> See *Briones v. People*, supra note 44, at 367.

<sup>63</sup> Id.

<sup>64</sup> AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS “THE REVISED PENAL CODE”, AS AMENDED.



Article 309(4) of the Revised Penal Code has been relevantly amended as follows:

ART. 309. *Penalties.* – Any person guilty of theft shall be punished by:

x x x x

4. *Arresto mayor* in its medium period to *prisión correccional* in its minimum period, if the value of the property stolen is over Five thousand pesos (P5,000) but does not exceed Twenty thousand pesos (P20,000).

Accordingly, the Court modifies the penalty. Article 309(4) provides that the penalty shall be *arresto mayor* in its medium period to *prisión correccional* in its minimum period, which consist of the following periods:

- (a) MINIMUM – *arresto mayor* in its medium period, that is from two (2) months and one (1) day to four (4) months;
- (b) MEDIUM – *arresto mayor* in its maximum period, that is four (4) months and one (1) day to six (6) months; and
- (c) MAXIMUM – *prisión correccional* in its minimum period, that is six (6) months and one (1) day to two (2) years and four (4) months.

Pursuant to Article 64(1)<sup>65</sup> of the Revised Penal Code which provides that in cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed<sup>6</sup> of three different penalties, and there being no mitigating or aggravating circumstances, the penalty imposable shall be in its medium period. Hence, the imposable penalty is *arresto mayor* in its maximum period, that is, four (4) months and one (1) day to six (6) months.<sup>66</sup>

In *Romero v. People*,<sup>67</sup> citing *Argoncillo v. Court of Appeals*,<sup>68</sup> the Court summarized the application and non-application of the Indeterminate Sentence Law (ISL), to wit:

x x x It is basic law that x x x the application of the Indeterminate Sentence Law is mandatory where imprisonment exceeds one (1) year, except only in the following cases:

<sup>65</sup> ART. 64. *Rules for the application of penalties which contain three periods.* - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

<sup>66</sup> See *People v. Moreno*, 425 Phil. 526, 543 (2002); see also *People v. Alay-ay*, 295 Phil. 943, 957 (1993).

<sup>67</sup> 677 Phil. 151 (2011).

<sup>68</sup> 354 Phil. 324, 340-341 (1998).

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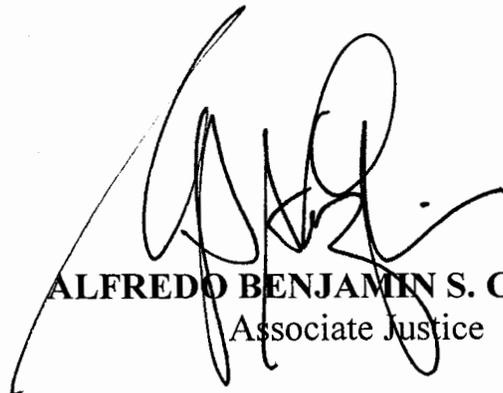
h. Those whose maximum period of imprisonment does not exceed one (1) year.

Where the penalty actually imposed does not exceed one (1) year, the accused cannot avail himself of the benefits of the law, the application of which is based upon the penalty actually imposed in accordance with law and not upon that which may be imposed in the discretion of the court. (*People v. Hidalgo*, [CA] G.R. No. 00452-CR, January 22, 1962).<sup>69</sup>

In other words, since the maximum imposable penalty does not exceed one year, the ISL does not apply.<sup>70</sup> As aforementioned, the maximum term to be considered is the penalty actually imposed in accordance with law, which is *arresto mayor* in its maximum period, that is four (4) months and one (1) day to six (6) months.<sup>71</sup> Accordingly, his penalty is fixed at six (6) months of *arresto mayor* maximum.

**WHEREFORE**, in view of the foregoing, the Petition is hereby **PARTIALLY GRANTED**. The Court **DECLARES** petitioner EDWIN DEL ROSARIO **GUILTY** beyond reasonable doubt of **THEFT**, for which he is sentenced to suffer the straight penalty of six (6) months of *arresto mayor*.

**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

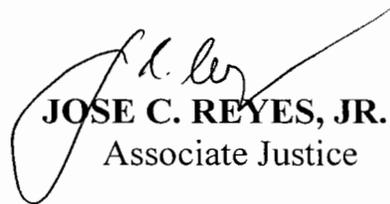
<sup>69</sup> *Romero v. People*, supra note 67, at 166.

<sup>70</sup> *Rimano v. People*, 462 Phil. 272, 288 (2003).

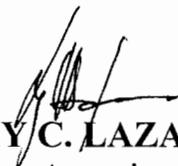
<sup>71</sup> See *People v. Moreno*, supra note 66, at 543; see also *People v. Alay-ay*, supra note 66, at 957.



**(On official leave)**  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



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



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

**ATTESTATION**

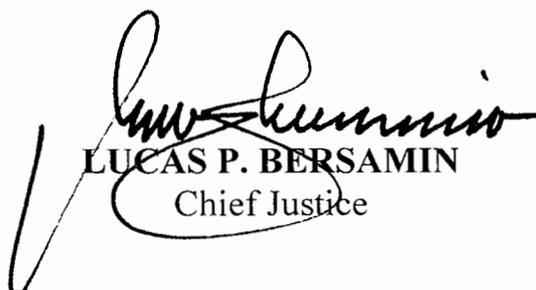
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

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



**LUCAS P. BERSAMIN**  
Chief Justice

