



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

TITUS A. BARONA,
Petitioner,

G.R. No. 249131

- versus -

Present:
LEONEN, J.,
Chairperson,
CARANDANG,
ZALAMEDA,
ROSARIO,
MARQUEZ., JJ.

PEOPLE OF THE PHILIPPINES and
AAA,
Respondents.

Promulgated:
December 6, 2021

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DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated April 10, 2019 and the Resolution³ dated September 6, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 39772 finding Titus A. Barona guilty of acts of lasciviousness defined and penalized under Article 336 of the Revised Penal Code (RPC).

Facts of the Case

The case stemmed from an Information⁴ filed against petitioner Titus A. Barona (Barona) by private respondent AAA for committing Acts of Lasciviousness. The accusatory portion thereof reads:

¹ Rollo, pp. 10-37.

² Penned by Associate Justice Marie Christine Azcarraga-Jacob with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Henri Jean Paul B. Inting; id. at 44-56.

³ Penned by Associate Justice Marie Christine Azcarraga-Jacob with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Fernanda Lampas Peralta; id. at 57-58.

⁴ Id. at 73.

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That on or about period comprised from the year 2004 up to February 2011, in Quezon City, Philippines, the above-named accused, with lewd design, by using intimidation did, then and there, willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of one [AAA] by then and there touching her private parts against her will and without her consent, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.⁵

When arraigned, Barona pleaded not guilty to the charge.

Version of the Prosecution

According to the prosecution, Barona and AAA belong to Bless Our Lord To Shine (BOLTS) Ministry, a Christian group spreading the word of God to members of the Philippine National Police (PNP), wherein Barona is the leader Pastor while AAA was one of the elders, until she left the ministry on January 13, 2012. Prior to being appointed as an elder, AAA was performing work delegated to her by Barona such as sharing her experiences with the Lord, translating Barona's teachings from English to Filipino, composing letters and communications regarding the ministry's activities to PNP officers and performing other administrative matters.⁶

In her Judicial Affidavit, AAA narrated the several instances when Barona tried to take advantage of her and commit acts of lasciviousness to her damage and prejudice.⁷

According to her, sometime in 2004, Barona started to send her text messages saying that she was beautiful. She found the text messages inappropriate given that Barona was the head of their ministry and she sensed some malice from the messages. She disclosed the text message to another elder of their church, however she got scared in confronting Barona for fear that she might be reprimanded by him.⁸

In another instance, AAA received a call from Barona who called just to say "*mahal kita*"⁹ and "*miss na kita*"¹⁰ to her. AAA felt confused, afraid and intimidated because Barona was showing perverse behavior towards her and she cannot do anything about it given that Barona was the pastor and leader of their church.¹¹

⁵ Id.

⁶ Id. at 262.

⁷ Id. at 263.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

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There was another incident when Barona asked her to go to his house to do some translation for him. While working, Barona suddenly went near her and put his face near her face as if attempting to kiss her, but she moved away and told him “[p]astor, huwag po.”¹² In one instance, she was asked to accompany Barona inside a prayer cell while in another instance, she was asked to give Barona a massage, to which she both declined.¹³

In February 2011, she was asked again to do some translation for Barona in his office. After finishing the work and saying her goodbye, Barona extended his arm for her to make a *mano*. Then, he pulled her arm making her off balance and falling to Barona which resulted to AAA being embraced by him. She immediately put her bag in between them, but Barona ordered her to remove the bag so that his chest came into contact with her breasts. She said “[h]uwag po!”¹⁴ and immediately left the office.¹⁵

In another occasion, she was called to his office again to do some translation work. While working, Barona sat on the chair across her and suddenly touched and pressed her left thigh. Instinctively, she moved her legs away from Barona. She hastily finished the work and left his office.¹⁶

AAA said that she did not immediately report the incidents for fear of going against Barona, who was considered as the “*anointed one of God*” and also to maintain the respect their ministry members have over him. However, when she learned that other women members experienced the same incidents as her, she decided to speak up and take action.¹⁷

The prosecution likewise submitted the affidavits of Benigno B. Durana Jr. (Durana) and Elmer A. Anibigno (Anibigno) who were also members of the BOLTS Ministry. According to them, they confronted Barona regarding the alleged sexual advances committed by him against women members of the ministry. During this confrontation, Barona allegedly admitted that sometimes he cannot stop himself from doing those acts because of his exhaustion from work.¹⁸

Version of the Accused

On the other hand, Barona vehemently denies the acts imputed against him. He argues that the accusations against him were mere fabrications and were impelled by Lorna Sevilla (Sevilla) as revenge on him.¹⁹

¹² Id.
¹³ Id.
¹⁴ Id. at 264.
¹⁵ Id.
¹⁶ Id.
¹⁷ Id. at 264-265.
¹⁸ Id. at 265-266.
¹⁹ Id. at 360.



According to Barona, Sevilla convinced AAA to file this complaint because he reprimanded Sevilla and limited her activities in their ministry when he learned that Sevilla used to be the mistress of her husband. AAA is the sister-in-law of Sevilla and owes money to the latter, that's why AAA was compelled to file the complaint against him.²⁰

Further, AAA's accusations were belied by the emails she sent to Barona praising and thanking him for leading their ministry and giving them spiritual assistance. Moreover, there was a CCTV footage showing AAA hugging Barona during one of their events which negates the claim that AAA felt scared or intimidated of him.²¹

Likewise, the belated filing of the complaint repudiates the claims of AAA. If indeed these acts were committed against her, she should have reported these incidents immediately but it took her years to file the complaint.

Lastly, the statements of Durana and Anibigno deserve no consideration since they do not have personal knowledge of the events being testified about.

Ruling of the Metropolitan Trial Court

In a Decision²² dated June 24, 2015, the MeTC convicted petitioner of the crime of acts of lasciviousness under Article 336 of the RPC, ruling in this wise:

The foregoing clearly manifest that the accused committed beyond reasonable doubt the crime charged against him.

In view thereof, he is hereby imposed a penalty of SEVEN (7) MONTHS imprisonment, and to pay Php20,000.00 as moral damages.

SO ORDERED.²³

MeTC gave credence to the testimony of AAA that Barona committed the lewd acts against her. Further, the MeTC believed the testimonies of Durana and Anibigno that Barona admitted to them the commission of the crime reasoning that it was only due to Barona's exhaustion from work.²⁴

MeTC ruled that the defense failed to refute the charges against him. The prosecution's evidence duly established beyond reasonable doubt that Barona committed acts of lasciviousness against AAA.²⁵

²⁰ Id.
²¹ Id. at 266-267.
²² Penned by Judge Augustus C. Diaz; id. at 262-268.
²³ Id. at 267-268.
²⁴ Id. at 267.
²⁵ Id.



Aggrieved, Barona filed a Motion for Reconsideration²⁶ of the MeTC Decision, which was denied in an Order²⁷ dated August 26, 2015. Hence, he filed an appeal²⁸ before the Regional Trial Court (RTC).

Ruling of the Regional Trial Court

In a Decision²⁹ dated May 20, 2016, the RTC affirmed the conviction of Barona, ruling in this wise:

WHEREFORE, in view of all the foregoing, finding no reversible error committed by the Court *a quo*.

Accordingly, the Decision dated June 24, 2015 of the Metropolitan Trial Court, Branch 37, Quezon City, finding accused-appellant GUILTY of the crime of acts of lasciviousness under Article 336 of the Revised Penal Code is AFFIRMED with Modification that he is sentenced to suffer an indeterminate penalty of imprisonment of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum, and to pay the victim the amount of Php20,000.00 as moral damages.

SO ORDERED.³⁰

The RTC found no reversible error in the conviction of Barona. It ruled that the elements of acts of lasciviousness have been duly proven by the prosecution. The acts of sending AAA text messages, appearing to kiss her, asking her for a massage, touching her hands, embracing her and pressing her left thigh are clear manifestations of lasciviousness or lewdness.³¹

Further, the RTC found that the element of intimidation was likewise proven. Barona, being the Pastor and leader of the BOLTS Ministry, exercises supervision and moral ascendancy over AAA, which constitutes intimidation.³²

Lastly, the RTC modified the penalty in accordance with the Indeterminate Sentence Law. There being no aggravating or mitigating circumstances, it ruled that the proper penalty is imprisonment of six (6) months of *arresto mayor* to four (4) years and two (2) months of *prision correccional*. The award of moral damages was affirmed.³³

²⁶ Id. at 276-290.

²⁷ Id. at 309.

²⁸ Id. at 310-311.

²⁹ Penned by Judge Manuel B. Sta. Cruz, Jr.; id. at 358-363.

³⁰ Id. at 362-363.

³¹ Id. at 361.

³² Id.

³³ Id. at 362-363.

Barona filed a Motion for Reconsideration³⁴ but was denied in an Order³⁵ dated December 22, 2016. Undeterred, he filed a petition for review under Rule 42 before the CA.

Ruling of the Court of Appeals

In a Decision³⁶ dated April 10, 2019, the CA affirmed the ruling of the RTC convicting Barona, *viz*:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

*The Decision dated 20 May 2016 and Order dated 22 December 2016 issued the Regional Trial Court (RTC) of Quezon City, Branch 226, in Case No. R-QZN-15-11217-CR is **AFFIRMED**.*

SO ORDERED.³⁷ (Emphasis and italics in the original)

The CA found that all the elements of the crime charged are present. Barona failed to refute the acts imputed against him. Giving credence to the findings of the MeTC and the RTC, it found that the accusations against Barona manifestly constitute lasciviousness or lewdness. The acts of embracing, kissing and touching a woman's breasts are considered lascivious conduct as contemplated by law.³⁸

Further, the lower courts correctly found that the element of intimidation is present. Barona exercises supervision over their ministry and has moral ascendancy over AAA, which fact is a sufficient cause for intimidation on AAA's part to resist or report the incident to others.³⁹

On the issue that the statements of Durana and Anibigno are barred by the hearsay rule, the CA applied the doctrine of independently relevant statements and ruled that their testimonies are admissible insofar as it proves that Barona made such admission, regardless of the truth or falsity of that admission. Durana and Anibigno's statements reinforce the positive testimony of AAA that Barona committed acts of lasciviousness against her.⁴⁰

Lastly, on the issue of lack of particularity on the date of the commission of the crime in the Information, which violates Barona's right to due process, the CA ruled that the date of commission of the crime is not an essential element of the crime of acts of lasciviousness. What is material is

³⁴ Id. at 364-377.

³⁵ Id. at 379-380.

³⁶ Supra note 1.

³⁷ *Rollo*, p. 55.

³⁸ Id. at 51.

³⁹ Id. at 52-53.

⁴⁰ Id. at 53-54.

the occurrence of the acts. Thus, an approximation of the date of the commission will suffice. Further, Barona belatedly raised this defect in the Information. He should have assailed the same by filing a Motion to Quash the Information or by filing a bill of particulars for him to be properly informed of the exact date of the alleged lascivious conducts.⁴¹

Aggrieved, Barona filed a Motion for Reconsideration⁴² which was denied in a Resolution⁴³ dated September 6, 2019. Hence, he filed this petition for review under Rule 45.

Proceedings Before This Court

In a Resolution⁴⁴ dated January 26, 2021, the Court directed the respondents to file a Comment to the petition for review within 10 days from receipt of the notice.

On March 26, 2021, the People, through the Office of the Solicitor General, filed its Comment.

Petitioner's arguments

Barona avers that the Information is vague and ambiguous for failure of the prosecution to provide the specific date of the commission of the crime. The approximation of 2004 to 2011, or about seven years, is too long a time to enable him to ably defend himself.⁴⁵

He also contends that the prosecution failed to prove that he touched the private part of AAA, as charged in the Information, since case law provides that breasts are different from private parts which include the external genitalia or external organs of sex and excretion.⁴⁶

Likewise, the elements of lewdness and intimidation were not duly established and proven by the prosecution. The acts being imputed against him are not being close to obscene or detestable given that these acts, assuming without admitting that they are true, are purely accidental. There was also no proof of the text messages and calls, thus AAA's statements are self-serving. The element of intimidation was not proven as this was only mentioned in the Judicial Affidavit of AAA. They did not present any evidence to support the same.⁴⁷

⁴¹ Id. at 54-55.

⁴² Id. at 59-65.

⁴³ Supra note 3.

⁴⁴ *Rollo*, p. 450.

⁴⁵ Id. at 20-24.

⁴⁶ Id. at 24-26.

⁴⁷ Id. at 26-28.

Lastly, the testimonies of Durana and Anibigno are inadmissible as evidence by virtue of the hearsay rule. Further, their declarations do not have any reference to the criminal information. Their statements are vague and do not corroborate the acts being imputed against Barona.⁴⁸

Respondents' comment

In its Comment,⁴⁹ the prosecution merely reiterated that the bare denial of Barona cannot overcome the positive testimonies of the prosecution's witnesses absent any showing that it is supported by strong evidence of non-culpability. Hence, the prosecution concluded that the CA did not err in affirming Barona's conviction.

Issue

The issue in this case is whether petitioner has been proven guilty beyond reasonable doubt of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code.

Ruling of the Court

The petition has no merit.

There was no violation of due process of law.

Barona argues that the Information is too vague and ambiguous when the prosecution alleged therein that the crime was committed sometime between 2004 to February 2011. While he admits that the date of the commission of the offense is not a material ingredient of Acts of Lasciviousness, its ambiguity violates his right to due process of law because he is not able to properly defend himself due to the long span of time alleged in the Information.

The established rule is that the date of the commission of the offense need not be alleged in the complaint or information with exactitude as long as it is near the actual date the crime was committed. The law excepts when the date of the commission is a material element of the offense.⁵⁰ In this case, the date when the offense was committed is not a material element of Acts of Lasciviousness. It is sufficient that an approximate date of the commission of the crime is alleged in the Information. The seven-year range in the date of commission as alleged is not unusual because the victim was accusing Barona of a series of lascivious conduct that took place over a long period of time. This series of acts were properly proven during trial.

⁴⁸ Id. at 33-34.

⁴⁹ Id. at 406-424.

⁵⁰ Section 11, Rule 110 of the Revised Rules of Criminal Procedure.

Further, Barona cannot argue that he was deprived of his right to due process of law because of the long range of time alleged in the Information. Each of the lascivious conduct he committed against the victim was narrated by AAA during trial. Barona had every opportunity to rebut and disprove these accusations, however he failed to do so. He merely proffered the defense of bare denial, which is not sufficient to overturn the positive testimony of the victim.

Moreover, vagueness and ambiguity of the allegations in the Information are considered defects that must be raised prior to the accused's arraignment. Barona failed to assail these defects of the Information before he was arraigned. As correctly found by the CA, he had the remedies of a bill of particulars or a motion to quash the Information prior to entering his plea. Failure to assert these defects before he pleads to the Information shall be deemed a waiver of these objections except those grounds provided in Section 3 (a), (b), (g) and (i) of Rule 117 of the Revised Rules of Court.⁵¹ None of the excepted grounds apply in this case. Hence, the defects in the Information are deemed waived for failure of Barona to object to the same prior to entering his plea.

The prosecution was able to prove beyond reasonable doubt the guilt of Barona.

Prefatorily, only pure questions of law may be raised in a petition for review on certiorari under Rule 45 raised before this Court. It is only in exceptional circumstances that the Court admits and reviews questions of fact. In his petition, Barona generally assails the findings of fact of the MeTC as affirmed by the RTC and the CA. Further, he questions the credibility of the prosecution's witnesses. He avers that the lower and appellate courts erred in giving more credence to the prosecution's evidence more than his, when the former's evidence is insufficient to overcome his presumption of innocence.

These arguments are factual issues that are not within the purview of a petition for review on *certiorari* under Rule 45. Barona failed to show that the exceptions to the general rule apply in this case. Even if the Court considers his petition for review, the same will still be denied for lack of merit.

It is settled that findings of fact by the trial courts, as affirmed by the Court of Appeals, are binding and conclusive upon this Court unless the same are not supported by the evidence on record. Moreover, the trial court's assessment of the witnesses deserves great weight, and is even conclusive and binding, unless the same is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Since it had the full opportunity to observe directly the deportment and the manner of testifying

⁵¹ Section 9, Rule 117, Revised Rules of Court.



of the witnesses before it, the trial court is in a better position than the appellate court to properly evaluate testimonial evidence. The rule finds an even more stringent application where the CA sustained said findings, such as in this case.

To be convicted of Acts of Lasciviousness under Article 336 of the RPC, the following elements must be established by the prosecution, to wit:

- a.) that the offender commits any act of lasciviousness or lewdness;
- b.) that the act of lasciviousness is committed against a person of either sex; and
- c.) that it is done under any of the following circumstances:
 - (1) By using force or intimidation;
 - (2) When the offended party is deprived of reason or otherwise unconscious;
 - (3) By means of fraudulent machination or grave abuse of authority; OR
 - (4) When the offended party is under 12 years of age or is demented.

After a judicious review of the records, the Court finds that all the elements of the crime of Acts of Lasciviousness have been sufficiently established. Lewd is defined as obscene, lustful, indecent or lecherous. It signifies that form of immorality which has relation to moral impurity or that which is carried on in a wanton manner.⁵² It includes acts of making physical contact with the body of another person for the purpose of obtaining sexual gratification other than, or without intention of, sexual intercourse. What constitutes lewdness is determined from the circumstances surrounding each case. In *Amployo v. People*,⁵³ the Court expounded on the definition of the word "lewd," to wit:

The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. **The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition.**⁵⁴
(Emphasis supplied; citations omitted)

In this case, the alleged acts constituting lascivious conduct committed by Barona against AAA include sending inappropriate text messages to her such as "you're beautiful," "*miss na kita*," and "*mahal kita*," attempting to kiss her, asking her to go with him inside a prayer cell, asking

⁵² *People v. Egan*, 432 Phil. 74, 84 (2002).

⁵³ 496 Phil. 747 (2005).

⁵⁴ *Id.* at 756.

her for a massage, coming into contact with her breasts by embracing her, and touching and pressing her thigh.⁵⁵ To determine whether these acts can be considered as lewd or lascivious, the circumstances through which the acts were done must be examined.

In view of the manner, place, and time under which the acts complained of were done, lewd designs can be attributed to Barona. Most of these lascivious acts imputed against him were committed while Barona and AAA were alone. The acts of texting and calling AAA to tell her she's pretty and he misses her, coupled with the instances of embracing her, attempting to kiss her, and touching her thighs⁵⁶ evidently manifest lascivious conduct on the part of Barona. When AAA was about to extend her hand to *mano* to Barona, he intentionally grabbed her hand and tried to embrace her.⁵⁷ Further, when AAA was working inside Barona's office, he intentionally sat beside her and slid his hand to AAA's thighs, making the latter immediately stand up, say goodbye and walk out of the office.⁵⁸ These lewd acts exhibit the sexual desire of Barona. He took advantage of the fact that they were alone when he committed these acts. All these acts are indecent and immoral. Barona cannot claim that these deeds are merely accidental. He is a leader and a Pastor in their congregation. As the spiritual head and leader, he must maintain and exude a chaste and impeccable conduct towards his ministry members.

In a number of cases, the Court found the following acts to be considered lascivious or lewd: embracing, kissing the lips and neck or other body parts, fondling or touching of breasts, touching of private parts such as vagina and other parts of the body, and laying on top of the victim.⁵⁹ The acts explicitly show the sexual desire of the assailant to molest or abuse the victim. From these actuations, the unchaste mind of the assailant is readily exposed.

As applied in this case, the actuations of Barona, when taken together, reveal his sexual desire to molest and exploit the victim. The element of lewd design is duly established by the prosecution, more particularly when Barona intentionally sat beside AAA while she was working and slyly slipped his hands to her legs and pressed her thighs. AAA positively testified the several instances that Barona committed lascivious conduct against her. Her testimony, as found by the trial courts, was clear and straightforward. A victim of sexual abuse or molestation cannot easily concoct a story so detailed unless the same has not been actually committed against such person. Thus, AAA cannot easily forget these lewd conduct done against her by Barona.

⁵⁵ *Rollo*, p. 263.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *PO3 Sombilon, Jr. v. People*, 617 Phil. 187 (2009); *Perez v. Court of Appeals*, 431 Phil. 786 (2002); *Sibuyo v. People*, 463 Phil. 168 (2003).

Likewise, the Court affirms that the element of intimidation has been duly established. In cases of Acts of Lasciviousness, it is not necessary that the intimidation or physical force be irresistible, it being sufficient that some violence or moral compulsion, equivalent to intimidation, annuls or subdues the free exercise of the will of the offended party.

As found by the MeTC, the RTC and the CA, Barona, as the leader and Pastor of their ministry, had moral ascendancy over AAA. This moral ascendancy was a sufficient cause for AAA to feel intimidated by him. As raised by AAA in her Judicial Affidavit, she did not immediately report the untoward incidents for fear that she will be reprimanded by Barona and that she will be going against 'God's anointed one'. As she pointed out, the members of their ministry must "touch not the anointed of God"⁶⁰ as often preached by Barona.

Having duly established all the elements of Acts of Lasciviousness with proof beyond reasonable doubt, the Court affirms the conviction of Barona.

As to the damages awarded, the Court affirms the same with modification that a civil indemnity in the amount of ₱20,000.00 shall be awarded to the victim in accordance with law and in keeping with the Court's ruling in *People v. Tulagan*.⁶¹

WHEREFORE, the petition is **DENIED**. The Decision dated April 10, 2019 and the Resolution dated September 6, 2019 of the Court of Appeals in CA-G.R. CR No. 39772 are **AFFIRMED with MODIFICATION**. Petitioner Titus A. Barona is found **GUILTY** of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code. He is sentenced to suffer an indeterminate penalty of imprisonment of six (6) months of *arresto mayor*, as minimum to four (4) years and two (2) months of *prision correccional*, as maximum, and to pay the victim the amount of ₱20,000.00, as moral damages and ₱20,000.00, as civil indemnity.

SO ORDERED.

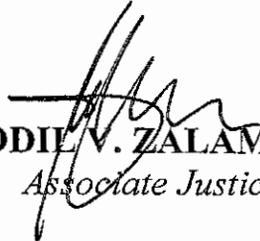

ROSMARI D. CARANDANG
Associate Justice

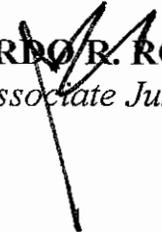
⁶⁰ *Rollo*, p. 264.

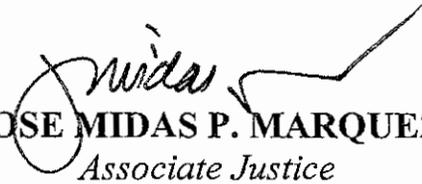
⁶¹ G.R. No. 227363, March 12, 2019.

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

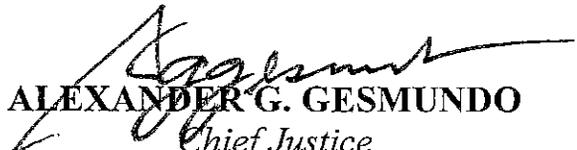
ATTESTATION

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.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

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.



ALEXANDER G. GESMUNDO
Chief Justice