



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

AXEL TRIA y CIPRIANO,  
Petitioner,

G.R. No. 255583

Members:

-versus-

LEONEN, *SAJ*, Chairperson  
LAZARO-JAVIER,  
LOPEZ, M.V.,  
LOPEZ, J.Y., and  
KHO, JR., *JJ*.

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:

AUG 02 2023

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review<sup>1</sup> on *Certiorari* under Rule 45 assails the Decision<sup>2</sup> dated January 10, 2020 of the Court of Appeals in CA-G.R. CR No. 42776, affirming the conviction of petitioner **Axel Tria y Cipriano** for **robbery with violence against or intimidation of persons (robbery)** under Article 294 of the Revised Penal Code, and Resolution<sup>3</sup> dated December 15, 2020, denying reconsideration.

<sup>1</sup> *Rollo*, pp. 14–38.

<sup>2</sup> Penned by Associate Justice Rafael Antonio M. Santos, and concurred in by Associate Justices Manuel M. Barrios and Geraldine C. Fiel-Macaraig, of the Special Sixteenth Division, Court of Appeals, Manila; *id.* at 41–57.

<sup>3</sup> Penned by Associate Justice Rafael Antonio M. Santos, and concurred in by Associate Justices Manuel M. Barrios and Geraldine C. Fiel-Macaraig, of the Former Special Sixteenth Division, Court of Appeals, Manila; *id.* at 65–67.

### Antecedents

Under two separate Informations, petitioner Axel Tria y Cipriano (Tria) was charged with **robbery** and **online libel**, respectively, *viz.*:

#### Criminal Case No. 13300

That on or about the 24<sup>th</sup> day of August 2015, in the City of ██████████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of intimidation and with intent to gain, did then and there willfully, unlawfully and feloniously demand, take, and extort money from, and belonging to [AAA],<sup>4</sup> in the sum of Fifteen Thousand (P15,000.00) Pesos, Philippine Currency, in exchange for his deleting of her nude photos which he (the accused) posted and/or uploaded in the internet, or on Facebook, to the damage and prejudice of said AAA, in the aforementioned amount.

That the act was committed by, through, and with the use of information and communications technologies, as defined under Section 3 R.A. 10175.

ACTS CONTRARY TO LAW.<sup>5</sup>

#### Criminal Case No. 13301

That sometime in August 2015 or prior thereto, in the City of ██████████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with malice and intent to cast dishonor, discredit and contempt upon the person of [AAA] by hacking her Facebook account “████████████████████” which the latter owns for the purpose of her business advertisement online accompanied with caption and/or words defamatory to her character and reputation as a private person, to wit: “Ang makating babae ng ██████████ [AAA],” thereby offending her good name, character and reputation, to her damage and prejudice.

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

On arraignment, Tria pleaded *not guilty* to both charges. The cases were then consolidated and jointly tried.<sup>7</sup>

<sup>4</sup> In line with Amended Administrative Circular No. 83-2015, as mandated by Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.C. No. 83-2015, the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy.

<sup>5</sup> *Id.* at 121-122.

<sup>6</sup> *Id.* at 122.

<sup>7</sup> *Id.* at 44.

### Version of the Prosecution

Private complainant AAA testified that she and Tria were lovers. Their relationship was blissful for the first six months but it turned sour when he became jealous and started to treat her differently. To appease him, she gave him the password to her Facebook account.<sup>8</sup> This, however, proved futile, as his behavior worsened and he even became abusive. One time, he texted her son: “*Yung Mama mu malandi, makati, andami daming lalake, puta, manyak.*” He also sent her indecent and vulgar words like “*puta ka,*” “*malandi,*” “*maharot,*” “*magpakantot ka na,*” and “*parausan ka ng [REDACTED].*” He, too, threatened to upload their photos and sex video on the internet to humiliate her and her family.<sup>9</sup>

When she had had enough, she tried to break up with him but the latter got furious; he took out his gun and showed her their sex video and some of her pictures. She asked him to delete the files which he promised to do.<sup>10</sup>

On August 12, 2015, Tria asked her for PHP 55,000.00, but she refused as she did not have that much. This prompted him to hack into her online business Facebook page “[REDACTED] *Buy and Sell,*” and change her username and password to prevent her from accessing the account.<sup>11</sup>

On August 23, 2015, her sister told her to check her Facebook page. Using her sister’s account, she saw that her half-naked photo was uploaded therein with the caption “*AAA malibog Malate.*” The photo was a screenshot of the video which Tria showed her when they had a fight. Aside from this, there was another photo of a naked woman with AAA’s face superimposed thereon.<sup>12</sup>

She confronted Tria about the pictures. In response, he offered to delete them in exchange for the payment of the PHP 55,000.00 he demanded earlier, for her to stay with him in a hotel for three days, and for them to reconcile as if nothing had happened. She verbally acceded to his demands, and the photos were taken down for some time. Later, however, the photos were re-uploaded when AAA stopped responding to Tria’s texts and calls.<sup>13</sup>

Tria kept demanding PHP 55,000.00 but she responded that she only had PHP 20,000.00. He told her to give him PHP 15,000.00 while the remaining PHP 5,000.00 would be for their hotel expenses. Because of Tria’s

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

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 45.

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

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

continued demands, she reported the matter to the Criminal Investigation and Detection Group (CIDG) Anti-Cybercrime Group at Camp Simeon A. Ola.<sup>14</sup>

The CIDG Anti-Cybercrime Group prepared an entrapment operation on the day she was set to meet Tria at Gaisano Mall supposedly to accede to his demands. When they met, he asked her if the money was ready and if she had already chosen a hotel. She replied in the affirmative. He then asked for the PHP 15,000.00. After she handed him the money, she removed her watch, signaling the CIDG to rush in and arrest him.<sup>15</sup>

Expert witness cybercrime investigator Senior Police Officer 2 Carlo Benavente (SPO2 Benavente) testified that he performed forensic examination on the two cellphones confiscated from Tria and the three cellphones used by AAA. He used a special software called Cellebrite to extract and save unalterable versions of call logs and text messages. The software, however, did not work flawlessly with the gadgets involved; thus, he had to manually encode a bulk of the messages by handwriting them.<sup>16</sup>

He corroborated AAA's narration through the messages he processed and from what he overheard from AAA's conversation with Tria over the phone when she called him.<sup>17</sup>

### Version of the Defense

Tria denied the accusations and gave a different version,<sup>18</sup> thus:

In March 2014, he met AAA through the online dating site "OK Cupid." Eventually, their friendly relation grew romantic and they became lovers. They were aware of each other's marital status even at the onset of their illicit affair.<sup>19</sup>

Their romance developed further and became more daring as they would even document their sexual rendezvous on separate occasions. During those times, AAA would take pictures especially while they were naked in bed. It was also AAA herself who would take videos of their sexual intercourse as she enjoyed watching them after coitus. She would send these files to his phone, but he would immediately delete them for fear that his wife would discover the affair.<sup>20</sup>

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

<sup>15</sup> *Id.* at 45-46.

<sup>16</sup> *Id.* at 129.

<sup>17</sup> *Id.* at 112-113.

<sup>18</sup> *Id.* at 46-48.

<sup>19</sup> *Id.* at 46.

<sup>20</sup> *Id.*

They broke up in July 2015, and contrary to AAA's claim, he was actually the one who broke off the relationship because she became possessive. She demanded so much from him; she even asked him to marry her in Hong Kong, and prepared the necessary documents. She also became very jealous of his wife to the point that during one of their clandestine meetings, AAA shot him using his own gun. The injury nearly killed him and he even needed medical treatment from ██████████ Hospital in ██████ City. Due to his affection for her, however, he let the incident go and no longer filed charges against her.<sup>21</sup>

He never sent her any threatening messages, let alone contacted her after their breakup. His mistake was agreeing to help her when she got in touch with him in August 2015. She called him and asked for his help in looking for a boarding house because she was supposedly being evicted from their home in ██████. For old time's sake, he agreed to help her because he thought she was really in distress. It was then that they agreed to meet at Gaisano Mall in ██████████ where the so-called entrapment operation was conducted.<sup>22</sup>

He never asked AAA for money. The money found in his possession was strategically handed to him by AAA, saying that she might lose it since she did not have a bag with her. He even refused at first considering that they were inside the mall, where it was relatively safe. But she insisted. When he obliged and took the purse, however, he was immediately arrested.<sup>23</sup>

### Ruling of the Trial Court

By Joint Judgment<sup>24</sup> dated November 19, 2018, the Regional Trial Court-Branch 6, ██████████ City found Tria guilty of robbery but acquitted him of online libel for lack of evidence, thus:

In the charge of online libel in Criminal Case No. 13301, the Court so holds that the charge as spelled out in the Information and the evidence presented by the prosecution to prove the same is at a variance such that the right of the accused-Axel Tria y Cipriano to be informed of the nature and cause of the accusation against him may have been violated, thus, he cannot be convicted of the charge of online libel vis-à-vis the evidence presented by the prosecution.

Recall that the Information for the charge of online libel accuses Axel of committing the pertinent facts as follows; *"That sometime on August 2015 or prior thereto Axel Tria y Cipriano [AAA], did then and there wilfully, x x x, post/upload nude photos of [AAA] by hacking her Facebook account "██████████", which the latter owns for the purpose of her business advertisements online accompanied with caption and/or words defamatory to her character and reputation as a*

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<sup>21</sup> *Id.* at 46-47.

<sup>22</sup> *Id.* at 47.

<sup>23</sup> *Id.* at 48.

<sup>24</sup> Penned by Judge Elmer M. Lanuzo, of Branch 6, Regional Trial Court, ██████████ City; *id.* at 120-147.

*private person, to wit: “Ang makating babae ng █████ City [AAA]”, x x x*  
(Emphasis and italics in the original)

x x x x

In the Information for libel Axel is accused of having hacked the Facebook account of [AAA] called █████ on which account Axel allegedly uploaded the nude photo of a woman with the face of [AAA] having been superimposed or photoshopped on the face of the unknown nude woman.

The evidence however of the prosecution tends to establish that this piece of evidence... These photos however cannot be considered as having libeled [AAA] since what the Information alleges to have libeled her is the add photoshopped nude photos uploaded on █████ █████. Had the Information charging libel alleged that Axel uploaded/re-uploaded the nude photos ... at █████ or had the Information charged Axel having uploaded/re-uploaded [AAA]'s photoshopped nude picture with the caption “Ang Makating Babae ng █████ City [AAA] Malate” at █████, it would have suffice[d] to secure a conviction of Axel. The prosecution however confused the two (2) Facebook accounts and the proper libelous nude photographs posted on the correct Facebook account, respectively.

x x x x

As for the charge however of Robbery With Violence Against or Intimidation of Persons or Extortion, the Court finds the evidence adduced by the prosecution sufficient to convict Axel beyond reasonable doubt of the charge. x x x

\* x x x x

WHEREFORE, in the light of the foregoing ratiocinations, the Court hereby renders judgment, thus:

- 1) In Criminal Case No. 13300, the accused[,] Axel Tria y Cripriano[,] is found **GUILTY** beyond reasonable doubt of the crime of Robbery with Intimidation of Person/Extortion defined and penalized under Article 294, par. 5 of the Revised Penal Code in relation with Section 6 of R.A. 10175 or the Cybercrime Prevention Act of 2012 and he is hereby sentenced to an indeterminate imprisonment of **SIX (6) YEARS** as the **MINIMUM** to **ELEVEN (11) YEARS, ONE (1) MONTH and ELEVEN (11) DAYS** as the **MAXIMUM**. No pronouncement as to civil liability in view of the recovery of the money taken.
- 2) In Criminal Case No. 13301, the accused[,] Axel Tria y Cipriano[,] is **ACQUITTED** for lack of evidence in view of the violation of the right of the accused to be informed of the nature and cause of accusation against him.

Costs against the accused.

SO ORDERED.<sup>25</sup>

In acquitting Tria of the crime of online libel, the trial court pointed out that there was a discrepancy between the allegations in the Information and the evidence adduced during the trial. As for the charge of robbery, on the other hand, it found that the prosecution established all the elements of the crime beyond reasonable doubt.

### **Ruling of the Court of Appeals<sup>26</sup>**

Under Decision<sup>27</sup> dated January 10, 2020, the Court of Appeals affirmed. It held that Tria committed robbery when he threatened AAA and demanded that she pay him PHP 55,000.00 in exchange for the deletion of her nude photos which he had posted online.

AAA positively identified Tria as the one who sent her text messages demanding PHP 55,000.00 in exchange for taking down incriminating pictures of her on the Facebook page of her business. SPO2 Benavente corroborated AAA's claim. He was able to extract the contents of the text messages between AAA and Tria. He, too, overheard one of AAA's phone conversations with Tria while they were still planning the entrapment operation.

The Court of Appeals denied reconsideration on December 15, 2020.<sup>28</sup>

### **Present Petition**

Tria now seeks affirmative relief and prays anew for a verdict of acquittal.<sup>29</sup>

**First.** He faults the courts below for giving credence to the testimony of SPO2 Benavente despite the latter's failure to exert due diligence in ascertaining the identity of the person who was allegedly threatening AAA; SPO2 Benavente simply relied on AAA's misrepresentations. He did not even ask AAA to put the call on loudspeaker as to allow the entrapment team to hear for themselves both sides of the conversation and confirm the identity of the caller. At any rate, his phone logs show that he only made one call to AAA which lasted 00:00, meaning the call did not get through.<sup>30</sup>

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<sup>25</sup> *Id.* at 133–147.

<sup>26</sup> Pleadings filed before the Court of Appeals were not attached to the petition.

<sup>27</sup> *Rollo*, pp. 41–57.

<sup>28</sup> *Id.* at 65.

<sup>29</sup> *Id.* at 14–38.

<sup>30</sup> *Id.* at 20–28.

**Second.** The integrity of the text messages allegedly extracted by SPO2 Benavente is highly questionable. As SPO2 Benavente admitted, bulk of the text messages were “physically extracted,” i.e., manually copied from the cellular phone. It took the cybercrime team about two days to allegedly transcribe said texts. During this two-day period, it was possible that the phone seized from him (Tria) had been tampered and its contents, altered to suit the case of the prosecution.<sup>31</sup>

**Third.** There was no “unlawful taking of property with intent to gain.” AAA voluntarily handed him PHP 15,000.00 and asked him to hold on to it because she feared she might misplace it as she was not carrying a bag.<sup>32</sup>

Verily, the prosecution failed to establish the identity of the person harassing AAA, as well as the elements of robbery to a moral certainty.

In its Comment,<sup>33</sup> the People, through the Office of the Solicitor General, argues that the Petition must be denied for raising questions of fact. It maintains that the Court of Appeals correctly convicted Tria of robbery. Too, the Office of the Solicitor General points out that Tria failed to attach copies of the material and relevant portions of the records to support his Petition.<sup>34</sup>

### Our Ruling

At the outset, the Court notes that Tria only attached the assailed dispositions of the Court of Appeals to the present Petition for Review, nothing more. Worse, the verification and certification of non-forum shopping attached to the Petition is a mere scanned copy. Finally, the affidavit of service lacks proof of the affiant’s identity. Under the rules, these procedural defects already warrant the outright dismissal of the Petition.

In any event, a petition for review on *certiorari* is narrowly confined to any of these two grounds, i.e., (a) when the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or (b) when the court *a quo* has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.<sup>35</sup>

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<sup>31</sup> *Id.* at 28–31.

<sup>32</sup> *Id.* at 32–34.

<sup>33</sup> *Id.* at 96–118.

<sup>34</sup> *Id.* at 103.

<sup>35</sup> RULES OF COURT, Rule 45, sec. 6 provides: *Review discretionary.* — A review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons thereof. The following, while neither controlling nor fully measuring the court’s discretion, indicate the character of the reasons which will be considered:

Absent any of these grounds cited or shown in the Petition, there is no special reason to warrant the exercise of the Court's discretionary appellate jurisdiction here. This is an additional reason for the outright dismissal of the Petition.

But even on the merits, the Petition must fail.

Robbery with violence against or intimidation of persons is defined and penalized under Article 294 of the Revised Penal Code, viz.:

**Article 294. Robbery with violence against or intimidation of persons; Penalties.** - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

x x x x

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.

Since the Information charging Tria with robbery did not allege any resultant death or bodily injury, Article 249(5) governs. It requires that: (a) there is personal property belonging to another; (b) that there is unlawful taking of that property; (c) the taking is with intent to gain; and (d) there is violence against or intimidation of persons.<sup>36</sup>

Here, Tria demanded from AAA PHP 55,000.00 in exchange for the deletion of her nude photos posted on her Facebook page. She haggled until Tria agreed to reduce it to PHP 20,000.00, PHP 15,000.00 of which would be given to Tria while the remaining PHP 5,000.00 would pay for their hotel expenses. AAA reported the matter to the CIDG Anti-Cybercrime Group which arranged an entrapment operation against Tria. During the operation, AAA met with Tria at Gaisano Mall and handed him PHP 15,000.00 as agreed, resulting in Tria's arrest.

Clearly, AAA was forced to part with her money in exchange for the deletion of her nude photos posted on her Facebook page. Her compromising photos damaged and continued to damage her family life, reputation, and online business; thus, she felt she had no choice but to accede to Tria's demands. The taking was deemed complete the moment Tria gained possession of her money. Meanwhile, Tria's intent to gain is presumed.

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(a) When the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or

(b) When the court *a quo* has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

<sup>36</sup> *Flores v. People*, 830 Phil. 635, 645 (2018) [Per J. Gesmundo, Third Division].

Tria nevertheless assails the credibility of SPO2 Benavente and the text messages retrieved from his phone. But the factual findings of trial courts on matters of credibility are accorded great weight and respect especially when affirmed by the Court of Appeals, as here.

At any rate, SPO2 Benavente's testimony regarding the phone conversation he overheard pertained to independently relevant statements, hence, admissible in evidence.<sup>37</sup> Too, it bears stressing that Tria's identity was not established through the testimony of SPO2 Benavente alone, but also through AAA's personal account.

As for Tria's denial of his authorship of the text messages demanding payment from AAA, this is easily negated by the fact that he showed up at Gaisano Mall as agreed upon between AAA and the person who made the demand.

All told, the courts below did not err in finding Tria guilty of robbery through force and intimidation against persons.

### Penalty

Robbery with violence against or intimidation of persons under Article 294(5) of the Revised Penal Code is punishable by *prision correccional* in its maximum period to *prision mayor* in its medium period. Considering, however, that the crime was committed with the use of communication technologies as alleged in the Information, the imposable penalty is raised by one degree higher or *prision mayor* in its maximum period to *reclusion temporal* in its medium period in accordance with Section 6, Republic Act No. 10175 or the Cybercrime Prevention Act, thus:

**Section 6.** All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: *Provided*, That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

Applying the Indeterminate Sentence Law,<sup>38</sup> Tria's minimum sentence of six years of *prision correccional* was correctly taken from the range of the penalty next lower in degree or *prision correccional* in its maximum period to *prision mayor* in its medium period.<sup>39</sup>

<sup>37</sup> *Buenaflor Car Services, Inc. v. David, Jr.*, 798 Phil. 195, 207 (2016) [Per J. Perlas-Bernabe, First Division].

<sup>38</sup> *Medina v. People*, 724 Phil. 226, 232–233 (2014) [Per J. Bersamin, First Division].

<sup>39</sup> *Prision correccional* in its maximum period to *prision mayor* in its medium period or four years, two months and one day to eight years.

In view, however, of the use of communication technologies in the commission of the crime, the imposable penalty is raised one degree higher, and Tria's maximum sentence should be taken anywhere from the range of 12 years, five months, and 11 days to 14 years, 10 months, and 20 days.

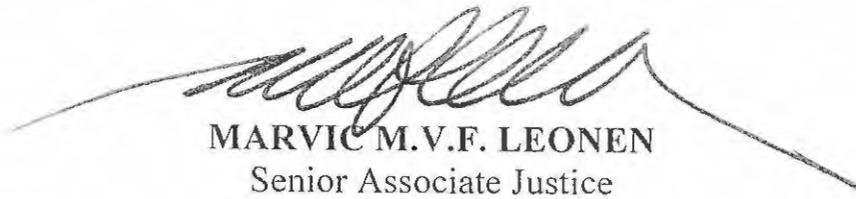
**ACCORDINGLY**, the Petition is **DENIED**. The Decision dated January 10, 2020 and Resolution dated December 15, 2020 of the Court of Appeals in CA-G.R. CR No. 42776, are **AFFIRMED** with **MODIFICATION**.

Petitioner **AXEL TRIA y CIPRIANO** is found **GUILTY** of **ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS**. He is sentenced to the indeterminate penalty of **SIX YEARS** of *prision correccional*, as minimum, to **14 YEARS** of *reclusion temporal*, as maximum.

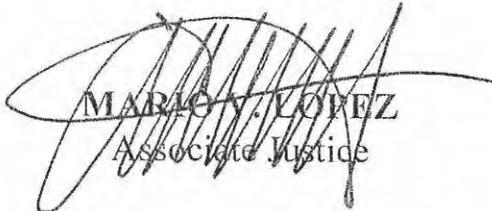
**SO ORDERED.**

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

**WE CONCUR:**



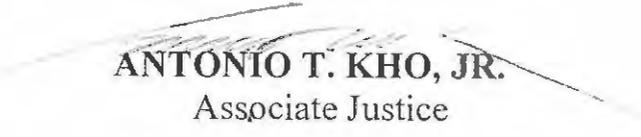
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice



**MARIO V. LOPEZ**  
Associate Justice



**JHOSEP V. LOPEZ**  
Associate Justice



**ANTONIO T. KHO, JR.**  
Associate Justice

**ATTESTATION**

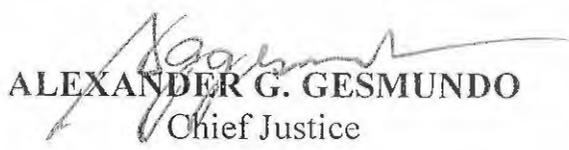
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M. V. F. LEONEN**  
Senior Associate Justice  
Chairperson

**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