Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 177140**
	Present:
- *versus* -	SERENO, *CJ.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and PERLAS-BERNABE,* *JJ.*
ALEJANDRO VIOJELA y ASARTIN, Accused-Appellant.	Promulgated: 17 OCT 2012

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DECISION

LEONARDO-DE CASTRO, *J.*:

The present case is an appeal from the Decision[1] dated November 29, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01085, entitled *People of the Philippines v. Alejandro Viojela y Asartin*, which affirmed with modification the Decision[2] dated September 1, 2003 of the Regional Trial Court (RTC) of Cavite, Branch 18 in Criminal Case No. TG-3256-99. The trial court found appellant Alejandro Viojela y Asartin guilty beyond reasonable doubt of the crime of statutory rape as defined and penalized under Article 335 of the Revised Penal Code, in relation to Republic Act No.

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* Per Special Order No. 1337 dated October 9, 2012.

1 *Rollo*, pp. 3-17; penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Andres B. Reyes, Jr. and Mariflor P. Punzalan Castillo, concurring.

2 CA *rollo*, pp. 11-17.

7610 or the "Special Protection of Children Against Abuse, Exploitation, and Discrimination Act." The incident of rape involved in this case was committed before the amendment of Article 335 of the Revised Penal Code by Republic Act No. 8353 or the "Anti-Rape Law of 1997" that reclassified and expanded the definition of rape, the provisions of which are now found in Articles 266-A to 266-D under Crimes Against Persons in the Revised Penal Code. These changes in our rape law came into effect only on October 22, 1997.

The facts of this case, as narrated in the assailed November 29, 2006 Decision of the Court of Appeals, are as follows:

> Accused-appellant was charged in an Information dated November 26, 1999, which reads, as follows:
>
> > The undersigned 1st Assistant Provincial Prosecutor accuses ALEJANDRO VIOJELA Y ASARTIN of the crime of RAPE IN RELATION TO REPUBLIC ACT 7610, committed as follows:
> >
> > That on or about the period or sometime in June 1997, at x x x, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation and taking advantage of his superior strength over the person of his ten (10)[-]year[-]old stepdaughter, did, then and there, willfully (sic), unlawfully and feloniously, have carnal knowledge of one VEA, against her will and consent, to her damage and prejudice.
> >
> > CONTRARY TO LAW.
>
> Upon arraignment, accused-appellant pleaded not guilty to the crime charged, and thereafter, trial on the merits ensued.
>
> The evidence for the prosecution shows that private complainant VEA was only 10 years old when the incident complained of took place, she having been born on September 13, 1986. Accused-appellant is the common-law husband of VEL, VEA's mother, with whom accused-appellant has three children. VEA started living with them when she was four years old, after her mother VEL took her from Cagayan Valley to live with her and accused-appellant in x x x. VEA is VEL's daughter from her deceased husband.

Sometime in June 1997, when VEL was not at home and VEA was left alone with accused-appellant, the latter ordered VEA to undress and told her that he would look at her private parts so that when she grows up and gets married, she would know what will be done to her. VEA did as she was told and took off her pair of shorts. Accused-appellant instructed her not to make any noise, and then forced his penis into her vagina. According to VEA, accused-appellant was not able to insert his organ into her genitalia, but accused-appellant's act of forcing his penis into her vagina was painful.

VEA recounted another incident prior to the one described above when they were still residing in a room situated inside a bakery where accused-appellant worked. Accused-appellant entered the room and instructed VEA to suck his penis, and afterwards, asked her if she enjoyed it. The victim, likewise, recalled that every morning afterwards, when her mother had left the house to go to the town proper, accused-appellant would enter her room, wake her up and take her to the kitchen. Accused-appellant would sit on a chair naked, order her to remove her shorts and sit on his lap facing him, and forcibly insert his penis into her vagina.

VEL testified that when she arrived home one afternoon in June, 1997, accused-appellant was already waiting for her outside their house, and told her that he had something to tell her. When VEL asked him what it was, accused-appellant said that something happened to VEA. He initially refused to explain to VEL what he meant, but when VEL insisted that he tell her, accused-appellant finally admitted that he did something to VEA. He told VEL that he molested VEA. The victim had already run away from home at that time and sought refuge in a neighbor's house.

Upon being informed by accused-appellant that he molested VEA, VEL asked accused-appellant not to leave the house. VEL fetched VEA from their neighbor. VEA told her mother that she was molested again so she decided to run away from home. The two of them proceeded to the barangay hall in Biga to report the matter to the barangay authorities.

After VEL and VEA lodged a complaint with the barangay and police authorities, VEA was brought to the Silang Municipal Health Center in Silang, Cavite, where she was examined by Dr. Luz Jaurigue-Pang, a municipal health officer of the Rural Health Office of Silang, Cavite. Dr. Pang testified, based on the medical certificate she issued, that the victim's vagina does not admit her smallest finger. The examination, however, revealed the presence of fresh lacerations at the 3:00 and 9:00 o'clock positions at the *labia minora* of the victim's vagina. Dr. Pang further testified that the lacerations could have been caused by any forcible entry upon the victim's vagina, and could have been inflicted within more or less a week from the time of the victim's medical examination.

Accused-appellant invoked *alibi* in his defense. He testified that he is a farmer working in a corn plantation from 8:00 o'clock in the morning until 1:00 o'clock in the afternoon. On June 19, 1997, he went home after

> pasturing the cow, and saw inside their bedroom a man on top of VEL. He ran back to the farm and resumed cutting grasses for four hours as if nothing happened. He also alleged that at the time he saw his wife inside their bedroom with another man, he saw VEA playing outside their house with his kids, and that near VEA was a naked man lying face down. When he went home after cutting grasses that same afternoon, he was arrested by barangay officials who mauled him, causing him to lose consciousness. Accused-appellant claimed that it was only in the municipal jail that he regained consciousness.[3] (Citations omitted.)

After a full-blown trial, the trial court did not give credit to appellant's professed innocence and convicted him. However, he was not convicted of the crime that he was originally charged in the Information, which was rape in relation to Republic Act No. 7610, but with the offense of statutory rape. The dispositive portion of the assailed September 1, 2003 Decision is quoted here:

> WHEREFORE, finding the guilt of the accused ALEJANDRO VIOJELA y ASARTIN for the crime of "STATUTORY RAPE" to be beyond reasonable doubt, the Court hereby sentences him to suffer imprisonment of RECLUSION PERPETUA; to indemnify the victim [VEA] as actual and compensatory damages the sum of Php100,000.00, and to pay the costs.[4]

Hoping for a reversal, appellant elevated his case to the Court of Appeals but the trial court's ruling was merely affirmed with modifications by the appellate court in its assailed November 29, 2006 Decision. The appellate court reduced the trial court's award of actual damages and added the award of moral and exemplary damages. The dispositive portion of the aforesaid ruling reads:

> WHEREFORE, the decision dated September 1, 2003 of the RTC, Branch 18, Tagaytay City, in Criminal Case No. TG-3256-99, finding accused-appellant Alejandro Viojela y Asartin guilty of statutory rape and sentencing him to suffer the penalty of *reclusion perpetua* is AFFIRMED with MODIFICATION that accused-appellant is ordered to pay private complainant VEA the reduced amount of ₱50,000.00 as actual damages,

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3 *Rollo*, pp. 3-7.

4 CA *rollo*, p. 17.

> ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages. Costs against accused-appellant.[5]

Hence, appellant appealed before this Court where he adopted his Accused-Appellant's Brief[6] filed with the Court of Appeals which he augmented with a Supplemental Brief.[7] Accused-Appellant's Brief submits the following assignment of errors:

> I
>
> THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE ACCUSED-APPELLANT'S DEFENSE OF *ALIBI*.
>
> II
>
> THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCREDIBLE TESTIMONIES OF THE PROSECUTION'S WITNESSES.
>
> III
>
> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[8]

While in his Supplemental Brief, he added a lone assignment of error, to wit:

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S JUDGMENT CONVICTING THE ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT WITH MORAL CERTAINTY.[9]

In his appeal, appellant maintains that his *alibi* should be given more weight and credence over the testimonies of the prosecution witnesses which he claims to contain certain irreconcilable inconsistencies and inherent

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5 *Rollo*, p. 16.
6 CA *rollo*, pp. 43-54.
7 *Rollo*, pp. 29-34.
8 CA *rollo*, p. 45.
9 *Rollo*, p. 29.

improbabilities. Furthermore, appellant argues that the testimony of the prosecution's own witness, Dr. Luz Jaurigue-Pang (Dr. Pang), belies the charge of rape because said witness testified that, during her medical examination of VEA,[10] VEA's vagina could not accommodate entry of even her smallest finger. On the basis of this fact, appellant asserts that no consummated rape could have occurred because if VEA's vagina could not admit Dr. Pang's smallest finger then it would be improbable for said sexual organ to have had admitted the appellant's penis or be lacerated by it. Moreover, appellant insists that the lacerations on VEA's vagina could have been caused by an object other than appellant's penis.

We are not persuaded.

Considering that the incident of rape at issue happened prior to the enactment of Republic Act No. 8353, the applicable law is Article 335 of the Revised Penal Code which provides:

> Art. 335. *When and how rape is committed*. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
>
> 2. When the woman is deprived of reason or otherwise unconscious; and
>
> 3. When the woman is under twelve years of age or is demented.

According to the foregoing provision, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was

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[10] The Court withholds the real name of the victim-survivor and uses fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed. (*See People v. Cabalquinto*, 533 Phil. 703 [2006].)

accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.[11]

Sexual intercourse with a girl below 12 years old is referred to as statutory rape which, as stated earlier, is penalized under Article 335 of the Revised Penal Code. In this type of rape, force and intimidation are immaterial since the only subject of inquiry is (1) the age of the woman, and (2) whether carnal knowledge took place.[12]

The accused is charged under the said Article 335 in relation to Republic Act No. 7610, Section 5 of which states:

> Section 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; ***Provided,*** **That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be:** *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x. (Emphasis supplied.)

After a careful review of the records of this case, we find the appellant guilty of simple rape, not statutory rape.

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11 *People v. Manjares*, G.R. No. 185844, November 23, 2011, 661 SCRA 227, 242.

12 *People v. Espina*, G.R. No. 183564, June 29, 2011, 653 SCRA 36, 39.

It is settled in jurisprudence that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.[13]

We affirm the lower courts in ruling that all the elements of rape are present in the case at bar. The victim's clear and credible testimony coupled with the corroboration made by the medical findings of Dr. Pang points positively to the conclusion that appellant indeed committed the crime of rape attributed to him.

In her testimony, VEA was clear and straightforward, not to mention consistent, in her recollection of the details of her sexual abuse in the hands of appellant, to wit:

(Fiscal Velasco)

Q: When Alejandro told you to undress, did you undress?

A: Yes, sir, my shorts only, sir.

Q: What else happened after you removed your shorts?

A: He placed his penis into my organ, sir.

Q: By the way, when you were told to undress by Alejandro, was he wearing anything?

A: There was, sir.

Q: What happened to the clothes he was wearing?

A: He did not remove anything, I was told to remove, sir.

Q: To whom did you undress?

A: I was the one, sir.

Q: How about the accused?

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[13] *People v. Felan*, G.R. No. 176631, February 2, 2011, 641 SCRA 449, 452.

A: He just put out his organ and he did not remove his clothing, sir.

Q: What was he wearing at that time?

A: Shorts, sir.

Q: Was he able to insert his organ into your organ?

A: No, sir. But he was forcing it, sir.

Q: How did you feel?

A: Painful, sir.[14]

Contrary to appellant's assertions, Dr. Pang's medical findings support, rather than negate, VEA's accusation of rape. We quote hereunder the pertinent portions of Dr. Pang's testimony:

(Fiscal Velasco)

Q: Now, there is an entry there about your findings, will you tell before this Honorable Court what do you mean by that?

A: It says here, vagina doesn't admit smallest finger, however, there was a fresh laceration at the *labia minora* at 3:00 o'clock and 9:00 o'clock.

Q: You mean fresh laceration, can you determine or still recall at that time of your examination, how old can that injury be i[nf]licted?

A: More or less, within a week.

x x x x

Q: Now, that fresh laceration on the *labia minora*, can you explain further what part of the body is that?

A: In the vagina, the vagina normally have two (2) lips, the outer cover is the labia majora and the inner part is the *labia minora*, sir.

Q: That is the inner part of the *labia minora*?

A: Yes, sir.

Q: What would have caused that injury?

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[14] TSN, August 8, 2000, pp. 9-10.

A: Any forcible entry into the vagina.[15]

Appellant is grossly mistaken in his contention that no rape occurred because the prosecution did not prove that his penis penetrated the vagina of the victim. Such an argument is of little consequence in light of jurisprudence declaring that penetration of the penis, however slight, of the *labia minora* constitutes consummated rape.[16]

In *People v. Gragasin*,[17] we elaborated on this legal principle in this manner:

> Following a long line of jurisprudence, full penetration of the female genital organ is not indispensable. It suffices that there is proof of the entrance of the male organ into the labia of the pudendum of the female organ. Any penetration of the female organ by the male organ, however slight, is sufficient. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify conviction for rape.[18] (Citations omitted.)

However, although the Court is convinced that indeed rape had been committed by appellant, we find that the prosecution failed to present VEA's birth certificate or to otherwise unequivocally prove that VEA was indeed below 12 years of age at the time of the incident in question. In view of this paucity in the prosecution's evidence on the matter of the victim's age, jurisprudence compels us to reclassify appellant's offense as simple rape.[19]

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15 TSN, January 15, 2002, pp. 9-11.
16 *People v. Codilan*, G.R. No 177144, July 23, 2008, 559 SCRA 623, 634.
17 G.R. No. 186496, August 25, 2009, 597 SCRA 214.
18 Id. at 231-232.
19 *People v. Otos*, G.R. No. 189821, March 23, 2011, 646 SCRA 380, 384.

In *People v. Rullepa*,[20] we reiterated a set of guidelines in appreciating age as an element of the crime or as a qualifying circumstance. The following guidelines were formulated in response to the seemingly conflicting decisions regarding the sufficiency of evidence of the victim's age in rape cases:

> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
>
> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
>
>   a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
>
>   b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
>
>   c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
>
> 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
>
> 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
>
> 6. The trial court should always make a categorical finding as to the age of the victim.[21]

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[20] 446 Phil. 745 (2003).

[21] Id. at 765-766, citing *People v. Pruna*, 439 Phil. 440, 470-471 (2002).

The trial court relied on the testimonies of VEA and her mother who attested to the effect that she was only 10 years old at the time of the rape. The pertinent parts of the testimonies of VEA and her mother are as follows:

[VEA]
(Fiscal Velasco)

Q: Now, (VEA) you gave your age as twelve (12) years old?

A: Yes, sir.

Q: Can you tell this Honorable Court, what is the date of your birthday?

A: September 13, 1986, sir.[22]

[VEL]
(Fiscal Velasco)

Q: Now, (VEL), do you know (VEA)?

A: My daughter, sir.

Q: How old is she now?

A: Going thirteen (13) on September 1, sir.

Q: In 1997, what was her age?

A: Ten (10) years old, sir.

Q: Will you be able to tell the Honorable Court when was she born?

A: September 13, 1986, sir.[23]

Measured against the jurisprudential guidelines that this Court has set forth, VEA and her mother's testimonies cannot be given sufficient weight to establish her age with moral certainty, for in the absence of relevant documentary evidence or an express admission from the accused, the bare testimony of the victim's mother or a member of the family would suffice only if the victim is alleged to be below seven years of age and what is

[22] TSN, August 8, 2000, p. 4.
[23] TSN, May 22, 2000, p. 4.

sought to be proved is that she is less than 12 years old. In the present case, VEA was supposedly 10 years of age on the material date stated in the Information.

Nevertheless, simple rape was proven to have been committed by appellant since he is the common-law spouse of VEA's mother and, thus, exercises moral ascendancy over VEA. In a recent case, we reiterated that the moral ascendancy of an accused over the victim renders it unnecessary to show physical force and intimidation.[24] Indeed, in rape committed by a close kin, such as the victim's father, stepfather, uncle, **or the common-law spouse of her mother**, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[25]

It is apropos to mention here that appellant's offense could not be deemed qualified rape, despite the proviso in Article 335 (as amended by Republic Act No. 7659), imposing the death penalty on rape committed when the victim is **under eighteen (18) years of age** and the **offender** is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the **common-law spouse** of the parent of the victim. This is due to the fact that the "live-in" or common-law relationship between appellant and VEA's mother was not alleged in the Information[26] despite being proven in the trial court. What was alleged in the Information is that VEA was the stepdaughter of the appellant but we have held that a stepfather-stepdaughter relationship as a qualifying circumstance presupposes that the victim's mother and the accused contracted marriage.[27]

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24 *People v. Ortega*, G.R. No. 186235, January 25, 2012, 664 SCRA 273, 285.
25 *People v. Corpuz*, G.R. No. 175836, January 30, 2009, 577 SCRA 465, 473.
26 Records, p. 1.
27 *People v. Corpuz*, supra note 25 at 474.

However, it was shown during trial that no marriage was ever contracted between appellant and the victim's mother.

Anent appellant's defenses of denial and alibi, this Court is not persuaded by such invocations since we have consistently regarded them as inherently weak defenses and must be rejected when the identity of the accused is satisfactorily and categorically established by the eyewitnesses to the offense, especially when such eyewitnesses have no ill motive to testify falsely.[28] In the instant case, appellant failed to show that VEA, the victim and sole eyewitness to the crime of rape, was motivated by ill will in accusing him of such a grave offense.

Moreover, as correctly pointed out by the assailed November 29, 2006 Decision of the Court of Appeals, appellant's alibi cannot be counted in his favor. For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.[29] Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired, but more importantly, the facility of access between the two places.[30] In the present case, appellant failed to establish the distance between the corn plantation where he claimed to have been working and the house where the rape occurred. Failing in this regard, doubt is cast on appellant's defense of alibi because this leads to the conclusion that it was not physically impossible for appellant to be at the place of the crime at the time when the victim was raped.

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28 *People v. Manjares*, supra note 11 at 244.
29 *People v. Alfredo*, G.R. No. 188560, December 15, 2010, 638 SCRA 749, 760.
30 *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 345-346.

In view of the foregoing, we therefore affirm the conviction of appellant with the modification that the offense he committed is not statutory rape but simple rape. This notwithstanding, he is to suffer the penalty previously imposed which is *reclusion perpetua*.

The Court of Appeals was correct in reducing the amount of actual damages to ₱50,000.00 and in awarding moral damages in the amount of ₱50,000.00. However, the award of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00 in accordance with prevailing jurisprudence.[31]

WHEREFORE, premises considered, the Decision dated November 29, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01085 is hereby **AFFIRMED** with **MODIFICATIONS**, to wit:

(1) Appellant Alejandro Viojela is found **GUILTY** beyond reasonable doubt of simple rape;

(2) Appellant Alejandro Viojela is ordered to pay Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and

(3) Appellant Alejandro Viojela is further ordered to pay the private offended party interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

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[31] *People v. Ortega*, supra note 24 at 292.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice