Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 200515**
	Present:
- *versus* -	SERENO, *CJ.,* Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
LINO PALDO, Accused-Appellant.	Promulgated: DEC 1 1 2013

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DECISION

LEONARDO-DE CASTRO, *J.*:

For Our resolution is the appeal of accused-appellant Lino Paldo (Paldo) of the Decision[1] dated June 23, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04064, which affirmed with modification the Decision[2] dated May 27, 2009 of the Regional Trial Court (RTC) of Banaue, Ifugao, Branch 34, in Criminal Case No. 117, finding accused-appellant Lino Paldo guilty of raping AAA.[3]

Paldo was charged through an Information[4] filed before the RTC by the Office of the Provincial Prosecution of Ifugao on January 14, 2002, which reads:

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Japar B. Dimaampao with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Jane Aurora C. Lantion, concurring.

[2] CA *rollo*, pp. 80-89; penned by Presiding Judge Ester L. Piscoso-Flor.

[3] The real name of the victim and all other identifying information are withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. *See* our ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] Records, p. 1.

> That on the night of March 10, 2001 at [XXX], Banaue, Ifugao, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the victim, DID then and there wilfully, unlawfully and feloniously, have carnal knowledge of [his] daughter, [AAA], who is eight years old.

When arraigned on November 8, 2004, Paldo pleaded not guilty.[5] The Pre-trial Order dated September 16, 2005 stated the following:

> VI. STIPULATION OF FACTS
>
> A. ADMITTED FACTS
>
> 1. That the accused Lino Paldo is the father of the victim;
> 2. That the victim is a minor but not aged eight (8);
> 3. That the accused goes home to their house with the qualification that the wife usually does not go home.
>
> B. FACTS DISPUTED BY THE DEFENSE
>
> 1. That the incident complained of happened on the date, time and place alleged in the information;
> 2. That the victim is a minor aged eight (8) years old at the time the incident complained of happened[.]
>
> C. FACTS DISPUTED BY THE PROSECUTION
>
> 1. That the wife is living with another man;
> 2. That the mother of the allege victim BBB is living together with one Mr. Vicente Lim as husband and wife at Barangay [ZZZ], Ifugao.
>
> VII. EVIDENCES SUBMITTED AND MARKED BY THE PROSECUTION AND DEFENSE
>
> A. FOR THE PROSECUTION
>
> 1. DOCUMENTARY EVIDENCE
>
> 1.a. The Sworn Statement of AAA as Exhibit "A" and her signature appearing therein as Exhibit "A-1";
>
> 1.b. The Supplemental Affidavit of AAA as Exhibit "B" and her signature appearing therein as Exhibit "B-1";
>
> x x x x
>
> 1.e. The Certificate of Live Birth of AAA issued by [the] Local Civil Registrar of Banaue, Ifugao as Exhibit "E";
>
> 1.f. The Medical Certificate issued as Exhibit "F" and the signature of the attending physician as Exhibit "F-1."[6]

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5 Id. at 16.

6 Id. at 53-54.

During trial, the prosecution presented the victim AAA and her mother BBB. The version of events according to their testimonies is as follows:

In the evening of March 10, 2001, AAA, then eight years old, and her father, accused-appellant, were sleeping at their residence in XXX, Banaue, Ifugao. Suddenly, AAA was awakened by accused-appellant who removed AAA's pants and immediately thereafter, inserted his penis into AAA's vagina. After the incident, AAA felt pain in her stomach. Although there were no lights on, AAA knew it was accused-appellant who sexually assaulted her, being very familiar with her own father. Accused-appellant warned AAA not to tell her mother what had happened. AAA's mother, BBB, and sibling were not around that night as they were in ZZZ, Ifugao, to get their family's food supply. When BBB arrived home on March 12, 2001, AAA narrated to BBB what accused-appellant did to her. BBB was so angry and caused the filing of the complaint against her husband.

The testimony of another prosecution witness, Dr. Mae Diaz (Diaz), who conducted the physical examination of AAA, was dispensed with after the parties agreed to stipulate as to the existence and genuineness of Dr. Diaz's medical certificate, as well as on several other matters to be covered by Dr. Diaz's testimony, *viz*, (1) that AAA had healed hymenal lacerations; (2) that said hymenal lacerations could have been caused by objects other than a hard penis; and (3) that if said hymenal lacerations had been caused by a hard penis, it could have been the penis of a man other than the accused.

Despite finishing its presentation of evidence, the prosecution failed to make a formal offer of its documentary/object evidence.

For its part, the defense presented four witnesses: (1) accused-appellant himself, (2) Celestino Guinanoy (Guinanoy), (3) Maria Pin-ag (Pin-ag), and (4) Emilia Nitokyap (Nitokyap).

Accused-appellant denied AAA's accusations against him. He averred that from February to March 2001, he was working for Pin-ag in Kinakin, Chapeh, Banaue, Ifugao, a two-hour hike from XXX. On the night of the alleged rape, he did not go home to XXX but stayed in Chapeh. He was with his two friends, Guinanoy and Licyag, and the three of them slept in the hut owned by Pin-ag. Accused-appellant further asserted that he could not have raped AAA on March 10, 2001 since his daughter was not staying in XXX, but was living with her grandfather in ZZZ, where she was studying.

Pin-ag and Guinanoy corroborated accused-appellant's testimony. The other defense witness, Nitokyap, testified that on March 10, 2001, she travelled from her residence in Kinakin, Chapeh, to accused-appellant's

house at XXX to offer the latter work. Accused-appellant was not around so Nitokyap waited for him. When it was already dark, Nitokyap decided to just sleep at accused-appellant's house and left the following day without seeing either accused-appellant or AAA.

On May 27, 2009, the RTC rendered its Decision finding accused-appellant guilty beyond reasonable doubt of raping AAA and sentencing him thus:

> **WHEREFORE**, accused **LINO PALDO** is hereby found **guilty** beyond reasonable doubt of the offense charged and sentenced to ***reclusion perpetua*** and to pay **SEVENTY[-]FIVE THOUSAND PESOS (₱75,000.00) as civil indemnity, moral damages of SEVENTY[-]FIVE THOUSAND PESOS (₱75,000.00) and exemplary damages of TWENTY[-]FIVE THOUSAND PESOS (₱25,000.00)** .[7]

Accused-appellant appealed to the Court of Appeals. The appellate court, in its Decision dated June 23, 2011, affirmed the conviction of accused-appellant, and also increased the amount of exemplary damages awarded to AAA, to wit:

> **WHEREFORE**, the *Decision* dated 27 May 2009 of the Regional Trial Court, Second Judicial Region, Branch 34 of Banaue, Ifugao, Branch 34, in Criminal Case No. 117, is hereby **AFFIRMED** with the modification that the exemplary damages is increased to Thirty Thousand Pesos (₱30,000.00).[8]

Hence, this appeal with the same lone assignment of error raised before the Court of Appeals:

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[9]

Accused-appellant was charged with qualified rape under Article 266-A(1), in relation to Article 266-B(1), of the Revised Penal Code, as amended by Republic Act No. 8353. Said provisions read:

> Article 266-A. *Rape, When and How Committed*. – Rape is committed -
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat or intimidation;
>
> b) When the offended party is deprived of reason or is otherwise unconscious.

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7 CA *rollo*, p. 89.
8 *Rollo*, p. 13.
9 CA *rollo*, p. 68.

> c) By means of fraudulent machination or grave abuse of authority;
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> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> ART. 266-B. *Penalties*. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1) 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.

Much of accused-appellant's arguments focus on the purported inconsistencies in AAA's testimony which cast doubt on her credibility, specifically: (1) There was no electric light inside their house on March 10, 2001, when the alleged rape took place, so AAA could not have seen the face of her rapist and she could have been mistaken in identifying accused-appellant; and (2) According to AAA, she was staying at XXX, where she was allegedly raped on March 10, 2001, but her school records reveal that she was studying in ZZZ for school year 2000-2001. Accused-appellant also claim that the rape case was filed against him at the instigation of his wife BBB since if he would be imprisoned, BBB could freely live with her paramour.

Accused-appellant's appeal is without merit.

The fact that the room was dark because there was no electricity in the house is insignificant. This cannot be considered a hindrance to AAA's identification of accused-appellant as her rapist, especially considering that accused-appellant is her father, with whom she is very familiar, even when it was dark. During rape incidents, the offender and the victim are as close to each other as is physically possible. In truth, a man and a woman cannot be physically closer to each other than during a sexual act.[10] As AAA testified:

> Q So how did you know that it was the accused who raped you?
> A There was no [other person] around us except I and my father.
>
> Q But you did not actually see the accused when he raped you is it not?
> A I could identify my father since he is my father.

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[10] *People v. Evina*, 453 Phil. 25, 40 (2003).

Q But you have neighbors in said place at Bangaan?
A Yes sir but a little bit farther.[11]

There is miniscule possibility that AAA was only mistaken in identifying accused-appellant as the man who raped her. It should also be noted that after the rape, accused-appellant talked to AAA to warn her not to tell what had just happened to her mother.

Accused-appellant's claim that AAA was not in XXX at the time the rape took place as she was studying in ZZZ deserves little credit. Two certifications dated February 4, 2007 and February 5, 2007 issued by AAA's teachers reveal that AAA had transferred to XXX Elementary School in January 2001, where she attended the third and fourth grading periods and took the periodical tests for the same school periods. While these two certifications were not formally offered in evidence, they can still be considered by the Court as long as they had been properly identified by a witness' duly recorded testimony and the documents themselves had been incorporated in the records of the case.[12] The two certifications herein of AAA's teachers were duly identified by AAA when she testified before the RTC and subsequently incorporated as part of the records.[13] Accused-appellant's counsel even cross-examined AAA regarding these certifications and, in fact, the defense marked the same as its own exhibits, although the defense did not include said certifications in its formal offer of evidence for the obvious reason that said documents were not favorable to its case.

We likewise find baseless accused-appellant's contention that the rape charge was filed against him at his wife BBB's instigation so that BBB could carry on her purported illicit relation with a paramour. We are not convinced that there existed such resentment and ill will on the part of AAA and her mother against accused-appellant prior to the rape. Granting that there was already bad blood between accused-appellant and BBB, it is unfathomable for BBB, as AAA's mother, to concoct a story too damaging to the welfare and well-being of her own daughter. Certainly, it is inconceivable that a mother would draw her young daughter into a rape scam with all its attendant scandal and humiliation just because of a supposed feud with the father. No mother in her right mind would use her offspring as an engine of malice. She would not subject her child to the humiliation, disgrace, and even the stigma attendant to the prosecution for rape unless she is motivated by the desire to bring to justice the person responsible for her child's defilement.[14] There appears to be no other reason for AAA and her mother to have boldly initiated the present case but to seek justice for the bestial act committed by AAA's own father, accused-appellant.

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11 TSN, May 17, 2006, p. 16.
12 *People v. Libnao*, 443 Phil. 506, 519 (2003).
13 TSN, February 6, 2007, pp. 7-9.
14 *People v. Pruna*, 439 Phil. 440, 464 (2002).

Moreover, well-established is the rule that testimonies of rape victims, especially child victims, are given full weight and credit.[15] In this case, the victim AAA was barely eight years old when raped by accused-appellant. In a litany of cases, we have ruled that when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed. Youth and immaturity are generally badges of truth. Courts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, particularly in cases of incestuous rape, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation were it not to condemn an injustice and to have the offender apprehended and punished.[16]

Additionally, we held that the conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth and falsity of the charge of rape. That AAA immediately narrated her ordeal to her mother upon the latter's return to their residence, and thereafter, straightaway reported the matter to the authorities, strengthen our belief that AAA had indeed been raped by accused-appellant.

To counter the clear and categorical declarations of AAA that accused-appellant raped her, accused-appellant proffered the defense of denial and alibi, totally denying that he was at their house in XXX when the rape happened. We had consistently held that for alibi to prosper, it is not enough to prove that the defendant was somewhere else when the crime was committed, but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.[17] This, accused-appellant failed to do. Although defense witness Guinonoy testified that he was with accused-appellant in Chapeh on March 10, 2001, he also acknowledged that the travel time of one to two hours from Chapeh to XXX does not pose an insurmountable barrier for accused-appellant to actually take the trip from Chapeh to XXX and back after committing the crime. Clearly, it was not physically impossible for accused-appellant to be present at the scene of the crime at the time of its commission.

As for the testimonies of the other defense witnesses, the RTC aptly observed and we quote:

> For the second witness [Maria Pin-ag], her testimony showed that she had no actual knowledge who slept where, much less who did what during the night as she left the workplace at about 5:00 in the afternoon.
>
> As for the third witness [Emilia Nitokyap], her story is so implausible as to merit serious consideration, let alone belief as it runs counter to natural human behavior especially for people living in the rural areas. For one it is incredible that she, a resident of Kinakin, would not

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15 *People v. De Guzman*, 423 Phil. 313, 330 (2001).
16 Id. at 331.
17 *People v. Malejana*, 515 Phil. 584, 597 (2006).

> know that the person she is looking for had been working for a month or so in Kinakin, the Barangay where she lives, so that she had to go to his house to look for him. Further, one would not normally start a trip so she could arrive at night time in her destination in a place where hiking is the main means of mobility and where the destination is a few hours away. Still further, a female would not just sleep over in the house of somebody unrelated. Normally, people would rush back to their homes to avoid any intrigues and also to be with their family. It is also unnatural for this alleged visitor to estimate the age of one of the children she purportedly saw at the house and not the other one when she alleged that she slept there. It is quite obvious that she was no where near the house of Lino Paldo on the night of the incident.
>
> As for the accused, his account that he had three visitors on that fateful day, two of whom did not go home to their families but instead slept with him is not worthy of belief. His fixation on the day of the incident, March 10, 2001[,] betrays a rehearsed testimony to fit with similarly manufactured testimonies of ill motivated witnesses. While the accused could remember the day of March 10, 2001, he could not tell what day came before. Nor could he remember the day he started work. Indeed it is difficult to etch into memory what did not transpire.[18]

It is an established rule that when it comes to the issue of credibility of witnesses, the appellate courts generally will not overturn the findings of the trial court. They are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court.[19] In this case, we find no cogent basis to depart from the general rule.

The guilt of accused-appellant having been established beyond reasonable doubt, we now discuss the penalty to be imposed upon him.

Pursuant to Article 266-B(1) of the Revised Penal Code, as amended, the qualifying circumstances of minority and relationship must concur. As these circumstances raise the penalty of the crime to death, great caution must be exercised in their evaluation. For these circumstances to be appreciated, both must be specifically alleged in the information and duly proved during the trial with equal certainty as the crime itself.[20]

The Information filed against accused-appellant explicitly alleged that victim AAA was eight years old and that accused-appellant is her father. The next question to be resolved is whether these circumstances had been duly proven by the prosecution.

There seems to be no dispute as to the relationship of AAA and accused-appellant. During the pre-trial conference, one of the stipulations agreed upon by the parties was that accused-appellant is the father of AAA.

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18 CA *rollo*, p. 87.
19 *People v. Alo*, 401 Phil. 932, 943 (2000).
20 *People v. Antonio*, 447 Phil. 731, 743 (2003).

During trial, AAA testified that accused-appellant was her father,[21] while BBB reiterated the fact in her own testimony.[22] Accused-appellant himself admitted on the witness stand that AAA is his daughter.[23]

As to AAA's age, it is incumbent upon the prosecution to establish that she was still a minor at the time of rape, meaning, she was under 18 years of age.

What the defense herein questioned at the pre-trial conference was whether AAA was actually eight years old at the time of the alleged rape, but it had actually agreed to stipulate that AAA was then a minor.

Also, the prosecution had a copy of AAA's birth certificate stating that she was born on February 8, 1993, making her eight years old when she was raped by accused-appellant on March 10, 2001. The birth certificate was marked as evidence for the prosecution during the pre-trial conference and was incorporated into the records of the case,[24] but the prosecution failed to formally offer the same as evidence to the court.

After noting the divergent rulings on the proof of the victim's age in rape cases, we laid down in *People v. Pruna*[25] certain guidelines in appreciating age, either as an element of the crime or as qualifying circumstance, to wit:

> 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;
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> 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;

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21 TSN, May 17, 2006, p. 4.
22 TSN, March 21, 2007, pp. 2-3.
23 TSN, February 21, 2008, p. 3.
24 Records, p. 6.
25 Supra note 14 at 470-471.

> 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. (Citation omitted.)

To paraphrase *Pruna*, the best evidence to prove the age of a person is the original birth certificate or certified true copy thereof; in their absence, similar authentic documents may be presented such as baptismal certificates and school records. If the original or certified true copy of the birth certificate is not available, credible testimonies of the victim's mother or a member of the family may be sufficient under certain circumstances. In the event that both the birth certificate or other authentic documents and the testimonies of the victim's mother or other qualified relative are unavailable, the testimony of the victim may be admitted in evidence provided that it is expressly and clearly admitted by the accused.[26]

Hence, the presentation of the birth certificate is not an all-exclusive requisite in proving the age of the victim. Certainly, the victim's age may be proven by evidence other than that. As we held in *People v. Tipay*[27]:

> This does not mean, however, that the presentation of the certificate of birth is at all times necessary to prove minority. The minority of a victim of tender age who may be below the age of ten is quite manifest and the court can take judicial notice thereof. The crucial years pertain to the ages of fifteen to seventeen where minority may seem to be dubitable due to one's physical appearance. x x x.

In *People v. Boras*[28] we further ruled that:

> The testimony of the mother as to the age of her child is admissible in evidence for who else would be in the best position to know when she delivered the child. Besides, the court could very well assess whether or not the victim is below twelve years old by simply looking at her physique and built.

During trial, BBB, testified that her daughter AAA was born on February 9, 2001 and was eight years old at the time of the rape. AAA herself categorically stated in her Sworn Statement and Supplemental Sworn Statement, executed on June 1, 2001 and October 6, 2001, respectively, that

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26 *People v. Cayabyab*, 503 Phil. 606, 618 (2005).
27 385 Phil. 689, 718 (2000).
28 401 Phil. 852, 864 (2000).

she was then eight years old and a Grade III pupil. BBB's testimony and AAA's declaration as to AAA's age are consistent with AAA's statement when she took the witness stand on May 17, 2006 that she was already 13 years old and a second year high school student. Even accused-appellant, in his testimony before the trial court, confirmed that AAA was 8 years old in March 2001.[29] Indeed, accused-appellant, having personal knowledge of his own daughter's age, offered unsolicited, independent, and categorical declaration on the same, that is in accord with the claim of AAA and BBB.

As the rape of AAA was qualified by AAA's minority and accused-appellant's paternity, the Court of Appeals was correct in determining that the penalty prescribed for such a crime under Article 266(B) of the Revised Penal Code, as amended, is death. However, as the appellate court also explained, Republic Act No. 9346 has prohibited the imposition of the death penalty, so that the proper penalty that can be imposed upon accused-appellant in lieu of the death penalty is *reclusion perpetua*, without eligibility for parole.

Lastly, we affirm the award to AAA of ₱75,000.00 civil indemnity, ₱75,000.00 moral damages, and ₱30,000.00 exemplary damages, in line with jurisprudence.[30] In addition, we expressly impose an interest of 6% per annum on the aggregate amount of damages awarded from finality of this judgment until full payment of the same.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 04064 is **AFFIRMED with MODIFICATION**, expressly subjecting the aggregate amount of damages awarded in AAA's favor to interest at the legal rate of 6% per annum from the date of finality of this Decision until it is fully paid.

SO ORDERED.

Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

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29 TSN, February 21, 2008, p. 12.

30 *People v. Zafra*, G.R. No. 197363, June 26, 2013.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
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