Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

ATILANO AGATON y OBICO,
Accused-Appellant.

G.R. No. 251631

Present:

PERALTA, *C.J.*, *Chairperson*,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:

AUG 2 7 2020

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DECISION

PERALTA, *C.J.*:

Before us is an appeal from the Decision[1] dated August 20, 2019 of the Court of Appeals (*CA*) in CA-G.R. CEB CR. HC No. 02949, affirming with modification the Decision[2] dated April 18, 2018 of the Regional Trial Court of Tacloban City in Criminal Case No. 2001-12-773, finding accused-appellant Atilano Agaton y Obico guilty beyond reasonable doubt of the special complex crime of Robbery with Rape.

This Court notes that in *People v. Evangelio, et al.*,[3] whose factual antecedents are identical to those of the case at bench, we affirmed the Decision of the CA finding Joseph Evangelio guilty beyond reasonable doubt of Robbery with Rape. At the time, however, accused Edgar Evangelio and

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1 *Rollo*, pp. 5-19. Penned by Associate Justice Gabriel T. Ingles, with the concurrence of Associate Justices Edward B. Contreras and Alfredo D. Ampuan.

2 CA *rollo*, pp. 44-69.

3 672 Phil. 229 (2011).

appellant had not yet been brought to trial because they were facing another criminal charge and detained at the Bacolod City District Jail.

Upon arraignment on August 18, 2009,[4] Edgar pleaded *guilty*, while appellant pleaded *not guilty* to the crime of Robbery with Rape as charged in the Information[5] dated December 3, 2001, which reads:

> The undersigned City Prosecutor of the City of Tacloban accuses EDGAR EVANGELIO Y GAL[L]O, JOSEPH EVANGELIO, ATILANO AGATON y OBICO, and NOEL MALPAS Y GARCIA of the crime of Robbery With Rape, committed as follows:
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> That on or about the 3rd day of October, 2001, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, with intent to gain and armed with a handgun and deadly/bladed weapons forcibly enter the inhabited house/residence of [BBB][6] and while inside, by means of violence and intimidation using said arms on the latter and the other occupants therein, and without the consent of their owners did, then and there wil[l]fully, unlawfully and feloniously, take, and carry away from said residence the following personal properties belonging to:
>
> (a) [BBB]:
>
> - Two Saudi-gold necklace with pendant with a combined value of ₱25,000 more or less;
> - Saudi-gold bracelet valued at ₱25,000;
> - Leather wallet containing ₱1,500 cash; and
> - Two shoulder bags with a combined value of ₱2,000.
>
> (b) [CCC:]
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> - One tri-colored gold necklace (choker) valued at ₱50,000;
> - One yellow gold necklace (choker) valued at ₱5,000;
> - One gold necklace with Jesus Christ['s] head pendant valued at ₱12,000;

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4 Records, pp. 280-281.

5 *Id.* at 4-6.

6 The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

- One gold necklace with star diamond pendant valued at ₱8,000;
- One gold necklace, tri-colored cross diamond valued at ₱13,000;
- Three tri-colored bracelet (gold) with diamond valued at ₱18,000;
- Three tri-colored bracelet (twisted) valued at ₱15,000;
- One gold bracelet with diamonds valued at ₱60,000;
- One gold bracelet (dangling) valued at ₱4,000;
- One gold bracelet (chain) valued at ₱7,000;
- Five sets earrings and rings valued at ₱45,000;
- One set earrings and ring (diamond Solitaire) valued at ₱45,000;
- Two black colored wristwatch (Pierre Cardin) valued at ₱25,000;
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- [T]wo gold plated wristwatch (Pierre Cardin) valued at ₱25,000; and
- One gold bracelet (chain) valued at ₱4,000[.]

and -

(c) [DDD:]

- Instamatic Camera, Olympus brand.

to the damage and prejudice of said owners to the extent of the value of their respective properties above indicated.

That on the occasion of the said robbery and in the same house/residence, accused, by means of force and intimidation and using the said handgun and deadly/bladed weapons, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of [AAA], a 17 year old minor, against her will and consent and at a time when the latter lost consciousness after her head was banged on the bathroom floor.

CONTRARY TO LAW.[7]

The prosecution presented AAA as its first witness and moved to adopt her earlier testimony, presented during the trial of Joseph. She was likewise made to identify Edgar and appellant. During the hearing, the trial court ordered that the former plea of *guilty* of Edgar be considered as withdrawn and a plea of *not guilty* be reinstated. Other prosecution witnesses included BBB, CCC, Dr. Angel Cordero and Police Inspector Arturo Abuyen.

The version of the prosecution is as follows:

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7 Records, pp. 4-6.

At around 6:30 p.m. of October 3, 2001, AAA was cooking when two persons, armed with a firearm and a knife, entered through the kitchen door. They then held AAA and told her to keep quiet and brought her to the living room. When two more persons, also with knives, arrived, AAA and the rest of the household, namely, EEE, FFF, GGG, HHH, III, JJJ and KKK, were brought to the living room, hogtied, and their eyes covered with tape. They were all separated and brought to different parts of the house. AAA's eyes were only partly covered, thus enabling her to see one of her companions in the house get hit on the head with a firearm, leaving her unconscious. Subsequently, AAA and EEE were brought to the bathroom by Joseph and Noel Malpas. But EEE was then brought outside again when Joseph and Noel started removing AAA's clothing. When she tried to resist them, AAA's head was knocked twice against the cement wall, causing her to faint.[8]

Upon gaining consciousness, AAA discovered that she was half-naked, and felt pain in her knees, head, stomach and vagina. She realized that the blood in the bathroom came from her vagina. Later, some of her companions in the house entered the bathroom to untie her hands, remove the tape from her eyes and carry her out to the living room. By this time, the four men had already left the house.[9]

AAA was examined the next day by Dr. Angel Cordero of the Philippine National Police Crime Laboratory whose findings were compatible with AAA having had recent sexual intercourse.[10]

For its part, the defense presented Edgar and appellant as its witnesses, who interposed the defenses of alibi and denial.

During the hearing on June 18, 2016, Edgar and appellant manifested their intention to voluntarily plead guilty to Robbery. After searching questions, the trial court was convinced that they freely and voluntarily entered a plea of guilty to Robbery only.[11]

On January 10, 2018, the trial court received a letter[12] from the Bureau of Jail Management and Penology, Tacloban City, informing it that Edgar had died that day. Accordingly, the trial court issued an Order[13] dismissing the case against him on the ground that death of an accused extinguishes his criminal liability.

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8 CA *rollo*, pp. 49-50.
9 *Id.* at 50.
10 *Id.* at 51-52.
11 *Id.* 102.
12 Records, p. 454.
13 *Id.* at 456.

On April 18, 2018, the trial court rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, Judgment is hereby rendered finding the accused ATILANO AGATON y OBICO guilty beyond reasonable doubt of the special complex crime of Robbery with Rape and is hereby sentenced to a penalty of *reclusion perpetua* without eligibility for parole pursuant to Republic Act No. 9346. He is ordered to return the pieces of jewelry and valuables taken from the spouses [BBB] and [CCC] as enumerated in the Information dated December 3, 2001. Should restitution be no longer possible, accused shall pay the spouses Aya-ay the value of the stolen pieces of jewelry and valuables in the amount of PhP336,000.00. He is further directed to pay [AAA] the amounts of PhP75,000.00 as civil indemnity, PhP75,000.00 as moral damages and PhP30,000.00 as exemplary damages. Interest at the rate of six percent (6%) per annum is imposed on all the damages awarded in this case from date of finality of this judgment until fully paid.[14]

On appeal, the CA affirmed the decision of the trial court, but increased the award of civil indemnity, moral and exemplary damages to ₱100,000.00 each,[15] in view of the guidelines laid down in *People v. Jugueta*.[16]

On September 13, 2019,[17] appellant, through the Public Attorney's Office, appealed the Decision of the CA to this Court, assigning the following error in his appeal, initially passed upon by the CA:

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[18]

In his brief, appellant averred that his plea of guilt merely involved his intention to rob the house of spouses BBB and CCC, but did not extend to successfully taking the properties therein. He alleges that other than the self-serving declaration of the spouses that personal properties were taken from them, there is no other evidence that could support such claim.[19] In his testimony, he stated that they were not able to take anything because somebody suddenly came to the house.[20]

Appellant's contention is devoid of merit.

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14 CA *rollo*, pp. 68-69.
15 *Rollo*, p. 18.
16 783 Phil. 806 (2016).
17 *Rollo*, p. 112.
18 CA *rollo*, p. 37.
19 *Id.* at 39.
20 *Rollo*, p. 10.

In *Evangelio*, we ruled that the prosecution was able to establish that all the accused, herein appellant included, took the pieces of jewelry and valuables of the spouses by means of violence and intimidation. They barged into the house of the victims, armed with a handgun and knives, and tied the hands and feet of the members of the household. The perpetrators then asked for the location of the pieces of jewelry and valuables. BBB was also tied and was struck in the head with a gun, causing him to fall face down on the floor with blood oozing from his left eyebrow. He was able to see the perpetrators going out of the house carrying bags and the jewelry box of his wife. There is no doubt, therefore, that appellant is liable for the robbery.

As regards the allegation of rape, appellant argues that the same was not proven beyond reasonable doubt. According to him, AAA was not inside the house at the time of the incident and he did not witness the alleged rape being committed. Hence, he could not have had the chance to prevent the same considering that he was totally unaware of the same being committed.[21]

We held in *Evangelio* that although AAA did not exactly witness the actual rape because she was unconscious when it happened, the following circumstantial evidence shows that she was indeed raped: *first*, while two of the robbers were stealing, Joseph and one of the robbers brought AAA inside the comfort room; *second*, inside the comfort room, AAA was stripped of her clothes and panty; *third*, when AAA resisted and struggled, Joseph and the other robber banged her head against the wall, causing her to lose consciousness; *fourth*, when she regained consciousness, the culprits were already gone and she saw her clothes and panty strewn at her side; and *fifth*, she suffered pain in her knees, head, stomach and, most of all, in her vagina which was then bleeding.[22]

The CA affirmed the trial court's findings that Joseph and Noel were the ones who brought AAA to the comfort room and stripped her of her clothing in the course of the robbery,[23] and that there is no convincing evidence of the actual participation of appellant in the rape.[24] The presence of the aggravating circumstances of band and dwelling was likewise affirmed. Indeed, it is settled that when the factual findings of the trial court are confirmed by the CA, said facts are final and conclusive on this Court, unless the same are not supported by the evidence on record.[25]

However, we disagree with the CA that appellant should be implicated in the rape for the reason that he was positively identified as one of Joseph's

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21 CA *rollo*, p. 39.

22 *People v. Evangelio, et al.*, 672 Phil. 229, 243 (2011).

23 *Rollo*, p. 106.

24 *Id.* at 66.

25 *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 618.

companions inside the house. We also disagree with the CA that appellant had the opportunity to stop the other two accused from raping AAA, considering that the same is not supported by the evidence on record. While the trial court found that AAA heard the voice of appellant, this does not prove that appellant had the opportunity to attempt to prevent the rape.

On cross-examination during the trial of Joseph, AAA stated that she does not know what the other robbers did because, after being hogtied in the living room, she and EEE were brought to the comfort room.[26]

When AAA was recalled to the witness stand more than a dozen years later, during the trial of appellant, she merely identified the voice of appellant, but did not say at what point she heard him speak during the robbery, to wit:

PROS. MACALALAG:

> We would like to adopt the direct examination, the re-direct examination that is found in the record, your honor and we will just ask the witness [AAA] to identify the accused in this case Edgar Evangelio and Atilano Agaton.

COURT:

> The Court takes note of the manifestation of the prosecutor and inasmuch as the testimony of this witness is intact, the Court will allow questions only on the identification of the two accused.

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COURT:

Q Of the two accused here, who of them raped you?
A (no answer)

PROS. MACALALAG:

> Your honor, she lost her consciousness at the time she was raped and she was only able to find out that she was raped when she woke up without a panty.

COURT:

Q Who brought you to this bedroom in the house of the [spouses BBB and CCC] before you were raped?
A I could not identify who because I was blindfolded.

Q Could you not recall any voice which you could identify among those inside the courtroom?
A Yes, your honor.

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26 CA *rollo*, p. 50.

Q Who?
A The voice of Atilano Agaton.[27]

There was also no testimony to the effect that appellant saw AAA being brought to the comfort room or being stripped of her clothing—this despite AAA's testimony that she could still see because Joseph and Noel were not able to fully cover her eyes.[28] Otherwise, appellant would have had the opportunity to attempt to prevent the rape.

Furthermore, FFF testified that the house where the robbery took place was an elevated house and that while she was blindfolded, her niece was brought upstairs where the pieces of jewelry and firearm are kept, to wit:

Q How many storey is that house?
A It is elevated house and there is one room upstair[s].

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Q While you were there at the bedroom with masking tape all over your head have [you] noticed anything that transpired?
A I heard Edgar Evangelio asking my nieces where did your father keep the jewelries and firearm.

Q Did your nieces answered?
A My niece replied it is upstairs.

Q What happened next?
A Edgar said come with me.

Q And after that what happened next?
A I heard that my niece was brought upstairs since she was holding on my left arm and heard the footsteps.

Q About the other members of the household were you able to know what happened to them?
A I can only [hear] the noises afterwards [AAA] shouted calling my name.[29]

This is in consonance with our finding in *Evangelio* that while some robbers went upstairs and proceeded to ransack the house, the others brought AAA into the comfort room and sexually abused her, then they left the house together carrying the loot. Considering that the rape occurred at the first floor while the ransacking occurred at the second floor, there is reasonable doubt that appellant was aware of what was going on downstairs, especially because AAA's shouts came afterwards.

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27 TSN, pp. 416-417.
28 Records, p. 120.
29 *Id.* at 71-72.

On cross-examination, appellant alleged that he did not see AAA inside the house and that it was only during the trial that he learned that a rape had occurred on the occasion of the robbery, to wit:

Q Now you are denying of a rape incident, so when you said you are denying of rape in the house of [the spouses BBB and CCC], do you mean to say that there was actually a rape incident that took place but you just did not participate in that rape incident?
A Nothing happened.

Q You mean to say that you were not able to see an incident of rape in the house of the [spouses BBB and CCC]?
A I did not.

Q But you were informed that there was a fact of rape incident that transpired on that day?
A I never heard, I only heard about that here during the hearing.

xxxx

COURT: From the court.

xxxx

Q You said that you did not rape [AAA]?
A I did not.

Q Before the incident did you already know [AAA]?
A I do not know her.

Q When for the first time did you come to know her?
A Here, during the hearing.[30]

While appellant's mere denial that he was aware of the rape during the robbery is inherently weak, it is not bankrupt of weight since the same was confirmed on cross-examination and, more importantly, since the prosecution failed to discharge its burden of showing by positive proof that he was aware.

In considering the defenses of denial and alibi, we held in *Lejano v. People*:[31]

> But not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. So how can such accused penetrate a mind that has been made cynical by the rule drilled into his head that a defense of alibi is a hangman's noose in the face of a witness positively swearing, "I saw him do it."? Most judges believe that such assertion automatically dooms an alibi which is so easy to fabricate. This quick stereotype thinking, however, is

30 TSN, pp. 515-520.
31 652 Phil. 512 (2010).

> distressing. For how else can the truth that the accused is really innocent have any chance of prevailing over such a stone-cast tenet?
>
> There is only one way. A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job of deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused's claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can. The lying witness can also say as forthrightly and unequivocally, "He did it!" without blinking an eye.[32]

Thus, if found credible, the defenses of denial and alibi may, and should, be considered complete and legitimate defenses. The burden of proof does not shift by the mere invocation of said defenses; the presumption of innocence remains in favor of the accused.

It is a settled rule that when conspiracy is established between several accused in the commission of the crime of robbery, they would all be equally culpable for the rape committed by anyone of them on the occasion of the robbery, unless anyone of them proves that he endeavored to prevent the others from committing rape.[33] By removing culpability for the complex crime from an accused who endeavors to prevent the rape, the law recognizes the less perverse state of his mind vis-à-vis that of the perpetrator of the rape and that of his co-accused who did not even attempt to prevent the same despite an opportunity to do so.

In *United States v. Tiongco*,[34] we affirmed the conviction of two robbers for Robbery with Rape even if they took no part in the rape because they made no opposition nor prevented their co-accused from consummating the rape. In *People v. Merino,*[35] we found the accused to be equally liable for the rape because he was aware of the dastardly act being performed by his co-accused but merely told the latter to hurry.

In *People v. Canturia,*[36] however, we declined to hold some of the robbers liable for the rape because while the evidence convincingly shows a conspiracy to commit only robbery among the accused, there is no evidence that the other members of the band were aware of the lustful intent of the perpetrator of the rape and his consummation thereof so that they could have attempted to prevent the same. To be equally responsible for the rape, there should be positive proof that they abetted or, at least, were aware of the rape.

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32 *Id.* at 581.
33 *People v. Suyu*, 530 Phil. 569, 596 (2006); citation omitted.
34 37 Phil. 951 (1918).
35 378 Phil. 828 (1999).
36 315 Phil. 278 (1995).

Positive proof is not merely an inference drawn more or less logically from a hypothetical fact.[37] It is proof beyond reasonable doubt.[38] Absent positive proof, mere presumptions and inferences, no matter how logical and probable, would not be enough.[39]

In *People v. Anticamara, et al.*,[40] echoing our ruling in *Canturia*, we ruled that there was no evidence to prove that the accused was aware of the rape and, therefore, could have prevented the same. Thus, we found the accused guilty of the crime of kidnapping and serious illegal detention instead of the special complex crime of kidnapping and serious illegal detention with rape.

In *People v. Villaruel*,[41] we found that there is neither allegation nor evidence that the other co-accused also raped the victim or assisted the perpetrators in committing the rape. Consequently, they cannot be held guilty of robbery with rape, but only of robbery.

In *People v. Mendoza*,[42] we held that for the accused to be convicted only of the crime of robbery, he must prove not only that he himself did not abuse the victim but that he tried to prevent the rape. The accused cannot seek refuge in our ruling in *Canturia* when the evidence shows that he was indeed aware.

In *People v. Belmonte,*[43] we ruled that the act of endeavoring to prevent the commission of the lustful act presupposes that there was an opportunity to do so. Hence, where the accused did not prevent the commission thereof despite an opportunity to do so, he is equally culpable for the rape committed by anyone of them on occasion of the robbery.

In fine, the long line of jurisprudence on the special complex crime of Robbery with Rape requires that the accused be aware of the sexual act in order for him to have the opportunity to attempt to prevent the same, without which he cannot be faulted for his inaction. Further, there must be positive proof to show such awareness.

Although we made a pronouncement in *Evangelio* that there was no showing that the other accused, including herein appellant, prevented Joseph

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37 *People v. Latag*, 465 Phil. 683, 695 (2004).

38 *People v. Osianas, et al.*, 588 Phil. 615, 635-636 (2008); and *People v. Rodas*, 558 Phil. 305, 323 (2007).

39 *People v. Gerry Agramon*, G.R. No. 212156, June 20, 2018.

40 666 Phil. 484 (2011).

41 330 Phil. 79 (1996).

42 354 Phil. 177 (1998).

43 813 Phil. 240 (2017).

from sexually abusing AAA, the record is bereft of any positive proof that he was aware of the act. The fact that he was upstairs while the rape was occurring lends even more credence to the absence of awareness.

The accused who is aware of the lustful intent or sexual act of his co-accused but did not endeavor to prevent or stop it, despite an opportunity to do so, becomes complicit in the rape and is perfectly liable for Robbery with Rape. On the other hand, for an accused who is totally ignorant of the same and who did not merely choose to turn a blind eye, it could not have been the intent of the law to punish him as severely as those who committed the sexual act or who were aware thereof but were indifferent to its commission. He shall, therefore, be held liable only for Robbery, as in the case at bench.

For lack of positive proof that he was aware of the rape, appellant shall only be liable for robbery under paragraph 5, Article 294 of the Revised Penal Code, punishable by *prision correccional* in its maximum period to *prision mayor* in its medium period. Due to the presence of two aggravating circumstances, the proper penalty should be *prision mayor* in its medium period. Applying the Indeterminate Sentence Law, appellant should be imposed the indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as minimum penalty, to nine (9) years and four (4) months of *prision mayor* medium, as maximum penalty.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated August 20, 2019 in CA-G.R. CEB CR. HC No. 02949 is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant Atilano Agaton *y* Obico is found **GUILTY** beyond reasonable doubt of the crime of Robbery in band, defined and punished under Article 294, in relation to Article 295, of the Revised Penal Code, and is hereby sentenced to suffer an indeterminate prison term of four (4) years and two (2) months of *prision correccional* medium, as minimum penalty, to nine (9) years and four (4) months of *prision mayor* medium, as maximum penalty.

The period of his preventive imprisonment shall be credited in his favor in accordance with Article 29 of the Revised Penal Code, as amended by Republic Act No. 10592.

He is ordered to return the pieces of jewelry and valuables taken from the spouses BBB and CCC as enumerated in the Information dated December 3, 2001. Should restitution be no longer possible, appellant shall pay the spouses BBB and CCC the value of the stolen pieces of jewelry and valuables which have not yet been returned by him or his co-accused.

SO ORDERED.

DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
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.

DIOSDADO M. PERALTA
Chief Justice