



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 240750

Present:

- versus -

LEONEN, J.,**
 HERNANDO, *Acting*
Chairperson,***
 INTING,
 DELOS SANTOS, and
 LOPEZ, J., JJ.

XXX,*

Accused-Appellant.

Promulgated:

June 21, 2021

Mis-DCBatt

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RESOLUTION

LOPEZ, J., J.:

Section 13, Rule 110 of the Rules of Court provides that an information must only charge one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses. The remedy of the accused is to move to quash the information before entering his plea. If the accused fails to move to quash the duplicitous information, it would be considered as a waiver. Thus, the Court could convict the accused on all the charges alleged in the information.

The subject of this appeal is the Decision¹ of the Court of Appeals (CA), dated May 10, 2018, which affirmed with modifications the

* Initials were used to identify the accused-appellant pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017, Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances issued on September 5, 2017.

** On wellness leave.

*** Designated Acting Chairperson, per Special Order No. 2828 dated June 21, 2021.

¹ Penned by Associate Justice Edgardo T. Lloren, with Presiding Justice Ruben Reynaldo G. Roxas and Associate Justice Walter S. Ong, concurring; *Rollo*, pp. 3-17.

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Decision dated May 11, 2017 of the Regional Trial Court (RTC), ██████████, ██████████, Misamis Oriental, finding accused-appellant XXX guilty of Statutory Rape.²

The accusatory portion of the Information reads:

That on or about June 8, 2014, at around 11:00 o'clock in the morning, in Barangay ██████████, Municipality of ██████████, Province of Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by using force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA],³ minor, 7 years old, by inserting his finger in her vagina against her consent, to her damage and prejudice.

Contrary to and in violation of Article 266-A and 266-B of the Revised Penal Code.⁴

XXX entered a plea of “*not guilty*” during the arraignment.⁵ As a consequence, trial on the merits followed as a matter of course.

Version of the Prosecution

The facts, as established by the prosecution, and meticulously synthesized in the CA Decision, are as follows:

On June 8, 2014, at around 10:30 in the morning, BBB was at the house of her employer preparing lunch when she saw accused-appellant and her child AAA alone near the poultry farm. When she made a second look, they both suddenly disappeared. This prompted her to rush towards the poultry farm and called for AAA. When AAA descended from the stairs of the poultry house after being called for the third time, she was looking nervous and scared and the two went home after.

She then narrated to her mother in detail her ordeal. She said that accused-appellant called her and directed her to go upstairs in the poultry house where he forced her to sit down on his lap, then made her lie down on the floor, removed her short pants and underwear and thereafter inserted his penis in her vagina, and subsequently his middle finger. This prompted BBB to check the genitalia of AAA which she noticed was reddish.

² The geographical location is blotted out pursuant to Supreme Court Amended Circular No. 83-2015.

³ The identity of the victim or any information which could 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, Providing Penalties for its Violation, 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; and Section 40 of A.M. No. 04-10-11-SC., known as the Rule on Violence against Women and their Children, effective November 15, 2002.” (*People v. Dumadag*, 667 Phil.664, 669 [2011]).

⁴ *Rollo*, p. 4.

⁵ *Id.*

On June 9, 2014, at around 7:00 o'clock in the evening, PO3 Cirilo R. Manco (PO3 Manco) was on duty at the [REDACTED] Police Office when he received a call from the Barangay Captain, [REDACTED], requesting for police assistance regarding a rape incident in Purok [REDACTED], Barangay [REDACTED], [REDACTED]. PO3 Manco with their Deputy Chief of Police Allan Payla and Glenn Pacamalan then proceeded to Barangay [REDACTED]. Upon arrival, they were informed by CCC (victim's father) and AAA that she was raped a day prior by accused-appellant.

Acting on this information, the policemen arrested accused-appellant pursuant to a warrantless arrest so that he will not evade arrest. Subsequently, they brought him to their office for further investigation and proper disposition and likewise resulted to the filing of the case at the Provincial Prosecutor's Office.

On June 16, 2014, Dr. Grystel G. Gadian (Dr. Gadian) examined AAA, and made the following findings in her Living Case Report, *to wit*:

GENITAL EXAMINATION:

Genital Tanner - I (Prepubertal - no pubic hair)
Hyperemic widened hymenal orifice
Hymenal laceration 6 o'clock
No discharge⁶

Version of the Defense

The accused-appellant interposed the defense of denial and *alibi*. The CA condensed his testimony in this manner:

On June 8, 2014, at around 11:00 o'clock in the morning, accused-appellant was working at the poultry farm with CCC then both of them returned to the bunkhouse to have late breakfast with BBB and AAA. After eating, they watched a movie containing adult scenes. This prompted him to tell BBB that the movie is bad for her daughter. BBB then noticed AAA scratching her organ so she reprimanded her.

Thereafter, CCC, AAA and accused-appellant went to the poultry building. While there, AAA asked permission from CCC if she could go up to watch the chickens but she was not allowed.

Accused-appellant proceeded to go upstairs to put (drinking) water for the chickens. A few moments later, AAA was able to go up the building so he thought that CCC carried her through.

While AAA was watching the chickens, BBB saw and called for her. She then jumped off at the sidewalk then ran toward her mother. Because of this, BBB reprimanded and whipped her for climbing the building. AAA then said that accused-appellant raped her, which he denied.

At around 7:00 o'clock in the evening, while he was about to drink coffee at the bunkhouse, policemen arrived and informed accused-appellant

⁶ *Id.* at 5-6.

that they were there because he raped a child. He was later brought to the police station.⁷

Judgment of the RTC

After due proceedings, the RTC rendered a Decision⁸ convicting XXX of Statutory Rape. The RTC gave full credence to the testimony of the minor AAA when she positively identified the accused-appellant as the perpetrator. It also gave full corroborative value on the medical findings of the physician, Dr. Gadian, as well as the testimony of the victim's mother. Lastly, the RTC junked the defense of denial and *alibi* by the accused-appellant.

Thereafter, XXX appealed his conviction. He argued that the trial court erred in convicting him on the basis of a defective information; that his guilt was not proven beyond reasonable doubt; and, that granting *arguendo* that his conviction is warranted, the trial court gravely erred in imposing the penalty of *reclusion perpetua* for the crime charged in the information.

The Ruling of the Court of Appeals

As discussed above, the appellate court affirmed and modified the trial court's conviction of the accused-appellant. The CA affirmed the trial court's conviction for Statutory Rape. In addition, the accused-appellant was also found liable for Rape by sexual assault. In finding accused-appellant liable for the second type of rape, the CA invoked its power to review the entire records of the case to correct errors, though unassigned in the appealed judgment.⁹

The CA further noted that the real nature of the crime charged is determined not by the title of the complaint, nor by the specification of the provision of the law alleged to have been violated, but on the facts recited in the complaint or information. The CA having reviewed the records of the case, it ruled that the accused-appellant may be convicted for both Statutory Rape and Rape by sexual assault based on one information, because there was no procedural challenge made during the arraignment stage.¹⁰ The appellate court quoted the portions of the testimony of AAA to show the commission of the two counts of rape on the same date.

The CA, taking into consideration Republic Act No. 7610, rendered its Decision, the dispositive portion which reads:

⁷ *Id.* at 6-7.

⁸ *Id.* at 7.

⁹ *Id.* at 15.

¹⁰ *Id.* at 9.

WHEREFORE, premises considered, the Decision dated May 11, 2017 of the Regional Trial Court, 10th Judicial Region, ████████ of ████████, Misamis Oriental is **AFFIRMED AND MODIFIED**. Accused-appellant XXX is guilty beyond reasonable doubt of:

1. RAPE BY CARNAL KNOWLEDGE UNDER ARTICLE 266-A, PAR. 1 OF THE RPC AS AMENDED BY R.A. 8353 and shall suffer the penalty of *Reclusion Perpetua*. In addition, accused-appellant is ORDERED to indemnify the minor victim AAA in the amount of Seventy-Five Thousand (₱75,000.00) pesos as civil indemnity, Seventy-Five Thousand (₱75,000.00) Pesos as moral damages, and Seventy-Five Thousand (₱75,000.00) Pesos as exemplary damages. Awards for damages shall earn the legal interest of six percent (6%) per annum from the date of finality of this [Judgment] until fully paid, in conformity with prevailing jurisprudence.

2. RAPE BY SEXUAL ASSAULT UNDER ARTICLE 266-A, PAR. 2 OF THE RPC, AS AMENDED BY R.A. 8353, and sentenced to an indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. He is ORDERED to pay the victim civil indemnity in the amount of ₱30,000.00, moral damages in the amount of ₱30,000.00, and exemplary damages in the amount of ₱30,000.00. Awards for damages shall earn the legal interest of six percent (6%) per annum from the date of finality of this [Judgment] until fully paid, in conformity with prevailing jurisprudence.

He shall be entitled to the full credit of his preventive imprisonment deducted from the term of imprisonment pursuant to existing laws.

SO ORDERED.¹¹

Hence, this appeal.

The Court's Ruling

The appeal has no merit.

Under Article 266-A, paragraph 1, of the Revised Penal Code (*RPC*), as amended by Republic Act No. 8353, the crime of rape may be committed in two ways:

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 otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and

¹¹ *Id.* at 15-16.

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.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

The Court finds that the prosecution sufficiently established the presence of the elements of Statutory Rape under paragraph 1(d) as cited above, viz.: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse. Here, it is undisputed that AAA was a minor below 12 years of age when the accused-appellant had sexual intercourse with her on June 8, 2014.

The Court also finds the accused-appellant guilty of Rape by sexual assault committed on the same occasion. As We have stated in *Pielago v. People*,¹² Article 266-A (2) of the RPC explicitly provides that the gravamen of the crime of Rape by sexual assault, which is the insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice. The unimpeached testimony of AAA about the fact of insertion of accused-appellant's fingers in her vagina is sufficient to convict the latter of the crime.

In *People v. Crisostomo*,¹³ We upheld the conviction of the accused for statutory rape and two counts of Rape by sexual assault committed on the same occasion based on three informations. While in this case, the trial court convicted the accused-appellant for Statutory Rape and the appellate court modified the decision by making the accused-appellant likewise liable for Rape by sexual assault.

We find that the CA aptly convicted the accused-appellant for Rape by sexual assault despite such issue not being raised on appeal. We quote the portion of the appellate court's decision:

In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

¹² 706 Phil. 460, 471 (2013).

¹³ 725 Phil 542 (2014).

Accused-appellant argues that the information describes only one act which is carnal knowledge or rape of the first kind. However, as to the method of commission, it was allegedly done by "inserting his finger in her vagina", which constitutes rape by sexual assault or rape of the second kind. x x x¹⁴

The provision of Section 13, Rule 110 of the 2000 Rules on Criminal Procedure, which was lifted from Section 13, Rule 110 of the 1985 Rules on Criminal Procedure,¹⁵ proscribes the filing of one information containing multiple offenses. The provision reads:

SECTION 13. *Duplicity of the Offense.* — A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.

The prohibition of filing an information with multiple offenses is predicated in the protection of the constitutional right of the accused to be properly informed of the nature and cause of the accusation. If two or more offenses are alleged in the information, the remedy of the accused is to file a motion to quash as provided in Section 3(f),¹⁶ Rule 117 of the 2000 Rules on Criminal Procedure. The failure to object to the information before the arraignment would result in a waiver to challenge the procedural infirmity. As in this case, the accused-appellant failed to file a motion to quash the Information. Thus, the CA correctly convicted him for Statutory Rape and Rape by sexual assault.

Further, the accused-appellant could also file a motion for bill of particulars, if he felt that the allegations in the information are vague, to enable him to properly plead and prepare for trial. Unfortunately, the accused-appellant did not avail of these procedural remedies. On the contrary, he actively participated in the trial. Hence, he is estopped to challenge the defective information.

In *People v. Lindo*,¹⁷ the Supreme Court convicted the accused for both Statutory Rape and Rape by sexual assault based on the following information:

That on or about April 3, 2001, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously,

¹⁴ *Rollo*, pp. 7-8. (Citation omitted).

¹⁵ SECTION 13. *Duplicity of Offense.* — A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses.

¹⁶ SECTION 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:

x x x x

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law; x x x

¹⁷ 641 Phil. 635, 641 (2010).

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with lewd designs and by means of force and intimidation commit sexual abuse to wit: by then and there carrying said [AAA], a minor, 11 years old, and bringing her to a vacant lot, trying to insert his penis into her vagina but said accused was not able to do so, thereafter inserting his penis into her anus, thereby endangering her normal growth and development.

CONTRARY TO LAW.

The Supreme Court explained in the same case that the trial court and the appellate court erred in convicting the accused for only Statutory Rape. The pertinent portion of the Decision reads:

Both the RTC and the CA, however, erred in finding only one count of rape in the present case. It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not. From the information filed, it is clear that accused-appellant was charged with two offenses, rape under Art. 266-A, par. 1 (d) of the Revised Penal Code, and rape as an act of sexual assault under Art. 266-A, par. 2. Accused-appellant was charged with having carnal knowledge of AAA, who was under twelve years of age at the time, under par. 1 (d) of Art. 266-A, and he was also charged with committing "an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person" under the second paragraph of Art. 266-A. Two instances of rape were indeed proved at the trial, as it was established that there was contact between accused-appellant's penis and AAA's labia; then AAA's testimony established that accused-appellant was able to partially insert his penis into her anal orifice. The medical examination also supports the finding of rape under Art. 266-A par. 1 (d) and Art. 266-A par. 2, considering the extragenital injuries and abrasions in the anal region reported.¹⁸

Further, in the case of *People v. VVV*,¹⁹ the information filed against the accused therein reads as follows:

That on or about the 10th day of June, 2010, in the Municipality of [REDACTED], Province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused with lewd, designs, and by means of force and intimidation, did then and there, willfully, unlawfully and feloniously, lay with, and have carnal knowledge with his own daughter [AAA], who is a minor of 15 years old, by then and there inserting his finger in her private parts, against her will and consent.

With the aggravating circumstances that the [victim] is a minor below 18 years old and that the accused is the father of the victim.

CONTRARY TO LAW.²⁰

¹⁸ *Id.* at 647.

¹⁹ G.R. No. 230222, June 22, 2020.

²⁰ *Id.*

In the said case, VVV was convicted by the trial court with the crime of Rape by sexual assault under paragraph 2, Article 266-A of the RPC. On appeal, the CA convicted him of Rape by carnal knowledge and Rape by sexual assault, ratiocinating as follows:

Upon a reading of the Information, the CA observed that accused-appellant was charged with two offenses: (1) rape through sexual intercourse under paragraph 1(a), and (2) rape as an act of sexual assault under paragraph 2, both of Article 266-A of the RPC, as amended. The CA found that accused-appellant was charged with having carnal knowledge of AAA, his 15-year-old daughter, by means of force and intimidation; and, at the same time, he was charged with committing an act of sexual assault against AAA by inserting his finger into her private part. The CA noted that the Information merely lacked the conjunctive word "and." Furthermore, the CA found that the prosecution was able to prove during trial the guilt of accused-appellant for the two charges of rape.²¹

When the case reached this Court, the conviction of VVV for two counts of rape under the aforestated information was sustained, thus:

At the outset, the Court notes that the CA convicted accused-appellant for two counts of Rape, while only one Information was filed against him. Duplicity of offenses charged contravenes Section 13, Rule 110 of the Rules of Court (Rules) which states that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses."

From a reading of the Information dated June 15, 2010, the Court agrees with the CA that accused-appellant was charged with two offenses—the act of having carnal knowledge of AAA constitutes one offense, while the act of inserting his finger into AAA's private part constitutes another. Section 3(f), Rule 117 of the Rules allows the accused to move for the quashal of the information based on the ground of duplicity of the offenses charged. However, under Section 9, Rule 117 of the Rules, accused-appellant is deemed to have waived any objection based on this ground due to his failure to assert it before he pleaded to the Information. Thus, the CA was correct in holding that accused-appellant can be convicted for the two offenses.²²

In the present case, the accusatory portion of the Information filed against XXX contains the same wordings as the Information filed in the case of *People v. VVV*. Considering that carnal knowledge constitutes as an offense under Article 266-A of the RPC, and inserting a finger into the victim's vagina, another offense under the same provision, coupled with the absence of any objection on the part of XXX on the wordings of the Information, it is undeniable that XXX can be convicted of the two offenses, consistent with this Court's pronouncement in *People v. VVV*.

²¹ *Id.*

²² *Id.*

The first charge for Statutory Rape was sufficiently alleged with using the term carnal knowledge. The case of *People v. Bormeo*,²³ cited by the CA in its Decision, defined "*carnal knowledge as the act of a man having sexual bodily connections with a woman; sexual intercourse. An essential ingredient thereof is the penetration of the female sexual organ by the sexual organ of the male. In cases of rape, however, mere proof of the entrance of the male organ into the labia of the pudendum or lips of the female organ is sufficient to constitute a basis for conviction.*" The term carnal knowledge has been countlessly interpreted by this Court as penile penetration of the woman's vagina. It leaves no doubt that the accused knew that he was being charged with inserting his penis into the vagina of the minor victim.

As regards the charge for Rape by sexual assault, We, likewise, find that the information sufficiently alleged the crime. The use of the word "by" is misplaced in the paragraph, since the information started with carnal knowledge, as already discussed above, the term refers to penile penetration. To the mind of the Court, the intention of the prosecution is to use "thereafter," instead of "by," to connote two different counts of rape that was committed on the same occasion. The testimony of the victim of the horrific events is coherent with this premise. The quoted portions are reproduced below:

Q If ever, what did XXX do to you?

A He removed my short and panty.

x x x

Q After XXX removed your short and panty, what then (did) next (sic) he do (next) to you?

A "Tenten".

Q What did XXX do with his *tenten*?

A Inserted "*suksuk*".

Q Where did he insert?

A Witness is pointing to her genitalia (sic).

Q After he inserted his penis, what then did he do next?

A Hand.

Q What did he do with his hand?

A Witness is demonstrating the hand directed to her genitalia.

Q If this is the hand of XXX which part of the hand did he use?

A Witness pointed to the middle finger of the right hand.

Q What did he do to his finger?

A Witness demonstrated that the middle finger was directed to her organ with action "*ge-inane*".

²³

292-A Phil. 691, 704 (1993), citing Black's Law Dictionary, Fifth Ed. 193.

Q Did he insert?

A Witness is nodding her head.

Q What did you feel during that time when he inserted his finger?

A Painful.²⁴

Finally, We reject the defense of denial and *alibi* proffered by the accused-appellant. As correctly ruled by the RTC, and affirmed by the CA, AAA's direct, positive, and straightforward narration of the incidents in detail prevails over accused-appellant's unsubstantiated allegations. Basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the appellate court.²⁵ We find no cogent reason to deviate from the lower courts' factual findings.

To conform with our pronouncement in *People v. Tulagan*,²⁶ We increase the award of damages given by the appellate court as regards the crime of Rape by sexual assault. The accused-appellant is ordered to pay AAA ₱50,000.00 as civil indemnity, moral damages in the amount of ₱50,000.00, and exemplary damages in the amount of ₱50,000.00.

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the Decision of the Court of Appeals in CA-GR. CR HC No. 01703, dated May 10, 2018. Accused-appellant XXX is:

(1) **DECLARED GUILTY** beyond reasonable doubt of Statutory Rape, as defined under Article 266-A of the Revised Penal Code, and penalized with *reclusion perpetua*; and **ORDERED** to **PAY** to AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages; and

(2) **DECLARED GUILTY** beyond reasonable doubt of Rape by sexual assault, as defined under Article 266-A of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610, and is (a) sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum; and (b) **ORDERED** to **PAY** to AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

²⁴ Rollo, p. 11. (Emphases ours).

²⁵ *People v. Leonardo*, 638 Phil. 161, 189 (2010).

²⁶ G.R. No. 227363, March 12, 2019.

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Resolution until fully paid.

The accused-appellant shall pay the costs of suit.

SO ORDERED.


JHOSEPV LOPEZ
Associate Justice

WE CONCUR:

On wellness leave
MARVIC M.V.F. LEONEN
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

ATTESTATION

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


RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Resolution 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