

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 260704

- versus -

Present:

MARLON CONTI y PARAGGUA,  
*Defendant Appellant.*

CAGUIOA, J., Chairperson,  
INTING,  
GAERLAN  
DIMAAMPAO, and  
SINGH, JJ.

Promulgated:

February 27, 2023

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DECISION

SINGH, J.:

This is an appeal from the August 13, 2021 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 13749, which affirmed with modification the September 18, 2019 Judgment<sup>2</sup> of the Regional Trial Court, Branch 4, [REDACTED], Tuguegarao City, Cagayan (RTC) in Criminal Case Nos. 16451 and 16452. The RTC found accused-appellant Marlon Conti y Paraggua (**Marlon**) guilty beyond reasonable doubt of Violation of Section 5(a), in relation to Section 6(a), of Republic Act No. (RA) 9262<sup>3</sup> or the Anti-

<sup>1</sup> Rollo, pp. 5-21. Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Louis P. Acosta and Bonifacio S. Pascua.

<sup>2</sup> Id. at 24-37. Penned by Judge Lylaha L. Abella-Aquino.

<sup>3</sup> Approved on March 8, 2004.

Violence Against Women and their Children Act of 2004, and Statutory Rape under Article 266-A(1)(d) of the Revised Penal Code (RPC).

### *The Facts*

Marlon was charged with Violation of Section 5(a), in relation to Section 6(a), of RA 9262 and Statutory Rape in two separate Informations,<sup>4</sup> the accusatory portions of which read:

#### **Criminal Case No. 16451**

That on or about November 13, 2013, in the Municipality of ██████████, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused MARLON CONTI being the live-in partner of complainant, [BBB], without valuing the dignity of his live-in partner as human being, did, then and there, wilfully, unlawfully and feloniously employ physical violence upon the person of the complainant, by then and there box and maul (sic) the complainant on different parts of her body, thereby inflicting upon her physical injuries which needed medical treatment and attendance and even threaten the herein complainant with a gun, that by virtue of the said acts of the accused, the same cause mental or emotional anguish, public ridicule[,] as well as physical, psychological or emotional distress and humiliation, thereby degrading, (sic) and demeaning the dignity of the complainant as human being

Contrary to law.<sup>5</sup>

#### **Criminal Case No. 16452**

That on or about November 13, 2013 and prior thereto in the municipality of ██████████, province of Cagayan and within the jurisdiction of this Honorable Court, the said accused MARLON CONTI, with lewd design, did, then and there[,] willfully, unlawfully and feloniously sexually abuse one, [AAA], a minor 7 years old by inserting his finger into her vagina, thereafter, have (sic) sexual intercourse with the said complainant against her will.

Contrary to law.<sup>6</sup>

At his arraignment, Marlon pleaded not guilty to the charges. Upon the parties' motion, the cases were jointly tried.<sup>7</sup>

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<sup>4</sup> Records, p. 1; *rollo*, pp. 24-25.

<sup>5</sup> *Rollo*, pp. 24-25.

<sup>6</sup> *Id.* at 25.

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



The prosecution presented the testimonies of the private complainants, AAA\* and BBB,<sup>8</sup> and Dr. Mila-Simangan (**Simangan**), the Municipal Health Officer of ██████████, Cagayan who examined BBB and AAA on November 15, 2013. Marlon and Faustino Rodriguez (**Faustino**), Marlon's co-worker, testified for the defense.<sup>9</sup>

*The Version of the Prosecution*

BBB and Marlon, who were common-law spouses, and AAA, BBB's seven-year-old daughter, lived together in the house of Marlon's mother in ██████████ Cagayan. They all slept in the same room.<sup>10</sup>

On November 13, 2013, while AAA was lying down in their room, Marlon suddenly pulled down and removed her shorts. Thereafter, Marlon inserted his finger into AAA's vagina. This was witnessed by BBB who just came back to their room after using the bathroom outside the house. BBB testified that this was the third time she saw Marlon insert his finger into AAA's vagina.<sup>11</sup>

Marlon then inserted his penis into AAA's vagina. Alarmed by what she saw, BBB hit Marlon's back but Marlon fought back. BBB lost consciousness after Marlon punched her in the abdomen.<sup>12</sup>

When BBB regained consciousness, Marlon was no longer in the house so she reported the incident to Marlon's uncle, who convinced her to go to the house of her grandfather, CCC, the following morning. CCC accompanied BBB and AAA first to the Barangay Hall and then to the police station to file a complaint against Marlon.<sup>13</sup>

In her Medicolegal Report,<sup>14</sup> Dr. Simangan stated that AAA had hymenal lacerations at 5 and 9 o'clock positions.

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\* In line with Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 8505, the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

<sup>8</sup> Also appears as ██████████ in some parts of the *rollo* and records.

<sup>9</sup> *Rollo*, pp. 26 & 28.

<sup>10</sup> TSN, August 31, 2016, pp. 1-3; TSN, November 27, 2017, pp. 2-3.

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

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

<sup>13</sup> Records, p. 6.

<sup>14</sup> *Id.* at 8.

### *The Version of the Defense*

Marlon denied the charges and interposed the defense of alibi. He testified that on November 13, 2013, the alleged date of the incident, he was not home as he spent the night in a warehouse in Buntun, Tuguegarao City, where he was employed.<sup>15</sup> To corroborate Marlon's testimony, the defense called Faustino to the witness stand. Faustino testified that he was working in the same warehouse as Marlon and that they both spent the night in the warehouse on November 13, 2013. However, Faustino also said that he and Marlon slept in different rooms, which were around 15 meters apart. On cross-examination, Faustino further confirmed that he could not see from his room what was happening inside Marlon's room.<sup>16</sup>

### *The Ruling of the RTC*

The RTC convicted Marlon of the crimes charged. The dispositive portion of the RTC Judgment reads:

WHEREFORE, in view of the above findings, accused MARLON y PARAGGUA is hereby found:

1. **GUILTY** beyond reasonable doubt in **Criminal Case No. 16451** for: VIOLATION of REPUBLIC ACT [NO.] 9262, ANTI-VIOLENCE AGAINST WOMEN and THEIR CHILDREN ACT of 2004 under Section 5(a) in relation to Section 6(a), thereof.

Accused shall suffer the penalty of *arresto mayor* or a penalty of imprisonment from one (1) month and one (1) day to six (6) months.

Record shows that accused is under the custody of the Cagayan Provincial Jail, Tuguegarao City since November 19, 2014 and has already served more than the imposable penalty under the law with his continued detention. Accused is therefore considered as having served the full term of his sentence.

Nonetheless, he is ordered to pay a fine in the amount of One Hundred Thousand Pesos (P100,000.00) pursuant to Section 6, last paragraph of RA 9262 and shall report compliance to the court within fifteen (15) days from date of promulgation of this case.

2. **GUILTY** beyond reasonable doubt in **Criminal Case No. 16452** for: STATUTORY RAPE, defined and penalized under [Article] 266-A, 1(d) in relation to [Article] 266-B of the Revised Penal Code, as amended by Republic Act [No.] 8353[.]

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<sup>15</sup> TSN, December 12, 2018, pp. 2-3.

<sup>16</sup> TSN, February 21, 2019, pp. 3-4 & 7.



Accused shall suffer the penalty of *reclusion perpetua* and is likewise ordered to pay the minor victim the amount of seventy-five thousand pesos (P75,000.00) as civil indemnity, seventy-five thousand pesos (P75,000.00) as moral damages, and seventy-five thousand pesos (P75,000.00) as exemplary damages.

In view of the fact that accused was under the custody of [the] Cagayan Provincial Jail, Tuguegarao City since November 19, 2014, the preventive imprisonment of the accused during the pendency of this case shall be credited in full in his favor if he abided with the disciplinary rules imposed upon convicted prisoners.

SO ORDERED.<sup>17</sup> (Emphasis in the original)

The RTC rejected Marlon's defenses of denial and alibi and found BBB's and AAA's testimonies to be sufficient to sustain Marlon's conviction for the crimes charged.

Marlon filed a Notice of Appeal<sup>18</sup> in Criminal Case No. 16452. In his brief<sup>19</sup> before the CA, Marlon assailed the credibility of AAA and BBB claiming that their testimonies were marred with irreconcilable inconsistencies. He also averred that BBB's statements that she still stayed with him despite having seen him insert his finger into her daughter's vagina on two other occasions and that she waited until Marlon inserted his penis into AAA's vagina before stopping him were contrary to human experience and thus incredible.<sup>20</sup>

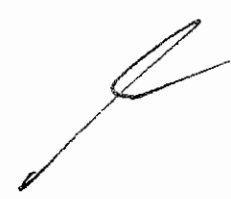
### *The Ruling of the CA*

The CA noted that the Notice of Appeal<sup>21</sup> that Marlon filed with the RTC only pertained to Criminal Case No. 16452, the case for Statutory Rape. Consequently, the CA limited its ruling to Marlon's conviction for Statutory Rape.<sup>22</sup>

According to the CA, the prosecution was able to establish the elements of Statutory Rape. The fact that AAA was under 12 years old at the time of the incident was uncontroverted while the rape was proven by AAA's categorical testimony, corroborated by BBB's eyewitness testimony and Dr. Simangan's medical findings. Thus, the CA denied Marlon's appeal and

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<sup>17</sup> *Rollo*, pp. 36-37.  
<sup>18</sup> *Records*, p. 138.  
<sup>19</sup> *CA rollo*, pp. 15-31.  
<sup>20</sup> *Id.* at 24-28.  
<sup>21</sup> *Id.* at 12.  
<sup>22</sup> *Rollo*, p. 13.



affirmed with modification the RTC Judgment by imposing a 6% per annum interest on the monetary award:

**WHEREFORE**, the appeal is **DENIED**. The judgment of the Regional Trial Court of [REDACTED] (sic), Tuguegarao City, Cagayan Branch 04 (Family Court) dated September 18, 2019 in Criminal Case No. 16452 is **AFFIRMED WITH MODIFICATION**. Accused-appellant **Marlon Conti y Paraggua** is found guilty beyond reasonable doubt of statutory rape, defined and penalized under Article 266-A, 1(d) in relation to [Article] 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as The Anti-Rape Law of 1997. Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and is ordered to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages and P75,000.00 as exemplary damages. Further, the award of damages by the RTC shall earn interest at the legal rate of six percent (6%) per annum from the finality of this judgment until fully paid.

**SO ORDERED.**<sup>23</sup> (Emphasis in the original)

The records of this case were elevated to the Court pursuant to the December 16, 2021 Resolution<sup>24</sup> of the CA, which gave due course to the Notice of Appeal<sup>25</sup> filed by Marlon.

In a Resolution,<sup>26</sup> dated July 25, 2022, the Court directed both parties to file their supplemental briefs. In their respective Manifestations,<sup>27</sup> the parties waived the filing of their supplemental briefs, and instead adopted the briefs they filed before the CA.

### *The Issue*

Did the CA commit any reversible error in affirming Marlon's conviction for Statutory Rape?

### *The Ruling of the Court*

The appeal is devoid of merit. The CA did not commit any reversible error in affirming Marlon's conviction for Statutory Rape under Article 266-A(1)(d) of the RPC. However, considering that the prosecution was also able to establish by proof beyond reasonable doubt that Marlon, before having

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<sup>23</sup> *Id.* at 20-21.

<sup>24</sup> *Id.* at 6.

<sup>25</sup> *Id.* at 3-4.

<sup>26</sup> *Id.* at 48.

<sup>27</sup> *Id.* at 40-42 & 49-51.



carnal knowledge of AAA, also inserted his finger into the latter's vagina, he must likewise be convicted of Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of RA 7610<sup>28</sup> or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

*Statutory Rape under  
Article 266-A(1)(d)*

In order to sustain a conviction for Statutory Rape under Article 266-A(1)(d) of the RPC, the following elements must concur: (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.<sup>29</sup>

The Court concurs with the findings of the RTC, as affirmed by the CA, that the prosecution was able to establish beyond reasonable doubt the foregoing elements. It is undisputed that AAA, having been born on [REDACTED], was under 12 years old when Marlon had sexual intercourse with her on November 13, 2013.

Marlon's defenses of denial and alibi do not persuade. Denial is inherently a weak defense which cannot outweigh positive testimony. A categorical statement that has the earmarks of truth prevails over a bare denial which can easily be fabricated and is inherently unreliable.<sup>30</sup>

As correctly ruled by the RTC, and affirmed by the CA, AAA's direct, positive, and straightforward narration of the incidents in detail, as corroborated by the testimony of BBB and the medical findings of Dr. Simangan, prevails over Marlon's denial and unsubstantiated allegations that he was somewhere else at the time of the commission of the crime.

For the defense of alibi to prosper, the accused must prove that he was at some other place at the time of the commission of the crime and it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.<sup>31</sup> Marlon miserably failed in this regard. Considering Faustino's admission that he and Marlon stayed in different rooms, the Court cannot fault

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<sup>28</sup> Approved on June 17, 1992.

<sup>29</sup> *People v. Ronquillo*, 818 Phil. 641-654 (2017).

<sup>30</sup> *People v. Moreno*, G.R. No. 191759, March 2, 2020, 934 SCRA 111, 123.

<sup>31</sup> *Id.*

the RTC and the CA for not giving credence to Faustino's testimony that Marlon spent the night in the warehouse.

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 the Court, particularly when affirmed by the CA as in this case.<sup>32</sup> As such, the Court finds no cogent reason to deviate from the lower courts' factual findings.

*Sexual Assault under paragraph 2,  
Article 266-A of the RPC in relation to  
Section 5(b) of RA 7610*

The Court finds that Marlon also committed the crime of Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of RA 7610, which is committed when: (1) the victim is a child, male or female, under 12 years of age; and (2) the offender inserts any instrument or object into the genital or anal orifice of the victim.<sup>33</sup>

It can be gleaned from the testimony of AAA and BBB that Marlon first inserted his finger in the vagina of AAA, before inserting his penis. This was also alleged in the Information.

In *People v. Agoncillo*,<sup>34</sup> the Court held that it is possible to convict an offender for Rape under Article 266-A(1)(d) and Rape under Article 266-A(2) for one incident provided that these crimes are properly alleged in the informations.

In *People v. Chingh*<sup>35</sup> (**Chingh**), the Court affirmed the conviction of the accused for Statutory Rape and Rape by Sexual Assault even though only one Information was filed against him. The Court ratiocinated:

The CA correctly found Armando guilty of the crime of Rape Through Sexual Assault under paragraph 2, Article 266-A, of the Revised Penal Code, as amended by Republic Act No. (R.A.) 8353, or The Anti-Rape Law of 1997. From the Information, it is clear that Armando was being charged with two offenses, Rape under paragraph 1 (d), Article 266-A of the Revised Penal Code, and rape as an act of sexual assault under paragraph 2, Article 266-A. Armando was charged with having carnal knowledge of VVV, who was under twelve years of age at the time, under paragraph 1 (d)

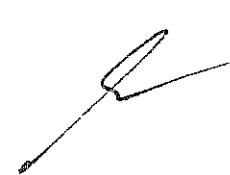
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<sup>32</sup> *People v. Talib-og*, 844 Phil. 1073 (2018).

<sup>33</sup> *People v. Pueyo*, G.R. No. 192327, February 26, 2020, 933 SCRA 522, 532.

<sup>34</sup> 820 Phil. 1194 (2017).

<sup>35</sup> 661 Phil. 208 (2011).





of Article 266-A, and he was also charged with committing an act of sexual assault by inserting his finger into the genital of VVV under the second paragraph of Article 266-A. Indeed, two instances of rape were proven at the trial. First, it was established that Armando inserted his penis into the private part of his victim, VVV. Second, through the testimony of VVV, it was proven that Armando also inserted his finger in VVV's private part.

The Information has sufficiently informed accused-appellant that he is being charged with two counts of rape. Although two offenses were charged, which is a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which states that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Nonetheless, Section 3, Rule 120 of the Revised Rules of Criminal Procedure also states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." Consequently, since Armando failed to file a motion to quash the Information, he can be convicted with two counts of rape.<sup>36</sup> (Citations omitted)

The accusatory portion of the Information in *Chingh* reads:

That on or about March 11, 2004 in the City of Manila, Philippines, [Armando], with lewd design and by means of force, violence and intimidation did then and there willfully, unlawfully and knowingly commit sexual abuse and lascivious conduct upon a ten (10) year old minor child, [VVV], by then and there pulling her in a dark place then mashing her breast and **inserting his fingers in her vagina and afterwards his penis**, against her will and consent, thereby causing serious danger to the normal growth and development of the child [VVV], to her damage and prejudice.

Contrary to law.<sup>37</sup> (Emphasis supplied)

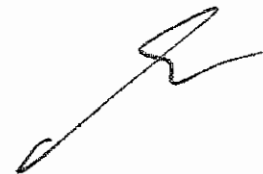
In this case, the Information sufficiently alleged that Marlon inserted his finger into AAA's vagina **and** had sexual intercourse with her. Clearly, the Information charged Marlon with two crimes, in violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure (**Rules**) which provides that an "information must charge only one offense, except when the law prescribes a single punishment for various offense."

Nevertheless, applying Section 3, Rule 120 of the Rules, which states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on

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<sup>36</sup> *Id.* at 219-220.

<sup>37</sup> *Id.* at 212-213.



him the penalty for each offense, setting out separately the findings of fact and law in each offense,” Marlon can be convicted of the two offenses charged in the Information and proven during the trial as he failed to file a motion to quash the Information.

However, instead of Rape by Sexual Assault, the proper nomenclature of the crime committed by Marlon is Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5(b) of RA 7610, based on the Court’s ruling in *People v. Tulagan*<sup>38</sup> (***Tulagan***):

Considering the development of the crime of sexual assault from a mere “crime against chastity” in the form of acts of lasciviousness to a “crime against persons” akin to rape, as well as the rulings in *Dimakuta* and *Caoili*, We hold that **if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be “Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5 (b) of R.A. No. 7610”** and no longer “” of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of R.A. No. 7610,” because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A (2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the impossible penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.<sup>39</sup> (Emphasis supplied, citations omitted)

### *Penalty and Damages*

For Statutory Rape by Sexual Intercourse under Article 266-A(1)(d) the impossible penalty is *reclusion perpetua*.<sup>40</sup> For Sexual Assault under Article 266-A(2) of the RPC, in relation to Section 5(b) of RA 7610, the impossible penalty is *reclusion temporal* in its medium period.<sup>41</sup> Applying the Indeterminate Sentence Law,<sup>42</sup> and consistent with *Tulagan*, the Court sentences Marlon 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-one (21) days of *reclusion temporal*, as maximum.

As to Marlon’s civil liabilities, the lower courts correctly awarded the following damages: PHP 75,000.00 as civil indemnity, PHP 75,000.00 as moral damages, and PHP 75,000.00 as exemplary damages for Statutory Rape under Article 266-A(1)(d) of the RPC in accordance with *People v. Jugueta*.<sup>43</sup>

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<sup>38</sup> 849 Phil. 197 (2019).

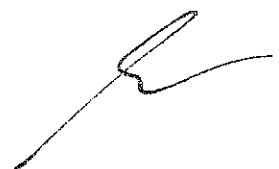
<sup>39</sup> *Id.* at 229.

<sup>40</sup> *Id.* at 249.

<sup>41</sup> *Id.*

<sup>42</sup> Act No. 4103. Approved on December 5, 1933.

<sup>43</sup> 783 Phil. 806 (2016).



However, in view of Marlon's conviction for Sexual Assault under Article 266-A(2) of the RPC, in relation to Section 5(b) of RA 7610, the award of PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, and PHP 50,000.00 as exemplary damages is likewise proper.<sup>44</sup>

**WHEREFORE**, the appeal is **DENIED**. The September 18, 2019 Judgment of the Regional Trial Court, Branch 4, [REDACTED], Tuguegarao City, Cagayan in Criminal Case Nos. 16451 and 16452, as affirmed by the August 13, 2021 Decision of the Court of Appeals in CA-G.R. CR-HC No. 13749, is **AFFIRMED WITH MODIFICATIONS**. The accused-appellant Marlon Conti y Paraggua is found guilty beyond reasonable doubt of:

- (a) Statutory Rape under Article 266-A(1)(d) of the Revised Penal Code, and is sentenced to suffer the penalty of *reclusion perpetua* and **ORDERED TO PAY** private complainant AAA the amounts of PHP 75,000.00 as civil indemnity, PHP 75,000.00 as moral damages, and PHP 75,000.00 as exemplary damages;
- (b) Sexual Assault under Article 266-A(2) of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610 and is 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-one (21) days of *reclusion temporal*, as maximum and **ORDERED TO PAY** private complainant AAA the amounts of PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, and PHP 50,000.00 as exemplary damages.

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

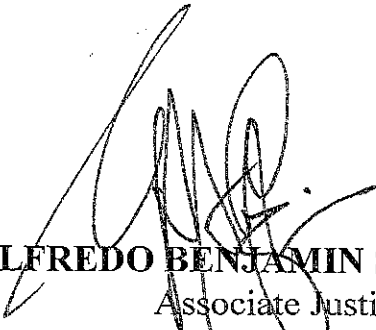
**SO ORDERED.**

  
**MARIA FILOMENA D. SINGH**  
Associate Justice


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<sup>44</sup> *People v. Tulagan, supra.*

**WE CONCUR:**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice  
Division Chairperson



**HENRI JEAN PAUL B. INTING**  
Associate Justice



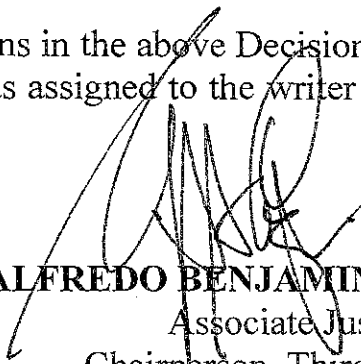
**SAMUEL H. GAERLAN**  
Associate Justice



**JAPAR B. DIMAAMPAO**  
Associate Justice

**ATTESTATION**

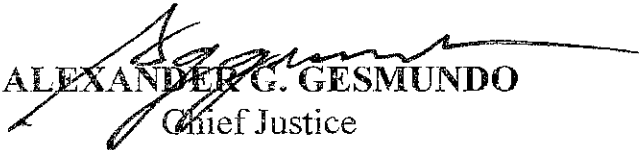
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

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



**ALEXANDER G. GESMUNDO**  
Chief Justice

