



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0277**  
*Plaintiff,* For: Violation of R.A. No. 7877

-versus-

RAMON MAKABENTA MONTALBAN,  
*Accused.*

X-----X

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0278**  
*Plaintiff,* For: Acts of Lasciviousness

-versus-

Present:

RAMON MAKABENTA MONTALBAN,  
*Accused.*

Musngi, J., *Chairperson*  
Pahimna, J.  
Jacinto, J.

Promulgated:

**SEP 23 2022**

X-----X

**DECISION**

**JACINTO, J.:**

This resolves the complaints for Violation of Republic Act (R.A.) No. 7877, otherwise known as the "Anti-Sexual Harassment Act of 1995" and Acts of Lasciviousness, as defined in Article 336 of the Revised Penal Code (RPC), against accused Ramon Makabenta Montalban (Montalban).

**ANTECEDENTS**

These cases originated from a Complaint-Affidavit dated 17 February 2016 filed by Rhodora A. Pimlott before the Office of the Ombudsman (OMB) on the same date, charging accused Montalban, Department Head II of the Pasay City Disaster and Risk Reduction Management Office (DRRMO), of the following:

- a) The act of Sexual Harassment, under Resolution No. 01-0940 or 'Administrative Disciplinary Rules on Sexual Harassment Cases' issued by the Civil Service Commission on May 2001;
- b) The crime of Acts of Lasciviousness punishable by Article 366 (sic) of the Revised Penal Code; and

- c) Violation of the provisions of Republic Act No. 6713, otherwise known as the 'Code of Conduct and Ethical Standards for Public Officials and Employees.'<sup>1</sup>

On 22 March 2016, accused Montalban filed his Counter-Affidavit,<sup>2</sup> denying the accusations against him.

After conducting its preliminary investigation, the OMB issued a Resolution<sup>3</sup> dated 15 May 2017, finding probable cause to indict accused Montalban of the herein cases.

### PROCEEDINGS BEFORE THE COURT

Both *Informations* dated 7 March 2018 were filed with the Court on 6 April 2018. The *Information* in SB-18-CRM-0277 for Violation of R.A. No. 7877, reads in part:

That in April 2015, or sometime prior or subsequent thereto, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, accused **RAMON MAKABENTA MONTALBAN**, a high-ranking public officer, being a City Department Head of the City Government of Pasay, holding the position as Department Head II of the Disaster Risk Reduction and Management Office, committing the crime in relation to office, taking advantage of his official position, did then and there, willfully, unlawfully and criminally demand, solicit, or request a sexual favor from Rhodora A. Pimlott, a subordinate employee over whom accused has authority, influence or moral ascendancy, being the immediate superior/supervisor of the victim, who held the position of Administrative Officer IV and assigned to the Disaster Risk Reduction and Management Office, by grabbing her buttocks, which sexual favor and unwelcome sexual advance resulted in a hostile or offensive working environment for Pimlott.

On the other hand, the *Information* in SB-18-CRM-0278 for Acts of Lasciviousness reads in part:

That in April 2015, or sometime prior or subsequent thereto, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, accused **RAMON MAKABENTA MONTALBAN**, a high-ranking public officer, being a City Department Head of the City Government of Pasay, holding the position as Department Head II of the Disaster Risk Reduction and Management Office, committing the crime in relation to office, taking advantage of his official position, committing the crime through intimidation and with lewd design, did then and there, willfully, unlawfully and feloniously commit a lascivious conduct on Rhodora A. Pimlott by grabbing her butt without her consent and/or against her will, to her damage and prejudice.

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<sup>1</sup> Paragraph 1 of Complaint-Affidavit, Records, Vol. I, pp. 20-33.

<sup>2</sup> Id., pp. 34-65.

<sup>3</sup> Id., pp. 6-18.

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On 13 April 2018, the Court issued a Hold Departure Order<sup>4</sup> (HDO) against the accused, and on 16 April 2018, issued its Resolution<sup>5</sup> finding probable cause to issue a Warrant of Arrest. The corresponding warrant was issued on the same day.<sup>6</sup>

On 24 April 2018, accused Montalban posted bail in SB-18-CRM-0278. No bail was required in SB-18-CRM-0277.<sup>7</sup>

On 15 May 2018, accused Montalban filed a *Motion to Quash Information*<sup>8</sup> on the ground that the "Court has no jurisdiction over the offense charged." Said motion was opposed by the prosecution<sup>9</sup> and was subsequently denied in the Court's 14 June 2018 Resolution.<sup>10</sup>

On 17 August 2018, accused Montalban was arraigned and entered "not guilty" pleas to both charges.<sup>11</sup>

In addition to their respective Pre-trial Briefs,<sup>12</sup> the parties filed their *Joint Stipulations*<sup>13</sup> dated 7 September 2018. The Court then issued the Pre-Trial Order<sup>14</sup> containing the following stipulations made by the parties:

1. That at the time material to the allegation in the *Information*, accused **Ramon Makabenta Montalban** was a public officer, holding the position of Department Head II at the Disaster Risk Reduction and Management Office of the City Government of Pasay (PCRDRRMO);
2. Whenever referred to orally or in writing by the Honorable Court and the Prosecution and/or its witnesses the accused admits that he is the same person being referred to in this case;
3. The identity of the accused as the one charged in the respective *Information*;
4. The existence and due execution of the following documents:
  - a. Memorandum Order No. 040, Series 2015 and dated 18 August 2015 addressed to Ms. Amy Gumboc;
  - b. Reply Memorandum No. 040, Series 2015 and dated 21 August 2015 issued by Ms. Amy Gumboc;

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<sup>4</sup> Records, Vol. I, p. 66.

<sup>5</sup> Id., p. 67.

<sup>6</sup> Id., p. 68.

<sup>7</sup> See Order dated 24 April 2018, id., p. 90.

<sup>8</sup> Dated 11 May 2018, id., pp. 97-114.

<sup>9</sup> *Comment/Opposition* dated 30 May 2018, id., pp. 119-144.

<sup>10</sup> Id., pp. 145-152.

<sup>11</sup> Id., pp. 167-168.

<sup>12</sup> Prosecution's *Pre-trial Brief* dated 16 August 2018, id., pp. 158-164; Accused's *Pre-trial Brief* dated 4 September 2018, id., pp. 173-178A.

<sup>13</sup> Id., pp. 184-192.

<sup>14</sup> Id., pp. 198-206.

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c. Service Record of Ramon Makabenta Montalban.

Thereafter, trial ensued, with the prosecution presenting the testimonies of Rhodora Aldea Pimlott,<sup>15</sup> Marites Villanueva Agbuya,<sup>16</sup> Amy Daura Usman Gumboc,<sup>17</sup> and Atty. Dennis Bernard Nepomuceno Acorda.<sup>18</sup> The testimony of its last witness, Atty. Maverick S. Sevilla,<sup>19</sup> Head of the Pasay City Human Resource Management Office (HRMO), was dispensed with after the parties stipulated on his intended testimony.

On 12 July 2019, the prosecution filed its Formal Offer of Exhibits,<sup>20</sup> and on 23 August 2019, over accused's objections,<sup>21</sup> the Court admitted into evidence the prosecution's Exhibits "A" to "N" and "Q" to "R" for the purposes for which they were offered, but subject to the Court's proper appreciation of their respective probative values.<sup>22</sup>

On 5 September 2019, accused filed a *Motion for Leave to File Demurrer to Evidence*,<sup>23</sup> which was duly opposed by the prosecution.<sup>24</sup> Said motion was eventually denied in the Court's 4 October 2019 Resolution.<sup>25</sup>

Accused thereafter presented six witnesses, in addition to his own testimony,<sup>26</sup> in his defense, *to wit*: Alice A. Fetisan,<sup>27</sup> Ma. Cristina Jimenez Aguilar-Lundang,<sup>28</sup> Joji C. Maranilla,<sup>29</sup> Ronald S. Bacunot,<sup>30</sup> Leigh Ann Kris Andrada,<sup>31</sup> and Susana M. Cruz.<sup>32</sup>

Accused filed his *Formal Offer of Exhibits* on 23 March 2022,<sup>33</sup> while the prosecution filed its Comment thereto on 6 April 2020.<sup>34</sup> On 25 April 2020, the Court admitted into evidence accused's Exhibits "1" to "30" and

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<sup>15</sup> TSN, 19 November 2018.

<sup>16</sup> TSN, 21 January 2019; Judicial Affidavit dated 3 January 2019, Records, Vol. I, pp. 230-236.

<sup>17</sup> TSN, 20 February 2019; Judicial Affidavit dated 15 January 2019, id., pp. 216-226.

<sup>18</sup> TSN, 3 June 2019; Sworn Affidavit dated 1 February 2017, id., pp. 257-260.

<sup>19</sup> Order dated 1 July 2019, Records, Vol. I, pp. 276-277; Sworn Affidavit dated 1 February 2017, id., p. 244.

<sup>20</sup> Id., pp. 280-340.

<sup>21</sup> *Comment/Opposition* dated 22 August 2019, id., pp. 350-355.

<sup>22</sup> Resolution dated 23 August 2019, id., p. 341.

<sup>23</sup> Id., pp. 348-349-A.

<sup>24</sup> Id., pp. 359-367.

<sup>25</sup> Id., pp. 368-370.

<sup>26</sup> TSN, 5 July 2021; Judicial Affidavit dated 27 July 2020, Records, Vol. II, pp. 56-124.

<sup>27</sup> TSN, 20 November 2019; Judicial Affidavit dated 8 November 2019, Records, Vol. I, pp. 386-389.

<sup>28</sup> TSN, 11 March 2020; Judicial Affidavit dated 11 November 2019, Supplemental Judicial Affidavit dated 21 January 2020, id., pp. 406-415.

<sup>29</sup> TSN, 25 January 2021; Judicial Affidavit dated 8 November 2019, Supplemental Judicial Affidavit dated 4 March 2020, Joint Affidavit dated 16 March 2016, id., Vol. II, pp. 7-29.

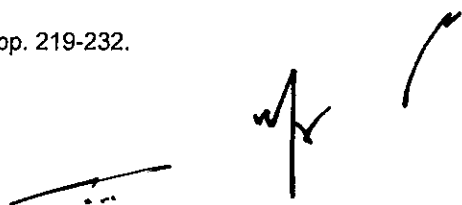
<sup>30</sup> TSN, 5 July 2021; Judicial Affidavit dated 4 March 2020, id., pp. 30-36.

<sup>31</sup> TSN, 8 November 2021; Judicial Affidavit dated 11 November 2019, Supplemental Judicial Affidavit dated 1 September 2021, id., pp. 175-203.

<sup>32</sup> TSN, 14 March 2022; Judicial Affidavit dated 7 March 2022, id., pp. 219-232.

<sup>33</sup> Records, Vol. II, pp. 242-343.

<sup>34</sup> Filed by electronic mail, id., pp. 345-355.



their sub-markings for the purposes for which they were offered but subject to its proper appreciation of their respective probative values.<sup>35</sup>

Thereafter, accused Montalban filed his Memorandum<sup>36</sup> on 16 June 2022, while the prosecution failed to file its own Memorandum despite notice.

### **EVIDENCE FOR THE PROSECUTION**

The prosecution's evidence is primarily based on the testimony of private complainant Rhodora Aldea Pimlott. Her testimony may be summarized as follows:

Between 16 December 2014 to 4 August 2015, she was employed as an Administrative Officer IV at the Pasay City DRRMO;<sup>37</sup> accused Montalban was the Head of Office. On two to five occasions, accused Montalban would clasp her face as if to kiss her, and would put his arms around her shoulder while giving instructions or while introducing her to other Department Heads.<sup>38</sup> Every time he would do so, she would tell accused Montalban that she was uncomfortable with his actions.<sup>39</sup>

One afternoon in April 2015, while Ms. Pimlott was checking the clothes being sold by Marites Villanueva Agbuya along the corridor in front of their office, accused Montalban grabbed her buttocks with both his hands (the incident).<sup>40</sup> Startled, she turned around and remarked, "*Puwet ko 'yan, Sir, bakit mo hinahawakan?*"<sup>41</sup> Accused Montalban, who was then smiling, replied, "*Asa harapan ko eh, anong gagawin ko?*"<sup>42</sup> Feeling humiliated and angry, she went to her mother at the PSWD Office. However, her mother was then talking to somebody else, so she just stayed at the PSWD conference room until the end of the workday.<sup>43</sup>

On the week following the incident, she decided to stay away from accused Montalban's sight by joining rescue groups being sent on deployment.<sup>44</sup> While accused Montalban did not talk to her about the incident, she would later find out that she was being targeted and bullied on social media, particularly, Facebook.<sup>45</sup> She and her mother found out about the Facebook posts made by the accused at almost the same time.

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<sup>35</sup> Resolution dated 25 April 2022, Records, Vol. II, p. 357.

<sup>36</sup> *Id.*, pp. 366-397.

<sup>37</sup> TSN, 19 November 2018, p. 12.

<sup>38</sup> *Id.*, p. 13.

<sup>39</sup> *Id.*, p. 13.

<sup>40</sup> *Id.*, pp. 14-15.

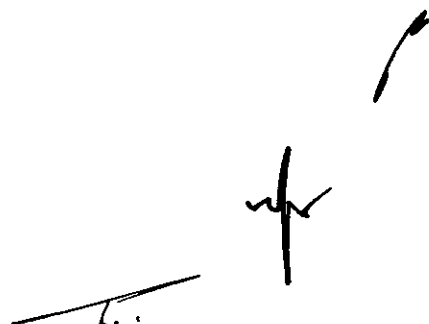
<sup>41</sup> *Id.*, p. 15.

<sup>42</sup> *Id.*, p. 16.

<sup>43</sup> *Id.*, p. 17.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

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It was then that she informed her mother about her predicament in the office, including the sexual advances made by accused Montalban.<sup>46</sup>

She and her mother thereafter consulted a lawyer, who advised them to bring the matter to Atty. Dennis Acorda, Pasay City Administrator.<sup>47</sup> She thus spoke to Atty. Acorda and informed him of the “bullying [and] the harassment” and accused’s act of “grabbing” her buttocks.<sup>48</sup>

Atty. Acorda convened a meeting with Ms. Pimlott, accused Montalban, Atty. Sevilla, Head of the Pasay City HRMO, and Atty. Andres Jimenez, Pasay City Head of the Public Information Office.<sup>49</sup> During the meeting, Ms. Pimlott narrated what transpired between her and accused Montalban. When Atty. Acorda asked her if she was willing to pursue the complaint against accused, she said that she would consider not doing so if he would stop the harassment and social media bullying. Accordingly, accused Montalban promised to comply.<sup>50</sup>

Unfortunately, despite accused Montalban’s earlier promise, the bullying merely toned down but did not stop, which made it uncomfortable for her to go to the office. Between the months of June and July 2015, she would frequently be absent or be on sick leave.<sup>51</sup>

When she reported back to the office, she asked permission to attend the Incident Command System Ladderized Course (second level) seminar, which was the second part of a series of trainings organized by the Office of the Civil Defense (OCD) to be held from 3 to 7 August 2015 (August 2015 seminar). She had earlier completed the first part of the training and was personally invited to attend the second part. However, accused Montalban, who was her immediate supervisor, did not allow her to do so, and instead scheduled her to attend a one-day orientation seminar to be conducted by the Pasay City Human Resource Department.<sup>52</sup>

She then proceeded to talk to the City Administrator, who verbally gave a green light for her to attend the August 2015 seminar.<sup>53</sup> She then confirmed her attendance with Ms. Amy Gumboc, one of the training organizers.<sup>54</sup>

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<sup>46</sup> TSN, 19 November 2018, p. 20.

<sup>47</sup> Id.

<sup>48</sup> Id., p. 21.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id., p. 23.

<sup>52</sup> Id.

<sup>53</sup> Id., p. 24.

<sup>54</sup> Id., at p. 25.

However, on the day of the training, or on 3 August 2015, Ms. Gumboc informed her that she could not attend the seminar upon instructions from accused Montalban.<sup>55</sup>

She felt humiliated as a result thereof, so she went to see Atty. Acorda and informed him of her intention to resign.<sup>56</sup> She was, however, stopped from doing so, and instead, she was reassigned to the Office of the City Administrator.<sup>57</sup>

Despite her transfer to a different office, she was continuously being bullied on social media, hence, she finally decided to file a complaint with the OMB.<sup>58</sup>

Ms. Pimlott's testimony was corroborated on material points by the prosecution's other witnesses: (i) Maritess Villanueva Agbuya, the vendor whose merchandise she was perusing, corroborated her claim that accused Montalban grabbed her buttocks; (ii) Amy Daura Usman Gumboc confirmed that Ms. Pimlott was prevented from attending the August 2015 seminar upon accused Montalban's instructions; (iii) Atty. Dennis Bernard Nepomuceno Acorda testified that he was informed of the accusation against accused Montalban and in response thereto he held meetings either with the parties together or individually. The testimony of Atty. Maverick S. Sevilla, Head of the Pasay City Human Resource Management Office, was dispensed with after the parties stipulated as follows:

- a. That the witness can identify his affidavit<sup>59</sup> and his signature thereon;
- b. That the witness has no personal knowledge of the act complained of;
- c. That no formal complaint was filed before the Committee on Decorum and Investigation (CODI) but instead a complaint was filed before the OMB; and
- d. That no mediation and investigation was conducted by the CODI.<sup>60</sup>

In his Affidavit, Atty. Sevilla corroborated Atty. Acorda's testimony that informal conferences were held following Ms. Pimlott's informal complaint of sexual harassment against accused Montalban.

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<sup>55</sup> TSN, 19 November 2018, p. 25.




<sup>56</sup> *Id.*, p. 26.

<sup>57</sup> Exh. "L"; TSN, 19 November 2018, p. 26

<sup>58</sup> TSN, 19 November 2018, pp. 77-78.

<sup>59</sup> Exh. "R."

<sup>60</sup> Order dated 1 July 2019, Records, Vol. I, pp. 276-277.



### **EVIDENCE FOR ACCUSED MONTALBAN**

Accused Ramon Makabenta Montalban testified in his defense<sup>61</sup> and denied all the allegations against him. He claimed that the conflict between him and Ms. Pimlott began when he did not allow her to participate in the August 2015 seminar.<sup>62</sup> Said seminar coincided with the General Orientation Seminar organized by the HRMO,<sup>63</sup> which Ms. Pimlott was required to attend as a newly hired employee.<sup>64</sup> She, however, insisted on attending the August 2015 seminar.

He denied that he was hostile to Ms. Pimlott and pointed out that she was in fact allowed to attend various seminars outside the office even if she was a new employee.<sup>65</sup> The two of them even went to trainings on 28 to 30 April 2015<sup>66</sup> and 17 to 19 June 2015, after the alleged incident complained of. On 26 May 2015, he attended Ms. Pimlott's birthday party and, on 28 May 2015, they were together once again at the DRRMO's team building activity.<sup>67</sup>

The accused likewise averred that he learned of the charges against him long after Ms. Pimlott was transferred to the Office of the City Administrator.<sup>68</sup>

Accused Montalban's witnesses corroborated his testimony on material points: (i) Alice Arniño Fetisan, who Ms. Pimlott claims to have been present when the incident in question took place, denied having witnessed accused Montalban grab Ms. Pimlott's buttocks; (ii) Ma. Cristina Jimenez Aguilar-Lundang, Nursing Aid at the Pasay DRRMO, claimed that it was impossible for the alleged incident to have taken place in a busy corridor where some employees of the DRRMO were also present. Many people would have seen it, and news thereof would have easily spread. She further claims that she was present for the whole month of April but did not see or notice the incident alleged by Ms. Pimlott; (iii) Joji Maralina<sup>69</sup> testified that the incident could not have happened, considering that there were a lot of people present at that place during that time. She did not observe anything odd about the relationship between Ms. Pimlott and accused Montalban,<sup>70</sup> and, in fact, the former even invited the latter to her birthday party in May 2015. The entire office even went on a team building activity on the same month. She also claims that Ms. Pimlott had the

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<sup>61</sup> See Note 26.

<sup>62</sup> Judicial Affidavit dated 27 July 2020, Q&A No. 8, see Note 26.

<sup>63</sup> Exh. "4" and sub-markings.

<sup>64</sup> Exh. "16."

<sup>65</sup> Judicial Affidavit dated 27 July 2020, Q&A No. 26, see Note 26.

<sup>66</sup> Id., Q&A No. 29.

<sup>67</sup> Id., Q&A No. 31.

<sup>68</sup> Id., Q&A No. 30.

<sup>69</sup> See Note 29.

<sup>70</sup> Id.





propensity to not let things pass and to file complaints;<sup>71</sup> (iv) Ronald S. Bacunot, DRRMO Administrative Aide,<sup>72</sup> claims that the relationship among the employees of Pasay City DRRMO remained cordial even after the alleged incident happened. In fact, Ms. Pimlott invited all of them, including accused Montalban, to her birthday party on 26 May 2015. He also identified an affidavit<sup>73</sup> and pictures<sup>74</sup> taken during the complainant's birthday party; (v) Leigh Ann Kris Andrada, another employee of the Pasay City DRRMO,<sup>75</sup> corroborated Maralina's testimony; (vi) Susana M. Cruz, former Regional Director of the OCD for the National Capital Region, testified as to matters pertaining to the events that transpired during the August 2015 seminar, which, in substance, was identical to the testimony of prosecution witness Amy D. Gumboc.

In his Memorandum, accused Montalban assails the credibility of Ms. Pimlott's testimony, pointing out the variance between her narrations and the allegations in her Complaint-Affidavit, the lapse of time between the alleged incident and the filing of her complaint, and her behavior towards him even after the said incident. He points out that their relationship only turned sour after she was not allowed to attend the August 2015 Seminar.

### ISSUES

With the conflicting claims of the prosecution and the defense, the following are the issues to be resolved:

1. Whether the evidence presented by the prosecution is enough to establish the guilt of the accused for sexual harassment; and
2. Whether the evidence of the prosecution supports a conviction for acts of lasciviousness.

### RULING

#### **SB-18-CRM-0277 (Sexual Harassment)**

Section 3 of The Anti-Sexual Harassment Act of 1995, which penalizes the crime of sexual harassment, provides:

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<sup>71</sup> See Note 29.

<sup>72</sup> Dated 4 March 2020, Records, Vol. II, pp. 30-34.

<sup>73</sup> Exh. "17".

<sup>74</sup> Exh. "18" and sub-markings.

<sup>75</sup> Dated 11 November 2019.

SECTION 3. *Work, Education or Training-Related, Sexual Harassment Defined.* – Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms of conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or,

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

(b) In an educational or training environment, sexual harassment is committed:

(1) Against one who is under the care, custody or supervision of the offender;

(2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;

(3) When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or considerations; or

(4) When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.


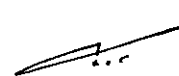

Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act.

To determine whether the act amounting to sexual harassment was carried out, *Escandor v. People*,<sup>76</sup> citing *Domingo v. Rayala*,<sup>77</sup> instructs that the following elements must concur:

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<sup>76</sup> G.R. No. 211962, 6 July 2020.

<sup>77</sup> G.R. No. 155831, 18 February 2008.



- (i) that the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person has authority, influence, or moral-ascendancy over another;
- (ii) the authority, influence, or moral ascendancy exists in a work-related, training-related, or education-related environment; and
- (iii) the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who has authority, influence, or moral-ascendancy over another makes a demand, request, or requirement of a sexual favor.


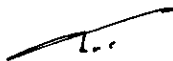

*Escandor* further clarifies that while the third element calls for a “demand, request, or requirement of a sexual favor,” it is not necessary that the same be articulated in a categorical oral or written statement. Thus

While the third requisite calls for a “demand, request, or requirement of a sexual favor,” this Court has held in *Domingo v. Rayala* that it is not necessary that these be articulated in a categorical oral or written statement. It may be discerned from the acts of the offender. Thus, the Court found in that case that the accused’s acts of “holding and squeezing Domingo’s shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones’ satisfy the third requisite.

There is no question that the foregoing elements are present in this case. At the time the incident took place, accused Montalban was private complainant’s direct superior. As such, he exercised authority, influence, or moral ascendancy over her. The Court also finds the prosecution’s evidence that accused Montalban grabbed Ms. Pimlott’s buttocks to be credible.

Ms. Pimlott was then a new employee at the Pasay City DRRMO and accused Montalban was her superior. Filing a complaint, albeit an informal one, was a risk that she would not have undertaken if she only made up her allegations against accused Montalban.

Ms. Pimlott’s testimony was corroborated by Ms. Agbuya, the vendor whose goods she was inspecting or checking at the time the incident took place. There was no reason for Ms. Agbuya to be involved in this case and testify against the accused – thereby risking not being allowed to sell her merchandise at the Pasay City Hall – unless she was recounting what she actually witnessed.



While there were variations between Ms. Pimlott and Ms. Agbuya's testimonies, they were only as to accused Montalban's remark rather than the actual act of grabbing Ms. Pimlott's buttocks itself. Witnesses cannot be expected to have exactly the same recollection of an incident, more so of statements made by the parties during a particular event.

On the other hand, accused's witnesses did not categorically deny that he grabbed Pimlott's buttocks – only that this was either impossible, since there were a lot of people at that time, or that they did not see it happen.

That being said, the question that remains is whether the other circumstances provided under Sec. 3(a), which are required to establish the crime of sexual harassment in the workplace, were likewise proven, *to wit*:

- (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms of conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
- (2) The above acts would impair the employee's rights or privileges under existing labor laws; or,
- (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.




Although the offense of sexual harassment under R.A. No. 7877 is *malum prohibitum* and, as such, intent is immaterial and the mere commission of the act is sufficient to warrant a conviction,<sup>78</sup> there is still a need, as with any other crime, for the prosecution to prove all the elements of the act complained of. And, as charged under the present *Information*, the sexual act must be committed within the context of a workplace environment. As explained in *People v. Floralde*:<sup>79</sup>

xxx sexual harassment in the workplace is about power being exercised by a superior officer over his women subordinates. And this power emanates from the fact that the superior can remove the subordinate from his workplace if the latter would refuse his amorous advances xxx.

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<sup>78</sup> *People v. Escandor*, note 76.

<sup>79</sup> G.R. No. 123048, 8 August 2000.



The prosecution, for its part, alleges that the third modality, which is the resultant "hostile work environment," obtains in this case.

After evaluating the prosecution's evidence, the Court is convinced that the totality thereof does not support its allegation that accused Montalban's act of grabbing Ms. Pimlott's buttocks "resulted in a hostile or offensive working environment for Pimlott." In fact, the bulk of said evidence bears no direct causality with the "sexual" act complained of. Rather, what appear to be the causes of Ms. Pimlott's perceived hostility towards her are accused Montalban's act of preventing her from attending the August 2015 seminar and the alleged bullying and harassing posts on Facebook, which she likewise attributes to him.

Ms. Pimlott claims that she was relieved of her duties by accused a week after the incident<sup>80</sup> and that she, in turn, avoided him by joining rescue groups on deployment. The incident also made her feel uncomfortable in going to the office and caused her to incur absences or sick leaves.

Her claims, however, find no support in the evidence and, as such, remain unsubstantiated. In government offices, personnel action and movement are usually reflected in official records. Despite this, the prosecution failed to present Ms. Pimlott's Daily Time Record, any document to prove her deployment with rescue groups, her relief from her duties, her application for sick leaves, or at least any witness to corroborate her claims. Moreover, when she was asked why she felt uncomfortable going to her workplace, she answered as follows:

Q Why did you feel uncomfortable going to your workplace?

A Because he never stopped the posting, the rumors, the talking of his friends and I'll be the topic always about discrediting me and then, he stopped me from attending seminar, Ma'am.<sup>81</sup>


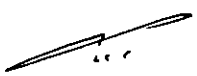

Even Ms. Pimlott's earlier threat to resign does not appear to be prompted by the incident. Rather, she did so when she was barred from attending the August 2015. Contrary to her claim of being particularly disadvantaged, within her short tenure of seven months in accused's office, she was granted the privilege of attending various seminars, particularly those held on 28 to 30 April 2015<sup>82</sup> and June 2015. On the other hand, it cannot be said the accused's act of disallowing her from attending the August 2015 seminar was arbitrary and an act of hostility, since she was instead told to attend the Seminar for New Employees,

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<sup>80</sup> TSN, 19 November 2018, p. 81.

<sup>81</sup> *Id.*, p. 23.

<sup>82</sup> *Id.*, pp. 46-48.



which was organized by the Pasay City HRMO Office and held on the same date, where her attendance was required.<sup>83</sup>

Further, Ms. Pimlott's first complaint before the City Administrator was prompted by Facebook posts, the first of which was made on 6 May 2015, which she interpreted as being directed against her.<sup>84</sup> As such, the main relief that she asked for was for Atty. Acosta to address the alleged bullying and harassing rather than to report accused's "sexual act," thus:

Q Ms. Witness (sic), why did you not report or file the official complaint with the Local Government Unit (LGU)?

A My initial report to Atty. Acorda about the incidences because I was so confident that they will do something about it, that the bullying and harassing will stop eventually, Ma'am, so, I did not go further because I gave everything to them, and since the HR Head was already there, I thought they will do something about it, Ma'am.<sup>85</sup>

The following statement also reveals that it was the Facebook posts that Ms. Pimlott was reacting to rather than the April 2015 incident:

Q: What was the reaction of Mr. Montalban when he was called to that meeting?

A Atty. Acorda asked me if I am willing to pursue the case, and I said to Atty. Acorda, "*If Mr. Montalban will stop the posting and the harassing and the bullying, I might consider not going to file a complaint against him,*" and then Mr. Montalban promised to stop the posting and the bullying, Ma'am. (italics in the original)

More importantly, when asked why she decided to finally file her complaint, Ms. Pimlott said:<sup>86</sup>

MS. PIMLOTT

They promised that the posting and the bullying will stop, Your Honors, and then, it did not. And again, I went to Atty. Acorda sometime after August telling him that the posting didn't stop, and then, if you are not doing anything, I told Atty. Acorda that if it will not stop and nobody is doing anything about it, then, I will proceed in filing it to the Ombudsman.

At the time Ms. Pimlott filed her complaint with the OMB, she was no longer working under accused Montalban. Hence, there was no hostile


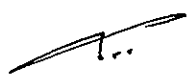

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<sup>83</sup> Judicial Affidavit dated 27 July 2020, Q&A No. 9, see Note 26; Exh. "4".

<sup>84</sup> TSN, 19 November 2018, p. 29.

<sup>85</sup> Id., pp. 70-71.

<sup>86</sup> Id., pp. 76-77.



working environment to speak of. In *Aquino v. Hon. Acosta*,<sup>87</sup> the Supreme Court quoted with approval the following pronouncement of the investigating justice, Justice Josefina G. Salonga:

xxxx Neither did Atty. Aquino establish by convincing evidence that the busses on her cheek, which she considers as sexual favors, discriminated against her continued employment, or resulted in an intimidating, hostile or offensive environment. In fact, complainant continued to perform her work in the office with the usual normalcy. Obviously, the alleged sexual favor, if there ever was, did not interfere with her working condition xxxx. Moreover, Atty. Aquino also continued to avail of benefits and leaves appurtenant to her office and was able to maintain a consistent outstanding performance. On top of this, her working area which, is at the third floor of the CTA is far removed from the office of Judge Acosta located at the fourth floor of the same building. Resultantly, no hostile or intimidating working environment is apparent.

As to the social media posts, it is important to note that the Court cannot give credence to the printouts submitted by the prosecution, as they have not been admitted as independent evidence.

The said printouts were captured from the screen of Ms. Pimlott's mother's mobile phone and were printed by another person. Neither Ms. Pimlott's mother nor the person who printed them testified in court to identify the said printouts.


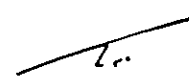

Even assuming that the printouts are admissible, the Facebook posts referred to did not mention or identify Ms. Pimlott as the person alluded to therein. Neither did she present any witness to testify that the posts were directed against her. More importantly, it cannot be directly deduced therefrom that they resulted from accused's act of grabbing her or Ms. Pimlott's retort when the incident happened. It bears adding that her testimony that the alleged bullying did not stop but merely became less frequent after their meeting with the City Administrator was neither given further context as to content or proof by the prosecution. One of the said posts, for example, only pertains to usurpation of authority and is addressed to the Civil Service Commission, heads of offices, or department heads.<sup>88</sup>

Admittedly, this does not render accused's act of grabbing Ms. Pimlott irrelevant; nonetheless, it lends insight on the gravity of the incident's effect on Ms. Pimlott's state of mind when compared to other independent factors that have contributed to her workplace distress and caused her to initiate the present complaint. However, these

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<sup>87</sup> A.M. No. CTA-01-1 dated 2 April 2002.

<sup>88</sup> Records, Vol. I., p. 332.



circumstances belie the allegation in the *Information* that the grabbing incident resulted in a hostile or offensive working environment for Ms. Pimlott.

In sum, the Court finds the prosecution's evidence insufficient to prove the allegation in the *Information* that accused Montalban's act of grabbing Ms. Pimlott's buttocks "resulted in a hostile or offensive working environment for Pimlott." Her own testimony reveals that the hostility that she suffered was mainly attributable to accused Montalban's alleged bullying on Facebook. However, as explained above, the prosecution's evidence is not enough to prove the existence and authenticity of the Facebook posts themselves, that they were made by accused Montalban, that they were directed at Ms. Pimlott, or that they were related to the grabbing incident.

While the Court does not condone accused Montalban's act, it must nonetheless decide this case according to the requirements of law vis-à-vis the evidence presented – particularly, on the strength of the prosecution's evidence. The Court, in this regard, finds the same wanting.

**Acts of Lasciviousness (SB-18-CRM-0278):**

Accused Montalban is also charged with the felony of Acts of Lasciviousness as defined and penalized under Art. 336 of the RPC for the same act. To sustain a conviction thereunder, the following elements must be present:


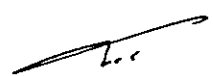
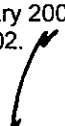
- (i) that the offender commits any act of lasciviousness or lewdness;
- (ii) that it is done:
  - (a) by using force and intimidation; or
  - (b) when the offended party is deprived of reason or otherwise unconscious, or
  - (c) when the offended party is under 12 years of age; and
- (iii) that the offended party is another person of either sex.<sup>89</sup>

The word "lasciviousness" or "lewdness" "is defined as "obscene, lustful, indecent, lascivious, lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried on in a wanton manner."<sup>90</sup>

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<sup>89</sup> *People v. Caiñgat*, G.R. No. 137963, 6 February 2002.

<sup>90</sup> *People v. Egan*, G.R. No. 139338, 28 May 2002.





*Ampluyo y Ebalada v. People*<sup>91</sup> defines "lewd conduct" and explains that unchaste design is difficult to establish. Since it is a mental process, the Court can only infer its presence by considering an accused's overt acts and prevailing environmental circumstances:

The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition. As early as *U.S. v. Gomez* we had already lamented that —

It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of article 439 of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover.

Unlike in the first case, specific intent is material in the present case. The best determinant of accused's unchaste design is Ms. Pimlott's assessment of his intent since she was the victim of his untoward behavior. However, it may be noted that even Ms. Pimlott's reaction or discomfort towards accused Montalban's acts — touching her face or putting his shoulders around her — was because of his "skin condition" and not because she found them to be lewd or malicious. Thus —


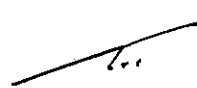
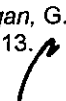
xxxx                      xxxx                      xxxx

- Q     What was your reaction everytime he do (sic) this?
- A     Usually, especially when he clasp (sic) his hands on my face, I usually tell him that I am not comfortable with it. Together with that, one of my colleagues will automatically give me the wipes to wipe my face, Ma'am.
- Q     Why is your officemate giving you wipes to wipe your face after that?
- A     Because Mr. Ramon Montalban has this skin condition which is psoriasis, and I really feel uncomfortable if his hands touching my face Ma'am.<sup>92</sup>

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<sup>91</sup> G.R. No. 157718, 26 April 2005. See also *Guerrero v. People*, G.R. No. 248027 (Unsigned Resolution), 3 May 2021 and *People v. Tulagan*, G.R. No. 227363, 12 March 2019.

<sup>92</sup> TSN, 19 November 2018, p.13.



As discussed in the first case, Ms. Pimlott's complaint focused more on what she considered as bullying and harassing social media posts. As such, the Court need not belabor the matter as it is clear that the prosecution was unable to categorically substantiate the circumstances that would satisfy the first and second elements of Acts of Lasciviousness.

Nonetheless, accused may still be held liable for the felony of Unjust Vexation, as defined and penalized under Art. 287 of the RPC, which provides:

Art. 287. Light coercions. — Any person who, by means of violence, shall seize anything belonging to his debtor for the purpose of applying the same to the payment of the debt, shall suffer the penalty of *arresto mayor* in its minimum period and a fine equivalent to the value of the thing, but in no case less than 75 pesos.

Any other coercions or unjust vexations shall be punished by *arresto menor* or a fine ranging from 5 pesos to 200 pesos, or both.

*Maghilum v. People*<sup>93</sup> reiterates the long-standing principle that, under the Variance Doctrine, an accused may instead be convicted for Unjust Vexation should the prosecution fail to prove lewd or lascivious intent in a charge for Acts of Lasciviousness:

Nonetheless, even assuming for the sake of argument that the CA committed a reversible error in denying the petition for review, the merits of the appeal would still not be resolved in favor of the petitioner. Based on the records accompanying the present appeal, the Metropolitan Trial Court as the trial court and the RTC as the immediate appellate court correctly pronounced him guilty of *unjust vexation instead of acts of lasciviousness because the State did not establish the attendance of lewd design. His claim that the lower courts thereby violated his right to due process, in that he had not been informed of the nature and cause of the accusation against him due to the criminal complaint being for acts of lasciviousness but he was instead found guilty of unjust vexation, is unworthy of any serious consideration.*




Section 4 and Section 5 of the Rules on Criminal Procedure state that:

*Sec. 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.*

*Sec. 5. When an offense includes or is included in another. — An offense charged necessarily includes the*

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<sup>93</sup> G.R. No. 227564 (Notice), 3 July 2017.



offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

The foregoing rules allow an accused to be convicted of a crime other than the one charged against him provided that the offense charged is included in or necessarily includes the offense proved. The crime of *unjust vexation, albeit concededly different from the crime of acts of lasciviousness, is embraced by the latter crime or is necessarily included therein. A common characteristic of the offenses is molestation of the offended party. Where the molestation is not shown to be accompanied by lewd designs, the accused may not be convicted of acts of lasciviousness but may be held guilty of unjust vexation, the lesser offense; in fact, conviction or acquittal for either offense should bar prosecution for the other offense under the rule of double jeopardy.* Moreover, there is no question that what controls is not the designation of the offense but its description in the complaint or information. As such, the conviction of accused-appellant for the crime of *unjust vexation should really be upheld.* (italics in the original; citations omitted)

While lascivious intent was not established beyond moral certainty in this case, accused's act can still be considered as molestation, as discussed in *Maghikum*, which remains to be a criminal offense that cannot be countenanced by this Court, especially considering the exacting standard of decorum required from public officials.


*People v. Sumingwa*<sup>94</sup> reminds that the crime of Unjust Vexation is broad enough to include any conduct that may unjustifiably cause emotional or mental disturbance to a victim thereof:

The second paragraph of this provision is broad enough to include any human conduct that, although not productive of some physical or material harm, could unjustifiably annoy or vex an innocent person. The paramount question to be considered is whether the offender's act caused annoyance, irritation, torment, distress, or disturbance to the mind of the person to whom it was directed. (citation omitted)

While the prosecution's evidence was insufficient to attribute accused's acts with the resultant hostile workplace environment Ms. Pimlott's was alleged to have suffered from, her testimony is nonetheless sufficient to establish that she suffered mental distress from accused's act of grabbing her. As such, the Court finds that the prosecution was able to prove the lesser crime of Unjust Vexation under the second paragraph of Art. 287 of the RPC and that the accused deserves to be meted out the penalty provided under the law to punish his actions.

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<sup>94</sup> G.R. No. 183619, 13 October 2009.



**Penalty:**


Art. 287 of the RPC was amended by R.A. No. 10951,<sup>95</sup> primarily by increasing the amount of fine provided as a penalty. However, since the amendment took effect after the act complained of was committed and the new law is unfavorable to the accused,<sup>96</sup> the same will not be applied in this case.

There being no aggravating circumstances specifically alleged by the prosecution nor any mitigating circumstances that may be appreciated in accused's favor, the penalty of *arresto menor* in its medium period, which is 11 days to 20 days, may be imposed. However, considering that Sec. 2 of the Indeterminate Sentence Law<sup>97</sup> does not apply in instances when the maximum term of imprisonment does not exceed one year, the Court finds it proper to impose a straight penalty of imprisonment of 15 days.

**WHEREFORE**, premises considered, the Court renders judgment as follows:

1. In **SB-18-CRM-0277**, accused **RAMON MAKABENTA MONTALBAN** is hereby **ACQUITTED** of the offense of Sexual Harassment, defined and penalized under R.A. No. 7877, for failure of the prosecution to prove his guilt beyond reasonable doubt.
2. In **SB-18-CRM-0278**, accused **RAMON MAKABENTA MONTALBAN** is instead found **GUILTY** of the lesser felony of Unjust Vexation, as defined and penalized under the second paragraph of Art. 287 of the Revised Penal Code, and is accordingly sentenced to suffer the straight penalty fifteen (15) days of *arresto menor*.

**SO ORDERED.**

  
**BAYANI H. JACINTO**  
Associate Justice

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<sup>95</sup> AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE," AS AMENDED.

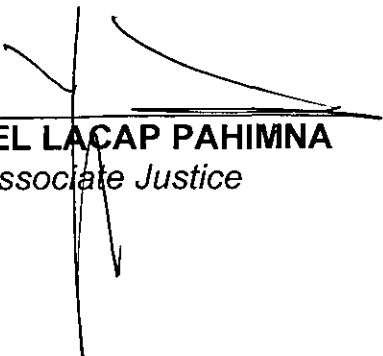
<sup>96</sup> Sec. 100 of R.A. No. 10951 provides that the retroactive application may be given to the extent that it is favorable to the accused.

<sup>97</sup> Act. No. 4103.


**WE CONCUR:**

  
**MICHAEL FREDERICK L. MUSNGI**  
*Associate Justice*  
*Chairperson*

  
**LORIFEL LACAP PAHIMNA**  
*Associate Justice*

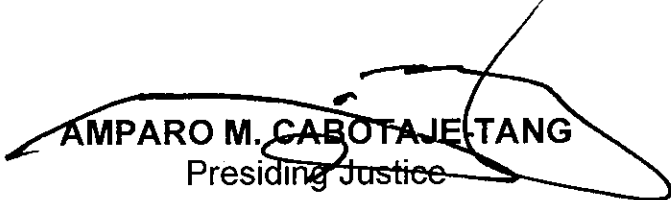
## **ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation with the Justices of the Court's Division.

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice  
Chairperson, Fourth 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.

  
**AMPARO M. CABOTAJETANG**  
Presiding Justice