



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 226143

Present:

- versus -

BERSAMIN,
*Acting Chairperson,**
DEL CASTILLO,
CAGUIOA,**
TIJAM, *and*
GESMUNDO,*** JJ.

FERNANDO BALLEES y FOJAS,
EMMA SULIT y LACSAMANA, *and*
CARMELITA LIBAO y REYES,
Accused-Appellants.

Promulgated:
NOV 21 2018

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DECISION

DEL CASTILLO, J.:

Assailed in this appeal is the August 27, 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06567 which affirmed the July 16, 2012 Decision² of the Regional Trial Court (RTC), Branch 53, Manila, finding appellants Fernando Balles y Fojas (Fernando), Emma Sulit y Lacsamana (Emma) and Carmelita Libao y Reyes (Carmelita) guilty beyond reasonable doubt of violation of Republic Act (RA) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

Antecedent Facts

Appellants were charged with the illegal sale of dangerous drugs under Section 5, Article II of RA 9165 in an Information which reads:

* Per Special Order No. 2606 dated October 10, 2018.
** Designated Additional Member per October 3, 2018 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.
*** Per Special Order No. 2607 dated October 10, 2018.
¹ *Rollo*, pp. 2-15; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Danton Q. Bueser and Myra V. Garcia-Fernandez.
² *CA rollo*, pp. 43-47; penned by Judge Reynaldo A. Alhambra.

Criminal Case No. 03-217231

That on or about August 1, 2003, in the City of Manila, Philippine[s], the said accused, conspiring and confederating together and helping one another, not having been authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale, or attempt to sell three (3) heat-sealed[,] transparent plastic sachets each containing white crystalline substance with the following weights, to wit: ZERO POINT ZERO FIVE ZERO (0.050) gram; ZERO POINT ZERO FOUR [SIX] (0.046) [gram;] AND ZERO POINT ZERO FOUR THREE (0.043) gram containing methylamphetamine hydrochloride, which is a dangerous drug.³

Appellant Fernando was also charged with the illegal possession of dangerous drugs under Section 11, Article II of RA 9165 in an Information which reads:

Criminal Case No. 03-217232

That on or about August 1, 2003, in the City of Manila, Philippines, the said accused, without being authorized by law to possess dangerous drug[s], did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control three (3) heat-sealed[,] transparent plastic sachets with [the] following weights, to wit: ZERO POINT ZERO FOUR FOUR (0.044) [gram], ZERO POINT ZERO FOUR THREE (0.043) gram; and ZERO POINT ZERO FOUR NINE (0.049) gram containing Methylamphetamine Hydrochloride[,] [also] known as SHABU, a dangerous drug.⁴

During their arraignment on July 4, 2005, appellants entered a plea of not guilty.⁵ Trial thereafter ensued.

Version of the Prosecution

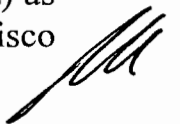
The prosecution's version of the incident is, as follows:

On August 1, 2003, P/Insp. Arnulfo Ibañez (P/Insp. Ibañez) of the Western Police District (WPD) District Anti-Illegal Drugs (DAID) received information from a confidential informant (CI) that two individuals with the aliases "Mang Fernan" and "Aling Ester" were selling illegal drugs along Almario Street, Tondo, Manila. On the basis of said information, P/Insp. Ibañez formed a buy-bust team with PO2 Roman Jimenez (PO2 Jimenez) as the designated poseur-buyer and PO2 Chito De Guzman, PO2 Bert Francisco

³ Records, p. 2.

⁴ Id. at 15.

⁵ Id. at 72.



(PO2 Francisco), PO2 Marcial Agustin⁶ and PO2 Wilfredo Millare as perimeter security.⁷

At the target area, two women approached PO2 Jimenez and the CI while they were walking along the street. The CI whispered to PO2 Jimenez that the two women were working with Mang Fernan and Aling Ester. The CI thereafter introduced PO2 Jimenez to the two women, herein appellants Emma and Carmelita, as the buyer of *shabu*. The women asked PO2 Jimenez, “*Magkano ang bibilhin mo?*” to which the latter replied that he wanted to buy ₱300.00-worth of *shabu*. Emma and Carmelita each handed PO2 Jimenez a plastic sachet from their respective pockets and in return, he gave each of them a ₱100.00-bill.⁸

Emma, however, told PO2 Jimenez and the CI that she will accompany them to Mang Fernan because they only had two plastic sachets in their possession. Upon reaching Mang Fernan’s house, Emma introduced PO2 Jimenez to appellant Fernando and his wife, Aling Ester. Emma told Fernando that PO2 Jimenez was supposed to buy ₱300.00-worth of *shabu* but she and Carmelita only had two plastic sachets.⁹

Aling Ester then handed Fernando a small camera film container where the latter took a plastic sachet of suspected *shabu* and gave it to PO2 Jimenez. In return, PO2 Jimenez handed Fernando a ₱100.00-bill. Once the exchange was completed, PO2 Jimenez combed his hair which served as the pre-arranged signal that the transaction had already been consummated.¹⁰

The other members of the buy-bust team immediately rushed to the scene. PO2 Francisco arrested Emma and Carmelita and recovered two (2) ₱100.00-marked bills.¹¹ Similarly, PO2 Jimenez took custody of Fernando and retrieved the small camera film container, three plastic sachets of suspected *shabu* and one ₱100.00-marked bill. Aling Ester, however, eluded arrest by escaping through the backdoor of the house.¹²

From Almario Street, appellants were brought to the hospital for a physical examination. Afterwards, the buy-bust team took them to the office of the WPD-DAID where they were turned over to PO1 Federico Casupli (PO1 Casupli) for investigation.¹³

⁶ Referred to as PO2 Marcia Agustin in some parts of the records.

⁷ CA rollo, p. 65.

⁸ Id.

⁹ Id. at 65-66.

¹⁰ Id. at 66.

¹¹ Rollo, p. 5.

¹² CA rollo, p. 66.

¹³ Id.

PO2 Jimenez turned over the seized plastic sachets to PO1 Casupli who marked the same as follows: “FFB-1” for the plastic sachet purchased from Fernando; “FFB-2, FFB-3 and FFB-4” for the three plastic sachets recovered from the small camera film container; “ELS” for the plastic sachet purchased from Emma; and “CRL” for the plastic sachet purchased from Carmelita.¹⁴

In the course of the investigation, PO1 Casupli prepared the Joint Affidavit of Apprehension, the Booking Sheet and Arrest Report, and the Request for Laboratory Examination. The seized items, together with the Request for Laboratory Examination, were thereafter forwarded to the Crime Laboratory.¹⁵

On August 2, 2003, P/Insp. Maritess F. Mariano (P/Insp. Mariano), the forensic chemical officer of the WPD Crime Laboratory, conducted a qualitative examination of the subject specimens to determine the presence of dangerous drugs. Based on Chemistry Report No. D-1827-03,¹⁶ the seized items tested positive for the presence of methylamphetamine hydrochloride, a dangerous drug.

Version of the Defense

For his part, Fernando testified that:

x x x On 1 August 2003, between 10:00 o'clock to 10:30 o'clock in the evening, he opened the big gate of the garage to let a truck come in. When he opened the smaller gate, he saw a vehicle parked outside the garage then three (3) men, who turned out to be police officers in civilian clothing, alighted. These men suddenly grabbed him and boarded him inside the vehicle. x x x He was left inside the vehicle and when the policemen returned, they had with them Emma Sulit and Carmelita Libao. The three (3) of them were brought to the Ospital ng Maynila and thereafter brought to the headquarters. At the headquarters, Fernando learned from the investigator that he was apprehended because of selling illegal drugs. Since they could not find his wife, he was the one arrested instead.¹⁷

As for Emma, she testified that:

[She] was at home with Michaela Rose Peralta when three (3) men suddenly entered their house. These men told them to be quiet [when she asked them] who they were. They started searching and ransacking the house without showing any search warrant. They even took Emma's two

¹⁴ Id.

¹⁵ *Rollo*, p. 5.

¹⁶ Records, p. 13.

¹⁷ *CA rollo*, p. 29.

(2) mobile phones and money worth Eight Hundred Pesos (₱800.00). Thereafter, together with Carmelita and Michaela Rose, she was brought downstairs and was boarded in a sidecar. After passing three (3) blocks, they were boarded in a vehicle together with Fernando Balles, Emma's brother-in-law. Thereafter, they were all brought to the Ospital ng Maynila then to Precinct 5 Headquarters in UN Avenue. The police captain told Emma that they will not charge her with a non-bailable crime as long as she gives them money. She was forced to mortgage her house in the amount of Seventy Thousand Pesos (₱70,000.00). When she gave the money, the police captain and police officers Chito de Guzman and Roman Jimenez divided it equally among them. They told Emma to wait because they would have a meeting at the other building but they did not return.¹⁸

Carmelita corroborated Emma's testimony. She further testified that:

x x x while the police officers were searching their house, they took their money worth Twelve Thousand Pesos (₱12,000.00) which should have been used as capital for their bag business. When they arrived at the police station, the police officers were looking for Ester Balles, the wife of Fernando Balles. Carmelita and Emma, however, did not know where Ester was. It was only during the inquest when they learned that they were being accused of selling illegal drugs. x x x¹⁹

Ruling of the Regional Trial Court

In its Decision dated July 16, 2012, the RTC found appellants guilty beyond reasonable doubt of the crimes charged against them. It found the prosecution's version of the incident credible and worthy of belief as the same was sufficiently supported by the evidence on record.²⁰

The RTC further held that the prosecution was able to establish that the identity of the *corpus delicti* had been properly preserved, viz.:

x x x The prosecution established the continuous whereabouts of the plastic sachets of shabu from the time these were seized from the accused until these were tested in the laboratory to determine the composition of the contents of the plastic sachets up to the time these were offered in evidence. Thus, it is evident that the identity of the *corpus delicti* has been properly preserved and established by the prosecution. What is of vital importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.²¹

¹⁸ Id. at 29-30.

¹⁹ Id. at 30.

²⁰ Id. at 46.

²¹ Id.

Accordingly, the RTC rendered judgment as follows:

1. In CRIM. CASE NO. 03-217231, finding accused FERNANDO BALLE y FOJAS, EMMA SULIT y LACSAMANA and CARMELITA LIBAO y REYES **GUILTY** beyond reasonable doubt of the crime of [v]iolation of Sec. 5, Article II [of] Republic Act [No.] 9165, and are hereby sentenced to suffer [the penalty of] [l]ife [i]mprisonment and each to pay [a] fine in the amount of ₱500,000.00.
2. In CRIM. CASE NO. 03-217232, finding accused FERNANDO BALLE y FOJAS **GUILTY** beyond reasonable doubt of the crime of [v]iolation of Sec. 11(3), Article II [of] Republic Act [No.] 9165, and is hereby sentenced to suffer [the penalty of] imprisonment of [t]welve (12) years and one (1) day, as minimum, to [f]ifteen (15) years, as maximum, and to pay fine in the amount of ₱300,000.00.²²

Appellants thereafter appealed the RTC Decision before the CA.

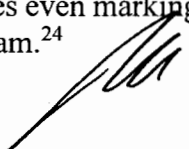
Ruling of the Court of Appeals

In its Decision dated August 27, 2015, the CA affirmed the assailed RTC Decision *in toto*. It upheld the RTC's findings that the prosecution was able to prove all the elements of the crimes charged.²³

The CA noted, too, that the chain of custody over the seized *shabu* was sufficiently established by the prosecution, *viz.*:

PO2 Jimenez testified that the plastic sachet given to him by Emma Sulit was marked "ELS" while the plastic sachet given to him by Carmelita Libao was marked "CRL". The said markings were placed by their investigator PO1 Federico Capili [sic] at the police station in his presence. The one piece of plastic sachet given to PO2 Jimenez by Ferdinand Balles was marked "FFB-1" while the three (3) plastic sachets inside the camera film container recovered from Ferdinand Balles were marked with "FFB-2, FFB-3 and FFB-4". The said markings were also made by their investigator PO1 Federico Casupli in his presence.

Marking of the seized *shabu* is the initial stage in the chain of custody in buy-bust operations. As requisites, the marking must be made in the presence of the apprehended offender and upon immediate confiscation, and this contemplates even marking at the nearest police station or office of the apprehending team.²⁴



²² Id. at 47.

²³ *Rollo*, p. 10-11.

²⁴ Id. at 13.

Aggrieved, appellants filed the present appeal.

The Issues

Appellants raise the issue of whether the integrity and evidentiary value of the confiscated drugs had been preserved, considering the arresting officers' failure to: (a) immediately mark the seized plastic sachets at the place of arrest; and (b) conduct a physical inventory and take photographs of said plastic sachets in the presence of appellants or their representatives, and a representative from the media and the Department of Justice (DOJ), and any elected official.²⁵

The Court's Ruling

In cases involving dangerous drugs, we have consistently held that “the dangerous drug itself constitutes as the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.”²⁶ In other words, the identity of the dangerous drug must be established beyond reasonable doubt, along with the other elements of the offense/s charged.²⁷ “Such proof requires an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him.”²⁸

It should be noted, however, that “the presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs *alone* is insufficient to secure or sustain a conviction under RA 9165.”²⁹ Given the unique characteristics of dangerous drugs which render them *indistinct, not readily identifiable and easily susceptible to tampering, alteration or substitution*, it is essential to show that the identity and integrity of the seized drugs have been preserved.³⁰ Simply put, the evidence must show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession or for drug pushing under RA 9165 must necessarily fail.³¹

²⁵ CA rollo, pp. 34-35.

²⁶ *Derilo v. People*, 784 Phil. 679, 686 (2016).

²⁷ *People v. Bartolini*, 791 Phil. 626, 634 (2016).

²⁸ *People v. De Guzman*, G.R. No. 219955, February 5, 2018.

²⁹ *Id.*

³⁰ *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

³¹ *Id.*

Section 21, Article II of RA 9165 provides the procedural safeguards that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. “As indicated by their *mandatory terms*, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case.”³²

Since the buy-bust operation against appellants took place in 2003, the procedure under Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165, prior to its amendment by RA 10640³³ in 2014, is applicable in this case, *viz.*:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (a) **The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis supplied)**

After a thorough review of the records, we find that the buy-bust team utterly failed to comply with the prescribed procedure under Section 21(a).

For one thing, the arresting officers had failed to mark the confiscated plastic sachets *immediately after seizure* either at the place of arrest or at the

³² Id. Italics supplied.

³³ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE “COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002”. Approved July 15, 2014.

nearest police station. The records, in fact, disclose that the arresting officers first took appellants to the *Ospital ng Maynila* for a physical examination before proceeding to the police station where the seized sachets were finally marked, **not** by PO2 Jimenez (the poseur-buyer/arresting officer) but by PO1 Casupli (the investigating officer) who was not present during the buy-bust operation.³⁴

For another, the records do not show that the seized items were ever inventoried or photographed in the presence of appellants or their representatives, a representative from the media and the DOJ, and any elected public official. To repeat, neither a physical inventory sheet nor photographs of the seized plastic sachets can be found anywhere in the records.³⁵

Although it is true that non-compliance with the prescribed procedures under Section 21(a) does not, as it should not, *automatically* result in an accused's acquittal,³⁶ the **saving mechanism** provided in the last sentence of Section 21(a) only operates "under justifiable grounds, and as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team."³⁷

It is therefore incumbent upon the prosecution to: a) recognize and explain the lapse or lapses committed by the apprehending team; and b) demonstrate that the integrity and evidentiary value of the evidence seized had been preserved, despite the failure to follow the procedural safeguards under RA 9165.³⁸

Here, the prosecution failed not only to recognize and explain the buy-bust team's utter non-compliance with Section 21(a), but also to adduce evidence establishing the chain of custody over said items that would unequivocally demonstrate that the illegal drugs presented in court were the same illegal drugs actually recovered from appellants during the buy-bust operation.

In *People v. Bartolini*,³⁹ we strongly emphasized the prosecution's duty to show an *unbroken* chain of custody over the seized items to ensure that unnecessary doubts on the identity of the evidence – the dangerous drugs – are removed, viz.:

³⁴ TSN, October 2, 2007, p. 18.

³⁵ See Prosecution's Formal Offer of Evidence, records, pp. 200-201.

³⁶ See *People v. De Guzman*, supra note 28.

³⁷ *People v. Prudencio*, 800 Phil. 128, 140 (2016).

³⁸ *People v. Denoman*, supra note 30 at 1178.

³⁹ Supra note 27.

x x x The prosecution has the duty to prove every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence. **The marking of the seized item, the first link in the chain of custody, is crucial in proving an unbroken chain of custody as it is the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point.** The succeeding links in the chain are the different processes the seized item will go through under the possession of different persons. This is why it is vital that each link is sufficiently proven to be unbroken – to obviate switching, planting, or contaminating the evidence.⁴⁰ (Emphasis supplied)

Thus, to show an *unbroken* chain of custody, the following links must be established by the prosecution: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁴¹

In this case, we find that the prosecution failed to establish the **first link** in the chain of custody. As previously discussed, there was a failure to mark the drugs *immediately* after they were allegedly seized from appellants. The seized items were only marked at the police station *after* first taking a detour to the hospital for appellants' physical examination. During that length of time, said items remained *unmarked* and *easily susceptible to tampering, alteration or substitution*.

At this juncture, we deem it necessary to reiterate that the marking of the seized dangerous drugs is the first and most *crucial* step in proving an unbroken chain of custody in drug-related prosecutions, as it is "the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point."⁴² "Also, the marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence, thus preventing the switching, "planting" or contamination of evidence,"⁴³ whether by accident or otherwise.

Unfortunately, the failure of the arresting officers to *immediately* mark the seized drugs raises reasonable doubt on the authenticity of the *corpus*

⁴⁰ Id. at 634-635.

⁴¹ See *Derilo v. People*, supra note 26 at 687.

⁴² *People v. Bartolini*, supra note 27 at 634.

⁴³ *Derilo v. People*, supra note 26 at 688.

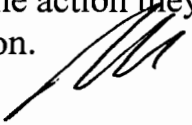
delicti and suffices to rebut the presumption of regularity in the performance of official duties.⁴⁴

Finally, we note the serious evidentiary gaps in the **second, third and fourth** links in the chain of custody over the seized dangerous drugs. Based on the records, the seized evidence was turned over by PO2 Jimenez to PO1 Casupli at the police station.⁴⁵ In this regard, the prosecution failed to disclose the identities of: (a) the person who had retained custody of the seized items after they were turned over by PO2 Jimenez; (b) the person who turned over the items to P/Insp. Mariano (the forensic chemist); and (c) the person who had custody thereof after they were examined by the forensic chemist and before they were presented in court.

The totality of these circumstances – the failure of the arresting officers to immediately mark the seized drugs after confiscation, to conduct a physical inventory thereof and to photograph the same in the presence of appellants or their representatives, a representative of the media and the DOJ, and any elected official, and the prosecution’s failure to disclose the identities of the persons who had custody of said items after they were turned over by PO2 Jimenez – broke the chain of custody and tainted the integrity of the seized *shabu* ultimately presented as evidence before the trial court. Given the prosecution’s failure to prove the indispensable element of *corpus delicti*, appellants must necessarily be acquitted on the ground of reasonable doubt.

WHEREFORE, premises considered, the appeal is **GRANTED**. The August 27, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06567 is **REVERSED** and **SET ASIDE**. Appellants Fernando Balles y Fojas, Emma Sulit y Lacsamana and Carmelita Libao y Reyes are hereby **ACQUITTED** of the charges against them for failure of the prosecution to prove their guilt beyond reasonable doubt. Their immediate **RELEASE** from detention is hereby ordered unless they are being held for another lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City and the Correctional Institution for Women, Mandaluyong City for immediate implementation, and who are then also directed to report to this Court the action they have taken within five (5) days from their receipt of this Decision.




⁴⁴ See *People v. Bartolini*, supra note 27 at 635.

⁴⁵ *Rollo*, p. 5.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson

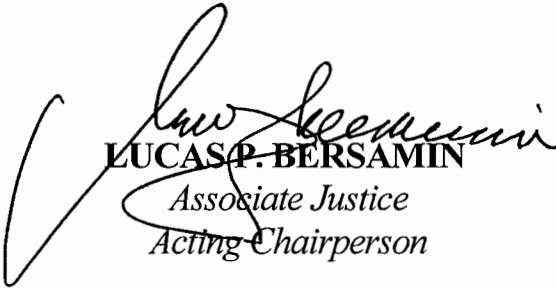

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

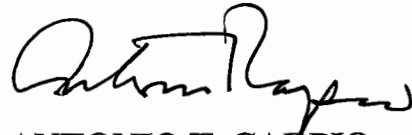
ATTESTATION

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.


LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson

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

**ANTONIO T. CARPIO***Senior Associate Justice*

(Per Section 12, Republic Act No. 296
The Judiciary Act of 1948, as amended)

