



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

LUZVIMINDA LLAMADO y
VILLANA,

Petitioner,

G.R. No. 243375

Present:

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

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

JUN 30 2020

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DECISION

REYES, J. JR., J.:

This resolves the petition for review on *certiorari* filed by petitioner Luzviminda Llamado y Villana (Llamado) from the Decision¹ dated May 31, 2018 of the Court of Appeals-Manila (CA) in CA-G.R. CR No. 39547 and the Resolution² dated November 28, 2018 affirming the Decision of the Regional Trial Court (RTC), Branch 156, Marikina City, in Criminal Case Nos. 2011-3921-D-MK and 2011-3922-D-MK finding Llamado guilty beyond reasonable doubt of the charge of illegal possession of dangerous drugs and paraphernalia, defined and penalized under Section 11 and 12, Art.

¹ Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion; *rollo*, pp. 37-52.

² *Id.* at 54-55.

II of Republic Act No. 9165³ otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

On July 5, 2011, two separate Informations were filed before the RTC, Branch 156, Marikina City, in Criminal Case Nos. 2011-3921-D-MK & 2011-3922-D-MK. The two separate Informations read as follows:

In Crim. Case No. 2011-3921-D-MK
(for violation of section 12 of R.A. 9165)

That on or about 1st day of July 2011, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there [willfully], unlawfully and knowingly have in her possession, direct custody and control one (1) black carton pencil case labelled Tomato; one strip of aluminum foil; one (1) disposable cigarette lighter labelled Torch; and one (1) improvised burner, which are instruments, apparatus or other paraphernalia fit or intended for smoking or introducing shabu, a dangerous drug, into the body and such were all found and recovered in the residence of the accused.

CONTRARY TO LAW.⁴

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In Crim. Case No. 2011-3922-D-MK
(for violation of section 11 of R.A. 9165)

That on or about the 1st day of July 2011, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above named accused without being authorized by law to possess or otherwise use any dangerous drugs, did then and there [willfully], unlawfully and knowingly have in her possession, direct custody and control two (2) plastic sachets each containing 2.8853 grams and 2.8617 grams, respectively, of Methamphetamine Hydrochloride (shabu), a dangerous drug, in violation of the above cited law.

CONTRARY TO LAW.⁵

When arraigned, Llamado pleaded not guilty to the charge. After the Pre-Trial conference, trial on the merits ensued.

³ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

⁴ *Rollo*, p. 84.

⁵ *Id.* at 84-85.

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Version of the Prosecution

According to the prosecution, Llamado became a person of interest in their anti-drug campaign after an informant reported a certain "Minda" allegedly involved in illegal drug activities in the vicinity of Barangays Sto. Nino and Concepcion Uno, Marikina City and nearby localities.

Upon obtaining information from a regular confidential informant, Agent Macairap, sought the permission of his Regional Director to verify the information disclosed. He then immediately organized a team to conduct a surveillance, upon which, a test-buy operation conducted was completed and the pieces of evidence obtained therewith was sent to the crime laboratory and yielded positive results for methamphetamine hydrochloride. When the results of the laboratory examination was obtained, Agent Macairap applied for a search warrant against Llamado, with address at No. 56 Exequiel Street, Brgy. Sto. Niño, Marikina City. A search warrant was then issued by Judge Amor A. Reyes.

For the implementation of the said search warrant, Intelligence Officer 1 Randolph Cordovilla ("IO1 Cordovilla") was designated as seizing officer against the premises where Llamado a.k.a. Minda resides. The team was led by Intelligence Agent 3 Liwanag B. Sandaan, (IA3 Sandaan). The team proceeded to the subject premises after proper coordination with the Marikina police and the presence of *Barangay Kagawad* Wilfredo Santos. Upon arrival at the subject premises, IO1 Cordovilla saw the main door of the accused open. After securing the entire perimeter of the place, IO1 Cordovilla entered the house. He saw that there was no one in the first floor so he immediately went to the second floor where he saw the accused. The search warrant was presented to Llamado and search commenced in the second floor of the house. There he found one black carton pencil case, labeled "tomato," containing two heat-sealed transparent plastic sachet containing white crystalline substance suspected to be *shabu*, one aluminum foil strip with white residue, and one white disposable lighter, labeled "torch," used as improvised burner. In the ground floor of the house, IO1 Cordovilla found one improvised burner on top of the hanging cabinet. The items were marked and inventoried in the presence of Agent Almerino, accused Llamado and *Kagawad* Wilfredo Santos. Immediately thereafter, accused was arrested by Special Investigation Agent John Jerme Almerino (SI Almerino). The team thereafter went back to the Philippine Drugs Enforcement Agency (PDEA) main office in Quezon City.

The laboratory examination conducted by Forensic Chemist Jasmyne Lora M. Jaranilla (Jaranilla) on the specimen taken from the house of the accused yielded positive results for methamphetamine hydrochloride. These are the following:

- A- One (1) heat-sealed transparent plastic sachet with markings EXH-A-1 RCC 7-1-2011 containing white crystalline substance with a net

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weight of 2.8853 grams.

B- One (1) heat-sealed transparent plastic sachet with markings EXH-A-2 RCC 7-1-2011 containing white crystalline substance with a net weight of 2.8617 grams.

C- One (1) strip of aluminum foil with markings EXH-A-3 RCC 7-1-2011 with traces of white residue.

The urine testing on the accused also yielded positive results for the said banned substance.⁶

Version of the Defense

On the other hand, Llamado denied the allegations hurled against her and offered a different account of what transpired.

According to Llamado, her house was located at No. 56 Exequiel St., Brgy. Concepcion Uno, Marikina City.

On July 1, 2011 at around 8:00 p.m., she was sleeping beside her grandson inside the room of her house when she was awakened by PDEA operatives who entered the room. She was not familiar with them. She asked them for their purpose. One of them told her that they were looking for *shabu* inside her house. They did not present any search warrant to her.

As the search ensued, the things inside the house were in disarray. Accused was brought downstairs and was instructed to sit on top of a table. She was asked by one of the officers where she hid the *shabu*. She replied that she had no knowledge of such. One of the operatives said, "*heto sa iyo di ba?*" exhibiting a transparent plastic sachet containing suspected *shabu*. She dismissed the claim of the operative saying that it was the first time she saw the sachet of *shabu*. She was about to be taken outside the house when a local official of the *barangay* and Vice Mayor Fabian Cadiz arrived. Thereafter, she was brought to the PDEA main office where she was further investigated.

While inside the PDEA, accused was asked where and from whom she got the prohibited drug. She was also asked to produce the amount of ₱150,000.00 to settle her case. She denied ownership of the drug and also added that she did not have the money they were asking for. She was transported back to Marikina City for inquest at the City Prosecutor's Office.

Ruling of the Trial Court

On September 20, 2016, the RTC of Marikina City, Branch 156, convicted Llamado for Possession of Dangerous Drugs, and Possession of

⁶ Id. at 41.

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Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs punished under Sections 11 and 12, Art. II of R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. According to the RTC, the prosecution was able to establish the guilt of Llamado beyond reasonable doubt. The dispositive portion of the RTC Decision reads:

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

(1) In Criminal Case No. 2011-3921-D-MK, finding the accused LUZVIMINDA LLAMADO y VILLANA guilty beyond reasonable doubt of violation of Section 12, Art. II of RA 9165, sentencing the said accused to an indeterminate prison term of SIX (6) MONTHS ad ONE (1) DAY to TWO (2) YEARS and a fine of P10,000;

(2) In Criminal Case No. 2011-3922-D-MK, finding the accused LUZVIMINDA LLAMADO y VILLANA guilty beyond reasonable doubt of violation of Section 11, Art II. Of RA 9165, sentencing the said accused to an indeterminate prison term of TWENTY (20) YEARS and ONE (1) DAY to TWENTY-FIVE (25) YEARS and a fine of P400,000.00.

Said sentences shall be served simultaneously.

The shabu and drug paraphernalia subject of these cases are forfeited in favor of the government for proper disposal. Let a copy of this Decision be furnished the PDEA, the Office of the Vice Mayor of Marikina City, and the National Police Commission (NAPOLCOM).

[SO ORDERED].

The RTC accentuated that the evidence for the prosecution showed the presence of all the elements of the crimes of Possession of Dangerous Drugs, and Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs respectively punished under Sections 11 and 12 of the comprehensive Dangerous Drugs Act of 2002.

Aggrieved, accused-appellant appealed to the Court of Appeals.

Ruling of the CA

Subsequently, on May 31, 2018, the Court of Appeals rendered its Decision, affirming Llamado's conviction of the crimes charged. Echoing the trial court's findings, the CA affirmed that all the facts proven, and taken together prove the guilt of the accused beyond reasonable doubt.

Llamado contended that the articles seized from her residence were inadmissible as evidence because to her, the search warrant was invalid for failing to describe the place to be searched with particularity. To recall, the address indicated in the search warrant was "56 Exequiel Street, Brgy. Sto

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Niño, Marikina City”, while the address of the accused-appellant was “56 Exequiel Street, *Brgy. Concepcion Uno, Marikina City*”.

Furthermore, accused-appellant contended that there was non-compliance with the mandatory requirement of the presence of third party representatives because *Barangay Kagawad Santos* arrived at the scene only after the illegal substances and the paraphernalia were confiscated by the authorities in contravention with the proper procedure that he should have been present at the time of the search and seizure .

In addition, accused-appellant avers that there was a broken link in the chain of custody of the allegedly seized sachet of methamphetamine hydrochloride because there was no testimony with regard to how the seized items were managed, store, preserved, labeled and recorded after the chemical analysis by Forensic Chemist Jasmyne Lora M. Jaranilla. The dispositive portion of which provides:

WHEREFORE, premises considered, the *Appeal* filed by Luzviminda Llamado y Villana on 24 October 2016 is **DENIED**. The *Decision* rendered by the Regional Trial Court , Branch 156, Marikina City on 20 September 2016 in Criminal Case Nos. 2011-3921-22-D-MK is **AFFIRMED**.

SO ORDERED.

Petitioner Llamado moved for reconsideration which was, however, denied by the CA in a Resolution⁷ dated November 28, 2018; hence the instant petition.

The Issue

The pivotal issue for this Court’s resolution is whether or not Llamado’s conviction for illegal possession of dangerous drugs and paraphernalia defined and penalized under Section 11 and 12, Article II of R.A. No. 9165, should be upheld.

Our Ruling

We resolve to acquit petitioner Llamado on the ground of reasonable doubt.

Jurisprudence dictates that to secure a conviction for illegal possession of dangerous drugs under Sec. 11, Art. II of R.A. 9165, the prosecution must establish the following: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the

⁷ *Rollo*, pp. 54-55.

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said drug.⁸ On the one hand, the elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Sec. 12 are the following: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.⁹ The CA ruled that all the elements of the offenses charged against appellants were established with moral certainty.¹⁰

To secure conviction for the aforementioned offenses, the existence of the drug or drug paraphernalia is of supreme importance such that no drug case can be successfully prosecuted and no judgment of conviction can be validly sustained without the identity of the dangerous substance being established with moral certainty, it being the very *corpus delicti* of the violation of the law.¹¹ There must be a clear showing that "it is the very thing that is possessed by the accused" (illegal possession).¹² Thus, the chain of custody over the confiscated drugs or paraphernalia must be sufficiently proved.

The Dangerous Drugs Board Regulation No. 1, Series of 2002, defines chain of custody as "duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction."

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While the testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The

⁸ *People v. Minanga*, 751 Phil. 240, 248 (2015).

⁹ *People v. Villar*, G.R. No. 215937, November 9, 2016.

¹⁰ *Rollo*, p. 51.

¹¹ *People v. Rivera*, G.R. No. 225786, November 14, 2018.

¹² *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

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same standard obtains in case the evidence is susceptible of alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain or custody rule.¹³

In sum, it is the prosecution's duty to establish that the same confiscated drugs and paraphernalia are the ones submitted and presented in court by providing a clear account of the following: 1) the date and time when, as well as the manner, in which the illegal drug was transferred; 2) the handling, care and protection of the person who had interim custody of the seized illegal drug; 3) the condition of the drug specimen upon each transfer of custody; and 4) the final disposition of the seized illegal drug.

The chain of custody rule is enshrined in Section 21, Article II of R.A. No. 9165 which specifies:

SEC. 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,

required to sign the copies of the inventory and be given a copy thereof 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:

- (1) The apprehending 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.

Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 further provides:

SEC. 21. (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*

¹³ *People v. Havana*, G.R. No. 198450, 776 Phil. 462-476 (2016).

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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)

On July 15, 2014, Section 21 was amended by R.A. No. 10640¹⁴ to this effect:

SEC. 21. x x x. —

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an **elected public official and a representative of the National Prosecution Service or the media** 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, finally*, That noncompliance of 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 and custody over said items. (Emphasis and underscoring supplied)

Since the offense was committed on July 1, 2011, the Court is constrained to evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165. Thus, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) and a representative from the media and the Department of Justice and any elected public official (e) who shall be required to sign the inventory and be given copies thereof.¹⁵

Based on the foregoing, the prosecution was not able to show that the apprehending officers faithfully complied with the rule on chain of custody.

Under the original provision of Section 21 and its IRR, which is applicable at the time the accused-appellant committed the crime charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof.

¹⁴ Amendment to R.A. 9165, R.A. 10640, approved on July 15, 2014.

¹⁵ *Rontos v. People*, G.R. No. 188024, June 5, 2013.

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The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."¹⁶

In the instant case, while there was an inventory made after the seizure and confiscation of the items allegedly recovered from the accused-appellant, the said inventory cannot be said to have been compliant with the strict requirements of Section 21. *Barangay Kagawad* Santos revealed in his testimony the following:

Q: Mr. witness when you arrived at the house of Luzviminda Llamado, the shabu were already confiscated allegedly from her house. Is that correct?

A: Yes, Sir.

Q: **So you were not present anymore when these alleged shabu were being searched.** Is that correct?

A: **Yes, Sir.**

Q: And the officer of PDEA just showed you these shabu when you arrived at the house of Luzviminda Llamado?

A: Yes, Sir.

Prosecutor: I think the witness would be incompetent.

Witness: **'Basta nung dumating ako, nandun na yon'**

Q: **Mr. witness, the inventory was already prepared when they let you sign it.** Is that correct?

A: **Yes, Sir.**

Based on the foregoing, *Barangay Kagawad* Santos was not present in the inventory in clear contravention of the mandatory requirements enumerated under R.A. No. 9165 and its implementing rules and regulations which require the presence of the required witnesses during the conduct of the inventory. Here, the inventory was already finished and prepared when *Barangay Kagawad* Santos came and was only asked to sign the inventory making it appear that he was present all throughout the whole process.

Furthermore, the testimony of SI Almerino provides that there was no witness from the Department of Justice and representative of the media in the inventory. The following is the pertinent portion of SI Almerino's testimony, to wit:

¹⁶ *People v. Sagana*, G.R. No. 208471, August 2, 2017.

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Q: Mr. witness you mentioned that an inventory was prepared after the search and arrest of the accused, is that correct?

A: Yes, sir.

Q: **In that inventory no witness from the Department of Justice was present to sign that inventory?**

A: Yes, sir.

Q: There was also **no representative from the media present to sign that inventory?**

A: Yes, sir.

Q: Despite the pro forma inventory of this property or items from PDEA containing empty signatures of a representative from the media and Department of Justice **you never boter [sic] asking representative from said sectors to witness the search, is that correct?**

A: Yes, sir.

As a whole, the testimony of *Kagawad Santos* and SI Almerino shows that none of the required third party witnesses was present during the inventory. Worse, the apprehending officers provided no explanation to justify their non-compliance with the rules.

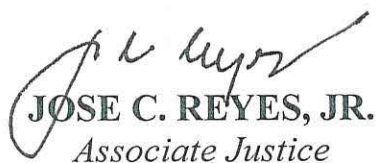
These witnesses are necessary in order to fortify the links in the chain of custody as it prevents any lingering doubt that the evidence gathered from the buy-bust operation was merely planted. For failing to observe the witness requirement, the identity and integrity of the drugs and paraphernalia allegedly recovered from Llamado had been compromised at the initial stage of the operations.

The presence of the third-party witnesses during the marking and inventory of the seized items is necessary to ensure that the police operations were valid and legitimate in their inception. Subsequent precaution and safeguards observed would be rendered inutile if in the first place there is doubt as to whether the drugs presented in court were in fact recovered from the accused. Accordingly, such uncertainty would negatively affect the integrity and identity of the *corpus delicti* itself. As such, when there is persistent doubt, the courts are left with no other recourse but to acquit the accused of the charges against him.¹⁷

¹⁷ *People v. Jagdon y Banaag*, G.R. No. 234648, March 27, 2019.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 31, 2018 of the Court of Appeals in CA-G.R. CR No. 39547 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Luzviminda Llamado y Villana is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is **ORDERED** to cause her **IMMEDIATE RELEASE**, unless she is being lawfully held in custody for any other reason.

SO ORDERED.



JOSE C. REYES, JR.
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



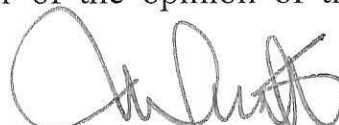
AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice

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