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Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES  
*Plaintiff-Appellee,*

G.R. No. 244256

Present:

- versus -

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

JOSEPH STA. CRUZ y  
ILUSORIO,  
*Accused-Appellant.*

Promulgated:

NOV 25 2019

X ----- X

DECISION

REYES, J. JR., *J.:*

On appeal is the August 29, 2018 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10019 which affirmed the October 30, 2017 Joint Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 72, Malabon City finding accused-appellant Joseph Sta. Cruz y Ilusorio (accused-appellant) guilty in both Criminal Case No. 10-1980-MN of violating Section 5, and in Criminal Case No. 10-1979-MN of violating Section 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

\* On official leave.

\*\* Additional Member per Special Order No. 2726.

<sup>1</sup> Penned by Associate Justice Franchito N. Diamante, with Associate Justices Remedios A. Salazar-Fernando and Ma. Luisa C. Quijano-Padilla, concurring; *rollo*, pp. 3-20.

<sup>2</sup> Penned by Judge Jimmy Edmund G. Batara; CA *rollo*; pp. 53-58.

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### The Facts

Accused-appellant was charged with illegal possession of methamphetamine hydrochloride (*shabu*), committed as follows:

In Criminal Case No. 10-1979-MN

That on or about the 5<sup>th</sup> day of November 2010, in the City of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control two (2) small heat-sealed transparent plastic sachets with markings "HAB/JSCI-2-11-5-10" containing 0.03 gram of white crystalline substance and "HAB/JSCI-3-11-5-10" containing 0.02 gram of white crystalline substance, which substance when subjected to qualitative examination gave positive result for Methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>3</sup>

Accused-appellant was also indicted for illegal sale of *shabu*, committed as follows:

In Criminal Case No. 10-1980-MN

That on or about the 5<sup>th</sup> day of November 2010, in the City of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously sell and deliver to [*poseur*]-buyer PO1 HERBERT A. BAGAIN, JR., in the amount Php500.00 one (1) small heat-sealed transparent plastic sachet with markings "HAB/JSCI-1-11-5-10" containing 0.02 gram of white crystalline substance, which substance when subjected to qualitative examination gave positive result for Methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>4</sup>

Upon arraignment, accused-appellant pleaded not guilty to the charges. Thereafter, trial on the merits ensued.

#### *Version of the Prosecution*

The prosecution presented Police Officer 2 Herbert Bagain, Jr. (PO2 Bagain), the *poseur*-buyer and apprehending officer and Police Chief

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<sup>3</sup> Id. at 53.

<sup>4</sup> Id.

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Inspector Stella S. Garciano (P/C Insp. Garciano), the forensic chemist as witnesses. Their combined testimonies tended to establish the following:

On November 5, 2010, at around 4:30 p.m., the police operatives at District Anti-Illegal Drugs, Northern Police District in Larangay, Caloocan City received information from a confidential informant that accused-appellant was engaged in the illegal drug trade.<sup>5</sup>

After receiving such information, P/C Insp. Arnold Thomas C. Ibay immediately formed a buy-bust team and designated Deputy Officer P/C Insp. Leoben Ong as the leader and PO2 Bagain as the *poseur-buyer*. The team conducted a briefing and coordinated with the Philippine Drug Enforcement Agency for the conduct of the buy-bust operation on the same day.<sup>6</sup>

At around 8:15 p.m. the same day, the team proceeded to the target area on Hito Street, Longos, Malabon City. PO2 Bagain intimated to accused-appellant his intention to buy ₱500.00 worth of *shabu*. He then handed to accused-appellant the buy-bust money while accused-appellant gave him a plastic sachet.<sup>7</sup>

Then, PO2 Bagain turned his back and waved his umbrella as the pre-arranged signal. The team rushed to the scene and PO2 Bagain introduced himself to accused-appellant as a police officer. Thereafter, PO2 Bagain arrested and handcuffed accused-appellant and found two more plastic sachets containing white crystalline substance from the possession of accused-appellant. PO2 Bagain placed all the plastic sachets in his pocket.<sup>8</sup>

Thereafter, the team proceeded to the police station for inquest proceedings. Thereat, PO2 Bagain made an inventory of the seized items which could not be done at the place of arrest because there were several persons at that time. The plastic sachets were then turned over to PO3 Ariosto Rana (PO3 Rana) who prepared the request for laboratory examination. A media representative was present at the police station when the inventory and markings were being made.<sup>9</sup>

Together with PO3 Rana, PO2 Bagain brought the seized specimens to the Philippine National Police Crime Laboratory for qualitative

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<sup>5</sup> Id. at 54.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at 54-55.

examination. P/C Insp. Garciano received the request and the specimens. Upon laboratory examination, the specimens tested positive for *shabu*.<sup>10</sup>

### *Version of the Defense*

Accused-appellant denied the accusations against him and averred that on November 5, 2010, at around 2:00 p.m., he was filling soil by the entry way of his mother's residence at Block 8, Lot 43, Hito Street, Longos, Malabon City. During his break, he decided to go outside to watch people playing *mahjong*. His son followed him and after a while, they saw several police officers pass by the area. Later on, the policemen returned to the area where he was standing. They held his arms and tried to bring him with them, but he resisted and asked why he was being apprehended. He finally acceded to their demands because the police officers were forcing him to go and he was afraid that he might get hurt. He was then brought to the Larangay Police Station where he was detained.<sup>11</sup>

### *The RTC Ruling*

In a Joint Decision dated October 30, 2017, the RTC found accused-appellant guilty of illegal possession of *shabu*. It opined that possession of a dangerous drug constitutes a *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such possession. The trial court also handed a guilty verdict on accused-appellant for illegal sale of *shabu*. It declared that the prosecution was able to prove that the *shabu* subject of the cases are the same items purchased and seized from accused-appellant. The *fallo* reads:

WHEREFORE, in view of the foregoing[,] judgment is rendered as follows:

In Criminal Case No. 10-1979-MN for Violation of Section 11, Article II of Republic Act No. 9165, the accused JOSEPH STA. CRUZ y ILUSORIO is found GUILTY beyond reasonable doubt of the offense charged and is hereby sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS and to pay a fine of Three Hundred Thousand Pesos (P300,000.00).

In Criminal Case No. 10-1980-MN for Violation of Section 5, Article II of Republic Act No. 9165, the accused JOSEPH STA. CRUZ y ILUSORIO is found GUILTY beyond reasonable doubt of the offense charged and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

<sup>10</sup> Supra note 5.

<sup>11</sup> Id. at 55-56.

All the specimen subject of these cases are forfeited in favor of the government to be disposed of under the rules governing the same.

SO ORDERED.<sup>12</sup>

Aggrieved, accused-appellant elevated an appeal before the CA.

### *The CA Ruling*

In a Decision dated August 29, 2018, the CA affirmed the RTC ruling. It agreed with the findings of the trial court that the prosecution adequately established all the elements of illegal sale of a dangerous drug as the collective evidence presented during the trial showed that a valid buy-bust operation was conducted. Likewise, all the elements of illegal possession of a dangerous drug were proven. The prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated drugs were not compromised. The witnesses for the prosecution were able to testify on every link in the chain of custody, establishing the crucial link in the chain from the time the seized items were first discovered until they were brought for examination and offered in evidence in court. Thus, it disposed the case in this wise:

WHEREFORE, in view of the foregoing, the instant appeal is hereby DENIED. The Joint Decision dated October 30, 2017 of the Malabon City Regional Trial Court, Branch 72, in the cases docketed as Criminal Case No. 10-1979-MN and Criminal Case No. 10-1980-MN is AFFIRMED.

SO ORDERED.<sup>13</sup>

Hence, this appeal. Accused-appellant and the People manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA. Accused-appellant reiterated that the buy-bust team failed to follow the procedure mandated in Section 21(1), Article II of R.A. No. 9165.

### **The Court's Ruling**

The judgment of conviction is reversed and set aside and accused-appellant is acquitted of the crimes charged.

Chain of custody is a procedural mechanism that ensures that the identity and integrity of the *corpus delicti* are clear and free from any

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<sup>12</sup> Id. at 58.

<sup>13</sup> *Rollo*, p. 19.

unnecessary doubt or uncertainty. It secures the close and careful monitoring and recording of the custody, safekeeping, and transfer of the confiscated illegal drug so as to preclude any incident of planting, tampering, or switching of evidence. The links in the chain, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court must be adequately proved in such a way that no question can be raised as to the authenticity of the dangerous drug presented in court.<sup>14</sup> Thus, in *Mallillin v. People*,<sup>15</sup> the Court declared:

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 into 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.

Section 21(1), Article II of R.A. No. 9165 states:

*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, 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 required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied)

<sup>14</sup> *People v. Lim*, G.R. No. 231989, September 4, 2018.

<sup>15</sup> 576 Phil. 576, 587 (2008).

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 mandates:

SEC. 21. x x x

(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)

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165, thus:

(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 supplied)

Since the offenses were committed on November 5, 2010, the Court must evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165.

Section 21, Article II of R.A. No. 9165 strictly requires that (1) the seized items be inventoried and photographed immediately after seizure or

confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel; (b) an elected public official; (c) a representative from the media; and (d) a representative from the Department of Justice (DOJ).<sup>16</sup>

In addition, in *People v. Tanes*,<sup>17</sup> the Court declared:

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of R.A. 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that **the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as mentioned, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** (Emphasis supplied)

In this case, the physical inventory and photographing of the confiscated items were done at the police station and only a media representative was present.<sup>18</sup> There were no elected public official and representative from the DOJ. In fact, the physical inventory and photographing of the seized items were not even made in the presence of accused-appellant.

The Court stressed in *People v. Sipin*:<sup>19</sup>

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

<sup>16</sup> *People v. Retada*, G.R. No. 239331, July 10, 2019.

<sup>17</sup> G.R. No. 240596, April 3, 2019.

<sup>18</sup> CA *rollo*, pp. 54-55.

<sup>19</sup> G.R. No. 224290, June 11, 2018.



It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) [T]heir attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.<sup>20</sup>

Further, earnest efforts to secure the attendance of the necessary witnesses must be proven. *People v. Ramos*<sup>21</sup> requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of [R.A. No.] 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of [R.A. No.] 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.<sup>22</sup> (Citation omitted, emphases supplied)

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<sup>20</sup> Id.

<sup>21</sup> G.R. No. 233744, February 28, 2018.

<sup>22</sup> *People v. Ramos*, G.R. No. 233744, February 28, 2018.

While it is true that less than strict compliance with the guidelines stated in Section 21, Article II of R.A. No. 9165 does not necessarily render void and invalid the confiscation and custody over the evidence obtained, the saving clause would only be set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers.<sup>23</sup>

The first requirement instructs the prosecution to identify and concede the lapses of the buy-bust team and thereafter give a justifiable and credible explanation therefor. In this case, PO2 Bagain himself admitted that in the conduct of the drug inventory, only a media representative was present.<sup>24</sup> There was no attempt to secure the presence of a representative from the DOJ and an elected public official. Worse, it was not made in the presence of accused-appellant.

With regard to the second requirement, the prosecution was not able to prove that the integrity and evidentiary value of the seized items remained intact from the time of confiscation, marking, submission to the laboratory for examination, and presentation in court. The lack of a DOJ representative and an elected public official during the actual physical inventory and photographing of the seized drugs without offering a credible justification created a gap in the chain of custody. Moreover, records do not show that the prosecution was able to establish a justifiable ground as to why the police officers were not able to secure the presence of the other mandatory witnesses. Considering that buy-bust is a planned operation, police officers are given sufficient time to prepare and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of R.A. No. 9165.<sup>25</sup>

Because of the miniscule amount of the confiscated illegal drugs involved, rigid compliance with Section 21 of R.A. No. 9165 is expected from the apprehending officers. As aptly held in *People v. Plaza*,<sup>26</sup> “buy-bust teams should be more meticulous in complying with Section 21 of R.A. No. 9165 to preserve the integrity of the seized *shabu* most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with.” Without the insulating presence of the three witnesses during the seizure, marking and physical inventory of the sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence arise as to negate the integrity and credibility of the seized drugs that were

<sup>23</sup> *People v. Fatallo*, G.R. No. 218805, November 7, 2018.

<sup>24</sup> *CA rollo*, p. 55.

<sup>25</sup> *People v. Gamboa*, G.R. No. 233702, June 20, 2018.

<sup>26</sup> G.R. No. 235467, August 20, 2018.

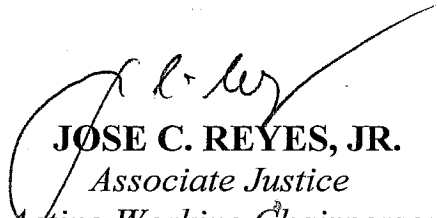
evidence herein of the *corpus delicti*.<sup>27</sup> The procedure enshrined in Section 21, Article II of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.<sup>28</sup> For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.<sup>29</sup>

In fine, as a result of the apprehending officers' non-compliance with Section 21 of R.A. No. 9165, accused-appellant must therefore be acquitted.

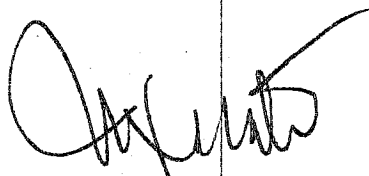
**WHEREFORE**, premises considered, the August 29, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 10019 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Joseph Sta. Cruz y Ilusorio is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Chief Superintendent of the New Bilibid Prison for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*  
*Acting Working Chairperson*

**WE CONCUR:**

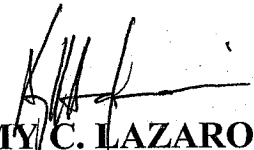
  
**DIOSDADO M. PERALTA**  
*Chief Justice*  
*Chairperson*


<sup>27</sup> *People v. Mendoza*, 736 Phil. 749, 764 (2014).

<sup>28</sup> *Gamboa v. People*, 799 Phil. 584, 597 (2016).

<sup>29</sup> *Id.*

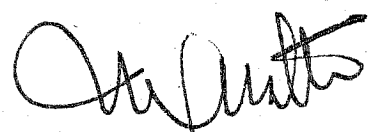
(On Official Leave)  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*  
*Working Chairperson*

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

  
**HENRI JEAN PAUL B. INTING**  
*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*