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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 240224

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

- versus -

WILLRUSS ORTEGA,*
Accused-Appellant.

Promulgated:

FEB 23 2022

X-----X

DECISION

HERNANDO, J.:

Assailed in this ordinary appeal¹ is the November 9, 2017 Decision² of the Court of Appeals (CA) in CA G.R. CR-HC No. 08591, which affirmed in *toto* the August 19, 2016 Decision³ of the Regional Trial Court (RTC), Branch 13, Laoag City, in Criminal Case Nos. 15891 and 15892, finding accused-appellant Willruss Ortega (Ortega) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

* Also referred as Wilrus Ortega in some parts of the records.

¹ *Rollo*, pp. 20-22.

² *Id.* at 2-19. Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Mario V. Lopez and Amy C. Lazaro-Javier (now both Members of this Court).

³ *CA rollo*, pp. 50-70. Penned by Presiding Judge Philip G. Salvador.

⁴ Entitled "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." Approved: June 7, 2002.

The Factual Antecedents:

On March 18, 2014, the Office of the City Prosecutor of Laoag filed two cases against Ortega after preliminary investigation.⁵ The Information in Criminal Case No. 15891 charged Ortega with violation of Section 5, Article II of RA 9165, *viz.*:

That on or about the 20th day of February, 2014, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully, and feloniously sell and deliver to a police poseur buyer, One (1) small heat sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as “shabu”, a dangerous drug, weighing 0.1083 grams (sic), including plastic sachet, without any license or authority to sell the same, in violation of the aforesaid law.

CONTRARY TO LAW.⁶

On the other hand, the Information in Criminal Case No. 15892 charged Ortega with violation of Section 11, Article II of RA 9165, which alleges:

That on or about the 20th day of February 2014, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully, and feloniously have in his possession, control and custody methamphetamine hydrochloride commonly known as “shabu” a dangerous drug, weighing 0.69 grams (sic), including plastic sachets, without any permit, license, or authority to do so.

CONTRARY TO LAW.⁷

Upon his arraignment on April 2, 2014, Ortega pleaded “not guilty” to both charges.⁸ After the preliminary and pre-trial conferences were concluded, trial on the merits ensued.

Version of the Prosecution:

On February 20, 2014, at around 8:30 p.m., Police Officer (PO) 2 Lawrence Ganir (PO2 Ganir) was on duty at the Laoag City Police Station when he received information from an asset that Ortega was looking for prospective buyers of shabu.⁹

Consequently, a team was formed to conduct a buy-bust operation against Ortega. PO2 Ramon Christopher Diego (PO2 Diego) was designated as poseur

⁵ CA rollo, p. 50.

⁶ Records (Criminal Case No. 15891-13), p. 1.

⁷ Records (Criminal Case No. 15892-13), p. 1.

⁸ Records (Criminal Case No. 15891-13), p. 32.

⁹ CA rollo, p. 93.

buyer, while PO2 Ganir, PO2 Engelbert Ventura (PO2 Ventura), and PO3 Melecio Antonio, Jr. (PO3 Antonio), were tasked to act as back-up operatives.¹⁰ The buy-bust money consisting of a ₱1,000.00-bill was then prepared, and the coordination form and pre-operation report were submitted to the Philippine Drug Enforcement Agency.¹¹

After the briefing, the buy-bust team went to the target area located at Barangay 19, Basa Street corner Rizal Street, Laoag City.¹² PO2 Diego and the asset positioned themselves strategically within five meters from the Addressa Building, where the back-up police officers were staying.¹³

A few minutes later, Ortega arrived at the target area. The asset introduced PO2 Diego to Ortega as his friend who was interested in buying shabu.¹⁴ Subsequently, Ortega gave PO2 Diego a plastic sachet containing a white crystalline substance. After receiving the plastic sachet, PO2 Diego placed the same in his pocket and gave Ortega the ₱1,000.00-bill marked money as consideration therefor.¹⁵ Once the transaction was completed, PO2 Diego then shouted the pre-arranged signal, "*Pulis! Arestado ka!*"¹⁶

Upon hearing the pre-arranged signal, the back-up operatives immediately rushed to the scene. When they arrived, PO2 Diego was holding Ortega, who was trying to resist arrest.¹⁷ PO2 Ventura then handcuffed Ortega and informed him of his rights and the reason for his arrest.¹⁸ Thereafter, PO2 Ventura conducted a body search upon Ortega and recovered from him one leather coin purse containing six plastic sachets of white crystalline substance, among other items.¹⁹

As onlookers were starting to gather around them, the buy-bust team transferred to the police station. There, the police officers photographed, marked, and inventoried the confiscated items in the presence of Ortega and Barangay Captain Andres (Andres).²⁰ They likewise prepared the Confiscation Receipt and Request for Laboratory Examination.²¹ Afterwards, PO2 Diego and PO2 Ventura brought the seized drugs to the crime laboratory for examination.²² The forensic chemist, Police Inspector (PI) Amiely Ann Luis Navarro (PI

¹⁰ Id. at 93-94.

¹¹ Id. at 94.

¹² Id. at 93.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 95.

¹⁸ Id. at 52 and 95.

¹⁹ Id.

²⁰ Id. at 95.

²¹ Records, p. 7.

²² CA rollo, p. 95.

Navarro), conducted the examination and found that the items were positive for methamphetamine hydrochloride or *shabu*.²³

Version of the Defense:

For his part, Ortega vehemently denied the accusations against him. He testified that on the night of the incident, he was at home taking care of his two children, when his live-in partner, May Ann Colobong (Colobong), texted him to go to St. Joseph Pharmacy at Rizal Street, Laoag City.²⁴ She asked him to bring ₱7,000.00 because she did not have enough money to buy medicine for their child. Ortega acceded to her request and left the children with his sister-in-law and brother.²⁵

Thereafter, Ortega boarded a tricycle and noticed a white Tamaraw FX following him. He then alighted from the tricycle at the corner of Basa Street and walked towards the south. Suddenly, a vehicle stopped in front of him and three individuals got off, whom he later on identified as PO2 Ganir, PO2 Ventura, and PO2 Diego.²⁶ PO2 Ganir handcuffed him and pushed him to the pavement.²⁷ Ortega was then made to board the Tamaraw FX. He asked them what his fault was, but no one answered.²⁸ Ortega was brought to the Laoag City Police Station, where the police searched him and confiscated from him his cellphone, key chain, and money.²⁹

Colobong also testified and corroborated the testimony of Ortega. She claimed that while she was waiting for Ortega at the pharmacy, she heard noises at the back of Adessa Bldg. along Basa Street and saw Ortega being forcibly taken and boarded on a vehicle by persons in civilian clothes. She immediately went home and was advised to blotter the incident. At around 11:00 p.m., she went to the Laoag City Police Station, where she discovered that Ortega was being implicated for the Illegal Sale and Possession of Dangerous Drugs.³⁰

Ruling of the Regional Trial Court:

On August 19, 2016, the RTC rendered its Decision finding Ortega guilty beyond reasonable doubt of violating Section 5 and Section 11, Article II of RA 9165. The RTC gave more credence to the prosecution witnesses' testimonies than Ortega's defense of denial.³¹ Moreover, the RTC held that the integrity and evidentiary value of the confiscated drugs had been preserved as "there was compliance with the procedural requirements under Section 21 of RA 9165, and

²³ Id. at 95-96.

²⁴ Id. at 36.

²⁵ Id.

²⁶ Id.

²⁷ Id. at 36-37.

²⁸ Id. at 37.

²⁹ Id.

³⁰ Id.

³¹ Id. at 62.

more importantly a perfect chain of custody of the seized drugs.”³² The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered finding accused Willruss Ortega GUILTY on both counts beyond reasonable doubt and is accordingly sentenced to suffer as follows:

1. for illegal sale of shabu as charged in Criminal Case No. 15891, the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00); and

2. for illegal possession of shabu weighing 0.69 gram as charged in Criminal Case No. 15892, the indeterminate penalty of imprisonment ranging from TWELVE (12) YEARS and ONE (1) DAY as minimum to FOURTEEN (14) YEARS as maximum and to pay a fine of THREE HUNDRED THOUSAND PESOS (Php 300,000.00).

The shabu subject hereof is confiscated for proper disposition as the law prescribes.

SO ORDERED.³³

Dissatisfied with the ruling of the RTC, Ortega elevated the case to the CA.

Ruling of the Court of Appeals:

In its November 9, 2017 Decision,³⁴ the CA affirmed Ortega’s conviction. It found that the testimonies of the police officers were “straightforward, categorical, consistent on material points, unwavering, clear, and credible.”³⁵ Similar to the RTC, the CA likewise ruled that the integrity of the seized drugs was “intact and never compromised,”³⁶ despite the presence of some flaws in the police officers’ compliance with the procedures provided in Section 21 of RA 9165.³⁷ According to the CA, such procedural lapses did not affect the admissibility of the seized items since the court is not always looking for the strict step-by-step adherence to the procedural requirements.³⁸ The CA thus ruled:

WHEREFORE, the instant appeal is hereby DENIED. The August 19, 2016 Decision of the Regional Trial Court, Branch 13, Laoag City in Crim. Case Nos. 15891-13 and 15892-13 is AFFIRMED *in toto*.

³² Id. at 67.

³³ Id. at 70.

³⁴ *Rollo*, pp. 2-19.

³⁵ Id. at 12.

³⁶ Id. at 15.

³⁷ Id. at 14.

³⁸ Id.

SO ORDERED.³⁹

Hence, the present appeal.⁴⁰

Issue

The sole issue for resolution in the instant case is whether Ortega is guilty of violating Section 5 and Section 11, Article II of RA 9165.

Our Ruling

There is merit in the appeal.

In order to secure the conviction of an accused charged with the crime of Illegal Sale of Dangerous Drugs, the prosecution must be able to prove beyond reasonable doubt the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.⁴¹ Meanwhile, in instances where an accused is charged with Illegal Possession of Dangerous Drugs, three elements ought to be proved by the prosecution, namely: (1) the accused was in possession of an item or object identified as a prohibited drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the said drug.⁴²

However, jurisprudence dictates that the presentation of evidence establishing the elements of the offenses of Illegal Sale and Possession of Dangerous Drugs *alone* is insufficient to sustain a conviction under RA 9165.⁴³ In illegal drugs cases, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is essential to sustain a guilty verdict. Thus, aside from proving the elements of the crimes of Illegal Sale and Possession, it is equally important for the prosecution to establish beyond reasonable doubt the integrity and identity of the dangerous drug. It must be proven with moral certainty that the substance obtained from the accused during the buy-bust operation is exactly the same substance offered in evidence before the court.⁴⁴

In this regard, and in order to prevent any unnecessary doubt as to its identity and integrity, the prosecution has to show an unbroken chain of custody over the dangerous drug and account for each link in the chain of custody from the moment it is seized up to its presentation in court as evidence of the crime.⁴⁵

³⁹ Id. at 18.

⁴⁰ Id. at 20-22.

⁴¹ *People v. Buesa*, G.R. No. 237850, September 16, 2020.

⁴² Id.

⁴³ *People v. De Guzman*, 825 Phil. 43, 54 (2018).

⁴⁴ See *People v. Arellaga*, G.R. No. 231796, August 24, 2020.

⁴⁵ *People v. Baldugo*, G.R. No. 242275, February 3, 2021.

In the instant case, this Court agrees with the findings of the RTC and CA that the elements of Illegal Sale and Possession of Dangerous Drugs are present. The evidence offered by the prosecution shows that Ortega committed the said crimes following the buy-bust operation conducted against him. The records indicate that he had sold *shabu* to PO2 Diego who acted as the poseur buyer. His receipt of the buy-bust money consummated the sale of the illegal drug. Moreover, he was also caught to have in his possession six other plastic sachets of *shabu* after being arrested and frisked by PO2 Ventura.

This Court likewise concurs with the CA's conclusion that the buy-bust team was not impelled by any ill motive to impute such serious offenses against Ortega. As correctly found by the CA, "accused-appellant admitted that the first time he met the police officers was during his arrest and there was no previous misunderstanding among them. Neither was there any indication that the police officers were in bad faith nor had digressed from their ordinary tour of duty."⁴⁶ Hence, on this score, there is no basis to suspect the veracity of the testimonies of the police officers.⁴⁷

This notwithstanding, this Court finds that Ortega's acquittal is proper because the prosecution failed to prove beyond reasonable doubt the integrity of the seized drugs, given that the police officers did not strictly comply with requirements laid down under Section 21 of RA 9165.

Section 21 provides the procedural safeguards that the apprehending team must observe in the custody and handling of seized illegal drugs in order to preserve their identity and integrity as evidence. "While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded."⁴⁸ The said provision states:

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:

(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

⁴⁶ *Rollo*, pp. 11-12.

⁴⁷ *Id.* at 12.

⁴⁸ *People v. Manabat*, G.R. No. 242947, July 17, 2019.

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; x x x

Further, the Implementing Rules and Regulations (IRR) of RA 9165 elaborates on the proper procedure to be followed, to wit:

(a) The apprehending office/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; x x x

It bears to note at this juncture that RA 10640,⁴⁹ which took effect on July 23, 2014, had amended Section 21 of RA 9165 by requiring only two witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; and, (b) either a representative from the National Prosecution Service or the media. Prior to its amendment, three witnesses were required, namely: (a) a representative from the media; (b) a representative from the Department of Justice; and (c) any elected public official. As the crime in this case was committed on February 20, 2014, Section 21, prior to its amendments, is applicable.

A perusal of the records of the case would show that only the barangay official, Andres, was present during the time the police officers conducted the inventory of the seized drugs.⁵⁰ Further, the Inventory/Confiscation Receipt⁵¹ was not signed by Ortega or by his counsel or representative, as required by Section 21.⁵² It only contained the signatures of Andres, PO2 Diego, and PO2 Ventura.⁵³ Moreover, it was also admitted by the prosecutor handling the case that there was no proof that Ortega and the required witness/es were furnished a copy of the said document.⁵⁴

⁴⁹ Entitled "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.

⁵⁰ *CA rollo*, p. 95; Records, Criminal Case No. 15891-13, p. 15; TSN, November 5, 2014, p. 20.

⁵¹ Records, p. 15.

⁵² *People v. Manabat*, supra note 44.

⁵³ Records (Criminal Case No. 15891-13), p. 15.

⁵⁴ TSN, June 13, 2014, p. 7.

Given the fact that a buy-bust operation is, by its very nature, a planned activity, it strains credulity why the buy-bust team could not have ensured the presence of all the required witnesses. Verily, a buy-bust team normally has ample time to gather and bring with it the said witnesses.⁵⁵ The law requires their presence in order to ensure the establishment of the chain of custody and to guard against the evils of switching, planting, or contamination of evidence.⁵⁶

While this Court has ruled that the absence of the required witnesses does not *per se* render the confiscated items inadmissible, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses must first be adduced by the prosecution.⁵⁷ Any discrepancy should be reasonably explained and accounted for, otherwise, the regularity of the entire seizure procedure would be put into question.⁵⁸

In the case at bar, the prosecution did not adduce any explanation as to why the police officers deviated from the procedure under Section 21, or whether they exerted earnest efforts in securing the presence of the required witnesses. The multiple breaches and the lack of justification therefor effectively tainted the integrity of the seized drugs presented in court; thus, the very identity of the seized drugs became highly questionable.

Additionally, this Court notes that the parties' stipulation to dispense with the testimony of forensic chemist PI Navarro⁵⁹ did not fully cover the necessary pieces of information as required by jurisprudence, namely: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial.⁶⁰ Consequently, a huge gap in the chain of custody of the seized drugs is created.⁶¹ This gives rise to the probability that the evidence seized from Ortega may have been compromised while under police custody, thereby militating against a finding of guilt beyond reasonable doubt. In *People v. Claudel*,⁶² this Court held that:

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving**

⁵⁵ *People v. Claudel*, G.R. No. 219852, April 3, 2019.

⁵⁶ *People v. Esguerra*, G.R. No. 243986, January 22, 2020.

⁵⁷ *People v. Ramos*, 826 Phil. 981, 996 (2018).

⁵⁸ *People v. Lumaya*, 827 Phil. 473, 487 (2018).

⁵⁹ TSN, June 13, 2014, p. 10.

⁶⁰ *People v. Miranda*, G.R. No. 218126, July 10, 2019, citing *People v. Cabuhay*, 836 Phil. 903, 918 (2018).

⁶¹ *Id.*

⁶² *Supra* note 55.

mechanism. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the corpus delicti. With the chain of custody having been compromised, the accused deserves acquittal.**⁶³

Strict compliance with Section 21 is especially important in instances where only a miniscule amount of dangerous drugs is involved, such as in this case. As enunciated in *People v. Holgado*,⁶⁴

While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malilin v. People*, this court said that “the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.”

x x x x

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered. x x x⁶⁵ (Emphasis supplied)

All told, this Court finds that the prosecution failed to show that the chain of custody was properly preserved. Since proof beyond reasonable doubt was not established, the acquittal of Ortega must follow as a matter of course.

WHEREFORE, the appeal is hereby **GRANTED**. The November 9, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08591 is **REVERSED** and **SET ASIDE**. Accused-appellant Willruss Ortega is **ACQUITTED** of the crimes charged against him and is ordered to be immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

Let a copy of this Decision be furnished to the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director General is **DIRECTED** to inform this Court the action he/she has taken within five days from receipt of this Decision.


Let entry of judgment be issued immediately.

⁶³ Id., citing *People v. Reyes*, 797 Phil. 671, 690 (2016).

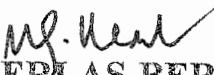
⁶⁴ 741 Phil. 78 (2014).

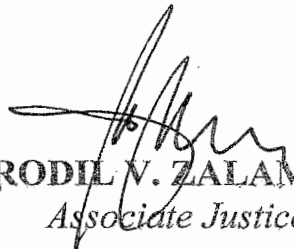
⁶⁵ Id. at 99-100.

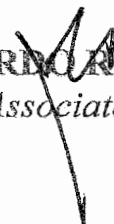
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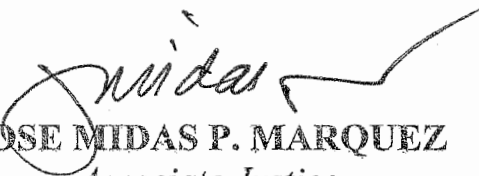

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

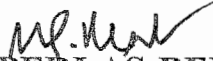

RODIL V. ZALAMEDA
Associate Justice


RICARDO A. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

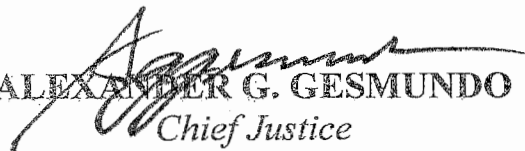
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice