



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**THE PEOPLE OF THE PHILIPPINES**

**G.R. No. 225789**

Plaintiff-Appellee,

**Present:**

- versus -

CARPIO, *Chairperson*,  
PERLAS-BERNABE,  
CAGUIOA,  
REYES, J., JR.  
LAZARO-JAVIER, JJ.

**ALTANTOR DELA TORRE  
y CABALAR**

Accused-Appellant.

**Promulgated:**

**29 JUL 2019**

X-----Ma. Luisa C. Quijano-Padilla-----X

**DECISION**

**LAZARO-JAVIER, J:**

**The Case**

This appeal<sup>1</sup> assails the Decision<sup>2</sup> dated October 13, 2015 of the Court of Appeals in CA-G.R CR-H.C. No. 06717 affirming appellant's conviction for violation of Section 5, Article II of Republic Act No. (RA) 9165.<sup>3</sup>

<sup>1</sup> Filed under Rule 45 of the Rules of Court.

<sup>2</sup> Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan; *Rollo*, p. 2-18.

<sup>3</sup> Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

## The Proceedings Before the Trial Court

### The Charge

By Information dated October 30, 2009, appellant Altantor dela Torre y Cabalar was charged with violation of Section 5, Article II of RA 9165, thus:

That on or about the 29<sup>th</sup> day of October, 2009, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ALTANTOR C. DELA TORRE, did then and there, willfully, unlawfully and criminally, sell and deliver to a customer Shabu contained in one (1) heat-sealed plastic sachet weighing more or less 0.5 gram, without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.<sup>4</sup>

The case was raffled to the Regional Trial Court (RTC) – Branch 42, Dagupan City.

On arraignment, appellant pleaded *not guilty*.<sup>5</sup>

During the trial, P/Insp. Myrna Malojo (Forensic Chemical Officer of PNP Crime Laboratory in Lingayen, Pangasinan), [PO3] Apollo Calimlim, SPO1 Flash Ferrer and PCI Froilan\* Lopez testified for the prosecution.<sup>6</sup> Appellant Altantor dela Torre y Cabalar was the lone witness for the defense.<sup>7</sup>

### The Prosecution's Version

On October 29, 2009, acting on the report of a confidential informant regarding rampant illegal drug activities in Pantal West, Dagupan City, PCI Lopez formed and dispatched a buy-bust team thereto.<sup>8</sup>

The buy-bust team was composed of members of the local police force, including PO3 Calimlim as poseur-buyer and SPO1 Ferrer as arresting officer. They were accompanied by the confidential informant.<sup>9</sup>

Around 5 o'clock in the afternoon, the team arrived at Pantal West, Dagupan City. PO3 Calimlim and the confidential informant headed to the front of the postal bank where appellant was waiting. The other members of the buy-bust team waited about seven (7) meters away.

The confidential informant introduced PO3 Calimlim to appellant as interested buyer. As planned, PO3 Calimlim told appellant he was going to buy Php300.00 worth of *shabu*. Appellant took out a plastic sachet containing

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<sup>4</sup> Records p. 1.

<sup>5</sup> CA rollo, p. 27.

\* "Froiland" in some parts.

<sup>6</sup> Id. at 28.

<sup>7</sup> Id. at 33.

<sup>8</sup> Rollo, p. 3 and CA rollo, p. 29.

<sup>9</sup> CA rollo, pp. 29-30.

white crystalline substance and handed it to PO3 Calimlim; in turn, PO3 Calimlim gave appellant three (3) marked Php100.00 bills. After the exchange, SPO3 Calimlim scratched his head to signal the team that the sale had been consummated. On cue, SPO1 Ferrer closed in and arrested appellant.<sup>10</sup>

Seized from appellant were the marked money and the plastic sachet containing white crystalline substance. PO3 Calimlim immediately marked the plastic sachet with his initials "ALC-1." Thereafter, they brought appellant and the seized items to the Magsaysay Barangay Hall before Barangay Kagawads Junvee Misleng and Eddie Manaois. In their presence, PO3 Calimlim and SPO1 Ferrer inventoried the seized items.<sup>11</sup>

PO3 Calimlim personally delivered the seized drug to the PNP Crime Laboratory for testing. Forensic chemist Malojo did the test and based on the results found the item positive for methamphetamine hydrochloride, a dangerous drug known as *shabu*.<sup>12</sup>

The prosecution offered the following documentary evidence: Joint Affidavit of Arrest; Inventory of Items Seized; Letter Request dated October 30, 2009; Rubber Stamp Impression of PNP Crime Laboratory; Marked Monies; Initial Laboratory Report dated October 30, 2009; Pictures; *Shabu*; and Final Chemistry Report.

### **The Defense's Evidence**

Appellant denied the charge and claimed he was framed. He testified that on October 29, 2009, he was waiting for his partner when some men introduced themselves as NBI agents and informed him of a case filed against him. Knowing that he had done nothing wrong, he went with the NBI agents to the Lingayen Police Station. He spent the night at the Lingayen Police Station until he was brought to the Justice Hall the following day. Thereafter, he was transferred to the Bureau of Jail Management and Penology in Dagupan City.<sup>13</sup> Too, appellant contends that he only learned that he was being charged with sale of illegal drugs a year after.<sup>14</sup>

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

As borne by its Decision dated January 10, 2014,<sup>15</sup> the trial court rendered a verdict of conviction, *viz*:

WHEREFORE, premises considered, the court hereby finds the accused GUILTY, of the crime of Violation of Section 5 of Art. II of R.A. 9165, beyond reasonable doubt, and is hereby sentenced to suffer

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<sup>10</sup> *Rollo*, p. 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.*

<sup>14</sup> *CA rollo*, p. 20, 23.

<sup>15</sup> *CA rollo*, pp. 27-39, Penned by Presiding Judge A. Florentino R. Dumlaog, Jr.

the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos.

Let the shabu subject matter of this case be disposed of in the manner provided by law.

SO ORDERED.<sup>16</sup>

The trial court found that the prosecution established beyond reasonable doubt that appellant was caught *in flagrante delicto* selling *shabu* to PO3 Calimlim.

### **The Proceedings Before the Court of Appeals**

On appeal, appellant faulted the trial court for rendering a verdict of conviction despite the buy-bust team's alleged non-compliance with the chain of custody requirements:<sup>17</sup>

*First*, the records do not show that the marking of the seized item was done in the presence of appellant or his chosen representative;<sup>18</sup> and

*Second*, the inventory was conducted in the barangay hall, rather than the place of arrest. Also, there was no representative from the media and the Department of Justice present at the signing of the physical inventory, as well as the photographing of the seized item.<sup>19</sup>

In refutation, the Office of the Solicitor General (OSG) through Assistant Solicitor John Emmanuel F. Madamba and State Solicitor Jacqueline S. Martin-Balictar defended the verdict of conviction. They relied on pertinent jurisprudence saying that substantial compliance with the legal requirements on handling the seized item is sufficient, as long as the integrity and evidentiary value are preserved.<sup>20</sup> It added that mere lapses in procedure do not invalidate a seizure.<sup>21</sup>

### **The Court of Appeals' Ruling**

The Court of Appeals affirmed through its assailed Decision dated October 13, 2015.<sup>22</sup> It found the prosecution to have proven appellant's guilt to a moral certainty, giving full faith and credit to the testimonies of the arresting officers.<sup>23</sup> These testimonies, coupled with the presentation of the *corpus delicti*, convincingly established that appellant was caught *in flagrante delicto* selling *shabu*.<sup>24</sup>

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<sup>16</sup> *Rollo*, pp. 38-39.

<sup>17</sup> *CA rollo*, pp. 14-26.

<sup>18</sup> *Id.* at 22.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 58, citing *People v. Cortez*, 611 Phil. 360, 381-382 (2009).

<sup>21</sup> *Id.* at 59, citing *People v. Domado*, 635 Phil. 74, 86-87 (2010).

<sup>22</sup> *Id.* at 70-86.

<sup>23</sup> *Id.* at 75-79.

<sup>24</sup> *Id.* at 78.

Too, inventory of the seized item at the Barangay Hall rather than the place of arrest is an acceptable deviation. For despite such lapse, the prosecution proved the uninterrupted chain of custody over the drug item from seizure until delivery to the PNP Provincial Crime Laboratory.<sup>25</sup>

### The Present Appeal

Appellant now comes before this Court via Notice of Appeal,<sup>26</sup> urging the exercise of its discretionary appellate jurisdiction to review and reverse the verdict of conviction.

In compliance with Resolution dated September 14, 2016,<sup>27</sup> both parties submitted their respective Manifestations (In Lieu of a Supplemental Brief), having fully discussed their points of arguments in their respective briefs submitted with the Court of Appeals.<sup>28</sup>

### Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the marking, inventory and photograph of the seized item?

### Ruling

We acquit.

Petitioner is charged with unauthorized sale of dangerous drugs allegedly committed on October 29, 2009. The governing law is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, 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:

- (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,**

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<sup>25</sup> *Id.* at 82-83.

<sup>26</sup> *Rollo*, pp. 19-20.

<sup>27</sup> *Id.* at 24-25.

<sup>28</sup> *Id.* at 26-35.

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**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 added)

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The Implementing Rules and Regulations of RA 9165 further commands:

**Section 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 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. (emphases added)

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally sold by the accused is the same substance presented in court.<sup>29</sup>

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:<sup>30</sup> **first**, the seizure and marking 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 by the forensic chemist to the court.<sup>31</sup>

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily

<sup>29</sup> *People v. Calvelo*, G.R. No. 223526, December 6, 2017, 848 SCRA 225, 244.

<sup>30</sup> As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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b. "Chain of Custody" means the 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. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

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<sup>31</sup> *People v. Dahil*, 750 Phil. 212, 231 (2015).

identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.<sup>32</sup>

Here, prosecution witness and arresting officer PO3 Calimlim testified:

PROS CASTRO:

Q And you also made mention that you put the operation in the police blotter, I am showing to you this certification from PNP, will you go over and tell whether this is the same certification?

A Yes, madam.

Q Were you able to arrive at the place where the buy-bust operation will be conducted?

A Yes, madam, we arrived at the agreed place.

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Q When you arrived at the place where Altantor was supposed to sell drugs, what happened next?

A We arrived at the place at around 5:00 in the afternoon and Altantor was there and I was introduced by the asset to him, madam.

Q After the introduction, what happened next?

A I was asked by Altantor how much will I buy, madam.

Q What is your response?

A I told him I am going to buy worth P300.00, madam.

Q What did he tell you?

A He took one from his pocket and handed to me the shabu, madam.

Q When he handed you the shabu, what did you do?

A I gave him the P300.00 in exchange, madam.

Q After you gave the P300.00 to the accused and in turn he gave you the plastic sachet, what happened next?

A I immediately had the pre-arranged signal by scratching my head, madam.

Q After you received the shabu and you gave the P300.00 you immediately effected the pre-arranged signal for the other members to get near you, what happened next?

A Immediately SPO1 Ferrer rushed to our place and arrested Altantor and he informed his constitutional rights and we searched him if we can still find any.

Q You said you searched him whether he is in possession of any illegal thing, did you find anything from the possession of the accused?

A SPO1 Ferrer recovered from him P300.00 peso bill, madam.

<sup>32</sup> *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

Q It was SPO1 Ferrer who frisked him and found the P300.00 marked money that you used to buy shabu from the accused?  
A Yes, madam.

Q What did you do next after that?  
A We marked the shabu and brought the accused at the Brgy. Hall of Dagupan City, madam.

Q You marked the plastic sachet, what other document did you prepare  
A The letter request to the crime laboratory, madam.<sup>33</sup>

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Q After you did the markings on the plastic sheets, what happened next?  
A After his arrest we apprised him of his constitutional rights then we brought him at the barangay hall of Magsaysay, Dagupan City for inventory, madam.

Q So the barangay hall is near the place where the buy-bust operation took place?  
A Yes, madam.

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Q **Why did you not make the Confiscation Receipt right then and there in the place where the incident happened?**  
A **We brought him to the barangay hall purposely to avoid any commotion or any untoward incident relative to the incident that transpired because at the time it was already dark, madam.**<sup>34</sup>

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ATTY. CARPIZO ON CROSS EXAMINATION:

Q **Where did you prepare the receipt inventory of the item seized?**

A **At the Brgy. Hall in Magsaysay, sir.**

Q Yes, it is in the Brgy. Hall, you did not mark at the place where you arrested?

A I marked at the place, madam.

Q **And those present only when you made a receipt of inventory were two (2) brgy. officials?**

A **Yes, sir.**

Q **No members from media or DOJ to document the incident?**

A **That time there was not (sic) representative, sir.**<sup>35</sup>  
(Emphases added)

<sup>33</sup> TSN, January 13, 2012, pp. 6-9.

<sup>34</sup> TSN, March 23, 2012, pp. 2-3.

<sup>35</sup> TSN, May 23, 2013, p. 4.



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SPO1 Ferrer also testified as a member of the buy-bust operation team:

ATTY. DELA CRUZ:

Q When you conducted the buy-bust operation, you did not ask for the presence of a representative from the Department of Justice, is that right?

A Yes, sir.

Q You never ask (sic) for the representative from the media, is that right?

A Yes, sir.<sup>36</sup>

The arresting officers' testimonies, on the face, bear how the chain of custody here had been breached in several instances.

**First**, the venue for making the inventory was not properly complied with. Section 21(a) of the Implementing Rules and Regulations (IRR) requires that the inventory be conducted immediately after seizure and confiscation, thus it must be done at the place of the arrest. In *People v. dela Victoria*,<sup>37</sup> the Court strictly applied the requirement and acquitted the accused-appellant therein for the arresting officer's non-compliance therewith.

In the present case, the inventory was conducted at the barangay hall, without any explanation as to the distance from the nearest police station or nearest office of the apprehending team. The only explanation given was "to avoid any commotion or any untoward incident" which to the Court, hardly justifies such deviation. Any commotion or untoward incident is, at best, speculative.

In *People v. Sood*,<sup>38</sup> the Court ruled that the buy-bust team could have planned the operation in such a way that any possible commotion could be avoided or contained. More, the buy-bust team's excuse of existence of a commotion was not a justifiable reason for failure to conduct the inventory at the place of seizure because the armed men could have easily contained it.<sup>39</sup>

**Second**, PO3 Calimlim and SPO1 Ferrer both testified that there was neither a representative from the media nor from the DOJ during the conduct of the post-operation procedures. No explanation was given for their absence.

The presence of both representatives, together with the accused and a barangay official, is mandated by the law. Failure to comply with this requirement shall result in the acquittal of the accused. In the case of *People*

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<sup>36</sup> TSN, October 24, 2012, p. 12.

<sup>37</sup> G.R. No. 233325, April 16, 2018.

<sup>38</sup> G.R. No. 227394, June 6, 2018.

<sup>39</sup> *People v. Sood*, citing *People v. Cornel*, G.R. 229047, April 16, 2018.

*v. Mendoza*,<sup>40</sup> the Court emphasized that the presence of these personalities is an insulation against the evils of switching, planting, or contamination of evidence. While non-compliance may be allowed under justifiable circumstances, jurisprudence states that prosecution must show that the PDEA operatives exerted earnest efforts to comply with the procedure.<sup>41</sup>

*Finally*, the photograph requirement was not complied with at all. Though the prosecution offered in evidence pictures marked as Annex “G”, these pictures are not of the items seized. What can be seen in Annex “G” are two pictures: a mugshot of the appellant, and one where a man is writing on a piece of paper.<sup>42</sup> What the law requires is a photograph of the seized item, which is absent in this case. These photos do not even show the presence of the appellant or the witnesses.

In *People of the Philippines v. Monir Jafaar*,<sup>43</sup> the Court acquitted appellant for the prosecution’s failure to comply with the photograph requirement. Failure to present the photograph of the seized sachet as evidence is a fatal break in the chain of custody.

Indeed, the repeated breach of the chain of custody rule here had cast serious uncertainty on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly restrained petitioner’s right to liberty. Verily, therefore, a verdict of acquittal is in order.

Strict adherence to the chain of custody rule must be observed;<sup>44</sup> the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence vis-à-vis the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule.

We have clarified, though, that a perfect chain may be impossible to obtain at all times because of varying field conditions.<sup>45</sup> In fact, the IRR of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.<sup>46</sup> The prosecution’s witnesses, however, offered an unacceptable excuse for the deviation from the strict requisites of the law.

In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the proviso “so long as the integrity and evidentiary value of the seized items are properly preserved”, too, will not come into play.

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<sup>40</sup> 736 Phil. 749, 761 (2014).

<sup>41</sup> Supra note 37, citing *People v. Miranda*, G.R. No. 229671, January 31, 2018.

<sup>42</sup> Exhibits for the Prosecution, Exhibit “G”, p. 14.

<sup>43</sup> 803 Phil. 582, 595 (2017).

<sup>44</sup> *People v. Lim*, G.R. No. 231989, September 04, 2018.

<sup>45</sup> See *People v. Abetong*, 735 Phil. 476, 485 (2014).

<sup>46</sup> See Section 21 (a), Article II, of the IRR of RA 9165.

For perspective, life imprisonment is imposed for unauthorized sale of dangerous drugs even for the minutest amount. It thus becomes inevitable that safeguards against abuses of power in the conduct of buy-bust operations be strictly implemented. The purpose is to eliminate wrongful arrests and, worse, convictions. The evils of switching, planting or contamination of the *corpus delicti* under the regime of RA 6425, otherwise known as the “Dangerous Drugs Act of 1972,” could again be resurrected if the lawful requirements were otherwise lightly brushed aside.<sup>47</sup>

As heretofore shown, the chain of custody here had been breached several times over; the metaphorical chain, irreparably broken. Consequently, the identity and integrity of the seized drug item were not deemed to have been preserved. Perforce, appellant must be unshackled, acquitted, and released from restraint.<sup>48</sup>

Suffice it to state that the presumption of regularity in the performance of official functions<sup>49</sup> cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.<sup>50</sup> And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule.

**ACCORDINGLY**, the petition is **GRANTED**. The Decision dated October 13, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 06717 is **REVERSED** and **SET ASIDE**.

Appellant **ALTANTOR DELA TORRE y CABALAR** is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to: a) immediately release accused-appellant from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of judgment be issued immediately.

**SO ORDERED.**

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

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<sup>47</sup> See *People v. Luna*, G.R. No. 219164, March 21, 2018.

<sup>48</sup> See *Jacson v. People*, G.R. No. 199644, June 19, 2019.

<sup>49</sup> Section 3(m), Rule 131, Rules of Court


<sup>50</sup> *People v. Cabilies*, June 7, 2017, G.R. No. 220758, 827 SCRA 89, 98.



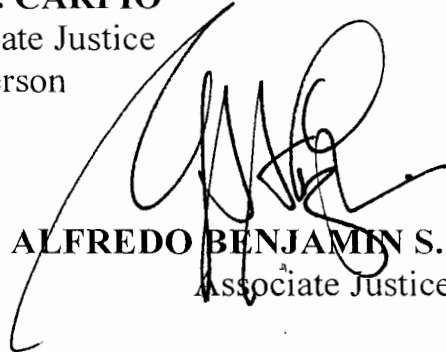
**WE CONCUR:**



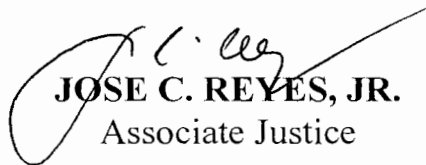
**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson



**ESTELA M. PERLAS-BERNABE**  
Associate Justice




**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**JOSE C. REYES, JR.**  
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



**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the above 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.



**LUCAS P. BERSAMIN**  
Chief Justice

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