

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

SECOND DIVISION

**JOEL A. LARGO**

Petitioner,

**G.R. No. 201293**

**Present:**

- versus -

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

**PEOPLE OF THE PHILIPPINES**  
Respondent.

**Promulgated:**

19 JUN 2019

*Harcabalo*

X-----X

**DECISION**

**LAZARO-JAVIER, J.:**

**THE CASE**

This petition assails the following dispositions of the Court of Appeals in CA-G.R. CEB-CR No. 00940<sup>1</sup> entitled "*People of the Philippines v. Joel A. Largo*":

<sup>1</sup> Penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justice Edgardo L. Delos Santos and Associate Justice Eduardo B. Peralta, Jr.

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1. Decision<sup>2</sup> dated November 30, 2010 affirming petitioner's conviction in Criminal Case No. CBU-75585 for violation of Section 11, Article II of Republic Act 9165; and
2. Resolution<sup>3</sup> dated February 29, 2012 denying petitioner's motion for reconsideration.

## THE PROCEEDINGS BEFORE THE TRIAL COURT

### *The Charge*

In Criminal Case No. CBU-75585, petitioner Joel A. Largo was charged with violation of Section 11, Article II of Republic Act 9165 (RA 9165) under the following Information, *viz*:

That on or about the 28<sup>th</sup> day of November 2005, at 1:00 o'clock in the afternoon in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, without authority of law, with deliberate intent, did then and there have in his possession, use and control one (1) heat-sealed transparent plastic packet containing 0.05 gram of white crystalline substance locally known as "Shabu" containing methamphetamine hydrochloride, a dangerous drug.  
CONTRARY TO LAW.<sup>4</sup>

On arraignment, petitioner pleaded "not guilty". Trial ensued.

Barangay Tanods Vicente Bosque and Venancio Catalan of Brgy. Ermita, Cebu City testified for the prosecution. On the other hand, appellant Joel Largo and Celia Dalugdog\* testified for the defense.

### *The Prosecution's Evidence*

On November 28, 2005, around 1 o'clock in the afternoon, Barangay Tanods Bosque, Catalan, and three other barangay tanods were patrolling the Carbon Public Market in Cebu City when a cargo handler informed them that people at the second floor of Unit 3 were engaged in a pot session.<sup>5</sup> When they arrived in the area, people who saw them scampered away. One of them ran toward Barangay Tanod Bosque. It was petitioner Joel A. Largo. When the latter realized he was heading toward a barangay tanod, he backed off. Then he flicked away a plastic sachet containing white crystalline substance. Barangay Tanod Bosque arrested him and retrieved the plastic sachet from the ground. He held on to the plastic sachet until they reached the police station.<sup>6</sup> There, he turned it over to Police Investigator SPO1 Romeo Abellana who marked it "JLA".

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<sup>2</sup> *Rollo*, pp. 39-47.


<sup>3</sup> *Id.* at 63-64. Penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justice Eduardo B. Peralta, Jr. and Associate Justice Nina G. Antonio Valenzuela.

<sup>4</sup> Record, p. 1.

\* "Dalogdog" in some parts of *Rollo* and Records.

<sup>5</sup> Joint-Affidavit of Arresting Officers, Original Record, p. 11.

<sup>6</sup> TSN of Vicente Bosque, December 5, 2006, pp. 8-14.



**Barangay Tanod Catalan** brought the plastic sachet to the PNP Crime Laboratory for examination. P/Sr. Insp. David Alexander Patriana who examined the contents of the plastic sachet confirmed that they tested positive for methamphetamine hydrochloride or “shabu”, a dangerous drug.<sup>7</sup>

The prosecution presented in evidence the letter request for laboratory examination<sup>8</sup> and Chemistry Report No. D-1806-2005.<sup>9</sup>

### *The Defense’s Evidence*

**Petitioner** testified that on November 27, 2005 he was waiting for a jeepney ride in front of the University of San Jose Recolletos Bldg. when barangay tanods of Ermita, Cebu City accosted and picked him up. When he asked why he was being accosted, the barangay tanods replied that Barangay Captain Imok Rupinta of Ermita, Cebu City wanted to talk to him. They brought him to the barangay hall where he got detained. He was neither investigated nor informed of his constitutional rights. Worse, the supposed Barangay Captain Rupinta never arrived.

Around 8 o’clock in the evening of the same day, a certain Erik Larrubis y Ripe was also brought in and detained in the same cell. Like him, Erik did not know why the barangay tanods arrested and jailed him.

On the following day, Virgilio Cartilla y Carteciano of Mantalongon, Dalaguete, Cebu was also brought in and detained. All three of them were clueless why they were being detained in the same cell.

On November 28, 2005, around 2:30 in the afternoon, they were brought to the Police Station 5, M.C. Briones St., Cebu City supposedly for further investigation but the same did not take place.

In the afternoon of November 29, 2005, they were taken to the Office of the City Prosecutor of Capitol, Cebu City for inquest proceedings. Through a blotter report,<sup>10</sup> he came to know that they had been separately charged with violation of Section 11 of R.A. 9165 or illegal possession of dangerous drugs.<sup>11</sup>

**Celia Dalugdog**, the mother-in-law of petitioner’s brother, testified that on November 27, 2005, petitioner asked permission to go home to Basak, Cebu City. He wanted to bring home milk for his child. On the following day, she learned of petitioner’s arrest so she visited him in his detention cell.<sup>12</sup>

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<sup>7</sup> Chemistry Report, November 29, 2005, Original Record, p. 102.

<sup>8</sup> Record, p. 101.

<sup>9</sup> *Id.* at 102.

<sup>10</sup> *Id.* at 18.

<sup>11</sup> Counter-Affidavit of Joel A. Largo, Original Record, p. 124-127.

<sup>12</sup> Affidavit of Cecilia Dalugdog, Original Record, p. 123.

The defense presented the following documentary evidence: Resolution of Prosecutor Agan recommending the dismissal of the case;<sup>13</sup> Affidavit of Celia Dalugdog;<sup>14</sup> Certification of Police Blotter regarding the arrest of Joel Largo;<sup>15</sup> and Counter-Affidavit of Joel Largo.<sup>16</sup>

### The Trial Court's Decision

By *Judgment* dated April 4, 2008,<sup>17</sup> the trial court found petitioner guilty as charged and sentenced him to twelve years and one day to fifteen years and fine of ₱350,000.00, viz:

WHEREFORE, the guilt of the accused duly proven beyond reasonable doubt, the Court sentences the accused to suffer an imprisonment ranging from twelve (12) years and one (1) day to fifteen (15) years and to pay Php 350,000.00 as fine.

The trial court gave full credence to the testimonies of Barangay Tanods Vicente Bosque and Venancio Catalan and held that although the chain-of-custody rule was not strictly observed, the integrity of the confiscated sachet of shabu was duly preserved, and its evidentiary value, remained intact.

Petitioner moved for reconsideration which the trial court denied.

### The Appeal

On appeal, petitioner faulted the trial court for finding him guilty of the offense charged despite the following alleged infirmities: (1) the prosecution dismally failed to establish the identity and chain of custody of the *corpus delicti*; (2) his warrantless arrest was invalid because it was not proved that he was caught *in flagrante delicto*; and (3) the testimony of Brgy. Tanod Bosque that on the same day petitioner was arrested, the former has altogether three successive warrantless arrests in Carbon Public Market with exactly 30-minute intervals.

On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Roman G. Del Rosario and Associate Solicitor Ma. Felina C.B. Yu countered petitioner's warrantless arrest was valid in view of the urgent need for the arresting officers to promptly apprehend people engaged in illegal drug trade and illegal drug use. Consequently, the plastic sachet of dangerous drugs obtained in the course of the arrest was also admissible in evidence. More so considering that the defense did not present any evidence to show that the law enforcers were impelled by any ill motive to falsely implicate petitioner of illegal possession of dangerous drug.

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<sup>13</sup> Record, pp. 4-9.

<sup>14</sup> *Id.* at 123.

<sup>15</sup> *Id.* at 18.

<sup>16</sup> *Id.* at 124-127.

<sup>17</sup> *Rollo*, pp. 66-69

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### The Court of Appeals' Ruling

By Decision dated November 30, 2010, the Court of Appeals affirmed. It also denied petitioner's motion for reconsideration through Resolution dated February 29, 2012.

### The Present Petition

Petitioner now implores the Court to exercise its discretionary appellate jurisdiction to review and reverse the assailed dispositions of the Court of Appeals.

He faults the Court of Appeals for *first*, admitting in evidence the confiscated dangerous drug despite the fact that it was obtained incidental to his invalid warrantless arrest and *second*, for disregarding the blatant breach of the chain of custody rule.

In refutation, the OSG essentially reiterate its arguments before the Court of Appeals.

### Issues

1. Was petitioner's warrantless arrest valid?
2. Was the chain of custody rule duly complied with?

### Ruling

On the first issue, we cannot sustain petitioner's challenge against his warrantless arrest and the consequent seizure of the dangerous drug. A warrantless arrest is not a jurisdictional defect and any objection thereto is deemed waived when the person arrested submits to arraignment without raising this objection through an appropriate motion to quash.<sup>18</sup>

Here, petitioner voluntarily submitted to the jurisdiction of the trial court, underwent arraignment and actively participated during the trial. Before arraignment and even during the entire proceedings before, petitioner never objected to the manner by which he got arrested. His belated objection for the first time on appeal may no longer be entertained.

We now proceed to the second issue: was the chain of custody rule complied with?

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<sup>18</sup> *Zalameda v. People*, 614 Phil. 710, 729 (2009).

In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself.<sup>19</sup> The dangerous drug seized from the accused constitutes such *corpus delicti*. It is thus of utmost imperative that the prosecution be able to establish that the identity and integrity of the seized drug be duly preserved in order to support a verdict of conviction.<sup>20</sup> Verily, not only should the prosecution prove the fact of possession. It must also prove that the substance subject of illegal possession is truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt.

The Information here alleged that the offense was committed on November 28, 2005. The governing law, therefore, is RA 9165, Section 21 (1), *viz*:

- (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.

Section 21 (a) of the Implementing Rules and Regulations of RA 9165 complements the foregoing provision, *viz*:

- (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;

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<sup>19</sup> *People v. Bautista*, 682 Phil. 487, 499-500 (2012).

<sup>20</sup> *Calahi v. People*, G.R. No. 195043, November 20, 2017, citing *People v. Casacop*, 778 Phil. 369, 376 (2016) and *Zafra v. People*, 686 Phil. 1095, 1105-1106 (2012).

The chain of custody is 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 and their presentation in court for identification and destruction. This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition.<sup>21</sup>

*People v. Gayoso*<sup>22</sup> enumerated the four links comprising the chain of custody:

**First**, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer;

**Second**, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer;

**Third**, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and

**Fourth**, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.<sup>23</sup>

We focus on the first, third and fourth links.

The first link refers to seizure and marking. "Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.<sup>24</sup> Marking though should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody.<sup>25</sup>

Here, Barangay Tanod Bosque admitted he did not mark the dangerous drug which he retrieved from the second floor of the Carbon Market, thus:

Q: Since you stated earlier that you were the one who picked up that plastic pack containing white substance after it was flicked by that person who was in possession of that plastic pack of white substance from the scene up to the police station?

A: Me, ma'am.

<sup>21</sup> *People v. Diputado*, G.R. No. 213922, July 5, 2017, 830 SCRA 172, 184 (2017).

<sup>22</sup> G.R. No. 206590, March 27, 2017, 821 SCRA 516, 529 (2017).

<sup>23</sup> *People v. Hementiza*, 807 Phil. 1017, 1030 (2017).

<sup>24</sup> *People v. Ismael*, 806 Phil. 21, 31 (2017).

<sup>25</sup> *People v. Ramirez and Lachica*, G.R. No. 225690, January 17, 2018, citing *People v. Sanchez*, and 590 Phil. 214, 241 (2008).

Q: Upon arrival at the police station, Mr. Witness, what did you do with the plastic pack which you have picked up from the ground?

A: I turned over the evidence to the Police Investigator at the Carbon Police Station.

Q: After you turned over the item to the Investigator, do you know what the Investigator did to the plastic pack of white substance?

A: A letter request was prepared.

Q: After that letter request was prepared, what happened?

A: The same, together with the evidence was brought to the PNP Crime Laboratory at Gorordo Avenue.<sup>26</sup>

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Q: When you picked up the white substance, you did not do the marking right there at the second floor of Unit 3 Carbon Market?

A: No, sir.<sup>27</sup>

The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.<sup>28</sup>

Here, the failure of Barangay Tanod Bosque to mark the dangerous drug engendered serious doubts on whether the sachet of shabu which petitioner allegedly flicked in the air and which Barangay Tanod Bosque retrieved from the ground was indeed the very same item indicated in the Chemistry Report.

In *People v. Diputado*,<sup>29</sup> the Court acquitted the accused when the prosecution failed to establish an unbroken chain of custody because the seized drug and buy bust money were not marked at the place where the accused was arrested. The Court noted that from the time of seizure up until the dangerous drug was brought to the office of the arresting officers, alteration, substitution or contamination of the seized item could have happened.

The first link also includes compliance with physical inventory and photograph of the seized dangerous drug. This is done before the dangerous drug is sent to the crime laboratory for testing.

Here, the testimonies of Barangay Tanods Bosque and Catalan did not at all mention that the required inventory and photograph were complied with. Also, the prosecution's offer of documentary evidence did not bear these twin documents.

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<sup>26</sup> TSN, December 5, 2006, pp. 11-12.

<sup>27</sup> TSN, March 20, 2007, p. 13.

<sup>28</sup> Supra note 21, pp. 184-185.

<sup>29</sup> G.R. No. 213922, July 5, 2017, 830 SCRA 172, 188.



Hence, in the absence of competent proof that the required inventory and photography were complied with, sans any justification therefor, the chain of custody is considered to have been breached.

In *People v. Alagarme*<sup>30</sup> and *People v. Arposeple*<sup>31</sup> the Court ruled that the failure of the arresting officers to prepare the required inventory and photograph of the seized dangerous drug militated against the guilt of an accused. For then the integrity and evidentiary value of the *corpus delicti* cannot be deemed to have been preserved.

In fine, the **first link** had been incipiently broken not once but thrice in view of the omission to comply with **first**, the required marking, **second**, the inventory and **third**, the photograph of the confiscated dangerous drug.

The **third link** refers to the transfer of the dangerous drug from the investigating officer to the forensic chemist of the crime laboratory. Here, Barangay Tanod Catalan testified that he was the one who brought the dangerous drug to the crime laboratory after SPO1 Abellana, the investigating officer prepared the letter request for examination of the specimen.<sup>32</sup> SPO1 Abellana, on the other hand, was not presented to testify how he handled the dangerous drug from the time it was turned over to him by the arresting officers up to the time he endorsed the same for chemical examination.

In *People v. Carlit*,<sup>33</sup> the Court acquitted the accused when the investigating officer who was in custody of the dangerous drug before the same was sent to the crime laboratory for examination failed to testify on how he handled the drug after it was placed in his custody until it was brought to the forensic chemist. It was emphasized that “for during the interim time - from when the specimen was placed under his custody until the time it was brought to court - the threat of tampering, alteration, or substitution of the *corpus delicti* still existed.”

In sum, the third link here appears to have been as broken as the first link.

Finally, the **fourth link** refers to the turnover and submission of the dangerous drug from the forensic chemist to the court.<sup>34</sup> In drug related cases, it is of paramount necessity that the forensic chemist testifies as to details pertinent to the handling and analysis of the dangerous drug submitted for examination i.e. when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in, as the case may be. Further, the forensic chemist must also identify the name and method of analysis used in determining the

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<sup>30</sup> 754 Phil. 449, 457 (2015).

<sup>31</sup> G.R. No. 205787, November 22, 2017.

<sup>32</sup> *Id.*

<sup>33</sup> G.R. No. 227309, August 16, 2017.

<sup>34</sup> *Supra* note 23.

chemical composition of the subject specimen.<sup>35</sup>

Here, forensic chemist P/Sr. Insp. Patriana did not testify on how he supposedly received, handled, examined and preserved the integrity of the dangerous drug from the time he received it until it left his custody. There was no evidence either showing who turned over the dangerous drug for the purpose of presenting it to the court as evidence.<sup>36</sup>

In *People v. Dahil and Castro*,<sup>37</sup> the Court acquitted the accused in view of the absence of the testimony of the forensic chemist on how she handled the dangerous drug submitted to her for laboratory examination, viz:

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general stipulation of her testimony. Although several subpoena were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.

Hence, like the first and the third links, the final link in this case is considered to have been breached.

Surely, the repeated lapses in the chain of custody rule here had cast serious doubts on the identity and the integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly deprived petitioner of his right to liberty.

In another vein, while the chain of custody should ideally be perfect and unbroken, it is almost always impossible to obtain such perfect and unbroken chain.<sup>38</sup> In this light, the Implementing Rules and Regulations of RA 9165 bears a saving clause allowing leniency whenever compelling reasons exist that would otherwise warrant deviation from the established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.<sup>39</sup>

Here, the arresting barangay tanods did not at all offer any explanation which would have excused their failure to comply with the chain of custody rule. They did not even acknowledge that they omitted the required marking, inventory and photograph. In sum, the condition for the saving clause to

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<sup>35</sup> Board Regulation No. 1, Series of 2002: Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

<sup>36</sup> Record, p. 50.

<sup>37</sup> 750 Phil. 212, 237 (2015).

<sup>38</sup> *People v. Adrid*, 705 Phil. 654, 672 (2013).

<sup>39</sup> See Section 21 (a), Article II of the IRR of RA 9165.



become operational was not fulfilled. For this reason, there is no occasion for the proviso “as long as the integrity and the evidentiary value of the seized items are properly preserved,” to even come into play.

For perspective, in cases involving illegal possession of dangerous drug, even for the most miniscule amount, imprisonment of at least twelve years and one day awaits violators. It is thus of utmost importance that the safeguards against abuses of power in the conduct of drug-related arrests be strictly implemented. The purpose is to eradicate wrongful arrests and, worse, convictions. The pernicious practice 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>40</sup>

Be that as it may, the presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers failed to comply many times over with the requirements laid down in Section 21 of RA 6195 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused.<sup>41</sup>

Taken together, the lapses in the procedure laid out in Section 21 of RA 9165 and the Implementing Rules and Regulations and the suspicious handling of the seized drug here had impeached its integrity and evidentiary value. As the dangerous drug presented before the court constitutes the *corpus delicti* of the offense charged, it must be proven with moral certainty that it is the same item seized from Largo during the roving patrol conducted by the barangay tanods at the Carbon Public Market. Since the prosecution miserably failed to discharge this burden, petitioner is entitled to a verdict of acquittal on ground of reasonable doubt.

**ACCORDINGLY**, the petition is **GRANTED** and the Decision dated November 30, 2010 in CA-G.R. CEB-CR No. 00940, **REVERSED** and **SET ASIDE**.

Joel A. Largo is **ACQUITTED** of violation of Section 11, Article II of Republic Act 9165. Let an entry of final judgment be issued immediately.

The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to cause the immediate release of Joel A. Largo from custody unless he is being held for some other lawful cause, and to submit his report on the action taken within five days from notice.


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<sup>40</sup> *People v. Luna*, G.R. No. 219164, March 21, 2018.


<sup>41</sup> *Id.*

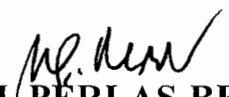


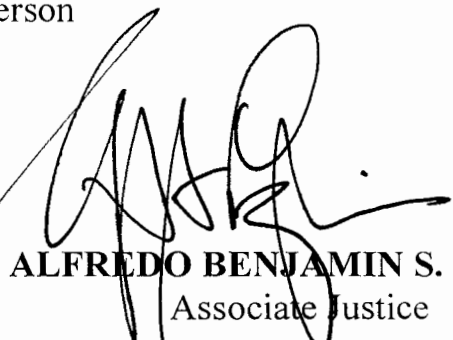
**SO ORDERED.**

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

**WE CONCUR:**

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

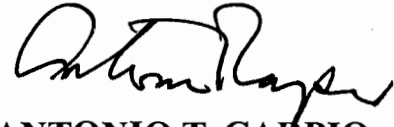
  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**JOSE C. REYES, JR.**  
Associate Justice

**ATTESTATION**

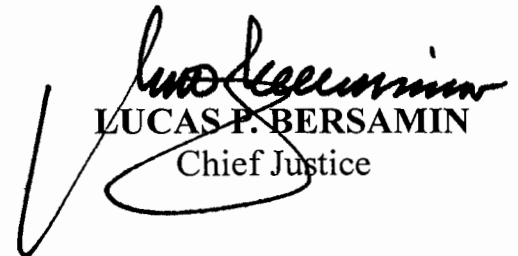
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division



**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