



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES
 Plaintiff-Appellee,

G.R. No. 243589

Present:

- versus -

BERSAMIN, C.J.,
 PERLAS-BERNABE,
 JARDELEZA,
 GISMUNDO, and
 CARANDANG, JJ.

ANDIDATO MAMARINTA and
 JACK BATUAN
 Accused-Appellants.

Promulgated:

SEP 09 2019

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DECISION

CARANDANG, J.:

Before Us is an ordinary appeal¹ filed by accused-appellants Andidato P. Mamarinta (Mamarinta) and Jack A. Batuan (Batuan; collectively, accused-appellants) assailing the Decision² dated July 26, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08215, which affirmed the Judgment³ dated November 23, 2015 of the Regional Trial Court of Pasig City, Branch 164 (RTC), the dispositive portion of which reads:

WHEREFORE:

1. In *Criminal Case No. 20483-D*, the Court finds the accused (*sic*) Andidato P. Mamarinta *alias* "Dato" and Jack A. Batuan *alias* "Malupiton", **GUILTY** beyond reasonable doubt of the crime of selling *shabu* penalized under Section

¹ CA rollo, pp. 174-175.

² Penned by Associate Justice Marie Christine Azcarraga-Jacob, with by Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan, concurring; rollo, pp. 2-19.

³ Penned by Presiding Judge Jennifer Albano Pilar; CA rollo, pp. 77-87.

5, Article II of RA 9165, and hereby imposes upon them the penalty of **life imprisonment and a fine of five hundred thousand pesos (P500,000.00), with all the accessory penalties under the law.**

2. In *Criminal Case No. 20484*, the Court finds accused Andidato P. Mamarinta *alias* "Dato" **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposes upon him an indeterminate penalty of imprisonment **from twelve (12) years and one (1) day, as minimum, to sixteen (16) years as maximum, and a fine of three hundred thousand pesos (P300,000.00), with all the accessory penalties under the law.**

3. In *Criminal Case No. 20485*, the Court finds accused Jack A. Batuan *alias* "Malupiton" **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposes upon him an indeterminate penalty of imprisonment **from twelve (12) years and one (1) day, as minimum, to sixteen (16) years, as maximum, and a fine of three hundred thousand pesos (P300,000.00), with all the accessory penalties under the law.**

The five (5) transparent plastic sachets of *shabu* (Exhibits "W" to "Z" and "AA") subject matter of these cases are hereby ordered confiscated in favor of the government and turned over to the PDEA for destruction in accordance with law.

SO ORDERED.⁴ (Emphasis in the original)

The Antecedents

Accused-appellants were charged with violation of Sections 5⁵ and 11,⁶

⁴ Id. at 87.

⁵ Sec. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

⁶ Sec. 11. *Possession of Dangerous Drugs.* –The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin; CTEDSI
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

Article II of Republic Act No. (R.A.) 9165, also known as the Comprehensive Dangerous Drugs Act of 2002, in three separate Informations which provide:

Accused: Andidato P. Mamarinta alias "Dato" and Jack A. Batuan alias "Malupiton"

On or about July 19, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Rodrigo J. Nido, Jr., a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing 0.10 gram of white crystalline substance, which was found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.⁷

Accused: Andidato P. Mamarinta alias "Dato"

On or about July 19, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control three (3) heat-sealed transparent plastic sachets each containing the following:

1. B (2RJN/DATO 07/19/2015 – 0.12 gram
2. C (3RJN/DATO 07/19/2015 – 0.12 gram
3. D (4RJN/DATO 07/19/2015 – 0.11 gram

of white crystalline substance, which were found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

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- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
 - (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and
 - (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Contrary to law.⁸

Accused: Jack A. Batuan alias "Malupiton"

On or about July 19, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing 0.10 gram of white crystalline substance, which was found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.⁹

The witnesses for the prosecution testified that on July 18, 2015, the operatives of the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) of the Pasig City Police Station and its Chief Police Inspector Renato B. Castillo (PCI Castillo), were at their office when a confidential informant arrived and told them that *alias* Gerald was the most notorious pusher of illegal drugs at Villa Evangelista St., Bolante 2, Barangay Palatiw, Pasig City. Based on this information, PCI Castillo formed an entrapment team to conduct a buy-bust operation. PO1 Rodrigo J. Nidoy, Jr. (PO1 Nidoy, Jr.) was assigned as poseur-buyer and PO1 Jonathan B. Bueno (PO1 Bueno) was assigned as back-up. PO1 Nidoy, Jr. received two ₱100.00 bills as buy-bust money, which he marked with his initials "RJN." The SAID-SOTG buy-bust team submitted a Coordination Sheet and Pre-Operation Form to the Eastern Police District Anti-Illegal Drugs Special Operation Task Group and the Philippine Drug Enforcement Agency.¹⁰

Around 2:20 am of July 19, 2015, the buy-bust team and the confidential informant proceeded to Villa Evangelista St. While walking along said street, the confidential informant pointed to PO1 Nidoy, Jr., Gerald's house. PO1 Bueno was discreetly following them. They saw accused-appellants standing in front of the house. The confidential informant whispered to PO1 Nidoy, Jr. that these were Gerald's cohorts.¹¹

The confidential informant and PO1 Nidoy, Jr. approached accused-appellants and looked for Gerald because they wanted to buy shabu. After informing them that Gerald just left,¹² Mamarinta asked them how much they wanted to buy. PO1 Nidoy, Jr. replied "*dos lang*" and brought out the buy-bust money which Batuan received. Mamarinta then brought out four transparent plastic sachets containing white crystalline substance, which appears to be shabu, and placed it on his palm. Mamarinta gave one sachet to PO1 Nidoy, Jr.¹³

PO1 Nidoy, Jr. then executed the pre-arranged signal by scratching his

⁸ Records, pp. 3-4.

⁹ Id. at 4.

¹⁰ *Rollo*, p. 5.

¹¹ Id.

¹² Id.

¹³ Id. at 6.

head. PO1 Bueno then closed in on the crime scene. PO1 Nidoy, Jr. introduced himself as a police officer, arrested Mamarinta, and confiscated from him the three other sachets. As for PO1 Bueno, he likewise introduced himself as a police officer, arrested Batuan, and ordered him to bring out the contents of his pocket. Batuan brought out from his pocket the buy-bust money and a heat-sealed transparent plastic sachet containing white crystalline substance. PO1 Bueno confiscated the items.¹⁴

While they were still in the place of arrest, PO1 Nidoy, Jr. marked the sachets he received and confiscated from Mamarinta in front of the latter. PO1 Bueno likewise marked the sachet he confiscated from Batuan. They summoned representatives from the media and *barangay* elected officials. However, it was only *Barangay Kagawad* Chester Guevarra (*Brgy. Kgwd.* Guevarra) who arrived. PO1 Nidoy, Jr. and PO1 Bueno presented accused-appellants and the evidence against them to *Brgy. Kgwd.* Guevarra, and explained the circumstances of their arrest. PO1 Nidoy, Jr. and PO1 Bueno prepared the inventory of the seized evidence in front of accused-appellants and *Brgy. Kgwd.* Guevarra, which they all signed. Photographs were also taken during the conduct of the inventory.¹⁵

Accused-appellants were brought to the Pasig City Police Headquarters where PO1 Bueno and PO1 Nidoy, Jr. exhibited the confiscated items to police investigator PO1 Lodjie N. Coz (PO1 Coz).¹⁶ PO1 Coz prepared the chain of custody form and the request for laboratory examination. PO1 Nidoy, Jr. and PO1 Bueno proceeded to the Eastern Police District-Crime Laboratory where they handed the request for laboratory examination and the confiscated sachets to forensic chemist police senior inspector Anghelisa S. Vicente (PSI Vicente). PSI Vicente examined the contents of the sachets and found that all tested positive for the presence of methamphetamine hydrochloride.¹⁷

Accused-appellants pleaded not guilty.¹⁸ Mamarinta claimed that he was inside his house in Villa Evangelista St. and was putting his child to sleep when armed men barged in and asked him if he was Gerald. Despite answering in the negative, his hands were tied with a plastic rope and he was brought to the police station via a tricycle. It was only at the police station that he met Batuan. When he was subjected to an inquest, he finally discovered what was being charged against him.¹⁹

Batuan testified that he was at a store along Villa Evangelista St. when armed men asked him if he was Gerald and arrested him. Accused-appellants both claimed that the police demanded ₱100,000.00 in exchange for their liberty.²⁰

¹⁴ Id.
¹⁵ Id.
¹⁶ *CA rollo*, p. 81.
¹⁷ Id. at 82.
¹⁸ *Rollo*, p. 4.
¹⁹ Id. at 7.
²⁰ Id.

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Ruling of the RTC

In its Judgment²¹ dated November 23, 2015, the RTC found accused-appellants guilty beyond reasonable doubt of the crimes charged against them and imposed the following penalties: 1) for violation of Section 5, accused-appellants were sentenced with life imprisonment and a fine of ₱500,000.00, with all the accessory penalties under the law; and 2) for violation of Section 11, accused-appellants were sentenced with an indeterminate penalty of imprisonment from twelve (12) years and one (1) day as minimum to sixteen (16) years as maximum, and to pay a fine of ₱300,000.00, with all the accessory penalties under the law.²²

The RTC found the testimonies of PO1 Nidoy, Jr. and PO1 Bueno to be more credible than that of accused-appellants.²³ Further, the RTC held that all the confiscated items were properly identified and formally offered in evidence by the prosecution. With respect to the chain of custody, the RTC ruled that it was unbroken since the marking of the sachets, the preparation of the inventory of the seized evidence, and the taking of photographs were all done in the presence of accused-appellants and while they were still in the place of the arrest. *Brgy. Kgwad. Guevarra* was also present during the inventory of the seized evidence. The sachets were then turned over to PSI Vicente who examined its contents and found it positive for methamphetamine hydrochloride.²⁴ Accused-appellants appealed to the CA.

Ruling of the CA

On July 26, 2018, the CA rendered its Decision²⁵ affirming the conviction of accused-appellants. The CA agreed with the RTC that the chain of custody requirement was substantially complied with. *First*, the absence of a representative from the media was duly explained by PO1 Nidoy, Jr. and PO1 Bueno, who testified that they made extra efforts to contact a media representative, but no one came because the operation was carried out during an unholy hour, *i.e.*, 2:20 a.m. *Second*, the CA held that the presence of a representative from the National Prosecution Service (NPS) during the inventory-taking does not apply because the guidelines became the implementing rules and regulations (IRR) of R.A. 10640,²⁶ amending R.A. 9165, took effect on July 30, 2015, after the operation was conducted.²⁷ *Third*, the CA ruled that the non-presentation of PSI Vicente is not a sufficient ground to find a break in the chain of custody since her testimony was dispensed with because accused-appellants' counsel and the prosecution had agreed to a stipulation of facts, among which is that she received the specimens and can identify her report on it.²⁸ In addition, PSI Vicente is a public officer whose

²¹ Penned by Presiding Judge Jennifer Albano Pilar; *CA rollo*, pp. 77-87.

²² *Id.* at 87.

²³ *Id.* at 86-87.

²⁴ *Id.* at 86.

²⁵ *Rollo*, pp. 2-19.

²⁶ 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.

²⁷ *Rollo*, p. 13.

²⁸ *Id.* at 16.

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reports carry the presumption of regularity. *Fourth*, the prosecution's failure to establish that the confiscated items were placed in a sealed container or evidence bag is a negligible omission, considering that PO1 Nidoy, Jr. and PO1 Bueno were the only ones who had its custody from the time they confiscated the items until they turned it over to PSI Vicente.²⁹

Accused-appellants thus filed a Notice of Appeal³⁰ dated August 16, 2018. Both parties manifested that they were adopting their Brief before the CA as their Supplemental Brief.³¹

Issue

Whether the CA erred in affirming the conviction of accused-appellants for violation of Sections 5 and 11, Article II of R.A. 9165.

Ruling of the Court

The appeal is meritorious.

Since the five sachets of shabu under Exhibits W, X, Y, Z, and AA³² are the *corpus delicti* of the crimes penalized under Sections 5 and 11, Article II of R.A. 9165, the identity and integrity of the dangerous drugs must be established with moral certainty to prove the guilt of the accused beyond reasonable doubt. Thus, the rule laid down in Section 21, Article II of R.A. 9165, as amended by R.A. 10640, must be strictly observed.³³

Contrary to the ruling of the CA, R.A. 10640 applies in this case since the law became effective on July 23, 2014³⁴ and the operation took place on July 19, 2015. The amended provision of Section 21, Article II of R.A. 9165 reads as follows:

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. – x x x

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, **conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public social and a**

²⁹

Id.

³⁰ CA rollo, pp. 174-175.

³¹ Rollo, pp. 28, 34.

³² TSN, September 28, 2015, p. 18.

³³ *Limbo v. People*, G.R. No. 238299, July 1, 2019; *People v. Aure*, G.R. No. 237809, January 14, 2019; *People v. Misa*, G.R. No. 236838, October 1, 2018; *People v. Baptista*, G.R. No. 225783, August 20, 2018.

³⁴ *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

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.

x x x x (Emphasis ours)

As a general rule, the foregoing procedure must be strictly complied with. In *People v. Lim*,³⁵ citing *People v. Sipin*,³⁶ the Court *En Banc* held that the prosecution has the positive duty to demonstrate observance with the chain of custody rule under Section 21 “in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.”³⁷ As stated in Section 21, failure to do so will not render the seizure and custody of the items void only if the prosecution satisfactorily proves the following that: (1) there is a justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.³⁸ In *People v. Gamboa*,³⁹ We reiterated that the prosecution must explain the reason for the procedural lapses and that the justifiable ground for non-compliance must be proven as a fact. With respect to the absence of the required witnesses, the prosecution must show that the apprehending officers exerted genuine and sufficient efforts to secure their presence. Mere statements of unavailability are insufficient to justify non-compliance.⁴⁰

In this case, the only witness present during the conduct of the inventory in this case was *Brgy. Kgwd. Guevarra*. According to the CA, PO1 Nidoy, Jr. and PO1 Bueno both testified that they made an effort to contact a media representative but to no avail. During his cross examination, PO1 Nidoy, Jr. said that it was a certain PO2 Santos who called a representative from the media. He saw PO2 Santos call the media but he could no longer recall exactly who from the media was contacted. No one arrived because of the time.⁴¹ As for PO1 Bueno, he claimed in his re-direct examination that it was the chief of SAID who called through a cellphone the representative from the Department of Justice (DOJ) and the media. Only *Brgy. Kgwd. Guevarra* arrived.⁴²

³⁵ G.R. No. 231989, September 4, 2018.

³⁶ G.R. No. 224290, June 11, 2018.

³⁷ *People v. Lim*, supra note 35.

³⁸ *Limbo v. People*, supra note 33.

³⁹ G.R. No. 233702, June 20, 2018.

⁴⁰ *Id.*

⁴¹ TSN, September 21, 2015, pp. 12-13.

⁴² TSN, September 28, 2015, p. 11.

In *People v. Jodan*,⁴³ We held that when the person himself who contacted the representative from the media or the DOJ was not presented as a witness, the testimony of the other witnesses on this point is hearsay.⁴⁴ Therefore, the CA erred in relying on the statements of PO1 Nido, Jr. and PO1 Bueno with respect to the alleged phone call made to the representatives of the media and the DOJ or the National Prosecution Service (NPS). They had no personal knowledge of the same and were not qualified to testify on the matter. Notably, both PO1 Nido, Jr. and PO1 Bueno did not mention whether the representative from the NPS was available, thus giving the impression that no attempt was made to secure the latter's presence. Aside from that, they did not testify how many times they tried to contact the representatives or whether they tried to coordinate with them prior to conducting the operation. In *People v. Misa*,⁴⁵ We ruled that "the apprehending officers could not reasonably expect that a representative of the NPS or the media would just be readily available for the conduct of inventory (and photography) at a mere moment's notice, much less at the officers' beck and call."⁴⁶ That being the case, the prosecution failed to prove that they exerted genuine efforts in securing the presence of the required witnesses. Their non-compliance with Section 21 of R.A. 9165, as amended, is inexcusable. In *People v. Miranda*,⁴⁷ We held that "the procedure in Section 21 of [R.A.] 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."⁴⁸ Consequently, the acquittal of accused-appellants is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 26, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08215 is hereby **REVERSED** and **SET ASIDE**. Accused-appellants Andidato Mamarinta and Jack Batuan are **ACQUITTED** of the crimes charged against them, and are ordered to be immediately released, unless they are being lawfully held in custody for any other reason. The Director of Prisons is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.


ROSMARI D. CARANDANG
Associate Justice

⁴³ G.R. No. 234773, June 3, 2019.

⁴⁴ Id.

⁴⁵ G.R. No. 236838, October 1, 2018.


⁴⁶ Id.


⁴⁷ G.R. No. 229671, January 31, 2018.


⁴⁸ Id.

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice
Chairperson

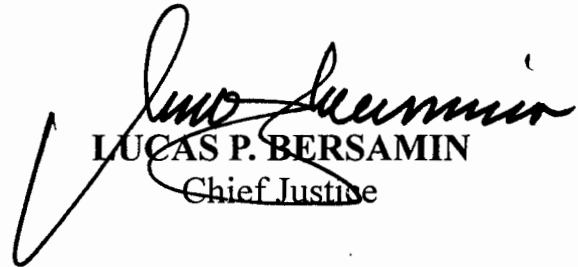

ESTELA M. PERLAS-BERNABE
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
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.



LUCAS P. BERSAMIN
Chief Justice

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Division Clerk of Court
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Supreme Court