



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE  
RECORDED  
SEP 17 2019  
BY: *Yig*  
TIME: 9:47

SECOND DIVISION

PEOPLE OF THE PHILIPPINES  
Plaintiff-Appellee,

G.R. No. 242160

Present:

-versus -

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

JAN JAN TAYAN y BALVIRAN and  
AIZA SAMPA y OMAR,  
Accused,

Promulgated:

AIZA SAMPA y OMAR,  
Accused-Appellant.

08 JUL 2019

X ----- *M. Cabalag* ----- X

DECISION

REYES, J. JR., J.:

Before us is an appeal from the Decision<sup>1</sup> dated June 20, 2018, of the Court of Appeals (CA), in CA-G.R. CR-HC No. 08481, which affirmed the Judgment<sup>2</sup> dated July 12, 2016, of the Regional Trial Court (RTC) Branch 79, Quezon City, in Criminal Case No. R-QZN-14-01991-CR. The RTC convicted Jan Jan Tayan y Balviran (accused Tayan) and Aiza Sampa y Omar (accused-appellant Sampa) of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Information against the accused reads:

That on or about the 24<sup>th</sup> day of February, 2014, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping with each other, without

<sup>1</sup> Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Mario V. Lopez and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 2-11.  
<sup>2</sup> *CA rollo*, pp. 41-58.

lawful authority, did, then and there willfully, unlawfully sell, trade and deliver one (1) heat-sealed transparent plastic sachet containing a total net weight of five zero point six three seven four grams (50.6374 grams) of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

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

Upon arraignment on March 14, 2014, the two accused pleaded not guilty of the crime charged. Pre-trial and trial on the merits then ensued.

### Version of the Prosecution

On February 23, 2014, at around 3:00 p.m., a regular confidential informant of Regional Office No. 4A of the Philippine Drug Enforcement Agency (PDEA) went to Camp Vicente Lim, Canlubang, Laguna to report about the alleged illegal drug activities of one alias "Mike," later identified as accused Tayan, in Quezon City. He gave the tip to Intelligence Officer 2 Paul Andrew Arteche (IO2 Arteche) and represented that he would be able to facilitate a drug deal with him. Acting as the team leader, IO2 Arteche formed a team of six police operatives to conduct a buy-bust operation and designated Intelligence Officer 1 Jonis Asaytono (IO1 Asaytono) as the poseur-buyer. The informant arranged the meeting with accused Tayan at 3:00 p.m. of February 24, 2014, at Jollibee Don Mariano Marcos Avenue corner Regalado Street in Fairview, Quezon City.<sup>4</sup> Thereafter, the assigned desk officer prepared the Authority to Operate Outside Jurisdiction while IO1 Asaytono put together the buy-bust money consisting of one ₱500 bill marked with the initials "JBA" placed on top of the paper cuttings which appear to amount to ₱50,000.00.<sup>5</sup>

On February 24, 2014, the buy-bust team left Camp Vicente Lim at around 9:00 a.m. on board its Toyota Innova service vehicle and went to Pinyahan, Quezon City, to meet its informant. IO2 Arteche talked to the informant and reiterated to the buy-bust team its operation before going to the agreed place of transaction. When they arrived at Jollibee at around 1:00 p.m., IO1 Asaytono and the informant went inside the food chain while the rest of the team strategically positioned themselves in the premises. They waited for three hours until a man in red and white striped polo shirt and *maong* pants approached their table. The informant introduced the man to IO1 Asaytono as Mike (accused Tayan). The latter asked the informant if IO1 Asaytono is the man he was referring to. The informant answered in the affirmative and asked accused Tayan if he brought the illegal drugs. In response, accused Tayan told him that they would just have to wait for his companion who is in possession of the items. He also asked to see the payment. IO1 Asaytono opened the paper bag and showed the money to him.

---

<sup>3</sup> Id. at 41.

<sup>4</sup> Id. at 133-134.

<sup>5</sup> Id. at 109-110.

Y

Upon securing the money, accused Tayan called someone on his mobile phone. A woman, later identified as accused-appellant Sampa, came and walked towards accused Tayan's direction. She handed a medium-sized plastic sachet containing white powdery substance to accused Tayan who immediately instructed IO1 Asaytono to follow him to the comfort room. When they reached the wash area, accused Tayan showed IO1 Asaytono the plastic sachet of white granules and examined it. IO1 Asaytono handed the buy-bust money to accused Tayan who, in turn, gave the plastic sachet to him. IO1 Asaytono brought out his handkerchief as pre-arranged signal that the transaction was completed. He introduced himself as a PDEA agent, apprised accused Tayan of his constitutional rights and effected the arrest. Meanwhile, accused-appellant Sampa was apprehended by IO2 Arteche. A commotion stirred when accused Tayan resisted the arrest. This prompted IO2 Arteche to order the buy-bust team to leave the place of operation and return to their office so as not to compromise their safety and security. The buy-bust team boarded accused Tayan and accused-appellant Sampa in their service vehicle. IO2 Arteche informed them of their constitutional rights while IO1 Asaytono marked the medium-sized heat-sealed transparent plastic sachet containing white crystalline substance suspected to be *shabu* with "JBA EXH A 2/24/14" and signed thereon.<sup>6</sup>

When the entrapment team arrived at Camp Vicente Lim, its members conducted the inventory and photographing in the presence of accused Tayan, accused-appellant Sampa and media representative Ding Bermudez and prepared the letter-request for laboratory examination. IO1 Asaytono brought the letter-request and the seized evidence to the crime laboratory. They were received by the forensic chemist who placed the confiscated substance inside a bigger re-sealable zipper storage bag. Upon quantitative and qualitative analysis, the confiscated item tested positive for Methamphetamine Hydrochloride or *shabu*, a dangerous drug.<sup>7</sup>

### Version of the Defense

On February 24, 2014, Nesren Blo asked her mother accused-appellant Sampa to accompany her at Expressions Bookstore in Fairview Central Mall. They were at a Jollibee outlet across the mall when accused-appellant Sampa was arrested by unknown armed men. One of them held and dragged her to the parking lot and forced her to board a Toyota Innova. The armed men brought accused-appellant Sampa to the PDEA Office at Camp Vicente Lim in Canlubang, Laguna and ordered her to affix her thumbprint on the certificate of inventory.<sup>8</sup>

---

<sup>6</sup> Id. at 134-135.

<sup>7</sup> Id. at 135-136.

<sup>8</sup> Id. at 84.

Accused-appellant Sampa claims that she was not informed of her rights when she was apprehended nor was she assisted by a lawyer while at the PDEA Office.

On July 12, 2016, the RTC found accused Tayan and accused-appellant Sampa guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and ordered them to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The RTC found that the prosecution was able to establish all the elements of illegal sale of prohibited drugs. It gave great weight to the testimony of IO1 Asaytono who positively identified accused Tayan and accused-appellant Sampa as the persons from whom he purchased the plastic sachet of *shabu*. It noted that the failure of the members of the apprehending team to mark, inventory and photograph the seized dangerous drugs at the place of arrest did not weaken the case of the prosecution as it was shown that IO1 Asaytono was the one in possession of the illegal drugs from the time of arrest until it was brought to the laboratory for examination. Finally, it stated that the defense failed to show any ill motive or odious intent on the part of the PDEA agents to impute such a serious crime that would put in jeopardy accused's life and liberty.

Aggrieved, accused Tayan and accused-appellant Sampa filed their separate appeals.

On June 20, 2018, the CA affirmed the July 12, 2016 Decision.<sup>9</sup> It held that there was substantial compliance with the procedural requirements on the custody and control of the seized illegal drugs. It declared that the sequence of events, as established by the evidence of the prosecution, and the overall handling of the confiscated items by the arresting officers show that the seized plastic sachet of *shabu* is the same evidence identified in open court. It further stated that it is not necessary to present during trial each and every person who came into possession of the confiscated drugs as long as the chain of custody is shown not to have been compromised as in this case. It discarded accused-appellant Sampa's claim of irregularities that attended the buy-bust operation, *i.e.*, failure to indicate the amount of boodle money, failure to mark the buy-bust money and present it as evidence, and failure to use ultraviolet fluorescent powder, as they did not affect the validity of the anti-narcotics operation.

On July 12, 2018, accused-appellant Sampa filed a Notice of Appeal<sup>10</sup> with the CA which the CA gave due course on August 3, 2018, and directed

---

<sup>9</sup> Id. at 41-58.

<sup>10</sup> Id. at 12.

its Judicial Records Division to elevate to us the entire records of CA-G.R. CR-HC No. 08481 for review.<sup>11</sup>

On November 12, 2018, the Court issued a Resolution<sup>12</sup> notifying the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice.

Accused-appellant Sampa<sup>13</sup> filed her Supplemental Brief<sup>14</sup> on November 22, 2018, questioning, among others, the absence of a representative from the Department of Justice (DOJ) and an elected public official to witness the marking, inventory and photographing of the seized evidence. She also pointed out that the existence of a commotion is not a justifiable ground for not conducting the marking, inventory, and photographing of the illegal drugs immediately at the place of arrest. She asserted that the PDEA agents committed gross violation of the substantive law when they transported the confiscated item from Fairview, Quezon City to Calamba, Laguna for its marking considering that the law instructs that it should be brought to the nearest police station to remove doubts on the identity of the *corpus delicti*.

The People, through the Office of the Solicitor General, on the other hand, filed its Manifestation (in lieu of Supplemental Brief),<sup>15</sup> on February 14, 2019, submitting that the June 20, 2018 CA Decision exhaustively discussed and judiciously passed upon the errors raised by accused-appellant Sampa such that the filing of a supplemental brief is no longer necessary.

### Our Ruling

The Court resolves to acquit accused-appellant Sampa on the ground of reasonable doubt.

The elements of the crime of illegal sale of dangerous drugs are: (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.<sup>16</sup> The prosecution must satisfactorily show the concurrence of these elements with moral certainty to establish its case and secure the conviction of an accused under Section 5, Article II of R.A. No. 9165. Equally crucial is the ascertainment of the identity of the illicit drug which constitutes the *corpus delicti* of the crime.<sup>17</sup> Thus, courts are duty-bound to examine the conduct of the entrapment operation *vis-à-vis* the chain of custody rule and place

---

<sup>11</sup> Id. at 13.

<sup>12</sup> *Rollo*, pp. 20-21.

<sup>13</sup> Referred to as "Rosemarie Gabunada" in the Supplemental Brief.

<sup>14</sup> *Rollo*, pp. 16-19.

<sup>15</sup> Id. at 24-25.

<sup>16</sup> *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 622.

<sup>17</sup> *People v. Bangalan*, G.R. No. 232249, September 3, 2018.

V

under close scrutiny the precautions undertaken by the members of the apprehending team to safeguard the integrity of the seized illegal drugs.

Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 mandates that in carrying out an entrapment operation, the police officers shall “immediately after seizure and confiscation, physically inventory and photograph the [seized items] 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.” While R.A. No. 9165 and its IRR are silent on the marking requirement, the Court has clarified in *People v. Sanchez*<sup>18</sup> that marking or the affixing of initials and signature of the apprehending officer or the poseur-buyer on the confiscated item in the presence of the apprehended violator immediately upon confiscation, preserves the integrity of the evidence as it enters the chain. Hence, the basic requirement on the proper disposition of confiscated and/or surrendered dangerous drugs enjoins the members of the apprehending team having initial custody and control of the illicit drugs to conduct the: (1) marking; (2) inventory; and (3) photograph taking of the seized illegal drugs immediately after seizure in the presence of: (a) the accused or the person/s from whom such items were confiscated and/or seized, or his representative or counsel; (b) a representative from the media; and (c) a representative from the DOJ.

In this case, when accused Tayan and accused-appellant Sampa were arrested, the PDEA agents, upon the instruction of IO2 Arteche, left the scene of operation in Fairview, Quezon City for the inventory and photographing of the seized item at their office in Camp Vicente Lim in Canlubang, Calamba, Laguna. IO1 Asaytono placed the marking “JBA EXH A 2/24/14” and his signature on the plastic sachet of suspected *shabu* while inside the buy-bust team’s service vehicle in the presence of accused Tayan and accused-appellant Sampa. When they reached Camp Vicente Lim, the inventory and photographing of the subject specimen were made before accused Tayan, accused-appellant Sampa, and media representative Ding Bermudez. These bare facts alone reveal significant deviations from the law’s prescribed method of handling the seized illicit drugs upon confiscation.

Marking, Physical Inventory, Photograph taking

IO1 Asaytono did not mark the seized item at the place of arrest but inside the service vehicle allegedly in the presence of the two accused. The physical inventory and photograph taking were not conducted immediately after the subject specimen was confiscated but only when they arrived at their office in Camp Vicente Lim in Canlubang, Laguna at around 6:00

---

<sup>18</sup> 590 Phil. 214, 241-242 (2008).

p.m.<sup>19</sup> The prosecution reasoned that the commotion inside the Jollibee outlet prevented IO1 Asaytono from complying with the rule that the marking, inventory, and photograph taking must be made immediately after seizure and confiscation.

Existing jurisprudence clarifies the phrase “immediately after seizure and confiscation” to purport an ideal scenario of conducting the physical inventory and photographing of the drugs immediately after, or at the place of apprehension.<sup>20</sup> However, if, on the ground of impracticability, immediate marking, inventory, and photographing were not feasible, Section 21(a) of the IRR of R.A. No. 9165 authorizes that the same be done at the nearest police station or the nearest office of the apprehending officer/team.

The Court is not unaware that, in drugs cases, the phrase “existence of a commotion” has been the apprehending team’s most convenient excuse to justify its non-compliance with the procedural safeguards encapsulated in Section 21. While it is not beyond the realms of possibility, its mere invocation does not *ipso facto* operate as substantial compliance with the law especially when it is not supported by the evidence on record, as in this case. After the prosecution alleged that a commotion ensued when accused Tayan and accused-appellant Sampa were arrested, it did not attempt to provide its details and the circumstances that prompted the buy-bust team to delay the marking, inventory, and photograph taking. Neither did it point out the measures carried out by the members of the entrapment team to ensure that the plastic sachet of *shabu* seized from accused Tayan and accused-appellant Sampa was the same item marked inside the vehicle and subjected to physical inventory and photographing in Camp Vicente Lim considering the absence of the three insulating witnesses required by Section 21.

Three-witness rule

IO1 Asaytono testified:

x x x x

Q: When you failed to secure the presence of the barangay officials, you did not exert effort to contact any Media representative in Quezon City, correct?

A: Yes. Ma’am.

Q: Likewise, you did not exert effort to contact any DOJ representative in Quezon City?

A: We did not, ma’am.

Q: According to you, **you marked the evidence inside the vehicle?**

A: **Yes, ma’am.**

---

<sup>19</sup> CA rollo, p. 102.

<sup>20</sup> *People v. Reyes*, G.R. No. 225736, October 15, 2018.

Q: So, **no representative from the Media, Barangay, and DOJ was present during your marking?**

A: **There was none** but there were witnesses who can attest for that matter.

Q: After the marking, you brought them back to Laguna, correct?

A: Yes, ma'am.

Q: You have an office here in Quezon City?

A: National [Headquarters], ma'am.

Q: Despite that fact, **you decided to go back to Laguna to conduct the inventory**, correct?

A: Yes, ma'am.

Court: There were other police stations?

A: During that time, your Honor, we exerted effort to locate nearby police station, but our team leader did not want to pursue in locating other police station.

Court: Why not?

A: Because the place is not familiar to us and we have advance information that the place is not safe for us.

Court: Why did you not proceed to your office here in Manila?

A: Because our SOP, we will not go to our National [Headquarters] but to our Regional [Headquarters], that is our SOP.<sup>21</sup> x x x

x x x x

Q: Where did you conduct the inventory?

A: Inside our office, sir.

Q: Who was present during the inventory?

A: The media representative, sir.

Q: Who was the media representative?

A: Mr. Ding Bermudez, sir.

Q: What media outfit this Ding Bermudez belongs?

A: From a local newspaper, sir.

Q: Aside from the media representative, who else were present at that time?

A: The two apprehended persons, Jan Jan Tayan and Aiza Sampa, sir.

Q: Why, Mr. Witness, there was no representative from the DOJ and from the local officials of the place where you arrested the accused?

A: We are not so familiar with the place, sir.

---

<sup>21</sup> CA rollo, pp. 88-89.

Q: How about the DOJ representative?

A: **We did not seek the DOJ representative, sir.**

Q: Why?

A: **On our part usually we do not seek the DOJ representative because based on our experience, usually they are not available, sir.**<sup>22</sup> x x x

It is undisputed that the apprehending team did not faithfully observe Section 21 insofar as securing the presence of the representative from the media, the representative from the DOJ, and the elected public official during the marking, physical inventory, and photograph taking of the seized prohibited drug immediately at the place of seizure and confiscation. In fact, as testified to by IO1 Asaytono, the entrapment team did not strive to obtain a representative from the DOJ to witness the marking and inventory by reason of unavailability which was never proved by convincing evidence. Moreover, the only witness secured by the apprehending team – media representative Ding Bermudez – did not actually see the conduct of the inventory since he only signed in the certificate of inventory and reviewed its contents.<sup>23</sup>

The requirement of having an elected public official and representatives from the media and the DOJ to personally witness the marking, inventory, and photographing of the seized illegal drugs is not a burden imposed upon police officers in the conduct of legitimate buy-bust operations. On the contrary, it serves to protect them from accusations of planting, switching, or tampering of evidence in support to the government's strong stance against drug addiction. The case of *People v. Dela Cruz*<sup>24</sup> is illuminating:

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory, is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*, the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People vs. Mendoza*, without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. (Emphasis supplied)

<sup>22</sup> Id. at 92.

<sup>23</sup> Id. at 93-94.

<sup>24</sup> G.R. No. 234151, December 5, 2018.

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.” x x x (Citations omitted)

The absence of the three insulating witnesses during the anti-narcotics operation against accused Tayan and accused-appellant Sampa, *sans* plausible reason, and the lack of honest-to-goodness efforts to secure their presence are serious lapses that taint the integrity and evidentiary value of the seized illicit drugs.

#### Application of the saving mechanism

Under Section 21(a) of the IRR, R.A. No. 9165, “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[.]” Known as the saving clause, the provision recognizes that the existence of justifiable grounds coupled with a clear showing that the integrity and evidentiary value of the seized items are properly preserved by the police officers shall not invalidate the procedural breaches committed by the apprehending team. Here, the prosecution miserably failed to set in motion the application of the saving mechanism.

The lapses of the members of the entrapment team in the conduct of the buy-bust operation were not identified and explained by the prosecution.

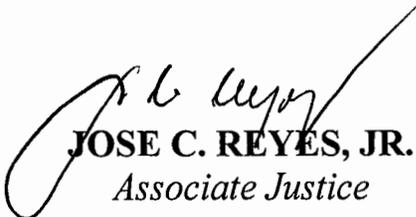
Its feeble attempt to justify the police officers' failure to conduct the marking, physical inventory, and photographing at the place of seizure and confiscation is unacceptable, to say the least, as it remained uncorroborated by evidence. The existence of a commotion after accused Tayan and accused-appellant Sampa were arrested was not established as a fact. Further, the apprehending team's failure to secure the presence of the three insulating witnesses at the place and time of seizure as well as during the actual marking, inventory, and photograph taking were never acknowledged.

The absence of credible explanation as to the police officers' deviation from the procedures laid down under Section 21 of R.A. No. 9165 creates serious doubt as to the integrity of the seized drug. Right at its inception, the chain of custody was broken in view of the marking of the seized illegal drug inside the police officers' service vehicle with none of the insulating witnesses present to attest that the first link of the chain was sufficiently established.

**WHEREFORE**, premises considered, the appeal is hereby **GRANTED**. The Decision dated June 20, 2018, of the Court of Appeals in CA-G.R. CR-HC No. 08481 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Aiza Sampa y Omar is **ACQUITTED for failure of the prosecution to prove her guilt beyond reasonable doubt**. She is ordered **IMMEDIATELY RELEASED** from detention, unless she is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, for immediate implementation. Said director is ordered to report the action he has taken to this Court, within five (5) days from receipt of this Decision.

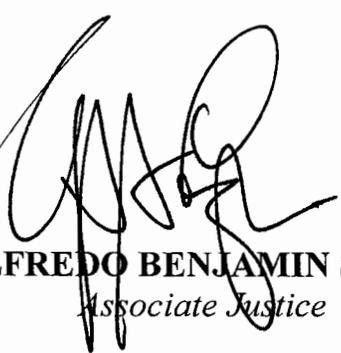
**SO ORDERED.**

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

**WE CONCUR:**

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

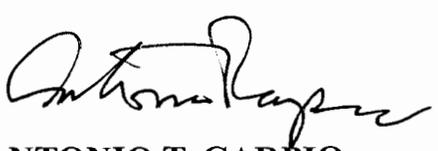
  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

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

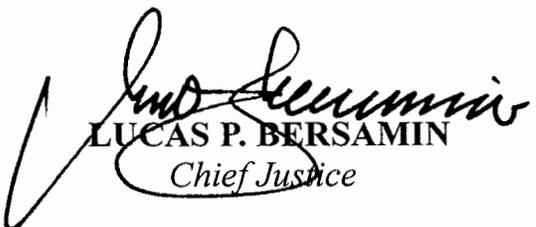
**ATTESTATION**

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 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*