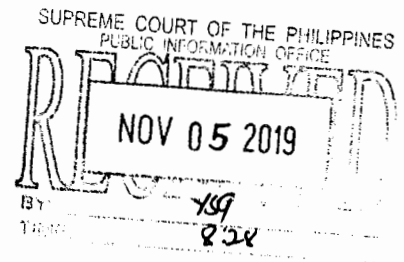




Republic of the Philippines
 Supreme Court
 Manila
 SECOND DIVISION



PEOPLE OF THE PHILIPPINES,
 Appellee,

G.R. No. 233656

Present:

CARPIO, J., Chairperson,
 CAGUIOA,
 REYES, J., JR.,
 LAZARO-JAVIER, and
 ZALAMEDA, JJ.

- versus -

CHARLES ROALES y PERMEJO,
 Appellant.

Promulgated:

02 OCT 2019

x ----- x
HT Cabalagbo

DECISION

CARPIO, J.:

The Case

For resolution is an appeal from the Decision¹ of the Court of Appeals dated 12 May 2017 dismissing the appeal of Charles Roales y Permejo² (appellant) and affirming the Judgment³ of the Regional Trial Court, Branch 164, Pasig City, dated 23 November 2015, convicting appellant for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Two separate informations both dated 20 July 2015 were filed against appellant for the illegal sale of 0.07 gram of *shabu* and the illegal possession of 0.23 gram of *shabu*.⁴ Upon being arraigned, appellant entered a plea of not guilty to the charges brought against him. After the mandatory pre-trial conference, trial on the merits ensued.

¹ *Rollo*, pp. 2-12. Penned by Associate Justice Socorro B. Inting, with Associate Justices Romeo F. Barza and Victoria Isabel A. Paredes concurring.

² Also referred to in the records as Charlie Roales y Permejo @ Charlie.

³ *CA rollo*, pp. 15-24. Penned by Judge Jennifer Albano Pilar.

⁴ *Rollo*, p. 2.

u

The prosecution presented three witnesses, to wit: (1) Police Senior Inspector Anghelisa S. Vicente (PSI Vicente), who was the forensic chemist; (2) Police Officer 3 Nelson G. Cruz (PO3 Cruz), who was the police investigator on the case; and (3) Police Officer 1 Randy S. Sanoy (PO1 Sanoy), who was the police poseur-buyer.⁵

The joint testimonies of the three witnesses presented by the prosecution revealed the following:

PO1 Sanoy was an operative of the Station Anti-Illegal Drugs Special Operation Task Force Group (SAID-SOTFG) of the Pasig City Police Station in July 2015. On 18 July 2015, at about 7:00 in the evening, Police Chief Inspector Renato B. Castillo (PCI Castillo) met the operatives of the SAID-SOTFG of the Pasig City Police Station in their office and informed them that they would be conducting an operation against *alias* “Charlie” on Narra Street, Barangay Manggahan, Pasig City. PO1 Sanoy was designated as the poseur-buyer and Police Officer 2 Jonathan P. Bueno was designated as his immediate backup. The rest of the team were tasked to position themselves strategically in the area during the operation. PCI Castillo gave PO1 Sanoy the buy-bust money, which consisted of two ₱100 bills. PO1 Sanoy marked the bills by placing his initials “RSS.” The pre-arranged signal to signify the consummation of the transaction was for PO1 Sanoy to remove his bull cap.⁶

PCI Castillo ordered the team to prepare the Coordination and Pre-Operation Report for coordination with the Philippine Drug Enforcement Agency (PDEA) and District Anti-Illegal Drugs (DAID). The Coordination and Pre-Operation Report were brought to PDEA and DAID by Police Officer 1 Rodrigo Nidoy⁷ (PO1 Nidoy) and were given the Control Numbers 10001-072015-0222 by the PDEA and 1507-04 by the DAID. The same were prepared in the presence of PO1 Nidoy.⁸

An hour later or around 8:00 in the evening of 18 July 2015, the team proceeded to the target area on Narra Street, Barangay Manggahan, Pasig City, near the arch of Barangay Napico, where they saw a man standing in front of a store and smoking a cigarette. The confidential informant informed PCI Castillo that the said man was *alias* “Charlie.” Thereafter, the confidential informant brought PO1 Sanoy near the man, greeted him, and introduced PO1 Sanoy as a co-worker who was looking for illegal drugs. *Alias* “Charlie” asked PO1 Sanoy how much worth of drugs he was going to “score” to which the latter replied “*Halagang dos, panggamit lang,*” which meant “Worth ₱200, just for personal use.”⁹ PO1 Sanoy then handed over the marked money to *alias* “Charlie” who, in turn, placed the same in his left pocket. From his right pocket, *alias* “Charlie” drew several plastic sachets which contained white

⁵ Id. at 3.

⁶ Id.

⁷ Also referred to in the records as PO1 Rodrigo Nidoy, Jr.

⁸ *Rollo*, p. 3.

⁹ Id. at 3-4.



crystalline substance and gave one plastic sachet to PO1 Sanoy. PO1 Sanoy suspected the contents in the plastic sachet to be Methamphetamine Hydrochloride, commonly known as *shabu*. PO1 Sanoy received the plastic sachet with his right hand and placed it in his right pocket. Immediately thereafter, PO1 Sanoy removed his bull cap, which was the pre-arranged signal, and the team rushed to the scene. PO1 Sanoy held *alias* “Charlie,” introduced himself as a police officer, and informed *alias* “Charlie” of his constitutional rights. *Alias* “Charlie” was later identified in court as Charles Roales y Permejo, herein appellant.¹⁰

Incidental to appellant’s arrest *in flagrante delicto*, PO1 Sanoy searched appellant and recovered the pre-marked buy-bust money from his pocket. The team was able to recover from appellant three more plastic sachets containing white crystalline substance. The team conducted an inventory at the place of arrest in the presence of appellant and an elected barangay official. Beforehand, the team summoned an elected barangay official and a representative from the media. However, no one from the media arrived. The inventory report was executed and signed by PO1 Sanoy as the arresting officer and Punong Barangay of Barangay Manggahan, Pasig City, Bobby L. Bobis (Bobis). Photographs of the conduct of the inventory report were likewise taken.¹¹

Afterwards, PO1 Sanoy brought appellant to the SAID-SOTFG of the Pasig City Police Station and turned over the seized evidence to PO3 Cruz, who prepared the necessary documents, namely, the Chain of Custody Form, Request for Drug Test, and Request for Medical Examination. Appellant was later brought to the Rizal Medical Center for his medical examination. The object evidence was delivered by PO1 Sanoy to PSI Vicente and as per the latter’s examination, the submitted evidence tested positive for the presence of Methamphetamine Hydrochloride, which is a dangerous drug.¹²

For his part, appellant contended that he was falsely charged with a violation of R.A. No. 9165. According to him, on 18 July 2015, at around 5:00 in the afternoon, he was in front of his house when six men in civilian clothes arrived and suddenly handcuffed him. Thereafter, he was beaten up and was being forced to admit that he was a man named Tolits. He adamantly denied that he was Tolits. He was later on brought to a house, which he eventually came to know belonged to Tolits. The men that apprehended him insisted that such house belonged to him, but he denied ownership of the same. He was further brought to Robinson’s lighthouse where he was asked to point to a certain Akong and Tolits, in exchange for his release. However, he failed to point to any person, because he had no idea who Akong and Tolits were. He was then brought to the Pasig City Police Headquarters, where he was ordered to clean the police officers’ room. While he was sweeping the floor, he saw

¹⁰ Id. at 4.

¹¹ Id.

¹² Id.



several drug paraphernalia lying around. He reported what he saw to the police chief, but the latter merely told him to just ignore them. At the police station, PO1 Sanoy showed him a plastic sachet that was allegedly recovered from him. After four days, he was charged with violation of R.A. No. 9165 and presented to Barangay Chairman Bobis.¹³

The Ruling of the Regional Trial Court

On 23 November 2015, the Regional Trial Court rendered a judgment convicting appellant for violation of Sections 5 and 11, Article II of R.A. No. 9165. The Regional Trial Court held that the prosecution had proven the guilt of appellant beyond reasonable doubt. It noted that the prosecution established that appellant was apprehended *in flagrante delicto*, during a buy-bust operation in which he sold a plastic sachet of *shabu* to PO1 Sanoy, who acted as a poseur-buyer, and was thereafter caught by PO1 Sanoy in possession of three more plastic sachets of *shabu*.¹⁴ The dispositive portion of the Judgment of the Regional Trial Court dated 23 November 2015 provides:

WHEREFORE:

1. In *Criminal Case No. 20486-D*, the Court finds accused CHARLIE P. ROALES GUILTY beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of RA 9165, and hereby impose[s] upon him the penalty of life imprisonment and a fine of five hundred thousand pesos (₱500,000) with all the accessory penalties under the law.
2. In *Criminal Case No. 20487[-D]*, the Court finds accused CHARLIE P. ROALES 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, a[s] maximum, and a fine of three hundred thousand pesos (₱300,000) with all the accessory penalties under the law.

The four (4) transparent plastic sachets of *shabu* (Exhibits “R” to “U”) 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.¹⁵

Aggrieved, appellant filed an appeal with the Court of Appeals.

The Ruling of the Court of Appeals

On 12 May 2017, the Court of Appeals denied the appeal of appellant for lack of merit and accordingly, affirmed the Judgment of the Regional Trial

¹³ Id. at 5.

¹⁴ Id.

¹⁵ CA rollo, p. 24.



Court dated 23 November 2015.¹⁶ The dispositive portion of the Decision of the Court of Appeals dated 12 May 2017 states:

WHEREFORE, premises considered, the appeal is DENIED for lack of merit. Accordingly, the Judgment dated November 23, 2015 of the Regional Trial Court of Pasig City, Branch 164, convicting CHARLIE ROALES y PERMEJO *alias* "Charlie" in Criminal Case Nos. 20486-D and 20487-D for violation of Sections 5 and 11, Article II of Republic Act No. 9165 and sentencing him to suffer respectively, the penalty of life imprisonment and a fine of ₱500,000.00, and the indeterminate sentence of (12) years and one (1) day as minimum to sixteen (16) years as maximum and a fine of ₱300,000, is hereby AFFIRMED.¹⁷

The Court of Appeals ruled that the prosecution was able to establish the essential elements for the illegal possession and sale of dangerous drugs. It held that prosecutions involving illegal drugs depend largely on the credibility of the police officers or drug operatives who conducted the buy-bust operation and thus, there is general deference to the assessment on such point by the trial court, considering it had the opportunity to directly observe the witnesses, their demeanor, and their credibility on the witness stand. Based on the records of the case under consideration, it ruled that no compelling reason exists to depart from the aforesaid rule. It held that the trial court gave proper credence to the testimonies of the drug operatives for the prosecution. It pointed out that appellant's failure to file cases against the buy-bust team for planting evidence reinforces the prosecution's assertion that appellant was arrested for being caught *in flagrante delicto* selling and possessing *shabu*.¹⁸

With respect to the alleged non-compliance with Section 21, Article II of R.A. No. 9165 by the buy-bust team, the Court of Appeals held that, based on jurisprudence, non-compliance with the procedures prescribed by such section does not automatically render void the seizures and custody of drugs in a buy-bust operation. It ruled that, while the marking, inventory, and photographing of the seized evidence were not made in the presence of a representative from the media and the Department of Justice, it must be noted that the same were conducted in the presence of Barangay Captain Bobis and the appellant himself. It further stated that the inventory bore the signatures of PO1 Sanoy, Barangay Captain Bobis, and appellant.¹⁹

The Court of Appeals held that the defenses of denial and alibi of appellant are belied by the testimonies of the prosecution witnesses. It stressed that the defenses of denial and alibi have been viewed with disfavor, because of the ease of their concoction and the fact that they have been common and standard defenses in prosecutions for the illegal sale and possession of dangerous drugs. It ruled that such defenses are self-serving and cannot be given weight over the positive assertions of credible witnesses, unless

¹⁶ *Rollo*, p. 11.

¹⁷ *Id.*

¹⁸ *Id.* at 7-8.

¹⁹ *Id.* at 8-10.

substantiated by clear and convincing evidence.²⁰

Hence, the present appeal.

The Issue

The issue in the instant case is whether or not appellant is guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of R.A. No. 9165.

The Court's Ruling

The Court finds the present appeal meritorious.

In order to be convicted of violation of Section 5, Article II of R.A. No. 9165, which refers to the illegal sale of dangerous drugs, the prosecution must prove the following: (1) the identity of the buyer and the seller; (2) the object of the sale, and its consideration; and (3) the delivery of the thing sold and the payment therefor. In the illegal sale of dangerous drugs, it is essential that the sale transaction actually happened and that the procured object is properly presented as evidence in court and is shown to be the same drugs seized from the accused.²¹

On the other hand, under Section 11, Article II of R.A. No. 9165, which refers to the illegal possession of dangerous drugs, the following must be proven before an accused can be convicted: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.²²

In cases that involve the illegal sale and illegal possession of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges. It is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt and that it must be proven with certainty that the substance bought and seized during the buy-bust operation is exactly the same substance offered in evidence before the court.²³ In this regard, Section 21, Article II of R.A. No. 9165 provides for the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved.²⁴

²⁰ Id. at 10-11.

²¹ *People v. Oliva*, G.R. No. 234156, 7 January 2019.

²² Id.

²³ Id.

²⁴ *People v. Año*, G.R. No. 230070, 14 March 2018.



To ensure an unbroken chain of custody, Section 21(1), Article II of R.A. No. 9165 specifies:

x x x x

- (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.

Supplementing the above-quoted provision, Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 provides:

x x x x

- (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 persons 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[.]

On 15 July 2014, R.A. No. 10640 was enacted amending Section 21, Article II of R.A. No. 9165 in the following manner:

x 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 person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a 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 [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 and custody over said items.

X X X X

Significantly, in the case of *People v. Miranda*,²⁵ the Court held the following:

x x x under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 — provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that noncompliance with the requirements of Section 21 of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.²⁶

Prior to the passage of R.A. No. 10640, after the seizure and confiscation of the dangerous drugs, the apprehending team was required to immediately conduct a physical inventory and to photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee against the planting of evidence and a frame up, insulating the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.

²⁵ G.R. No. 229671, 31 January 2018, 854 SCRA 42.

²⁶ *Id.* at 54-55, citing *People v. Almorfe*, 631 Phil. 51, 60 (2010) and *People v. De Guzman*, 630 Phil. 637, 649 (2010).

At present, R.A. No. 10640 mandates that the conduct of physical inventory and photographing of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof.²⁷ The present case is governed by R.A. No. 10640 since the buy-bust operation took place on 18 July 2015 after this law took effect.

In the present case, the absence of a representative of the National Prosecution Service or the media was not justifiably explained by the prosecution. An examination of the records of the case reveals that not only were no attempts made to secure the appearance of a representative of the National Prosecution Service but no explanation whatsoever was also given as to why no such attempts were made. With respect to the representative of the media, no justifiable explanation was given as to why no representative of the media arrived, despite being summoned. The mere allegation that a representative of the media was summoned, but none appeared hardly constitutes as a justifiable ground for such non-appearance. Evidently, the only one present to witness the inventory and the marking of the seized items was an elected public official, *i.e.*, Barangay Captain Bobis.²⁸

In the case of *People v. Oliva*,²⁹ the Court discussed recent jurisprudence to shed light on the scenarios where the absence of the required witnesses may be justified, to wit:

In *People v. Angelita Reyes, et al.*, this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

x x x[.] It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

The above-ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro*, thus:

²⁷ *People v. Oliva*, supra note 21. Emphasis supplied

²⁸ *Rollo*, p. 4.

²⁹ Supra note 21.

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected officials themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal [Code] prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.³⁰

Evidently, it is the prosecution which has the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21, Article II of R.A. No. 9165, as amended. The prosecution has the positive duty to establish observance thereto in such a way that, during the trial court proceedings, it must initiate in acknowledging and justifying any perceived anomalies from the requirements of the law. The failure of the prosecution to follow the mandated procedure must be sufficiently explained and proven as a fact, in accordance with the rules on evidence. It is required from the apprehending officers to not simply mention a justified ground but to also clearly state such ground in their sworn affidavit, coupled with a statement regarding the steps they took to preserve the integrity of the seized items. A stricter adherence to the requirements laid down by Section 21, Article II of R.A. No. 9165, as amended, is necessary where the quantity of the dangerous drugs seized is miniscule, considering it is highly susceptible to planting, tampering, or alteration.³¹

Taking all of the above-mentioned in mind, the Court finds it appropriate to acquit appellant in this case as his guilt has not been established beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals dated 12 May 2017 in CA-G.R. CR-HC No. 08163 affirming the Judgment of the Regional Trial Court, Branch 164, Pasig City dated 23 November 2015 convicting appellant for violation of Sections 5 and 11, Article II of Republic Act No. 9165 is **REVERSED** and **SET ASIDE**. Appellant Charles Roales y Permejo is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

³⁰ Supra note 21, citing *People v. Reyes*, G.R. No. 219953, 23 April 2018 and *People v. Sipin*, G.R. No. 224290, 11 June 2018.

³¹ *People v. Oliva*, supra note 21.




Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Bureau of Corrections in Muntinlupa City for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

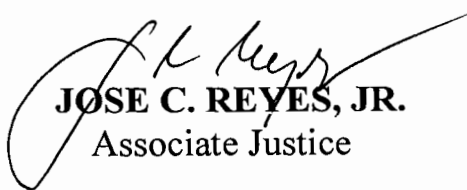


ANTONIO T. CARPIO
Associate Justice

WE CONCUR:



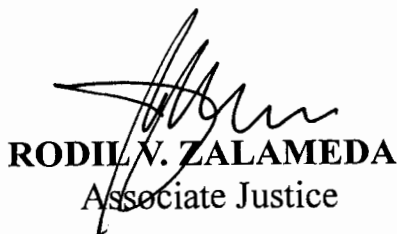
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

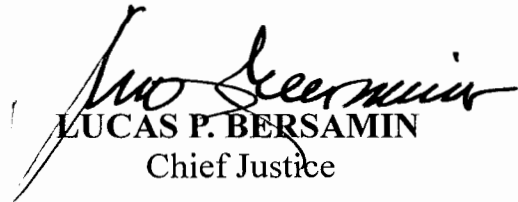
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

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



LUCAS P. BERSAMIN
Chief Justice