



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

RECORDED
08 2018

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 216430

July 4, 2018

Present:

LEONARDO-DE CASTRO, *CJ.*,
Chairperson,
CARPIO,*
BERSAMIN,
DEL CASTILLO,** and
TIJAM, *JJ.*

- versus -

YASSER ABBAS ASJALI,
Defendant-Appellant.

Promulgated:

SEP 03 2018

[Signature]

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DECISION

LEONARDO-DE CASTRO, *CJ.*:

On appeal is the Decision¹ dated October 9, 2014 of the Court of Appeals in CA-G.R. CR. HC. No. 01004-MIN, which affirmed *in toto* the Judgment² dated July 18, 2011 rendered by the Regional Trial Court (RTC), Branch 12, 9th Judicial Region, Zamboanga City in Criminal Case Nos. 4995 and 4996, finding accused-appellant Yasser Abbas Asjali guilty beyond reasonable doubt of illegal sale of dangerous drugs and illegal possession of dangerous drugs, defined and penalized under Article II, Sections 5 and 11 of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

The Informations against accused-appellant read as follows:

[Criminal Case No. 4995]

That on or about August 19, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there

* Per Raffle dated July 4, 2018.

** On official leave.

¹ *Rollo*, pp. 3-17; penned by Associate Justice Pablito A. Perez with Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting concurring.

² *CA rollo*, pp. 44-57.

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willfully, unlawfully, and feloniously, sell and deliver to PO2 ALBERT REARIO SERIL, PNP, Zamboanga City Mobile Group, who acted as poseur-buyer, one (1) small size heat-sealed blue plastic straw containing white crystalline substance weighing 0.0111 gram which when subjected to qualitative examination gave positive result to the tests for Methamphetamine Hydrochloride (*SHABU*), knowing [the] same to be a dangerous drug.³

[Criminal Case No. 4996]

That on or about August 19, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully, and feloniously, have in his possession and under his custody and control two (2) small size heat-sealed blue plastic straws each containing white crystalline substance having a total weight of 0.0186 gram which when subjected to qualitative examination gave positive result to the tests for Methamphetamine Hydrochloride (*SHABU*), knowing [the] same to be a dangerous drug.⁴

During his arraignment on January 13, 2004, accused-appellant pleaded not guilty to both charges.⁵

Trial ensued only in 2008.

The prosecution presented the testimonies of Senior Police Officer (SPO) 1 Samuel T. Jacinto (Jacinto),⁶ Police Officer (PO) 2 Albert I. Seril (Seril),⁷ and SPO2 Jason M. Lahaman (Lahaman),⁸ all from the Zamboanga City Police Office. The prosecution dispensed with the presentation of the testimonies of Police Inspector (P/Insp.) Eulogio A. Tubo (Tubo),⁹ the investigator in charge of the case against accused-appellant; and Police Superintendent (P/Supt.) Mercedes D. Diestro (Diestro),¹⁰ a forensic chemist, upon admission by the defense of the subject matter of their testimonies.

The prosecution also presented object and documentary exhibits consisting of the Request for Laboratory Examination¹¹ (of the sachets of *shabu* marked ET-1, ET-2, and ET-3) dated August 19, 2003 prepared by P/Insp. Tubo; two heat-sealed sachets of *shabu* (marked ET-2 and ET-3) with a total weight of 0.0186 grams, which were allegedly seized from accused-appellant's possession;¹² one heat-sealed sachet of *shabu* (marked ET-1) weighing 0.0111 grams, which was sold by accused-appellant to PO2

³ Records, p. 1.

⁴ Id. at 2.

⁵ Accused-appellant was assisted by Atty. Roberto M. Buenaventura, his counsel *de officio* from the Integrated Bar of the Philippines (IBP) Legal Aide Committee; Id. at 13.

⁶ TSN, September 4, 2008.

⁷ TSN, August 31, 2010.

⁸ TSN, September 1, 2010.

⁹ TSN, September 2, 2008.

¹⁰ TSN, April 17, 2008.

¹¹ Records, p. 84.

¹² Id. at 80.

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Seril;¹³ P/Supt. Diestro's Chemistry Report No. D-344-2003¹⁴ dated August 19, 2003; Complaint Assignment Sheet¹⁵ signed by SPO1 Jacinto and P/Insp. Tubo, reporting the conduct of the buy-bust operation and arrest of accused-appellant and the turn-over of the marked money and sachets of *shabu* from accused-appellant; Case Report¹⁶ dated August 19, 2003 of Police Chief Inspector (PC/Insp.) Nickson Babul Muksan (Muksan) and P/Insp. Tubo; Memorandum¹⁷ dated August 13, 2003 for the City Prosecutor of Zamboanga City, prepared by PO2 Proceso de la Cruz Remigio, Jr., for the registration of marked money; marked ₱100.00-bill with serial number CK 705444;¹⁸ PO2 Seril's Affidavit¹⁹ dated August 20, 2003; Joint Affidavit of Arrest²⁰ dated August 20, 2003 executed by SPO1 Jacinto and SPO2 Lahaman; and P/Insp. Tubo's Inquest Report²¹ dated August 20, 2003. In an Order²² dated November 15, 2010, the RTC admitted all the evidence proffered by the prosecution.

Based on the evidence presented by the prosecution, the buy-bust operation against accused-appellant transpired as follows:

On August 19, 2003, SPO1 Jacinto, head of the intelligence section of the Zamboanga City Mobile Group, received information from his confidential informant that accused-appellant was illegally peddling dangerous drugs at their local wharf located at Zone 4, Sta. Barbara, Zamboanga City. SPO1 Jacinto relayed this information to their group director, PC/Insp. Muksan, who immediately organized a buy-bust team to entrap accused-appellant. PO2 Seril was designated as the poseur-buyer while SPO1 Jacinto and SPO2 Lahaman were assigned as PO2 Seril's back-up officers. After the briefing, the buy-bust team together with the confidential informant, proceeded to the local wharf at around 5:00 in the afternoon to execute the operation.

Upon arriving at the local wharf, the buy-bust team positioned themselves and waited for accused-appellant to arrive. After waiting for 10 to 20 minutes, the confidential informant spotted accused-appellant standing beside a cigarette vendor. PO2 Seril and the confidential informant approached accused-appellant. The confidential informant, speaking the *Tausug* dialect, introduced PO2 Seril to accused-appellant. Accused-appellant then agreed to sell *shabu* to PO2 Seril for ₱100.00. After handing over the marked ₱100.00-bill to accused-appellant and receiving a packet of *shabu* in return from accused-appellant, PO2 Seril scratched his head, the

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Id.

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Id. at 85.

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Id. at 86, signed when they were still then PO3 Jacinto and SPO4 Tubo.

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Id. at 87.

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Id. at 88.

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Id. at 82.

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Id. at 89.

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Id. at 90.

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Id. at 91.

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Id. at 94.

pre-arranged signal to the buy-bust team that the sale had already been consummated.

SPO1 Jacinto and SPO2 Lahaman approached accused-appellant and identified themselves as police officers, and then placed accused-appellant under arrest for illegally selling dangerous drugs. As an incident to a lawful warrantless arrest, SPO1 Jacinto searched accused-appellant's body and recovered from the latter's right pants' pocket the marked ₱100.00-bill and two more sachets of *shabu*. Thereafter, the buy-bust team brought accused-appellant to the police station. PO2 Seril kept with him the packet of *shabu* that was sold to him by accused-appellant, while SPO1 Jacinto kept in his custody the marked ₱100.00-bill and the two sachets of *shabu* which he found in accused-appellant's possession.

At the police station, PO2 Seril and SPO1 Jacinto turned over to P/Insp. Tubo the marked ₱100.00-bill and the three sachets of *shabu* they got from accused-appellant. It was P/Insp. Tubo who marked the packet of *shabu* accused-appellant sold to PO2 Seril with ET-1 ("ET" representing P/Insp. Tubo's initials) and the two sachets of *shabu* confiscated by SPO1 Jacinto from accused-appellant's possession with ET-2 and ET-3. P/Insp. Tubo then requested and submitted said items for forensic analysis.

Acting on P/Insp. Tubo's request, P/Supt. Diestro conducted a chemical analysis of the submitted specimens and issued Chemistry Report No. D-344-2003 dated August 19, 2003, which stated:

SPECIMEN SUBMITTED:

Transparent plastic wrapper with marking ET-BB-08-19-03 with one (1) small size heat-sealed blue plastic straw with marking ET-1 containing 0.0111 gram of white crystalline substance and marked as Exh. MD. (Buy-bust)

Transparent plastic wrapper with marking ET-P 08-19-03 with two (2) small size heat-sealed blue plastic straws with marking ET-2 and ET-3 respectively each contains white crystalline substance having a total weight of 0.0186 gram and marked as Exh. MD-1 to Exh. MD-2 respectively. (Possession)

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs.

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (*shabu*), a dangerous drug.²³

²³ Id. at 85.

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Accused-appellant strongly denied the charges against him and proffered in evidence his own testimony and that of his eldest child, Nijar Asjali (Nijar), and they both recounted on the witness stand the following:

Accused-appellant was working as a laborer at the local wharf of Zamboanga City. In the afternoon of August 19, 2003, accused-appellant reported for work and brought with him his 11-year-old daughter, Nijar. While waiting for the arrival of a vessel coming from the island of Basilan, accused-appellant was playing a card game with two other companions in full public view. Three armed men then suddenly approached accused-appellant's group and tried to apprehend them. Accused-appellant's companions managed to escape and only accused-appellant was taken into custody and brought to the central police office of Zamboanga City by the three armed men. The three armed men also confiscated the playing cards and money from the card game.

The police informed accused-appellant that he would be charged with playing the card game "*tong-its*." However, accused-appellant came to know, as he appeared before the trial court, that he was actually charged with selling *shabu*.

On July 18, 2011, the RTC promulgated its Judgment, finding accused-appellant guilty as charged and sentencing him thus:

WHEREFORE, in view of all the foregoing, Judgment is hereby rendered finding the accused herein, Yasser Asjali y Abbas, guilty beyond reasonable doubt in both the above-entitled cases and hereby sentences him in Criminal Case No. 4995 (19919) to suffer the penalty of Life Imprisonment and to pay the fine of ₱1,000,000.00 and in Criminal Case No. 4996 (19920) to suffer the penalty of imprisonment for Twelve (12) Years and One (1) day as Minimum to Fifteen [15] Years as Maximum and to pay the fine of ₱300,000.00 and to further pay the costs of this suits.²⁴

In his appeal before the Court of Appeals, accused-appellant, represented by the Public Attorney's Office, asserted that the RTC gravely erred in finding him guilty beyond reasonable doubt of the offenses of illegal sale of dangerous drugs and illegal possession of dangerous drugs.

Accused-appellant argued that the alleged entrapment operation was dubious since it was not coordinated with the Philippine Drug Enforcement Agency (PDEA); the supposed informant of the police was never identified or presented to testify; no surveillance was conducted prior to the buy-bust operation; and SPO1 Jacinto even confirmed that he did not actually see PO2 Seril give money to accused-appellant in exchange for a packet of *shabu*. Accused-appellant also averred that there was enough reason to doubt whether the sachets of *shabu* actually came from him because the chain of custody of the said sachets as required by law was not substantially

²⁴ CA rollo, p. 55.

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followed by the members of the buy-bust team. Accused-appellant pointed out that no marking, physical inventory, and photograph of the sachets of *shabu* were taken in his presence or his counsel, a representative from the media and the Department of Justice (DOJ), and an elective official, immediately after the alleged buy-bust operation.

Accused-appellant additionally contended that Criminal Case Nos. 4995 and 4996 involved the same subject matter, so the charge against him for illegal possession of dangerous drugs in Criminal Case No. 4996 should have been deemed absorbed by the charge (and his eventual conviction) for illegal sale of dangerous drugs in Criminal Case No. 4995.

In its Decision dated October 9, 2014, the Court of Appeals denied accused-appellant's appeal and affirmed the judgment of conviction of the RTC.

Hence, accused-appellant lodged his present appeal.

The Court finds the appeal meritorious.

It is a basic legal tenet in the prosecutions for violations of Sections 5 and 11 of Republic Act No. 9165 that the State bears the burden not only of proving the elements of the offenses of sale of dangerous drug and of the offense of illegal possession of dangerous drug, but also of proving the *corpus delicti*, the body of the crime. *Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime was actually committed.²⁵

In all prosecutions for violations of Republic Act No. 9165, the *corpus delicti* is the dangerous drug itself. The *corpus delicti* is established by proof that the identity and integrity of the prohibited or regulated drug seized or confiscated from the accused has been preserved; hence, the prosecution must establish beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused. The prosecution can only forestall any doubts on the identity of the dangerous drug seized from the accused to that which was presented before the trial court if it establishes an unbroken chain of custody over the seized item. The prosecution must be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.²⁶

The links that must be established in the chain of custody in a buy-bust situation are as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

²⁵ *People v. Calates*, G.R. No. 214759, April 4, 2018.

²⁶ *People v. Calvelo*, G.R. No. 223526, December 6, 2017.

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second, the turn over of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turn over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turn over and submission of the marked illegal drug seized from the forensic chemist to the court.²⁷

Section 21(a), Article II of Republic Act No. 9165²⁸ lays down the procedure for the first link in the chain of custody. It describes in detail the steps to be taken by the apprehending team having initial custody and control of the drugs, thus:

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. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied.)

In furtherance of the aforequoted provision, Section 21, Article II of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” provides:

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. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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

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Id.

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Amended by Republic Act No. 10640, enacted on July 22, 2014.

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[.]** (Emphasis supplied.)

Although not specifically mentioned by the law or the implementing rules, the first link in the chain of custody necessarily involves the marking of the seized or confiscated drugs for reference of all succeeding handlers and to render the same distinct and identifiable from all other drugs in custody. As the Court pronounced in *People v. Gonzales*²⁹:

The first stage in the chain of custody is the marking of the dangerous drugs or related items. **Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value. (Emphasis supplied.)

There is dearth of evidence in the case at bar that the buy-bust team complied with the prescribed procedure for handling the alleged illegal drugs from accused-appellant.

Per the prosecution's evidence, the Zamboanga City Police conducted a buy-bust operation against accused-appellant; in the course of said operation, PO2 Seril bought a packet of *shabu* from accused-appellant for ₱100.00, while SPO1 Jacinto seized from accused-appellant's possession, during body search, two more sachets of *shabu* and the marked ₱100.00-bill paid by PO2 Seril; the apprehending team brought accused-appellant to the police station, where PO2 Seril and SPO1 Jacinto turned over the sachets of *shabu* seized from accused-appellant to P/Insp. Tubo, the investigator-in-charge; and P/Insp. Tubo marked the sachets with his initials.

²⁹ 708 Phil. 121, 130-131 (2013).

However, the prosecution's evidence failed to establish that the buy-bust team complied with the directives under Republic Act No. 9165 and its IRR, as well as relevant jurisprudence, *viz.*:

(1) That the buy-bust team marked the three sachets of *shabu* from accused-appellant in the latter's presence immediately upon arrest;

(2) That the buy-bust team conducted a physical inventory and took photographs of the three sachets of *shabu* from accused-appellant (a) immediately at the place of the arrest or subsequently at the police station and (b) in the presence of accused-appellant or his representative or counsel, representatives from the media and the DOJ, and an elected public official; and

(3) That the buy-bust team prepared a certificate of inventory or inventory receipt and had the same signed by accused-appellant or his representative or counsel, the representatives from the media and the DOJ, and the elected public official who witnessed the inventory.

The markings on the three sachets of *shabu*, purportedly seized or confiscated from accused-appellant, was done not by any of the members of the buy-bust team who apprehended accused-appellant, but by P/Insp. Tubo, the assigned investigating officer, at the police station where accused-appellant was brought following his arrest. In addition, there is totally no proof that the markings were done in the presence of accused-appellant.

Moreover, the records do not bear any stipulation between the parties, or a statement in the affidavits of the buy-bust team members, or an averment in the prosecution witnesses' testimonies that a physical inventory and photograph of the seized drugs were actually taken immediately upon accused-appellant's arrest or even later on at the police station. No certificate of inventory or inventory receipt or photograph of the seized drugs is attached to the records of the case. There is also no showing at all that representatives from the media and the DOJ and an elected public official were present at the place of arrest or at the police station to witness, together with accused-appellant or his representative or counsel, the conduct of the physical inventory and taking of photographs of the seized drugs:

Ultimately, the *corpus delicti* has not been satisfactorily established by the prosecution in this case. That the prosecution failed to present evidence to account for the very first link in the chain of custody already puts the rest of the chain into question and compromises the integrity and evidentiary value of the three sachets of *shabu* supposedly seized from accused-appellant. Thus, there is already reasonable doubt as to whether the seized drugs were exactly the same drugs presented in court as evidence.

It is true that the IRR states that "noncompliance with these requirements under justifiable grounds, as long as the integrity and the

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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.” This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. In which case, the prosecution loses the benefit of invoking the presumption of regularity and bears the burden of proving with moral certainty that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.³⁰

In this case, the noncompliance with the chain of custody rule by the buy-bust team was not explained by the prosecution. Without any explanation on why the buy-bust team was unable to comply with the chain of custody rule, then there is no basis for the Court to determine if there is a justifiable ground for the same.

Regardless of the weakness of accused-appellant’s evidence, a judgment of acquittal must follow when the prosecution failed to discharge its burden of proving accused-appellant’s guilt beyond reasonable doubt.

WHEREFORE, in view of the foregoing, the Decision dated October 9, 2014 of the Court of Appeals in CA-G.R. CR. HC. No. 01004-MIN is **REVERSED** and **SET ASIDE**. **YASSER ABBAS ASJALI** is **ACQUITTED** of the crimes charged for failure of the prosecution to prove his guilt beyond reasonable doubt and ordered immediately **RELEASED** from detention unless he is otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Director of the Bureau of Corrections, San Ramon Prison and Penal Farm, Zamboanga City, for immediate implementation, and to report the action taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

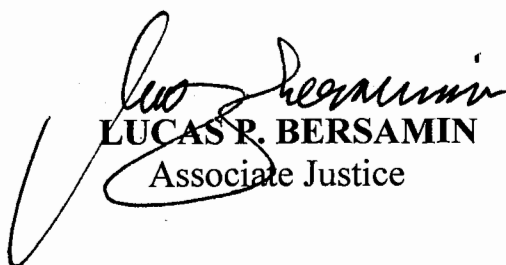
Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice
Chairperson

³⁰ *People v. Dela Rosa*, G.R. No. 230228, December 13, 2017.

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice



LUCAS P. BERSAMIN
Associate Justice

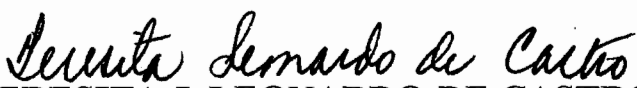
On official leave
MARIANO C. DEL CASTILLO
Associate Justice



NOEL GIMENEZ TIJAM
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.



TERESITA J. LEONARDO-DE CASTRO
Chief Justice