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Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

PERLY TUATES y CHICO,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 230789

Present:

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

Promulgated:

10 APR 2019

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DECISION

CAGUIOA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] (Petition) filed by petitioner Perly Tuates y Chico (Tuates) assailing the Decision[2] dated October 27, 2016 and Resolution[3] dated March 14, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 36706, which affirmed the Decision[4] dated February 10, 2014 of the Regional Trial Court of Iba, Zambales, Branch 69 (RTC) in Criminal Case No. RTC 6736-I, finding Tuates guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, as amended.

The Facts

The Information[6] filed against Tuates pertinently reads as follows:

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* On leave.

1 *Rollo*, pp. 11-31.

2 Id. at 32-40. Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Franchito N. Diamante and Carmelita Salandanan-Manahan concurring.

3 Id. at 44 to 44-A.

4 Id. at 101-110. Penned by Judge Josefina D. Farrales.

5 AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, approved on June 7, 2002.

6 *Rollo*, pp. 46-47.

> That on or about [the] 2nd day of March 2012 at about 1:40 o'clock (*sic*) in the afternoon, in Balili Brgy. Palanginan, Municipality of Iba, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, without any lawful authority, transport, Methamphetamine Hydrochloride, a dangerous drug, placed in one (1) transparent plastic sachet, with a total weight of .105 gram, without any authority, permit nor prescription to transport the same from the appropriate agency.
>
> CONTRARY TO LAW.[7]

Upon arraignment, Tuates pleaded not guilty to the offense charged. Thereafter, pre-trial and trial ensued. The prosecution's version, as summarized by the CA, is as follows:

> Katehlene Bundang (Bundang), a Jail Guard at the Provincial Jail of Zambales, was assigned to frisk women visitors at the jail. At around 1:40 o'clock (*sic*) in the afternoon of 2 March 2012, TUATES, a former detainee, went to the Provincial Jail to visit her boyfriend, Samuel Elamparo (Elamparo), who was charged with Violation of the Dangerous [Drugs] Act. Bundang conducted a body search on TUATES, and while searching the lower part of her body, Bundang found a plastic sachet containing white crystalline substance tucked on the left side of the latter's waist. Bundang took the sachet and went to the Office of the Jail Warden to report the matter. Thereat, Bundang wrote her initials "KAB" on the sachet in the presence of another Jail Guard, a certain Randy, as well as Police Officer 2 Virgilio Fennolar (Fennolar). Forthwith, Bundang and Fennolar went to the crime laboratory to have the seized specimen examined. The plastic sachet with markings "KAB" was found positive for Methylamphetamine (*sic*) Hydrochloride, a dangerous drug.[8]

On the other hand, the version of the defense, as likewise summarized by the CA, is as follows:

> Professing her innocence, TUATES vehemently denied the accusation against her, asseverating that on 2 March 2012, she went to the Provincial Jail of Zambales to visit her live-in partner, Elamparo, who was sick. She was let in by a male jail guard who told her to wait as the lady jail guard, Bundang, was not yet around.
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> After waiting for 30 minutes, Bundang arrived and brought her to the search room. Bundang frisked her for more than five minutes. She was baffled why it took long for Bundang to search her. In her previous visits, it lasted only for less than two minutes and that there were two to four guards in the search room. However, on that day, the search was not merely casual. Bundang placed her hand on her (TUATES') pocket as well as inside her pants. When Bundang took out her hand from her pants, she was surprised when something fell out. Bundang then shouted, "*O meron ito. Hulihin na ito.*" Thereafter, the other jail guards came and brought her to the office where they asked her name and purpose in visiting the jail.

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7 Id. at 46.
8 Id. at 33.

Subsequently, TUATES was brought to the crime laboratory for urine examination which yielded a negative result.[9]

Ruling of the RTC

After trial on the merits, in its Decision[10] dated February 10, 2014, the RTC convicted Tuates of the crime charged. The dispositive portion of the said Decision reads:

> IN VIEW THEREOF, accused PERLY TUATES y CHICO is found GUILTY beyond reasonable doubt of Violation of Section 11 of R.A. 9165 and is hereby sentenced to an indeterminate penalty of imprisonment from Twelve (12) Years and One (1) Day to Fourteen (14) Years and to pay a fine of Php300,000.00.
>
> The one (1) plastic sachet of methamphetamine hydrochloride weighing .105 gram is confiscated in favor of the government.[11]

From the testimonies of the prosecution witnesses, namely (1) Katehlene[12] Bundang (Bundang), (2) PO2 Virgilio Fennolar[13] (PO2 Fennolar), (3) PO2 Gabby Raboy, the RTC concluded that the evidence sufficiently established all the elements of the crime charged. The RTC held that the prosecution established an "unbroken link in the chain of custody of the plastic sachet containing white crystalline substance which when examined [tested] positive for methylamphetamine hydrochloride."[14]

Aggrieved, Tuates appealed to the CA.

Ruling of the CA

In the questioned Decision[15] dated October 27, 2016, the CA affirmed the RTC's conviction of Tuates, holding that the prosecution was able to prove the elements of the crimes charged. The CA also held that the prosecution was able to present an unbroken chain of custody in handling the confiscated item. It reasoned as follows:

> In reality, it is almost impossible to obtain a perfect and an unbroken chain of custody. Thus, failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused person's arrest illegal or the items seized or confiscated from him inadmissible. The most important factor is the preservation of the integrity and evidentiary value of the seized items. In this case, the prosecution was able to demonstrate that the integrity and evidentiary value of the seized prohibited drug had not been compromised because it established the

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9 Id. at 33-34.
10 Id. at 101-110.
11 Id. at 110.
12 Also referred to as "Kathleen" and "Katehlene Carl" in some parts of the *rollo*.
13 Also spelled as "Penullar" and "Fenollar" in some parts of the *rollo*.
14 *Rollo*, p. 109.
15 Id. at 32-40.

> crucial link in the chain of custody of the seized items from the time it was first discovered until it was brought to the court for examination.
>
> *Tout court,* the prosecution was able to preserve unscathed and establish the identity of the *corpus delicti. First,* Bundang found the illegal drug in the appellant's possession. *Second,* Bundang marked the seized item with her initials "KAB" at the Office of the Provincial Jail Warden. *Third,* the dangerous drug was personally brought by Bundang and Fennolar to the SOCO for laboratory examination. *Fourth,* PO2 Gabby Raboy (Raboy) received the subject specimen from Fennolar. *Fifth,* Raboy turned it over to Forensic Chemist Arlyn Dascil-Cañete for laboratory examination. *Sixth,* the seized item was found positive for Methylamphetamine Hydrochloride, a dangerous drug. Clearly, the succession of events established by evidence and the overall handling of the seized items by specified individuals all show that the evidence seized were the same evidence subsequently identified and testified to in open court.[16]

The CA thus affirmed the conviction of Tuates. She then sought reconsideration[17] of the Decision on December 2, 2016, which however was denied by the CA in a Resolution[18] dated March 14, 2017.

Thus, the present Petition.

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Tuates of the crime charged.

The Court's Ruling

The appeal is meritorious. The Court acquits Tuates for failure of the prosecution to prove her guilt beyond reasonable doubt.

Tuates was charged with the crime of illegal possession of dangerous drugs, defined and penalized under Section 11 of RA 9165. To convict a person under this charge, the prosecution must prove the following: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[19]

There is reasonable doubt, however, in the presence of the third element in this case — that the accused freely and consciously possessed the drug.

Tuates' defense is essentially that the seized item was merely planted on her by the jail guard who frisked her. Bundang, the jail guard, however, claims otherwise. Bundang avers that she found the seized item tucked in Tuates' underwear as she frisked the latter. Considering the conflicting statements of

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16 Id. at 38.
17 Id. at 159-166.
18 Id. at 44 to 44-A.
19 *People v. Mercado,* 755 Phil. 863, 875 (2015).

the parties, the lower courts resolved the case in favor of the prosecution in light of (1) the presumption of regularity in the performance of duties accorded to Bundang, and (2) lack of showing that the police officers had ill motive in imputing the crime to Tuates.

The Court reverses the rulings of both the RTC and the CA. As the Court said in *Mallillin v. People*,[20] "the blind reliance by the [RTC] and the [CA] on the presumption of regularity in the conduct of police duty is manifestly misplaced. **The presumption of regularity is merely just that — a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth**."[21] Verily, the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[22]

The presumption of regularity in the performance of duty cannot arise in the present case because Bundang did not follow the prescribed procedure in searching or frisking Tuates. According to the Bureau of Jail Management and Penology Standard Operating Procedures Number 2010-05 (BJMP-SOP 2010-05) dated September 16, 2010 on the conduct of body searches on jail visitors, the search on jail visitors should be conducted in the following manner:

> **V. GENERAL POLICY**
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> 1. **Searches are to be conducted in the least intrusive manner**, while ensuring accomplishment of the intended purpose, yet maintaining respect for individual dignity and insuring the greatest level of privacy. Personnel performing searches shall not be allowed to talk/discuss the search they performed unless directed by the court or warden.
>
> 2. All visitors before being allowed entry into the jail must be requested to submit the things they carry to a thorough inspection and a thorough body search to prevent the entry of contraband/s in our jails.
>
> 3. Money, jewelry, gadgets and other commodities of exchange shall be duly turned over to the Property Custodian for receipting and eventual safekeeping in a safety vault or box. It shall be duly returned to the visitor upon his or her exit from the jail facility. All visitors who refuse to undergo search and inspection shall be refused entry into the jail.
>
> 4. All male visitors shall be searched by male jail officers while female visitors shall be searched by female jail officers only. At no instance that a female homosexual jail officer shall be allowed to conduct body search on female jail visitors while a male homosexual jail officer cannot body search a male jail visitor. Further, no person of the opposite sex shall be allowed to conduct or view strip searches.

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20 576 Phil. 576 (2008).

21 Id. at 593. Emphasis and underscoring supplied.

22 *People v. Angeles*, G.R. No. 237355, November 21, 2018, p. 12.

5. In performing searches, sanitary gloves shall be worn by the jail officer.

6. **The search should not be more extensive than necessary to determine the existence of contraband believed to be concealed on the subject.**

7. Strip search and Visual Body Cavity Search shall only be conducted inside a searching room that is adequately lighted, safe and guarantees confidentiality.

VI. GUIDELINES IN THE CONDUCT OF PAT/FRISK/RUB SEARCH FOR VISITORS

1. All inmates' visitors who want to enter the jail facility must be subjected to body search and inspection of their belongings.

2. To perform a pat/frisk/rub search, the jail officer shall accomplish the following:

   a. Instruct the subject to remove items from pockets, shoes, jackets, or any extra clothing.

   b. Search the subject top to bottom being systematic:

      1. Shake out his/her hair;
      2. Grasp the collar and feel for any hidden items.
      3. Search each of the arms separately.
      4. Run hands down the shirt front, checking the pocket and stopping at the beltline. Then check the back using the same process.
      5. Once satisfied that all areas above the waist –the neck, arms, chest, and back are clear, check the waistline to feel for any small articles hidden.
      6. From the waistline, run hands down the subject's buttocks.
      7. Then move both hands to one leg. Repeat process on the other leg.
      8. Finally, run hands over the subject's lower abdomen and crotch carefully, feeling for concealed articles that may be taped to these areas[.]

3. **If during the pat/frisk/rub search the jail officer develops probable cause that contraband is being hidden by the subject which is not likely to be discovered, the Jail Officer shall request for a conduct of strip search/visual body cavity search.** (Emphasis supplied)

A pat/frisk search is defined by BJMP-SOP 2010-05 as "a search wherein the **officer pats or squeezes the subject's clothing** to attempt to detect contraband/s. For same gender searches the Pat/Frisk search is normally accomplished in concert with Rub Search."[23] In turn, a rub search is defined as "a search wherein the officer **rubs and/or pats the subject's**

[23] BJMP-SOP 2010-05, Sec. IV.

body over the clothing, but in a more intense and thorough manner. In a rub search, the genital, buttocks, and breast (of females) areas are carefully rubbed-areas which are not searched in a frisk/pat search. Rub searches shall not be conducted on cross-gender individuals."[24]

In the present case, the above guidelines were **not** followed. Bundang testified on the conduct of the search as follows:

Q And of course, Madam Witness, the purpose of the accused in this case when she went to the jail was to visit her boyfriend an inmate also, correct?

A Yes, sir.

Q The boyfriend is accused of committing a Violation of Dangerous Drug Act, if you know?

A Yes, sir.

Q So Madam Witness, you brought the accused inside the frisking room?

A Yes, sir.

Q Did you strip her Madam Witness?

A Not totally, sir. ("Hindi naman masyadong hubad, sir.")

Q Not all lady visitors were searched inside the frisking room, right?

A Yes, sir.

Q But particularly you made the accused stripped because you are suspecting she's also involved in drugs cases because her boyfriend is involved in drugs cases, is that correct?

A Yes, sir.

Q So you have very high suspicion that she's involved in drugs, right?

A Yes, sir.

Q The reason why you searched her and you brought her inside the searching room, and you searched her, right?

A Yes, sir.

Q Madam Witness, do you know that the very reason of searching anybody to see to it that there was no dangerous weapon tucked inside their body, nor anything else, right?

A Yes, sir.

Q **Now, Madam Witness, you said you half-stripped the accused, you removed her t-shirt?**

A **I raised, sir.**

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[24] Id.

Q **So, without you Madam Witness touching her body, you would not had (*sic*) discovered those things, right?**

A **Yes, sir.**

Q **And without you also inserting your hand inside the panty or the pants, you would not have discovered those thing (*sic*), right?**

A **Yes, sir.**

Q But if you will just searched (*sic*) her with the clothes on Madam Witness as if it would be a normal lady without anything illegal inside the body, correct?

A Yes, sir.

Q But you are very suspicious that she is involved in drug, you would not searched (*sic*) her?

A Yes, sir, all the visitors coming in.

COURT TO WITNESS:

Q **What is the procedure for searching, you have to remove the clothes?**

A **No, your Honor. I just raised her t-shirt.**

Q **Why do you have to raise the clothes?**

A **I did not raise, I just inserted my hand, your Honor.**

Q Are you allowed to insert your hand?

A Yes, your Honor.

Q Show me a regulation or a law which allow you to do that.[25] (Emphasis and underscoring supplied)

Based on Bundang's own testimony as quoted above, the search was undoubtedly conducted irregularly or in contravention of the established procedure. To emphasize anew, BJMP-SOP 2010-05 requires pat/frisk searches and rub searches to be done **over the jail visitor's clothing.** Bundang admitted twice that what she instead did was to raise Tuates' shirt. This she cannot do, for a strip search may be resorted to only "[i]f during the pat/frisk/rub search[,] the jail officer develops probable cause that contraband is being hidden by the subject which is not likely to be discovered."[26] Further, a strip search may only be done after the visitor agrees in writing, which is a requirement to shield the jail officer performing the search from harassment complaints.[27]

In this case, there was no probable cause for a strip search — for Bundang's only basis was that Tuates' boyfriend was a prisoner in that particular jail for a violation of RA 9165. Moreover, Tuates never agreed in

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25 TSN, July 25, 2012, pp. 15-17; *rollo*, pp. 63-65.
26 BJMP-SOP 2010-05, Sec. VI(3).
27 Id., Sec. VII(2).

writing to a strip search. It was thus highly irregular for Bundang to raise Tuates' shirt in the conduct of her supposed search.

It should be noted further that when Bundang realized that what she had done was not allowed by the rules, she then changed her testimony to the effect that she did not raise Tuates' shirt but "just inserted [her] hand."[28] This act was also irregular because, to repeat, a pat/frisk/rub search should be done only over the visitor's clothing.

In either case, the search conducted by Bundang was clearly not in accordance with BJMP-SOP 2010-05. From this alone, the presumption that she performed her duties in a regular manner was thus unmistakably rebutted.

Further, Bundang's testimony exhibited material contradictions. Apart from the inconsistency on whether she raised Tuates' shirt or just merely inserted her hand inside Tuates' undergarment, Bundang also manifested in her *Sinumpaang Salaysay ng Pag-Aresto*[29] that she saw the plastic sachet containing the supposed *shabu* tucked on the right side of Tuates' undergarment. And yet, when she gave her direct testimony, she testified that she found the dangerous drug tucked on the left side of Tuates' waist.[30]

Under different circumstances, the foregoing discrepancy may be dismissed as immaterial — or a minor inconsistency — that does not affect the witness' credibility or the culpability of the accused. However, considering that the Court cannot afford Bundang the presumption of regularity in the performance of her duties, as previously discussed, the other inconsistencies in her testimony become material, and adds further reasonable doubt on the existence of the third element of the charge, *i.e.*, whether Tuates freely and consciously possessed the drug.

Finally, it should likewise be emphasized that it is highly doubtful that an inventory of the seized item was conducted. Both the RTC[31] and the CA[32] recognized that the prosecution witnesses, particularly Bundang and PO2 Fennolar, testified that, after confiscation, they immediately submitted the seized item to the crime laboratory for forensic examination. PO2 Fennolar then testified that "after turning over the specimen to the crime laboratory, they delivered it to the police station for investigation and preparation of the documents such as the sworn statements and the receipts of the inventory."[33]

The foregoing raises a question regarding the veracity of the conduct of the inventory, for how could the police officers conduct an inventory of the seized item when they had immediately turned over the same to the crime laboratory?

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28 TSN, July 25, 2012, p. 17; *rollo*, p. 65.
29 *Rollo,* p. 82.
30 TSN, July 25, 2012, p. 4; id. at 52.
31 See *rollo,* pp. 102-103.
32 Id. at 33.
33 Id. at 103.

What further militates against the veracity of the inventory was the fact that Bundang was a signatory to the Inventory Receipt[34] as the Seizing Officer, **and yet she testified that she did not know whether an inventory was conducted**.[35] This was shown by the following testimony of Bundang:

> Q So from the Provincial Jail you went to the Office of the SOCO, is that what you are saying?
>
> A Yes, sir.
>
> **Q You would not know if there was an inventory conducted in this particular case?**
>
> **A I do not know, sir.**
>
> Q If a copy of an inventory, I am showing you a copy of an inventory…
>
> ATTY. FALLORIN:
>
> No basis, your Honor.
>
> PROS. FALINCHAO:
>
> No because she said…
>
> ATTY. FALLORIN:
>
> The first question if she know *(sic)* that an inventory was conducted, the witness said she do (*sic*) not know.
>
> PROS. FALINCHAO:
>
> There was a document. I will show her the document your Honor…
>
> COURT:
>
> Sustained unless she was the one who prepared the document.[36] (Emphasis supplied)

The foregoing thus casts doubt on whether an inventory of the seized item was even conducted. There is thus doubt on the integrity and evidentiary value of the seized item — the *corpus delicti* of the crime.

It was therefore error for the CA to convict Tuates by principally relying only on the presumption of regularity in the performance of duties extended in favor of the police officers. It bears emphasis that the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[37] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[38] As the Court, in *People v. Catalan*,[39] reminded the lower courts:

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34 Id. at 83.
35 Id. at 102.
36 TSN, July 25, 2012, pp. 10-11; id. at 58-59.
37 *People v. Mendoza*, 736 Phil. 749, 770 (2014).
38 See *People v. Catalan*, 699 Phil. 603, 621 (2012).
39 Id.

> Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.
>
> We hold that both lower courts committed gross error in relying on the presumption of regularity.
>
> Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.
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> **Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air.** To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[40] (Emphasis supplied)

In this case, the presumption of regularity cannot stand because of the police officers' blatant disregard of the established procedures under BJMP-SOP 2010-05 and Section 21 of RA 9165 on the conduct of inventory.

As a final word, the Court reiterates that it is aware that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.[41] Hence, the Court reaffirms the long-standing rule that the presumption that regular duty was performed by the police officers could not prevail over the constitutional presumption of the innocence of the accused.[42]

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Decision dated October 27, 2016 and Resolution dated March 14, 2017 of the Court of Appeals in CA-G.R. CR No. 36706 are hereby **REVERSED** and **SET ASIDE.** Accordingly, petitioner Perly Tuates y Chico is **ACQUITTED** of the crime charged on the ground of reasonable doubt. Let an entry of final judgment be issued immediately.

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40 Id. at 621.

41 *People v. Uy,* 392 Phil. 773, 788 (2000); *People v. Pagaura,* 334 Phil. 683, 689-690 (1997).

42 See *People v. Mendoza*, supra note 37, at 770.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

(On leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

JOSE C. REYES, JR.
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
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