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MISAEEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

JUL 24 2020

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 243941

Present:

-versus-

LEONEN, J., *Chairperson*,
GESMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

SAMIAH S. ABDULAH,
Accused-Appellant.

Promulgated:
March 11, 2020

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X-----X

DECISION

LEONEN, J.:

Deviations from the Comprehensive Dangerous Drugs Act's chain of custody requirements are permitted only on the strictest and most exceptional grounds. It is the burden of law enforcers to declare and demonstrate not only the specific reasons impelling them to deviate from the law, but also the concrete steps they took to ensure the integrity and evidentiary value of items allegedly seized.

Cursory and shallow averments of unsafe conditions premised on the profile of a given locality's population reveals indolence, if not bigotry. Such trite references fall woefully short of the law's lofty standards and cast doubt on the conduct of buy-bust operations. They justify the acquittal of those whose prosecutions are anchored on noncompliant police operations.

For this Court's resolution is a Notice of Appeal¹ assailing the Decision² of the Court of Appeals, which affirmed the Regional Trial Court Decision³ convicting Samiah S. Abdulah (Abdulah) of the illegal sale of dangerous drugs.

In an Amended Information, Abdulah and another accused, a child in conflict with law identified as "EB," were charged with violating Section 5⁴ of Republic Act No. 9165. It reads:

That on or about the 21st day of November 2014, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named child in conflict with the law (CICL) EB*, a seventeen (17) year old minor at the time of the commission of the crime, acting with discernment and SAMIAH S. ABDULLAH (*sic*), conspiring and confederating together, they mutually helping and aiding each other, did then and there willfully, unlawfully, and knowingly sell, deliver and give away without authority from law to PO3 ERICH JOEL TEMPORAL, of the District Anti-Illegal Drug-Special Operation Task Group (DAID-SOTG), Eastern Police district of Pasig City, posing as a buyer, one (1) small heat-sealed plastic sachet containing 0.25 gram of white crystalline substance marked with "EJT 11/21/14 BUY BUST", which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

¹ *Rollo*, pp. 14–17.

² *Id.* at 2–13. The Decision dated July 24, 2018 was penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion of the Second Division, Court of Appeals, Manila.

³ *CA rollo*, pp. 61–71. The Decision dated November 29, 2016 was penned by Presiding Judge Lorna F. Catris-Chua Cheng of Branch 168, Regional Trial Court, Marikina City.

⁴ Republic Act No. 9165 (2002), sec. 5 provides:

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

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

CONTARY TO LAW.⁵

On arraignment, both Abdulah and EB pleaded not guilty to the crime charged. Trial on the merits then ensued.⁶

The prosecution presented as its witnesses Police Officer 3 Erich Joel Temporal (PO3 Temporal), Police Officer 2 Rosauro B. Gayatao (PO2 Gayatao), PO3 Galahad Altarejos, Jr. (PO3 Altarejos), Police Superintendent Jose Samson Ogbac (Superintendent Ogbac), and Police Chief Inspector Rhea dela Cruz-Alviar (Chief Inspector dela Cruz-Alviar).⁷

Based on their collective testimonies, the prosecution averred that at around 1:30 p.m. on November 20, 2014, a confidential informant went to the District Anti-Illegal Drug of the Eastern Police District in Pasig City, reporting that two (2) girls were selling illegal drugs on Singkamas Street in Tumana, Marikina City. Superintendent Ogbac at once instructed PO3 Temporal and the informant to verify the tip.⁸

At the area, the informant introduced PO3 Temporal to “Erika” and “Lalay”—later identified as EB and Abdulah—as a potential buyer of shabu. However, PO3 Temporal was advised to just return the following day, as they had no shabu at that time.⁹

PO3 Temporal reported the incident, and Superintendent Ogbac formed a buy-bust team accordingly. The team was composed of him, Senior Police Officer 1 (SPO1) Garcia, SPO1 Villanueva, PO3 Serpino, PO3 Temporal, PO2 Gayatao, and Police Inspector Javier. PO3 Temporal was designated as the poseur-buyer, PO2 Gayatao as his back-up, and the others as the support group. PO3 Temporal was given a ₱500.00 bill to be used as buy-bust money, which he marked with his initials, “EJT.”¹⁰

On November 21, 2014, the buy-bust team went to the target area where they saw EB and Abdulah. At first, the girls hesitated approaching PO3 Temporal as he was with PO2 Gayatao, so PO3 Temporal advised the other to distance himself. Abdulah then approached PO3 Temporal and inquired about his order. The officer handed her the marked ₱500.00 bill, which she then passed to EB. In turn, EB placed the money in a sling bag

⁵ CA rollo, p. 61.

⁶ Rollo, p. 3.

⁷ Id. Altarejos was sometimes spelled as “Altajeros.”

⁸ Id. at 4.

⁹ Id.

¹⁰ Id.

and retrieved from it a small plastic sachet containing white crystalline substance, which she handed to the officer.¹¹

At this, PO3 Temporal immediately introduced himself as a police officer and apprehended Abdulah and EB. PO2 Gayatao proceeded to frisk the girls while PO3 Temporal seized the sling bag from EB, recovering the buy-bust money and another sachet of white crystalline substance.¹²

Believing that the area was unsafe for being “a Muslim area,”¹³ the team brought Abdulah and EB to the barangay hall where they marked, inventoried, and photographed the seized items. The proceeding was witnessed by Barangay Tanod Reynaldo Garcia, Barangay Kagawad Francisco delos Santos, Abdulah, and EB.¹⁴

The team then proceeded to the Eastern Police District headquarters. There, SPO1 Garcia prepared the Request for Laboratory Examination while PO3 Temporal prepared the Chain of Custody Form. PO3 Temporal later brought the request and the seized items to the Crime Laboratory and passed them to PO3 Altarejos, who then gave the items to Chief Inspector dela Cruz-Alviar for examination. The test results revealed that the confiscated items tested positive for shabu.¹⁵

The defense, on the other hand, presented Abdulah as its sole witness.¹⁶ She denied selling drugs, insisting that she was merely sleeping in her house during the incident. She further testified that EB is her nephew’s wife.¹⁷

By escaping the Department of Social Welfare and Development, under whose custody she had been placed, EB was considered to have waived her right to present evidence.¹⁸

On November 29, 2016, the Regional Trial Court rendered a Decision¹⁹ convicting Abdulah and EB of the crime charged, thus:

WHEREFORE, the Court finds **CICL EB** and accused **SAMIAH ABDULLAH** (*sic*) guilty beyond reasonable doubt of the crime of Violation of Sec. 5, Article II, of R.A. 9165. Considering the privileged

¹¹ Id.

¹² Id.

¹³ Id. at 11.

¹⁴ Id. at 5.

¹⁵ Id. at 5–6.

¹⁶ Id. at 6.

¹⁷ CA rollo, p. 67.

¹⁸ Rollo, p. 6 and CA rollo, p. 67.

¹⁹ CA rollo, pp. 61–71.

mitigating circumstance of minority, CICL EB is hereby sentenced to suffer the indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of *prision mayor* as minimum to FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY of *reclusion temporal* as maximum and to pay the fine of Php500,000.00.

As regards accused SAMIAH ABDULLAH (*sic*), she is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00, without subsidiary imprisonment in case of insolvency.

Accused Samiah Abdullar (*sic*) and CICL EB shall be credited in full of their preventive imprisonment they already served in confinement.

The methamphetamine hydrochloride (shabu) submitted as evidence in this case is hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposal.

SO ORDERED.²⁰ (Emphasis in the original)

Aggrieved, Abdulah appealed to the Court of Appeals.²¹

In her Brief, Abdulah argued that the Regional Trial Court erred when it rendered conviction despite the apprehending officers' failure to comply with Section 21 of Republic Act No. 9165.²² She noted that the inventory and photographs were taken only at the barangay hall, without the presence of representatives from the media and the National Prosecution Service.²³

The Office of the Solicitor General, on behalf of the People of the Philippines, maintained that noncompliance with the chain of custody rule does not render the confiscated items inadmissible. It insisted that the determination of a person's guilt is based on the prosecution's ability to safeguard the integrity and evidentiary value of the seized items.²⁴

In its July 24, 2018 Decision,²⁵ the Court of Appeals sustained the Regional Trial Court Decision:

WHEREFORE, premises considered, the instant appeal is **DENIED**, the Decision of the Regional Trial Court, Branch 168, Marikina City dated November 29, 2016 in Criminal Case No. 2014-4543-D MK is **AFFIRMED**.

SO ORDERED.²⁶ (Emphasis in the original)

²⁰ Id. at 70–71.

²¹ Id. at 12.

²² Id. at 45–46.

²³ Id. at 49.

²⁴ Id. at 84–87.

²⁵ *Rollo*, pp. 2–13.

²⁶ Id. at 13.

On August 16, 2018, Abdulah filed a Notice of Appeal.²⁷

In its March 20, 2019 Resolution,²⁸ this Court noted the records of this case forwarded by the Court of Appeals and required the parties to file their supplemental briefs.

Both accused-appellant²⁹ and the Office of the Solicitor General³⁰ manifested that they would no longer file their supplemental briefs.

For this Court's resolution is the issue of whether or not the Court of Appeals correctly upheld the conviction of accused-appellant Samiah S. Abdulah for the illegal sale of dangerous drugs.

In every prosecution for illegal sale of dangerous drugs, the prosecution must establish the following elements: "(1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence."³¹

In *People v. Nacua*,³² the *corpus delicti*, or the body of the crime itself, is further explained in this wise:

Sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and *the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.*³³ (Emphasis supplied)

The Comprehensive Dangerous Drugs Act spells out the chain of custody requirements for the safeguarding and custody of items seized in a buy-bust operation. Complying with these stringent measures preserves the seized items' authenticity and integrity. Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, provides in part:

SECTION 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

²⁷ Id. at 14–17.

²⁸ Id. at 20–21.

²⁹ Id. at 32–35.

³⁰ Id. at 24–28.

³¹ *People v. Nandi*, 639 Phil. 134, 142 (2010) [Per J. Mendoza, Second Division].

³² 702 Phil. 739 (2013) [Per J. Leonardo-De Castro, First Division].

³³ Id. at 751.

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment ***shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same*** in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public 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 of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.*** (Emphasis supplied)

Strict observance of the chain of custody requirements ensures the seized items' integrity. When the integrity of the seized items cannot be trusted—as when there are procedural lapses in the chain of custody—the prosecution has failed to establish the *corpus delicti*. It has fallen short of proving an element of the offense of illegal sale of dangerous drugs, which engenders reasonable doubt on the accused's guilt.

Nonetheless, in situations that render strict compliance impossible or impracticable, deviations from Section 21's requirements do not invalidate the seizure of illegal items. Noncompliance may be excused when “(a) there is a justifiable ground for such non-compliance, and (b) the integrity and evidentiary value of the seized items are properly preserved.”³⁴ The prosecution bears the burden of proving that the items presented are authentic without any indication of tampering. In *People v. Namil*:³⁵

[B]efore substantial compliance with the procedure is permitted, not only must the integrity and evidentiary value of the drugs seized be preserved, there must be a justifiable ground for its noncompliance in the first place. ***The prosecution has a two-fold duty of identifying any lapse in procedure and proving the existence of a sufficient reason why it was not strictly followed.***³⁶ (Emphasis supplied)

³⁴ *People v. Viterbo*, 739 Phil. 593, 603 (2014) [Per J. Perlas-Bernabe, Second Division].

³⁵ G.R. No. 218947, June 20, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64269>> [Per J. Martires, Third Division].

³⁶ *Id.*

The first in the chain of custody's interconnected links is the marking stage, in which the arresting officer or poseur-buyer affixes "initials or other identifying signs on the seized items . . . in the presence of the accused shortly after arrest."³⁷ This crucial step "serves to separate the marked evidence from the corpus of all other similar or related evidence[.]"³⁸ In *People v. Gonzales*:³⁹

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.⁴⁰

Here, the marking of the seized drugs was not done immediately after accused-appellant's arrest. In his own words, PO3 Temporal revealed that the team decided to mark and inventory the items at the barangay hall after deeming the target area to be unsafe, it being "a Muslim area":

Q: Why did you mark the evidence at the Barangay Tumana and not at the place where the incident happened?

A: Ma'am *the area is not safe* so we decided to bring the items at the barangay

Q: What made you say that the area is not safe?

A: *It is a Muslim area, ma'am.*"

....

Q: Why were you in Barangay Tumana when you put the marking, Mr. witness, and not at the place where the incident happened?

A: Because the place is risky so the group agreed that we do the marking at the Barangay Tumana, ma'am.⁴¹ (Emphasis supplied, citations omitted)

The prosecution's attempt to justify the delay in marking and inventorying the items is too weak, if not callous, a reason to validate the police officers' noncompliance with the chain of custody requirements.

In the recent case of *People v. Sebilleno*,⁴² this Court denounced the prosecution's reasoning that the target area was a "notorious Muslim

³⁷ *People v. Junaide*, 733 Phil. 315, 318 (2014) [Per J. Abad, Third Division].

³⁸ *People v. Coreche*, 612 Phil. 1238, 1245 (2009) [Per J. Carpio, First Division].

³⁹ 708 Phil. 121 (2013) [Per J. Bersamin, First Division].

⁴⁰ *Id.* at 130–131.

⁴¹ *Rollo*, p. 11.

⁴² G.R. No. 221457, February 12, 2020 [Per J. Leonen, Third Division].

community” to justify noncompliance with Section 21. We stressed that such invocation constitutes a bigoted view that only stirs conflict among Filipinos of different religious affiliations.

To sustain the police officers’ equating of a so-called “Muslim area” with dangerous places does not only approve of a hollow justification for deviating from statutory requirements, but reinforces outdated stereotypes and blatant prejudices.

Islamophobia, the hatred against the Islamic community, can never be a valid reason to justify an officer’s failure to comply with Section 21 of Republic Act No. 9165. Courts must be wary of readily sanctioning lackadaisical justifications and perpetuating outmoded biases. No form of religious discrimination can be countenanced to justify the prosecution’s failure to comply with the law.

Worse, the manner by which the allegedly seized drugs were handled after their confiscation, and while in transit to the barangay hall, remains unaccounted for. All that was alleged was that PO3 Temporal kept them himself.

This Court has previously decried police officers’ plain claims of having close, personal custody of allegedly seized items in transit. This lone assertion, as pointed out in *People v. Dela Cruz*,⁴³ is “fraught with dangers,” “reckless, if not dubious,” and “a doubtful and suspicious way of ensuring the integrity of the items”:

The circumstance of PO1 Bobon keeping narcotics in his own pockets precisely underscores the importance of strictly complying with Section 21. His subsequent identification in open court of the items coming out of his own pockets is self-serving.

The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items’ turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals’ finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer’s act of bodily-keeping

⁴³ 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.⁴⁴

Another glaring failure was the absence of representatives from the media and the National Prosecution Service during the physical inventory and photographing of the seized items. The prosecution gave no excuse to justify their absence, either.

Yet, worse, the prosecution did not even show that the police officers exerted any effort to call in these representatives. The officers had sufficient time to secure their presence, since a surveillance operation had been conducted prior to the buy-bust operation. By then, the necessary arrangements could have been made.

Finally, this Court emphasizes that in cases involving violations of the Comprehensive Dangerous Drugs Act, the prosecution cannot merely rely on the oft-cited presumption of regularity in the performance of official duty to justify noncompliance with the law's mandate. The presumption of innocence enjoyed by the accused stands so long as there is reasonable doubt on their culpability. To overcome the presumption of innocence, the prosecution must prove the accused's criminal liability beyond reasonable doubt; it cannot be overcome by merely relying on the weakness of the defense. The prosecution's duty to prove the accused's criminal liability must rise or fall upon its own merits.⁴⁵

WHEREFORE, the July 24, 2018 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 08883 is **REVERSED and SET ASIDE**. Accused-appellant Samiah S. Abdulah is **ACQUITTED** for the prosecution's failure to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention unless she is confined for some other lawful cause.

Let a copy of this Decision be furnished to the Superintendent of the Correctional Institution for Women for immediate implementation. The Superintendent is directed to report to this Court the action she has taken within five (5) days from receipt of this Decision. Copies shall also be


⁴⁴ Id. at 834–835.

⁴⁵ *People v. Mirantes*, 284-A Phil. 630, 642 (1992) [Per J. Regalado, Second Division].

furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

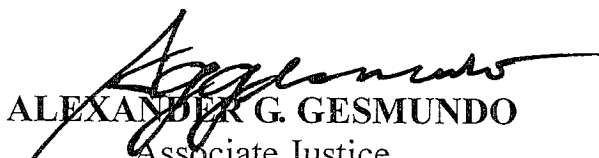
Let entry of final judgment be issued immediately.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

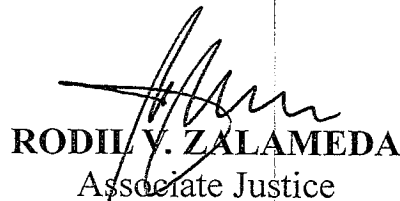
WE CONCUR:




ALEXANDER G. GESMUNDO
Associate Justice



ROSMARI D. CARANDANG
Associate Justice



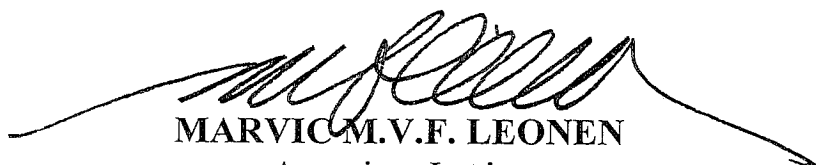
RODIL Y. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
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.



MARVIC M.V.F. LEONEN
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.



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

Mis-DC Batt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

JUL 24 2020