



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

MARGARITA AMBRE  
Y CAYUNI,

Petitioner,

G.R. No. 191532

Present:

- versus -

VELASCO, JR., J., *Chairperson*,  
ABAD,  
PEREZ,\*  
MENDOZA, and  
REYES,\* \* JJ.

PEOPLE OF THE  
PHILIPPINES,

Respondent.

Promulgated:

15 August 2012

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DECISION

*MENDOZA, J.:*

This is a petition for review on certiorari seeking to reverse and set aside the November 26, 2009 Decision<sup>1</sup> and the March 9, 2010 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 31957, which affirmed the September 1, 2008 Decision<sup>3</sup> of the Regional Trial Court, Branch 123, Caloocan City, (RTC) in Criminal Case No. C-73029, finding petitioner

\* Designated additional member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated September 19, 2011.

\*\* Designated additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1283 dated August 6, 2012.

<sup>1</sup> Penned by Associate Justice Ramon R. Garcia with Associate Justice Portia Aliño-Hormachuelos and Associate Justice Fernanda Lampas Peralta, concurring; *rollo*, pp. 31-50.

<sup>2</sup> Id. at 64-65.

<sup>3</sup> Penned by Judge Edmundo T. Acuña; id. at 66-76.

Margarita Ambre y Cayuni (*Ambre*) guilty beyond reasonable doubt of the crime of violation of Section 15, Article II of Republic Act (*R.A.*) No. 9165.

### **THE FACTS**

Two separate Informations were filed against Ambre, and co-accused, Bernie Castro (*Castro*) and Kaycee Mendoza (*Mendoza*), before the RTC charging them with illegal possession of drug paraphernalia docketed as Criminal Case No. C-73028, and illegal use of methylamphetamine hydrochloride, otherwise known as shabu, docketed as Criminal Case No. C-73029. The Informations indicting the accused read:

#### Criminal Case No. C-73028

That on or about 20<sup>th</sup> day of April 2005 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) unsealed transparent plastic sachet containing traces of white crystalline substance, (METHYLAMPHETAMINE HYDROCHLORIDE), one (1) rolled aluminum foil strip containing traces of white crystalline substance, (METHYLAMPHETAMINE HYDROCHLORIDE), one (1) folded aluminum foil strip containing traces of white crystalline substance, (METHYLAMPHETAMINE HYDROCHLORIDE) and two (2) disposable plastic lighters, knowing the same are paraphernalias instruments apparatus fit or intended for smoking, consuming, administering, ingesting or introducing dangerous drug (METHYLAMPHETAMINE HYDROCHLORIDE) into the body.

Contrary to law.<sup>4</sup>

#### Criminal Case No. C-73029

That on or about the 20<sup>th</sup> of April 2005 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with one another, without being authorized by law, did then and there willfully, unlawfully and feloniously use and sniff

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<sup>4</sup> Id. at 66.

Methylamphetamine Hydrochloride (Shabu), knowing the same to be a dangerous drug under the provisions of the above-cited law.

Contrary to law.<sup>5</sup>

When arraigned, Castro and Mendoza pleaded guilty to both charges. Consequently, they were meted the penalty of imprisonment of six (6) months and one (1) day to one (1) year and eight (8) months and a fine of ₱25,000.00 in Criminal Case No. C-73028. For their conviction in Criminal Case No. C-73029, the RTC ordered their confinement at the Center for the Ultimate Rehabilitation of Drug Dependents (*CURED*) for a period of six (6) months.<sup>6</sup>

Ambre, on the other hand, entered a plea of not guilty to the charges.<sup>7</sup> Trial on the merits ensued.

### **The Version of the Prosecution**

From the testimonies of prosecution witnesses PO3 Fernando Moran (*PO3 Moran*), PO1 Ronald Allan Mateo (*PO1 Mateo*), PO2 Randolph Hipolito (*PO2 Hipolito*), and P/Insp. Jessie dela Rosa (*P/Insp. dela Rosa*), it appeared that on April 20, 2005, the Caloocan Police Station Anti-Illegal Drug-Special Operation Unit conducted a buy-bust operation pursuant to a tip from a police informant that a certain Abdulah Sultan (*Sultan*) and his wife Ina Aderp (*Aderp*) were engaged in the selling of dangerous drugs at a residential compound in Caloocan City; that the buy-bust operation resulted in the arrest of Aderp and a certain Moctar Tagoranao (*Tagoranao*); that Sultan ran away from the scene of the entrapment operation and PO3 Moran, PO2 Masi and PO1 Mateo, pursued him; that in the course of the chase, Sultan led the said police officers to his house; that inside the house, the

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<sup>5</sup> Id. at 66-67.

<sup>6</sup> Id. at 34.

<sup>7</sup> Id. at 67.

police operatives found Ambre, Castro and Mendoza having a pot session; that Ambre, in particular, was caught sniffing what was suspected to be shabu in a rolled up aluminum foil; and that PO3 Moran ran after Sultan while PO2 Masi and PO1 Mateo arrested Ambre, Castro and Mendoza for illegal use of shabu.

The items confiscated from the three were marked and, thereafter, submitted for laboratory examination. Physical Science Report No. DT-041-05 to DT-043-05 stated that the urine samples taken from Ambre and her co-accused were positive for the presence of shabu while Physical Science Report No. D-149-05 showed that the items seized from them were all found positive for traces of shabu.<sup>8</sup>

### **The Version of the Defense**

Ambre vehemently denied the charges against her. Through the testimonies of Ambre, Mendoza and Lily Rosete (*Rosete*), the defense claimed that on the afternoon of April 20, 2005, Ambre was inside the residential compound in Caloocan to buy malong; that her mother asked Rosete to accompany her because Rosete's daughter-in-law, Nancy Buban (*Buban*), was a resident of Phase 12, Caloocan City, an area inhabited by Muslims; that when they failed to buy malong, Rosete and Buban left her inside the residential compound to look for other vendors; that ten minutes later, the policemen barged inside the compound and arrested her; that she was detained at the Caloocan City Jail where she met Castro, Mendoza and Tagoranao; and that she was not brought to the Philippine National Police (*PNP*) Crime Laboratory for drug testing.

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<sup>8</sup> Id. at 137-140.

Rosete further testified that after she had left Ambre inside the compound to find other malong vendors, she returned fifteen minutes later and learned that the policemen had arrested people inside the compound including Ambre.

Mendoza, who was convicted in Criminal Case No. C-73029, claimed that no pot session took place on the afternoon of April 20, 2005. She averred that she and Ambre were merely inside the residential compound, when policemen suddenly came in and pointed guns at them.<sup>9</sup>

### **The Ruling of the Regional Trial Court**

On September 1, 2008, the RTC rendered its decision declaring that the prosecution was able to establish with certitude the guilt of Ambre for illegal use of methylamphetamine hydrochloride or violation of Section 15, Article II of R.A. No. 9165. The RTC, however, acquitted her of the crime of violation of Section 12, Article II of R.A. No. 9165 for failure of the prosecution to prove with particularity the drug paraphernalia found in her possession. The trial court adjudged:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1) In Crim. Case No. C- 73028, finding accused MARGARITA AMBRE Y CAYUNI not guilty of the crime of Violation of Section 12, Article II, RA 9165;

2) In Crim. Case No. C-73029, finding accused MARGARITA AMBRE Y CAYUNI guilty beyond reasonable doubt of the crime of Violation of Sec. 15, Art. II RA 9165 and hereby sentences her to be confined and rehabilitated at the government rehabilitation center in Bicutan, Taguig, Metro Manila for a period of six (6) months. The six (6) month period of rehabilitation shall commence only from the time that she is brought inside

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<sup>9</sup> Id. at 13-14.

the rehabilitation center and its promulgation by this court for which the accused shall be notified.

The shabu subject of these cases is hereby confiscated in favor of the government to be disposed of in accordance with the rules governing the same.

Costs against the accused.

SO ORDERED.<sup>10</sup>

### **The Decision of the Court of Appeals**

Undaunted, Ambre appealed the judgment of conviction before the CA professing her innocence of the crime. On November 26, 2009, the CA rendered the assailed decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated September 1, 2008 of the Regional Trial Court, Branch 123, Caloocan City is AFFIRMED.

SO ORDERED.<sup>11</sup>

Ambre's motion for reconsideration was denied by the CA in its March 9, 2010 Resolution. Hence, she filed this petition

### **THE ISSUES**

Ambre raised the following issues:

1. WHETHER OR NOT THE ARREST OF AND THE SEARCH DONE AGAINST THE PETITIONER ON APRIL 20, 2005 (THAT YIELDED ALLEGED DRUG PARAPHERNALIA) CONFORMED WITH THE MANDATED LEGAL PROCEDURES IN CONDUCTING A BUY-BUST OPERATION.

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<sup>10</sup> Id. at 75-76.

<sup>11</sup> Id. at 50.

2. WHETHER OR NOT THE ARREST OF AND THE SEARCH DONE AGAINST THE PETITIONER WERE PART AND PARCEL OF THE DISMISSED AND DISCREDITED BUY-BUST OPERATIONS OF THE POLICE AND/OR “FRUITS OF THE POISONOUS TREE” AND HENCE, WERE ILLEGAL.

3. WHETHER OR NOT THE PROSECUTION'S EVIDENCE THAT WERE SEIZED DURING THE ILLEGAL BUY-BUST OPERATION ARE ADMISSIBLE AS EVIDENCE.

4. WHETHER OR NOT THE EXCLUSION OR DISREGARD OF THE FAVORABLE TESTIMONY OF PETITIONER'S WITNESS, HER CO-ACCUSED, KAYCEE MENDOZA, ON THE GROUND THAT THE LATTER EARLIER PLED GUILTY TO SUCH ILLEGAL USE, HAD VIOLATED THE RULE ON INTER ALIOS ACTA UNDER SECTION 26, RULE 130 OF THE RULES OF COURT.

5. WHETHER OR NOT THE PETITIONER'S PENALTY OF SIX (6) MONTHS REHABILITATION IN A GOVERNMENT CENTER IS A NULLITY GIVEN THE LACK OF CONFIRMATORY TEST AS REQUIRED UNDER R.A. 9165 (“COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002”).<sup>12</sup>

A perusal of the pleadings filed by the parties leads the Court to conclude that the case revolves on the following core issues:

- 1.) Whether the warrantless arrest of Ambre and the search of her person was valid; and
- 2.) Whether the items seized are inadmissible in evidence.

Essentially, Ambre insists that the warrantless arrest and search made against her were illegal because no offense was being committed at the time and the police operatives were not authorized by a judicial order to enter the dwelling of Sultan. She argues that the alleged “hot pursuit” on Sultan which ended in the latter's house, where she, Mendoza and Castro were supposedly found having a pot session, was more imaginary than real. In this regard, Ambre cites the April 29, 2005 Resolution of the Prosecutor's Office of

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<sup>12</sup> Id. at 16.

Caloocan City dismissing the case against Aderp and Sultan for insufficiency of evidence because the April 20, 2005 buy-bust operation was highly suspicious and doubtful. She posits that the items allegedly seized from her were inadmissible in evidence being fruits of a poisonous tree. She claims that the omission of the apprehending team to observe the procedure outlined in R.A. No. 9165 for the seizure of evidence in drugs cases significantly impairs the prosecution's case. Lastly, Ambre maintains that she was not subjected to a confirmatory test and, hence, the imposition of the penalty of six months rehabilitation was not justified.

For the State, the Office of the Solicitor General (*OSG*) urges this Court to affirm the challenged decision for failure of Ambre to show that the RTC committed any error in convicting her of illegal use of shabu. The OSG insists that Ambre was lawfully arrested in accordance with Section 5, Rule 113 of the Rules of Court. It is of the opinion that the credible and compelling evidence of the prosecution could not be displaced by the empty denial offered by Ambre.

### **THE COURT'S RULING**

The conviction of Ambre stands.

Section 2, Article III<sup>13</sup> of the Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which such search and seizure becomes "unreasonable" within the meaning of said constitutional provision. Evidence obtained and confiscated on the occasion of such an unreasonable search and seizure is tainted and should be excluded

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<sup>13</sup> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.



for being the proverbial fruit of a poisonous tree. In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding.<sup>14</sup>

This exclusionary rule is not, however, an absolute and rigid proscription. One of the recognized exception established by jurisprudence is search incident to a lawful arrest.<sup>15</sup> In this exception, the law requires that a lawful arrest must precede the search of a person and his belongings. As a rule, an arrest is considered legitimate if effected with a valid warrant of arrest. Section 5, Rule 113 of the Rules of Criminal Procedure, however, recognizes permissible warrantless arrests:

**"Sec. 5. Arrest without warrant; when lawful. -- A peace officer or a private person may, without a warrant, arrest a person:**

**(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;**

**(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and**

**(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Emphasis supplied)**

Section 5, above, provides three (3) instances when warrantless arrest may be lawfully effected: (a) arrest of a suspect *in flagrante delicto*; (b) arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; (c) arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during

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<sup>14</sup> Sec.3 (2), Art. III, 1987 Constitution.

<sup>15</sup> *People v. Delos Reyes*, G.R. No. 174774, August 31, 2011, 656 SCRA 417, 449.

the pendency of his case or has escaped while being transferred from one confinement to another.

In arrest *in flagrante delicto*, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. Clearly, to constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.<sup>16</sup>

In the case at bench, there is no gainsaying that Ambre was caught by the police officers in the act of using shabu and, thus, can be lawfully arrested without a warrant. PO1 Mateo positively identified Ambre sniffing suspected shabu from an aluminum foil being held by Castro.<sup>17</sup> Ambre, however, made much of the fact that there was no prior valid intrusion in the residence of Sultan. The argument is specious.

Suffice it to state that prior justification for intrusion or prior lawful intrusion is not an element of an arrest *in flagrante delicto*. Thus, even granting *arguendo* that the apprehending officers had no legal right to be present in the dwelling of Sultan, it would not render unlawful the arrest of Ambre, who was seen sniffing shabu with Castro and Mendoza in a pot session by the police officers. Accordingly, PO2 Masi and PO1 Mateo were not only authorized but were also duty-bound to arrest Ambre together with Castro and Mendoza for illegal use of methamphetamine hydrochloride in violation of Section 15, Article II of R.A. No. 9165.

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<sup>16</sup> *People v. Chua*, 444 Phil. 757, 770 (2003).

<sup>17</sup> *Rollo*, p. 68.

To write *finis* to the issue of validity and irregularity in her warrantless arrest, the Court holds that Ambre is deemed to have waived her objections to her arrest for not raising them before entering her plea.<sup>18</sup>

Considering that the warrantless arrest of Ambre was valid, the subsequent search and seizure done on her person was likewise lawful. After all, a legitimate warrantless arrest necessarily cloaks the arresting police officer with authority to validly search and seize from the offender (1) dangerous weapons, and (2) those that may be used as proof of the commission of an offense.<sup>19</sup>

Further, the physical evidence corroborates the testimonies of the prosecution witnesses that Ambre, together with Castro and Mendoza, were illegally using shabu. The urine samples taken from them were found positive for the presence of shabu, as indicated in Physical Science Report No. DT-041-05 to DT-043-05. It was likewise found that the items seized from the three were all positive for traces of shabu as contained in Physical Science Report No. D-149-05 dated April 21, 2005. These findings were un rebutted.

Ambre's assertion that her conviction was incorrect, because the evidence against her was obtained in violation of the procedure laid down in R.A. No. 9165, is untenable.

While ideally the procedure on the chain of custody should be perfect and unbroken, in reality, it is not as it is almost always impossible to obtain an unbroken chain.<sup>20</sup> This Court, however, has consistently held that the most important factor is the preservation of the integrity and evidentiary

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<sup>18</sup> *People v. Ng Yik Bun*, G.R. No. 180452, January 10, 2011, 639 SCRA 88, 103-104.

<sup>19</sup> Section 13, Rule 126, Rules of Court.

<sup>20</sup> *People v. Mendoza*, G.R. No. 189327, February 29, 2012.

value of the seized items.<sup>21</sup> In this case, the prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated drug paraphernalia had not been compromised. Hence, even though the prosecution failed to submit in evidence the physical inventory and photograph of the drug paraphernalia with traces of shabu, this will not render Ambre's arrest illegal or the items seized from her inadmissible.

Records bear out that after the arrest of Ambre with Castro and Mendoza, the following items were confiscated from them: one (1) unsealed sachet with traces of suspected shabu; one (1) strip of rolled up aluminum foil with traces of suspected shabu; one (1) folded piece of aluminum foil with traces of white crystalline substance also believed to be shabu; and two (2) yellow disposable lighters. Upon arrival at the police station, PO3 Moran turned over the seized items to PO2 Hipolito who immediately marked them in the presence of the former. All the pieces of evidence were placed inside an improvised envelope marked as "SAID-SOU EVIDENCE 04-20-05." With the Request for Laboratory Examination, PO2 Hipolito brought the confiscated items to the PNP Crime Laboratory and delivered them to P/Insp. dela Rosa, a forensic chemist, who found all the items, except the disposable lighters, positive for traces of shabu. Verily, the prosecution had adduced ample evidence to account for the crucial links in the chain of custody of the seized items.

Even if the Court strikes down the seized drug paraphernalia with traces of shabu as inadmissible, Ambre will not be exculpated from criminal liability. *First*, let it be underscored that proof of the existence and possession by the accused of drug paraphernalia is not a condition *sine qua non* for conviction of illegal use of dangerous drugs. The law merely considers possession of drug paraphernalia as *prima facie* evidence that the

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<sup>21</sup>*People v. Manlangit*, G.R. No. 189806, January 12, 2011, 639 SCRA 455, 469.

possessor has smoked, ingested or used a dangerous drug and creates a presumption that he has violated Section 15 of R.A. No. 9165.<sup>22</sup>

*Secondly*, the testimonies of the police officers have adequately established with moral certainty the commission of the crime charged in the information and the identity of Ambre as the perpetrator. At this juncture, the Court affirms the RTC's finding that the police officers' testimonies deserve full faith and credit. Appellate courts, generally, will not disturb the trial court's assessment of a witness' credibility unless certain material facts and circumstances have been overlooked or arbitrarily disregarded.<sup>23</sup> The Court finds no reason to deviate from this rule in this case.

Likewise, the Court upholds the presumption of regularity in the performance of official duties. The presumption remains because the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive. The presumption was not overcome as there was no showing that PO3 Moran, PO1 Mateo, PO2 Hipolito, and P/Insp. dela Rosa were impelled with improper motive to falsely impute such offense against Ambre.

As against the positive testimonies of the prosecution witnesses, the defense of denial offered by Ambre must simply fail. Bare denials cannot prevail over positive identification made by the prosecution witnesses.<sup>24</sup> Besides, this Court has held in a catena of cases that the defense of denial or frame-up has been viewed with disfavor for it can just as easily be concocted and is a common and standard ploy in most prosecutions for violation of the Dangerous Drugs Act.<sup>25</sup>

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<sup>22</sup> Section 12, par. 2, Art. II, R.A. No. 9165.

<sup>23</sup> *People v. Gregorio, Jr.*, G.R. No. 174474, May 25, 2007, 523 SCRA 216, 227.

<sup>24</sup> *People v. Unisa*, G.R. No. 185721, September 28, 2011.

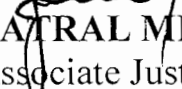
<sup>25</sup> *People v. Astudillo*, 440 Phil. 203, 224 (2002).

Finally, Ambre contends that the penalty of six months of rehabilitation in a government center imposed on her was a nullity, in view of the alleged lack of confirmatory test. The Court is not persuaded.

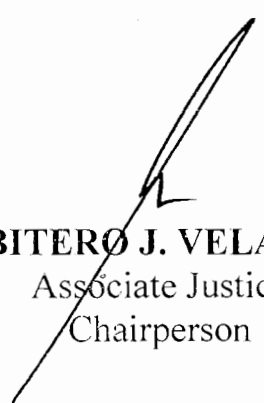
It must be emphasized that in no instance did Ambre challenge, at the RTC, the supposed absence of confirmatory drug test conducted on her. Ambre only questioned the alleged omission when she appealed her conviction before the CA. It was too late in the day for her to do so. Well-entrenched is the rule that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice.<sup>26</sup>

**WHEREFORE**, the petition is **DENIED**. The assailed November 26, 2009 Decision and the March 9, 2010 Resolution of the Court of Appeals in CA-G.R. CR No. 31957 are hereby **AFFIRMED**.

**SO ORDERED.**


  
**JOSE CATRAL MENDOZA**  
Associate Justice

WE CONCUR:

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson


  
**ROBERTO A. ABAD**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**BIENVENIDO L. REYES**  
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.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

### CERTIFICATION

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.

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. No. 296,  
The Judiciary Act of 1948, as amended)