



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 191193

Present:

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

-versus-

**GODOFREDO MARIANO y
FELICIANO and ALLAN DORINGO y
GUNAN,**

Accused-Appellants.

Promulgated:

NOV 14 2012

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DECISION

PEREZ, J.:

Assailed in this appeal is the Decision¹ of the Court of Appeals dated 9 November 2009 in CA-G.R. CR-H.C. No. 03343 affirming the 5 March 2008 Decision² of the Regional Trial Court of Sorsogon City, Branch 65, finding appellants Godofredo Mariano y Feliciano (Godofredo) guilty of the

¹ Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Arcangelita M. Romilla-Fontok and Sixto C. Marella, Jr. concurring. *Rollo*, pp. 2-23.
² Presided by Judge Adolfo G. Fajardo. *CA rollo*, pp. 23-47.

crimes of illegal sale of *shabu* and illegal possession of drug paraphernalia, and Allan Doringo y Gunan³ (Allan) guilty of the illegal sale of *shabu*.

On the one hand, Godofredo was charged with the offenses of violation of Sections 5 and 12, Article II of Republic Act No. 9165 in two (2) separate Informations, which read:

Criminal Case No. 04-706

That on or about the 17th day of October, 2004, at around 10:45 o'clock in the morning, at Zone 2, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there, willfully, unlawfully and feloniously sell, deliver, dispose, distribute and/or give away for value two (2) transparent plastic sachets containing methamphetamine hydrochloride locally known as "Shabu", a prohibited drugs (sic), containing 0.5680 gram to a poseur-buyer in exchange of One Thousand Peso Bill.⁴

Criminal Case No. 04-707

That on or about the 17th day of October, 2004, at around 10:45 o'clock in the morning, at Zone 2, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, have in his possession, custody and control one (1) aluminum foil, one (1) aluminum tooter and one (1) lighter which are used and intended to be used for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, without any authority of law.⁵

Allan, on the other hand, was charged with violation of Section 5, Article II of Republic Act No. 9165. The accusatory portion of the Information reads:

³ In some parts of the Records, it is also spelled as "Guban."
⁴ Records, p. 1.
⁵ Id. at 159-160.

That on or about the 17th day of October, 2004, at around 10:45 o'clock in the morning, at Zone 2, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there, willfully, unlawfully and feloniously, sell, deliver, dispose, distribute and/or give away for value two (2) transparent plastic sachets containing methamphetamine hydrochloride locally known as "Shabu", a prohibited drugs (sic), containing 0.1996 gram to a poseur-buyer in exchange of Six Hundred Peso Bill.⁶

The facts, according to the evidence for the prosecution, follow.

Acting on an informant's tip, a buy-bust team was formed composed of SPO1 Reginal Goñez (SPO1 Goñez), the team leader, with PO1 David Olleres, Jr. (PO1 Olleres) as the *poseur*-buyer, and police back-ups, PO3 Virgilio Razo (PO3 Razo), and a certain PO1 Pabrigas, and an unidentified member of the Philippine Drug Enforcement Agency (PDEA).⁷ SPO1 Goñez produced the marked money consisting of one (1) One Thousand Peso bill and six (6) One Hundred Peso bills. PO1 Olleres placed his initials on the marked bills.⁸ On 17 October 2004, the team conducted a buy-bust operation in the house of a certain Gerry Angustia located at Pier Uno, Zone 2, Bulan, Sorsogon. PO1 Olleres, PO3 Razo and the asset proceeded to the target house and they witnessed an ongoing pot session. They looked for "Galog" and they were introduced to Godofredo. They asked Godofredo if they can "score." Godofredo immediately left the house and went to a street at the back of the house. He returned carrying two (2) sachets of *shabu*, which he handed to PO1 Ollares. In exchange, PO1 Olleres paid him the One Thousand Peso marked bill. Allan also offered PO3 Razo two (2) more sachets of *shabu*. The latter asked for the Six Hundred Peso marked bills from PO1 Olleres and handed them to Allan as payment for the *shabu*. After these exchanges, they requested appellants for an actual test of *shabu*.

⁶ Id. at 161.

⁷ TSN, 20 September 2005, pp. 16-17.

⁸ Id. at 20.

Godofredo provided them with a *tooter* and aluminum foil. While they were testing said *shabu*, they declared an arrest.⁹ PO1 Olleres and PO3 Razo identified the appellants in open court.¹⁰

An Affidavit of Arrest was prepared and signed by PO1 Olleres and PO3 Razo.¹¹ PO1 Olleres also prepared a receipt of the property seized containing his and appellants' signatures.¹² The buy-bust team marked the plastic sachets containing *shabu* at the crime scene and PO1 Olleres brought the seized items to the Philippine National Police (PNP) Crime Laboratory.¹³ They also took photographs of the items confiscated and of appellants.

In Chemistry Report No. D-174-04 dated 18 October 2004, Police Inspector Josephine Macura Clemen, a forensic chemist, found that the specimen submitted to her was *Methamphetamine Hydrochloride*, otherwise known as *shabu*.¹⁴

A different version of the incident was presented by the defense. Allan claimed that on 17 October 2004 at around 10:45 a.m., he was near the fence of Jessie Angustia's house waiting for a pumpboat coming from Masbate. He heard someone from inside the house saying "*tadihan ta ini*" or "let's taste it." Allan thought that there was food being cooked so he went inside the house. He then saw *shabu* scattered on the table while a certain Ludy Gubat (Ludy) was holding an aluminum foil. He also saw Godofredo and PO1 Ollares. Allan tried to leave but Ludy poked a knife on the left side of his stomach and held him in the collar. Ludy apparently threatened to stab Allan if the latter did not go with him. Allan was brought by police

⁹ Id. at 4-6; TSN, 8 November 2005, pp. 3-5.

¹⁰ Id. at 6-7; Id. at 6.

¹¹ TSN, 20 September 2005, p. 9.

¹² Records, p. 132.

¹³ TSN, 20 September 2005, p. 12.

¹⁴ Records, p. 11.

officers to the 509th Mobile Group where he was forced to sign a document without reading its contents. He was eventually transferred to the PNP Station of Bulan, Sorsogon.¹⁵

Godofredo admitted that he was a drug user and that he went to the house of Jessie Angustia to “score” *shabu*. Thereat, he saw Ludy and PO1 Olleres sniffing *shabu*. When Allan arrived, Ludy cursed him and held him on his shoulders. Ludy pulled out a knife and poked it at Allan. Thereafter, PO1 Olleres arrested Godofredo. He was boarded in a tricycle and brought to Camp Crame.¹⁶

On 5 March 2008, the RTC rendered judgment finding appellants guilty. The dispositive portion reads:

WHEREFORE, premises considered, accused Godofredo Mariano y Feliciano and Allan Doringo y Guban, having been found GUILTY beyond reasonable doubt of Violation of Sections 5 and 12, Article II of RA 9165 (Comprehensive Dangerous Drugs Act of 2002), respectively, are hereby sentenced as follows:

- a) In Criminal Case No. 04-706 (Violation of Section 5, Article II, RA 9165) accused Godofredo Mariano y Feliciano is sentenced to suffer the indivisible penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00);
- b) In Criminal Case No. 04-707 (Violation of Section 12, Article II, RA 9165) accused Godofredo Mariano y Feliciano is sentenced to suffer the indeterminate penalty of Six (6) months and one (1) day to four years and a fine of Ten Thousand Pesos (Php10,000.00);
- c) In Criminal Case No. 04-708 (Violation of Section 5, Article II, RA 9165) accused Allan Doringo y Guban is sentenced to suffer the indivisible penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00).

The dangerous drugs as well as the drug paraphernalia subject matter of the three (3) instant cases are hereby ordered confiscated and

¹⁵ TSN, 4 June 2007, pp. 4-12.

¹⁶ TSN, 11 September 2007, pp. 5-7.

forfeited in favor of the government (Sec. 20, RA 9165) to be disposed in accordance with the provisions of Section 21 of the same Act.¹⁷

The trial court held that the prosecution was able to establish that the buy-bust operation was successfully conducted when appellants were caught in *flagrante delicto* selling drugs, resulting in their apprehension. The trial court dismissed the defense of *alibi* and denial over the positive testimonies of prosecution witnesses.

On appeal, the Court of Appeals on 9 November 2009 issued the challenged Decision denying the appeal and affirming appellants' conviction.

Failing to secure a favorable decision, appellants filed a notice of appeal before this Court.¹⁸

On 22 March 2010, the Court required the parties to simultaneously file their supplemental briefs.¹⁹ In two separate manifestations, both parties expressed their intention not to file any supplemental brief since all the issues and arguments have already been raised in their respective Briefs.²⁰

Appellants maintain that the trial court erred in admitting the seized dangerous drugs and drug paraphernalia as evidences against them. They assail the validity of their warrantless arrest by stating that the arresting officers should have secured a warrant because they were already in possession of pertinent information, such as the identity of their target, upon which an application for a warrant could be based. Thus, the alleged *shabu*

¹⁷ CA *rollo*, pp. 100-101.

¹⁸ *Rollo*, p. 24.

¹⁹ Id. at 29.

²⁰ Id. at 31 and 35.

obtained by virtue of an invalid warrantless arrest is inadmissible. In addition, appellants question the validity of the inventory receipt in that the signing was done without the assistance of counsel.

In its appellee's brief, the Office of the Solicitor General (OSG) supports the convictions of the appellants. It justifies the legality of the warrantless arrest of appellants as they were caught in *flagrante delicto*. Moreover, the OSG avers that appellants are estopped from questioning the legality of their arrest having raised them only on appeal.

We deny the appeal.

Appellants were charged and convicted of the crime of illegal sale of dangerous drugs.

Under Section 5, Article II of Republic Act No. 9165, the elements necessary for the prosecution of illegal sale of drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.²¹

All these elements were duly established by the prosecution. Appellants were caught in *flagrante delicto* selling *shabu* during a buy-bust operation conducted by the buy-bust team. The *poseur*-buyer, PO1

²¹ *People v. Abedin*, G.R. No. 179936, 11 April 2012 citing *People v. Serrano*, G.R. No. 179038, 6 May 2010, 620 SCRA 327, 340; *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118, 128 citing *People v. Del Mundo*, 539 Phil. 609, 617 (2006).

Olleres, positively testified that the sale took place and that appellants sold the *shabu*, thus:

A: At about 10:30 in the morning of that day our team leader instructed me to be with them in conducting a buy bust operation.

Q: And who was with you at that time?

A: PO3 Razo and an asset.

Q: Where is the venue of the buy bust operation?

A: In the house of a certain Gerry Angustia (sic).

Q: At what time did you proceed to said place more or less?

A: About 10:00 o'clock in the morning, Ma'am, we proceeded to the house of Gerry Angustia (sic). As per information of our asset, Galog was already on that house.

Q: Who is that Galog that you are referring to?

A: Godofredo Mariano.

Q: When you reached the place of Gerry Angustia (sic), what happened?

A: When we arrived at the scene there was an ongoing pot session but we did not disturb them because the subject of our operation for the day is Godofredo Mariano and when we arrived we asked who is Galog and he was introduced to us and so we asked him if we can buy some items from him.

Q: The place where you proceeded to, Mr. Witness, is it a house?

A: It is just a small house and to our knowledge it was being occupied by Gerry Angustia (sic).

Q: Mr. Witness, what happened when you were there and being introduced to Galog?

A: We talked with him and asked him if we can score and Godofredo Mariano left the house and went to a street at the back of the house and when he came back he has already with him two (2) sachets of *shabu*.

Q: Now, what happened when he returned with two (2) sachets of *shabu*?

- A: Upon arrival of Godofredo Mariano with those two (2) sachets of *shabu*, we paid him one thousand (Php1,000.00) pesos and right then and there Allan Doringo approached us and offered to us to buy also two (2) sachets of *shabu*.
- Q: Did you likewise buy the *shabu* offered by Allan Doringo?
- A: Yes, Ma'am, Police Officer Razo gave Allan Doringo six hundred (Php600.00) pesos.
- Q: Afterwards, what happened?
- A: And right after the exchanged of items we requested the two (2) of them to have the actual test of *shabu* and while they were testing the *shabu* we declared arrest.
- Q: What do you mean when you say they were actually testing the *shabu*?
- A: They tested the *shabu* by providing us the totter and aluminum foil and while we were testing the said *shabu* we declared arrest.
- Q: Is accused Godofredo Mariano present today in court?
- A: Yes, Ma'am.
- Q: Please identify him to us?
- A: (Witness pointed to a man in a blue strife sweet shirt (sic) who identified himself as Godofredo Mariano.)
- Q: What about accused Allan Doringo (sic), is he present today in court?
- A: Yes, Ma'am.
- Q: If you are required to identify him, will you be able to do so?
- A: Yes, Ma'am.
- Q: Please go down and identify him?
- A: (Witness pointed to a man in black shirt and identified as Allan Doringo when asked.)²²

Simply put, Godofredo produced two (2) plastic sachets containing *shabu* and gave it to PO1 Olleres in exchange for ₱1,000.00. Also, Allan

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TSN, 20 September 2005, pp. 4-7.

had offered and given two (2) more sachets containing *shabu* to PO3 Razo, who in turn, handed him ₱600.00. PO3 Razo corroborated the account of PO1 Olleres, to wit:

Q: Mr. Witness, on October 17, 2004 at more or less 10:45 in the morning do you still recall your whereabouts?

A: Yes, Ma'am.

Q: Will you please tell us where?

A: On October 17, 2004 at 10:45 a.m. from the camp we proceeded to the house of Gerry Angustia (sic).

Q: And what was your purpose in going to the house of Gerry Angustia (sic)?

A: To conduct a buy bust operation.

Q: By the way, where is that house of Gerry Angustia (sic) located?

A: At pier Uno of Zone 2, Bulan, Sorsogon just in front of the Coast Guard.

Q: Okay, when you proceeded to the house of Gerry Angustia (sic) to conduct buy bust operation, who was with you at that time?

A: PO3 David F. Olleres, Jr. and our asset.

Q: When you proceeded to the house of Gerry Angustia (sic) and when you arrived at the house of Gerry Angustia (sic) what happened next?

A: While at the house of Gerry Angustia (sic), Godofredo Mariano offered to our asset to taste the *shabu* and he also offered two (2) sachets of *shabu* worth Php1,000.00 to PO3 David Olleres, Jr. while this Allan Doringo persuaded us to buy also two (2) sachets of *shabu* which was offered to PO3 Olleres who gave him also Php600.00 pesos.

Q: What did Olleres do when he was offered this *shabu* by Godofredo Mariano?

A: He received the two (2) sachets of *shabu* from Godofredo Mariano and gave Godofredo Mariano the Php1,000.00 bill then PO3 David Olleres identified himself to Godofredo Mariano.

Q: Now, before Olleres identified himself as a police officer, did you already buy the *shabu* from Allan Doringo?

- A: Godofredo Mariano sold his *shabu* to PO3 David Olleres while this Allan Doringo insisted to me to buy his *shabu* for Php600.00 pesos.
- Q: And what did you do when Allan Doringo offered you this *shabu* in the amount of Php600.00.
- A: I get Php600.00 from David Olleres and paid Allan Doringo the same amount after I received from him the *shabu*.
- Q: Then what happened afterwards?
- A: Then after that we introduced ourselves as police officers and we brought them to the camp for police investigation.
- Q: Are accused Allan Doringo and Godofredo Mariano present today in court?
- A: Yes, Ma'am.
- Q: If you are required to identify them, will you be able to do so?
- A: Yes, Ma'am.
- Q: Please point at them?
- A: (The witness pointed to a man in yellow shirt who identified himself as Allan Doringo when asked and also the witness pointed to a man in black shirt and identified himself as Godofredo Mariano when asked.)²³

The result of the laboratory examination confirmed the presence of *methamphetamine hydrochloride* on the white crystalline substances inside the four (4) plastic sachets confiscated from appellants. The marked money was presented in evidence. Thus, the delivery of the illicit drug to PO1 Olleres and PO3 Razo and the receipt by appellants of the marked money successfully consummated the buy-bust transaction.

Godofredo was further charged and convicted of illegal possession of drug paraphernalia. The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under

²³ TSN, 8 November 2005, pp. 3-6.

Section 12, Article II, Republic Act No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.²⁴

The prosecution has convincingly established that Godofredo was in possession of drug paraphernalia such as aluminum foil, aluminum *tooter* and lighter, all of which were offered in evidence.²⁵ The corresponding receipt and inventory of the seized *shabu* and other drug paraphernalia were likewise presented in evidence.²⁶ Police Superintendent Leonidas Diaz Castillo attested to the veracity of the contents of these documents.²⁷

While both appellants admitted their presence in the scene of the crime, they both denied the existence of a buy-bust operation.

The defense of denial, like *alibi*, has been viewed by the court with disfavor for it can just as easily be concocted. Denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. Bare denials of appellants cannot prevail over the positive testimonies of the three police officers. Moreover, there is no evidence of any improper motive on the part of the police officers who conducted the buy-bust operation to falsely testify against appellants.²⁸

²⁴ *Zalameda v. People*, G.R. No. 183656, 4 September 2009, 598 SCRA 537, 549.

²⁵ Records, p. 130.

²⁶ Id. at 16-17.

²⁷ TSN, 15 August 2006, pp. 7-8.

²⁸ *People v. Soriano*, G.R. No. 173795, 3 April 2007, 520 SCRA 458, 468 citing *People v. Dulay*, 468 Phil. 56, 65 (2004) citing further *People v. Barita*, 381 Phil. 832, 846-847 (2000); *People v. Vinecario*, 465 Phil. 192, 215 (2004); *People v. Ahmad*, 464 Phil. 848, 869-870 (2004); *People v. Chua Uy*, 384 Phil. 70, 85-86 (2000) citing *People v. Dichoso*, G.R. Nos. 101216-18, 4 June 1993, 223 SCRA 174, 187; *People v. Constantino*, G.R. No. 109119, 16 August 1994, 235 SCRA 384,

Appellants' insistence on the illegality of their warrantless arrest equally lacks merit. Section 5, Rule 113 of the Rules of Court allows a warrantless arrest under any of the following circumstances:

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 just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In the instant case, the warrantless arrest was effected under the first mode or aptly termed as in *flagrante delicto*. PO1 Olleres and PO3 Razo personally witnessed and were in fact participants to the buy-bust operation. After laboratory examination, the white crystalline substances placed inside the four (4) separate plastic sachets were found positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug. Under these circumstances, it is beyond doubt that appellants were arrested in *flagrante delicto* while committing a crime, in full view of the arresting team.

Anent the absence of counsel during the execution of an inventory receipt, we agree with the conclusion of the appellate court that notwithstanding the inadmissibility of the inventory receipt, the prosecution has sufficiently proven the guilt of appellants, thus:

391; *People v. Tranca*, G.R. No. 110357, 17 August 1994, 235 SCRA 455, 462-463; *People v. Lee Hoi Ming*, 459 Phil. 187, 194 (2003); *People v. Saludes*, 451 Phil. 719, 726-727 (2003).

Admittedly, it is settled that the signature of the accused in the “Receipt of Property Seized” is inadmissible in evidence if it was obtained without the assistance of counsel. The signature of the accused on such a receipt is a declaration against his interest and a tacit admission of the crime charged. However, while it is true that appellants signed receipt of the property seized unassisted by counsel, this only renders inadmissible the receipt itself.

In fact, in the case at bar, the evidentiary value of the Receipt of Property Seized is irrelevant in light of the ample evidence proving appellants’ guilt beyond reasonable doubt. The prosecution was able to prove that a valid buy-bust operation was conducted to entrap appellants. The testimony of the poseur-buyer clearly established that the sale of shabu by appellant was consummated. The *corpus delicti*, which is the shabu, was presented in court and confirmed by the other members of the buy-bust team. They acknowledged that they were the same drugs placed in four (4) plastic sachets seized from appellants.²⁹

In fine, it has been established by proof beyond reasonable doubt that appellants sold *shabu*. Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 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. Hence, the trial court, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00. As to Godofredo who was further convicted of illegal possession of drug paraphernalia, Section 12, Article II of Republic Act No. 9165 imposes the penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) upon any person, who unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and any other paraphernalia fit or intended

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Rollo, pp. 20-21.

for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body.

Based on the foregoing rules, we also affirm the imposition of penalties by the trial court.

WHEREFORE, premises considered, the Decision dated 9 November 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03343 which, in turn, affirmed the Decision dated 5 March 2008 of the Regional Trial Court, Branch 65, Sorsogon City, in Criminal Cases Nos. 04-706, 04-707, and 04-708, is **AFFIRMED** *in toto*.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

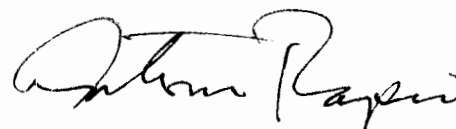

ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ATTESTATION

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


ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
Chief Justice