Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

- *versus* -

AQUILINO ANDRADE, ROMAN LACAP, YONG FUNG YUEN, RICKY YU, VICENTE SY, ALVIN SO, ROMUALDO MIRANDA, SINDAO MELIBAS, SATURNINO LIWANAG, ROBERTO MEDINA and RAMON NAVARRO,
Respondents.

G.R. No. 187000

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
VILLARAMA, JR.,
MENDOZA,* and
JARDELEZA, *JJ.*

Promulgated:

November 24, 2014

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DECISION

PERALTA, *J.*:

It is clearly provided by the Rules of Criminal Procedure that if the motion to quash is based on an alleged defect in the information which can be cured by amendment, the court shall order the amendment to be made.

For this Court's consideration is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks to reverse and set aside the Decision[1] dated May 29, 2008 and Resolution[2] dated February 26, 2009 of the Court of Appeals (*CA*).

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* Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 1878, dated November 21, 2014.

1 Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid, concurring; *rollo*, pp. 28-42.

2 *Id.* at 43-45.

The antecedent facts are the following:

Pursuant to the instructions of then Director of the Bureau of Corrections, Dionisio R. Santiago, on June 30, 2003, a random drug test was conducted in the National Bilibid Prison (*NBP*) wherein the urine samples of thirty-eight (38) inmates were collected and subjected to drug testing by the Chief Medical Technologist and Assistant Medical Technologist of the Alpha Polytechnic Laboratory in Quezon City, and out of that number, twenty-one (21) urine samples tested positive.

After confirmatory tests done by the NBI Forensic Chemistry Division, those twenty-one (21) urine samples, which included that of herein respondents, yielded positive results confirming the result of the initial screen test. Necessarily, the twenty-one (21) inmates were charged with violation of Section 15, Article II of Republic Act No. 9165 (RA 9165) under identical Informations,[3] which read as follows:

> The undersigned State Prosecutor of the Department of Justice, accuses AQUILINO ANDRADE for Violation of Section 15, Article II of R.A. 9165, committed as follows:
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> > That on or about June 30, 2003, in the New Bilibid Prisons, Muntinlupa City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully, and feloniously use or in any manner introduced into the physiological system of his body, Methamphetamine Hydrochloride, otherwise known as "shabu," a dangerous drug in violation of the aforecited law.[4]

All respondents pleaded "*Not Guilty*" to the crime charged during their arraignment on June 29, 2006. Thereafter, the case was set for pre-trial and trial on August 11, 2006.[5]

On August 29, 2006, respondents filed a Consolidated Motion to Dismiss on the ground that the facts alleged in the Information do not constitute a violation of Section 15, RA 9165, which reads:

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3 Records, pp. 5-6.
4 *Id.* at 5.
5 *Id.* at 79.

> 6. A strict reading of the provisions of Section 15, Article II, RA 9165 reveals that the accused did not commit the offense charged. Under RA 9165, the offense of Violation of Section 15 thereof is committed by a person apprehended or arrested for using dangerous drug, and who is found to be positive for use of any dangerous drug after a confirmatory test, to wit:
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> x x x x
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> 7. In the case at bar, the accused were never apprehended or arrested for using a dangerous drug or for violating the provisions of RA 9165, which would warrant drug testing and serve as basis for filing the proper information in court. In fact, the accused were merely called to the Maximum Security Conference Hall in the morning of June 30, 2003 and with seventeen (17) other inmates made to undergo drug testing, pursuant to the directive of then Sr. Usec. Santiago. It was only after they were found positive for dangerous drugs that the information for Violation of Section 15, RA 9165 was filed against each of them.
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> 8. Section 36, Article III, RA 9165 further enumerates the persons subject to mandatory and random drug tests, who if found positive after such drug test shall be subject to the provisions of Section 15. x x x
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> x x x x
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> National penitentiary inmates or inmates of the Bureau of Corrections are not included in the enumeration. Thus, even if the accused have been found positive in the mandatory or random drug test conducted by BUCOR, they cannot be held liable under Section 15.
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> 9. Assuming for the sake of argument, but not admitting, that the accused were apprehended or arrested for using a dangerous drug or for violating the provisions of RA 9165 which led to the June 30, 2003 screen test, or that the accused are subject to mandatory or random drug testing, the drug test would be invalid absent a showing that the same was conducted within twenty-four (24) hours after the apprehension or arrest of the offender through a confirmatory test within fifteen (15) days receipt of the result in accordance with the provisions of Section 38, Article II of RA 9165 x x x.
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> x x x x
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> 10. In the case, the accused were not informed of the results of the screening test, thus depriving them of the right to challenge the same through a confirmatory drug test within the required fifteen (15)-day period after receipt of the positive result.[6]

Respondents' lawyer, on the date set for hearing, manifested that he intends to pursue the Motion to Dismiss filed by respondents' previous counsel,[7] hence, the pre-trial and trial were reset to September 29, 2006.

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6 *Id.* at 107-109.

7 *Id.* at 90.

The pre-trial and trial were further reset to November 29, 2006[8] due to a typhoon that occurred on the earlier scheduled date.

The Regional Trial Court (*RTC*) of Muntinlupa, before the scheduled hearing date for pre-trial and trial, issued an Order[9] granting respondents' Consolidated Motion to Dismiss,[10] ruling as follows:

> To be liable under this Act the following essential requisites must be present:
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> 1. The offender must have been arrested or apprehended for use of dangerous drugs; or apprehended or arrested for violation of RA 9165 and the apprehending or arresting officer has reasonable ground to believe that the person arrested or apprehended on account of physical signs or symptoms or other visible or outward manifestation is under the influence of dangerous drugs; or must have been one of those under Sec. 36 of Art. III of RA 9165 who should be subjected to undergo drug testing;
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> 2. The offender must have been found positive for use of dangerous drug after a screening and confirmatory test;
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> 3. The offender must not have been found in his/ or her possession such quantity of dangerous drug provided for under Section 11 of this Act;
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> 4. That if the offender arrested or apprehended has been found to be positive for use of dangerous drugs after a screening laboratory examination, the results of the screening laboratory examination of test shall be challenged within fifteen (15) days after receipt of the result through a confirmatory test conducted in any accredited analytical laboratory equipment with a gas chromatograph/mass spectrometry or some such modern method.
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> x x x x
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> It is clear from the foregoing facts that the inmates were not apprehended nor arrested for violation of any provision of R.A. 9165. These inmates were in the National Bilibid Prisons (NBP) serving sentences for different crimes which may include also drug offenses. They were subjected to drug tests only pursuant to the request made by then Director Dionisio Santiago. Furthermore, they were not one of those persons enumerated in Section 36 of the said Act who may be subjected to mandatory drug testing. Hence, the first essential requisite has not been complied with. If one essential requisite is absent, the Court believes that these inmates cannot be held liable for the offense charged. They may be held liable administratively for violation of the Bureau of Corrections or NBP rules and regulations governing demeanor of inmates inside a penitentiary but not necessarily for violation of Sec. 15 of R.A. 9165. The

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8 *Id.* at 121.

9 *Id.* at 133-137; per Presiding Judge Juanita T. Guerrero.

10 *Id.* at 138-139.

> court need not discuss the other elements of the crime as the same has become moot and academic in view of the absence of the first essential element.
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> WHEREFORE, finding no probable cause for the offense charged in the Information these cases are ordered DISMISSED with costs de officio.
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> SO ORDERED.[11]

Petitioner filed a Petition for *Certiorari* with the CA after its Motion for Reconsideration was denied.

The CA, in its Decision dated May 29, 2008, affirmed the trial court's Order, the fallo of which reads:

> **WHEREFORE**, the instant petition for certiorari is ***DENIED***. The assailed Orders of the public respondent Regional Trial Court of Muntinlupa City, Branch 204, in Criminal Cases Nos. 06-224, 06-229, 06-231, 06-232, 06-234, 06-235, 06-237, 06-238, 06-239 and 06-241, ***STAND***.
>
> **SO ORDERED**.[12]

Consequently, petitioner filed its Motion for Reconsideration, but was denied in a Resolution dated February 26, 2009. Thus, the present petition.

Petitioner asserts the following argument:

> THE COURT OF APPEALS ERRED WHEN IT HELD THAT PRIVATE RESPONDENTS MAY NOT BE HELD LIABLE FOR VIOLATION OF SECTION 15, ARTICLE II OF RA 9165.[13]

According to petitioner, the CA erred because respondents had lost the remedy under Section 3(a), Rule 117 of the Rules of Court having been already arraigned before availing of the said remedy.

Respondents, however, insist that the CA is correct in upholding the RTC's decision dismissing the Informations filed against them. They claim that since the ground they relied on is Section 3(a), Rule 117 of the Rules of Court, their motion to quash may be filed even after they have entered their plea.

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11 *Id.* at 136-137.
12 *Rollo*, p. 41. (Emphasis in the original)
13 *Id.* at 17.

Basically, the issue presented before this Court is not so much as the timeliness of the filing of the motion to quash, but whether the CA erred in upholding the RTC's grant of respondents' motion and eventually dismissing the case based on lack of probable cause.

This Court finds the present petition meritorious.

The ground relied upon by respondents in their "Motion to Dismiss," which is, that the facts alleged in the Information do not constitute an offense, is actually one of the grounds provided under a Motion to Quash in Section 3 (a),[14] Rule 117 of the Revised Rules of Criminal Procedure.

It must be emphasized that respondents herein filed their Motion after they have been arraigned. Under ordinary circumstances, such motion may no longer be allowed after arraignment because their failure to raise any ground of a motion to quash before they plead is deemed a waiver of any of their objections. Section 9, Rule 117 of the Rules of Court provides:

> Sec. 9. *Failure to Move to Quash or to Allege Any Ground Therefor*. - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

However, since the ground asserted by respondents is one of the exceptions provided under the above-provision, the timeliness of the filing is inconsequential. The mistake lies in the RTC's dismissal of the case.

The RTC judge went beyond her authority when she dismissed the cases based on lack of probable cause and not on the ground raised by respondents, to wit:

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[14] Sec. 3. *Grounds*. - The accused may move to quash the complaint or information on any of the following grounds:

(a) **That the facts charged do not constitute an offense;**
(b) That the court trying the case has no jurisdiction over the offense charged;
(c) That the court trying the case has no jurisdiction over the person of the accused;
(d) That the officer who filed the information had no authority to do so;
(e) That it does not conform substantially to the prescribed form;
(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
(g) That the criminal action or liability has been extinguished;
(h) That it contains averments which, if true, would constitute a legal excuse or justification; and
(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (Emphasis supplied)

> WHEREFORE, finding **no probable cause for the offense charged in the Information** these cases are ordered DISMISSED with cost de officio.
>
> SO ORDERED.[15]

Section 2,[16] Rule 117 of the Revised Rules on Criminal Procedure plainly states that in a motion to quash, the court shall not consider any ground other than those stated in the motion, except lack of jurisdiction over the offense charged. In the present case, what the respondents claim in their motion to quash is that the facts alleged in the Informations do not constitute an offense and not lack of probable cause as ruled by the RTC judge.

The RTC judge's determination of probable cause should have been only limited prior to the issuance of a warrant of arrest and not after the arraignment. Once the information has been filed, the judge shall then "personally evaluate the resolution of the prosecutor and its supporting evidence"[17] to determine whether there is probable cause to issue a warrant of arrest. At this stage, a judicial determination of probable cause exists.[18]

In *People v. Castillo and Mejia*,[19] this Court has stated:

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
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> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[20]

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15 Emphasis supplied.

16 Section 2. *Form and contents*. - The motion to quash shall be in writing, signed by the accused or his counsel, and shall distinctly specify its factual and legal grounds. T**he court shall consider no grounds other than those stated in the motion, except lack of jurisdiction over the offense charged**. (Emphasis supplied)

17 Rules on Criminal Procedure, Rule 112, Sec. 6.

18 *Alfredo C. Mendoza v. People of the Philippines, et al.*, G.R. No. 197293, April 21, 2014.

19 *Id*., citing 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

20 *Id*., at 764-765, citing *Paderanga v. Drilon*, 273 Phil. 290, 296 (1991) [Per J. Regalado, En Banc];

> The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued. In People v. Inting:[21]
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> > x x x Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper – whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial – is the function of the Prosecutor.[22]

While it is within the trial court's discretion to make an independent assessment of the evidence on hand, it is only for the purpose of determining whether a warrant of arrest should be issued. The judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor's finding.[23]

In truth, the court's duty in an appropriate case is confined merely to the determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.[24] In this particular case, by proceeding with the arraignment of respondents, there was already an admittance that there is probable cause. Thus, the RTC should not have ruled on whether or not there is probable cause to hold respondents liable for the crime committed since its duty is limited only to the determination of whether the material averments in the complaint or information are sufficient to hold respondents for trial. In fact, in their motion, respondents claimed that the facts alleged in the Informations do not constitute an offense.

Considering that the RTC has already found probable cause, it should have denied the motion to quash and allowed the prosecution to present its

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Roberts, Jr. v. Court of Appeals, 324 Phil. 568, 620-621 (1996) [Per J. Davide, Jr., En Banc]; *Ho v. People*, 345 Phil. 597, 611 (1997) [Per J. Panganiban, En Banc].

21 G.R. No. 88919, July 25, 1990, 187 SCRA 788 [Per J. Gutierrez, Jr., En Banc].

22 *Id.* at 792-793.

23 *Mendoza v. People*, *supra*.

24 *First Women's Credit Corporation v. Baybay*, 542 Phil. 608, 614 (2007).

evidence and wait for a demurrer to evidence to be filed by respondents, if they opt to, or allowed the prosecution to amend the Information and in the meantime suspend the proceedings until the amendment of the Information without dismissing the case.

Section 4, Rule 117 of the Revised Rules of Criminal Procedure clearly states that if the ground based upon is that "the facts charged do not constitute an offense," the prosecution shall be given by the court an opportunity to correct the defect by amendment, thus:

> Section 4. Amendment of the complaint or information. - If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.
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> **If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.**[25]

If the defect in the information is curable by amendment, the motion to quash shall be denied and the prosecution shall be ordered to file an amended information.[26] Generally, the fact that the allegations in the information do not constitute an offense, or that the information does not conform substantially to the prescribed form, are defects curable by amendment.[27] Corollary to this rule, the court should give the prosecution an opportunity to amend the information.[28]

In the present case, the RTC judge outrightly dismissed the cases without giving the prosecution an opportunity to amend the defect in the Informations. In *People v. Talao Perez*,[29] this Court ruled that, "...even granting that the information in question is defective, as pointed out by the accused, it appearing that the defects thereof can be cured by amendment, the lower court should not have dismissed the case but should have ordered the Fiscal to amend the information." When there is any doubt about the sufficiency of the complaint or information, the court should direct its amendment or that a new information be filed, and save the necessity of appealing the case on technical grounds when the complaint might easily be amended.[30]

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25 Emphasis supplied

26 *Remedial Law Compendium*, Vol. II, Tenth Revised Edition, Florez D. Regalado, p. 481.

27 *Id.*, citing *People v. Plaza*, 117 Phil. 627, 629 (1963).

28 *People v. Plaza*, *supra*, citing *U.S. v. Muyo*, 2 Phil. 177 (1965) and *People v. Tan*, 48 Phil. 877 (1926).

29 98 Phil. 768 (1956).

30 *U.S. v. De Castro*, 2 Phil. 616 (1903).

Even the CA admitted that the RTC erred in that regard, thus:

> Indeed, Section 4, Rule 117 of the Rules of Court, requires that the prosecution should first be given the opportunity to correct the defects in the information before the courts may grant a motion to quash grounded on Section 3(a), and it may only do so when the prosecution fails to make the amendment, or the information suffers from the same defect despite the amendment.
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> Pursuant to this rule, it would thus seem that the trial court did err in this regard.[31]

The CA, however, still upheld the ruling of the RTC, stating that "whatever perceived error the trial court may have committed is inconsequential as any intended amendment to the informations filed surely cannot cure the defects,"[32] and to justify such conclusion, the CA proceeded to decide the merits of the case based merely on the allegations in the Information. Such pronouncement, therefore, is speculative and premature without giving the prosecution the opportunity to present its evidence or, to at least, amend the Informations. In *People v. Leviste,*[33] we stressed that the State, like any other litigant, is entitled to its day in court; in criminal proceedings, the public prosecutor acts for and represents the State, and carries the burden of diligently pursuing the criminal prosecution in a manner consistent with public interest.[34] The prosecutor's role in the administration of justice is to lay before the court, fairly and fully, every fact and circumstance known to him or her to exist, without regard to whether such fact tends to establish the guilt or innocence of the accused and without regard to any personal conviction or presumption on what the judge may or is disposed to do.[35] The prosecutor owes the State, the court and the accused the duty to lay before the court the pertinent facts at his disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in his evidence to the end that the court's mind may not be tortured by doubts; that the innocent may not suffer; and that the guilty may not escape unpunished.[36] In the conduct of the criminal proceedings, the prosecutor has ample discretionary power to control the conduct of the presentation of the prosecution evidence, part of which is the option to choose what evidence to present or who to call as witness.[37] Thus, the RTC and the CA, by not giving the State the opportunity to present its evidence in court or to amend the Informations, have effectively curtailed the State's right to due process.

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31 *Rollo*, p. 39

32 *Id.*

33 325 Phil. 525, 538 (1996).

34 *People of the Philippines v. Sandiganbayan, et al*., G.R. Nos. 153304-05, February 7, 2012, 665 SCRA 89, 105.

35 *Id*., citing *In re: The Hon. Climaco*, 154 Phil. 105 (1974).

36 *Id*., citing *People v. Esquivel, et al.*, 82 Phil. 453 (1948).

37 *Id*., citing *Alvarez v. Court of Appeals*, 412 Phil. 137 (2001).

IN LIGHT OF THE FOREGOING, the present Petition for Review on *Certiorari* is hereby **GRANTED**. The Decision dated May 29, 2008 and Resolution dated February 26, 2009 of the Court of Appeals in CA-G.R. SP No. 100016 are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

FRANCIS H. JARDELEZA
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

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