



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 190623

- versus -

Present:

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

ROMMEL ARAZA y SAGUN,
Accused-Appellant.

Promulgated:

NOV 17 2014 *MANCABALOG/Boyeto*

X -----

DECISION

DEL CASTILLO, J.:

In this appeal, appellant Rommel Araza y Sagun (Araza) assails the October 14, 2009 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03164 which affirmed the December 11, 2007 Decision² of the Regional Trial Court (RTC), Branch 93, San Pedro, Laguna in Criminal Case No. 3829-SPL finding him guilty beyond reasonable doubt of illegal possession of *shabu*.

Factual Antecedents

On August 15, 2003, an Information³ for violation of Section 11, Article II, Republic Act No. 9165 (RA 9165) otherwise known as the Comprehensive Dangerous Drugs Act of 2002, was filed against Araza, the accusatory portion of which reads as follows: *Maver*

¹ CA *rollo*, pp. 82-91; penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Antonio L. Villamor.

² Records, pp. 102-104; penned by Judge Francisco Dizon Paño.

³ Id. at 1.

That on or about August 28, 2002, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court the said accused, not being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody one (1) small heat-sealed transparent plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE commonly known as “shabu,” a dangerous drug, weighing zero point zero six (0.06) gram.

CONTRARY TO LAW.⁴

During arraignment, Araza pleaded “not guilty.”⁵ Thereafter, trial ensued.

Version of the Prosecution

The prosecution presented Police Officer 1 Edmund Talacca (PO1 Talacca) who testified as follows:

At around 8:00 p.m. of August 28, 2002, PO1 Talacca accompanied the *Barangay* Chairman, *Barangay* Tanods and several members of the *barangay* council in confiscating a video *karera* machine inside the house of a certain Alejandro Sacdo (Sacdo). While confiscating said machine, PO1 Talacca saw nine persons, including Araza, sniffing *shabu* or engaging in a pot session inside the house of Sacdo. He arrested and frisked them. Recovered from the pocket of Araza was a small heat-sealed transparent plastic sachet containing white crystalline substance which PO1 Talacca suspected to be *shabu*. PO1 Talacca immediately seized said sachet and brought Araza and his companions to the police station. He turned over the said sachet to the chief investigator, Larry Cabrera (Cabrera), who marked the same with the initials “RSA” in his presence.

The prosecution was supposed to also present Police Senior Inspector Donna Villa Huelgas (P/Sr. Insp. Huelgas), the Forensic Chemist who examined the confiscated white crystalline substance, but her testimony was dispensed with after the defense agreed to the following stipulations: 1) Chemistry Report No. D-2028-02 as Exhibit “B”; 2) the name of suspect Rommel Araza y Sagun as Exhibit “B-1”; 3) the specimen submitted as Exhibit “B-2”; 4) findings as Exhibit “B-3”; 5) conclusion as Exhibit “B-4”; 6) the name and signature of P/Sr. Insp. Huelgas as Exhibits “B-5”; 7) the request for laboratory examination as Exhibit “C”; 8) the name of suspect Rommel Araza y Sagun as Exhibit “C-1”; 9) the evidence submitted as Exhibit “C-2”; 10) the stamp mark as Exhibit “C-3”; 11) the half-size white envelope as Exhibit “D”; 12) the plastic sachet as Exhibit “D-1”; and 13) the small heat-sealed plastic sachets as Exhibit “D-1-A.”⁶

⁴ Id.

⁵ Id. at 16.

⁶ Id. at 56.

Version of the Defense

The defense presented a completely different version of the incident. Araza testified that he was sleeping inside a room in the house of Sacdo when PO1 Talacca suddenly woke him up and frisked him. PO1 Talacca confiscated his wallet that contained coins then took him to the police station and charged him with illegal possession of prohibited drugs.

Ruling of the Regional Trial Court

The RTC ruled that the prosecution was able to establish the guilt of Araza beyond reasonable doubt. It gave credence to the testimony of PO1 Talacca since he is presumed to have regularly performed his duties and there was no evidence that he had any motive to falsely testify against Araza. The RTC rejected Araza's alibi as a feeble defense that cannot prevail over the positive testimony of PO1 Talacca. The dispositive portion of the December 11, 2007 Decision⁷ of the RTC reads:

WHEREFORE, the Court hereby sentences accused ROMMEL ARAZA y SAGUN to suffer an indeterminate penalty of imprisonment from twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum and to pay a fine in the amount of ₱300,000.00.

The 0.06 gram of Methamphetamine Hydrochloride "shabu" which constitutes the instrument in the commission of the crime is confiscated and forfeited in favor of the government. Atty. Jaarmy Bolus-Romero, Branch Clerk of Court, is hereby directed to immediately transmit the 0.06 [gram] of Methamphetamine Hydrochloride "shabu" to the Dangerous Drugs Board for proper disposition.

Costs against accused.

SO ORDERED.⁸

Araza filed a notice of appeal⁹ which was approved by the RTC. Hence, the entire records of the case were forwarded to the CA.¹⁰

Ruling of the Court of Appeals

In his brief,¹¹ Araza highlighted PO1 Talacca's admission under oath that the *shabu* was confiscated from his pocket and not in plain view. He posited that

⁷ Id. at 102-104.

⁸ Id. at 103-104.

⁹ Id. at 108.

¹⁰ Id. at 109.

¹¹ CA *rollo*, pp. at 26-40.

the *shabu* is inadmissible in evidence since it was illegally seized, having been taken from his pocket and not as an incident of an arrest *in flagrante delicto*. Araza likewise argued that the rule on chain of custody was not properly adhered to since there was no evidence that a physical inventory of the *shabu* was conducted in the presence of any elected local government official and the media. He claimed that the possibility of tampering, alteration or substitution of the substance may have been present since the investigating officer who marked the seized *shabu* in the police station and the person who delivered the same to the crime laboratory were not presented during the trial.

The CA, however, was not impressed. It ruled that Araza was estopped from assailing the legality of his arrest for his failure to move to quash the Information against him prior to arraignment. It also held that he could no longer question the chain of custody for failing to raise the same during trial. Besides, the prosecution was able to establish the integrity and evidentiary value of the seized item. Thus, the CA issued its assailed Decision¹² with the following dispositive portion:

WHEREFORE, the assailed Decision dated 11 December 2007 of the Regional Trial Court, Fourth Judicial Region, San Pedro, Laguna, Branch 93, in Criminal Case No. 3829-SPL, is hereby AFFIRMED.

SO ORDERED.¹³

Hence, this appeal where Araza seeks for his acquittal.

Issues

On February 15, 2010, the parties were directed to file their respective supplemental briefs but both of them opted to just adopt the brief they submitted before the CA.

Araza imputes error upon the RTC and CA in upholding the validity of his warrantless arrest and in finding that the procedure for the custody and control of prohibited drugs was complied with.¹⁴

Our Ruling

The appeal is unmeritorious.

¹² Id. at 82-91.

¹³ Id. at 90.

¹⁴ See Brief for the Accused-Appellant, id. at 26-40.

The offense of illegal possession of dangerous drugs has been established.

The elements that must be established in the successful prosecution of a dangerous drugs case are: “(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.”¹⁵ “Mere possession x x x of a prohibited drug, without legal authority, is punishable under [RA 9165].”¹⁶

The prosecution satisfied the foregoing elements during trial. The arresting officer, PO1 Talacca, positively identified Araza as the person caught in possession of the *shabu* presented in court. He stated that the *shabu* was validly confiscated after Araza was arrested *in flagrante delicto* sniffing *shabu* in the company of other people. Relevant portions of his testimony are as follows:

Q Do you recall where you were on August 28, 2002 at around 8:00 o'clock in the evening?

A Yes, ma'am, I was with the barangay chairman of Brgy. Langgam, San Pedro, Laguna, Police Officer Mendoza, some members of the barangay council and members of the barangay tanod[. W]e went to Brgy. Langgam to conduct a confiscation of video karera in the house of Alejandro Sacdo.

x x x x

Q When you arrived at the house of Alejandro Sacdo, what happened?

A We [went directly] to the house of Alejandro Sacdo [where] we found a video karera.

Q What did you do when you saw that there was a video karera machine inside the house?

A The barangay chairman and [the] members of our group immediately confiscated the video karera machine.

Q Was Alejandro Sacdo inside his house then?

A Yes, ma'am, he was present.

x x x x

Q Aside from Alejandro Sacdo, who else, if any, was inside that house?

A There were all in all nine persons, including Alejandro Sacdo.

Q What were they doing?

A They were inside the house of Alejandro Sacdo sniffing shabu.

Q After that, what did you do?

¹⁵ *People v. Partoza*, G.R. No. 182418, May 8, 2009, 587 SCRA 809, 816.

¹⁶ *People v. Mariacos*, G.R. No. 188611, June 21, 2010, 621 SCRA 327, 344-345.

- A I called the attention of our companions, the barangay officials and the tanods and we immediately [entered] the house and arrested these nine people.
- Q After you arrested the nine people, including Alejandro Sacdo, what happened next?
- A When we arrested the nine persons, it is our standard operating procedure to search each suspect and when I searched Mr. Araza, I found one small heat[-]sealed plastic sachet [on] him.
- Q You referred to Mr. Rommel Araza y Sagun as the one from whom you were able to confiscate a small heat[-]sealed plastic [sachet], if he is in court right now, will you be able to identify him?
- A Yes, ma'am, there he is (witness pointing to a man seated inside the courtroom who identified himself as Rommel Araza y Sagun)
- Q After you arrested the nine persons including Alejandro Sacdo and herein accused Araza and after confiscating from him the small heat[-]sealed plastic sachet, what did you do next?
- A We brought them to the barangay hall of Brgy. Langgam.
- Q What did you do next?
- A After we [took down their names and pertinent details] in the blotter, all of them were brought to the police station for investigation and proper filing of case against them.
- Q What did you do with the specimen you confiscated from Araza?
- A I gave it to our chief investigator, Officer Larry Cabrera, for proper [marking] of the specimen and for them to deliver the same to the crime laboratory for examination.
- Q Where were you then when the police investigator put the markings on the specimen?
- A I was in front of him, ma'am.
- Q Did you see what markings were placed on the specimen?
- A Yes, ma'am, it was RSA which stands for the name of Rommel Araza y Sagun.¹⁷

Chemistry Report No. D-2028-02 confirmed that a qualitative examination conducted on the specimen inside the plastic sachet seized from Araza yielded positive result for methamphetamine hydrochloride or *shabu*.¹⁸

We find the statement of PO1 Talacca to be credible. The narration of the incident by a police officer, "buttressed by the presumption that they have regularly performed their duties in the absence of convincing proof to the contrary, must be given weight."¹⁹ His testimony, the physical evidence and the facts stipulated upon during trial were consistent with each other. Araza also failed to

¹⁷ TSN, February 18, 2004, pp. 3-4.

¹⁸ Records, p. 9.

¹⁹ *People v. Llanita*, G.R. No. 189817, October 3, 2012, 682 SCRA 288, 300-301.

adduce evidence showing that he had legal authority to possess the seized drugs. Thus, there is no reason to disturb the findings of the RTC as affirmed by the CA.

An accused cannot assail any irregularity in the manner of his arrest after arraignment.

Araza calls attention to the admission of PO1 Talacca that the *shabu* was confiscated from his pocket and was not in plain view. He therefore posits that he was not apprehended *in flagrante delicto* and the ensuing warrantless arrest was invalid. Moreover, the sachet allegedly seized from him is not admissible in evidence against him being the fruit of a poisonous tree.

Such an argument is unworthy of credence since objections to a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be manifested prior to entering his plea.²⁰ Otherwise, the objection is deemed waived.²¹ Moreover, jurisprudence dictates that “the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.”²²

Here, Araza did not object to the alleged irregularity of his arrest before or during his arraignment. He even actively participated in the proceedings before the RTC. He is, therefore, deemed to have waived any defect he believes to have existed during his arrest and effectively submitted himself to the jurisdiction of the RTC. In other words, Araza is already estopped from assailing any irregularity in his arrest after he failed to raise this issue or to move for the quashal of the Information on this ground before his arraignment.

Circumstances when warrantless search and subsequent seizure are valid.

As to the admissibility of the *shabu* seized from Araza, it is crucial to ascertain whether the search that yielded the alleged contraband was lawful.²³ The Constitution states that failure to secure a judicial warrant prior to the actual search and consequent seizure would render it unreasonable and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding.²⁴ This constitutional prohibition, however, admits of the following exceptions:

²⁰ *Sy v. People*, G.R. No. 182178, August 15, 2011, 655 SCRA 395, 403-404.

²¹ *Id.* at 404.

²² *Id.*

²³ *Id.*

²⁴ CONSTITUTION, Article III, Sections 2 and 3 (2).

1. Warrantless search incidental to a lawful arrest;
2. Search of evidence in “plain view”;
3. Search of a moving vehicle;
4. Consented warrantless search;
5. Customs search;
6. Stop and Frisk; and
7. Exigent and emergency circumstances.²⁵

In this case, there is sufficient evidence to prove that the warrantless search of Araza was effected as an incident to a lawful arrest. Section 5, Rule 113 of the Rules of Court provides in part:

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 temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

PO1 Talacca testified that he saw Araza and his companions sniffing substance that seemed to be *shabu* inside the premises where a video *karera* machine was being confiscated by the *barangay* officials for whom he provided security. He thus entered the room, effected their arrest and conducted a body search on them. Upon searching the person of Araza, PO1 Talacca recovered from him a plastic sachet containing white crystalline substance. Araza and the seized item were then brought to the police station. After a laboratory examination, the white crystalline substance inside the sachet was found positive for *shabu*.

Considering the foregoing, Araza was clearly apprehended in *flagrante delicto* as he was then committing a crime (sniffing *shabu*) in the presence of PO1

²⁵ *Sy v. People*, supra note 20 at 405.

Talacca. Hence, his warrantless arrest is valid pursuant to Section 5(a) of the above-quoted Rule 113 of the Rules of Court. And having been lawfully arrested, the warrantless search that followed was undoubtedly incidental to a lawful arrest, which as mentioned, is an exception to the constitutional prohibition on warrantless search and seizure. Conversely, the *shabu* seized from Araza is admissible in evidence to prove his guilt of the offense charged.

***Failure to comply with Section 21,
Article II of Republic Act No. 9165 is
not fatal.***

Araza hinges his claim for acquittal on the failure of the police officers to submit a pre-coordination report and physical inventory of the seized dangerous drug. He cites Section 21(1), Art. II of RA 9165, which provides:

Sec. 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 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 drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused, or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

However, it has been held time and again that failure to strictly comply with aforesaid procedure will not render an arrest illegal or the seized items inadmissible in evidence. Substantial compliance is sufficient as provided under Section 21(a) of the Implementing Rules and Regulations of RA 9165, *viz*:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official 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,**

further, that non-compliance with 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 of and custody over said items;
(Emphasis supplied)

Araza's contention that there must be compliance with a pre-coordination report has no legal basis since nowhere is it stated in the foregoing provision that this is an essential procedural requisite. A pre-coordination report is also not needed when an accused is apprehended in *flagrante delicto* for obvious reason.

Further, failure by the prosecution to prove that the police officers conducted the required physical inventory of the seized *shabu* does not immediately result in the unlawful arrest of an accused or render inadmissible in evidence the items seized. "What is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."²⁶ Here, the records reveal that the police officers substantially complied with the process of preserving the integrity of the seized *shabu*.

The chain of custody has not been broken.

Araza likewise contends that the prosecution failed to properly establish the chain of custody of evidence, and this adversely affected its admissibility. He argues that the non-presentation of the investigating officer and the person who delivered the specimen to the police crime laboratory creates serious doubt that the alleged *shabu* confiscated from him was the same one marked, forwarded to the crime laboratory for examination, and later presented as evidence in court. He puts forward the possibility that the evidence may have been tampered, altered, and/or substituted as would affect its identity and integrity.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing RA 9165, defines chain of custody as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of [the] seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition."

²⁶ *People v. Guiara*, G.R. No. 186497, September 17, 2009, 600 SCRA 310, 329.

The chain of custody requirement ensures the preservation of the integrity and evidentiary value of the seized items such that doubts as to the identity of the evidence are eliminated.²⁷ “To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.”²⁸

Here, the prosecution proved the chain of custody of the seized *shabu* as follows: After arresting Araza for possession of a sachet of suspected *shabu*, PO1 Talacca brought him and the confiscated item to the police station. The said sachet was turned over to the chief investigator, Cabrera, who marked it with the initials “RSA” in front of PO1 Talacca. A request for laboratory examination of the contents of said sachet was delivered, together with the sachet of suspected *shabu*, to the PNP Crime Laboratory in Calamba, Laguna. Forensic Chemist P/Sr. Insp. Huelgas examined the contents of the sachet with markings “RSA” and prepared Chemistry Report No. D-2028-02, confirming that the specimen tested positive for *shabu*. During the trial, this result was submitted to the RTC as Exhibit “D” and stipulated on by both parties.²⁹ The marked sachet of *shabu* was also presented in evidence and identified by PO1 Talacca.

Araza’s contention that the investigating officer who received the seized drug in the police station and the person who delivered the same to the crime laboratory should have been presented to establish an unbroken chain of custody fails to impress. It is not necessary to present all persons who came into contact with the seized drug to testify in court.³⁰ “As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.”³¹ The non-presentation as witnesses of the evidence custodian and the officer on duty is not a crucial point against the prosecution since it has the discretion as to how to present its case and the right to choose whom it wishes to present as witnesses.³²

Based on the foregoing findings, the chain of custody of the seized substance was not broken. The suspected illegal drug confiscated from Araza was the same substance presented and identified in court. There is therefore no reason to disturb the findings of the RTC, as affirmed by the CA, that he is guilty beyond reasonable doubt of illegal possession of a dangerous drug.

²⁷ *People v. Llanita*, supra note 19 at 304.

²⁸ *Id.*

²⁹ Records, p. 56.

³⁰ *People v. Amansec*, G.R. No. 186131, December 14, 2011, 662 SCRA 574, 595.

³¹ *Id.*

³² *People v. Hernandez*, 607 Phil. 617, 640 (2009).

Proper Penalty

Section 11, Article II of RA 9165, provides:

Sec. 11. *Possession of Dangerous Drugs.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof;

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

(3) **Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand (₱300,000.00) pesos to Four hundred thousand pesos (₱400,000.00)**, if the quantities of dangerous drugs are **less than five (5) grams** of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, **methamphetamine hydrochloride or “shabu,”** or other dangerous drugs such as, but not limited to MDMA or “ecstasy,” PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana x x x. (Emphasis supplied)

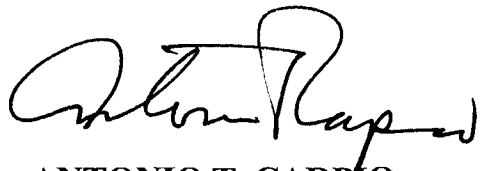
Araza was found guilty of possessing 0.06 gram of *shabu*, or less than five grams of the dangerous drug, without any legal authority. Under these circumstances, the penalty of imprisonment imposed by the RTC and affirmed by the CA, which is twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum, is within the range provided by RA 9165. Thus, the Court finds the same, as well as the payment of fine of ₱300,000.00 in order.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated October 14, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03164 is **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



ARTURO D. BRION

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice




MARVIC M.V.F. LEONEN

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*