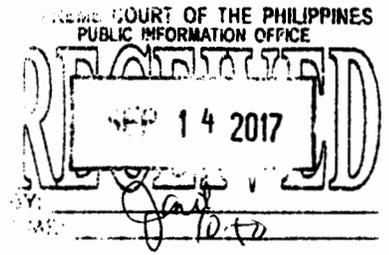


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Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

JEFFREY MIGUEL y G.R. No. 227038
REMEGIO,
Petitioner,

Present:

- versus -

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
PERLAS-BERNABE, and
CAGUIOA, JJ.

PEOPLE OF THE
PHILIPPINES,
Respondent.

Promulgated:

JUL 31 2017

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated October 21, 2015 and the Resolution³ dated September 5, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 35318, which affirmed the Decision⁴ dated October 1, 2012 of the Regional Trial Court of Makati City, Branch 64 (RTC) in Criminal Case No. 10-912 convicting petitioner Jeffrey Miguel y Remegio (petitioner) of the crime of illegal possession of dangerous drugs.

¹ Rollo, pp. 13-36.

² Id. at 40-53. Penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Rosmari D. Carandang and Mario V. Lopez concurring.

³ Id. at 55-56.

⁴ Id. at 71-73. Penned by Judge Gina M. Bibat-Palamos.

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The Facts

On May 27, 2010, an Information⁵ was filed before the RTC charging petitioner of illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of Republic Act No. (RA) 9165,⁶ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” the accusatory portion of which reads:

On the 24th day of May 2010, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, control, and custody a total of one point ten (1.10) grams of dried Marijuana leaves, a dangerous drug.

CONTRARY TO LAW.⁷

The prosecution alleged that at around 12:45 in the morning of May 24, 2010, a *Bantay Bayan* operative of Barangay San Antonio Village, Makati City named Reynaldo Bahoyo (BB Bahoyo) was doing his rounds when he purportedly received a report of a man showing off his private parts at Kaong Street. BB Bahoyo and fellow *Bantay Bayan* operative Mark Anthony Velasquez (BB Velasquez) then went to the said street and saw a visibly intoxicated person, which they later identified as herein petitioner, urinating and displaying his private parts while standing in front of a gate enclosing an empty lot. BB Bahoyo and BB Velasquez approached petitioner and asked him where he lived, and the latter answered Kaong Street. BB Bahoyo then said that he also lived in the same street but petitioner looked unfamiliar to him, so he asked for an identification card, but petitioner failed to produce one. BB Velasquez then repeated the request for an identification card, but instead, petitioner emptied his pockets, revealing a pack of cigarettes containing one (1) stick of cigarette and two (2) pieces of rolled paper containing dried marijuana leaves, among others. This prompted BB Bahoyo and BB Velasquez to seize the foregoing items, take petitioner to the police station, and turn him, as well as the seized items, over to SPO3 Rafael Castillo (SPO3 Castillo). SPO3 Castillo then inventoried, marked, and photographed the seized items, all in the presence of BB Bahoyo and BB Velasquez, and thereafter, prepared an inventory report and a request for qualitative examination of the seized two (2) pieces of rolled paper and for petitioner to undergo drug testing. After examination, it was confirmed that the aforesaid rolled paper contained marijuana and that petitioner was positive for the presence of methamphetamine but negative for THC-metabolites, both dangerous drugs.⁸

⁵ Dated May 26, 2010. Records, pp. 1-2.

⁶ ENTITLED “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES” approved on June 7, 2002.

⁷ Records, pp. 1-2.

⁸ See *rollo*, pp. 42-44.

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Petitioner pleaded not guilty to the charge, and thereafter, presented a different version of the facts. According to him, he was just urinating in front of his workplace when two (2) *Bantay Bayan* operatives, *i.e.*, BB Bahoyo and BB Velasquez, approached and asked him where he lived. Upon responding that he lived in Kaong Street, BB Bahoyo and BB Velasquez then frisked him, took away his belongings, and thereafter, handcuffed and brought him to the barangay hall. He was then detained for about an hour before being taken to the Ospital ng Makati and to another office where a bald police officer questioned him. Thereafter, he was taken back to the barangay hall where they showed him two (2) sticks of marijuana joints allegedly recovered from him.⁹

The RTC Ruling

In a Decision¹⁰ dated October 1, 2012, the RTC found petitioner guilty beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine in the amount of ₱300,000.00, without subsidiary imprisonment in case of insolvency.¹¹

The RTC found that BB Bahoyo and BB Velasquez conducted a valid warrantless arrest, as petitioner was scandalously showing his private parts at the time of his arrest. Therefore, the resultant search incidental to such arrest which yielded the seized marijuana in petitioner's possession was also lawful. In this regard, since the prosecution has adequately shown that petitioner freely and consciously possessed such marijuana without authority by law, then he must be convicted for violating Section 11, Article II of RA 9165.¹²

Aggrieved, petitioner appealed¹³ to the CA.

The CA Ruling

In a Decision¹⁴ dated October 21, 2015, the CA affirmed petitioner's conviction.¹⁵ It held that the search made on petitioner which yielded the seized marijuana was validly made as it was done incidental to his arrest for exhibiting his private parts on public. As such, the said seized marijuana is admissible in evidence and, thus, sufficient to convict him for the crime

⁹ See *id.* at 44-45.

¹⁰ *Id.* at 71-73.

¹¹ *Id.* at 73.

¹² See *id.*

¹³ See Notice of Appeal dated October 2, 2012; records, p. 164.

¹⁴ *Rollo*, pp. 40-53.

¹⁵ *Id.* at 52.

charged.¹⁶ The CA likewise held that the rule on chain of custody was duly complied with and, thus, the integrity and evidentiary value of the seized drugs were not compromised.¹⁷

Undaunted, petitioner moved for reconsideration,¹⁸ which was, however, denied in a Resolution¹⁹ dated September 5, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld petitioner's conviction for illegal possession of dangerous drugs.

The Court's Ruling

The petition is meritorious.

In criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."²⁰

Proceeding from the foregoing, and as will be explained hereunder, petitioner's conviction must be set aside.

One of the arguments presented in the instant petition is that the search and arrest made on petitioner were illegal and, thus, the marijuana purportedly seized from him is inadmissible in evidence.²¹ In this relation, it is worth noting that his arresting officers, *i.e.*, BB Bahoyo and BB Velasquez, are mere *Bantay Bayan* operatives of Makati City. Strictly speaking, they are not government agents like the Philippine National Police (PNP) or the National Bureau of Investigation in charge of law enforcement; but rather, they are *civilian volunteers* who act as "force multipliers" to assist the aforesaid law enforcement agencies in maintaining peace and

¹⁶ See *id.* at 47-49.

¹⁷ See *id.* at 49-52.

¹⁸ See motion for reconsideration dated November 13, 2015; CA *rollo*, pp. 97-109.

¹⁹ *Rollo*, pp. 55-56.

²⁰ See *People v. Alejandro*, G.R. No. 225608, March 13, 2017, citing *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

²¹ See *rollo*, pp. 19-23.

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security within their designated areas.²² Particularly, jurisprudence described the nature of *Bantay Bayan* as “a group of male residents living in [the] area organized for the purpose of keeping peace in their community[, which is] an accredited auxiliary of the x x x PNP.”²³ In the case of *Dela Cruz v. People*²⁴ involving civilian port personnel conducting security checks, the Court thoroughly discussed that while the Bill of Rights under Article III of the 1987 Constitution generally cannot be invoked against the acts of private individuals, the same may nevertheless be applicable if such individuals **act under the color of a state-related function**, viz.:

With regard to searches and seizures, **the standard imposed on private persons is different from that imposed on state agents or authorized government authorities.**

In *People v. Marti*, the private forwarding and shipping company, following standard operating procedure, opened packages sent by accused Andre Marti for shipment to Zurich, Switzerland and detected a peculiar odor from the packages. The representative from the company found dried marijuana leaves in the packages. He reported the matter to the National Bureau of Investigation and brought the samples to the Narcotics Section of the Bureau for laboratory examination. Agents from the National Bureau of Investigation subsequently took custody of the illegal drugs. Andre Marti was charged with and was found guilty of violating Republic Act No. 6425, otherwise known as the Dangerous Drugs Act.

This court held that there was no unreasonable search or seizure. The evidence obtained against the accused was not procured by the state acting through its police officers or authorized government agencies. **The Bill of Rights does not govern relationships between individuals; it cannot be invoked against the acts of private individuals:**

If the search is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. However, if the search is made at the behest or initiative of the proprietor of a private establishment for its own and private purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individual, not the law enforcers, is involved. **In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.**

x x x x

The Cebu Port Authority is clothed with authority by the state to oversee the security of persons and vehicles within its ports. **While there**

²² See “Makati Police Increases Visibility in Burgos-Makati Avenue-Kalayaan Triangle” dated April 29, 2014, <<http://www.makati.gov.ph/portal/news/view.jsp?id=3194#.WXqT5hWGPIU>> (visited July 28, 2017).

²³ *People v. Lauga*, 629 Phil. 522, 530 (2010), citing *People v. Buendia*, 432 Phil. 471, 476 (2002).

²⁴ G.R. No. 209387, January 11, 2016, 779 SCRA 34.

is a distinction between port personnel and port police officers in this case, considering that port personnel are not necessarily law enforcers, both should be considered agents of government under Article III of the Constitution. The actions of port personnel during routine security checks at ports have the color of a state-related function.

In *People v. Malngan*, barangay tanod and the Barangay Chairman were deemed as law enforcement officers for purposes of applying Article III of the Constitution. **In *People v. Lauga*, this court held that a “bantay bayan,” in relation to the authority to conduct a custodial investigation under Article III, Section 12 of the Constitution, “has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights[.]”**

Thus, **with port security personnel’s functions having the color of state-related functions and deemed agents of government, *Marti* is inapplicable in the present case.** x x x.²⁵ (Emphases and underscoring supplied)

In this light, the Court is convinced that the acts of the *Bantay Bayan* – or any barangay-based or other volunteer organizations in the nature of watch groups – relating to the preservation of peace and order in their respective areas have the color of a state-related function. As such, they should be deemed as law enforcement authorities for the purpose of applying the Bill of Rights under Article III of the 1987 Constitution to them.²⁶

Having established that the Bill of Rights may be applied to the *Bantay Bayan* operatives who arrested and subsequently searched petitioner, the Court shall now determine whether such arrest and search were validly made.

“Section 2,²⁷ Article III of the 1987 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.** To protect the people from unreasonable searches and seizures, Section 3 (2),²⁸ Article III of the 1987 Constitution provides that **evidence obtained from**

²⁵ Id. at 54-61; citations omitted.

²⁶ See *People v. Lauga*, supra note 23, at 529-531.

²⁷ Section 2, Article III of the 1987 Constitution states:

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.

²⁸ Section 3 (2), Article III of the 1987 Constitution states:

Section 3. x x x.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

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unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding. In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.²⁹

One of the recognized exceptions to the need [of] a warrant before a search may be [e]ffected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed.**³⁰

A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with:

Section 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 cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

The aforementioned provision identifies three (3) instances when warrantless arrests may be lawfully effected. These are: (a) an arrest of a suspect *in flagrante delicto*; (b) an 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; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.³¹

²⁹ See *Sindac v. People*, G.R. No. 220732, September 6, 2016, citing *People v. Manago*, August 17, 2016, G.R. No. 212340.

³⁰ See *id.*

³¹ See *id.*, citing *Comerciante v. People*, 764 Phil. 627, 634-635 (2015).

In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (a) 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 (b) such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it.³²

In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential. Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed.”³³

In this case, the prosecution claims that the BB Bahoyo and BB Velasquez simply responded to a purported report of a man showing off his private parts at Kaong Street which led to petitioner's arrest. On the other hand, petitioner maintains that he was just urinating in front of his workplace when the *Bantay Bayan* operatives suddenly approached and questioned him, and thereafter, frisked and arrested him. BB Bahoyo's testimony on direct and cross-examinations is enlightening on this matter, to wit:

PROSECUTOR: x x x

x x x x

So, upon seeing Jeffrey Miguel, what did you do?

WITNESS: We approached him and we asked him what was he doing in that place and he appears to be intoxicated, ma'am.

PROSECUTOR: After questioning him, what did you do?

WITNESS: We asked him from where he is residing and he told us that he is from Caong Street.

PROSECUTOR: What you do next?

WITNESS: Because I also live in Caong and he is not familiar to me, I asked for his I.D, ma'am.

PROSECUTOR: Was he able to produce an I.D?

WITNESS: He was not able to produce any I.D., ma'am.

PROSECUTOR: When he failed to produce any I.D., what did you do?

³² See id.

³³ See id.

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WITNESS: One of my companions asked him if he has any I.D. with him.

PROSECUTOR: Who was this companion of yours?

WITNESS: Mark Anthony Velasquez, ma'am.

PROSECUTOR: What was the response of Jeffrey to the request of Mark Anthony Velasquez?

WITNESS: He brought out the contents of his pocket and he brought out one pack of Fortune with one stick inside and another pack, Marlboro light pack with one stick of cigarette and two sticks of marijuana.

x x x x

[on cross-examination]

ATTY. PUZON: When you saw certain Jeffrey, you were not familiar with him, is that correct?

WITNESS: No, sir, I am not familiar with him.

ATTY. PUZON: And when you saw him, he was already showing his private parts, is that correct?

WITNESS: Yes, sir.

ATTY. PUZON: In your "Pinagsanib na Sinumpaang Salaysay" you stated that when you saw Jeffrey, his back was turned to you and it seemed that he was peeing. Do you remember saying that in your "Pinagsanib na Sinumpaang Salaysay"?

WITNESS: Yes, sir.

ATTY. PUZON: So, is it not true that when you saw him, he was already showing his private parts?

WITNESS: He was showing his private parts, sir.

ATTY. PUZON: While his back turned to you?

WITNESS: Yes, sir.

ATTY. PUZON: How could you see his private parts if his back was turned against you?

WITNESS: He faced us, sir.

x x x x

COURT: Did you charge the accused for urinating in a public place or for showing his private parts?

WITNESS: No, Your Honor.

ATTY. PUZON: And in fact, only a drug case was filed against Jeffrey?

WITNESS: I have no idea, sir. (Emphases and underscoring supplied) ³⁴

On the other hand, pertinent portions of petitioner's Judicial Affidavit³⁵ containing his direct testimony read:

Q: *Naaalala mo pa ba ang petsang 24 May 2010?*

A: *Opo. Iyon po ang araw nang ako ay dakpin ng dalawang bantay-bayan.*

Q: *Ano ang naaalala mo bago ka mahuli, kung mayroon man?*

A: *Mga bandang pasado alas dose ng hating gabi ako ay umihi sa tapat ng pinagtrabahuhan ko ng may biglang lumapit sa akin na dalawang bantay-bayan.*

Q: Ano ang sumunod na nangyari x x x, kung mayroon man?

A: Nagtanong po sila kung saan ako nakatira at sinagot ko na nakatira ako sa Kaong St., Brgy. San Antonio Village, Makati City at pagkatapos ay kinapakan nila ako.

Q: May nakuha ba sila sa iyo pakatapos kang kapkapan, kung mayroon man?

A: Opo. Nakuha nila ang aking charger, cellphone, lighter at sigarilyong Fortune.

Q: Ano ang sumunod na nangyari, kung mayroon man?

A: Pinosasan nila ako at dinala sa barangay. ³⁶ (Emphases and underscoring supplied)

On cross-examination, petitioner testified, as follows:

PROSECUTOR: x x x Mr. Witness, you said that at past 12:00 in the midnight of May 24, 2010 you were arrested by two *Bantay Bayan*, do you affirm that Mr. Witness?

WITNESS: Yes, ma'am.

PROSECUTOR: And how did you know that they are *Bantay Bayan complement*?

WITNESS: They told me that they were *Bantay Bayan* personnel, ma'am.

PROSECUTOR: What were you doing then, Mr. Witness?

WITNESS: Urinating in front of my place of work, ma'am.

³⁴ TSN, February 27, 2012, pp. 5-6 and 19-21.

³⁵ Dated September 14, 2012. Records, pp. 149-151.

³⁶ Id. at 149.

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x x x x

PROSECUTOR: And you were working at that time that you were allegedly arrested by these two *Bantay Bayan* complement, Mr. Witness?

WITNESS: Not anymore because I was staying in at the company, ma'am.

x x x x

PROSECUTOR: You urinated outside because you do not have a comfort room inside, is it not a fact, Mr. Witness?

WITNESS: Yes, ma'am.

PROSECUTOR: What is this Fine Home Incorporation doing, Mr. Witness?

WITNESS: I am a caretaker at Fine Home Incorporation I guard the steels, ma'am.³⁷ (Emphases and underscoring supplied)

On the basis of the foregoing testimonies, the Court is inclined to believe that at around past 12 o'clock in the early morning of May 24, 2010, petitioner went out to the street to urinate when the *Bantay Bayan* operatives chanced upon him. The latter then approached and questioned petitioner, and thereafter, went on to search his person, which purportedly yielded the marijuana seized from him. Verily, the prosecution's claim that petitioner was showing off his private parts was belied by the aforesaid testimonies. Clearly, these circumstances do not justify the conduct of an *in flagrante delicto* arrest, considering that there was no overt act constituting a crime committed by petitioner in the presence or within the view of the arresting officer. Neither do these circumstances necessitate a "hot pursuit" warrantless arrest as the arresting *Bantay Bayan* operatives do not have any personal knowledge of facts that petitioner had just committed an offense.

More importantly, the Court simply finds highly implausible the prosecution's claim that a valid warrantless arrest was made on petitioner on account of the alleged public display of his private parts because if it was indeed the case, then the proper charge should have been filed against him. However, records are bereft of any showing that such charge was filed aside from the instant criminal charge for illegal possession of dangerous drugs – thereby strengthening the view that no prior arrest was made on petitioner which led to a search incidental thereto. As stressed earlier, there must first be a lawful arrest before a search can be made and that such process cannot be reversed.

All told, the *Bantay Bayan* operatives conducted an illegal search on the person of petitioner. Consequently, the marijuana purportedly seized

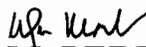
³⁷ TSN, September 17, 2012, pp. 5-6.

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from him on account of such search is rendered inadmissible in evidence pursuant to the exclusionary rule under Section 3 (2), Article III of the 1987 Constitution. Since the confiscated marijuana is the *very corpus delicti* of the crime charged, petitioner must necessarily be acquitted and exonerated from criminal liability.³⁸

WHEREFORE, the petition is **GRANTED**. The Decision dated October 21, 2015 and the Resolution dated September 5, 2016 of the Court of Appeals in CA-G.R. CR No. 35318 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Jeffrey Miguel y Remegio is **ACQUITTED** of the crime of illegal possession of dangerous drugs defined and penalized under Section 11, Article II of Republic Act No. 9165. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held for any other reason.

SO ORDERED.

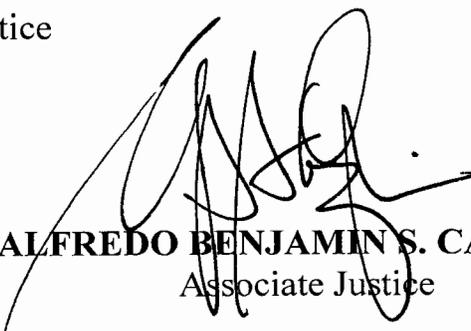

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

³⁸ See *People v. Manago*, supra note 29, citing *Comerciante v. People*, supra note 31, at 641.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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