



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee.*

G.R. No. 184606

Present:

- versus -

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

CALEXTO DUQUE FUNDALES, JR.,  
*Accused-Appellant.*

Promulgated:

SEP 05 2012 *HL Cabalag for Jacto*

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DECISION

DEL CASTILLO, J.:

On appeal is the April 18, 2008 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02274, which affirmed the March 18, 2006 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Parañaque City, Branch 259, in Criminal Case No. 03-1425. Said RTC Decision declared appellant Calexto Duque Fundales, Jr. (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II, Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

*Factual Antecedents*

On December 8, 2003, appellant was charged with violations of Section 5

*Udel*

<sup>1</sup> CA rollo, pp. 99-107; penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Mario L. Guariña III and Romeo F. Barza.

<sup>2</sup> Records, pp. 286-291; penned by Judge Zosimo V. Escano.

(illegal sale of dangerous drugs), Section 11 (illegal possession of dangerous drugs), and Section 12 in relation to Section 14 (illegal possession of drug paraphernalia) of Article II, RA No. 9165. The Informations read as follows:

CRIMINAL CASE NO. 03-1425  
(For violation of Section 5, Article II, RA No. 9165)

That on or about the 2<sup>nd</sup> day of December 2003, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully[,] and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport Methylamphetamine Hydrochloride (shabu) in the total weight 0.10 gram, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>3</sup>

CRIMINAL CASE NO. 03-1426  
(For violation of Section 11, Article II, RA No. 9165)

That on or about the 2<sup>nd</sup> day of Dec. 2003, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess did then and there willfully, unlawfully[,] and feloniously have in his possession and under his control and custody Methylamphetamine Hydrochloride (shabu) weighing 0.02 gram, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>4</sup>

In the charge for illegal possession of drug paraphernalia, appellant was charged together with Ricardo Duque Fundales (Ricardo), Chulo Duque Fundales (Chulo), Jerico Cabangon Hugo (Jerico), and Joel Manuel Gomez (Joel). The Information reads:

CRIMINAL CASE NO. 03-1427  
(For violation of Section 12 in relation to Section 14, Article II, RA No. 9165)

That on or about the 2<sup>nd</sup> day of Dec. 2003, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, being in the proximate company of five (5) persons and having gathered together, not being lawfully authorized to possess and/or use any

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<sup>3</sup> Id. at 1.

<sup>4</sup> Id. at 9.

dangerous drug, did then and there willfully, unlawfully, and feloniously possess and have under their control any equipment, instrument, apparatus and other paraphernalia for or intended for smoking, consuming, administering, injecting or introducing any dangerous drug into the body, in violation of the above-cited law.

CONTRARY TO LAW.<sup>5</sup>

During arraignment, the appellant and his co-accused pleaded not guilty.<sup>6</sup> Thereafter, the parties agreed to terminate the pre-trial<sup>7</sup> and set the case for trial on the merits.

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

On the evening of December 2, 2003, the Chief of the Intelligence Unit of the Station Anti-Illegal Drug Special Task Force of Parañaque City Police, Police Superintendent Alfredo Valdez (P/Supt. Valdez), received an information from a confidential informant about the illegal drug trade operations conducted by the Fundales brothers. P/Supt. Valdez thus formed a buy-bust team composed of PO1 Ariel Ilagan, PO1 Cesarie Soquiña (PO1 Soquiña), PO1 Emmanuel Salvaloya, PO3 Regalado Adriatico and CE Ronald Tangcoy. The group then proceeded to 008 Jordan Street, Sitio Nazareth, *Barangay* San Isidro, Parañaque City for the buy-bust operation.

The group arrived in the vicinity of the target area at around 9:00 p.m.<sup>8</sup> PO1 Soquiña, who was designated as the poseur-buyer, and the informant proceeded to the house of the appellant.<sup>9</sup> The team remained inside their vehicles about 20 meters away from the target area. The informant then introduced PO1 Soquiña to the appellant as the person interested in buying *shabu* worth ₱500.00.<sup>10</sup>

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<sup>5</sup> Id. at 10.

<sup>6</sup> Id. at 13.

<sup>7</sup> Id. at 30.

<sup>8</sup> TSN, May 23, 2005, p. 15.

<sup>9</sup> Id. at 17.

<sup>10</sup> Id. at 19.

After PO1 Soquiña handed the ₱500.00 marked money to the appellant,<sup>11</sup> the latter then went inside his house and when he reappeared, he handed to PO1 Soquiña five plastic sachets containing white crystalline substance.<sup>12</sup> PO1 Soquiña then lit a cigarette which was the pre-arranged signal to inform the rest of the team that the buy-bust operation had been consummated.<sup>13</sup> Hence, the team of back-up police officers proceeded to appellant's house to apprehend him.<sup>14</sup> Inside the house, the police officers saw Jerico, Ricardo, Chulo, and Joel who appeared to be engaged in a pot session hence they were also arrested along with the appellant.<sup>15</sup>

The five sachets of white crystalline substance sold by appellant, together with one sachet obtained from the group and the drug paraphernalia, were immediately marked and inventoried. The same were then submitted to the crime laboratory of the Philippine National Police (PNP) for examination.<sup>16</sup> After conducting a forensic examination, P/Insp. Richard Allan B. Mangalip (Mangalip), Chief of the Physical Science Section and Forensic Chemical Officer of the PNP Crime Laboratory, issued Physical Science Report No. D-1402-03S<sup>17</sup> confirming that the specimen submitted yielded positive for the presence of Methamphetamine Hydrochloride.

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

On December 2, 2003, appellant was at home with Ricardo, Chulo, Joel, and Jerico repairing a washing machine.<sup>18</sup> At around 4:30 p.m., eight persons suddenly entered his house without warning and permission.<sup>19</sup> Aside from their weapons and handcuffs, there was no indication that the men were police officers

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<sup>11</sup> Id. at 20.

<sup>12</sup> Id. at 21-22.

<sup>13</sup> Id. at 22.

<sup>14</sup> Id. at 23.

<sup>15</sup> Id. at 24.

<sup>16</sup> Records, p. 6.

<sup>17</sup> Id.

<sup>18</sup> Id. at 214; TSN, June 21, 2005, p. 5.

<sup>19</sup> Id. at 216-217; id. at 7-8.

since they were all in civilian clothing.<sup>20</sup> Once inside, the men shouted, “*Walang gagalaw, sumama kayo sa amin*”.<sup>21</sup> They were then brought to the Coastal Police Station and detained there for two days.<sup>22</sup>

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

On March 18, 2006, the RTC rendered its Decision convicting appellant in Criminal Case No. 03-1425 for illegal sale of *shabu* and dismissing Criminal Case No. 03-1426 for illegal possession of dangerous drugs and Criminal Case No. 03-1427 for illegal possession of drug paraphernalia, for insufficiency of evidence. The dispositive portion of the Decision reads:

**WHEREFORE, PREMISES CONSIDERED**, finding **Calexto Duque Fundales, Jr[.]** **GUILTY** beyond reasonable doubt for Violation of Section 5 Article II RA 9165 he is hereby sentenced to life imprisonment and to pay a fine of P500,000.00. The case against him under Crim. Case No. 03-1426 for alleged [violation] of Section 11 Art. II RA 9165 is ordered **DISMISSED** being considered absorbed in the commission of Violation of Section 5 under Crim. Case No. 03-1425. The case for alleged Violation of Section 12 in relation to Section 14 Art. II RA 9165 against accused **Calexto Duque Fundales, Jr[.]**, **Ricardo Duque Fundales**, **Chulo Duque Fundales**, **Jerico Cabangon Hugo** and **Joel Manuel Gomez** is also ordered **DISMISSED** for insufficiency of evidence.

The Clerk of Court is directed to prepare the Mittimus for the immediate transfer of accused **Calexto Duque Fundales, Jr[.]** to the New Bilibid Prisons, Muntinlupa City and to forward the specimen subject of this case to the Philippine Drug Enforcement Agency for proper disposition.

The Jail Warden of this jurisdiction is hereby ordered to immediately release **JERICO CABANGON HUGO** from custody unless there be some other legal reason to warrant his further detention.

SO ORDERED.<sup>23</sup>

In finding appellant guilty of illegal sale of *shabu*, the RTC gave due consideration to the testimonies of the law enforcement officers.<sup>24</sup> It held that “no

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<sup>20</sup> Id. at 216; id. at 7.

<sup>21</sup> Id. at 218; id at 9.

<sup>22</sup> Id. at 219-222; id. at 10-11.

<sup>23</sup> Records, pp. 290-291. Emphases in the original.

<sup>24</sup> Id. at 290.

ill-motive or [wrongdoing] could be ascribed to the herein police officers with respect to the buy-bust operation x x x.”<sup>25</sup> It gave full credit and weight to the testimony of PO1 Soquiña who positively identified the appellant as the person from whom he bought five plastic sachets of *shabu* during the buy-bust operation.

### ***Ruling of the Court of Appeals***

On appeal, the CA affirmed the trial court’s Decision disposing as follows:

**WHEREFORE**, the assailed *Decision* dated 18 March 2006 of the Regional Trial Court of Parañaque City, Branch 259, in Criminal Case No. 03-1425 finding appellant Calexto Fundales, Jr. guilty beyond reasonable doubt of the crime of violation of Section 5, Article II, R.A. No. 9165 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>26</sup>

Not satisfied with the Decision of the CA, the appellant is now before this Court adopting the same issues he raised in the appellate court, *viz*:

#### **I**

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED BEYOND REASONABLE DOUBT.

#### **II**

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE EVIDENCE OF THE PROSECUTION AND DISREGARDING THE DEFENSE OF THE ACCUSED-APPELLANT.

#### **III**

THE TRIAL COURT GRAVELY ERRED IN FINDING THE EXISTENCE OF THE BUY-BUST OPERATION.

#### **IV**

THE TRIAL COURT GRAVELY ERRED IN UPHOLDING THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY IN FAVOR OF THE ARRESTING OFFICERS.<sup>27</sup>

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<sup>25</sup> Id.

<sup>26</sup> CA *rollo*, p. 107.

<sup>27</sup> Id. at 30.

### Issue

The main issue for resolution is whether the appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of RA No. 9165.

### Our Ruling

The appeal lacks merit.

“Conviction is proper in prosecutions involving illegal sale of [dangerous] drugs if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereto.”<sup>28</sup>

This Court is convinced that the prosecution sufficiently discharged the burden of establishing the elements of illegal sale of dangerous drugs and in proving the guilt of the appellant beyond reasonable doubt.

The identity of the buyer and the seller were both established by the prosecution, appellant being the seller and PO1 Soquiña as the poseur-buyer. The object of the transaction was the five sachets of Methylamphetamine Hydrochloride or *shabu* and the consideration was the ₱500.00 marked money. Both such object and consideration have also been sufficiently established by testimonial and documentary evidence presented by the prosecution. As to the delivery of the thing sold and the payment therefor, PO1 Soquiña caught appellant *in flagrante delicto* selling and delivering the prohibited substance during a buy-bust operation. He also personally handed to appellant the marked money as payment for the same. Clearly, the above-mentioned elements are present in this case.

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<sup>28</sup> *People v. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 339.

Appellant insists that the prosecution failed to establish his guilt beyond reasonable doubt. He argues that the prosecution's failure to present the forensic chemist during trial was fatal to its cause. According to the appellant, the laboratory report has no probative value since the forensic chemist did not attest to the report's authenticity.<sup>29</sup> In view of this, he points out that the prosecution failed to establish the *corpus delicti*.

This Court is not persuaded. We have already ruled in a number of cases that non-presentation of the forensic chemist in illegal drugs cases is an insufficient cause for acquittal.<sup>30</sup>

In *People v. Quebral*,<sup>31</sup> we held thus:

The accused-appellants also point out that, since the chemist who examined the seized substance did not testify in court, the prosecution was unable to establish the indispensable element of *corpus delicti*. But this claim is unmeritorious. This Court has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. This means that proof beyond doubt of the identity of the prohibited drug is essential.

Besides, *corpus delicti* has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts they state. Therefore, the report of Forensic Chemical Officer Sta. Maria that the five plastic sachets PO3 Galvez gave to her for examination contained *shabu* is conclusive in the absence of evidence proving the contrary. x x x (Citations omitted.)

Thus, it is of no moment that Forensic Chemical Officer Mangalip was not presented as witness. The non-presentation as witnesses of other persons who had custody of the illegal drugs is not a crucial point against the prosecution.<sup>32</sup> "It is the prosecution which has the discretion as to how to present its case and it has the

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<sup>29</sup> CA rollo, pp. 36-37.

<sup>30</sup> *People v. Sultan*, G.R. No. 187737, July 5, 2010, 623 SCRA 542, 556.

<sup>31</sup> G.R. No. 185379, November 27, 2009, 606 SCRA 247, 255.

<sup>32</sup> *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 235.



right to choose whom it wishes to present as witnesses.”<sup>33</sup> What is important is that the integrity and evidentiary value of the seized drugs are properly preserved as it had been so in this case.

Besides, it has not escaped our attention that during the proceedings before the trial court, both the prosecution and the defense agreed to dispense with the testimony of the forensic chemist. During the trial held on August 19, 2004, the parties stipulated as regards the probative value of the documents and physical evidence marked as Exhibits “A” to “C.”<sup>34</sup> Exhibit “A” pertained to the letter request for laboratory examination of the specimens. Exhibit “B” was the specimen subject to laboratory examination; while Exhibit “C” was the Physical Science Report No. D-1402-03S submitted by the forensic chemist. The parties likewise stipulated that it was Forensic Chemical Officer Mangalip who conducted a qualitative examination on the specimens.

Appellant next claims that the pieces of evidence adduced by the prosecution were obtained in violation of Sections 21 and 86(a) of RA No. 9165 regarding the proper custody and disposition of seized narcotic substances and dangerous drugs. He also avers that the prosecution failed to prove that the police officers coordinated and reported the buy-bust operation with the Philippine Drug Enforcement Agency (PDEA).

The provisions of RA No. 9165 cited by the appellant are meant to safeguard the accused in drugs cases against abuses of law enforcement officers. They provide for the proper handling of confiscated dangerous drugs in order to prevent malicious imputations of guilt upon an unsuspecting accused.

However, as correctly ruled by the CA, this Court has already held in *People v. Sta. Maria*<sup>35</sup> that:

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<sup>33</sup> *People v. Rivera*, G.R. No. 182347, October, 17, 2008, 569 SCRA 879, 893.

<sup>34</sup> Records, p. 85.

<sup>35</sup> G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

[T]he failure of the law enforcers to comply strictly with Section 21 was not fatal. It did not render [the] appellant's arrest illegal nor the evidence adduced against him inadmissible.

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

As in the above-quoted case, the appellant here did not question during trial the alleged improper handling of the items seized from him, it being the proper time for him to raise such objections. We cannot thus accept such belated argument of the appellant especially so when the integrity of the items seized from him was shown to have been preserved. Evidence on record shows that the seized drugs were inventoried. "Slight infractions or nominal deviations by the police from the prescribed method of handling the *corpus delicti* should not exculpate an otherwise guilty defendant."<sup>36</sup>

Appellant further claims that the police officers failed to coordinate and report the buy-bust operation with the PDEA. To appellant, this tainted the presumption of regularity in the performance of duty of the police officers. He likewise posits that the arresting officers had insufficient authority to conduct the said operation.

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<sup>36</sup> *People v. Sultan*, supra note 30 at 552.

Section 86<sup>37</sup> of RA No. 9165 deals with inter-agency relations of the PNP and other law enforcement agencies with the PDEA. It is an administrative provision designating the PDEA as the lead agency in dangerous drugs cases. We have already ruled that nothing in RA No. 9165 suggests that it is the intention of the legislature to make an arrest in drugs cases illegal if made without the participation of the PDEA.<sup>38</sup> In the implementing rules and regulations of RA No. 9165, Section 86(a) clearly states:

(a) Relationship/Coordination between the PDEA and Other Agencies. – **The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA xxx** Provided, finally, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court. (Emphasis supplied)

Suffice it to state that in this case, the danger of abuse that the provision seeks to prevent is not present. We therefore see no reason why the non-participation of the PDEA would render the arrest illegal and the evidence obtained therein inadmissible considering that the integrity and evidentiary value

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<sup>37</sup> **Section 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions.** – The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: *Provided*, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: *Provided*, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided, however*, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

<sup>38</sup> *People v. Sta. Maria*, supra note 35 at 634.

of the seized prohibited substances and dangerous drugs have been properly preserved.

Appellant further asserts that no buy-bust operation took place contrary to the testimony of the arresting officers. He claims that on the day of the alleged buy-bust operation, he was at home repairing a washing machine.

Appellant's contention does not deserve serious consideration. It is well-settled that the testimonies of the police officers in dangerous drugs cases carry with it the presumption of regularity in the performance of official functions. "Law enforcers are presumed to have performed their duties regularly in the absence of evidence to the contrary."<sup>39</sup> In this case, PO1 Soquiña narrated in a straightforward manner the circumstances leading to the sale of *shabu*. He positively and categorically identified appellant as the seller of the drugs. Absent any clear showing that the arresting officers had ill motive to falsely testify against the appellant, their testimonies must be respected and the presumption of regularity in the performance of their duties must be upheld. Appellant himself testified that he never had any personal encounter with the police prior to his arrest,<sup>40</sup> thus negating any ill-motive on the part of the police officers.

The appellant, on the other hand, offers mere denial as his defense. He claims that he was merely fixing a washing machine at the time of the arrest and that the alleged buy-bust operation was fictitious. However, other than his own self-serving testimony, appellant has not offered any evidence to support this claim. We have held that "[a] bare denial is an inherently weak defense x x x."<sup>41</sup> Appellant's denial is unsubstantiated by any credible and convincing evidence. Between the positive and categorical testimonies of the arresting officers on one hand, and the unsubstantiated denial of the appellant on the other, we are inclined to uphold the former.

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<sup>39</sup> *People v. Padua*, supra note 32 at 238.

<sup>40</sup> Records, p. 226; TSN, June 21, 2005, p. 17.

<sup>41</sup> *People v. Quigod*, G.R. No. 186419, April 23, 2010, 619 SCRA 407, 424.

All told, this Court thus sustains the RTC's conviction of the appellant for violation of Section 5, Article II of RA No. 9165, as affirmed by the CA.

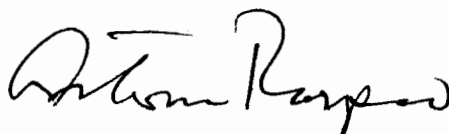
**WHEREFORE**, the appeal is **DENIED**. The April 18, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02274 is **AFFIRMED**.

**SO ORDERED.**



MARIANO C. DEL CASTILLO  
*Associate Justice*

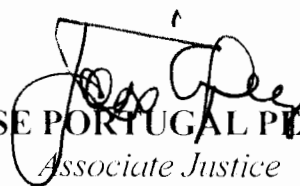
WE CONCUR:



ANTONIO T. CARPIO  
*Associate Justice*  
*Chairperson*



ARTURO D. BRION  
*Associate Justice*



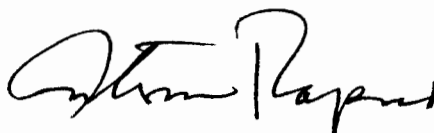
JOSE PORTUGAL PEREZ  
*Associate Justice*



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

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*

