



**SANDIGANBAYAN**  
Quezon City

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Second Division

**PEOPLE OF THE  
PHILIPPINES,**  
Plaintiff,

CRIM. CASE NO. SB-17-CRM-0049

For: Violation of Sec. 1(c)  
Presidential Decree No. 1829

-versus-

**BAGUINDA-ALI AHMAD  
PACALNA,**  
Former Presiding Judge  
Municipal Trial Court in Cities  
Marawi City, Lanao del Sur  
**Accused.**

Present:  
Herrera, Jr., J. *Chairperson*  
Musngi, J. &  
Pahimna, J.

Promulgated:

December 7, 2018 *[Signature]*

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**DECISION**

**PAHIMNA, J.:**

Accused is charged before this Court with ***Violation of Sec. 1 (c) of Presidential Decree No. 1829 otherwise known as PENALIZING OBSTRUCTION OF APPREHENSION AND PROSECUTION OF CRIMINAL OFFENDERS*** under an ***Information***<sup>1</sup> dated July 12, 2016, filed by Assistant Special Prosecutor III Maria Janina J. Hidalgo of the Office of the Special Prosecutor, which bears the approval of then Ombudsman Conchita Carpio Morales. The accusatory portion of which reads:

*[Signature]*

<sup>1</sup> Records, pp. 1-3

*[Signatures]*

“On 19 September 2007 or sometime prior or subsequent thereto, in Marawi City, Lanao del Sur and within this Honorable Court’s jurisdiction; **BAGUINDA-ALI AHMAD PACALNA (SG 27)**, took advantage of his position as Presiding Judge of the Municipal Trial Court in Cities, Marawi City and committed the offense in relation thereto when-aware of the arrest and detention of Menor Saud at the Marawi City Jail-Pacalna knowingly, willfully and criminally obstructed Saud’s apprehension, investigation and prosecution by exerting undue influence over the Jail Warden to turn over custody of Saud’s person to him solely on the basis of an acknowledgement receipt that Pacalna prepared and signed as Judge, and allow Saud’s removal from the jail premises, which removal facilitated Saud’s escape due to the absence of physical restraints and concrete barriers.

**CONTRARY TO LAW.”**

### ANTECEDENT FACTS

On March 17, 2017, accused voluntarily surrendered to the NBI-Iligan District Office, Iligan City and thereafter posted the bail of P12,000.00 before the Regional Trial Court Branch 3, Iligan City.<sup>2</sup>

Before the accused could be arraigned, he filed a **Motion for Judicial Re-Determination of Probable Cause**<sup>3</sup> praying that the instant case be dismissed for lack of probable cause. By way of **Comment/Opposition**<sup>4</sup> the plaintiff argued that the Office of the Ombudsman has found, based on the evidence adduced during the preliminary investigation that sufficient grounds exist to indict accused with this charge.

<sup>2</sup> Records, p. 83

<sup>3</sup> Ibid., p. 113

<sup>4</sup> Ibid., p. 170

In a **Resolution**<sup>5</sup> promulgated on June 15, 2017, this Court denied the **Motion** ruling that the movant's contention is a matter of defense that should be proved by evidence during the trial of the case. This finding was upheld by the Supreme Court following denial of the *Petition for Certiorari* filed by the accused.

When finally arraigned on *August 3, 2017*, Accused entered a plea of NOT GUILTY to the offense charged<sup>6</sup>.

With the termination of Pre-Trial<sup>7</sup>, trial ensued.

### **PROSECUTION EVIDENCE**

To prove the charges against the accused, the prosecution presented the following:

#### **1. MAMINTAL OSOP**

Witness is 47 years old, Police Officer at Philippine National Police residing at Marawi City. He narrated that:

He is currently assigned as police officer at Kalinga Police Provincial Office and prior thereto, he was assigned at Marawi Police Station from 2000 to 2016. In relation to his job in Marawi City, he remembered executing an Administrative Complaint<sup>8</sup> against the accused who positively identified in Court. The said administrative complaint was signed by PO1 Agakhan Tomawis, Alano D. Osop, Casanali M. Lawi, Ricky C. Cogo, Casan Imam, Anowar Modasir, Alnasser Ali and he<sup>9</sup>. He knows the signatures appearing thereon because he is familiar with them being his companions. In paragraph 4 of the said affidavit, they mentioned of a Warrant of Arrest<sup>10</sup> against one Menor Saud. He likewise identified an acknowledgment

<sup>5</sup> Records, pp. 200-202

<sup>6</sup> Ibid., p. 218

<sup>7</sup> Ibid., p. 236

<sup>8</sup> Exhibit D

<sup>9</sup> TSN, October 18, 2017 p.9-11

<sup>10</sup> Exhibit H

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receipt<sup>11</sup> allegedly issued by accused and the Complaint against Menor Saud for illegal possession of firearms.<sup>12</sup>

On cross-examination by accused himself, he admitted that he had been working as Police Officer for the last 18 years. He also testified that when they arrested Menor, they were armed with a Warrant of Arrest and admitted that he did see the accused inside the City Jail when the accused allegedly took custody of Menor Saud.

On re-direct, he admitted that he saw the accused inside the City Jail from his position because it was merely a partition away (*pader lang ang pagitan naming*) from their Police Station<sup>13</sup>. He also narrated that he verified that accused took custody of Menor Saud from his team leader who showed him the handwritten acknowledgment note of accused. However, he later confirmed that he saw the accused coming inside their Police Station and not inside the City Jail.

## 2. CASAN IMAM


His testimony is being offered to prove that he is one of the arresting officers who arrested Menor Saud on September 19, 2017 and turned him over to Marawi City BJMP. Also, to prove that the witness is one of the complainants in the administrative complaint before the Supreme Court against accused Judge Pacalna of MTC – Marawi City. He narrated as follows:

He was a Police Officer in 2007 at Marawi City. On September 19, 2007, PO2 Ricky Cogo, PO1 Agakhan Tomawis, PO1 Alano D. Osop, PO1 Mamintal Osop, PO1 Alnasser Ali and he were on patrol at Brgy. Lilod, Marawi City when they saw a man whom they later identified as Menor Saud holding a 357-revolver gun. After seeing this, they approached him and asked if he has any papers with respect to his possession of a gun but

<sup>11</sup> Exhibit E

<sup>12</sup> TSN, October 18, 2017

<sup>13</sup> Ibid. p. 29



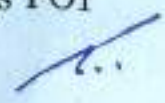
he could not produce any, so they brought him to the Police Station where the investigator took his statement. It was later found out that he has a pending warrant of arrest<sup>14</sup>. Because of the pending Warrant of Arrest, he was brought to the City Jail. Thereafter, they resumed conduct of patrol operation. The following day, they returned to the station and executed a formal affidavit<sup>15</sup> so they can charge Menor Saud. However, after preparing the said affidavit, they found out that Menor Saud had already been released per information relayed to them by PO1 Agakhan Tomawis, who remained at the Police Station while they were on patrol. Upon learning of the release of Menor Saud, they immediately went to the City Jail and verified that the latter was no longer there as he was allegedly taken or accompanied by herein accused. They were not able to see the actual release of Menor Saud but the BJMP showed them the handwritten note of accused acknowledging receipt<sup>16</sup> of Menor Saud in his custody. They went back to their station to continue preparing the charges against Menor Saud. Thereafter, their team leader consulted some law students from Mindanao State University (MSU) and these law students helped them in preparing an Administrative Complaint which they later filed before the Supreme Court<sup>17</sup>.

On cross-examination, he testified that they filed a case for Illegal Possession of Firearms against Saud before the City Courts of Marawi. He admitted that when said Saud was allegedly freed by accused from the custody of the BJMP, he did not witness the same nor did he see the accused writing the note acknowledging receipt of custody of Saud.

On re-direct examination, he acknowledged that he understood the contents of the affidavit that his colleagues and he had executed.

When asked by the Court who in particular told him that Menor Saud was no longer in jail, he admitted that it was PO1

<sup>14</sup> Exhibit H  
<sup>15</sup> Exhibit I  
<sup>16</sup> Exhibit E  
<sup>17</sup> Exhibit D



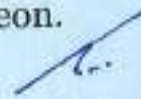
Agakhang Tomawis who told him "*wala na sa BJMP si Menor Saud kasi kinuha na ni Judge Pacalma*".

### 3. ANOWAR MODASIR

He was a police officer stationed at Marawi City in 2007. On September 19, 2017, PO2 Ricky Cogo, PO1 Casan Imam, PO1 Agakhan Tomawis, PO1 Alano D. Osop, PO1 Mamintal Osop, PO1 Alnasser Ali and he were on patrol operation at Brgy. Lilod Madaya, Marawi City when they saw a man whom they later identified as Menor Saud holding a 357-revolver gun. After seeing this, they approached him and asked if he has any papers with respect to his possession of a gun but he could not produce any so they brought him to the Police Station where the investigator took his statements and it was later found out that he has a pending warrant of arrest. Then, they brought Menor Saud for a medical check-up and thereafter, brought him to the BJMP. They left the BJMP to continue with their patrol operation. The following day, they were told by Agakhan Tomawis that Menor Saud was no longer in BJMP so they went to the City Jail to verify and found out from the Jail Warden that Saud had already been released to accused who acknowledged receipt of his custody through a handwritten note shown to them. Thereafter, they proceeded to execute an Administrative Complaint<sup>18</sup> against accused.

On cross-examination, he admitted that they arrested Menor Saud without prior warrant of arrest against him and that it was only after he was brought to the Police Station that they learned that a pending warrant has been issued for his arrest. They brought Saud to Amai Pakpak Public Hospital but the medical records which were placed at BJMP were burned during the Marawi siege. He also admitted that it was Warden Arasol Agio who gave them the handwritten receipt of accused and they have no knowledge if accused was the one who prepared the same including the signature thereon.

<sup>18</sup> Exhibit D



When asked by the Court, he admitted that they did not execute an affidavit complaint against Saud immediately after bringing him to the Police Station nor ask the officers from the BJMP why they released Saud the following day.

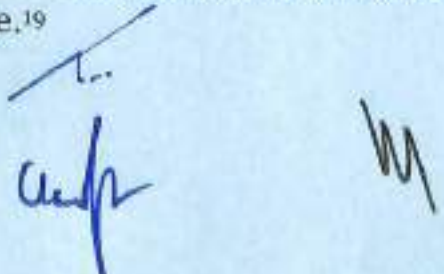
### DOCUMENTARY EVIDENCE

On May 8, 2018, the Prosecution formally offered the following exhibits which the Court admitted, to wit:

Exhibit "A" to "A-3"	Complaint Affidavit dated August 15, 2013 of Court Administrator Jose Midas P. Marquez
Exhibit "B"	Resolution issued by the First Division of the Supreme Court dated August 17, 2011 in Administrative Matter No. MTJ-11-1791
Exhibit "C" to C-5"	Memorandum dated 29 June 2011 of the OCA Re: OCAQ IPI No. 08-1958-MTJ
Exhibit "D to D-4"	Administrative Complaint dated 27 September 2007 against accused
Exhibit "E"	Handwritten acknowledgment of Judge B. Pacalna dated September 19, 2007
Exhibit "F to F-14"	Investigation Report and Recommendation dated December 8, 2010 by EJ Gamor B. Disalo in MISC No. 4636 A.M. OCA IPI No. 08-MTJ for abuse of authority against accused Judge
Exhibit "G"	Subpoena Duces Tecum dated 24 October 2007 issue by the RTC Branch 8 – Marawi City in Criminal Case No. 5353-06 to the City Warden Marawi City to bring Menor Saud to the Court with a notation "Accused under the custody of Judge Baguinda Ali Pacalna
Exhibit "H"	Warrant of Arrest of Menor Saud issued by the RTC Branch 8, Marawi City under Criminal Case No. 5353-06
Exhibit "I"	Complaint Affidavit for Illegal Possession of Firearms against Menor Saud dated September 20, 2007
Exhibit "J" to "J-5"	Comment on the Administrative Complaint of Judge Baguinda Ali Pacalna

On even date, accused orally moved for leave of court to file Demurrer to Evidence but the Court denied the same.<sup>19</sup>

<sup>19</sup> Order dated May 8, 2018, Records, p. 404



### EVIDENCE FOR THE DEFENSE

The Defense presented its lone witness, **ANSOLORA ALONTO**, who narrated the following:

He is the Retired City Warden of Marawi City who served as such for three (3) years. On September 17, 1997, he recalled that there is a certain Menor Saud who was moved to their Jail Facility because he was arrested and turned over by the police. As the BJMP head, he directed that Menor Saud be booked and put inside the cell. He noticed that Saud had some bruises "or parang may pasa". As it was already nighttime, the relatives of Saud came and asked if they could talk to Saud and bring him to the hospital for the treatment of his bruises. As a response, he asked if they have a relative who has a position in government, the reason for asking was to make sure Menor Saud would not escape. When the relatives came back, they were accompanied by accused and told them to make a request so they could accompany Saud by way of convoy. Thereafter, he ordered her two (2) jail guards to accompany Menor Saud to the hospital. After his treatment at the hospital Menor Saud was brought back to his cell. He also narrated that he never ordered Judge Pacalna to take custody of Menor Saud but merely to accompany him to the hospital for treatment of his bruises. When he received a Court Order from Judge Ibrahim directing her to release Menor Saud, it was the only time Menor Saud was released as the case filed against him was dismissed. He denied releasing Menor Saud to the custody of accused merely on the basis of the handwritten acknowledgment receipt he allegedly received as he would never allow the same and insisted that what he agreed upon was for the accused to accompany Menor Saud only to the hospital for treatment.

On cross-examination, he admitted that there was no Court Order issued as far as bringing Menor Saud to the hospital for treatment.

When asked by the Court if he received any written request for Menor Saud to be brought to the hospital, he answered that there was such a request from the relatives and Saud himself but he was not able to bring the records as similar documents are still missing in Marawi City due to the recent siege. He further admitted that because of the threat against his life

*[Handwritten signature]*

*[Handwritten mark]*



made by the relatives of Menor Saud that he readily agreed to the request of the relatives to bring Saud to the hospital.

### DOCUMENTARY EVIDENCE

On July 2, 2018, Defense orally offered the following exhibits which the Court admitted, to wit:

Exhibit "1"	Affidavit of Ansarola Alonte
Exhibit "2"	Pictures of Menor Saud
Exhibit "3"	Medical Certificate of Menor Saud
Exhibit "4"	Handwritten note of Accused Pacalna

### THE FACTS

On September 19, 2007, while PO2 Ricky Cogo, PO1 Agakhan Tomawis, PO1 Alano D. Osop, PO1 Mamintal Osop, PO1 Alnasser Ali and PO1 Casan Imam were conducting a routine patrol, they accosted a suspicious-looking person who has a gun tucked in his waist and was later identified as Menor Saud. They found out later on that said Menor Saud has a pending case before the Regional Trial Court, Branch 8 Marawi City and docketed as Criminal Case No. 5353-06 for carnapping.

On the same day in Marawi City, the accused presented himself before the arresting officers and Jail Warden Ansorola R. Alonto and demanded that the custody of Saud be turned over to him. The jail warden was left with no choice except to surrender Saud to the accused but not without executing an acknowledgment receipt relative to the turn-over of custody of Saud.

Consequently, the police officers filed an Administrative Case against accused before the Office of the Court Administrator of the Supreme Court for interfering in the arrest of Menor Saud, an accused in Criminal Case no. 5553-6. In answer, accused admitted taking custody of Menor Saud to bring him to the hospital for treatment of injuries allegedly sustained during his arrest.

The Administrative Complaint against accused was investigated upon instruction of the Supreme Court. It was discovered that sometime in

*[Handwritten signatures and marks]*

October 2007, the Regional Trial Court, Br. 8 Marawi City issued a Subpoena Duces Tecum dated October 24, 2007 in Criminal Case No. 5353-06 to the City Warden of Marawi City for the latter to bring back Menor Saud to the Court for the Trial of the latter's carnapping case. The subpoena was returned to the Court with the notation "Accused under the custody of Judge Barguinda Ali Pacalna".

In a **Resolution**<sup>20</sup> dated August 17, 2011, which served as the basis for the Criminal Complaint leading to the instant case, accused was found *Guilty of Gross Misconduct* for taking custody of a detained person without lawful authority.

### FINDINGS AND CONCLUSION

Accused is charged with violation of P.D. 1829 which penalizes any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the enumerated acts. If any of the said acts is committed by a public official or employee, he shall in addition to the penalties provided therein shall suffer perpetual disqualification from holding public office.

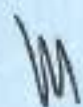
Sec. 1 (c) of P.D. 1820 particularly provides:

*Sec.1 - The penalty of prison correccional in its maximum period, or a fine ranging from 1,000 to 6,000 pesos, or both, shall be imposed upon any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:*

xxxx

*(c) harboring or concealing, or facilitating the escape of, any person he knows, or has reasonable ground to believe or suspect, has committed by offense under existing penal laws in order to prevent his arrest prosecution and conviction;*

<sup>20</sup> Per Notice of First Division, Records, p. 21



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The general meaning of "obstruction of justice" denotes an interference with the orderly administration of law, impeding or obstructing those who seek justice in court or those who have duties or power of administering justice therein.<sup>21</sup>

In the instant case, the prosecution proved that the following elements of the offense are present:

1. The accused is a public officer discharging administrative, judicial or official functions;
2. The accused knows, or has reasonable ground to believe or suspect, that the person he assisted has committed any offense under existing penal laws; and
3. The accused harbors or conceals or facilitates the escape of a person to prevent his arrest, prosecution and conviction.

Verily, accused was a Presiding Judge at the time he removed Menor Saud from the City Jail, knowing that he was apprehended by the police officers of Marawi City.

His allegations that he neither obstructed nor intended to obstruct the administration of justice as Saud's call for assistance was so 'deafening that everyone who had the heart would have lent succor to him especially in the light of the fact that Saud's arresting officers did not bring him to the hospital for fear of being indicted for police brutality'<sup>22</sup> does not hold water.

Per Court Administrator, Jose Midas P. Marquez, in his Memorandum to then Hon. Chief Justice Renato Corona, dated June 29, 2011, "the accused, being a public officer appointed to preside over a court and a member of the bar, is to be evaluated according to a high standard in that the Courts and the office of a judge exist primarily for the promotion of

<sup>21</sup> To Strictly Penalize Offenses Against the Proper Administration of Justice: A Critique of Presidential Decree 1829 "Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders", Allan Verman Y. Ong citing 58 AmJur 2d Obstructing Justice § 2 (citing People v. Ormsby, 310 Mich 291, 17 NW2d 187; People v. Somma, 123 Mich App 658, 333 NW2d 117; Shackelford v. Commonwealth, 185 Ky 51, 214 SW 788).

<sup>22</sup> Records p. 8 citing accused's allegation in his Counter-Affidavit

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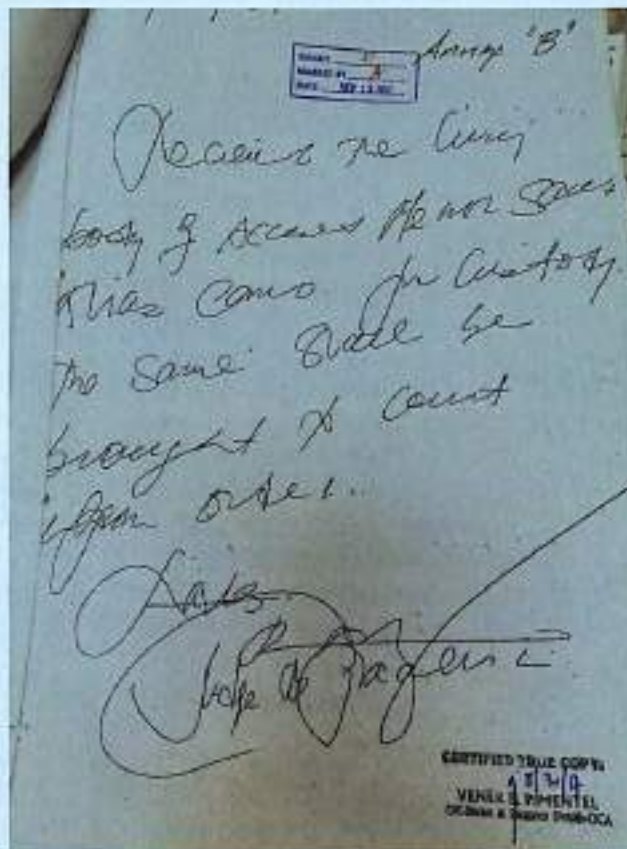
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justice, the stability of government and the well being of the people. Therefore, the misuse of such power in order to facilitate wrongdoing to the detriment of the society cannot be countenanced.”<sup>23</sup> (citations omitted)

Interestingly, accused never denied having executed and signed the handwritten note<sup>24</sup> acknowledging receipt of the living body of Menor Saud for custody when the latter was detained at the Marawi City Jail.

For a clear understanding, the handwritten note is hereto incorporated, to wit:



Accused would like to point out that he did not take custody of the living body of Menor Saud as he merely brought him to the hospital for treatment, but this run counter to what he wrote in the above note. It is very clear that he was receiving Menor Saud for custody.

Further, as revealed in the investigation conducted, Menor Saud was never returned to the City Jail after being brought out by the accused which

<sup>23</sup> Exhibit C  
<sup>24</sup> Exhibit E

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led Executive Judge Disalo to conclude that accused committed abuse of authority/exerted undue influence in committing the acts complained of.<sup>25</sup>

Likewise, the notation "Accused under the custody of Judge Baguinda Ali Pacalna" on the Subpoena Duces Tecum<sup>26</sup> received by the BJMP Office on September 25, 2007 further bolster this finding of Executive Judge Disalo and contradicts the statement<sup>27</sup> made by defense witness Ansolora Alonto that Menor Saud was brought back to the detention cell after he was taken by accused to be treated in the hospital on September 19, 2007.

It must be noted that the release of a detention prisoner must be upon the Order of a competent court, either through recognizance or by posting of a bond in any form allowed by law. Sec. 3, Rule 114 of the Revised Rules of Criminal Procedure provides, thus:

*Sec. 3. No release or transfer except on court order or bail – No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail.*

Notwithstanding the good intentions of the accused in bringing Menor Saud to the hospital for immediate medical attention, his act of taking into his custody his living body is still considered non-procedural. The above-quoted provision is explicit and requires no further interpretation.

Such act of the accused in taking Menor Saud from his detention without lawful authority is highly irregular, illegal and not in accordance with proper procedure. As a judge, accused cannot feign ignorance of correct procedures, or if such were indeed the case, bespeaks of grave ignorance of the law which demonstrates accused's unsuitability to exercise his mandate as a judge.<sup>28</sup>

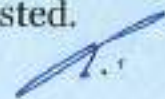
Taking advantage of his position as a judge, his act was clearly tainted with undue influence upon the Jail Warden when the latter allowed the unlawful release of Menor Saud sans any Court Order or bail being posted.

<sup>25</sup> Records, p. 25

<sup>26</sup> Exhibit G

<sup>27</sup> TSN, July 2, 2018, p. 16


<sup>28</sup> Records, p. 25




Given the foregoing facts and taking into consideration the admission of accused that he has executed and signed a handwritten note clearly stating that he received the living body of one Menor Saud for custody without any lawful authority, the guilt of accused has been proven beyond reasonable doubt.


**WHEREFORE**, finding accused **BAGUINDA-ALI AHMAD PACALNA** guilty of violation of Sec. 1(c) of Presidential Decree No. 1829 otherwise known as *Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders*, this Court hereby sentences him to suffer the penalty **of a fine of P6,000.00, with subsidiary imprisonment in case of insolvency; and perpetual disqualification from holding public office.**

**SO ORDERED.**

  
**LORIFEL L. PAHIMNA**  
Associate Justice


*We concur:*

  
**OSCAR M. HERRERA, JR.**  
Chairperson  
Associate Justice

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice

**ATTESTATION**

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

  
**OSCAR M. HERRERA, JR.**  
Chairperson  
Second Division

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice

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