



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **04 August 2021** which reads as follows:*

“**G.R. No. 252546** (*People of the Philippines v. Virgilio Bandong y Salarda @ Ver and Joan Fernandez y Avaño*). – This is an ordinary appeal¹ assailing the Decision² dated July 12, 2019 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 11410 which affirmed the Decision³ dated May 18, 2018 of Branch 48, Regional Trial Court (RTC), Urdaneta City, Pangasinan, in Criminal Case No. U-19200 finding accused-appellants Virgilio Bandong y Salarda @ Ver (Virgilio) and Joan Fernandez y Avaño (Joan) guilty beyond reasonable doubt of violation of Section 5,⁴ Article II of Republic Act (RA) No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

The Antecedents

Virgilio and Joan, together with their co-accused Lourdes Bandong y Soriano (Lourdes), were charged with Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165, in an Information⁵ which states:

¹ *Rollo*, pp. 20-21.

² *Id.* at 3-19; penned by Associate Justice Ramon R. Garcia with Associate Justices Eduardo B. Peralta, Jr., and Gabriel T. Robeniol, concurring.

³ *CA rollo*, pp. 55-64; penned by Presiding Judge Gonzalo P. Marata.

⁴ Section 5, *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions, approved on June 7, 2002.

⁵ As culled from the CA Decision, *rollo*, pp. 4-5.

- more -

That on or about 4:00 o'clock in the afternoon of October 31, 2013 at Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously sell ten (10) heat-sealed transparent plastic sachets each containing, to wit:

- | | |
|-----------------|------------------|
| 1) 4.506 grams; | 6) 4.538 grams; |
| 2) 4.509 grams; | 7) 4.469 grams; |
| 3) 4.572 grams; | 8) 4.459 grams; |
| 4) 4.492 grams; | 9) 4.506 grams; |
| 5) 4.460 grams; | 10) 4.293 grams; |

with a total weight of 44.804 grams of Methamphetamine Hydrochloride (*SHABU*), a dangerous drug.

CONTRARY to Section 5, Article II, RA No. 9165.⁶ (Emphasis omitted).

When arraigned on December 9, 2013, the three accused, with the assistance of counsel, pleaded not guilty to the charge against them.⁷

Trial ensued.⁸

Version of the Prosecution

The prosecution established that on October 28, 2013,⁹ the Philippine Drug Enforcement Agency (PDEA), Regional Office (RO) 3, Pampanga received a tip from a confidential informant (CI) that a certain alias "*Baby*" and her cohorts were selling *shabu* in Urdaneta City, Pangasinan. Intelligence Officer 1 Elmer Verceles (IO1 Verceles) then instructed the CI to buy from alias "*Baby*" 20 *bulto* or a total of 100 grams of *shabu* for the amount of ₱400,000.00.¹⁰

On October 30, 2013, the operatives of PDEA RO3 planned a buy-bust operation against alias "*Baby*." After PDEA RO3 coordinated with PDEA RO1 (Pangasinan), the PDEA National Operations Center sent a control number authorizing the operatives of PDEA RO3 to proceed with the buy-bust operation.¹¹

⁶ As culled from the CA Decision, *id.*

⁷ *Id.* at 5.

⁸ *Id.*

⁹ October 29, 2013 in the RTC Decision; See CA *rollo*, pp. 56-57. There is a discrepancy in the date of receipt of the tip. The RTC Decision dated May 18, 2018, provides that the PDEA RO3 received the tip on October 29, 2013.

¹⁰ *Rollo*, pp. 5-6; CA *rollo*, pp. 56-57.

¹¹ *Rollo*, p. 6.

At around 4:00 p.m. of the same day, the operatives of PDEA RO3 proceeded to Dagupan City, Pangasinan. When they arrived in Dagupan City, Agent Rogelito A. Daculla, the buy-bust team leader, conducted a final briefing wherein he designated IO1 Verceles to be the *poseur*-buyer and Agent Jerico Inocencio¹² (Agent Inocencio) as the immediate back-up officer. IO1 Verceles then placed two marked genuine ₱500.00 bills on top of two bundles of boodle money worth ₱400,000.00.¹³

At about 10:00 p.m., IO1 Verceles and the CI went to the target area, a videoke bar in front of the San Miguel Plant in Sta. Barbara, Pangasinan. Upon arrival thereat, they stayed in a waiting shed in front of the videoke bar. Later, a woman who introduced herself as alias “Joan” (later identified as herein accused-appellant Joan) approached and invited them inside the videoke bar, but IO1 Verceles refused the invitation. Subsequently, an old woman came out from the videoke bar and invited them to go inside. The CI recognized her to be alias “Baby” (later identified as herein accused Lourdes). Lourdes assured the CI and IO1 Verceles that the items were inside the videoke bar and in the possession of alias “Ver” (later identified as herein accused-appellant Virgilio). IO1 Verceles then showed the buy-bust money to Lourdes when the latter asked for reassurance about the payment. Satisfied, Lourdes went back inside the videoke bar. After a few minutes, Virgilio, Lourdes, and Joan approached the waiting shed and invited the CI and IO1 Verceles to go with them inside the videoke bar. At this point, IO1 Verceles deemed it too risky to proceed, and thus, decided to leave and continue the operation the next day.¹⁴

The following day, the CI and Lourdes continued to communicate and agreed to continue with the drug deal. The buy-bust team then instructed the CI to inform her that the transaction will push through at Jollibee, Urdaneta City. The team agreed that the pre-arranged signal would be the removal of IO1 Verceles’ eyeglasses.¹⁵

At around 4:00 p.m. on even date, IO1 Verceles and the CI entered Jollibee, while the rest of the buy-bust team strategically positioned themselves around the area. In a few minutes, Joan and Lourdes arrived and approached IO1 Verceles. They insisted to see the money and asked if they can count the bills inside the restroom. IO1 Verceles refused and

¹² “Jericho Jeorge Inocencion” in some parts of the *rollo*.

¹³ *Rollo*, p. 6; *CA rollo*, pp. 77-78.

¹⁴ *Rollo*, pp. 6-7.

¹⁵ *Id.* at 7.

demanded that the *shabu* be handed to him first. Lourdes went out and then came back with Virgilio, who was then holding a paper bag. Thereafter, Virgilio handed over the paper bag to IO1 Verceles, who immediately opened it. After finding that the contents of the bag were transparent plastic sachets containing white crystalline substance, he gave the marked money to Joan and executed the pre-arranged signal.¹⁶

In no time, the back-up team rushed to the area and assisted IO1 Verceles in apprehending Lourdes, Joan, and Virgilio. IO1 Verceles then marked the seized items. To avoid a commotion in the area and to ensure their safety and security, the buy-bust team, together with the arrested suspects, proceeded to the PDEA office in Dagupan City. There, the PDEA operatives conducted the inventory and took photographs of the confiscated items which were witnessed by *Brgy.* Captain Felixberto De Guzman, ABS-CBN correspondent Michelle Soriano, and GMA correspondent Jette Arcellana.¹⁷ Thereafter, they brought the seized items to the Philippine National Police (PNP) Regional Urdaneta City Crime Laboratory Office. After PCI Emelda Besarra Roderos (PCI Roderos), the forensic chemist, conducted an examination of the items, she issued Chemistry Report No. D-142-2012-U dated November 1, 2013 stating that the ten (10) plastic sachets tested positive for methamphetamine hydrochloride or *shabu*.¹⁸

Version of the Defense

The defense presented Virgilio, Joan, and Lourdes for their testimonies.¹⁹

Virgilio testified that in the afternoon of October 31, 2013, he was at his repair shop in Sta. Barbara, Pangasinan when his neighbors, Lourdes and Joan, asked him to accompany them to Urdaneta City to buy groceries. He agreed because he was also planning to buy spare parts in Urdaneta City. Afterwards, Lourdes and Joan boarded the tricycle driven by Virgilio. Before proceeding to the grocery, Lourdes and Joan went to Jollibee to have their snacks. Virgilio decided to wait in the driveway in the parking area. While waiting for Lourdes and Joan, a man approached Virgilio and asked for directions in going to Carmen, Pangasinan. As Virgilio was about to leave, the man blocked his way and told him to wait as the man needed something from him. Then, two other

¹⁶ *Id.* at 7-8; CA *rollo*, p. 58

¹⁷ Arcillana in some parts of the *rollo*.

¹⁸ *Id.* at 7-8.

¹⁹ *Id.* at 9.

men in civilian clothes arrived, held Virgilio's hands, and boarded him in a van. The man seated in front of the van pointed a gun at Virgilio's forehead. After a while, four females entered the van; two of whom were Lourdes and Joan. In no time, the van proceeded to the PDEA office in Dagupan City wherein Virgilio, Lourdes, and Joan were detained.²⁰

Joan testified that at noontime of October 31, 2013, she was at her *Nanay* Lourdes' stall in Sta. Barbara, Pangasinan. At around 2:00 p.m., they asked Virgilio if he could drive them to Urdaneta City to buy groceries. After buying some items at the Urdaneta City public market, they proceeded to Jollibee to have some snacks. After placing an order, Joan and her *Nanay* Lourdes took turns in going to the restroom. While waiting for her *Nanay* Lourdes, Joan felt a hand on her shoulder and a gun pointed at her waist. She then saw her *Nanay* Lourdes held by two men. Thereafter, the men boarded the two of them in a van, brought them to the PDEA office in Dagupan City, and detained them.²¹

Lourdes testified that on October 31, 2013, she, Joan, and Virgilio were at Jollibee along McArthur Highway, Urdaneta City, Pangasinan to have their snacks. She went to the second floor to look for a vacant table and thereafter went to the restroom. While she was going downstairs, a man held her hands and handcuffed her. Afterwards, several men brought them to the PDEA office in Dagupan City.²²

Accused Lourdes died while in detention on April 28, 2018.²³

Ruling of the RTC

In the Decision²⁴ dated May 18, 2018, the RTC convicted Virgilio and Joan of Illegal Sale of Dangerous Drugs. Meanwhile, it dismissed the case as against Lourdes in view of her death. The dispositive portion of the Decision provides:

WHEREFORE, finding the accused Virgilio Bandong y Salarda and Joan Fernandez y Awaño guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs defined and penalized under Section 5, Article II of R.A. 9165 otherwise known as Comprehensive Dangerous Drugs Act of 2002, the court hereby sentences them to suffer the penalty of Life Imprisonment and to pay a fine of Php500,000.00 each.

²⁰ CA rollo, p. 60.

²¹ Rollo, pp. 9-10.

²² *Id.* at 10.

²³ *Id.*

²⁴ CA rollo, pp. 55-64.

The criminal liability of accused Lourdes Bandong y Soriano is extinguished by reason of her untimely death.

The prohibited drugs presented in court as evidence are hereby forfeited in favor of the government and shall be forwarded to the office of PDEA for proper disposition.

Both accused having been convicted are hereby ordered committed to the National Bilibid Prison, Muntinlupa City, Philippines, for the service of their sentence and in the meanwhile they are hereby ordered detained at the Bureau of Jail Management and Penology Urdaneta City, Pangasinan, pending their transfer to the National Bilibid Prison.

SO ORDERED.²⁵

Ruling of the CA

In the assailed Decision,²⁶ the CA denied the appeal and affirmed the Decision²⁷ of the RTC. The CA disposed of the case as follows:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Decision dated May 18, 2018 of the Regional Trial Court, Branch 48, Urdaneta City is AFFIRMED.

SO ORDERED.²⁸

Hence, the instant appeal.

Both parties manifested²⁹ that they are adopting their arguments in the respective briefs they filed before the CA.

In their Brief,³⁰ accused-appellants argued that the prosecution failed to prove all the elements of Illegal Sale of Dangerous Drugs.³¹ According to them, no sale was perfected as the parties did not agree on the object and the price. Lourdes allegedly agreed to sell 20 *bulto* or 100 grams of *shabu* for ₱20,000.00, but IO1 Verceles testified that the

²⁵ *Id.* at 64.

²⁶ *Rollo*, pp. 3-19.

²⁷ *CA rollo*, pp. 55-64.

²⁸ *Rollo*, p. 19.

²⁹ See *Manifestation in Lieu of Supplemental Brief* filed by accused-appellants, *id.* at 27-29. See also *Manifestation in Lieu of Supplemental Brief* filed by plaintiff-appellee, *id.* at 35-37.

³⁰ *CA rollo*, pp. 32-53.

³¹ *Id.* at 41.

operatives intended to buy *shabu* equivalent to 10 *bulto* or 50 grams. Moreover, the seized items have a total weight of 44.804 grams which was not commensurate to the original arrangement of 100 grams of *shabu*.³²

Accused-appellants further contended that the buy-bust operation conducted by the PDEA RO3 (Pampanga) operatives was tainted with irregularity as no coordination was done with the PNP, Pangasinan. Thus, they insist that the PDEA operatives did not enjoy the presumption of regularity in the performance of their duties.³³

Moreover, accused-appellants highlighted the fact that the PDEA operatives failed to comply with Section 21, Article II of RA 9165. They asserted that no representative from the Department of Justice (DOJ) witnessed the alleged inventory of the seized items; that the representative from ABS-CBN admitted that she did not actually see the person filling out the certificate of inventory; that when they arrived, the certificate of inventory was already filled out and the media representatives from ABS-CBN and GMA merely checked if the markings in the seized items matched with those already listed in the inventory; and that no actual inventory was conducted because when the witnesses arrived, the inventory was already made.³⁴

Lastly, accused-appellants argued that there was no justifiable reason why the PDEA operatives failed to conduct the inventory at the place of arrest. They stated that the allegation of IO1 Verceles that there was a commotion at the place of arrest was self-serving and unsupported by any corroborating evidence.³⁵

On the other hand, in the Appellee's Brief,³⁶ plaintiff-appellee, through the Office of the Solicitor General (OSG), reiterated that all the elements of Illegal Sale of Dangerous Drugs were present. It maintained that the prosecution was able to prove all the elements of the offense through the testimonies of the witnesses that the illegal sale was consummated after the exchange of the buy-bust money and the *shabu*.³⁷ Moreover, the OSG contended that the integrity and the evidentiary value of the seized items were properly preserved.³⁸

³² *Id.* at 43-44.

³³ *Id.* at 44-45.

³⁴ *Id.* at 46-49.

³⁵ *Id.* at 49-51.

³⁶ *Id.* at 74-85.

³⁷ *Id.* at 80-81.

³⁸ *Id.* at 81-84.

The Issue

Whether the CA erred in affirming accused-appellants' conviction.

The Court's Ruling

The appeal is meritorious.

In cases involving Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165,³⁹ the identity of the dangerous drug must be established with *moral certainty*,⁴⁰ considering that “the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.”⁴¹ Thus, to prevent any unnecessary doubt on the identity of the dangerous drugs, the prosecution must sufficiently establish an *unbroken* chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to the presentation thereof in court as evidence of the offense.⁴²

In *People v. Sipin*,⁴³ the Court reiterated the links that must be established in the chain of custody in a buy-bust operation, to wit:

(1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officers; (2) the turn-over of the illegal drug seized to the investigating officer; (3) the turn-over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turn-over and submission of the illegal drug from the forensic chemist to the court.⁴⁴

Moreover, Section 21(1), Article II of RA 9165, as amended by RA 10640,⁴⁵ requires among others, that the inventory and the taking of photographs of the confiscated dangerous drugs be done in the presence of the accused from whom the items were seized, or his representative or

³⁹ The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. See *People v. Santos*, G.R. No. 243627, November 27, 2019.

⁴⁰ See *People v. Santos*, *id.*

⁴¹ *People v. Malabanan*, G.R. No. 241950, April 10, 2019, citing *People v. Suan*, 627 Phil. 174, 188 (2010).

⁴² *People v. Gamboa*, 833 Phil. 1055 (2018).

⁴³ 833 Phil. 67 (2018).

⁴⁴ *Id.* at 81.

⁴⁵ Entitled “An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act no. 9165, otherwise known as ‘The Comprehensive Dangerous Drugs Act of 2002,’” approved on July 15, 2014.

counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative each from the media and the DOJ, *and* any elected public official;⁴⁶ or (b) if *after* the amendment of RA 9165 by RA 10640 (effective August 7, 2014), an elected public official and a representative from the National Prosecution Service *or* the media.⁴⁷

In this regard, the Court stresses that “the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.”⁴⁸

Here, the buy-bust operation was conducted on October 31, 2013,⁴⁹ or prior to the amendment of RA 9165. Thus, the three witnesses required under RA 9165 must be present during the conduct of the inventory and the taking of photographs of the seized items.

After a careful study of the case, the Court finds that the buy-bust team had failed to strictly comply with the *three-witness rule* under Section 21, Article II of RA 9165. Specifically, no representative from the DOJ was present during the inventory and the taking of photographs of the *shabu* allegedly seized from accused-appellants.⁵⁰ From this fact alone, the PDEA operatives already *deviated* from the requirements outlined in Section 21, Article II thereby rebutting the presumption of the regularity in the performance of their duties.

To recall, the operation to capture alias “*Baby*” and her cohorts started on October 28, 2013.⁵¹ The PDEA operatives even initiated the *first* buy-bust operation on October 30, 2013, but it was canceled because IO1 Verceles refused to consummate the sale inside the videoke bar. Thus, a *second* buy-bust operation was planned for the next day.⁵² Still, despite having considerable time to do so, the PDEA operatives failed to secure the attendance of a representative from the DOJ to witness the inventory and the taking of photographs of the seized items as required by law. Worse, the prosecution, too, failed to offer any single

⁴⁶ Section 21(1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

⁴⁷ Section 21, Article II of RA 9165, as amended by RA 10640. See also *People v. Alconde, et al.*, G.R. No. 238117, February 4, 2019.

⁴⁸ *Gamboa v. People*, 799 Phil. 584, 597 (2016).

⁴⁹ *Rollo*, p. 7.

⁵⁰ The inventory and photograph taking of the seized items were only witnessed by Brgy. Captain Felixberto De Guzman, ABS-CBN correspondent Michelle Soriano and GMA correspondent Jette Arcellana, *id.* at 8.

⁵¹ *Id.* at 5-6.

⁵² *Id.* at 6-7.

explanation for this glaring breach in the prescribed procedure.

Notably, the media representatives who were allegedly called in to witness the inventory did not actually see the conduct of inventory of the seized items. In particular, the media representative from ABS-CBN admitted that she did not witness the filling out of the certificate of inventory; that when she and the media representative from GMA arrived, the certificate of inventory was already filled out; and that they merely compared if the markings in the seized items matched those already listed in the inventory.⁵³ Again, this fact remained unexplained by the prosecution.

There is no doubt that the chain of custody was already *broken* when the seized drugs were marked and inventoried without the presence of representatives from the media and the DOJ. Obviously, it is already futile to prove the other links in the chain of custody.

All told, the buy-bust team's *unjustified noncompliance* with the *three-witness rule* broke the chain of custody and tainted the integrity and the evidentiary value of the seized *shabu* that was ultimately presented as evidence before the trial court. Given the prosecution's failure to prove the indispensable requirement of *corpus delicti*, accused-appellants must necessarily be acquitted of the charge of Illegal Sale of Dangerous Drugs on the ground of reasonable doubt.⁵⁴

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 12, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11410 is **REVERSED** and **SET ASIDE**. Accused-appellants Virgilio Bandong *y* Salarda @ Ver and Joan Fernandez *y* Avaño are hereby **ACQUITTED** of the charge of Illegal Sale of Dangerous Drugs under Section 5, Article II of Republic Act No. 9165 for failure of the prosecution to prove their guilt beyond reasonable doubt.

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to (a) cause the immediate release of Virgilio Bandong *y* Salarda @ Ver and Joan Fernandez *y* Avaño, respectively, unless they are being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

⁵³ *CA rollo*, pp. 47-49.

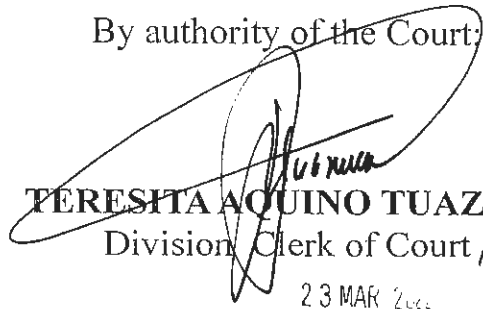
⁵⁴ See *Lescano v. People*, 778 Phil. 460, 476-479 (2016).

August 4, 2021

Let entry of judgment be issued immediately.

SO ORDERED.” (ROSARIO, J., designated as Additional Member per Special Order No. 2835 dated July 15, 2021).

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court *my 2/22*
 23 MAR 2022

PUBLIC ATTORNEY’S OFFICE (reg)
 Special & Appealed Cases Service
 Department of Justice
 5th Floor, PAO-DOJ Agencies Building
 NIA Road corner East Avenue
 Diliman, 1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)
 134 Amorsolo Street
 1229 Legaspi Village
 Makati City

VIRGILIO BANDONG y SALARDA @ VER (x)
 Accused-Appellant
 c/o The Director
 Bureau of Corrections
 1770 Muntinlupa City

THE DIRECTOR (x)
 Bureau of Corrections
 1770 Muntinlupa City

THE SUPERINTENDENT (x)
 New Bilibid Prison
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 48
 Urdaneta City, Pangasinan
 (Crim. Case No. U-19200)

JOAN FERNANDEZ y AVAÑO (x)
 Accused-Appellant
 c/o The Superintendent
 Correctional Institution for Women
 1550 Mandaluyong City

THE SUPERINTENDENT (x)
 Correctional Institution for Women
 1550 Mandaluyong City

JUDGMENT DIVISION (x)
 Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
 LIBRARY SERVICES (x)
 [For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
 OFFICE OF THE REPORTER (x)
 PHILIPPINE JUDICIAL ACADEMY (x)
 Supreme Court, Manila

COURT OF APPEALS (x)
 Ma. Orosa Street
 Ermita, 1000 Manila
 CA-G.R. CR-H.C. No. 11410

Please notify the Court of any change in your address.
 GR252546. 8/04/2021(139)URES(a)