



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 19, 2022 which reads as follows:

“G.R. No. 252489 (People of the Philippines, *Plaintiff-Appellee*, vs. Edwin Dela Peña y Dela Cruz, Angelo Domingo y Ramirez and Arlene Rafanan y Villegas, *Accused-Appellants*). – Before the Court is an appeal¹ from the Court of Appeals (CA) Decision² dated September 17, 2019 in CA-G.R. CR-HC No. 11365. The CA affirmed the Decision³ dated December 27, 2017 of Branch 75, Regional Trial Court (RTC), Olongapo City that found Angelo Domingo y Ramirez⁴ (Domingo) guilty beyond reasonable doubt of violation of Sections 5⁵ and 11,⁶ Article II of Republic Act No. (RA) 9165,⁷ otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*; and Edwin Dela Peña y Dela Cruz (Dela Peña) and Arlene Rafanan y Villegas (Rafanan) guilty of violation of Section 11, Article II of the same Act.

Domingo, Dela Peña, and Rafanan (collectively, accused-appellants) were charged as follows:

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¹ *Rollo*, pp. 18-19.

² *Id.* at 3-17. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Perpetua Susana T. Atal-Paño and Louis P. Acosta.

³ *CA rollo*, pp. 76-87. Penned by Judge Raymond C. Viray.

⁴ Referred to as “Angelo Domingo y Ramirez” in some parts of the *rollo*.

⁵ SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*

⁶ SECTION. 11. *Possession of Dangerous Drugs.*

⁷ 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 Therefore, and for Other Purposes, approved on June 7, 2002.

Criminal Case No. 375-2015
(against Angelo Domingo y Ramirez)

“That on or about the fifth 5th (*sic*) day of June 2015 in the city of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there, willfully unlawfully, and knowingly sell and deliver to PO2 Benedick C. Sarmiento P300 (SN-FD087272, ZV877582 & JP249688) worth of Methamphetamine Hydrochloride, otherwise known as “Shabu”, a dangerous drug, weighing One Hundred Eight Thousandths (0.108) of a gram placed in one (1) heat-sealed transparent plastic sachet.

CONTRARY TO LAW.”⁸

Criminal Case No. 376-2015
(against Edwin Dela Peña y Dela Cruz)

“That on or about the fifth 5th (*sic*) day of June 2015 in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his effective possession and control Fifty-Two Thousandths (0.052) of a gram of Methamphetamine Hydrochloride or “Shabu”, placed in one (1) heat-sealed transparent plastic sachet, which is a dangerous drug, said accused not having the corresponding license or prescription to possess said dangerous drug.

CONTRARY TO LAW.”⁹

Criminal Case No. 377-2015
(against Arlene Rafanan y Villegas)

“That on or about the fifth 5th (*sic*) day of June 2015 in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully, and feloniously have in his (*sic*) effective possession and control Forty-Eight Thousandths (0.048) of a gram of Methamphetamine Hydrochloride or “Shabu”, placed in one (1) heat-sealed transparent plastic sachet, which is a dangerous drug, said accused not having the corresponding license or prescription to possess said dangerous drug.

CONTRARY TO LAW.”¹⁰

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⁸ As culled from the CA Decision; *rollo*, pp. 4-5.

⁹ *Id.* at 4.

¹⁰ *Id.* at 5.

Criminal Case No. 378-2015
(against Angelo Domingo y Ramirez)

“That on or about the fifth 5th (*sic*) day of June 2015 in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously have in his effective possession and control ten (10) heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride or “Shabu” with the following markings and weights:

D1 (EXH D BCS RAL) = 0.087 gram
D2 (EXH D-1 BCS RAL) = 0.084 gram
D3 (EXH D-2 BCS RAL) = 0.071 gram
D4 (EXH D-3 BCS RAL) = 0.090 gram
D5 (EXH D-4 BCS RAL) = 0.087 gram
D6 (EXH D-5 BCS RAL) = 0.082 gram
D7 (EXH D-6 BCS RAL) = 0.111 gram
D8 (EXH D-7 BCS RAL) = 0.146 gram
D9 (EXH D-8 BCS RAL) = 0.097 gram
D10 (EXH D-9 BCS RAL) = 0.085 gram
TOTAL = 0.940 grams

which are dangerous drugs, said accused not having the corresponding license or prescription to possess said dangerous drugs.

CONTRARY TO LAW.”¹¹

Upon arraignment, accused-appellants entered their respective pleas of not guilty.¹²

Trial ensued.

Version of the Prosecution

On June 5, 2015, the City Anti-Illegal Drugs Special Operations Team (CAIDSOT) received information from the *barangay* officials of *Barangay New Kalalake* that Domingo was engaged in drug trafficking activities. During monitoring, Police Officer 2 Benedict Sarmiento (PO2 Sarmiento) did not see Domingo selling drugs; however, an informant told him that Domingo sells drugs along Kessing Street, *Barangay New Kalalake*, Olongapo City.¹³

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¹¹ Id.

¹² Id. at 6.

¹³ CA rollo, pp. 77-78.

The CAIDSOT decided to conduct a buy-bust operation against Domingo. After coordinating with the Philippine Drug Enforcement Agency (PDEA), it formed a buy-bust team and designated PO2 Sarmiento as the *poseur*-buyer and PO2 Arnie Omega (PO2 Omega), with the other members of the CAIDSOT, as back-up.¹⁴

The team proceeded to the target area at 1:00 a.m. When PO2 Sarmiento and the informant arrived at the target area, they saw Domingo at Kessing Street. After a while, the informant and Domingo greeted each other. Thereafter, the informant introduced PO2 Sarmiento to Domingo as a *shabu* user. Domingo told PO2 Sarmiento “*Kuha ka sakin ng shabu pare*” to which the latter replied “*Sige po, halagang 300.*”¹⁵

Two other persons (later identified as accused-appellants Dela Peña and Rafanan) arrived. Domingo then took a small pouch from his right pocket and opened it. PO2 Sarmiento saw several sachets of suspected *shabu* inside the pouch. Domingo then gave one sachet to PO2 Sarmiento in exchange for the marked money. Domingo also gave Dela Peña and Rafanan one sachet each.¹⁶ While Dela Peña and Rafanan were handing their payment of ₱150.00 each to Domingo, PO2 Sarmiento executed the pre-arranged signal — a blank text message to his team leader. The team members then rushed to the scene and introduced themselves as police officers. PO2 Sarmiento held Domingo and told the team that Dela Peña and Rafanan are “scorers.”¹⁷

PO2 Omega held Dela Peña while another police officer held Rafanan. PO2 Omega recovered two sachets of suspected *shabu* from Dela Peña and Rafanan. PO2 Omega kept the sachet recovered from Rafanan in his right pocket and kept the one recovered from Dela Peña in his left pocket.¹⁸ Meanwhile, PO2 Sarmiento kept the sachet he purchased from Domingo in his possession. The buy-bust team then brought the arrested persons and the seized items to the CAIDSOT located at Police Station 1.¹⁹

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¹⁴ Id. at 78.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 78-79.

¹⁹ Id. at 78.

At the CAIDSOT office, PO2 Sarmiento marked the sachet which he bought from Domingo with his initials “BCS” in the presence of Domingo and Police Investigator PO3 Rolan Lonsame (PO3 Lonsame) and placed it back in his pocket. They then waited for the sector representatives to arrive.²⁰ When representatives from the Department of Justice (DOJ) and the *barangay* arrived at around 8:00 a.m., PO3 Lonsame conducted the inventory, as evidenced by the pictures and Inventory Receipt. PO2 Sarmiento turned over the sachet which he bought from Domingo to PO3 Lonsame, who then marked it with initials “RAL.” PO2 Sarmiento also turned over the 10 sachets of suspected *shabu* found inside Domingo’s pouch, which he marked with “BCS,” to PO3 Lonsame. PO2 Omega did the same with the sachets recovered from Dela Peña and Rafanan.²¹

PO3 Lonsame delivered the sachets of suspected *shabu* to the crime laboratory for examination, as evidenced by the Request for Laboratory Examination. After the laboratory examination, the contents of the seized sachets tested positive for methamphetamine hydrochloride or *shabu*, as evidenced by the Chemistry Report.²²

Version of the Defense

For the defense, Domingo testified that at the time of the incident, he was in the house of his brother-in-law, Jeffrey Cao (Cao), located at Kessing Street to pawn his cell phone. Dela Peña was also there to get his flashlight from Cao. Suddenly, several men arrived and shouted, “*Dapa! Dapa!*” While the men searched Cao’s house, Cao said, “*Wala dito ang kapatid ko.*” The men then handcuffed Domingo, Dela Peña, and Rafanan. They took Cao’s wallet. The men then brought Domingo, Dela Peña, and Rafanan to the police station. There, the police officers instructed each of them to point to the sachets of drugs on a table. Domingo identified the drugs as the ones taken from Cao’s house.²³

RTC Ruling

On December 27, 2017, the RTC rendered a Decision,²⁴ the dispositive portion of which reads:

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²⁰ Id.

²¹ Id. at 78 and 80.

²² Id. at 78.

²³ Id. at 81.

²⁴ Id. at 76-87.

WHEREFORE, judgment is rendered as follows:

1. In Criminal Case No. 375-2015, the Court finds ANGELO DOMINGO y Ramirez GUILTY beyond reasonable doubt of Violation of Sec. 5, RA 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of [Five Hundred Thousand Pesos] ₱500,000.00, plus cost, without subsidiary imprisonment in case of insolvency;

2. In Criminal Case No. 376-2015, the Court finds EDWIN DELA PENA y Dela Cruz GUILTY beyond reasonable doubt of Violation of Section 11, RA 9165 and sentences him to suffer the penalty of imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of [Three Hundred Thousand Pesos] ₱300,000.00, plus cost, without subsidiary imprisonment in case of insolvency;

3. In Criminal Case No. 377-2015, the Court finds ARLENE RAFANAN y Villegas GUILTY beyond reasonable doubt of Violation of Section 11, RA 9165 and sentences her to suffer the penalty of imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of [Three Hundred Thousand Pesos] ₱300,000.00 plus cost, without subsidiary imprisonment in case of insolvency; and

4. In Criminal Case No. 378-2015, the Court finds ANGELO DOMINGO y Ramirez GUILTY beyond reasonable doubt of Violation of Section 11, RA 9165 and sentences him to suffer the penalty of imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of [Three Hundred Thousand Pesos] (₱300,000.00) plus cost, without subsidiary imprisonment in case of insolvency.

All the accused shall also suffer the accessory penalties under Section 35, RA 9165; and Angelo Domingo shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code as amended.

The shabu sachets marked Exhs. "F" to "F-10", "J" and "K" of the Prosecution are ordered confiscated in favor of the government and to be disposed in accordance with law.

SO DECIDED.²⁵

The RTC held that the prosecution was able to establish all the elements of "drug pushing and drug possession."²⁶

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²⁵ Id. at 86-87.

²⁶ Id. at 84.

CA Ruling

In the Decision²⁷ dated September 17, 2019, the CA affirmed the ruling of the RTC as follows:

WHEREFORE, the instant appeal is DISMISSED. The Decision dated 27 December 2017 of the Regional Trial Court of Olongapo City, Branch 75, in Criminal Case Nos. 375 to 378-2015 is hereby AFFIRMED.

SO ORDERED.²⁸

Hence, the appeal before the Court.

The Issue

The issue to be resolved is whether the CA erred in affirming accused-appellants' conviction.

Our Ruling

The Court grants the appeal.

The elements necessary in every prosecution for Illegal Sale of Dangerous Drugs are: "(1) the identities of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor."²⁹

For Illegal Possession of Dangerous Drugs, meanwhile, the following elements must be established: "(a) the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs."³⁰

Moreover, for a successful prosecution of Illegal Sale or Illegal Possession of Dangerous Drugs, not only must the prosecution establish the above elements, it is equally essential that the identity of the dangerous drug be established with moral certainty considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the offense.³¹

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²⁷ *Rollo*, pp. 3-17.

²⁸ *Id.* at 16.

²⁹ *People v. Roble*, 663 Phil. 147, 157 (2011).

³⁰ *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

³¹ *People v. Santos*, G.R. No. 243627, November 27, 2019.

Thus, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the offense.³² As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photographing of the seized items be conducted immediately after seizure and confiscation of the same.³³

The law further requires that the inventory and photographing be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, and certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640,³⁴ a representative each from the media and the DOJ, and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of either the National Prosecution Service or the media.³⁵

In the case, the Inventory Receipt and Chain of Custody Form showed that the physical inventory of the seized items was conducted by PO3 Lonsame in the presence of accused-appellants, *Barangay Kagawad* Hilario M. Carullo, as elected public official, and Jaime Navarro, as representative of the DOJ.³⁶ Photographs of the inventory showed the representative from the DOJ and the elected official placed their signatures on the inventory in the presence of accused-appellants.³⁷ After PO3 Lonsame placed his initials "RAL" on the seized items, he delivered the same to the Olongapo City Crime Laboratory Office and turned over the same to Police Senior Inspector Maria Cecilia G. Tang (PSI Tang) for examination. Her Chemistry Report No. D-087-2015, showed that the specimen found in the plastic sachets recovered from the possession of accused-appellants yielded positive results when tested for the presence of methamphetamine hydrochloride or *shabu*. PSI Tang thereafter sealed each of them with a masking tape and placed her initials "MGCT" thereon. She labeled the same as Chemistry Report No. D-087-2015 before endorsing them to the custody of the Olongapo City Prosecutor's Office.³⁸

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³² *People v. Año*, 828 Phil. 439, 448 (2018). See also *People v. Viterbo*, 739 Phil. 593, 601 (2014) and *People v. Alagarme*, 754 Phil. 449, 459-460 (2015).

³³ *People v. Gabunada*, G.R. No. 242827, September 9, 2019.

³⁴ 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, and became effective on August 7, 2014.

³⁵ *People v. Gabunada*, supra note 33.

³⁶ Records, pp. 15-16.

³⁷ Id. at 19.

³⁸ CA *rollo*, p. 134; records, pp. 9-12.

According to the CA, the integrity and evidentiary value of the seized items were preserved through the above-mentioned procedure undertaken by the police officers in this case.

The Court disagrees.

In the RTC Order dated March 14, 2017, the parties stipulated on the testimonies of PO3 Lonsame and PSI Tang as follows: that PO3 Lonsame received the sachets of *shabu* marked Exhs. K and J series, from PO2 Sarmiento and PO2 Omega for inventory; that he received the buy-bust money for inventory; that he placed his initials “RAL” on each of the sachets of *shabu* he received and also on the buy-bust money; that he conducted physical inventory of the evidence he received in the presence of the *barangay kagawad* and media representative; that he prepared Inventory Receipt & Chain of Custody; and that he delivered the sachets of *shabu* to the Philippine National Police Crime Laboratory for examination after the inventory.³⁹

In cases where strict compliance with the chain of custody procedure is not possible, the seizure and custody of the seized items will not be rendered void if the prosecution satisfactorily proves that there is justifiable ground for the deviation and the integrity and evidentiary value of the seized items are properly preserved.⁴⁰

After a review of the records of the case, the Court finds that the prosecution failed to prove that the police officers observed the requirements mandated by Section 21, Article II of RA 9165, as amended. The police officers committed several deviations from the requirements of the law with respect to the chain of custody.

As the Court explained in *People v. Tomawis*,⁴¹ the initial custody requirements must be done “immediately after seizure or confiscation” which means that the law intended that the physical inventory and photographing be made “immediately after, or *at the place of apprehension*.”⁴² “Any deviation in the mandatory procedure must be satisfactorily justified by the buy-bust team.”⁴³ The procedure

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³⁹ Records, p. 229.

⁴⁰ *People v. Miranda*, 824 Phil. 1042, 1052-1053 (2018).

⁴¹ 830 Phil. 385 (2018).

⁴² Id. at 405. Italics supplied.

⁴³ Id.

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 ignored as an impediment to the conviction of illegal drug suspects.⁴⁴

Here, the marking of the seized items was not done at the place of arrest. The police officers did not provide any reason for their noncompliance. PO2 Sarmiento in his testimony merely said that a certain Sir Ravelo instructed them to bring accused-appellants to the CAIDSOT office.⁴⁵

Further, PO2 Sarmiento testified that he placed the sachet of suspected *shabu* which he purchased from Domingo in his pocket.⁴⁶ Meanwhile, PO2 Omega testified that he placed the sachet of *shabu* he recovered from Dela Peña in his left pocket and the sachet of *shabu* he recovered from Rafanan in his right pocket.⁴⁷

In *People v. Leaño*,⁴⁸ the Court expounded on the danger of bodily keeping the seized drugs, *viz.*:

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counterchecking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.⁴⁹ (Italics supplied)

The Court cannot merely gloss over the glaring lapses committed by the police officers especially when the amounts of *shabu* allegedly seized from accused-appellants Dela Peña, Rafanan,

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⁴⁴ Id. at 404.

⁴⁵ See TSN, November 10, 2015, p. 6.

⁴⁶ Id. at 7.

⁴⁷ CA rollo, p. 79

⁴⁸ G.R. No. 246461, July 28, 2020.

⁴⁹ Id., citing *People v. Dela Cruz*, 744 Phil. 816 (2014).

and Domingo are only 0.052 gram, 0.048 gram, and 0.108 gram, respectively. The Court has highlighted the need to ensure the integrity of the seized drugs in the chain of custody when only a miniscule amount of drugs had been allegedly seized from the accused.⁵⁰

The police officers should have at least marked the seized items at the place of arrest in order to avoid any suspicion as to the handling or mishandling of the *corpus delicti*. Apparently, they did not do so.

Considering that the marking and handling of the allegedly seized drugs were highly questionable, there is no assurance that the sachets of *shabu* tested in the laboratory and presented in court were the same sachets allegedly confiscated from accused-appellants. While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of accused-appellants to be presumed innocent. It cannot by itself constitute proof of guilt beyond reasonable doubt. This presumption of regularity remains just like a presumption, disputable by contrary proof, which when challenged by evidence cannot be regarded as binding truth.⁵¹

The prosecution's sweeping guarantees as to the identity and integrity of seized drugs will not secure a conviction.⁵² In drug cases, conviction cannot be sustained if there is a persistent doubt about the identity of the drug. The identity of the seized drug must be established with moral certainty. Apart from showing that the elements of illegal sale and illegal possession are present, the fact that the substance illegally sold or possessed in the first place is the same substance offered in court as an exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.⁵³

The Court holds that the circumstances obtaining here do not support a finding of guilt beyond reasonable doubt as the integrity and evidentiary value of the seized sachets of *shabu* were not preserved.

In fine, reasonable doubt exists in the present case because the quantum of proof required for the conviction of accused-appellants for the violations charged was not met. Their acquittal is therefore in order.

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⁵⁰ *People v. Del Mundo*, 818 Phil. 575, 588 (2017).

⁵¹ *People v. Cantalejo*, 604 Phil. 658, 668-669 (2009).

⁵² *People v. Saunar*, 816 Phil. 482, 495 (2017), citing *People v. Holgado*, 741 Phil. 78 (2014).

⁵³ *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

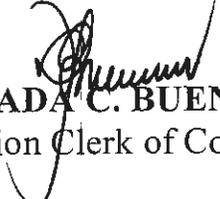
WHEREFORE, the appeal is **GRANTED**. The Decision dated September 17, 2019 in CA-G.R. CR-HC No. 11365 is **REVERSED** and **SET ASIDE**. Accused-appellants Edwin Dela Peña y Dela Cruz and Arlene Rafanan y Villegas are hereby **ACQUITTED** of violation of Section 11, Article II of Republic Act No. 9165, as amended; while Angelo Domingo y Ramirez is **ACQUITTED** of violation of Sections 5 and 11, Article II of Republic Act No. 9165, as amended, for failure of the prosecution to prove their guilt beyond reasonable doubt, and are ordered immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director General, Bureau of Corrections, Muntinlupa City, and the Superintendent of the Correctional Institution for Women, Mandaluyong City for immediate implementation. Furthermore, the Director General of the Bureau of Corrections, and the Superintendent of the Correctional Institution for Women are **DIRECTED** to report to the Court the action they have taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

SO ORDERED.” Gaerlan, J., on official leave.

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *AB 6/17*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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