



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated March 8, 2023, which reads as follows:*

**“G.R. No. 207768 (*People of the Philippines v. Armando Bornaes y Salon*).** – The Court NOTES the Letter dated December 23, 2020 of CCSupt. Julie May C. Taguiam, Acting Superintendent, Davao Prison and Penal Farm, Bureau of Corrections, B.E. Dujali, Davao del Norte, in compliance with the Resolution dated September 2, 2020, confirming the confinement therein of accused-appellant since February 21, 2009.

Before the Court is an appeal filed by Armando Bornaes y Salon (accused-appellant) from the Decision<sup>1</sup> dated February 18, 2013, of the Court of Appeals (CA) Mindanao Station in CA-G.R. CR-HC No. 00664-MIN. The assailed decision dismissed the appeal and affirmed the Decision<sup>2</sup> dated September 19, 2008, of the Regional Trial Court (RTC) of Butuan City, Branch 4, in Criminal Case No. 10940, finding the accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act, as amended.

This case stemmed from an Information filed before the RTC charging the accused-appellant of the crime of Illegal Sale of Dangerous Drugs, allegedly committed as follows:

That on or about 10:30 o'clock in the evening of November 27, 2004 at P-5 Villanueva Village, Brgy. 22, Bading, Butuan City and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur buyer one (1) sachet of white crystalline methamphetamine hydrochloride otherwise known as shabu, weighing zero point zero two six two (0.0262) grams, which is a dangerous drug, in consideration of five (5) pcs. one hundred pesos bill marked moneys.

<sup>1</sup> Rollo, pp. 3-18. Penned by Associate Justice Oscar V. Badelles with Associate Justices Edgardo A. Camello and Renato C. Francisco, concurring.

<sup>2</sup> CA rollo, pp. 31-41. Rendered by Presiding Judge Godofredo B. Abul, Jr.

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

The accused-appellant was arraigned on August 15, 2005 and assisted by counsel, entered a plea of not guilty.<sup>4</sup> After pre-trial, trial proceeded.<sup>5</sup>

The prosecution presented as witnesses: Senior Police Officer (SPO) 1 Estelito O. Gono (SPO1 Gono) and Forensic Chemist Police Senior Inspector (PSI) Norman G. Jovita.<sup>6</sup> As the parties already stipulated that Police Officer (PO) 2 Jaime Delos Santos (PO2 Delos Santos) was the one who delivered the plastic sachet to the Philippine National Police (PNP) Crime Laboratory for examination, his testimony was dispensed with.<sup>7</sup>

Their testimonies tend to establish that on November 27, 2004, Philippine Drug Enforcement Agency (PDEA) Butuan City, formed a team to conduct a buy-bust operation at Purok 5, Villanueva Village, Barangay 22, Bading, Butuan City. The team was composed of Police Inspector (PI) Inocencio Amora (PI Amora), who acted as the team leader, PO2 Delos Santos, PO3 Rey Gabrielle Maderal, and SPO1 Gono.<sup>8</sup> Per arrangement, a police asset would act as the poseur-buyer of a sachet of *shabu* worth ₱500.00 or five ₱100.00 bills.<sup>9</sup>

When the team arrived at the area, the poseur-buyer approached the accused-appellant, while the rest of the team were on board a tricycle observing from a distance. After the exchange between the poseur-buyer and the accused-appellant, the former performed the pre-arranged signal. The poseur-buyer approached the team and handed the sachet of *shabu* to PI Amora. At about the same time, SPO1 Gono disembarked from the tricycle and arrested the accused-appellant. The rest of the team approached the scene, informed the accused-appellant of the reason for his arrest and searched his person. The accused-appellant was found to be in possession of the marked money<sup>10</sup> with this, he was informed of his constitutional rights.<sup>11</sup>

Thereafter, the police team brought the accused-appellant to the PDEA Office at the Butuan City Police Station. While on their way, PI Amora received a text message from the police asset that money was hidden in a closed store near the place where the buy-bust operation occurred and that *shabu* was placed underneath a stone. This prompted the team together with the accused-appellant to return to the scene. There, the police recovered the amount of ₱2,570.00.<sup>12</sup>

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<sup>3</sup> *Rollo*, p. 4.  
<sup>4</sup> *CA rollo*, p. 31.  
<sup>5</sup> *Id.* at 31-32.  
<sup>6</sup> *Id.* at 32.  
<sup>7</sup> *Rollo*, pp. 5-6.  
<sup>8</sup> *CA rollo*, p. 32, *rollo*, pp. 5-6.  
<sup>9</sup> *Id.* at 33, *Id.* at 6.  
<sup>10</sup> *Id.*  
<sup>11</sup> *Id.*, *id.* at 7.  
<sup>12</sup> *Id.*

The team then went to the police station where photographs of the accused-appellant and the retrieved items were taken.<sup>13</sup>

The sachet of *shabu* retrieved during buy-bust was turned over by PI Amora to PO3 Delos Santos, who then placed markings on it and then, accompanied by SPO1 Gono submitted the sachet to the PNP Crime Laboratory for examination. The sachet was received by Desk Officer SPO3 Ocate who immediately turned over the same to Forensic Chemical Officer PSI Noman Jovita (PSI Novita). PSI Jovita conducted the examination and confirmed that the contents of the sachet yielded positive for the presence of *methamphetamine hydrochloride*.<sup>14</sup>

The defense for its part presented the testimony of the accused-appellant, his mother, Luciana Salon Bornaes, one Jasmine Salipong, and Renando Cañete.<sup>15</sup>

The accused-appellant averred that on the evening of November 27, 2007, he was at a waiting shed at Purok 5, Barangay Bading, together with Edwin Anunciado, Remus Bulatin, Aldrin Catayas, Dodong Ty, Palong Rogador, and several others he could no longer recall and that sometime thereafter, the group parted ways. While on his way home, he was offered by his neighbor, Julius Baito, to join him for a drink of beer to which the accused-appellant obliged. Thereafter, the accused-appellant proceeded to go home but was arrested by the police along the way and was brought to the barangay hall. Therein, the accused-appellant claimed that he was searched but nothing was found.<sup>16</sup>

While on the way to the police station from the barangay, PI Amora received a call prompting them to go to a nearby store. There, PI Amora retrieved money placed at the roofing. The accused-appellant's mother insisted into riding with them to the police station. When they arrived, the accused-appellant was again searched but, again, nothing was found on him. It was then that PI Amora remarked "that he will take care of that." The accused-appellant was then made to sit on a chair opposite the table of PI Amora where the alleged marked money and a sachet of *shabu* was placed; that was when photographs were taken.<sup>17</sup>

The accused-appellant claimed that his arrest was a form of retaliation for his act of punching one Maximo Baguyo, PI Amora's brother-in-law.<sup>18</sup>

The accused-appellant's mother corroborated his testimony with respect to what happened at the Central police station, whereas the other witnesses supported the accused-appellant's testimony with respect to the

<sup>13</sup> Rollo, p. 7.

<sup>14</sup> CA rollo, p. 33, rollo, p. 8.

<sup>15</sup> Rollo, p. 8.

<sup>16</sup> CA rollo, pp. 33-34.

<sup>17</sup> Id.

<sup>18</sup> Rollo, p. 10.

arrest and search upon his person.<sup>19</sup>

On September 19, 2008, the RTC rendered its Decision,<sup>20</sup> the dispositive portion of which reads:

WHEREFORE, premises considered, accused is guilty beyond reasonable doubt of violation of Section 5, of Article II of Republic Act No. 9165 and hereby sentenced to life imprisonment and to pay a fine of P500,000.00 without subsidiary imprisonment in case of insolvency.

Accused shall serve his sentence at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte and shall be credited in the service of his sentence with his preventive imprisonment conformably with Article 29 of the Revised Penal Code, as amended.

The sachet of shabu (Exhibit "F") is declared forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.<sup>21</sup>

The RTC held that the accused-appellant's lone protestation that the marked monies came from a polluted source, cannot overcome the positive and categorical testimony of [SPO1 Gono].<sup>22</sup> Further, the RTC found that the "the fact that immediately after the arrest, [PI Amora] received a text message regarding monies hidden in a closed store, confirms the testimony of [SPO1 Gono] in the [conduct of a] buy bust operation."<sup>23</sup> All told, the RTC opined that the accused-appellant's evidence did not overcome the presumption of regularity in the performance of duty by the police officers.<sup>24</sup>

The accused-appellant appealed to the CA, which rendered the herein assailed Decision,<sup>25</sup> affirming the accused-appellant's conviction, viz.:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated 19 September 2008 of the Regional Trial Court of Butuan City, Branch 4 in Criminal Case No. 10940 finding Accused-Appellant ARMANDO BORNALES y SALON guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 is **AFFIRMED**.

SO ORDERED.<sup>26</sup>

In upholding the RTC's decision, the CA held that the prosecution established all the elements of the offense of illegal sale of dangerous drugs, the accused-appellant having been caught *in flagrante delicto*. The CA also ruled that "the *corpus delicti* of the crime was established with certainty and

<sup>19</sup> CA rollo, p.34.

<sup>20</sup> Id. at 31-41.

<sup>21</sup> CA rollo, p. 41.

<sup>22</sup> Id. at 40.

<sup>23</sup> Id. at 41.

<sup>24</sup> Id.

<sup>25</sup> Rollo, pp. 3-18.

<sup>26</sup> Id. at 17-18.

conclusiveness” as the links of the chain of custody were substantiated.<sup>27</sup>

The CA opined that under the circumstances of a buy-bust operation, “there may be no time for the buy-bust team to notify third party representatives to witness the physical inventory of the items seized,” and the failure to strictly comply with this requirement under R.A. No. 9165 does not render the item seized inadmissible.<sup>28</sup>

Lastly, the CA refused to believe the accused-appellant’s defense that he had been framed, opining that the same is all too common and can be easily feigned and fabricated.<sup>29</sup>

Thus, this appeal.

The plaintiff-appellee opted not to file a supplemental brief and instead adopted the brief which it filed before the CA.<sup>30</sup>

The accused-appellant in his Supplemental Brief<sup>31</sup> maintained his innocence. He averred that the evidence of the prosecution negates that a buy-bust operation occurred; that the testimony of the arresting officer showed deviations in the procedure mandated by Section 21 of R.A. No 9165; and that the *corpus delicti* was not established with moral certainty.

The appeal is **meritorious**.

In order to sustain conviction for the sale of illegal drugs under Section 5 of the Comprehensive Dangerous Drugs Act, the following elements must be established beyond reasonable doubt: (1) proof that the transaction or sale took place, and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.<sup>32</sup>

The element of *corpus delicti* is established by showing compliance with the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia as set forth under Section 21 of R.A. No. 9165, viz.:

**Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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<sup>27</sup> Id. at 12-15.

<sup>28</sup> Id. at 15.

<sup>29</sup> Id. at 16.

<sup>30</sup> Id. 25-26.

<sup>31</sup> Id. at 34-48.

<sup>32</sup> *People v. Que*, 824 Phil. 882, 893 (2018), citing *People v. Morales*, 630 Phil. 215, 228 (2010).

- (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation**, physically inventory and photograph the same **in the presence** of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media **and** the Department of Justice (DOJ), **and** any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; (Emphasis and underscoring supplied)

In the same vein, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides for the proper procedure to be observed in accordance with the foregoing provision and the effect of noncompliance therewith, *viz.*:

- (a) The apprehending office/team having initial custody and control of the drugs shall, **immediately after seizure and confiscation**, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that **the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable**, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

These chain of custody requirements goes into the integrity of the *corpus delicti*,<sup>33</sup> as such, these requirements must be strictly complied with as they ensure the possibility of planting or substitution of evidence.<sup>34</sup>

In the case at bar, the accused-appellant was arrested *in flagrante delicto* during a buy-bust operation. The simulated sale involved one plastic sachet containing *methamphetamine hydrochloride* weighing 0.0262 gram. The seized item was not inventoried and photographed until after they reached the police station; no reason was offered why the police team had to wait until then to comply with the procedure. What is more, none of the required third persons were present to witness the seizure, picture taking, and inventory; similarly no explanation was proffered by the police officers whether they have at least sought the presence of these witnesses and the reason for their absence.

Clearly, the police operation involved various procedural lapses that

<sup>33</sup> *People v. Que*, id. at 902, citing *People v. Morales*, id. at 236, and *People v. Belocura*, 693 Phil. 476, 500 (2012).

<sup>34</sup> *People v. Gonzales*, 708 Phil. 121, 132-133 (2013).

warrant the accused-appellant's acquittal. As the prosecution admitted but never even attempted to justify the deviation from the mandated procedure, it cannot seek refuge from the saving mechanism under Section 21(a), Article II of the IRR of R.A. No. 9165 on substantial compliance and preservation of chain of custody.<sup>35</sup>

Apart from the foregoing, there are missing links in the chain of custody of the seized item that raise serious doubts on its integrity. Specifically, SPO1 Gono, the lone police officer from the buy-bust team who testified, appears to not have been involved in the handling of the seized item. From his testimony, he merely stated that from the poseur-buyer, the seized plastic sachet was handed over to PI Amora. It was, however, unclear who maintained custody thereof when the team had to make a detour to a nearby store to confirm the information they received from the police informant. Similarly, no details were offered as to when and where PI Amora handed the plastic sachet to PO2 Delos Santos. The question as to the integrity of the seized plastic sachet is highlighted by the fact that the inventory was made only at the police station and without any third party witness present. In view of the considerable lapse of time and lack of sufficient detail showing the steps taken to ensure that the same item seized was the same one presented for laboratory examination, it cannot be reasonably presumed that the integrity of the item has remained intact.

All told, in view of the glaring and numerous procedural lapses in the case at bar, the customary presumption of regularity in the performance of official duties would not suffice even if the accused-appellant merely offered the defense of "denial and frame-up." It is settled that the presumption applies only when the officers have shown compliance with the standard conduct of official duty required by law; where the act is irregular on its face, the presumption cannot arise or be relied upon.<sup>36</sup> Hence, while the defenses of "denial and frame-up" are inherently weak, still, the burden is upon the prosecution to establish the guilt of the accused beyond reasonable doubt. In doing so, it must rise on its own merits, without regard to the weakness of the defense.<sup>37</sup> Should the prosecution fail to discharge this burden, as in the case at bar, acquittal must follow.

**WHEREFORE**, in view of the foregoing, the appeal is **GRANTED**. The Decision dated February 18, 2013, of the Court of Appeals Mindanao Station in CA-G.R. CR-HC No. 00664-MIN, which, in turn, affirmed the Decision dated September 19, 2008, of the Regional Trial Court of Butuan City, Branch 4 in Criminal Case No. 10940 is hereby **REVERSED** and **SET ASIDE**.

Accused-appellant Armando Bornaes y Salon is **ACQUITTED** based on reasonable doubt.

<sup>35</sup> *People v. Claudel*, G.R. No. 219852, April 3, 2019, citing *People v. Reyes*, 797 Phil. 671, 690 (2016).

<sup>36</sup> *Id.*, citing *People v. Kamad*, 624 Phil 289, 311 (2010).

<sup>37</sup> *Daayata v. People*, 807 Phil. 102, 118 (2017).

The Director General of the Bureau of Corrections is directed to: (a) cause the immediate release of accused-appellant Armando Bornaless y Salon, unless he is being lawfully held for another cause; and (b) inform this Court of the date of his release, or the reason for his continued confinement as the case may be, within five (5) days from receipt of this Resolution.


Let entry of judgment be issued immediately.

**SO ORDERED.” (Dimaampao, J., on leave.)**

By authority of the Court:

**MISAEL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

By:

  
**RUMAR D. PASION**  
*Deputy Division Clerk of Court*  
G.R. 4/13/23

Regional Special & Appealed Cases Unit  
PUBLIC ATTORNEY'S OFFICE  
2/F BJS Bldg., Tiano Brothers  
cor. San Agustin Sts.  
9000 Cagayan de Oro City

COURT OF APPEALS  
CA-G.R. CR-HC No. 00664-MIN  
9000 Cagayan de Oro City

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
1229 Legaspi Village, Makati City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 4, 8600 Butuan City  
(Crim. Case No. 10940)

Gen. Gregorio Pio P. Catapang, Jr. AFP (Ret.) CESE  
Director General  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

CSupt. Julie May C. Taguiam  
Acting Superintendent  
Davao Prison & Penal Farm  
B.E. Dujali, 8105 Davao del Norte

Mr. Armando Bornaless y Salon  
c/o The Superintendent  
Davao Prison & Penal Farm  
B.E. Dujali, 8105 Davao del Norte

PGen. Rodolfo S. Azurin, Jr.  
Chief, PHILIPPINE NATIONAL POLICE  
PNP, National Headquarters  
Camp Crame, Quezon City

The Director General  
PHILIPPINE DRUG ENFORCEMENT AGENCY  
PDEA Bldg., NIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

The Chairman  
DANGEROUS DRUGS BOARD  
3<sup>RD</sup> Floor DDB-PDEA Bldg.,  
NIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

PHILIPPINE JUDICIAL ACADEMY  
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Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

PEOPLE OF THE PHILIPPINES,  
Petitioner,

**G.R. No. 207768**

-versus-

ARMANDO BORNALES y  
SALON,  
Accused-Appellant.  
x-----/

**ORDER OF RELEASE**

**TO:** Gen. Gregorio Pio P. Catapang, Jr., AFP (Ret.) CESE  
**Director General**  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Thru: CSupt. Julie May C. Taguiam  
**Acting Superintendent**  
Davao Prison & Penal Farm  
B.E. Dujali, Davao del Norte

**GREETINGS:**

WHEREAS, the Supreme Court on March 8, 2023 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

“**WHEREFORE**, in view of the foregoing, the appeal is **GRANTED**. The Decision dated February 18, 2013, of the Court of Appeals Mindanao Station in CA-G.R. CR HC No. 00664-MIN, which, in turn, affirmed the Decision dated September 19, 2008, of the Regional Trial Court of Butuan

City, Branch 4 in Criminal Case No. 10940 is hereby **REVERSED** and **SET ASIDE**.

Accused-appellant Armando Bornaes y Salon is **ACQUITTED** based on reasonable doubt.

The Director General of the Bureau of Corrections is directed to: (a) cause the immediate release of accused-appellant Armando Bornaes y Salon, unless he is being lawfully held for another cause; and (b) inform this Court of the date of his release, or the reason for his continued confinement as the case may be, within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

**SO ORDERED.”**

**NOW, THEREFORE**, you are hereby ordered to immediately release **Armando Bornaes y Salon**, unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

**GIVEN** by the Honorable **ALFREDO BENJAMIN S. CAGUIOA**,  
Chairperson of the Third Division of the Supreme Court of the Philippines,  
this **8<sup>th</sup>** day of **March 2023**.

By authority of the Court:

**MISAEL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

By:

**RUMAR D. PASION**  
*Deputy Division Clerk of Court*  
4/18/23

Regional Special & Appealed Cases Unit  
PUBLIC ATTORNEY'S OFFICE  
2/F BJS Bldg., Tiano Brothers  
cor. San Agustin Sts.  
9000 Cagayan de Oro City

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CA-G.R. CR-HC No. 00664-MIN  
9000 Cagayan de Oro City

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
1229 Legaspi Village, Makati City  
The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 4, 8600 Butuan City  
(Crim. Case No. 10940)

Mr. Armando Bornales y Salon  
c/o The Superintendent  
Davao Prison & Penal Farm  
B.E. Dujali, 8105 Davao del Norte

PGen. Rodolfo S. Azurin, Jr.  
CHIEF, PHILIPPINE NATIONAL POLICE  
National Headquarters  
Camp Crame, Quezon City

The Director General  
PHILIPPINE DRUG ENFORCEMENT AGENCY  
PDEA Bldg., NIA Northside Road  
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G.R. No. 207768,

