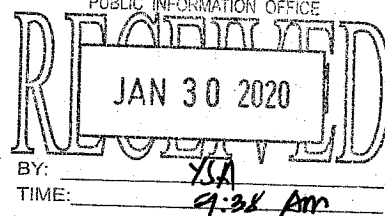




Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 28, 2019 which reads as follows:

“G.R. No. 237696 (People of the Philippines v. Sammy Ampaso y Noron/ Samurai Disankaan Ampaso)

The Case

This appeal¹ seeks to reverse the Decision² dated October 27, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01404-MIN affirming the conviction of appellant Sammy Ampaso y Noron/Samurai Disankaan Ampaso for violation of Sections 5 and 11, Article II of Republic Act 9165 (RA 9165)³ and imposing on him the corresponding penalties.

The Proceedings Before the Trial Court

The Charge

Appellant Sammy Ampaso y Noron/Samurai Disankaan Ampaso was charged in the following Informations:

Criminal Case No. 13192

That on or about 8:30 o'clock in the morning of November 18, 2008 at Purok 8, Brgy. San Ignacio, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and without corresponding license or prescription, did then and there willfully,

- over – thirteen (13) pages ...

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¹ Notice of Appeal dated November 21, 2017; CA *rollo*, pp. 96-97.

² Penned by Ronaldo B. Martin and concurred in by Associate Justices Romulo V. Borja and Edgardo T. Lloren; *rollo*, pp. 3-20.

³ Comprehensive Dangerous Drugs Acts of 2002.

unlawfully and feloniously have in his possession, control and custody two (2) sachets of methamphetamine hydrochloride otherwise known as shabu weighing zero point zero eight three (0.083) gram, and zero point zero zero seven seven (0.0077) gram, more or less, which is a dangerous drug.

CONTRARY TO LAW.⁴

Criminal Case No. 13194

That on or about 8:30 o'clock in the morning of November 18, 2008 at Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and without corresponding license or prescription, did then and there willfully, unlawfully and feloniously dispense, deliver and give away one (1) heat sealed transparent plastic sachet of methamphetamine hydrochloride, otherwise known as shabu weighing zero point zero one three five (0.0135) gram, which is a dangerous drug to a poseur buyer.

CONTRARY TO LAW.⁵

Both cases were raffled to the Regional Trial Court (RTC) – Branch 4, Butuan City.

On arraignment, appellant pleaded “not guilty” to both charges.⁶ Joint trial ensued.

Philippine Drug Enforcement Agency (PDEA) Special Officer 3 (SO3) Rodelio M. Daguman, Jr. (Daguman), Investigating Officer 1 (IO1) Simplicio Bautista (Bautista) and *Barangay* Captain Florencio Cañete testified for the prosecution. On the other hand, appellant himself testified as the defense’s sole witness.

The Prosecution’s Evidence

On November 17, 2008, around 10:30 in the evening, SO3 Daguman received a phone call from a confidential informant that a certain Samurai Disankaan was selling *shabu* in *Barangay* San Ignacio, Butuan City. SO3 Daguman immediately relayed the information to his Officer-in-Charge Atty. Joey S. Quiriones (Atty. Quiriones) who instructed him to check the database of drug

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⁴ *Rollo*, p. 4.

⁵ *Id.* at 5.

⁶ *Id.*

personalities in Butuan City. Upon confirming that appellant's name was included on the list, Atty. Quiriones ordered Investigating Officer 3 (IO3) Joel B. Plaza (Plaza) to form a buy-bust team with the latter as team leader, SO3 Daguman as poseur-buyer, IO1 Bautista as arresting officer, and the rest of the team as back-up. SO3 Daguman prepared the buy-bust money of ₱500.00 bill. They agreed on the prearranged signal: SO3 Daguman will "miscall" IO3 Plaza's cellular phone indicating the sale had been consummated.⁷ The team then proceeded to D' Arthurs along Montilla Boulevard in *Barangay* San Ignacio where the informant was waiting. At the target area, the informant reported to SO3 Daguman that appellant was nowhere to be found. The buy-bust team thus decided to abort the operation in the meantime.⁸

The following day, on November 18, 2008, the buy-bust team resumed the operation. They returned to the target area around 8 o'clock in the morning. There, the informant pointed to appellant who was standing near the water pump in an alley located about ten (10) to fifteen (15) meters from Montilla Boulevard. The informant told SO3 Daguman that he and appellant had already agreed on the purchase of *shabu*. When SO3 Daguman and the informant approached, appellant asked them what they were going to buy. The informant replied "one (1) line." SO3 Daguman then handed the marked money to appellant, who in turn, drew from his right pocket a red eyeglass case from which he retrieved a sachet of *shabu*. While inspecting the contents of the sachet handed by appellant, SO3 Daguman secretly dialed the number of IO3 Plaza. As soon as SO3 Daguman saw IO1 Bautista and the rest of the buy-bust team rushing toward them, he immediately got hold of appellant and declared he was a PDEA agent. Appellant resisted but was eventually overpowered.⁹ IO1 Bautista then informed appellant of his constitutional rights and frisked him for any weapon but found none.¹⁰

Due to the growing number of persons surrounding them, the team brought appellant to the *barangay* hall of San Ignacio which was two hundred (200) meters more or less from the actual place of arrest. At the *barangay* hall, SO3 Daguman conducted another body search on appellant resulting in the recovery of additional two (2) sachets of *shabu*.¹¹

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⁷ *Id.* at 5-6.

⁸ *Id.* at 6.

⁹ *Id.* at 6-7.

¹⁰ TSN, January 9, 2013, p. 16.

¹¹ *Rollo*, pp. 7-8.

SO3 Daguman conducted the marking and inventory of the seized items at the *barangay* hall in the presence of appellant, *Barangay* Captain Florencio Cañete and Bombo Radyo reporter Rey Brangan. The sachet of *shabu* received by SO3 Daguman from appellant during the buy-bust operation was kept inside SO3 Daguman's pocket the whole time. During the inventory, he marked the sachet "RMD 1". The two (2) other sachets of *shabu* confiscated from appellant after the body search were likewise marked "RMD 2" and "RMD 3", respectively. Thereafter, the team together with appellant proceeded to the PDEA Regional Office where SO3 Daguman prepared the Request for Laboratory Examination, Request for Drug Test, and Affidavit of Apprehension. Then, they brought appellant and the seized items to the PNP Crime Laboratory. Based on Chemistry Report No. D-088-2008, the items bearing the marks "RMD 1", "RMD 2", and "RMD 3" yielded positive results for *methamphetamine hydrochloride*, otherwise known as *shabu*. Appellant was also found positive for drug use per Chemistry Report No. DT-083-2008.¹²

The prosecution submitted the following evidence: 1) piece of bond paper with original ₱500 bill marked money; 2) Certificate of Inventory; 3) Affidavit of Apprehension; 4) Request for Laboratory Examination; 5) Chemistry Report No. D-088-2008; 6) specimens of *shabu* bought during buy-bust and found in possession of appellant; 7) Request for Drug Test; 8) Chemistry Report No. DT-083-2008; and 9) appellant's picture taken at the *Barangay* Hall of San Ignacio, Butuan City.¹³

The Defense's Evidence

Appellant testified that on November 18, 2008, around 8:30 in the morning, he was on his way to Langihan, *Barangay* San Ignacio, Butuan City. When he was only about twenty (20) meters away from his house, two (2) men of large built grabbed and handcuffed him, and hit him in the head several times using their guns. He was brought to the PDEA office in Libertad where he was mauled again before he was taken to the *barangay* hall. There, a sachet of *shabu* was laid on the table in front of him. He was asked to point at the *shabu* on the table.¹⁴

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¹² *Id.* at 8-9.

¹³ Record, pp. 102-106.

¹⁴ *Rollo*, p. 10.

The defense submitted a medical certificate¹⁵ dated November 19, 2008 to prove his injuries.

The Trial Court's Ruling

In the Omnibus Decision¹⁶ dated January 19, 2015, the trial court found appellant guilty as charged, viz:

WHEREFORE, premises considered in Criminal Case No. 13194 for violation of Section 5 of Article II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, the Court finds accused Sammy Ampaso y Noron/Samurai Disankaan Ampaso alias Samurai Disankaan guilty beyond reasonable doubt and he is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Five hundred thousand pesos (P500,000.00) without subsidiary imprisonment in case of insolvency.

In Criminal Case No. 13192 for violation of Section 11, Article II of Republic Act 9165, accused Sammy Ampaso y Noron/Samurai Disankaan Ampaso alias Samurai Disankaan is found guilty beyond reasonable doubt and is hereby sentenced to undergo imprisonment of an indeterminate penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and to pay a fine of Three hundred thousand pesos (P300,000.00), without subsidiary imprisonment in case of insolvency.

Accused is ordered incarcerated at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte.

He shall serve his sentence simultaneously, and is credited in the service thereof of the period of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended.

The sachets of shabu are ordered confiscated in favor of the government to be dealt with in accordance with law.

SO ORDERED.¹⁷

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¹⁵ Record, p. 20.

¹⁶ Penned by Judge Godofredo B. Abdul, Jr.; CA *rollo*, pp. 34-44.

¹⁷ CA *rollo*, p. 44.

The trial court found that the prosecution established substantial compliance with the chain of custody rule.¹⁸ It gave credence to the justification of the prosecution witnesses that the marking and inventory of the illegal drugs seized had to be done at the Barangay Hall of San Ignacio, Butuan City and not at the *situs criminis* for security reasons.¹⁹

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court when it allegedly overlooked the police officers' non-compliance with Section 21 (a) of RA 9165. *First*, the apprehending team failed to immediately mark, conduct an inventory, and take photographs of the seized drugs at the place of arrest. *Second*, during the inventory, only an elected public official and a media representative were present. The absence of a representative from the Department of Justice (DOJ) during the inventory was not even acknowledged and justified by the prosecution.²⁰

In refutation, the Office of the Solicitor General (OSG) through Assistant Solicitor General Raul J. Mandin and Associate Solicitor Ronn Michael M. Villanueva defended the verdict of conviction. They essentially argued that the integrity and evidentiary value of the seized drugs were properly preserved in compliance with the chain of custody rule.²¹

The Court of Appeals' Ruling

In the Decision²² dated October 27, 2017, the Court of Appeals affirmed the conviction. It found that the arresting officers substantially complied with the chain of custody rule and the integrity of the *corpus delicti* was duly preserved.²³

The Present Appeal

Appellant now seeks affirmative relief and pleads anew for his acquittal.

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¹⁸ *Id.* at 43.

¹⁹ *Id.*

²⁰ *Id.* at 28-29.

²¹ *Id.* at 64-67.

²² *Rollo*, pp. 3-20.

²³ *Id.* at 16-18.

For the purpose of this appeal, both appellant and the People adopted, their respective briefs filed before the Court of Appeals, in lieu of supplemental briefs.²⁴

Issue

Was the prosecution able to prove beyond reasonable doubt appellant's guilt for illegal sale and illegal possession of dangerous drugs?

Ruling

The case is governed by RA 9165 prior to its amendment in 2014. Section 21 of RA 9165 lays down the procedure in handling the dangerous drugs starting from their seizure until they are finally presented as evidence in court. This makes up the **chain of custody rule**.²⁵

Paragraph 1, Section 21 of RA 9165 reads:

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:

(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 added)

XXXX

This provision is related to Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165:

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²⁴ *Id.* at 29-31 and 34-35.

²⁵ *People v. Frias*, G.R. No. 234686, June 10, 2019.

Section 21. (a) The apprehending officer/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.** (Emphases added)

In the recent case of *People v. Miranda*,²⁶ the Court emphasized anew that to ensure the integrity of the illegal drug seized, the prosecution must account for each link in its chain of custody:²⁷ *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.²⁸

The *first link* speaks of seizure and marking which should be done immediately at the place of arrest and seizure. It also includes the physical inventory and taking of photographs of the seized or confiscated drugs which should be done in the presence of the accused, a media representative, a representative from the DOJ, and an elected public official.²⁹

On this score, SO3 Daguman testified:

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²⁶ G.R. No. 218126, July 10, 2019.

²⁷ As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.] xxx

²⁸ *People v. Victoria*, G.R. No. 238613, August 19, 2019.

²⁹ *People v. Baltazar*, G.R. No. 229037, July 29, 2019.

Direct examination:

Q: By the way, you said that you were handed a sachet of *shabu* by Samurai, where did you place the *shabu* after you received it?

A: I placed the sachet of *shabu* that I was able to purchase from him [in] my pocket.

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Q: Where did you go after that?

A: We then proceeded to the Barangay Hall of barangay San Ignacio.

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Q: Why did you proceed to the Barangay Hall of Barangay San Ignacio?

A: Because that's where we are going to conduct the inventory because the area is already crowded.

Q: Who decided that you conduct inventory at the Barangay Hall of Barangay San Ignacio?

A: It was the decision of IA3 Plaza considering that the place was hostile.

Q: Why you considered the place where the delivery of *shabu* took place as hostile Mr. Witness?

A: Because we received information and that some of the residents of that area have guns and there are rampant killings in the area.

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Q: Aside from Barangay Captain Cañete, who were present at the Barangay Hall before the inventory was actually conducted?

A: We summoned for a Media representative Mr. Rey Brangan of Bombo Radio.

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Q: By the way, where was the *shabu* delivered by Sammy to you when you arrived at the Barangay Hall?

A: It's with me in my pocket, Sir.

Q: During the inventory, what did you do, if there was any?

A: We conducted another body search on the suspect, and we recovered two (2) sachets of *shabu*.

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xxx

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Q: Where did you prepare the Certificate of Inventory?

A: At the Barangay Hall of San Ignacio.

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Q: In the presence of whom?
A: Barangay Captain Cañete, Mr. Rey Brangan; the suspect himself; and there were also other barangay officials.³⁰

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COURT:

Q: "RMD 1" refers to one (1) suspected methamphetamine hydrochloride or *shabu*, was this the subject of the buy-bust?

A: Yes, Your Honor.

Q: Who made the markings?

A: I was the one, Your Honor.

Q: Where at?

A: At the Barangay Hall of San Ignacio.

Q: What does RMD stands for?

A: It's my initials, Your Honor.

Q: There are two (2) *shabu* also marked as "RMD 2" and "RMD 3", what are these?

A: Your Honor, those were the sachets of *shabu* we recovered during the thorough search we conducted at the Barangay Hall of San Ignacio.³¹

SO3 Daguman's testimony, on its face, bears how the first link in the chain of custody had been breached many times over.

First, the marking of the seized drug was not immediately done after seizure at the place of arrest. SO3 Daguman testified that following appellant's arrest, the buy-bust team proceeded to the barangay hall of San Ignacio and only then did SO3 Daguman mark the seized drug. *En route*, the item remained unmarked. It was clearly exposed to switching, planting, and contamination.

A similar circumstance obtained in *People v. Kasan*³² where the Court acquitted appellant therein holding that the marking of the illegal drugs seized should be done immediately upon confiscation to truly ensure that they were the same items that entered the chain of custody.

The police officers here, nonetheless, averred that the place of arrest was "hostile" to justify their failure to mark, inventory, and photograph the drug item at the *situs criminis*. They claimed they

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³⁰ TSN, January 9, 2013, pp. 15-18.

³¹ *Id.* at 28.

³² G.R. No. 238334, July 3, 2019.

received information that some of the residents therein had guns and killings were rampant in the area.³³ Standing alone, however, such bare allegation should be rejected.

Indeed, lapses may be excused under exceptional circumstances. But this remains an exception to the rule requiring the immediate marking and inventory of the seized dangerous drug. In *People v. Al Shierav Ahmad*,³⁴ the Court ordained that there must be adequate explanation, **proven as a fact**, for the arresting officers' failure to follow the chain of custody rule. We can neither presume what these justifiable grounds are, nor assume their existence. The prosecution cannot simply bypass the requirements under Section 21 of RA 9165 through a bare and unsupported allegation that the area was hostile or dangerous.³⁵

Second, no DOJ representative was present during the inventory. Based on SO3 Daguman's testimony, the marking and inventory in this case were done in the presence of appellant, media representative Rey Brangan, and *Barangay* Captain Florencio Cañete. He did not mention, however, that a representative from the DOJ was also present. Notably, the prosecution failed to acknowledge this deficiency, let alone, offer any explanation therefor. In fact, the prosecution was completely silent on this point.

In *People v. Baltazar*,³⁶ the accused was acquitted because the prosecution's evidence was totally bereft of any showing that a representative from the DOJ was present during the inventory and photograph. The Court keenly noted, as in this case, that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegations of frame up.

Finally, the photograph requirement was not complied with at all. Though the prosecution offered in evidence a picture marked as Exhibit "I",³⁷ the picture is not of the items seized. It was appellant's mugshot already wearing a PDEA t-shirt, albeit the prosecution avowed it was taken at the barangay hall of San Ignacio. **What the law requires is a photograph of the seized items.** The Court cannot

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³³ TSN, January 9, 2013, p. 16.

³⁴ G.R. No. 228955, March 14, 2018.

³⁵ See *People v. Ahmad*, G.R. No. 228955, March 14, 2018.

³⁶ G.R. No. 229037, July 29, 2019, citing *People v. Seguinte*, G.R. No. 218253, June 20, 2018.

³⁷ Index of Exhibits, p. 5.

merely gloss over this procedural lapse especially when the police officers claimed they did another body search on appellant at the *barangay* hall and recovered two (2) additional sachets of *shabu*.

In *People v. Jafaar*,³⁸ the Court acquitted appellant due to the prosecution's failure to comply with the photograph requirement: a fatal break in the chain of custody.

Indeed, the repeated breach of the chain of custody rule here was a serious flaw which had destroyed the integrity and evidentiary value of the *corpus delicti*.

In *People v. Mercader*,³⁹ the Court ruled that mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of required witnesses under the law, did not equate to compliance with the mandatory procedure under Section 21, Article II of RA 9165. A verdict of acquittal therefore was deemed to be in order.

Strict adherence to the chain of custody rule must be observed.⁴⁰ It is recognized though that a perfect chain of custody may be impossible to obtain at all times because of varying field conditions.⁴¹ This is precisely the reason why the IRR of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.

Here, the prosecution utterly failed to offer an acceptable excuse for deviation from the strict requisites of the law. Thus, the condition for the saving clause to apply was not complied with. Appellant, therefore, must be unshackled, acquitted, and released from restraint.

WHEREFORE, the appeal is **GRANTED**. The Decision dated October 27, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01404-MIN is **REVERSED** and **SET ASIDE**.

Appellant **SAMMY AMPASO Y NORON/SAMURAI DISANKAAN AMPASO** is **ACQUITTED**. The Superintendent of the Davao Prison and Penal Farm, Davao del Norte is ordered to: a)

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³⁸ 803 Phil. 582, 595 (2017).

³⁹ G.R. No. 233480, June 20, 2018.

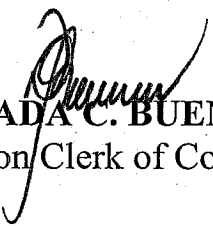
⁴⁰ Supra note 29.

⁴¹ See *People v. Abetong*, 735 Phil. 476, 485 (2014).

immediately release appellant Sammy Ampaso y Noron/Samurai Disankaan Ampaso from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of judgment be issued immediately.

SO ORDERED.” *Caguioa, J., on official leave; Inting, J., designated as Additional Member per S.O. No. 2726 dated October 25, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court *sk/llk*
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The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CR HC No. 01404-MIN)

The Hon. Presiding Judge
Regional Trial Court, Branch 4
8600 Butuan City
(Crim. Case Nos. 13192 & 13194)

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PUBLIC ATTORNEY'S OFFICE
Regional Special and Appealed Cases Unit
Counsel for Accused-Appellant
BJS Building
Tiano Bros cor. San Agustin Streets
9000 Cagayan de Oro City

Judgment Division (x)
Supreme Court

Mr. Sammy N. Ampaso/Samurai Disankaan
Ampaso
Accused-Appellant
c/o The Superintendent
Davao Prison and Penal Farm
B.E. Dujali, 8105 Davao del Norte

The Superintendent
Davao Prison and Penal Farm
B.E. Dujali, 8105 Davao del Norte

The Director General
Bureau of Corrections
1770 Muntinlupa City

UR

WAF