



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **February 5, 2020** which reads as follows:*

**“G.R. No. 233328 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus CIRILO SOLANTE BORBON @ Titing Gamay/Andoy a.k.a. Cirilo Borbon, Jr., ROMEO BORBON ROTA @ Bala, and MANUEL CABASE, JR. y ALMARIO, accused; CIRILO BORBON, JR. and MANUEL CABASE, JR. y ALMARIO, accused-appellants.**

After a careful review of the records of the instant case, the Court reverses and sets aside the Decision<sup>1</sup> dated September 6, 2016 (assailed Decision) of the Court of Appeals, Cebu City, Twentieth Division (CA) in CA-G.R. CR-HC No. 01928, which affirmed the Judgment<sup>2</sup> dated August 22, 2014 (Judgment) rendered by the Regional Trial Court of Cebu City, Branch 57 (RTC) in Criminal Case No. CBU-89569. The said Judgment found accused-appellants Cirilo Solante Borbon @ Titing Gamay/Andoy a.k.a Cirilo Borbon, Jr. (accused-appellant Borbon) and Manuel Cabase, Jr. y Almario (accused-appellant Cabase) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

The Court acquits accused-appellants Borbon and Cabase for failure of the prosecution to prove their guilt beyond reasonable doubt.

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<sup>1</sup> *Rollo*, pp. 4-20. Penned by Associate Justice Pablito A. Perez, concurred in by Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol.

<sup>2</sup> *CA rollo*, pp. 34-40. Penned by Presiding Judge Enriqueta Loquillano-Belarmino.

In the conduct of buy-bust operations, Section 21 of R.A. 9165 provides that: (1) the seized items must be marked, inventoried and photographed immediately after seizure or confiscation; and (2) **the marking, physical inventory, and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

The Court has held that the presence of the witnesses from the DOJ, the media, and a public elective office is *necessary* to protect against the possibility of planting, contamination, or loss of the seized drug.<sup>3</sup> Using the language of the Court in *People v. Mendoza*,<sup>4</sup> without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drug, the evils of switching, “planting” or contamination of the evidence that had tainted previous buy-bust operations would not be averted, thereby negating the integrity and credibility of the seizure and confiscation of the subject illegal drug that was evidence of the *corpus delicti*, and adversely affecting the trustworthiness of the incrimination of the accused.<sup>5</sup>

In the instant case, it is not disputed by the prosecution that the marking of the two plastic sachets containing illegal drugs allegedly retrieved from accused-appellants Borbon and Cabase was done without the presence of any of the required witnesses.<sup>6</sup> Further, the rest of the inventory process was undertaken without the presence of a representative from the DOJ, as mandatorily required under Section 21 of R.A. 9165.<sup>7</sup>

Concededly, however, there are instances wherein departure from the aforesaid mandatory procedures is permissible. Section 21 of the Implementing Rules and Regulations of R.A. 9165 provides that “noncompliance of 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 and custody over said items.”

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<sup>3</sup> *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 149.

<sup>4</sup> 736 Phil. 749 (2014).

<sup>5</sup> Id. at 764.

<sup>6</sup> *Rollo*, p. 7.

<sup>7</sup> Id. at 7-8.

For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.<sup>8</sup>

Applying the foregoing in the instant case, it must be stressed that the prosecution failed to recognize the authorities' failure to observe the mandatory requisites under Section 21 of R.A. 9165. Moreover, the prosecution failed to make any justification for such failure.

Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would have been compromised.<sup>9</sup>

In light of the foregoing, the Court restores the liberty of accused-appellants Borbon and Cabase.

**WHEREFORE**, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 6, 2016 of the Court of Appeals, Cebu City, Twentieth Division in CA-G.R. CR-HC No. 01928 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Cirilo Solante Borbon @ Titing Gamay/Andoy a.k.a Cirilo Borbon, Jr. and Manuel Cabase, Jr. y Almario are **ACQUITTED** of the crime charged on the ground of reasonable doubt, and are **ORDERED IMMEDIATELY RELEASED** from detention unless they are being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Penal Superintendent of the Leyte Regional Prison, Abuyog, Leyte for immediate implementation. The said Penal Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

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<sup>8</sup> See *People v. Alagarme*, 745 Phil. 449, 461 (2015).

<sup>9</sup> See *People v. Sumili*, 753 Phil. 342, 349-350 (2015).

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
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by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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Court of Appeals  
6000 Cebu City  
(CA-G.R. CR HC No. 01928)

The Hon. Presiding Judge  
Regional Trial Court, Branch 57  
6000 Cebu City  
(Crim. Case Nos. CBU-89569 & CBU-89570)

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Supreme Court

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Manuel A. Cabase, Jr.  
Accused-Appellants  
c/o The Superintendent  
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Abuyog, 6510 Southern Leyte

The Superintendent  
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