



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **03 February 2021** which reads as follows:*

“G.R. No. 242275 (*People of the Philippines v. Mack Dondon Baldugo*). – The Court **NOTES** the December 10, 2020 Letter of CInsp. Edgar N. Morillo, Acting Superintendent, New Bilibid Prison, Muntinlupa City, in compliance with the Resolution dated October 14, 2020, confirming the confinement of Mack Dondon Baldugo¹ (*accused-appellant*) in the said institution since September 15, 2016.

This resolves the present appeal from the May 22, 2018 Decision² of the Court of Appeals (*CA*) in CA-G.R. CR-HC. No. 08494 which affirmed the July 25, 2016 Judgment³ of the Regional Trial Court, Batac City, Branch 18 (*RTC*) finding accused-appellant guilty beyond reasonable doubt of illegal sale of *shabu*.

Antecedents

On October 5, 2011, the Office of the Provincial Prosecutor of Ilocos Norte filed an Information charging accused-appellant with violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165, allegedly committed as follows:

That on or about 4:45 o'clock in the afternoon of September 5, 2011, at Brgy. 2, Pagdilao, [M]unicipality of Pinili, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named [accused-appellant], did then and there willfully, unlawfully,

¹ As per footnote 1 of the RTC Judgment (Records, p. 181), the Information did not specify the middle name of the accused-appellant, but the Booking Sheet (Records, p. 20) indicated that it is “BUMANGLAG.”

² *Rollo*, pp. 2-16; penned by Associate Justice Samuel H. Gaerlan (now a Member of this Court), with Associate Justices Ramon Paul L. Hernando (now also a Member of this Court) and Marie Christine Azcarraga Jacob, concurring.

³ *CA rollo*, pp. 53-67.

feloniously and knowingly sell for the amount of ₱500.00 one [heat-sealed] plastic sachet containing white crystalline substance known as Shabu, a dangerous drug, weighing 0.0172 gram, to a member of the Ilocos Norte Provincial Anti-Illegal Drugs Special Operation Task Group of the Ilocos Norte Police Provincial Office, Camp Juan, Laoag City, who acted as a poseur buyer in a buy-bust operation, without authority or license to sell the same from the appropriate government agency.⁴

When arraigned, accused-appellant, with the assistance of counsel, pleaded not guilty. At the trial, the prosecution presented as witness PO2 Joey Aninag (*PO2 Aninag*). By agreement of the parties, the prosecution dispensed with the testimonies of the following: SPO2 Nilo Domingo (*SPO2 Domingo*), SPO2 Teodoro Flojo (*SPO2 Flojo*), Police Inspector Roanalaine Baligod (*PI Baligod*) and PO2 Sygman Benigno (*PO2 Benigno*). For the defense, accused-appellant was the lone witness.⁵

Version of the Prosecution

On September 5, 2011, at around 11:30 in the morning, an informant arrived at the office of the Provincial Anti-Illegal Drugs-Special Operations Task Group (*PAID-SOTG*) in Camp Captain Valentin S. Juan (*Camp Juan*), Laoag City. He informed them about accused-appellant's alleged involvement in the sale of illegal drugs. He claimed to be accused-appellant's regular customer and expressed willingness to help in apprehending him.⁶

Police Inspector Joseph Raton Baltazar (*PI Baltazar*, *PAID-SOTG's* Action Officer), held a briefing among their operatives and formed a buy-bust team. PO2 Aninag and the informant were designated as poseur-buyers, while PO2 Benigno and PO2 Jefferson Sulmerin were assigned as backup. After preparing the marked money and other requirements, PO2 Aninag recorded the pre-operations report in the police blotter. Coordination with the Philippine Drug Enforcement Agency (*PDEA*) was likewise done.⁷

From the police station, the *PAID-SOTG* team joined by other police officers, proceeded to Barangay 2, Pagdilao, Pinili and parked their service vehicle in front of the public market. PO2 Aninag and the informant walked towards a store where accused-appellant was consuming a softdrink. Accused-appellant recognized the informant and asked him where he was going, to which the latter replied that they wanted to buy *shabu*. The informant

⁴ Records, p. 1.

⁵ *CA rollo*, pp. 53-54.

⁶ *Id.* at 91.

⁷ *Id.* at 54.

introduced PO2 Aninag as a friend from Currimao.⁸

Accused-appellant demanded the payment and PO2 Aninag handed the ₱500-bill which he earlier marked with his initials, "JA." In turn, accused-appellant handed PO2 Aninag a heat-sealed plastic sachet which the latter put in his pocket. PO2 Aninag then placed a call on his cellphone to PO2 Benigno, which was the pre-arranged signal to the rest of the team that the transaction had been consummated. PO2 Aninag immediately grabbed accused-appellant's hand, introduced himself as a police officer and arrested accused-appellant.⁹

Meanwhile, PO2 Benigno and another police officer arrived and handcuffed accused-appellant. PO2 Aninag searched accused-appellant and found the marked ₱500-bill in the latter's right pocket. The team then brought accused-appellant to the Pinili Police Station where the marking of the confiscated item was done. With accused-appellant in front of him, PO2 Aninag placed his initials, "JA," and accused-appellant's initials, "MB," on the plastic sachet.¹⁰

PO2 Aninag also prepared the receipt of properties/articles seized which only he signed. Accused-appellant allegedly witnessed the inventory but refused to sign the document. PO2 Aninag then brought the request for laboratory examination prepared by PI Baltazar and the seized item to the Ilocos Norte Provincial Crime Laboratory. SPO2 Domingo received and recorded the seized contraband in the logbook and handed the same to chemist PI Baligod for examination. The subject item tested positive for *shabu* based on the initial laboratory report and chemistry report prepared by PI Baligod. Subsequently, PI Baligod turned over the letter request, specimen and chemistry report to SPO2 Flojo.¹¹

Version of the Defense

Accused-appellant denied the allegations and narrated that on September 5, 2011 at 4:00 in the afternoon, he left his house and rode a motorcycle to fetch his children from school. While waiting, he stayed at the the Three L Amazing General Merchandise, a store adjacent to the school, and bought softdrink and biscuits. When he heard a commotion nearby, he went in front of the store and saw that tricycle drivers were causing the disturbance. While standing there, a red pick-up arrived where more than five (5) men alighted. One of them shouted at him "*Dapa*." He dropped face down on the

⁸ Id.

⁹ Id.

¹⁰ Id. at 128.

¹¹ Id. at 128-129.

ground and the men placed him in handcuffs. He tried to ask what he did wrong, but none of them answered. Instead, the men lifted and pushed him inside the pick-up, and thereafter brought him to the Pinili Police Station.¹²

At the police station, accused-appellant claimed to have been ordered to sit in front of a table where the people behind started hitting him. While he was crying, one of the men got his necklace and PO2 Aninag took his two cellphones. Thereafter, a sachet and ₱500-bill were placed on the table which accused-appellant claimed to have not seen before. Another person asked accused-appellant if he recognized him as the one who purchased *shabu* from him. Accused-appellant denied knowing the person and selling *shabu*. He then claimed that the men started taking photographs of him and the items on the table. No other witnesses were present except for accused-appellant and the armed men.¹³ Accused-appellant was thereafter brought to Camp Juan in Laoag City where he was made to sign a piece of paper which he refused because he did not know its contents. Accused-appellant was consequently brought to a nearby jail.¹⁴

RTC Ruling

On July 25, 2016, the RTC promulgated a Judgment finding accused-appellant guilty of the crime charged, thus:

WHEREFORE, the [accused-appellant] MACK DONDON BALDUGO is found GUILTY beyond reasonable doubt of illegal sale of a dangerous drug penalized under Section 5 of Republic Act No. 9165 as amended and is hereby sentenced to LIFE IMPRISONMENT. He is also sentenced to pay a FINE of ₱500,000.00.

Let the methamphetamine hydrochloride, otherwise known as “shabu,” subject of this case be turned over to the Philippine Drug Enforcement Agency for proper disposition.

Costs against the [accused-appellant].

SO ORDERED.¹⁵

The RTC accorded credence to the buy-bust operation in the absence of improper motive on the part of PO2 Aninag. The trial court noted that while accused-appellant alleges gross misconduct on the part of the apprehending

¹² Id. at 129.

¹³ Id.

¹⁴ Id. 130.

¹⁵ Id. at 67.

officers, he nevertheless failed to charge them administratively.¹⁶ Also, the prosecution was able to establish an unbroken chain of custody of the *shabu* seized from accused-appellant during the buy-bust operation. The non-presentation of the surveillance report and the buy-bust money as evidence in court did not affect the conduct of the buy-bust operations considering that these are not elements of the crime of illegal sale of dangerous drugs.¹⁷

As regards the noncompliance with Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640, the RTC noted that said provision allows the conduct of inventory at the nearest police station whenever practicable in cases of warrantless seizures. The trial court noted that the Supreme Court recognizes that the specified timeframe for conduct of the physical inventory – “immediately after seizure and confiscation,” to have no exact definition and does not exclude the possibility that such may be done at the nearest police station. As to the absence of an elected public official and representative of the media or the Department of Justice (*DOJ*), the same was not fatal because the integrity of the item purchased from accused-appellant by PO2 Aninag had been preserved.¹⁸

CA Ruling

The CA rendered its Decision on May 22, 2018 affirming the RTC. It noted that the marking of the confiscated item from accused-appellant was done in his presence; that the chain of custody of the seized drug was sufficiently demonstrated by the records of the case; that the crucial links in the chain of custody of the seized drug, from its confiscation until its presentation as evidence in court, were duly accounted for and shown to not have been broken;¹⁹ that the absence of the required witnesses had been sufficiently explained by PO2 Aninag; and that against the positive identification by PO2 Aninag that he bought the seized *shabu* from accused-appellant, the latter only offered bare denials.²⁰

Assignment of Errors

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE BEYOND REASONABLE DOUBT THE *CORPUS DELICTI*

¹⁶ Id. at 61-62.

¹⁷ Id. at 62-63.

¹⁸ Id. at 62-66.

¹⁹ Id. at 132-134.

²⁰ Id. at 136-138.

DUE TO A GAP IN THE CHAIN OF CUSTODY;

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THAT THE POLICE OFFICERS COMPLIED WITH THE PROVISIONS OF SECTION 21 OF REPUBLIC ACT NO. 9165;

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THAT THE DEFENSE WAS ABLE TO OVERCOME THE PRESUMPTION OF REGULARITY OF FUNCTION OF THE POLICE OFFICERS;

IV

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE.²¹

Accused-appellant insists that there was a gap in the chain of custody in view of the ruling of this Court that marking of the seized drug should be done immediately after confiscation at the place of arrest. The failure of the prosecution to prove this matter casts doubt on its evidence, thus warranting accused-appellant's acquittal.²²

As regards the absence of the elected public official, as well as media and DOJ representatives during the inventory of the seized items, accused-appellant pointed out that PO2 Aninag only testified that they were not available and failed to elaborate on how they exerted "effort" to secure their attendance. Accused-appellant argues that the police officers' lapses cannot be overlooked by invoking the presumption of regularity in the performance of official duty, which cannot be deemed superior to the presumption of innocence of the accused-appellant. He also claims that PO2 Aninag also admitted that they failed to follow the procedures on the conduct of surveillance and the preparation of the buy-bust money.²³

²¹ Id. at 32-33.

²² Id. at 36-38.

²³ Id. at 38-46.

The Office of the Solicitor General (*OSG*) asserts that accused-appellant's conviction was amply supported by testimonial, documentary and object evidence. Contrary to accused-appellant's claim, the totality of the evidence disclosed that the sale of the prohibited drug had taken place; that the transaction/exchange was adequately established; and that accused-appellant was the person responsible therefor. Further, the result of the laboratory examination conducted on the substance contained in the confiscated plastic sachet confirmed the presence of *shabu*.²⁴

On the matter of compliance with the procedure laid down in Sec. 21, the *OSG* contends that the integrity and evidentiary value of the seized item had been preserved by the police officers from the time it was confiscated by PO2 Aninag up to the time it was turned over to the Ilocos Norte Provincial Crime Laboratory Office and PNP Regional Office 1 for laboratory examination. It stressed that Sec. 21(a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 acknowledges that noncompliance with the requirements therein does not automatically render the seizure of the item void, provided that the integrity of the item had been preserved. Jurisprudence likewise recognizes that noncompliance with the procedure under Sec. 21 is not fatal as long as the chain of custody is sufficiently proven. Besides, the presumption of regularity of performance of official duty runs in favor of the apprehending officers absent any proof of ill motive on their part in effecting the buy-bust operation and eventual arrest of accused-appellant.²⁵

Did the CA err in affirming the RTC despite failure of the police officers to comply with Sec. 21, Article II of R.A. No. 9165?

The Court's Ruling

The appeal is meritorious.

Sec. 5, Art. II of R.A. No. 9165 makes it illegal for any person to sell any dangerous drug regardless of quantity and purity. To be convicted of this charge, the prosecution must prove with moral certainty: (1) the identity of the seller and the buyer; (2) the object and consideration of the sale; and, (3) the delivery of the thing sold and the payment therefor.²⁶

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is essential, therefore, that the identity and

²⁴ *Id.* at 97-98.

²⁵ *Id.* at 99-104.

²⁶ *People v. Sahibil*, G.R. No. 228953, January 28, 2019; citing *People v. Taboy*, 834 Phil. 72 (2018).

integrity of the seized drugs be established with moral certainty. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime.²⁷

Chain of custody refers to the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.²⁸ To ensure the integrity of the substances presented as evidence in drug cases, compliance with the chain of custody rule is imperative. It is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.²⁹

Sec. 21, Art. II of R.A. No. 9165 provides for the procedure on how seized drugs must be handled until they are presented in court as evidence, to wit:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs x x x. — The PDEA shall take charge and have custody of all dangerous drugs x x x 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 supplied)

Sec. 21(a) of the IRR of R.A. No. 9165 further provides:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/

²⁷ *People v. Dela Cruz*, G.R. No. 234151, December 5, 2018.

²⁸ *People v. Dumanjug*, G.R. No. 235468, July 1, 2019; citing *People v. Guzon*, 719 Phil. 441, 451 (2013).

²⁹ *Id.*

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:

- (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[.]** (emphasis supplied)

The fact that the marking of the seized drug was not done immediately after its confiscation at the place of arrest will not necessarily invalidate the seizure nor make the confiscated item inadmissible as evidence. In here, the marking and inventory of the seized item were done at the police station, which the IRR allow on justifiable grounds for as long as the integrity and evidentiary value of the evidence have been properly preserved. However, the elected public official, media and DOJ representatives were conspicuously absent during the buy-bust operation and inventory. The apprehending officers have admitted their failure to secure the attendance of these required third-party witnesses.

It is settled that the presence of the three required witnesses at the time of the apprehension and inventory is mandatory.³⁰ The law imposes the said requirement because their presence serves to prevent the evils of switching, “planting,” or contamination of the evidence that had tainted previous buy-bust operations under the former law (R.A. No. 6425 or the *Dangerous Drugs Act of 1972*).³¹ The requisite is thus imposed not only to guard against any irregularities in the act of apprehension and seizure but also to disprove any

³⁰ *People v. Gabriel, Jr.*, G.R. No. 228002, June 10, 2019.

³¹ *People v. Tomawis*, 830 Phil. 385, 408-409 (2018).

defense of frame-up usually invoked by the accused-appellant.

Sec. 21 of R.A. No. 9165 was amended by R.A. No. 10640 and incorporated the saving clause contained in the IRR which now requires that the conduct of the physical inventory and taking of photograph of the seized items be done in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative from the National Prosecution Service or the media. However, since the alleged crime was committed in 2011, the old provisions of Sec. 21 and its IRR are applicable in this case. This requires three additional witnesses during the physical inventory and photographing of the seized items, aside from the accused or his/her representative or counsel: (1) any elected public official; (2) a representative from the media; **and** (3) a representative from the DOJ.

The Court has consistently held that the prosecution has the burden of (1) proving their compliance with Sec. 21 of R.A. No. 9165, and (2) providing a sufficient explanation in case of noncompliance.³² Such justification or explanation given by the apprehending officers, after recognizing their lapse or lapses, would be the basis for applying the saving mechanism under the last paragraph of Sec. 21(a), Art. II of the IRR of R.A. No. 9165.³³

In the recent case of *People v. Lim*,³⁴ this Court declared:

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required

³² *People v. Briones*, G.R. No. 239077, March 20, 2019; citing *People v. Musor*, G.R. No. 231843, November 7, 2018.

³³ See *People v. Reyes*, 797 Phil. 671, 690 (2016).

³⁴ G.R. No. 231989, September 4, 2018; citing *People v. Sipin*, 833 Phil. 67 (2018).

witnesses even before the offenders could escape.³⁵ (boldface omitted)

Mere statements of unavailability, absent actual serious attempts to secure the presence of these witnesses, are not justifiable reasons for noncompliance. As such, police officers are compelled not only to state the reasons for their noncompliance, but must, in fact, also convince the Court that they exerted earnest efforts to comply with the legally prescribed procedure, and that under the given circumstances, their actions were reasonable.³⁶

In this case, PO2 Aninag testified during cross-examination:

Q Now, tell the Honorable Court, do you have any witness to the inventory that you prepared?

A None, sir.

Q No local government official?

A None, sir.

Q No barangay official?

A None, sir.

Q No representative from the media?

A No, sir.

Q No DOJ representative?

A No, sir.

Q So, the [accused-appellant] was alone together with his wife at that time against all of you?

A Yes, sir.³⁷

On re-direct examination, PO2 Aninag was given the opportunity to explain such lapse on the part of the buy-bust team and he testified as follows:

Q Then you were also again confronted with respect to the inventory report wherein there was no barangay official who witnessed the inventory, why is it like that, there was no barangay official who witnessed the same?

A We called for one but no one responded, sir.

³⁵ *People v. Sipin*, id. at 93.

³⁶ See *People v. Cariño*, G.R. No. 233336, January 14, 2019.

³⁷ TSN, March 31, 2014, p. 17.

- Q How about the fact that there was also no media representative to witness the conduct of inventory and to sign the inventory report?
- A There was no available media at that time, sir.³⁸

To reiterate, the prosecution bears the burden of establishing that it exerted earnest efforts to obtain the presence of the required witnesses under Sec. 21 of R.A. No. 9165. A simple declaration that there was no one available among the required witnesses is not acceptable.

We thus find no justifiable reason on the part of the prosecution for noncompliance with the required presence of third-party representatives during the conduct of the inventory. With the resulting substantial gap in the chain of custody of the seized item from accused-appellant, the integrity and evidentiary value of the seized item is placed in question.³⁹ Accordingly, We find accused-appellant's acquittal of the crime charged in order.

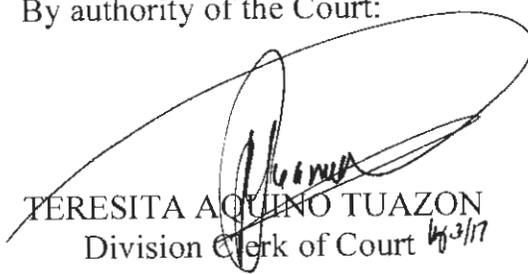
WHEREFORE, the appeal is **GRANTED**. The Decision dated May 22, 2018 of the Court of Appeals in CA-G.R. CR-HC. No. 08494 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Mack Dondon Baldugo is accordingly **ACQUITTED** of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director of the Bureau of Corrections is **ORDERED** to **IMMEDIATELY RELEASE** accused-appellant from detention, unless he is being lawfully held in custody for any other reason, and to inform this Court of his action hereon within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *by 3/17*
17 MAR 2021

³⁸ Id. at 21.

³⁹ See *Edangalino v. People*, G.R. No. 235110, January 8, 2020.

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

MACK DONDON BALDUGO (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

*CINSP. EDGAR N. MORILLO (x)
Acting Superintendent
New Bilibid Prison-South
Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 18
Batac City, Ilocos Norte
(Crim. Case No. 4807-18)

JUDGMENT DIVISION (x)
Supreme Court, Manila

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PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR-HC No. 08494

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