



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Petitioner,

G.R. No. 250295

Members:

- versus -

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*  
GESMUNDO,  
LAZARO-JAVIER,  
LOPEZ, M., and  
ROSARIO, JJ.

NACI BORRAS y LASCANO,  
Respondent.

Promulgated:

MAR 15 2021

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**DECISION**

**LAZARO-JAVIER, J.:**

**The Case**

Petitioner People of the Philippines, through the Office of the Solicitor General (OSG), assails the Decision<sup>1</sup> dated October 28, 2019 of the Court of Appeals in CA-G.R. SP No. 159780 entitled “*People of the Philippines v. Hon. Soliman M. Santos, Jr., in his capacity as Presiding Judge of RTC Branch 61, Naga City and Naci Borrás y Lascano*” upholding private respondent Naci Borrás y Lascano’s plea bargain sans the prosecutor’s conformity.

<sup>1</sup> Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Victoria Isabel A. Paredes and Tita Marilyn B. Payoyo-Villordon, all members of the Eight Division, *rollo*, pp. 37-51.

### Antecedents

By Informations<sup>2</sup> dated March 10, 2017, private respondent was charged with violations of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165), as amended by Republic Act No. 10640 (RA 10640), viz.:

#### **Criminal Case No. 2017-0358**

That on March 10, 2017, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, [did] [then] and there, willfully, unlawfully and criminally sell, dispense, and deliver one (1) small heat-sealed transparent plastic sachet, containing white crystalline substance weighing 0.032 gram, later marked as RCP3-10-17, to poseur buyer PO2 Randy C. Pitallano, which when tested was found positive for the presence of Methamphetamine Hydrochloride popularly known as “*shabu*,” a dangerous drug, in violation of the above cited law.

ACTS CONTRARY TO LAW.

#### **Criminal Case No. 2014-0359**

That on March 10, 2017, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, [did] then and there, willfully, unlawfully and criminally have in his possession, custody and control three (3) heat-sealed & masking tape-sealed transparent plastic sachets, containing white crystalline substances, described and later marked as: 1) RCP-1 3-10-17 weighing 0.1116 gram, 2) RCP-4 3-10-17 weighing 0.037 gram and 3) RCP-3 3-10-17 weighing 0.012 gram; with aggregate weight of 0.165 [gram]. Said items when tested were found to be Methamphetamine Hydrochloride, popularly known as “*shabu*,” a dangerous drug, in violation of the above cited law.

ACTS CONTRARY TO LAW.

On arraignment, private respondent pleaded not guilty to both charges. Trial ensued.

Meantime, on August 15, 2017, the Court promulgated *Estipona v. Lobrigo*<sup>3</sup> declaring as unconstitutional Section 23<sup>4</sup> of RA 9165 for being contrary to the Supreme Court’s rule-making authority under Section 5 (5),<sup>5</sup> Article VIII of the 1987 Constitution. Section 23 prohibits a person charged under RA 9165 to avail of plea bargaining.

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<sup>2</sup> *Id.* at 38.

<sup>3</sup> 816 Phil. 789, 817 (2017).

<sup>4</sup> **Section 23. Plea-Bargaining Provision.**—Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining. (Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002).

<sup>5</sup> **Section 5.** The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. (The 1987 Constitution, February 2, 1987)

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Thereafter, the Department of Justice (DOJ) issued Department Circular No. 061-17 or the "Guidelines on Plea Bargaining Agreement for RA 9165 Otherwise Known as the 'Comprehensive Dangerous Drugs Act of 2000'" dated November 21, 2017,<sup>6</sup> viz.:

Offense charged in Information		Acceptable Plea Bargain	
Section	Penalty	Section	Penalty
Section 5 <i>Sale, Trading, etc. of Dangerous Drugs</i>	Life Imprisonment to Death & Fine from Php500k to Php10M	No Plea Bargain Allowed	
Section 11, par. 3 <i>Possession of Dangerous Drugs</i>  (Where quantity of "shabu", opium, morphine, heroin, cocaine is less than 5 grams, etc.)	12 yrs. & 1 day to 20 yrs. and Fine from Php300k to Php400k	Sec. 15 <i>Use of Dangerous Drugs</i>	6 mos. Rehab (1st Offense)  6 yrs. & 1 day to 12 yrs. & fine from Php50k to Php200k (for 2nd offense)

Following *Estipona*, on April 12, 2018, the Court promulgated A.M. No. 18-03-16-SC,<sup>7</sup> adopting the plea bargaining framework in drugs cases, viz.:

Offense Charged			Acceptable Plea Bargain	
Section	Penalty	Quantity	Section	Penalty <sup>8</sup>
Section 11, par. 3. <i>Possession of Dangerous Drugs</i>  (Where quantity of <i>shabu</i> , opium, morphine, heroin, cocaine	12 years & 1 day to 20 years and fine ranging from Php300,000 to Php400,000	.01 gram to 4.99 grams	Section 12. <i>Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs</i>	6 months and 1 day to 4 years and a fine ranging from Php10,000 to Php50,000 <sup>9</sup>

<sup>6</sup> DOJ Department Circular No. 061-17, November 21, 2017.

<sup>7</sup> A.M. No. 18-03-16-SC, April 10, 2018.

<sup>8</sup> In all instances, whether or not the maximum period of the penalty imposed is already served, drug dependency test shall be required. If accused admits drug use, or denies it but is found positive after drug dependency test, he/she shall undergo treatment and rehabilitation for a period of not less than 6 months. Said period shall be credited to his/her penalty and the period of his after-care and follow-up program if penalty is still unserved. If accused is found negative for drug use/dependency, he/she will be released on time served, otherwise, he/she will serve his sentence in jail minus the counseling period at rehabilitation center. However, if accused applies for probation in offenses punishable under RA No. 9165, other than for Illegal Drug Trafficking or pushing under Section 5 in relation to Sec. 24 thereof, then the law on probation shall apply.

<sup>9</sup> The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.

is less than 5 grams)				
Section 5. <i>Sale, Trading, etc. of Dangerous Drugs</i>  (Methamphetamine hydrochloride or <i>shabu</i> only)	Life Imprisonment to Death and fine ranging from Php500,000 to Php10,000,000	.01 gram to .99 grams (methamphetamine hydrochloride or <i>shabu</i> only)	Section 12. <i>Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs</i>	6 months and 1 day to 4 years and a fine ranging from Php10,000 to Php50,000 <sup>10</sup>

On May 17, 2018, the DOJ issued Regional Prosecution Office Order No. 027-E-18<sup>11</sup> reiterating Department Circular No. 061-17.

While petitioner was presenting its evidence on May 28, 2018, private respondent filed a plea bargaining proposal<sup>12</sup> to withdraw his earlier plea of not guilty in order to plead guilty to two (2) counts of Illegal Possession of Drug paraphernalia under Section 12 of RA 9165, as amended by RA 10640.

Petitioner objected on ground that DOJ Circular No. 061-17,<sup>13</sup> the prevailing circular at that time, proscribed plea bargaining for the crime of Illegal Sale of Dangerous Drugs under Section 5 of RA 9165, as amended by RA 10640. The same circular decreed that plea bargaining should be done before the prosecution commenced its presentation of evidence. Meanwhile, violation of Section 11 of the same law may be the subject of plea bargaining to the lesser offense of illegal use of dangerous drugs.

Subsequently, on June 26, 2018, the DOJ issued Department Circular No. 027-18 or the “Amended Guidelines on Plea Bargaining for Republic Act No. 9165, otherwise known as the ‘Comprehensive Dangerous Drugs Act of 2000’” amending Department Circular No. 061-17 dated November 21, 2017. According to this department circular, private respondent may only plead guilty to a lesser offense, as follows:

Offense Charged in the Information		Acceptable Plea Bargain	
Section	Penalty	Section	Penalty

<sup>10</sup> The court is given the discretion to impose a minimum period and a maximum period to be taken from the range of the penalty provided by law. A straight penalty within the range of 6 months and 1 day to 1 year may likewise be imposed.

<sup>11</sup> Not part of the records.

<sup>12</sup> *Rollo*, pp. 52.

<sup>13</sup> Guidelines on Plea Bargaining Agreement for RA No. 9165 Otherwise Known as the “Comprehensive Dangerous Drugs Act of 2000,” DOJ Department Circular No. 061-17, November 21, 2017.

Section 5 Sale, Trading, etc. of Dangerous Drugs	Life Imprisonment to Death & Fine from Php500k to Php10M	Section 11, par. 3 Possession of Dangerous Drugs (Plea bargaining is allowed only if the drugs involved are “shabu” and/or marijuana and the quantity of “shabu” is less than 5 grams and the quantity of marijuana is less than 300 grams)	12 yrs. & 1 day to 20 yrs. and Fine from Php300k to Php400k
Section 11, par. 3 Possession of Dangerous Drugs (Where quantity of “shabu”, opium, morphine, heroin, cocaine, et al. is less than 5 grams; marijuana is less than 300 grams)	12 yrs. & 1 day to 20 yrs. and Fine from Php300k to Php400k	Section 12 Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs	6 months & 1 day to 4 years and a Fine Ranging from Php10k to Php50k

### The Trial Court’s Ruling

By Resolution<sup>14</sup> dated July 20, 2018, the trial court granted private respondent’s plea bargaining proposal and ordered his re-arraignment despite petitioner’s objection, thus:

WHEREFORE, premises considered, Department of Justice (DOJ) Circular No. 061 dated [November] 21, 2017, DOJ Circular No. 027 dated June 26, 2018 and Regional Prosecution Office (RPO) Order No. 027-E-18 dated May 17, 2018 are hereby DECLARED UNCONSTITUTIONAL AND INVALID for being in contravention to or undermining the rule-making power of the SC, its *Estipona* Decision, its A.M. No. 18-03-16-SC Resolution (*Adopting the Plea Bargaining Framework in Drug Cases*), and the equal protection clause in their (the said DOJ issuances) application if not in their design. The defense Proposal for Plea Bargaining is ALLOWED over the “vigorous” objection of the prosecution. RE-ARRAIGN the accused in accordance therewith at the next scheduled hearing (on July 23).<sup>15</sup>

Too, the trial court *motu proprio* declared as unconstitutional DOJ Circular Nos. 061-17 and 027-18, and RPO Order No. 027-E-18 (DOJ Issuances) on the following grounds:

**First.** These issuances were contrary to the landmark case of *Estipona* and A.M. No. 18-03-16-SC;

<sup>14</sup> *Rollo*, pp. 55-59.

<sup>15</sup> *Id.* at 59.

**Second.** The same effectively blocked the otherwise allowable plea bargains in numerous Section 5 cases involving miniscule amounts of dangerous drugs;

**Third.** They encroach on the Supreme Court's rule-making power under Article VIII, Section 5(5)<sup>16</sup> of the 1987 Constitution; and

**Fourth.** They undermine the state policy behind RA 9165 to balance repression and punishment on the one hand, with treatment, rehabilitation, and reintegration on the other.

According to the trial court, since the opposition to private respondent's plea bargaining proposal was based on the DOJ issuances that had already been declared unconstitutional, there was no more need to require the prosecutor's consent thereto.

Petitioner's subsequent motion for reconsideration<sup>17</sup> was denied under Resolution<sup>18</sup> dated August 25, 2018.

Meantime, on July 23, 2018, private respondent was re-arraigned, during which he pleaded guilty to two (2) counts of Illegal Possession of Drug Paraphernalia under Section 12<sup>19</sup> of RA 9165, as amended by RA 10640.<sup>20</sup>

Thereafter, the trial court rendered a verdict of conviction per Judgment<sup>21</sup> dated August 31, 2018, viz.:

WHEREFORE, premises considered, judgment is hereby rendered FINDING the **accused NACI BORRAS y LASCANO** GUILTY beyond reasonable doubt:

[a] In Crim. Case No. 0358 as principal in the special offense of violation of R.A. 9165, Sec. 12 and is SENTENCED to an indeterminate

<sup>16</sup> Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. (The 1987 Constitution, February 2, 1987)

<sup>17</sup> *Rollo*, pp. 61-69.

<sup>18</sup> *Rollo*, pp. 70-75.

<sup>19</sup> **Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.**— The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be prima facie evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

(Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002)

<sup>20</sup> *Rollo*, p. 44.

<sup>21</sup> *Id.* at 76-77.

prison term of THREE (3) YEARS **as minimum to FOUR (4) years as maximum**, and a FINE of THIRTY THOUSAND PESOS (P30,000.00); and

[b] In Crim. Case No. 0359 as principal in the special offense of violation of R.A. 9165, Sec. 12 and is SENTENCED to an indeterminate prison term of TWO (2) years **as minimum to THREE (3) YEARS as maximum**, and a FINE of TWENTY THOUSAND PESOS (P20,000.00).<sup>22</sup>

### **Proceedings before the Court of Appeals**

On *certiorari*,<sup>23</sup> petitioner charged the trial court with Grave Abuse of Discretion when it granted private respondent's proposal to plead guilty to lesser offenses over the prosecution's vigorous objection. It insisted that the prosecutor's consent in plea bargaining was a condition precedent to a valid plea of guilt to a lesser offense. Too, the trial court gravely abused its discretion when it unilaterally voided the relevant DOJ issuances.

In his comment,<sup>24</sup> private respondent supported the trial court's dispositions. He countered that the trial court was authorized to overrule the prosecution's objections to a plea bargaining. At any rate, the trial court did not gravely abuse its discretion when it declared the relevant DOJ issuances as unconstitutional. For one, the validity of these DOJ issuances was already ripe for adjudication. For another, the trial court had *locus standi* to pass upon the validity of the DOJ issuances because the same were of transcendental significance.

### **The Ruling of the Court of Appeals**

Through its assailed Decision<sup>25</sup> dated October 28, 2019, the Court of Appeals affirmed, with modification, *viz.*:

**WHEREFORE**, premises considered, the instant petition for certiorari is hereby **DENIED**. The Judgment dated August 31, 2018 of the Regional Trial Court (RTC), Branch 61, Naga City finding private respondent Naci Borrás y Lascano guilty of two (2) counts of violation of Section 12, Article II of RA No. 9165 and sentencing him to suffer an indeterminate prison term of three (3) years, as minimum, to four (4) years, as maximum, and a fine of P30,000.00 for the first count of illegal possession of drug paraphernalia; and, two (2) years, as minimum, to three (3) years, as maximum, and a fine of P20,000.00 for the second count, is **AFFIRMED with MODIFICATION** in that the portions of the Plea Bargaining Resolutions dated July 20, 2018 and August 25, 2018, respectively, which declared as unconstitutional the Department of Justice (DOJ) Circular Nos. 061 and 027 are **DELETED**.

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<sup>22</sup> *Id.* at 75.

<sup>23</sup> *Id.* at 78-98.

<sup>24</sup> *Id.* at 102-116.

<sup>25</sup> *Id.* at 37-51.

**SO ORDERED.**<sup>26</sup>

Citing the Resolution dated April 2, 2019 in *Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*, the Court of Appeals held that judges may allow plea bargaining even over the prosecution's objection where the sole ground for the objection was that it would weaken the government's campaign against illegal drugs. According to the Court of Appeals, petitioner failed to allege, much less, prove that private respondent was a recidivist, habitual offender, or known in the community as a drug addict and a troublemaker. There was also no showing that private respondent had undergone rehabilitation. There was no reason, therefore, to deny respondent's plea bargain. At any rate, the consent of the prosecutor is not required at all times.

The Court of Appeals, however, found that the trial court committed Grave Abuse of Discretion when it *motu proprio* passed upon the constitutionality of the relevant DOJ issuances. For the issue of whether to grant the plea bargaining may be resolved by simply applying A.M. No. 18-03-16-SC. Consequently, it deleted from the trial court's ruling the pronouncement declaring the DOJ issuances unconstitutional.

**The Present Petition**

Petitioner<sup>27</sup> now seeks affirmative relief from the Court. It insists that the prosecutor's consent must be secured before an accused can validly plead guilty to a lesser offense. Meanwhile, it was error for the Court of Appeals to have relied on this Court's Resolution dated April 2, 2019 in *Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association* in support of the trial court's action which overruled the prosecution's objection to private respondent's plea bargaining proposal. For one, the resolution cannot be applied retroactively to private respondent whose original plea was entered way back in 2018. For another, the resolution does not at all totally dispense with the prosecutor's consent.

In his comment,<sup>28</sup> private respondent defends the Court of Appeals' dispositions. He counters that neither the consent of the prosecutor nor the consent of the offended party is indispensable to the validity of a plea to a lesser offense. A contrary position would be tantamount to a surrender of the court's sole and supreme authority to command the course of a case. Under A.M. No. 18-03-16-SC, judges may allow plea bargaining even over the prosecution's objection. Since he was allowed to bargain under A.M. No. 18-03-16-SC, the prosecution had no basis to oppose it.

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<sup>26</sup> *Id.* at 50.

<sup>27</sup> *Id.* at 10-28.

<sup>28</sup> *Id.* at 124-138.



### Issue

Is the consent of the prosecutor indispensable to a valid plea bargain in drugs cases?

### Our Ruling

The petition is meritorious.

Plea bargaining in criminal cases is a process where the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.<sup>29</sup> Section 2, Rule 116 of the Rules of Criminal Procedure provides:

**SECTION 2. *Plea of guilty to a lesser offense.*** — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.<sup>30</sup>

The provision ordains that with the consent of the offended party and the prosecutor, plea bargaining to a lesser offense which is necessarily included in the offense charged,<sup>31</sup> may be allowed.

Contrary to the position taken by the trial court and the Court of Appeals, the conformity of the prosecutor to the proposed plea bargaining in drugs cases is not optional, nay, to be disregarded. For the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.<sup>32</sup> As guardian of the rights of the people, the State files the criminal action in the name of the People of the Philippines. The prosecutor who represents the government is duty bound to defend the public interests, threatened by crime, to the point that it is as though he or she were the person directly injured by the offense. Viewed in this light, the consent of the offended party, *i.e.* the State, will have to be secured from the prosecutor who acts on its behalf.<sup>33</sup>

As early as the 1992 case of *People v. Villarama, Jr.*,<sup>34</sup> the Court already clarified that the acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter

<sup>29</sup> See *People v. Villarama, Jr.*, 285 Phil. 723, 730 (1992).

<sup>30</sup> Rules of Court, July 1, 1997.

<sup>31</sup> See *Daan v. Sandiganbayan*, 573 Phil. 368, 376 (2008).

<sup>32</sup> *Supra* note 3 at 815.

<sup>33</sup> *Supra* note 29 at 732.

<sup>34</sup> *Id.* at 730.

that is addressed entirely to the trial court's sound discretion. The Court ratiocinated:

x x x x Section 2, Rule 116 is clear. The consent of both the Fiscal and the offended party is a condition precedent to a valid plea of guilty to a lesser offense. The reason for this is obvious. The Fiscal has full control of the prosecution of criminal actions. Consequently, it is his duty to always prosecute the proper offense, not any lesser or graver one, when the evidence in his hands can only sustain the former.

It would not also be correct to state that there is no offended party in crimes under RA 6425 as amended. While the acts constituting the crimes are not wrong in themselves, they are made so by law because they infringe upon the rights of others. The threat posed by drugs against human dignity and the integrity of society is malevolent and incessant. Such pernicious effect is felt not only by the addicts themselves but also by their families. As a result, society's survival is endangered because its basic unit, the family, is the ultimate victim of the drug menace. The state is, therefore, the offended party in this case.

The same doctrine was reiterated in the recent case of *Sayre v. Xenos*,<sup>35</sup> where the Court emphasized that a plea bargain still requires **mutual agreement** of the parties and remains subject to the approval of the court. The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.

Verily, the trial court here acted with grave abuse of discretion when it disregarded the prosecutor's vigorous objection to private respondent's plea bargaining proposal. In view of the parties' failure to strike a mutual agreement on the matter, the trial court should have ordered the continuation of the proceedings instead of rendering a verdict of conviction based on private respondent's invalid pleas of guilty to two (2) counts of Illegal Possession of Drug Paraphernalia.

Considering the foregoing irregularity, the Court is constrained to declare as invalid both pleas of private respondent and the consequent verdict of conviction and reinstate the charges against private respondent for violations of Sections 5 and 11 of RA 9165, as amended by RA 10640.

Section 7, Rule 117<sup>36</sup> of the Rules on Criminal Procedure is clear. The conviction of the accused shall not be a bar to another prosecution for an

<sup>35</sup> G.R. Nos. 244413 & 244415-16, February 18, 2020.

<sup>36</sup> Section 7. Former conviction or acquittal; double jeopardy. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

offense which necessarily includes the offense charged in the former complaint or information if the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party.

In closing, to dispel any lingering doubts on the validity of DOJ Department Circular No. 027-18 which superseded Department Circular No. 061-17, the Court takes this opportunity to reiterate *Sayre*:<sup>37</sup>

x x x x DOJ Circular No. 27 did not repeal, alter, or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC.

Therefore, the DOJ Circular No. 27 provision pertaining to acceptable plea bargain for Section 5 of R.A. 9165 did not violate the rule-making authority of the Court. DOJ Circular No. 27 merely serves as an internal guideline for prosecutors to observe before they may give their consent to proposed plea bargains.

So must it be.

**ACCORDINGLY**, the petition is **GRANTED**. The Decision<sup>38</sup> of the Court of Appeals dated October 28, 2019 in CA-G.R. SP No. 159780 is **REVERSED** and **SET ASIDE**. The twin pleas of “guilty” entered by **Naci Borras y Lascano** to two (2) counts of Illegal Possession of Drug Paraphernalia under Section 12 of RA 9165, as amended by RA 10640, and the Decision dated August 31, 2018 of the Regional Trial Court, Branch 61, Naga City in Criminal Case Nos. 2017-0358 and 2017-0359 are **INVALIDATED**. The cases are **REMANDED** to the Regional Trial Court, Branch 61, Naga City for resumption of the proceedings on the original charges of violations of Sections 5 and 11 of RA 9165, as amended by RA 10640.

**SO ORDERED.**

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

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(a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;

(b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or


(c) the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in section 1 (f) of Rule 116.

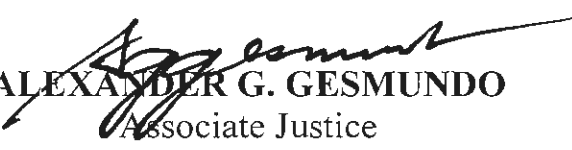
In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense. (7a)

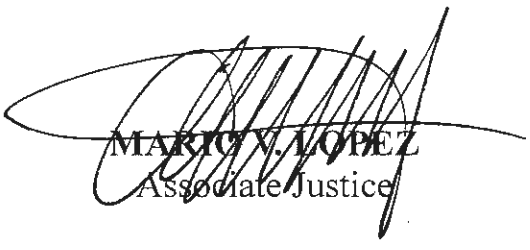
<sup>37</sup> See note 34.

<sup>38</sup> *Rollo*, pp. 37-51.

**WE CONCUR:**

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson


  
**ALEXANDER G. GESMUNDO**  
Associate Justice

  
**MARIO X. LOPEZ**  
Associate Justice

  
**RICARDO B. ROSARIO**  
Associate Justice

**ATTESTATION**


I attest that the conclusion in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson



**CERTIFICATION**

Pursuant to Section 13, Article VII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Chief Justice

