



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated July 15, 2020 which reads as follows:*

***“G.R. No. 248085 – PEOPLE OF THE PHILIPPINES vs. LITO LOPEZ Y DIAZ AND ZALDY BORBE Y BORIJON, accused; LITO LOPEZ Y DIAZ, accused-appellant.*”**

RESOLUTION

Appellant Lito Lopez y Diaz assails the Decision<sup>1</sup> dated October 19, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08020 affirming the trial court’s verdict of conviction against him and Zaldy Borbe y Borijon for violation of Section 5 of Republic Act No. 9165 (RA 9165).

Antecedents

*The Facts and the Plea*

By Information dated October 29, 2012, Lopez and Borbe were jointly charged with violation of Section 5 of RA 9165, viz.:

That around 1:15 in the afternoon of October 28, 2012 at Quinale, Tabaco City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring with

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<sup>1</sup> Penned by Associate Justice Ronaldo Roberto B. Martin and concurred in by Associate Justice Apolinario D. Bruselas Jr., and Associate Justice Myra V. Garcia-Fernandez, all members of the Tenth Division, *rollo*, pp. 3-16.

A handwritten signature or mark in the bottom right corner of the page.

each other, with deliberate intent to violate the law, did then and there willfully, unlawfully, [and] knowingly xxx sold and delivered to a poseur-buyer 14 heat-sealed transparent plastic sachets containing a total of **0.51 gram of methamphetamine hydrochloride** (shabu), a dangerous drug, without the necessary government authority and to the detriment of the public welfare.

ACTS CONTRARY TO LAW.<sup>2</sup>

On arraignment, they pleaded not guilty.<sup>3</sup> Thereafter, trial ensued.

During the trial, the prosecution presented IO3 Enrique G. Lucero (IO3 Lucero), PCI Josephine Macura Clemen (PCI Clemen), Agent Jonathan Ivan Revilla (Agent Revilla), PO1 Richard Daria (PO1 Daria), and IO1 Manuel David (IO1 David).<sup>4</sup> Barangay Kagawad Elmer Gascon (Brgy. Kagawad Gascon) was no longer presented as witness in view of the defense's admissions regarding the existence of the certificate of inventory and Gascon's signature thereon as witness.<sup>5</sup> On the other hand, the defense presented both Lopez and Borbe as witnesses.<sup>6</sup>

### *Version of the Prosecution*

**IO3 Lucero** testified that on October 28, 2012, he reported for work at the Philippine Drug Enforcement Agency (PDEA) Albay, Provincial Office. Around 8 o'clock in the morning, he received a report from a confidential informant that appellant Lopez was engaged in the proliferation of illegal drugs in Tabaco City. A buy-bust team was then formed and he was designated as team leader.<sup>7</sup>

**Agent Revilla**<sup>8</sup> testified that he was designated as poseur-buyer while Agents Briguel, Cedo and Alimaña were designated as perimeter security. He prepared and marked the buy-bust money consisting of one (1) five hundred peso (₱500.00) bill with his initials "JIR" and six (6) bill-sized boodle money. Around noon, the confidential informant arranged a drug transaction with Lopez

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<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *CA rollo*, pp. 54-55.

<sup>7</sup> *Rollo*, pp. 4-5.

<sup>8</sup> *Id.* at 6-9.



informing the latter that his fraternity brothers would like to buy ₱3,500.00 worth of *shabu*. Lopez agreed to the sale.

They arrived at Lopez's residence at Purok 6, Quinale, Tabaco City around 1 o'clock in the afternoon and saw Borbe standing in front of the house. After a brief introduction, Borbe led them in and instructed them to wait outside the kitchen. A few minutes later, Borbe came out with Lopez. After another brief introduction, he confirmed his purchase of ₱3,500.00 worth of *shabu*. Lopez took out several heat-sealed transparent plastic sachets containing white crystalline substance and handed them to Borbe who, in turn, handed them to him. In exchange, he gave the buy-bust money to Borbe who handed them to Lopez. Upon confirming that the items he received were *shabu*, Agent David clandestinely signaled IO3 Lucero that the sale had been consummated. They introduced themselves as PDEA agents and informed Lopez and Borbe they were being arrested for illegal sale of drugs. As they were being handcuffed, the other apprehending officers closed in. IO1 David retrieved the marked money from inside Lopez's pocket. He marked the seized items with his initials "JIR" and wrote the date in the presence of media representative Darlan P. Barcelon. Agent Lucero photographed the marking procedure.

At the Tabaco City Police Station, he signed the inventory along with IO1 David, Barangay Kagawad Gascon, DOJ representative Romulo B. Barbacena and media representative Darlan P. Barcelon. He then personally brought the seized items and the Request for Laboratory Examination signed by Agent Noe S. Briguel to the crime laboratory.

**IO1 David**, the designated arresting officer, corroborated Agent Lucero's testimony. He authenticated and explained the photographs taken during the marking and inventory of the seized items.<sup>9</sup> Too, he pointed out that the inventory was accomplished at the Tabaco City Police Station, a kilometer away from the place of arrest, for security purposes.<sup>10</sup>

**PO1 Daria** testified that he and PCI Clemen received the seized items with the Request for Laboratory Examination from Agent

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<sup>9</sup> *Id.* at 9.

<sup>10</sup> TSN dated May 22, 2014, p. 13.

Revilla. He immediately placed them in a big brown envelope and handed it to PCI Clemen.<sup>11</sup>

After the defense admitted **PCI Clemen's** competence as a forensic chemist and the genuineness, authenticity, and accuracy of Chemistry Report No. D-160-12, she produced the fourteen (14) small transparent plastic sachets containing white crystalline substance seized from appellants. She testified that she received the specimen personally from Agent Revilla on October 28, 2012, around 5:30 in the afternoon. The seized items were all heat-sealed and contained markings described in the Request for Laboratory Examination. The results yielded positive for methamphetamine hydrochloride as reflected in Chemistry Report No. D-160-12.<sup>12</sup>

The prosecution formally offered the following documentary and object evidence: Complaint (Exhibit A), Affidavit of Poseur Buyer Jonathan Ivan Revilla (Exhibit B), Affidavit of Back-up Arresting Officer Agent Manuel D. David (Exhibit C), PDEA Authority to Operate dated October 28, 2012 (Exhibit D), PDEA Pre-Operation Report dated October 28, 2012 (Exhibit E), Extracts from Tabaco City PNP Blotter (Exhibit F), Photographs during the body search and marking (Exhibits G, G-1, G-3, and G-4), Photographs during the marking and inventory of the seized items (Exhibits H and H-1 to H-4), Photographs depicting the inventory and signing of the Certificate of Inventory (Exhibit I and I-1 to I-4), Certificate of Inventory (Exhibits J and J1), ₱500.00 peso bill with serial number #FM155092 buy-bust money (Exhibit J-2), six pieces boodle money (Exhibits J-2-A to J-2-F), green lighter (Exhibit J-3), rolled aluminum foil (Exhibit J-4), plastic pitcher containing aluminum foil strips, lighters, cotton bud, wooden stick, stainless steel clip, and plastic strips (Exhibit J-5), Booking Sheet and Arrest Report for Lopez (Exhibits K and K-1), Booking Sheet and Arrest Report for Borbe (Exhibits L and L-1), Chemistry Report No. D-160-12 (Exhibit M), seized items *shabu* with 0.51 gram total weight (Exhibit M-1), Request for Laboratory Examination (Exhibit N), Request for Medical Examination (Exhibit O), Barangay Certification on Lopez (Exhibit P), and Barangay Certification on Borbe (Exhibit Q).<sup>13</sup>

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<sup>11</sup> *Rollo*, p. 8.

<sup>12</sup> *CA rollo*, pp. 5-6.

<sup>13</sup> Crim. Case No. T-5570, record, pp. 249-252.



### *Version of the Defense*

**Lopez** testified that on October 28, 2012, around 1 o'clock in the afternoon, he was at home washing the dishes when he noted a car parked in front of his house. Suddenly, more than eight (8) armed persons alighted from the car and entered his house. They introduced themselves as PDEA agents and arrested him. While being handcuffed, one of the agents inserted a plastic sachet and money inside his pocket. He asked what they were but they told him to keep quiet.<sup>14</sup> He believed his arrest was the result of his refusal to cooperate with the PDEA.<sup>15</sup>

**Borbe** is the nephew of Lopez's live-in partner. He testified that on October 28, 2012, around 1 o'clock in the afternoon, he had barely waken up and went directly to the kitchen where he was greeted by PDEA agents who immediately handcuffed him. He and Lopez were brought to a yard and were instructed to sit on the ground. Thereafter, the agents brought out items from inside Lopez's pocket and marked them. He had no idea why he got arrested.<sup>16</sup>

### **The Trial Court's Ruling**

By Judgment<sup>17</sup> dated August 8, 2015, the trial court rendered a guilty verdict, *viz.*:

WHEREFORE, under the foregoing reasons, judgment is hereby rendered:

- a. Finding the accused, LITO LOPEZ y DIAZ and ZALDY BORIJON BORBE, **GUILTY** beyond reasonable doubt of Violation of Sec. 5, Art. II, R.A. No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002, for selling and delivering to a poseur buyer fourteen (14) heat-sealed transparent plastic sachets containing a total weight of 0.51 gram of methamphetamine hydrochloride (shabu); thereby sentencing them to the penalty of *life imprisonment* and a FINE of Five Hundred Thousand Pesos (Php500,000.00);
- b. Ordering the FORFEITURE and DESTRUCTION of the fourteen (14) pieces of heat-sealed transparent plastic sachets

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<sup>14</sup> *Rollo*, p. 9.

<sup>15</sup> TSN dated September 30, 2014, p. 21.

<sup>16</sup> *Rollo*, p. 9.

<sup>17</sup> Penned by Acting Presiding Judge Edwin C. Ma-Alat, *CA rollo*, pp. 50-61.

containing a total weight of 0.51 gram of methamphetamine hydrochloride (shabu) upon finality of this judgment, in accordance with the prescribed regulations of the Dangerous Drugs Board.

**SO ORDERED.**<sup>18</sup>

The trial court held that all the elements of illegal sale of dangerous drugs were clearly established and rejected Lopez's and Borbe's defense of frame-up. They sold fourteen (14) heat-sealed transparent plastic sachets of *shabu* worth ₱3,500.00 to Agents Revilla and David. The chain of custody over the *corpus delicti* had been duly established.

**The Proceedings before the Court of Appeals**

On appeal,<sup>19</sup> Lopez and Borbe faulted the trial court in rejecting their defense of denial and in upholding the validity of their arrest *sans* warrant. Since the agents had prior knowledge of their alleged illegal activities, they could have easily secured a warrant of arrest. They may have waived their right to question the legality of their arrest when they entered a plea and actively participated during the trial, the seized items were, nevertheless, inadmissible. At any rate, the prosecution failed to establish an unbroken chain of custody. The records do not bear whether PCI Clemen turned over the seized items to the evidence custodian after examination, and details regarding the safekeeping thereof.

On the other hand, the Office of the Solicitor General, through Associate Solicitor Vanessa D. Jacob, defended the trial court's verdict of conviction. It countered that all the elements of illegal sale of dangerous drugs were sufficiently established. Agent Revilla positively identified Lopez and Borbe as sellers who handed to him plastic sachets containing white crystalline substance in exchange of the buy-bust money during a successful buy-bust operation.

Even if Lopez was already in the watchlist, the PDEA agents were not precluded from conducting a buy-bust operation to catch him *in flagrante delicto* instead of applying for a warrant. Lastly, there was no need for PCI Clemen to testify on how the chemical examination on the seized items was conducted because Lopez and Borbe already

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<sup>18</sup> *Id.* at 60-61.

<sup>19</sup> *Id.* at 34-48.



admitted PCI Clemen's competency as expert witness as well as the existence and authenticity of Chemistry Report No. D-160-12.<sup>20</sup>

### The Court of Appeals' Ruling

By Decision<sup>21</sup> dated October 19, 2018, the Court of Appeals affirmed. According to the Court of Appeals, all the elements of illegal sale of dangerous drugs were duly established by the prosecution. Too, there was no breach in the chain of custody of the seized items. Thus, the integrity and evidentiary value of the *corpus delicti* remained intact.

By letter dated September 13, 2018,<sup>22</sup> CSSUPT. Celso S. Bravo informed the Court of Appeals of Zaldy Borbe y Borijon's death on September 10, 2018 at the NBP Hospital, Muntinlupa City. Borbe's death prior to the finality of the conviction extinguished his criminal liability pursuant to Article 89<sup>23</sup> of the Revised Penal Code.

### The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution<sup>24</sup> dated August 19, 2019, appellant<sup>25</sup> and the OSG<sup>26</sup> manifested they were adopting their respective briefs before the Court of Appeals in lieu of supplemental briefs.

### Issue

Did the Court of Appeals err in affirming Lopez's conviction of illegal sale of dangerous drugs?

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<sup>20</sup> *Id.* at 80-96.

<sup>21</sup> *Rollo*, pp. 3-16.

<sup>22</sup> *CA rollo*, p. 119.

<sup>23</sup> **ARTICLE 89.** *How Criminal Liability is Totally Extinguished.* — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment. x x x x (Revised Penal Code, Act No. 3815, December 8, 1930)

<sup>24</sup> *Id.* at 23.

<sup>25</sup> *Id.* at 26-28.

<sup>26</sup> *Id.* at 31-33.

### Ruling

We acquit.

Lopez and Borbe were charged with illegal sale of 0.51 gram of *shabu* committed on October 28, 2012. RA 9165, therefore, is the governing law.

To sustain a verdict of conviction for the crime of illegal sale of dangerous drug, the following elements must be sufficiently established: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>27</sup> Of utmost importance is that the identity of the prohibited drug be established with moral certainty. This means that on top of the key elements of sale, the fact that the substance illegally sold in the first place is the same substance offered in court must likewise be established with the same degree of certitude needed to sustain a guilty verdict.<sup>28</sup> This is accomplished through compliance with the chain of custody rule. The links in the chain are as follows:

**First**, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

**Second**, the turnover of the illegal drugs 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 seized and marked illegal drug from the forensic chemist to the court.<sup>29</sup>

Here, the chain of custody had repeatedly been breached, raising doubt on the integrity and evidentiary value of the *corpus delicti*.

We focus on the second and fourth links.

<sup>27</sup> See *People v. Dumangay*, 587 Phil. 730, 739 (2008).

<sup>28</sup> See *People v. Cervantes*, 600 Phil. 819, 835 (2009).

<sup>29</sup> See *People v. Angeles*, G.R. No. 218947, June 20, 2018.



***Second Link: Custody over the seized items remained with Agent Revilla from apprehension until the turn-over thereof to the forensic chemist.***

Agent Revilla testified that the seized items remained in his possession from the moment of arrest until the submission thereof to the forensic chemist, thus:

**PROSECUTOR BROTAMONTE:** Now at what point in time that you and David performed that inventory?

**[AGENT REVILLA:]** When we got to the PNP, Tabaco City Police Station at around past 2:00 o'clock.

xxx    xxx    xxx

**[PROSECUTOR BROTAMONTE:]** Meanwhile, who took care of the objects?

**[AGENT REVILLA:]** I took care of the drug items, sir, and Agent David took care also of the non-drug evidence which he had seized during the buy-bust operation.

**[PROSECUTOR BROTAMONTE:]** You mentioned of making documentation of the inventory. I will re-phrase that. I will just have you identify all the documentary and object evidence at one sequence. Now, after the inventory was conducted, what happened next?

**[AGENT REVILLA:]** After the inventory was done, we went back to the PDEA office and a document was prepared and I submitted the drug items to the PNP Crime Laboratory.

**[PROSECUTOR BROTAMONTE:]** How about the other items?

**[AGENT REVILLA:]** The other non-drug items were in the custody of the seizing officer.

**[PROSECUTOR BROTAMONTE:]** From Tabaco PNP to PDEA until turnover of the supposed shabu items to the PNP Crime laboratory Office No. 5, who took care of them?

**[AGENT REVILLA:]** I took personal custody of the drug items.

**[PROSECUTOR BROTAMONTE:]** How did you do that sir, to preserve its integrity and to avoid switching?

[AGENT REVILLA:] The drug items which were placed in the heat-sealed transparent plastic sachet were placed in a container, sir, and I placed it inside my pocket.

[PROSECUTOR BROTONTE:] Now, was the turnover of the supposed shabu items to the PNP Crime Laboratory Office No. 5 covered by written request?

[AGENT REVILLA:] Yes, sir.<sup>30</sup>

Verily, custody over the seized items were never turned over to the investigating officer. As such, no proper documentation of the seized items actually took place. The Request for Laboratory Examination dated October 28, 2012<sup>31</sup> does not even bear the quantity and weight of the seized items to be submitted to the crime laboratory. Instead, PCI Clemen was the first to weigh the seized items since Lopez and Borbe got arrested, viz.:

#### CROSS-EXAMINATION

ATTY. BUAG: Madam Witness, I noticed that in the request there are no corresponding weight while in the Chemistry Report that you made[,] there are already corresponding weights to the drug items. Does it mean, Madam Witness, that you were the first one who weighed these drug items?

[PCI CLEMEN:] For the contents, I believe so because the sachets were all heat-sealed. Because there are cases that the requesting party would have an approximate weight of the items together with the plastic. So, for the contents, I believe I was the first one who held it. As I said, it was heat-sealed.<sup>32</sup>

The arresting officers' failure to indicate the quantity of the seized items in the Request for Laboratory Examination precluded PCI Clemen from determining whether the items allegedly seized from Lopez and Borbe, though marked, had been tampered. She was supposed to verify that the items she had received were the very same items seized from Lopez and Borbe using the details in the Request for Laboratory Examination. Without these details, doubts are cast on the integrity of the *corpus delicti*. Indeed, common sense and fair play dictate that the apprehending officers state the exact quantity of the

<sup>30</sup> TSN dated March 27, 2014, pp. 25-27.

<sup>31</sup> Crim. Case No. T-5570, record, p. 16.

<sup>32</sup> TSN dated August 22, 2013, p. 13.



drug or drugs to be examined since illegal drugs, by their very nature, are susceptible to alteration, tampering, substitution, and exchange.<sup>33</sup>

In *People v. Casabuena*,<sup>34</sup> the Court noted a discrepancy between the quantity of *shabu* stated in the Request for Laboratory Examination (0.1 gram) and in the Chemistry Report No. D-011-2004 (0.0139). This was sufficient ground for acquittal since it raised serious doubts on the integrity of the *corpus delicti*. More so in this case where the weight of the seized items was not reflected at all in the Request for Laboratory Examination.

So must it be.

***Fourth Link: There was ineffective stipulation on some of the proposed testimony of Forensic PCI Chemist Clemen.***

As a rule, the forensic chemist who examined a seized substance should testify that: **First**, he or she received the seized article as marked, properly sealed and intact; **Second**, he or she resealed it after examination of the content; and **Third**, he or she placed his or her own marking on the same to ensure that it could not be tampered pending trial.<sup>35</sup>

To expedite the proceedings, the parties herein stipulated on some of PCI Clemen's supposed testimony, thus:

**[PROSECUTOR] BROTONTE:** The would be testimony of this witness will be presented that she is an expert witness in this case being the Forensic Chemist of the PNP Crime Laboratory Office No. V; that she received and examined the drug items mentioned in the October 28, 2012 Request for Laboratory Examination and also in the Chemistry Report No. D-160-12; and also the result of the examination; she will identify the specimen and will turn them over to this Honorable Court; she will authenticate the two (2) documents that I have mentioned. xxx  
xxx<sup>36</sup> xxx

**[JUDGE:]** Atty. Buag, you have admitted the Chemistry Report to what extent?

<sup>33</sup> See *People v. Casabuena*, 747 Phil. 358, 370 (2014).

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

<sup>35</sup> See *People v. Pajarin, et al.*, 654 Phil. 461, 466 (2011).

<sup>36</sup> TSN dated August 22, 2013, p. 5

**ATTY. BUAG:** We admitted, Your Honor, the findings.

**[JUDGE:]** The genuineness and authenticity of the report and accuracy of the findings you admitted it?

**ATTY. BUAG:** Yes, Your Honor.

**[JUDGE:]** So the procedure performed as well as the accuracy of the findings, you admitted it?

**ATTY. BUAG:** Yes, Your Honor.<sup>37</sup>

Verily, the parties only stipulated on PCI Clemen's qualification and competence, as well as the genuineness and due execution of Chemistry Report No. D-160-12. There was, however, no stipulation on the precautionary measures observed post-examination. Absent any stipulation regarding the management, storage, and preservation of the seized items after its qualitative examination, the fourth link in the chain of custody could not be reasonably established.<sup>38</sup>

In *People v. Gutierrez*,<sup>39</sup> the testimony of the forensic chemist was dispensed with after the parties stipulated that the specimen exists, a request has been made by the arresting officers for examination thereof, a forensic chemist examined it, and it tested positive for methylamphetamine hydrochloride. Despite these stipulations, the Court nevertheless held that there was a breach in the chain of custody because the stipulations did not cover the manner the specimen was handled before it came and after it left the custody of the forensic chemist.

Clearly, the presumption of regularity in the performance of official duty on the part of the arresting officers does not apply. It cannot be used as basis for affirming Lopez's conviction because the presumption is precisely just that — a mere presumption. Once challenged, as here, it cannot be regarded as binding truth. The presumption cannot preponderate over the presumption of innocence which prevails unless overthrown by proof beyond reasonable doubt.<sup>40</sup>

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<sup>37</sup> *Id.* at 13-14.

<sup>38</sup> See *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

<sup>39</sup> Phil. 285, 295 (2009).

<sup>40</sup> See *People v. Ambrosio*, 471 Phil. 241, 250 (2004), citing *People v. Tan*, 432 Phil. 171, 197 (2002).



In sum, the prosecution failed to establish an unbroken chain of custody. Lopez's acquittal necessarily follows.

**WHEREFORE**, the appeal is **GRANTED** and the Decision dated October 19, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08020, **REVERSED** and **SET ASIDE**.

**Lito Lopez y Diaz** is **ACQUITTED** of violation of Section 5, Article II of Republic Act No. 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to cause his immediate release from custody unless he is being held for some other lawful cause, and to submit his report on the action taken within five (5) days from notice.

Let the corresponding entry of final judgment be immediately issued.

**SO ORDERED."**

**By authority of the Court:**

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

*m/10/20*

by:

*mt sibulo*

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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1226 Makati City

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(CA-G.R. CR-HC No. 08020)

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*[Handwritten mark]*

RESOLUTION

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G.R. No. 248085  
July 15, 2020

Judgment Division (x)  
Supreme Court

The Presiding Judge  
Regional Trial Court, Branch 17  
Tabaco City, 4511 Albay  
(Crim. Case No. T-5570)

Mr. Lito Lopez y Diaz (x)  
Accused-Appellant  
c/o The Director General  
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The Director General (x)  
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