

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated June 29, 2020, which reads as follows:

“G.R. No. 246462 (*People of The Philippines v. Abucay Soria y Gwande*). – On appeal is the Decision¹ dated August 31, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09493, affirming the Decision² dated May 30, 2017 of the Regional Trial Court (RTC) of Olongapo City, Branch 75, convicting accused-appellant Abucay Soria y Gwande (Abucay) of violating Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

Facts of the Case

On October 27, 2014, while on duty at the Provincial Public Safety Company (PPSC) of Castillejos, Zambales, PO1 Marvin Bedonia Soler (PO1 Soler) received information from the Subic Police Station about the illegal sale of drugs by Abucay. PO1 Soler went to the Subic Police Station for the buy-bust operation briefing. Photos of Abucay were shown to PO1 Soler. He was also informed that Abucay was previously arrested by the police officers of Subic Police Station. Since Abucay was already familiar with the police officers of Subic Police Station, PO1 Soler was designated the *poseur*-buyer. It was PO1 Soler’s first time to act as such. PO1 Susano was assigned as back-up. A confidential agent was also part of the buy-bust team. The buy-bust money consisted of three pieces of ₱100.00 bills. PO1 Soler marked the buy-bust money with his initials.³

At around 3:30 p.m. of the same day, the buy-bust team went to the target area in Sitio Gala, Barangay Aningway Sacatihan. There, the members of the buy-bust operation positioned themselves strategically. The confidential agent told PO1 Soler that the man standing in front of the house was Abucay, the target of the buy-bust operation. Soler then approached and

¹ Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court), with the concurrence of Associate Justices Eduardo B. Peralta, Jr. and Josep Y. Lopez; *rollo*, pp. 3-24.

² Penned by Judge Raymond C. Viray; *CA rollo*, pp. 54-59.

³ *Id.* at 54.

asked Abucay, "*Pre, iiskor sana meron ka ba dyan?*" Abucay told PO1 Soler that he only had one sachet at hand and then asked PO1 Soler how much he is planning to get. PO1 Soler replied, "*Kasang tres*" which means ₱300.00 worth. Thereafter, Abucay took a sachet from his pocket and handed it to PO1 Soler. In exchange, PO1 Soler gave Abucay the buy-bust money. PO1 Soler immediately introduced himself as a police officer, arrested Abucay, and informed him of his constitutional rights. A body search on Abucay was subsequently done.⁴

The buy-bust team, together with Abucay, proceeded to the Subic Police Station. PO1 Soler took custody of the seized item from the crime scene until they reached Subic Police Station. Upon arrival at the Subic Police Station, PO1 Soler turned over the seized item to PO3 Roland Molino (PO3 Molino) who conducted the inventory. From 5:30 p.m. until 6:15 p.m., inventory was conducted. During inventory, PO1 Soler placed the marking "MBS-B" on the plastic sachet received from Abucay. Inventory was conducted in the presence of the following persons: (1) Abucay; (2) Department of Justice (DOJ) Representative Assistant Prosecutor Sunshine B. Palomar; (3) Aningway Sacatihan Barangay Captain Eddie de Guzman; and (4) media representative Betty Bendicion of DZRH Radio Station. Photographs were also taken during inventory. The following documents were later prepared: (a) Chain of Custody; and (b) Request for Laboratory Examination.⁵

PO2 Stephen Domingo (PO2 Domingo) of the Olongapo City Crime Laboratory received specimen "MBS-B" from PO3 Molino. PCI Vernon Rey Santiago (PCI Santiago), also from the Olongapo City Crime Laboratory, conducted the quantitative and qualitative examination. Per the Chemistry Report, the specimen yielded positive results for the presence of *shabu* in "MBS-B." PCI Santiago preserved the specimen intact until it was turned over and presented before the court.⁶

The defense presented the testimonies of Abucay and his brother Ariel Soria (Ariel). Abucay and Ariel narrated that around 3:30 p.m. of October 27, 2014, they were at the local cockpit area, *topada*, with their siblings Michael and Jeovinia. The *topada* was far from their house. At that time, there was a *fiesta*. A number of police officers in civilian clothes from the 315th Infantry Brigade arrived at the area. They took Abucay and Ariel's mobile phone, money, and fighting cocks. Abucay later on discovered that among those people were Officer Platon and Captain Feria. Captain Feria poked a gun and arrested Abucay and Ariel. Abucay was told that complaints were filed against him. As such, he did not resist the arrest. Abucay also thought that he was being arrested for his cockfighting activities. Eventually, Abucay was brought to the Subic Police Station. "*Ikaw ba si Abucay?*" asked one police officer. Abucay answered in the

⁴ Id. at 55.

⁵ Id. at 77-78.

⁶ Id. at 40-58.

affirmative, and was informed that the police officers in the Subic Police Station already knew his name because he was involved in illegal sale of drugs. Inventory was thereafter conducted. On the other hand, Ariel was released on bail paid by Calapacuan Barangay Captain Timbol. According to Ariel, Abucay was not released on bail because he was previously involved in a theft case. Abucay was later indicted for violating Section 5, Article II of R.A. 9165.⁷ The Information filed against Abucay reads:

That on or about the 27th day of October 2014, at about 4:00 in the afternoon, at Sitio Gala, Barangay Aningway-Sacatihan, in the municipality of Subic, Province of Zambales, Philippines and within the jurisdiction of the Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, without any lawful authority, give away, trade, deliver and sell to a poseur-buyer, one (1) heat-sealed transparent plastic sachet (with markings 'MBS-B' and 'RGM-B') containing Methamphetamine hydrochloride, otherwise known as 'shabu', a dangerous drug, having a net weight of 0.052 gram for three (3) pieces of One Hundred Peso bills (with Serial Numbers AL743876, AN657409 and HU545509 and markings "MBS-1", "MBS-2" and "MBS-3", respectively), or a total of Three Hundred Pesos, Philippine currency (PHP 300.00) marked money.

CONTRARY TO LAW.

Upon arraignment, Abucay pleaded not guilty. Trial on the merits ensued.⁸

In a Decision⁹ dated May 30, 2017, the RTC found Abucay guilty. The trial court upheld the validity of the buy-bust operation on the basis of PO1 Soler's testimony, which was "replete with details that attest to the truth of the transaction."¹⁰ "It could not be the product of the poseur buyer's imagination,"¹¹ the RTC added. Furthermore, PO1 Soler's testimony established the presence of the elements of Illegal Sale of Drugs: (1) that the sale of the dangerous drugs actually took place; (2) that the *shabu* was bought from Abucay; and (3) that Abucay received the payment from the *poseur*-buyer. As regards the identity and integrity of the *shabu*, the RTC concluded that there was proper inventory, marking and taking of photos of the seized *shabu*. The required sector representatives were all present during inventory, in compliance with Section 21, R.A. 9165.¹² The links in the chain of custody remained unbroken: (1) PO1 Soler, the apprehending officer, properly marked the seized drug; (2) PO1 Soler turned over the drug to PO3 Molino during inventory; (3) PO3 Molino delivered the *shabu* to the

⁷ Id. at 56-57.

⁸ Id. at 54.

⁹ Id. at 54-59.

¹⁰ Id. at 57.

¹¹ Id.

¹² Records, p. 58.

crime laboratory; (4) PO2 Domingo received from PO3 Molino the specimen; and (5) the examined drug specimen was turned over to the prosecutor's office and eventually presented as evidence in court.¹³ On the other hand, the RTC did not give merit to the bare denials presented by the defense and instead upheld the presumption of regularity in favor of the police officers. The RTC imposed the penalty of life imprisonment and ordered Abucay to pay a fine of ₱500,000.00 plus costs.¹⁴

On appeal, the defense raised the following issues: *First*, the defense argued that the RTC had no jurisdiction because the Information was not signed by the provincial prosecutor of the Province of Zambales. Following Section 4(3), Rule 112 of the Rules of Court, this absence of the provincial prosecutor's signature was a jurisdictional infirmity, which may be raised at any stage of the proceedings.¹⁵ *Second*, the defense insisted that the testimonies of the prosecution should not be given credence because of its inconsistencies. The defense doubts the veracity of PO1 Soler's statement that Abucay asked him how much he was willing to buy despite the fact that Abucay had only one sachet left with him.¹⁶ The role of PO1 Susano in the buy-bust operation was also unclear. In one instance, PO1 Soler said that PO1 Susano assisted him in the arrest of Abucay but then PO1 Soler said that PO1 Susano was just at the side.¹⁷ *Third*, the defense claimed that the *corpus delicti* was not marked immediately upon confiscation. The marking placed on the specimen was also incomplete as to the following details: date, time, and place where the evidence was found/recovered or seized.¹⁸

On August 31, 2018, the CA in its Decision¹⁹ affirmed the RTC Decision, finding Abucay guilty of violation of Section 5, Article II of R.A. 9165. The elements of Illegal Sale of Drugs were proven by the prosecution: (1) PO1 Soler, as *poseur*-buyer, explicitly described the sale transaction between him and Abucay; (2) during the buy-bust operation, Abucay sold and delivered to *poseur*-buyer PO1 Soler a sachet containing *shabu* worth ₱300.00.²⁰ For his defense, Abucay insisted that the prosecution failed to establish the *corpus delicti* because the drug confiscated from him was not immediately marked at the place of confiscation and does not bear the date, time, and place where it was recovered and seized.²¹ The CA did not agree with Abucay.²² The CA explained that while it may be true that the buy-bust team failed to immediately conduct the marking and inventory at the place of the alleged transaction, such failure was not fatal as to invalidate the seizure of and custody over the illegal drug in question.²³ The prosecution

¹³ Id.
¹⁴ Id. at 59.
¹⁵ CA rollo, pp. 41-43.
¹⁶ Rollo, p. 44.
¹⁷ Id. at 45.
¹⁸ Id. at 48-49.
¹⁹ Supra note 1.
²⁰ Rollo, pp. 12-13.
²¹ Id. at 13.
²² Id.
²³ Id. at 16.

proved that the methamphetamine hydrochloride contained in the plastic sachet confiscated from Abucay, taken to the police headquarters, subjected to examination at the crime laboratory, and introduced in evidence against Abucay was the same illegal drug which was confiscated from him when he was caught *in flagrante delicto* selling the same to the *poseur*-buyer PO1 Soler.²⁴ Furthermore, the defense raised doubts as regards the manner PO1 Soler asked Abucay for *shabu*. The CA held that these were minor details which did not relate to the elements of the offense nor destroy PO1 Soler's credibility.²⁵ Lastly, according to the CA, the issue of lack of authority from the provincial prosecutor cannot prosper since it was raised for the first time on appeal. In addition, it was reflected on the Information that the Assistant Provincial Prosecutor signed "by authority of the Provincial Prosecutor."²⁶

Pursuant to Section 2, Rule 125, in relation to Section 3, Rule 56 of the Rules of Court, the Office of the Solicitor General filed a Manifestation²⁷ dated December 3, 2019 that it would adopt the Appellee's Brief²⁸ dated May 9, 2018 as its supplemental brief. Likewise, the defense, through the Public Attorney's Office, filed its Manifestation in Lieu of Supplemental Brief²⁹ dated November 28, 2019.

This Court finds the appeal impressed with merit.

R.A. 9165 provides reasonable safeguards to preserve the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders.³⁰ Section 21, Article II of the Implementing Rules and Regulations (IRR) of R.A. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. Proper procedures to account for each specimen by tracking its handling and storage from point of seizure to presentation of the evidence in court and its final disposal must be observed. Strict compliance with the chain of custody rule is essential in order for the prosecution to establish the guilt of the accused beyond reasonable doubt. Immediately after seizure and confiscation, the apprehending team is required to conduct a physical inventory and to photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of R.A. 9165 by R.A. 10640, approved on July 23, 2014, a representative from the media *and* the DOJ, and any elected public official; or (b) if *after* the amendment of R.A. 9165 by R.A. 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media.³¹

²⁴ Id. at 18.

²⁵ Id. at 19.

²⁶ Id. at 23.

²⁷ Id. at 38-42.

²⁸ CA rollo, pp. 71-92.

²⁹ Rollo, pp. 33-37.

³⁰ *Cariño v. People*, 600 Phil. 433, 448 (2009).

³¹ See *Dimaala v. People*, G.R. No. 242315, July 3, 2019

Abucay was arrested *after* the effectivity of R.A. 10640. The witnesses required in this case are: (a) an elected public official; and (b) a representative of the NPS *or* the media. It is gathered from PO1 Soler's testimony and from the *Magkasanib na Sinumpaang Salaysay ng Pag-Aresto*³² submitted before the Office of the Provincial Prosecutor of Olongapo City that all the required witnesses were present during inventory: (a) DOJ Representative Assistant Prosecutor Sunshine B. Palomar; (b) Aningway Sacatihan Barangay Captain Eddie de Guzman; and (c) media representative Betty Bendicion of DZRH Radio Station.

The marking and the inventory of the drugs seized from Abucay, however, took place at the Subic Police Station. PO1 Soler stated that he took sole custody of the seized illegal drugs until the team reached the Subic Police Station. It was during the inventory when PO1 Soler placed the marking "MBS-B" on the plastic sachet containing *shabu*. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or the nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.³³ Section 21(a), Article II of the IRR of R.A. 9165 adopted in Section 1 of R.A. 10640 admits exceptions. So long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, non-compliance under justifiable grounds shall not render void and invalid seizures and custody over said items.

PO1 Soler's statement that he took sole custody of the *shabu* seized from Abucay until it was presented for inventory and marking is insufficient proof to merit exception from the application of the rules of chain of custody. This Court cannot just rely on PO1 Soler's statement, especially when taken in light of the other irregularities concerning the identity and integrity of the seized illegal drug. *First*, the police officers failed to provide explanation on why marking and inventory were conducted at the Subic Police Station and not at the place of arrest. Aside from the utter lack of explanation, the prosecution did not show that the Subic Police Station is the nearest police station to the place of seizure and arrest. *Second*, the manner how PO1 Soler took sole custody of the *shabu* was not expounded. Even after a careful review of the records, the following questions remain unresolved: where did PO1 Soler keep it? Did he keep it inside his pocket, or did he bring an evidence box? Are there other items or plastic sachets kept in his pocket or evidence box? How did PO1 Soler identify which sachet was seized from Abucay? *Third*, as correctly raised by the defense, PO1 Soler failed to indicate in his marking the date, time, and place where the evidence was found/recovered or seized. Neither did the prosecution provide any

³² Records, pp. 7-8.

³³ Guidelines on the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640.

reason to justify this deviation from the standard operating procedure on the marking of the illegal drug seized.³⁴ With the marking "MBS-B," there is no way to differentiate the items similarly marked "MBS-B" seized from different offenders.

It is worth underscoring in this case that the *shabu* seized from Abucay amounted to only 0.052 gram. The quantity of *shabu* involved is so minuscule that it only amounts to less than two pieces of long grain rice³⁵ and packed in a small plastic sachet.

While the minuscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21.³⁶ The likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.³⁷

Again and again, this Court has emphasized that the ultimate success of the buy-bust operation is being able to present, with moral certainty, that the illegal drugs seized from the accused during buy-bust operation is the very same one presented before the court. The mandated strict procedures for the marking and inventory serve a vital purpose: to protect the accused against any possibility of planting, contamination, or loss of the seized drug. Thus, the apprehending officer/team should be able to show that their handling of the illegal drug seized left no room for planting, contamination, or loss of the seized drug.

In this case, the apprehending officer/team completely failed to do so. The possibility of mix-up is highly probable. This Court cannot just assume that the item with markings "MBS-B" and "RGM" is the very same item seized from Abucay.

Lastly, it cannot escape the attention of this Court how the prosecution left unanswered questions about the forensic chemist's handling of the specimen. As a rule, the police chemist who examines a seized substance should ordinarily testify that he/she received the seized article as marked, properly sealed and intact; that he/she resealed it after examination of the content; and that he/she placed his own marking on the same to ensure that it could not be tampered pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter

³⁴ Philippine National Police Manual PNPM-D-0-2-14, Sec. 2.35. The Seizing Officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found/recovered or seized.

³⁵ A single long grain of rice weighs an average of 0.029 gram. Accessed at <<https://shigen.nig.ac.jp/rice/oryzabase/asset/rgn/vol5/v5VI33.html>>.

³⁶ *People v. Holgado*, 741 Phil. 78, 99 (2014).

³⁷ *Mallillin v. People*, 576 Phil. 576, 633 (2008).

would have testified that he took the precautionary steps mentioned.³⁸ Here, the following are the stipulations as regards the testimony of PCI Santiago:

- (1) that he is the forensic chemist assigned at the Olongapo City Crime Laboratory Office on the date of the incident;
- (2) he examined the specimen and urine sample as shown by the Chemistry Report Nos. D-160-2014 for the specimen and DT No. 298-2014 for the drug test;
- (3) that he can identify said specimens as well as the corresponding chemistry reports which bears his initials;
- (4) that he affixed his markings on the specimen (subject of inventory receipt) after receiving the same intact from officer Domingo of the Crime Laboratory; and
- (5) that he preserved intact until they were turned over to the Prosecutor's Office by Insp. Vernon (PCI Santiago) up to the time they were presented before the Honorable Court, identified and marked by the prosecution witnesses.³⁹

A general statement that PCI Santiago preserved the specimen intact falls short of the required showing of precautionary steps taken post-qualitative examination of the specimen. To satisfy this requirement, PCI Santiago should have testified or stipulated precisely the manner how he preserved the specimen intact. To be exact, the prosecution failed to provide the following important details in order to establish the links to preserve the identity and integrity of the seized illegal drug: (a) the place where the specimen was kept after the qualitative examination; (b) the possibility of other people having access to the specimen; and (c) the complete details on the handling of the specimen at the Prosecutor's Office when it was presented by PCI Santiago, such as the name of the person who received the specimen, the status of the specimen upon receipt at the Prosecutor's Office, and the duration the specimen was left at the Prosecutor's Office.

The prosecution has the burden to prove that the rules on chain of custody were faithfully complied with. In case of deviation from the rules, the prosecution has the duty to allege and provide justifiable reasons. In this case, the prosecution glaringly failed to discharge its duty. The stipulations should have been more detailed and substantiated if the prosecution was to enlighten this Court with moral certainty that the identity and integrity of the *corpus delicti* was preserved. Considering the burden to overturn the constitutionally mandated presumption of innocence, the prosecution cannot just place its entire faith on mere assurances, general statements, and generic descriptions.

All in all, due to the failure to comply with the strict requirements of the law on chain of custody, the prosecution did not prove with moral certainty the guilt of Abucay.

³⁸ *People v. Pajarin*, 654 Phil. 461, 467 (2011).

³⁹ Records, p. 83.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 31, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09493 is **REVERSED** and **SET ASIDE**. Accused-appellant Abucay Soria y Gwande is **ACQUITTED** of the charge of violating Section 5, Article II of Republic Act No. 9165. The Director of the Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless he is being lawfully held in custody for any other reason. The Director of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.”

Very truly yours,

Misael DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

*GEX
11/5/20*

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 75, 2200 Olongapo City
(Crim. Case No. 755-2014)

Mr. Abucay Soria y Gwande
Accused-Appellant
c/o The Superintendent
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Director General
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

G.R. No.246462

The Director General
PHILIPPINE NATIONAL POLICE
National Headquarters
Camp Crame, Quezon City

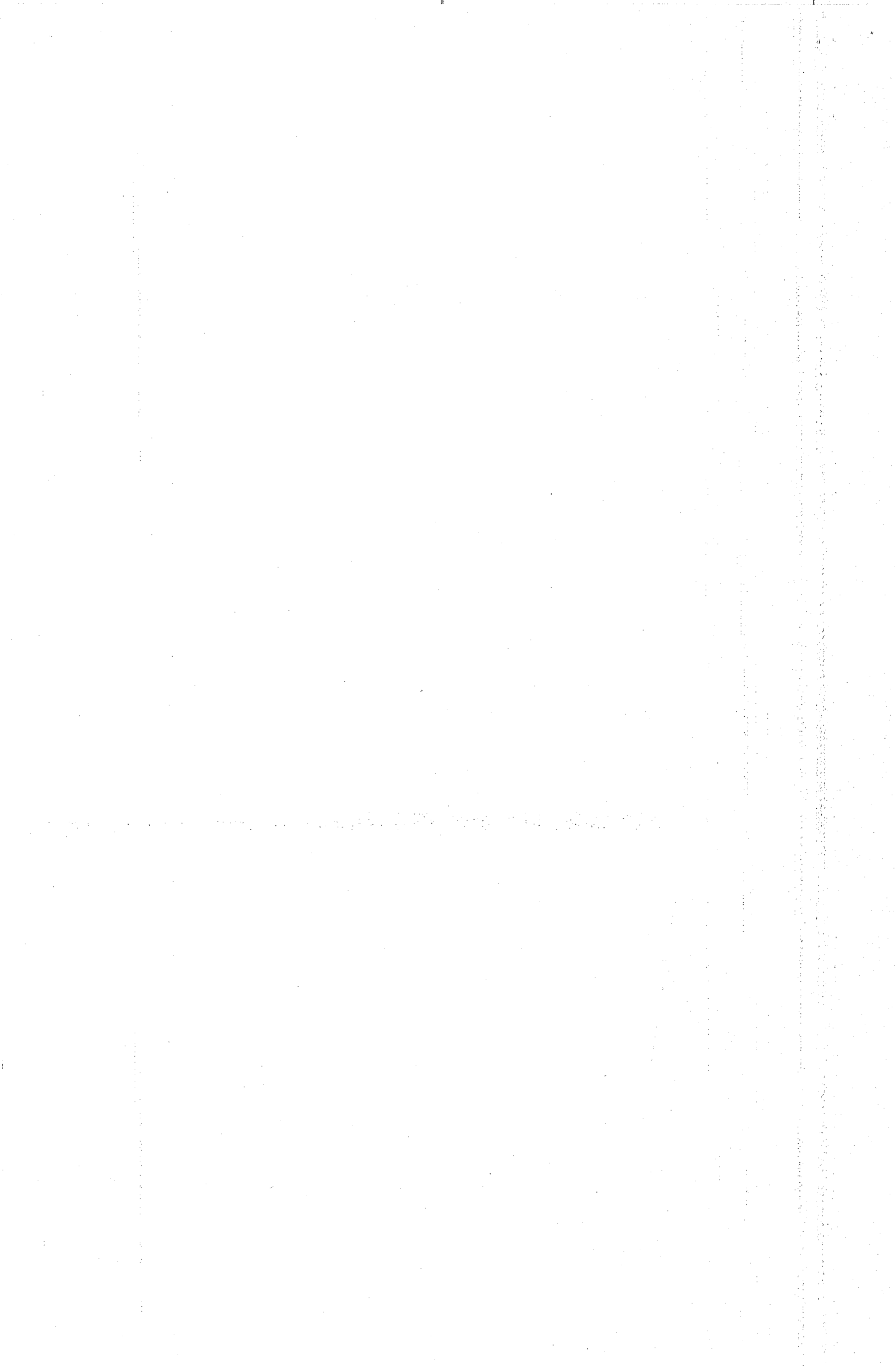
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 246462

-versus-

ABUCAY SORIA Y GWANDE,
Accused-Appellant,

x-----/

ORDER OF RELEASE

TO: The Director
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: **The Superintendent**
New Bilibid Prison
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on June 29, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 31, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09493 is **REVERSED** and **SET ASIDE**. Accused-appellant Abucay Soria y Gwande is **ACQUITTED** of the charge of violating Section 5, Article II of Republic Act No. 9165. The

Director of the Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless he is being lawfully held in custody for any other reason. The Director of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.”

NOW, THEREFORE, you are hereby ordered to immediately release **Abucay Soria y Gwande**, unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **29th** day of **June 2020**.

Very truly yours,

Misael D. Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

GER
11/5/20

OFFICE OF THE SOLICITOR GENERAL
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1229 Legaspi Village, Makati City

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 75, 2200 Olongapo City
(Crim. Case No. 755-2014)

Mr. Abucay Soria y Gwande
Accused-Appellant
c/o The Director
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