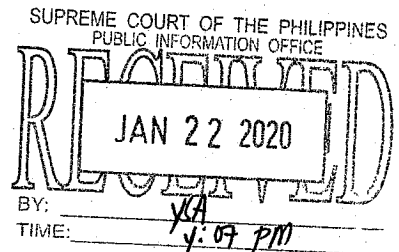




Republic of the Philippines  
Supreme Court  
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:

**“G.R. No. 226844 (People of the Philippines v. Noel Rigondola Rodelas)**

**The Case**

This appeal assails the Decision<sup>1</sup> dated August 27, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05825 affirming the conviction of appellant Noel Rigondola Rodelas for violation of Section 5, Article II of Republic Act No. (RA) 9165<sup>2</sup> involving the alleged sale of 0.01 gram of Methamphetamine Hydrochloride, otherwise known as “shabu”.

**The Proceedings Before the Trial Court**

**The Charge**

Appellant Noel Rigondola Rodelas was charged with violation of Section 5, Article II, RA 9165 under the following Information:

That on or about the 25<sup>th</sup> day of May 2009, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport one (1) heat-sealed transparent plastic sachet weighing 0.01 gram of white crystalline substance to Police Poseur<sup>3</sup>

- over – twelve (12) pages ...

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<sup>1</sup> Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Danton Q. Bueser and Myra V. Garcia-Fernandez; *rollo*, pp. 2-13.

<sup>2</sup> Comprehensive Dangerous Drugs Acts of 2002.

Buyer PO2 Domingo T. Julaton III, which contents of said plastic sachet when tested was found positive to be Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>3</sup>

The case was raffled to the Regional Trial Court (RTC) – Branch 259, Parañaque City.

On arraignment, appellant pleaded “not guilty”.<sup>4</sup> Trial ensued.

During the trial, Police Officer 2 (PO2) Domingo Julaton III of the Station Anti-Illegal Drug Special Operation Task Force (SAID SOTD), Parañaque City testified for the prosecution. On the other hand, appellant and his daughter Shella Rodelas testified for the defense.

### The Prosecution’s Evidence

On May 25, 2009, around 4 o’clock in the afternoon, Police Senior Inspector (PSI) Roque Tome received information regarding the illegal drug activities of a certain Noel Rigondola Rodelas, alias Choy, of Fourth Estate, Brgy. San Antonio, Parañaque City. PS/Supt. Alfredo Valdez briefed the members of SAID SOTD and organized a buy-bust operation. PO2 Julaton got assigned as the poseur buyer while PO2 Elbert Ocampo as immediate back-up. PO2 Julaton prepared the buy-bust money, i.e. three (3) fifty-peso bills marked with “X” in the middle portion or a total amount of One Hundred Fifty Pesos (₱150.00). They agreed on the pre-arranged signal: PO2 Julaton will scratch his head indicating the sale had been consummated.<sup>5</sup>

Around 7 o’clock in the evening, the buy-bust team, together with the confidential informant proceeded to appellant’s residence at Fourth Estate, Brgy. San Antonio, Parañaque City.<sup>6</sup> PO2 Julaton and the informant spotted appellant who was standing in front of his house. They approached him and the informant introduced PO2 Julaton as a friend in need of *shabu*. Appellant did not say anything while PO2 Julaton handed him the buy-bust money. After counting the money, appellant handed to PO2 Julaton a sachet of suspected *shabu*.<sup>7</sup> PO2 Julaton scratched his head to alert the rest of the team

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<sup>3</sup> *Rollo*, p. 3.

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

<sup>5</sup> *CA rollo*, p. 34.

<sup>6</sup> *Id.* at 55-56.

<sup>7</sup> *Id.* at 57.

that the transaction had been consummated. When PO2 Julaton saw PO2 Ocampo rushing to their location, he grabbed appellant's hands, introduced himself as a police officer, and arrested appellant.<sup>8</sup>

At the *situs criminis*, PO2 Julaton placed the small sachet of suspected *shabu* inside a bigger plastic sachet and marked it with his initials "DJ". PO2 Julaton prepared the inventory and Barangay Executive Officer (Ex-O) Armando Toribio signed it. Appellant, however, refused to sign. PO2 Ocampo took photographs of appellant and the seized item. Thereafter, they proceeded to their office at the Parañaque City Police Station. There, PO2 Julaton and PO2 Ocampo executed a joint affidavit of arrest. PO2 Julaton prepared the Request for Laboratory Examination and brought the specimen to the PNP Southern Police District Crime Laboratory<sup>9</sup> for examination. A certain PO2 Villar received the request and the specimen from PO2 Julaton.<sup>10</sup> Forensic chemist Insp. Richard Allan B. Mangalip conducted a qualitative examination on the specimen which was found positive for *methamphetamine hydrochloride*, a dangerous drug.<sup>11</sup>

The prosecution submitted the following evidence: 1) Request for Laboratory Examination;<sup>12</sup> 2) Physical Science Report No. D-262-09S;<sup>13</sup> 3) One transparent plastic sachet with markings D-262-09S and one small plastic sachet with markings DJ containing 0.01 gram of *shabu*;<sup>14</sup> 4) Joint Affidavit of Apprehension;<sup>15</sup> 5) Spot Report;<sup>16</sup> 6) Request for Drug Test Examination;<sup>17</sup> 7) Photographs of appellant and the seized item;<sup>18</sup> Receipt of Property Seized;<sup>19</sup> 8) PDEA Coordination Form;<sup>20</sup> 9) Pre-Operation Form;<sup>21</sup> 10) Photographs of the marked money;<sup>22</sup> and 11) Booking/Information Sheet of the accused.<sup>23</sup>

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<sup>8</sup> *Rollo*, p. 4.

<sup>9</sup> Record, p. 5.

<sup>10</sup> *CA rollo*, p. 34.

<sup>11</sup> *Rollo*, p. 3.

<sup>12</sup> Record, p. 183.

<sup>13</sup> *Id.* at 184.

<sup>14</sup> *Id.* at 179.

<sup>15</sup> *Id.* at 193-195.

<sup>16</sup> *Id.* at 186.

<sup>17</sup> *Id.* at 187.

<sup>18</sup> *Id.* at 188.

<sup>19</sup> *Id.* at 192.

<sup>20</sup> *Id.* at 196.

<sup>21</sup> *Id.* at 197.

<sup>22</sup> *Id.* at 198.

<sup>23</sup> *Id.* at 199.

### The Defense's Evidence

Appellant testified that on May 25, 2009 around 7 o'clock in the evening, he was inside their house sleeping when armed men suddenly barged in and pointed their guns at him. They handcuffed him and asked his name to which he replied "Noel Rodelas". They also asked him the whereabouts of a certain "Ben Tisoy" and threatened to incarcerate him if he will not cooperate with them. He pleaded and told them he did not know "Ben Tisoy". He was later asked to sign a document. A barangay tanod arrived and was also asked to sign it. When his daughter Shella arrived, the armed men introduced themselves as police officers. He was brought to the police headquarters and placed inside a room. There, he was shown a small plastic sachet which they allegedly recovered inside his house. The police officers told him he was being detained because he did not point the whereabouts of "Ben Tisoy". He only learned of the charge against him when he was brought to the City Hall for inquest.<sup>24</sup>

Shella corroborated appellant's testimony. She testified that on May 25, 2009, her father arrived home around 6:30 in the evening. When her father laid down to rest around 7 o'clock in the evening, she went outside their house to catch some air. When she returned after ten (10) minutes, she was surprised to see armed men inside their house and his father in handcuffs. She asked the men why her father was in handcuffs, but they told her to just follow them to the headquarters in Coastal. She denied the charge against her father as he had been working at a billiard hall while her step-mother worked in Saudi.<sup>25</sup>

### The Trial Court's Ruling

By Decision<sup>26</sup> dated October 8, 2012, the trial court found appellant guilty as charged, viz:

**WHEREFORE**, premises considered the court finds accused **NOEL RIGONDOLA RODELAS** in *Criminal Case No. 09-0602*, **GUILTY beyond reasonable doubt** for *Violation of Section 5, Article II of RA 9165*, and is hereby sentenced to suffer the penalty of **life imprisonment** and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (P500,000.00)**.

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<sup>24</sup> *Rollo*, pp. 5-6.

<sup>25</sup> *Id.* at 6-7.

<sup>26</sup> Penned by Judge Jansen R. Rodriguez; *CA rollo*, pp. 33-39.

Further it appears that the accused **NOEL RIGONDOLA RODELAS** is detained at the Paranaque City Jail and considering the penalty imposed, the OIC-Branch Clerk of Court is hereby directed to prepare the *Mittimus* for his immediate transfer from the Paranaque City Jail to the New Bilibid Prisons, Muntinlupa City.

The specimen is forfeited in favor of the government and the OIC- Branch Clerk of Court is likewise directed to immediately turn over the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Supreme Court OCA Circular No. 51-2003.

SO ORDERED.<sup>27</sup>

The trial court found the testimony of PO2 Julaton credible vis-à-vis appellant's defense of denial and frame-up.<sup>28</sup> It ruled there was a valid buy-bust operation resulting in the purchase of 0.01 gram of *shabu*. The absence of the Department of Justice (DOJ) and media representatives during the inventory and photograph of the seized item did not render the drug inadmissible as evidence because the prosecution showed there was substantial compliance with the chain of custody.<sup>29</sup>

### **The Proceedings Before the Court of Appeals**

On appeal, appellant faulted the trial court when it allegedly overlooked the police officers' non-compliance with Section 21 (a) of RA 9165, specifically their failure to acknowledge and justify why there were no representatives from the DOJ and the media during the inventory and photograph of the seized item.<sup>30</sup> Also, except for the results of the laboratory examination, there was no showing that the integrity and evidentiary value of the seized item were preserved at the time the same was turned over to forensic chemist Insp. Mangalip until it was presented in court.<sup>31</sup>

In refutation, the Office of the Solicitor General (OSG) through Senior State Solicitor Nelia A. Bandilla-Bustria and Associate Solicitor III Karla Monica S. Moraleda-Manabat defended the verdict of conviction. They relied on pertinent jurisprudence saying that substantial compliance with the legal requirements on handling the seized item is sufficient, so long as the integrity and evidentiary value are preserved.<sup>32</sup>

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<sup>27</sup> CA rollo, p. 39.

<sup>28</sup> *Id.* at 37.

<sup>29</sup> *Id.* at 37-38.

<sup>30</sup> *Id.* at 27.

<sup>31</sup> *Id.* at 28.

<sup>32</sup> *Id.* at 69-71.

### The Court of Appeals' Ruling

By Decision<sup>33</sup> dated August 27, 2015, the Court of Appeals affirmed. It found the prosecution to have proven appellant's guilt to a moral certainty, giving full faith and credit to the testimony of PO2 Julaton. His testimony, coupled with the presentation of the dangerous drugs in question, convincingly established that appellant was caught *in flagrante delicto* selling *shabu*.<sup>34</sup> It also found that despite the absence of witnesses from the DOJ and the media, the arresting officers substantially complied with the chain of custody rule and the integrity of the *corpus delicti* was deemed duly preserved.<sup>35</sup>

### The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

In compliance with Resolution dated November 9, 2016, appellant filed a Supplemental Brief<sup>36</sup> reiterating the arguments he raised before the appellate court. On the other hand, the People through the OSG adopted, in lieu of a supplemental brief, the Brief for the Appellee<sup>37</sup> filed before the Court of Appeals.<sup>38</sup>

### Issue

Did the Court of Appeals err when it affirmed appellant's conviction for violation of Section 5, Article II of RA 9165?

### Ruling

Appellant is charged with unauthorized sale of dangerous drugs allegedly committed on May 25, 2009. The governing law, therefore, is RA 9165 prior to its amendment in 2014.

Section 21 of RA 9165 sets out the step by step procedure to ensure preservation of the *corpus delicti* in illegal drug cases, viz:

**Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.** – The PDEA shall take charge and have custody of all

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<sup>33</sup> *Rollo*, pp. 2-14.

<sup>34</sup> *Id.* at 8-10.

<sup>35</sup> *Id.* at 12.

<sup>36</sup> *Id.* at 32-38.

<sup>37</sup> *CA rollo*, pp. 43-78.

<sup>38</sup> Manifestation and Motion, *rollo*, pp. 23-25.

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:

(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 added)

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The Implementing Rules and Regulations (IRR) of RA 9165 further commands:

**Section 21.** (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.** (Emphases added)

Section 21 and 21 (a) are the summation of the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.<sup>39</sup>

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<sup>39</sup> *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:<sup>40</sup> *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug 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 marked illegal drug seized by the forensic chemist to the court.<sup>41</sup>

Here, the inventory and photograph of seized items were only made in the presence of appellant and Barangay Ex-O Armando Toribio who was not even an elected public official.<sup>42</sup> This was confirmed by PO2 Julaton in his testimony before the trial court, thus:

PO2 Julaton:

*Direct examination:*

Q: Who were present during the inventory?  
A: Brgy. Ex-O, my companions, and the suspect, Ma'am.

Q: Do you still recall the name of the Brgy. Ex-O?  
A: I cannot recall, Ma'am.<sup>43</sup>

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*Cross-examination*

Q: **During the arrest, Mr. Witness, was there any counsel, Brgy. Official, DOJ representative or Media representative?**

A: **No, Sir. Only the Brgy. Ex-O.**

Q: **Mr. Witness, correct me if I'm wrong, as far as I remember Brgy. Ex-O official is an appointed official and not elected official, am I right?**

A: **Yes, sir. (Emphasis supplied)<sup>44</sup>**

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<sup>40</sup> As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.] xxx

<sup>41</sup> *People v. Victoria*, G.R. No. 238613, August 19, 2019.

<sup>42</sup> Record, p. 22.

<sup>43</sup> TSN, January 31, 2011, p. 23.

<sup>44</sup> *Id.* at 30-31.



Clearly, the prosecution failed to prove that the three (3) required witnesses namely, the representatives from the DOJ, the media, and any elected public official, were present during the inventory and photographing of the seized drugs. The arresting officers offered no excuse for the absence of these witnesses. Yet, they tried to trivialize this glaring procedural lapse by having a Brgy. Ex-O sign the inventory despite him not being qualified to do so. More, it was not shown that they performed their positive duty to secure through earnest efforts the presence of these representatives.

It is settled that in a prosecution for Illegal Sale of Dangerous Drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti*, failing in which, renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt.<sup>45</sup>

In *People v. Abelarde*,<sup>46</sup> the accused was acquitted of violation of Section 5, Article II of RA 9165 because there was no evidence that the inventory and photograph of seized dangerous drugs, if at all, were done in the presence of a media representative, a DOJ representative, and an elected public official.

Too, in *People v. Macud*,<sup>47</sup> the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule. In that case, the prosecution likewise failed to satisfactorily explain the absence of the DOJ representative, media representative, and local elective official during the marking, inventory, and photograph of the seized dangerous drug.

Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from appellant have been compromised.<sup>48</sup>

Another gap in the chain of custody happened here when the seized drug was delivered to the crime laboratory. There is nothing on record showing how the seized drug was handled, stored, and secured before, during, and after it came to the custody of forensic chemist

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<sup>45</sup> *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

<sup>46</sup> See G.R. No. 215713, January 22, 2018.

<sup>47</sup> See G.R. No. 219175, December 14, 2017, 849 SCRA 294, 321.

<sup>48</sup> *Supra* note 45.

Insp. Mangalip.<sup>49</sup> The parties merely stipulated that Insp. Mangalip was the one who examined the specimen delivered to him, *subject to the condition that he has no personal knowledge as to the source of the specimen.*<sup>50</sup> By reason of this stipulation, the parties agreed to dispense with his testimony.

In *People v. Ubungen*<sup>51</sup> We emphasized that stipulation on the testimony of a forensic chemist should cover the management, storage, and preservation of the seized drugs, thus:

Clear from the foregoing is the lack of the stipulations required for the proper and effective dispensation of the testimony of the forensic chemist. While the stipulations between the parties herein may be viewed as referring to the handling of the specimen at the forensic laboratory and to the analytical results obtained, they do not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left her possession. **Absent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized herein after its qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be reasonably established.** (Emphasis supplied)

Here, the parties' stipulation to dispense with the testimony of the forensic chemist did not contain the vital pieces of information required in *Cabuhay*: i.e., Insp. Mangalip received the seized drugs as marked, properly sealed, and intact; Insp. Mangalip resealed the drug items after examination of the content; and, Insp. Mangalip placed his own marking on the drug items — thus leaving a huge gap in the chain of custody of the seized drugs.

In *People v. Sanchez*,<sup>52</sup> while the testimony of the forensic chemist was dispensed with because of the stipulation of the parties, the Court found that the stipulation did not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left his possession. Thus, for failure of the prosecution to prove beyond reasonable doubt the indispensable element of *corpus delicti* of the crime, the Court acquitted the accused for illegal sale of drugs.

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<sup>49</sup> See *People v. Pajarin*, 654 Phil. 461, 466 (2011).

<sup>50</sup> Pre-Trial Order dated February 16, 2010; Record, pp. 31-32.

<sup>51</sup> G.R. No. 225497, July 23, 2018.

<sup>52</sup> 590 Phil. 214, 237-238 (2008).

Indeed, a perfect chain of custody may be impossible to obtain at all times because of varying field conditions.<sup>53</sup> Section 21 (a), Article II of the IRR of RA 9165<sup>54</sup> offers a saving clause allowing leniency under justifiable grounds. There are twin conditions for the saving clause to apply: a) the prosecution must explain the reasons behind the procedural lapses and; b) the integrity and value of seized evidence had been preserved. A justifiable ground for non-compliance must be proven as fact.<sup>55</sup>

Here, the prosecution utterly failed to offer any explanation which would otherwise excuse the buy-bust team's failure to comply with the chain of custody rule. Thus, the condition for the saving clause to apply was not complied with.

Suffice it to state that the presumption of regularity in the performance of official functions<sup>56</sup> cannot substitute for compliance and mend the broken links. There can be no presumption of regularity in this case when records were replete with details of the buy-bust team's serious lapses. For to allow the presumption to prevail notwithstanding clear errors on the part of the police is to negate the safeguards precisely placed by law to ensure that no abuse is committed.<sup>57</sup> Here, the presumption was amply overturned by compelling evidence of the glaring breaches of the chain of custody rule.

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<sup>53</sup> See *People v. Abetong*, 735 Phil. 476, 485 (2014).

<sup>54</sup> Section 21 (a) of the Implementing Rules and Regulations of RA 9165 provides:

- (a) The apprehending office/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;

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<sup>55</sup> See *People v. Jugo*, G.R. No. 231792, January 29, 2018.

<sup>56</sup> RULES OF COURT, Section 3(m), Rule 131.

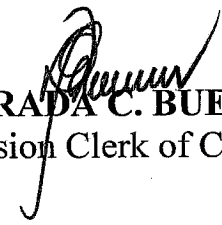
<sup>57</sup> *Supra* note 47.

**ACCORDINGLY**, the appeal is **GRANTED**. The Decision dated August 27, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05825 is **REVERSED** and **SET ASIDE**.

Appellant **NOEL RIGONDOLA RODELAS** is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to: a) immediately release appellant Noel Rigondola Rodelas from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of judgment be issued immediately.

**SO ORDERED.**” *Inting, J., additional member per Special Order 2726 dated October 25, 2019.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court <sup>(b)</sup>

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The Solicitor General  
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1229 Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 05825)

The Hon. Presiding Judge  
Regional Trial Court, Branch 259  
1700 Parañaque City  
(Crim. Case No. 09-0602)

The Director General (x)  
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