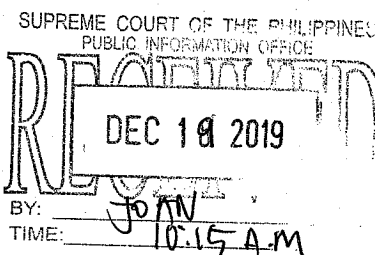




Republic of the Philippines  
Supreme Court  
Manila



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. 233741 (People of the Philippines v. Peping Macapangkat y Sarozong).** – On appeal is the December 11, 2015 Decision<sup>1</sup> and the April 17, 2017 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05366 which affirmed the June 6, 2011 Decision<sup>3</sup> of the Regional Trial Court (RTC), Branch 44, Dagupan City, in Criminal Case No. 2009-0396-D, finding accused-appellant Peping Macapangkat y Sarozong guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Amended Information dated April 13, 2010, Macapangkat was charged with the illegal sale of Methamphetamine Hydrochloride (*shabu*), committed as follows:

That on or about the 2<sup>nd</sup> day of July 2009, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, PEPING MACAPANGKAT y SAROZONG @ PEPING, did then and there, willfully, unlawfully and criminally[,] sell and deliver to a customer Methamphetamine Hydrochloride (*shabu*) contained in one (1) heated-sealed plastic sachet, weighing more or less 0.2 [gram], without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.<sup>4</sup>

- over – twelve (12) pages ...

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<sup>1</sup> Rollo, pp. 2-21; penned by Associate Justice Zenaida T. Galapate-Laguilles, with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino.

<sup>2</sup> CA rollo, pp. 198-199.

<sup>3</sup> Records, pp. 115-120; penned by Judge Genoveva Coching-Maramba.

<sup>4</sup> *Id.* at 48-49.

In his arraignment, Macapangkat pleaded not guilty.<sup>5</sup> He was committed to the Bureau of Jail Management and Penology during the trial of the case.<sup>6</sup>

The prosecution presented Police Inspector (*P/Insp.*) Myrna Malojo, Intelligence Officer (*IO*) 1 Rafael Balbin, IO2 Jaime Clave and Dr. Leored Rioflorido as witnesses.

### *Version of the Prosecution*

At the time of his testimony, IO1 Balbin stated that on July 2, 2009, at around 10:00 a.m., he was at their office in Urdaneta City when a confidential agent arrived and informed him that a certain Peping was selling *shabu* in Bonuan Binloc. He relayed the information to Senior Police Officer 1 Armando Agustin, their team leader, who organized a team to conduct a buy-bust operation against Macapangkat. IO1 Balbin was designated as poseur-buyer and IO2 Clave was assigned as his back-up. The buy-bust money and the vehicle for the operation were prepared. It was agreed upon by the team that if the sale was consummated, IO1 Balbin would light a cigarette. At about 10:00 p.m., the team proceeded to Bonuan Binloc, near the waiting shed. Macapangkat then arrived and was introduced by the confidential agent to IO1 Balbin as an interested buyer. Macapangkat, who was then around a meter away from them, asked the confidential agent if IO1 Balbin was the interested buyer. The confidential agent assented and told Macapangkat that IO1 Balbin was buying One Thousand Pesos (₱1,000.00) worth of *shabu*. Thereafter, Macapangkat took a heat-sealed plastic sachet containing *shabu* and handed it to IO1 Balbin who, in turn, gave the marked money to Macapangkat. As the sale was already consummated, IO1 Balbin performed the pre-arranged signal by lighting a cigarette. Having seen the pre-arranged signal, IO2 Clave rushed to their place and arrested Macapangkat. IO2 Clave told the latter that they were from the Philippine Drug Enforcement Agency (*PDEA*) and informed him of his constitutional rights. They searched his body and recovered the buy-bust money. Afterwards, IO1 Balbin marked the illegal drug obtained from Macapangkat and the buy-bust money. IO1 Balbin and company were ordered to proceed to their office in Bayaoas, Urdaneta City. Along the way, IO1 Balbin was holding the buy-bust money, as well as the illegal drug obtained from Macapangkat. Upon reaching their office, the arresting team prepared the Booking Sheet, as well as the Arrest Report and Joint Affidavit of Arrest. The request for

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<sup>5</sup> *Id.* at 28.

<sup>6</sup> *Id.* at 12.

laboratory examinations, including the Certificate of Inventory, was also prepared. IO1 Balbin took the mug shots of Macapangkat, including the buy-bust money and the *shabu* seized from him which were marked by IO1 Balbin with his initials "RAB."<sup>7</sup> The team, thereafter, turned over the *shabu* obtained from Macapangkat to the crime laboratory for examination.<sup>8</sup>

IO1 Balbin, in open court, identified the *shabu* seized from Macapangkat, as well as the marked money which was a One Thousand-Peso (₱1,000.00) bill that bore his initials "RAB." He also identified the pictures taken after Macapangkat's arrest, the Booking Sheet, the Arrest Report, the request for medical/physical examination dated July 2, 2009 which was addressed to Dir. Don Amado Perez Memorial Hospital, and the mug shots of Macapangkat.<sup>9</sup>

Meanwhile, P/Insp. Malojo testified in court that she personally received the letter-request dated July 2, 2009 and the subject specimen with markings "RAB" and "D-041-09LMCM." After recording the same, she immediately conducted the laboratory examination and found out that the specimen was positive for methamphetamine hydrochloride. The said finding was reflected in her Initial Laboratory and Final Chemistry Reports. Afterwards, she turned over the subject item to the evidence custodian, P/SInsp. Lady Ellen Maranion, for safekeeping.<sup>10</sup>

The testimony of IO2 Clave was dispensed with by the prosecution considering the admission of the defense that IO2 Clave was the back-up of IO1 Balbin during the buy-bust operation. In the case of Dr. Rioflorido, his testimony was also dispensed with as Macapangkat was subjected to medical examination and no sign of physical injury was found during the said examination.

#### *Version of the Defense*

Macapangkat vehemently denies all the accusations against him. He narrates that on the night of July 2, 2009, he was at his home until 8:30 p.m. and then left for Dagupan City, Pangasinan in order to buy medicine for his daughter Alyssa as she was sick. He boarded a tricycle owned by Malake Mirendato in going to his destination. When they reached the Palatong Highway, they noticed that an owner-type jeep was following them. The said vehicle suddenly

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<sup>7</sup> *Id.* at 116.

<sup>8</sup> *Id.* at 115.

<sup>9</sup> *Id.* at 116-117.

<sup>10</sup> *Id.* at 115.

overtook them and blocked their way upon reaching a subdivision known as "Aplaya." Four persons approached them, fired a gun and asked Macapangkat if he was a Muslim. As Macapangkat confirmed that he was, he was pulled from the tricycle by a male person with a gun. He asked what infraction did he commit but he was only told to go with them. Instead, he was brought to the PDEA office in Urdaneta City, Pangasinan on-board another vehicle which was a Toyota Revo. It was on the following day after the incident that he was asked to sign the Certificate of Inventory outside the Justice Hall of Dagupan City where he just saw Councilor Gilbert Sison sign the same.<sup>11</sup>

On the other hand, Mirendato testified that he was about to go home on the night of July 2, 2009 when he was flagged down by Macapangkat at around 8:30 p.m. to board his tricycle. Macapangkat asked Mirendato to accompany him to Dagupan City to buy medicine. When the two reached Bonuan Binloc near Aplaya Subdivision, he noticed an owner-type jeep following them. After reaching the Aplaya Subdivision, they were blocked by the said vehicle, causing them to stop. The passengers of the said vehicle alighted and poked their gun at Macapangkat and instructed them to drive the tricycle at the side of the road. They followed the order of the five (5) men who instructed them to lie down and who poked a gun at them. It was at this time when the five (5) men asked Macapangkat if he was a Muslim and was forced to board the owner-type jeep they were riding. Macapangkat struggled to avoid being boarded to their vehicle but he conceded when one of the men fired his gun. Afterwards, another vehicle, a Toyota Revo, suddenly arrived and Macapangkat was boarded thereat. Mirendato was instructed to go home and he later informed Macapangkat's siblings about the taking of Macapangkat by some male persons.

### ***RTC Ruling***

After trial, the RTC handed a guilty verdict on Macapangkat for violation of Article II, Section 5 of R.A. No. 9165 for the sale, trade, delivery, administration, dispensation, distribution and transportation of *shabu*. The dispositive portion of the June 6, 2011 Decision<sup>12</sup> states:

WHEREFORE, judgment is hereby rendered finding accused PEPING MACAPANGKAT y Sarozong @ Peping GUILTY beyond reasonable doubt with Violation of Art. II, Sec. 5 of RA 9165 otherwise known as the Dangerous Drugs Act of 2002

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<sup>11</sup> *Id.* at 118.

<sup>12</sup> *Supra* note 3.

and is hereby sentenced to suffer life imprisonment and to pay a fine in the amount of Five hundred thousand (P500,000.00) pesos.

The subject plastic sachet is hereby ordered disposed of in accordance with law.

With costs against said accused.

SO ORDERED.<sup>13</sup>

### ***CA Ruling***

On appeal, the CA affirmed the RTC Decision. It is convinced that the prosecution has properly established the continuous whereabouts of the said illegal drug, at least from the time it came into possession of the police officers, during its testing in the laboratory to determine its composition and up to the time it was offered in evidence. The CA is convinced that substantial compliance with Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 is well sanctioned by the provision itself. The partial noncompliance with the said provision, according to the CA, for as long as the same is explained and minor in character, is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. Lastly, the CA was in the position that the prosecution is not required to show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction.

Before us, the People manifested that it will no longer file a supplemental brief in view of the exhaustive discussion of the relevant issues in its Appellee's Brief.<sup>14</sup> On the other hand, Macapangkat submitted a Supplemental Brief.<sup>15</sup> Essentially, Macapangkat maintained his main argument that there are lapses in the chain of custody and the prosecution failed to establish his guilt beyond reasonable doubt.

### ***Our Ruling***

We find the appeal meritorious. The judgment of conviction is reversed and set aside, and Macapangkat should be acquitted based on reasonable doubt.

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<sup>13</sup> *Id.* at 120.

<sup>14</sup> *CA rollo*, pp. 57-72.

<sup>15</sup> *Rollo*, pp. 33-48.

Under Section 5, Article II of R.A. No. 9165 or the illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

(1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>16</sup> (Citation omitted)

In the illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge.<sup>17</sup> In *People v. Gatlabayan*,<sup>18</sup> "the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect."<sup>19</sup> Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."<sup>20</sup>

The prosecution failed to establish the chain of custody of the seized *shabu* from the time it was recovered from Macapangkat up to the time it was presented in court. Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,<sup>21</sup> which implements the Comprehensive Dangerous Drugs Act of 2002, defines chain of custody as follows:

"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[.]

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

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<sup>16</sup> *People v. Ismael*, 806 Phil. 21, 29 (2017).

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

<sup>18</sup> 669 Phil. 240, 252 (2011).

<sup>19</sup> *People v. Mirondo*, 771 Phil. 345, 356-357 (2015).

<sup>20</sup> See *People v. Ismael*, supra note 16, at 29.

<sup>21</sup> Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

(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[.]

Supplementing the above-quoted provision, Section 21 (a) of the IRR of R.A. No. 9165 provides:

(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[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That noncompliance of 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 and custody over said items.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."<sup>22</sup> Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all comers of the Philippines, especially in more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended."<sup>23</sup> In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."<sup>24</sup>

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."<sup>25</sup> In his Co-sponsorship Speech, he noted:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.

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Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are

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<sup>22</sup> Senate Journal, Session No. 80, 16<sup>th</sup> Congress, 1<sup>st</sup> Regular Session, June 4, 2014, p. 348.

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

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

<sup>25</sup> *Id.* at 349.



threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.<sup>26</sup>

The physical inventory and photograph, as evidenced by the Certificate of Inventory, were done in Urdaneta City, which is two municipalities away from Dagupan City where the buy-bust operation was conducted. Although these processes may be excused in cases where the safety and security of the apprehending officers, witnesses required by law and item seized are threatened by immediate danger, the present case is not one of those.

In the Joint-Affidavit of Arrest of IO1 Balbin and IO2 Clave, it was mentioned that it was only after Macapangkat was brought to their office, which is in Urdaneta City, Pangasinan, when the proper documentation happened and not immediately upon seizure and arrest. There is also no justification contained in the Joint-Affidavit of Arrest of why the physical inventory and photograph were done in Urdaneta City, instead of Dagupan City.

It is apparent from the Certificate of Inventory that it only bears the signature of Sison, who is a councilor from Calasiao, Pangasinan;

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<sup>26</sup> *Id.* at 349-350.

thus, no other witnesses signed the said document. It bears stressing that there were no representatives from the Department of Justice and the media to witness the physical inventory and photograph of the seized item. It is even unclear if Sison witnessed the physical inventory and photograph or if he was only asked to sign after the processes were done.

Hence, the prosecution failed to prove valid causes for noncompliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. Worse, there is no showing of any earnest efforts to secure the attendance of the necessary witnesses. The testimonies of the witnesses in open court and in the Joint-Affidavit miserably failed to mention the causes for noncompliance with Section 21.

The Court stressed in *People of the Philippines v. Vicente Sipin y De Castro*:<sup>27</sup>

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

Earnest efforts to secure the attendance of the necessary witnesses must be proven. *People of the Philippines v. Wilson Ramos y Cabanatan*<sup>28</sup> requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a

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<sup>27</sup> G.R. No. 224290, June 11, 2018 (citations omitted). See also *People of the Philippines v. Angelita Reyes y Ginove and Josephine Santa Maria y Sanchez*, G.R. No. 219953, April 23, 2018; and *People of the Philippines v. Jaycent Mola y Selbosa a.k.a. "Otok"*, G.R. No. 226481, April 18, 2018.

<sup>28</sup> G.R. No. 233744, February 28, 2018 (citations omitted). See also *People of the Philippines v. Marcelino Crispo y Descalso alias "Gogo" and Enrico Herrera y Montes*, G.R. No. 230065, March 14, 2018.

showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for [noncompliance]. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

The nonobservance of the procedure mandated by Section 21 of R.A. No. 9165, as amended, casts serious doubt if the illegal drug presented is the same from the one seized from Macapangkat. It is worthy to note the quantity of the drug seized which is only 0.2 gram. It is an extremely small amount which is highly susceptible to planting and tampering. This is the very reason why strict adherence to Section 21 is a must.

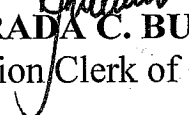
There being no justifiable reason in this case for noncompliance with Section 21 of R.A. No. 9165, this Court finds it necessary to acquit Macapangkat for failure of the prosecution to prove his guilt beyond reasonable doubt.

**WHEREFORE**, premises considered, the December 11, 2015 Decision and the April 17, 2017 Resolution of the Court of Appeals in CA-G.R. CR-H.C. No. 05366 which affirmed the June 6, 2011 Decision of the Regional Trial Court, Branch 44, Dagupan City, in Criminal Case No. 2009-0396-D, finding accused-appellant Peping Macapangkat y Sarozong guilty of violating Section 5, Article II of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, are **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Peping Macapangkat y Sarozong is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. Said Director is ordered to report to this Court, within five (5) working days from receipt of this Resolution, the action he has taken.

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
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The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 05366)

The Hon. Presiding Judge  
Regional Trial Court, Branch 44  
Dagupan City, 2400 Pangasinan  
(Crim. Case No. 2009-0396-D)

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