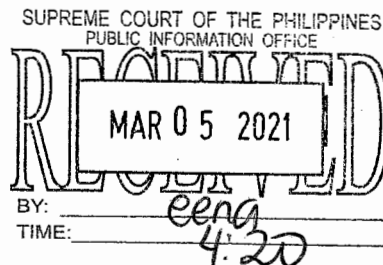




Republic of the Philippines
Supreme Court
Manila

SPECIAL THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **November 11, 2020**, which reads as follows:*

“G.R. No. 219174 (*People of the Philippines v. Vevir Diaz y Malinao and Alvin Velasco y Huevos*). – The Court resolves to **NOTE:**

- (1) the Manifestation dated February 18, 2020, filed by Atty. Catalino S. Pepi, assisting counsel for accused Vevir M. Diaz, praying for favorable application of the Decision promulgated on February 21, 2018 on his client as said Decision acquitted accused-appellant Alvin Velasco y Huevos, his co-accused before the Court of Appeals in CA-G.R. CR-HC No. 05655;
- (2) the letter dated January 18, 2020 of accused Diaz requesting for the reconsideration and review of his case and conviction;
- (3) the handwritten letter (in the vernacular) dated February 11, 2020 of accused Diaz, requesting legal assistance relative to Republic Act No. 11302 otherwise known as the “Ease of Doing Business and Efficient Government Service Delivery Act of 2018”; and
- (4) the Urgent Manifestation dated July 8, 2020, filed by accused Diaz, stating that his co-accused, Alvin Velasco y Huevos, was acquitted based on evidence presented by the prosecution against him and praying that he be acquitted based on the records of the instant case.

In a Decision¹ promulgated on February 21, 2018, this Court reversed and set aside the May 27, 2014 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05655, and acquitted accused-appellant Alvin Velasco y

¹ *Rollo*, pp. 52-61.

² *Id.* at 2-18; penned by Associate Justice Normandie B. Pizarro with Associate Justices Andres B. Reyes, Jr. (retired Member of this Court), and Manuel M. Barrios, concurring.

Huevos (*Velasco*) of the charge filed against him. This resolves the Motion³ dated April 4, 2018 and Manifestation⁴ dated November 23, 2018, both filed by Vevir Diaz y Malinao (*Diaz*), the co-accused of Velasco in the instant case.

This case originated from two Informations filed with the Regional Trial Court (*RTC*) of Calapan City, Oriental Mindoro for violation of Sections 5 and 11 of Republic Act (*R.A.*) No. 9165.

In Criminal Case No. CR-06-8538, Diaz was charged with illegal possession of dangerous drugs, the accusatory portion of the Information against him reads:

That on or about [the] 7th day of August 2006, at around 12:30 in the afternoon, more or less, at Barangay Camilmil, City of Calapan, [Oriental Mindoro,] Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, without any legal authority, nor[sic] corresponding license or prescription, did then and there willfully, unlawfully[,] and feloniously has in his possession, custody[,] and control, three (3) small heat-sealed plastic sachets containing methamphetamine hydrochloride (*shabu*), a dangerous drug, weighing 0.90 gram, more or less.

CONTRARY TO LAW.⁵

A separate Information docketed as Criminal Case No. CR-06-8539 charged Diaz and Velasco with illegal sale of dangerous drugs:

That on or about [the] 7th day of August 2006, at around 12:30 in the afternoon, more or less, at Barangay Camilmil, City of Calapan, [Oriental Mindoro,] Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating[,] and mutually helping one another, without any legal authority, nor[sic] corresponding license or prescription, did then and there willfully, unlawfully[,] and feloniously sell, deliver, transport[,] or distribute to a poseur-buyer, methamphetamine hydrochloride (*shabu*), a dangerous drug, weighing 0.26 gram, more or less.

CONTRARY TO LAW.⁶

Joint trial ensued, after which Diaz and Velasco were convicted of the respective charges filed against them. Their convictions were affirmed by the CA on appeal, and the matter was, thereafter, elevated to this Court. Finding that Diaz was no longer appealing his convictions, Our February 21, 2018 Decision only resolved Criminal Case No. CR-06-8539 as it pertained to Velasco.

³ Id. at 89-91.

⁴ Id. at 107-108.

⁵ Id. at 3.

⁶ Id. at 3-4.

In his Motion and his Manifestation, Diaz acknowledged receiving the Court's September 9, 2015 Resolution ordering him to file a supplemental brief if he so desired. Records, however, do not show any supplemental brief was filed on his behalf. Nonetheless, Diaz expressly disavowed any withdrawal of his appeal.⁷ He hereby prays that the February 21, 2018 Decision be made applicable to him, in so far as it is beneficial to his cause.

The motion is meritorious.

Sec. 11(a), Rule 122 of the Rules of Court provides:

Section 11. Effect of appeal by any of several accused. –

- (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

x x x x

It is a well-established rule that an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties.⁸ By operation of Sec. 11(a) of Rule 122, a favorable judgment – such as the acquittal in this case – may benefit a co-accused who did not appeal, even if the conviction of the latter had already become final and executory.⁹ Thus, whether or not Diaz actually withdrew his appeal is no longer material, since Velasco's acquittal is clearly applicable and favorable to Diaz.

With regard to Criminal Case No. CR-06-8539, the prosecution sought to prove that Velasco sold a plastic sachet containing suspected *shabu* to the poseur-buyer, which upon confiscation was marked "RUA" by the police operatives. To recapitulate, the Court observed that the chain of custody rule mandated under Sec. 21 of R.A. No. 9165 was not observed, and the prosecution failed to justify the lapses for noncompliance. Thus it could not be said that the integrity of the *corpus delicti* was preserved, for noncompliance and therefore there is a doubt whether the evidence presented to the trial court was the same substance subject of the purported sale.

Since both Diaz and Velasco were charged as co-accused based on conspiracy, the above ruling is undoubtedly applicable and beneficial to Diaz. His acquittal in Criminal Case No. CR-06-8539 is in order.

⁷ Id. at 108.

⁸ *People v. Artellero*, 395 Phil 876, 889 (2000).

⁹ See *People v. Libre*, G.R. No. 235980, August 20, 2018.

As to the charge of illegal possession of dangerous drugs, the prosecution sought to prove that as a result of the buy-bust operation, Diaz was searched and three (3) small plastic sachets of suspected *shabu* were found on him. The sachets were marked "JVR-1," "JVR-2," and "JVR-3." Prosecution's evidence shows that after the 3 sachets were confiscated, they were handled in the same manner as the sachet marked "RUA." Thus, the defects in the chain of custody observed, as regard the sachet marked "RUA," are likewise present in the handling of the 3 sachets subject matter of the charge of illegal possession.

As noted in the Court's February 21, 2018 Decision, the apprehending team failed to photograph and conduct the inventory of the seized goods at the place of arrest, and failed to secure the presence of a representative of the media and a representative of the Department of Justice during the inventory.

Just as in cases of illegal sale of dangerous drugs, in the prosecution of illegal possession of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense and, in sustaining a conviction therefor, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved.¹⁰ And like cases of illegal sale, the procedure established in Sec. 21 of R.A. No. 9165 also applies to drugs seized in cases of illegal possession. Since the apprehending officers failed to strictly follow the prescribed procedure, and the prosecution failed to give any justification for such lapses, the Court finds that the chain of custody was not shown to be unbroken, and the acquittal of Diaz in Criminal Case No. CR-06-8538 must necessarily follow as well.

WHEREFORE, the May 27, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05655 is **REVERSED and SET ASIDE**. Accused-appellant **VEVIR DIAZ y MALINAO** is hereby **ACQUITTED** of the crimes charged on the ground that his guilt was not established beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED to REPORT** to this Court within five (5) working days from receipt of this Resolution the action he/she has taken.

¹⁰ *Tumabini v. People*, G.R. No. 224495, February 19, 2020.

SO ORDERED.”

By authority of the Court:

Mis-DC-Batt
MISAEAL DOMINGO C. BATTUNG III
*Division Clerk of Court*_{37/1/21}

Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
East Avenue cor. NIA Road
Diliman, 1104 Quezon City

PGEN. Debold M. Sinas
Chief
PHILIPPINE NATIONAL POLICE
National Headquarters
Camp Crame, 1100 Quezon City

COURT OF APPEALS
CA G.R. CR No. 05655
1000 Manila

The Director General
PHILIPPINE DRUG ENFORCEMENT AGENCY
PDEA Bldg., NIA Northside Road
National Government Center
Brgy. Pinyahan, 1100 Quezon City

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

DANGEROUS DRUGS BOARD
3rd Floor DDB-PDEA Bldg.,
NIA Northside Road
National Government Center
Brgy. Pinyahan, 1100 Quezon City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 39, Calapan City
5200 Oriental Mindoro
(Crim. Case No. CR-06-8539)

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Mr. Vevir M. Diaz
c/o The Superintendent
New Bilibid Prison North
BUREAU OF CORRECTIONS
1770 Muntinlupa City

G.R. No. 219174

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