



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE  
RECORDED  
DEC 21 2018  
BY: *Judges*  
TIME:

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

GR. No. 225780

Present:

- versus -

BERSAMIN, C.J.,  
DEL CASTILLO,  
PERLAS-BERNABE,\*  
TIJAM, and  
GESMUNDO,\*\* JJ.

JAYSON TORIO y PARAGAS @  
"BABALU,"  
*Accused-Appellant.*

Promulgated:  
DEC 03 2018

X ----- *[Signature]*

DECISION

DEL CASTILLO, J.:

This resolves the appeal filed by Jayson Torio y Paragas, alias "Babalu" (appellant), assailing the September 29, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06473 which affirmed the October 22, 2013 Joint Judgment<sup>2</sup> of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 69, in Criminal Case Nos. L-9632 and L-9633 finding him guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs as defined and penalized respectively under Sections 5 and 11, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

*[Signature]*

\* Designated Additional Member per October 8, 2018 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.  
\*\* Per Special Order No. 2607 dated October 10, 2018.  
<sup>1</sup> CA rollo, pp. 111-122; penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Stephen C. Cruz and Rodil V. Zalameda.  
<sup>2</sup> Records (Criminal Case No. L-9632), pp. 75-88, penned by Judge Caridad V. Galvez.

Appellant was charged with illegal possession and sale of dangerous drugs under two separate Informations which read:

Criminal Case No. L-9632  
[Illegal Possession of Dangerous Drugs]

That on or about 4:00 o'clock in the afternoon of December 18, 2012, along Primicias St., Brgy. Poblacion, Lingayen, Pangasinan, and within the jurisdiction of this Honorable Court, [the above-named accused], did then and there wilfully, unlawfully[,] and feloniously have in his possession, control[,] and custody one (1) heat-sealed plastic sachet containing methamphetamine hydrochloride, otherwise known as "shabu", without any necessary license or authority to possess the same.

Contrary to Section 11, Article II of R.A. No. 9165.<sup>3</sup>

Criminal Case No. L-9633  
[Illegal Sale of Dangerous Drugs]

That on or about 4:00 o'clock in the afternoon of December 18, 2012, at Primicias St., Poblacion, Lingayen, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully[,] and feloniously sell methamphetamine hydrochloride (shabu), a dangerous drug, to a civilian asset who acted as a poseur-buyer, without any lawful authority.

Contrary to Section 5, Article II of R.A. No. 9165.<sup>4</sup>

Appellant was arraigned for illegal possession and sale of dangerous drugs on two separate dates. In both instances, appellant pleaded not guilty.<sup>5</sup>

***Version of the Prosecution***

The prosecution presented the testimonies of the Chief Intelligence Officer of Lingayen, Pangasinan, SPO1 Marday Delos Santos (SPO1 Delos Santos) and Forensic Chemist Police Senior Inspector Myrna Malojo-Todeño (PSI Malojo-Todeño). Their narrations were synthesized as follows:


On December 18, 2012, SPO1 Delos Santos received a text message from a civilian asset informing him of an upcoming transaction of drugs involving the appellant at Primicias St., *Barangay* Poblacion, Lingayen, Pangasinan. SPO1 Delos Santos informed his Chief of Police about the tip.

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<sup>3</sup> Id. at 1.

<sup>4</sup> Records (Criminal Case No. L-9633), p. 1.

<sup>5</sup> Records (Criminal Case No. L-9632), p. 35 and Records (Criminal Case No. L-9633), p. 35.



A briefing was immediately conducted where a buy-bust team was formed composed of SPO1 De los Santos as the team leader, PO1 Jethiel Vidal (PO1 Vidal) as the arresting officer, the civilian asset as the poseur-buyer, and *Barangay Kagawads* Edward Cuesta (*Kagawad* Cuesta) and Michael Angelo Disini (*Kagawad* Disini) as witnesses. SPO1 De los Santos informed the Philippine Drug Enforcement Agency (PDEA) of the buy-bust operation. SPO1 De los Santos then gave the civilian asset a ₱500.00 bill with serial number AEO86542 and marked with his initials "MDS."

The buy-bust team proceeded to the target area. The civilian asset waited for the appellant while the rest of the team positioned themselves about five to six meters away. Appellant arrived riding his tricycle and stopped in front of the civilian asset. The drug transaction then took place. Appellant handed to the civilian asset a plastic sachet suspected to contain *shabu* while the latter handed the ₱500.00 marked money. After the exchange, the civilian asset raised his left hand, which was the pre-arranged signal for the buy-bust team that the sale of drugs had been consummated.

The buy-bust team quickly arrested appellant. SPO1 Delos Santos and PO1 Vidal introduced themselves as police officers and informed appellant of his constitutional rights. The civilian asset handed the plastic sachet to SPO1 Delos Santos. Appellant was then subjected to a body search where the marked money and another transparent sachet suspected to contain *shabu* were recovered. Immediately thereafter, SPO1 Delos Santos marked the sachet subject of the sale with the initials "MDS1" and the sachet recovered from appellant's possession with "MDS2." *Kagawad* Cuesta and *Kagawad* Disini were present during the arrest and confiscation. The members of the buy-bust team were not able to invite members of the media since the operation was sudden and to avoid leakage of the impending operation.

After the marking of the sachets of suspected *shabu*, SPO1 Delos Santos prepared the confiscation receipt. Photographs were taken at the police station showing the appellant with the confiscated items and marked money. An inventory was also conducted. Afterwards, SPO1 Delos Santos brought appellant, together with the sachets recovered from him and the requests for examination, to the Provincial Crime Laboratory.

PSI Malojo-Todeño received the requests for examination and the sachets of *shabu* marked as MDS1 and MDS2. After examination, the



sachet marked as MDS1 was found positive of containing 0.022 gram of methamphetamine hydrochloride or *shabu*, while the sachet marked as MDS2 likewise tested positive of containing 0.125 gram of *shabu*.<sup>6</sup> After the examination, PSI Malojo-Todeño placed both sachets inside a sealed white envelope and turned it over to the evidence custodian. She retrieved the envelope only after she was summoned by the court.

### ***Version of the Defense***

For his defense, appellant denied the accusation against him and claimed that he was framed-up. Appellant alleged that a person, who turned out to be the civilian asset, boarded his tricycle and told him to go to Primicias Street. On the way, appellant noticed a car following his tricycle. When they arrived at Primicias Street, five to six police officers got out of the car and proceeded to arrest him and brought him to the police station where he was interrogated. Later on, SPO1 Delos Santos and PO1 Vidal brought him back to Primicias Street where *Kagawad* Cuesta and *Kagawad* Disini were waiting. The police officers then took pictures of him inside the tricycle. SPO1 Delos Santos pulled out a sachet from his own pocket and asked appellant to point at it while being photographed. Thereafter, he was brought back to the police station.

Appellant further testified that he had a misunderstanding with SPO1 Delos Santos in the past when the latter suspected him of robbery. However, no case was filed against appellant then since there was no complainant.

### ***Ruling of the Regional Trial Court***

On October 22, 2013, the RTC of Lingayen, Pangasinan, Branch 69 rendered a Joint Judgment finding appellant guilty beyond reasonable doubt of illegal sale and possession of *shabu*. The RTC upheld the presumption of regularity in the performance of duties of the police officers over appellant's unsubstantiated claim of frame-up. Further, the RTC held that the failure to present the poseur-buyer was not fatal to the prosecution's case since SPO1 Delos Santos also witnessed the transaction.

The dispositive portion of the RTC's Joint Judgment reads:



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<sup>6</sup> Records (Criminal Case No. L-9632), p. 23.

WHEREFORE, premises considered, the Court finds the accused Jayson Torio GUILTY beyond reasonable doubt in both cases and is hereby imposed with the following penalties, viz:

(a) Life imprisonment and is likewise ordered to pay a fine in the amount of Php500,000.00 in Crim. Case No. L-9633 for Violation of Sec. 5[,] Article II of R.A. 9165 and;

(b) Penalty of 14 years 8 months and one day to 17 years, 4 months of reclusion temporal and he is also directed to pay a fine in the amount of Php300,000.00 for Violation of Sec. 11[,] Article II of R.A. 9165 in Crim. Case No. L-9632.

SO ORDERED.<sup>7</sup>

Aggrieved by the RTC's judgment, appellant appealed to the CA. In his Brief for the Accused-Appellant,<sup>8</sup> appellant assigned the following errors of the RTC:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTIONS 5 AND 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE WITH CERTAINTY THE CORPUS DELICTI OF THE OFFENSES CHARGED.<sup>9</sup>

***Ruling of the Court of Appeals***

On September 29, 2015, the CA affirmed the RTC's judgment and held as follows:

WHEREFORE, the instant appeal is DENIED. The October 22, 2013 Joint Judgment of the Regional Trial Court, Branch 69, Lingayen, Pangasinan in the consolidated Crim. Case Nos. L-9632 and L-9633 is hereby AFFIRMED.

SO ORDERED.<sup>10</sup>



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<sup>7</sup> Id. at 88.

<sup>8</sup> CA *rollo*, pp. 30-41.

<sup>9</sup> Id. at 30.

<sup>10</sup> Id. at 122.

Dissatisfied with the CA's Decision, appellant filed a Notice of Appeal<sup>11</sup> dated October 22, 2015 manifesting his intention to appeal the CA Decision.

Hence, this appeal.

### Issue

The issue in this case is whether appellant was guilty of illegal sale and possession of *shabu*. According to appellant, the RTC erred in convicting him of the offenses charged in view of the prosecution's failure to prove the identity of the civilian asset who acted as the poseur-buyer. Appellant also claims that the prosecution failed to establish an unbroken chain of custody of the seized drugs. Finally, appellant argues that the presumption of regularity in the performance of official duty cannot prevail over the presumption of his innocence.

### Our Ruling

The Court finds the appeal meritorious and hereby acquits the appellant for failure of the prosecution to justify the arresting officers' non-compliance with the three-witness rule under Section 21<sup>12</sup> of RA 9165.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, it is necessary that the prosecution duly prove the identities of the buyer and the seller, the delivery of the drugs, and the payment in consideration thereof.<sup>13</sup> On the other hand, in cases where an accused is charged with illegal possession of dangerous drugs under Section 11, Article II of RA 9165, the prosecution must establish the following elements: "(a) the accused was in possession of dangerous drugs; (b) such

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<sup>11</sup> Id. at 129-131.

<sup>12</sup> 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 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;

x x x x

<sup>13</sup> *People v. Alberto*, 625 Phil. 545, 554 (2010).

possession was not authorized by law[;] and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.”<sup>14</sup> In both cases, it is essential that the identity of the dangerous drug be established with moral certainty since the drug itself forms an integral part of the *corpus delicti* of the crime.<sup>15</sup> Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug on account of the possibility of switching, “planting,” or contamination of evidence, the prosecution must be able to show an unbroken chain of custody and account for each link in the chain from the moment the drugs are seized until its presentation in court as evidence of the crime.

RA 9165 requires that the marking, physical inventory, and taking of photograph of the seized items be conducted immediately after seizure and confiscation of the same. The said law further requires that the physical inventory and taking of photograph of the seized items be done 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 RA 9165 by RA 10640,<sup>16</sup> any elected public official, a representative from the media **AND** the Department of Justice (DOJ);<sup>17</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, any elected public official and a representative from either the National Prosecution Service **OR** the media.<sup>18</sup>

In *People v. Macapundag*,<sup>19</sup> the Court held that “the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.” While this rule is not without exceptions, it is incumbent upon the prosecution to satisfactorily prove that (a) there is justifiable ground for non-compliance with the chain of custody rule; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>20</sup> For the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses.<sup>21</sup>

<sup>14</sup> *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

<sup>15</sup> *People v. Viterbo*, 739 Phil. 593, 601 (2014).

<sup>16</sup> AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002’, approved July 15, 2014.

<sup>17</sup> Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>18</sup> Section 21, Article II of RA 9165, as amended by RA 10640.

<sup>19</sup> G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215.

<sup>20</sup> Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165 states: “*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*”

<sup>21</sup> *People v. Almorfe*, 631 Phil. 51, 60 (2010).

Moreover, non-compliance with the three-witness rule may be excused provided the prosecution proves that the arresting officers exerted genuine efforts to secure the presence of such witnesses, albeit they eventually failed to appear.

In this case, since the buy-bust operation against appellant was conducted in 2012, or prior to the enactment of RA 10640 in 2014, the physical inventory and taking of photograph of the seized items must be witnessed by the following persons: (a) any elected public official; (b) a DOJ representative; and (c) a media representative. However, while SPO1 De los Santos marked the seized items in the presence of *Kagawad* Cuesta and *Kagawad* Disini, the prosecution failed to establish that the physical inventory and taking of photograph were made in the presence of the appellant or his representative, as well as representatives from the DOJ and media. In fact, the members of the buy-bust team deliberately did not invite members of the media to avoid leakage of the impending operation.<sup>22</sup> Thus, it is clear that the arresting officers did not comply with the rule requiring the presence of representatives from both the DOJ and the media.

In view of the foregoing, the Court is constrained to acquit the appellant for failure of the prosecution to provide a justifiable reason for the non-compliance with the chain of custody rule thereby creating doubt as to the integrity and evidentiary value of the seized drugs.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated September 29, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06473 is hereby **REVERSED** and **SET ASIDE**. Accordingly, appellant Jayson Torio y Paragas is **ACQUITTED** of the charges of violation of Sections 5 and 11, Article II of Republic Act No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately released from detention, unless he is being lawfully held in custody for any other reason.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation and who is then directed to report to this Court the action he has taken within five days from his receipt of this Decision.



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<sup>22</sup> Records (Criminal Case No. L-9632), p. 78.



**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**LUCAS P. BERSAMIN**  
*Chief Justice*

(On official leave)  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*

  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**LUCAS P. BERSAMIN**  
*Chief Justice*