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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 226492

Members:

-versus-

CARPIO, J., *Chairperson*,
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
ZALAMEDA, JJ.

EFREN POSOS y MORFE, and
THELMA GREZOLA y CABACANG,
Accused,

Promulgated:

EFREN POSOS y MORFE,
Accused-Appellant.

02 OCT 2019

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DECISION

LAZARO-JAVIER, J.:

The Case

This appeal seeks to reverse the Decision dated December 4, 2015¹ of the Court of Appeals in CA-G.R. CR-HC No. 06433, affirming the conviction of appellants Efren Posos y Morfe and Thelma Grezola y Cabacang for violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165² (RA 9165) and imposing on them life imprisonment and Five Hundred Thousand Pesos (P500,000.00) fine.

¹ Penned by now retired SC Associate Justice Noel G. Tijam and concurred in by Associate Justice Francisco P. Acosta and Associate Justice Eduardo B. Peralta, Jr., *CA rollo*, pp. 230-251.

² Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Proceedings Before the Trial Court

Appellants Efren Posos y Morfe and Thelma Grezola y Cabacang were charged with violation of Section 5 in relation to Section 26, Article II of RA 9165 under the following information:

That on or about the 6th day of September, 2011 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without being authorized by law, did then and there willfully, unlawfully and feloniously by direct (overt) acts, sell and deliver to SI II LAURA P. NEBATO (who posed as buyer) METHAMPHETAMINE HYDROCHLORIDE (Shabu), weighing 1.0248 grams, without the corresponding license or prescription therefore, and knowing the same to be such.

Contrary to Law.³

On arraignment, appellants pleaded not guilty.⁴ Trial ensued.

Special Investigator 2 Laura P. Nebato, Investigating Officer 1 Nazarion Bongkinki, Investigating Agent 3 Liwanag B. Sandaan, and Forensic Chemist Chris Israel Cabatic testified for the prosecution. On the other hand, Posos, Grezola, and the latter's husband Elorde Grezola testified for the defense.

Version of the Prosecution

On September 5, 2011, around 10 o'clock in the morning, IA3 Sandaan received a report from a confidential informant that alias "Rolly" was involved in illegal drug activities in Barangay Camarin, Caloocan City. The confidential informant told her he could introduce one of her men to "Rolly" and they could order a bag of illegal drugs from "Rolly."⁵ IA3 Sandaan directed SI2 Nebato to transact with Posos. Later, SI2 Nebato reported she was able to order twenty-five (25) grams of *shabu* from Rolly for a consideration of One Hundred Forty Thousand Pesos (P140,000.00). Rolly instructed them to meet him in Barangay Camarin, Caloocan City on the following day.⁶ They subsequently learned that Rolly's real name is Efren Morfe Posos.⁷

The next day, or on September 6, 2011, IA3 Sandaan formed a buy-bust team composed of the confidential informant, SI2 Nebato as poseur

³ Record, p. 2.

⁴ *Id.* at 29-30.

⁵ TSN, May 31, 2012, pp. 5 and 8; TSN, February 23, 2012, p. 5.

⁶ TSN, May 31, 2012, p. 6; TSN, February 23, 2012, p. 6.

⁷ TSN, February 23, 2012, p. 12.

buyer, IO1 Bongkinki as arresting officer, and IA3 Sandaan, IO1 Diongco, IO1 Paglucauan, and SI2 Almarinos, as back-up.⁸

Around 2 o'clock in the afternoon of September 6, 2011, the buy-bust team proceeded to Barangay Camarin, Caloocan City.⁹ SI2 Nebato and the confidential informant went straight to Grezola's store on Vanguard Street, where Posos instructed them to wait. Meantime, the backup team strategically positioned themselves nearby and waited for the pre-arranged signal.¹⁰

A few minutes later, Posos and Grezola approached SI2 Nebato's vehicle. SI2 Nebato and the confidential informant invited appellants inside the vehicle. The confidential informant introduced SI2 Nebato as buyer to Posos and Grezola. Posos, on the other hand, introduced Grezola as the wife of the owner of the drugs to be bought by SI2 Nebato. After an exchange of pleasantries, SI2 Nebato asked for the drugs from Posos. Thereupon, Posos withdrew from his pocket a small plastic sachet. He told SI2 Nebato and the confidential informant to try its contents first, as a sampler. SI2 Nebato, however, insisted for Posos to give them the whole bulk. But Posos insisted on first trying a sampler. When they still refused, Posos got irritated and started throwing invectives at them. Posos also blurted "*magulo kayo kausap.*" To ease the tension, SI2 Nebato agreed to buy the small sachet worth One Thousand Pesos (P1,000.00).¹¹

Posos thus, handed him the small plastic sachet. In turn, SI2 Nebato turned the hazard light to signify that the sale had been consummated.¹²

On signal, the back-up team immediately closed in. IO1 Bongkinki arrested appellants while SI2 Nebato held on to the small plastic sachet given by Posos, which she slid and kept in her sling bag. Thereafter, IA3 Sandaan instructed the team to go back to their office because a crowd was already starting to gather around them.¹³

The buy-bust team took appellants and the seized item to their office in Barangay Pinyahan, Quezon City.¹⁴ There, the team coordinated with the barangay officials to witness the inventory. When Kagawad Jose Ruiz arrived after a few hours, the team conducted a physical inventory of the item and took photographs of appellants with the seized item and the buy-bust money. The team prepared a request for laboratory examination of the contents of the small plastic sachet and request for drug test on appellants. SI2 Nebato took appellants and the plastic sachet to the crime laboratory.¹⁵

⁸ TSN, May 31, 2012, p. 7.

⁹ *Id.* at 8.

¹⁰ TSN, May 31, 2012, p.9; TSN, February 23, 2012, pp. 9-10.

¹¹ TSN, February 23, 2012, pp. 10-13.

¹² *Id.* at 13-14.

¹³ *Id.* at 14.

¹⁴ TSN, February 23, 2012, p. 15; TSN, May 31, 2012, p. 5.

¹⁵ TSN, February 23, 2012, pp. 15-18.

Forensic Chemist Cabatic received the plastic sachet and appellants' urine sample.¹⁶

Per Chemistry Report No. PDEA-DD011-334, Forensic Chemist Cabatic found the specimen positive for methamphetamine hydrochloride (*shabu*), a dangerous drug.¹⁷

The prosecution offered the following exhibits: "A" to "A-1" – Request for Laboratory Examination dated September 6, 2011;¹⁸ "B" to "B-1" – Request for Drug Test dated September 6, 2011;¹⁹ "C" to "C-1-A" – the seized small plastic sachet and its contents enclosed in a bigger brown envelope; "D" – Chemistry Report No. PDEA-DD011-334 dated September 6, 2011;²⁰ "E" – Chemistry Report No. PDEA-DT011-332 to PDEA-DT011-333 dated September 6, 2011;²¹ "F" to "F-4" – photographs of the buy-bust money;²² "G" to "G-2" – Inventory of Seized Properties/Items dated September 6, 2011;²³ "H" to "H-7" – photographs;²⁴ "J" – Acknowledgement Receipt dated September 6, 2011;²⁵ "K" and "K-3" – SI2 Nebato's Affidavit dated September 7, 2011;²⁶ "L" to "L-1" – Physical Examination dated September 7, 2011;²⁷ "M" – IO1 Bongkinki's Affidavit dated September 7, 2011;²⁸ "N" to "O" – Booking Sheets and Arrest Reports dated September 6, 2011;²⁹ "P" to "P-1" – Request for Physical Examination dated September 6, 2011;³⁰ "Q" – Authority to Operate dated September 6, 2011;³¹ and "R" to "R-1" – Pre-Operation Report dated September 6, 2011.³²

Version of the Defense

Defense witnesses Posos, Grezola, and Elorde Grezola testified that:

Salam, an agent of the Philippine Drug Enforcement Agency (PDEA), introduced Posos to SI2 Nebato. SI2 Nebato asked Posos to obtain *shabu* from a certain Allan. When Posos declined, two (2) men held and boarded him into a vehicle.³³

¹⁶ TSN, February 2, 2012, pp. 6-7

¹⁷ *Id.* at 10.

¹⁸ Record, p.58.

¹⁹ *Id.* at 59.

²⁰ *Id.* at 61.

²¹ *Id.* at 60.

²² *Id.* at 106.

²³ *Id.* at 70.

²⁴ *Id.* at 71-72.

²⁵ *Id.* at 73.

²⁶ *Id.* at 74-76.

²⁷ *Id.* at 107.

²⁸ *Id.* at 9-10.

²⁹ *Id.* at 108-109.

³⁰ *Id.* at 110.

³¹ *Id.* at 111.

³² *Id.* at 112.

³³ *Id.* at 261.

Grezoła was tending her *sari-sari* store when a man suddenly entered, held, and forced her to board a van parked in front of her store. Together with two (2) companions, the first man dragged her inside the van. There, she saw Posos being held by three (3) men. Both Posos and Grezoła were brought to SM Fairview, Quezon City where Grezoła was boarded into another vehicle, thus leaving behind Posos inside the first van.³⁴

The men frisked and took from Grezoła her money and her mobile phone. While in transit, the men asked Grezoła to give them Three Hundred Thousand Pesos (P300,000.00) in exchange for her liberty. She was ordered to call her husband to produce the amount. Grezoła was taken to the Quezon City Memorial Circle where they waited for her husband. When her husband did not show up, Grezoła was brought to the PDEA office where she saw Posos again.³⁵

At the PDEA office, they learned they were being charged with violation of RA 9165. They were asked to approach a table where *shabu* and money were laid on top. They also noticed the presence of several barangay officials.³⁶

The Trial Court's Ruling

By Judgment dated October 3, 2013,³⁷ the trial court found appellants guilty as charged, *viz*:

WHEREFORE, premises considered, this court finds both accused **Efren Posos y Morfe** and **Thelma Grezoła y Cabacang** **GUILTY** beyond reasonable doubt for violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon them the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00) each.

The drugs subject matter of this case, with a total weight of 1.0248 grams is hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.³⁸

The Proceedings Before the Court of Appeals

On appeal, appellants faulted the trial court for rendering a verdict of conviction. They argued:³⁹ (1) they were merely arrested sans

³⁴ Record, p. 260.

³⁵ *Id.*

³⁶ *Id.* at 261-262.

³⁷ Penned by Judge Aurelio R. Ralar, Jr., *CA rollo*, pp. 29-41; Record, pp. 256-268.

³⁸ *CA rollo*, p. 41; Record, p. 268.

³⁹ See appellants' respective Briefs, *CA rollo*, pp. 61-81 and 96-125.

warrant,⁴⁰ (2) no prior surveillance or test buy was conducted on them;⁴¹ and (3) the prosecution failed to prove with moral certainty the identity and integrity of the alleged seized drugs because the arresting officers did not properly comply with the chain of custody rule considering that the marking, inventory, and taking of photographs were done only at the PDEA office, sans the required witnesses, and it was not shown how the alleged seized item was handled after its examination.⁴²

For its part, the Office of the Solicitor General, through Assistant Solicitor General Ma. Antonia Edita C. Dizon and Associate Solicitor Elvira Joselle R. Castro, countered, in the main: (a) all the elements of illegal sale of dangerous drugs were duly proven by the prosecution;⁴³ (b) the presumption of regularity in the performance of official duties in favor of the arresting officers prevailed over appellants' unsubstantiated denial;⁴⁴ (c) the alleged custodial breaks and procedural lapses did not materially impair the integrity of the seized item;⁴⁵ (d) the prosecution was able to sufficiently explain why the marking and inventory were not made in the *situs criminis*. It was because the crowd started to gather at the *situs criminis* which consequently endangered their operation;⁴⁶ and (e) how and who handled the seized item from its confiscation to its examination in the crime laboratory were accounted for.⁴⁷

The Court of Appeals' Ruling

By its assailed Decision dated December 4, 2015,⁴⁸ the Court of Appeals affirmed.

The Present Appeal

Only Posos seeks affirmative relief from the Court and pleads anew for his acquittal. As for Grezola, the Court of Appeals issued a Partial Entry of Judgment on January 5, 2016.⁴⁹

For the purpose of this appeal, both the OSG and appellant Posos manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.⁵⁰

⁴⁰ CA *rollo*, p. 67 and 117-120.

⁴¹ *Id.* at 69.

⁴² *Id.* at 71-80 and 120-123.

⁴³ *Id.* at 161-163.

⁴⁴ *Id.* at 161-164.

⁴⁵ *Id.* at 166-172.

⁴⁶ *Id.* at 172-175.

⁴⁷ *Id.* at 175-178.

⁴⁸ *Id.* at 230-251.

⁴⁹ *Id.* at 267.

⁵⁰ *Rollo*, pp. 35-38 and 43-44.

Issues

1. Were all the elements for illegal sale of dangerous drugs under Section 5, Article II of RA 9165 shown?
2. Was the chain of custody rule complied with?

Ruling

The element of payment required in the charge of illegal sale of dangerous drugs was not shown in this case

Posos and Grezola were charged with illegal sale of dangerous drugs allegedly committed on September 6, 2011. This offense requires the following elements: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment.⁵¹

Here, the second element, *i.e.*, delivery of the payment, was not shown to have been done by SI2 Nebato who testified:

Q: What happened next, Madam Witness?

A: Since I already mentioned that I have the money with me and he was already throwing invectives towards us and the situation is already constrained, I agreed to buy the shabu worth One Thousand Pesos (Php1,000.00). So, @Rolly gave me one (1) piece of heat sealed transparent plastic sachet containing shabu, sir.

Q: What did you do with the money?

A: Before I handed to @Rolly the money in exchange of one (1) plastic sachet, I turned on the hazard light of our vehicle, sir.

Q: After you gave the pre-arranged signal to your companion, what happened next, Madam Witness?

A: My companion swiftly rushed to the scene, sir.

Q: What did they do?

A: They effected the arrest of @Thelma and @Rolly (who) was throwing invectives towards us x x x⁵²

x x x

x x x

x x x

Q: How about the buy bust money, what happened to that buy bust money?

A: It remained in my possession sir.⁵³

x x x

x x x

x x x

⁵¹ *People of the Philippines v. Manuel Lim Ching*, G.R. No. 223556, October 9, 2017, 842 SCRA 280, 293.

⁵² TSN, February 23, 2012, pp. 13-14.

⁵³ *Id.* at 15.

In fine, SI2 Nebato was not able to deliver the payment to Posos. In fact, the supposed payment remained in his possession. In *People v. Hilario, et al.*,⁵⁴ the Court emphasized that all the stages of the sale must be duly established, thus:

In *People v. Doria*, we stressed the “objective” test in buy-bust operations. We ruled that in such operations, **the prosecution must present a complete picture detailing the transaction, which “must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. We emphasized that the manner by which the initial contact was made, the offer to purchase the drug, the payment of the ‘buy-bust’ money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.”** (Emphasis supplied)

There being no “delivery of the payment,” to speak of, appellant cannot be convicted of illegal sale of dangerous drugs.

But this is not all.

Chain of Custody

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.⁵⁵

Again, Posos and Grezola allegedly committed illegal sale of dangerous drugs on September 6, 2011. The applicable law is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, viz:

SEC. 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:

⁵⁴ G.R. No. 210610, January 11, 2018, citing *People v. Doria*, 361 Phil. 595, 621 (1999).

⁵⁵ *People v. Barte*, 806 Phil. 533, 542 (2017).

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 supplied)

x x x

x x x

x x x

The IRR of RA 9165 further commands:

x x x

x x x

x x x

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: x x x 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; (Emphasis supplied)

x x x

x x x

x x x

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody. *People v. Gayoso*⁵⁶ enumerates the **links** in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, *i.e. first*, the seizure and marking, if practicable, 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 from the forensic chemist to the court.

This is 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.⁵⁷

⁵⁶ *People of the Philippines v. Myrna Gayoso*, 808 Phil. 19, 31 (2017).

⁵⁷ *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

The *first link* speaks of seizure and marking which should be done immediately at the place of arrest and seizure. It also includes the physical inventory and taking of photograph of the seized or confiscated items which should be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected public official.

Here, SI2 Nebato testified:

x x x x x x x x x

Q: After you received the items from the male accused, what did you do with it?

A: I placed it (in) my sling bag, sir.

Q: How sure are you that this item is the same item delivered to you by that male person?

A: From the time that @Rolly handed to me the item, it never left my possession, sir.⁵⁸

x x x x x x x x x

Q: How would you be able to recognize that this is the item you received from @Rolly?

A: I placed (the) markings on the plastic sachet, sir.

Q: What markings did you place on the plastic sachet?

A: My initials "LPN" and the date 9-6-11, sir.

Q: When did you place these markings?

A: Upon arrival at our office, sir.

Q: Who were present at the time you were placing these markings on the plastic sachet?

A: The accused and my co-team members, sir.⁵⁹

x x x x x x x x x

Q: After that, what happened next, Madam Witness?

A: Upon the instruction of our team leader, we proceeded to our office, sir.

Q: Who were with you when you proceeded to your office?

A: The whole team, sir.

Q: How about the two (2) accused in this case?

A: They were with us, sir.

Q: What happened in your office?

A: Upon reaching our office, we coordinated with the officials of Barangay Pinyahan to witness the inventory of the pieces of evidence, sir.

⁵⁸ TSN, February 23, 2012, p. 22.

⁵⁹ *Id.* at 23.

Q: What happened to that request?

A: After a few hours Kagawad Jose Ruiz arrived at our office, sir.

Q: What happened after Kagawad Jose Ruiz arrived in your office?

A: I conducted the inventory and the photographing of the evidence, sir.⁶⁰

X X X

X X X

X X X

Q: Madam Witness, I also noticed that you conducted an inventory and in what place again did you conduct the inventory?

A: Inside (the) PDEA office, sir.

Q: And not in the place where you allegedly able to confiscate the illegal drugs?

A: Yes, ma'am.

Q: Why?

A: Because at that time when my team leader rushed to the scene, @Rolly was already shouting at us and he was throwing invectives at us and was telling us that there were police officers discreetly positioned in the area and the crowd were getting thick, so we are afraid that there might be a commotion considering that we conducted the transaction in front of the store of accused Thelma Grezola, ma'am.

Q: I noticed that you conducted inventory with only one witness available, there was no representative from the D.O.J., correct?

A: Yes, ma'am.

Q: There was no representative from the accused such as his lawyer?

A: Yes, ma'am.

Q: There was no media representative?

A: Yes, ma'am.⁶¹

X X X

X X X

X X X

SI2 Nebato's testimony, on its face, bears how the *first link* in the chain of custody had been repeatedly breached.

Section A.1. in relation to Section A.1.3 of the Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640 instructs:

A.1. The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

⁶⁰ TSN, February 23, 2012, pp. 15-16.

⁶¹ *Id.* at 25-26.

x x x

x x x

x x x

A.1.3. 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 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.

The arresting officers here were justified when they conducted the marking at the police station since a crowd had already begun milling around the place of arrest. In *People v. Arciaga*⁶² the Court held that for the same security reason, the buy-bust team was justified in conducting the marking, inventory, and photograph of the seized items at the PDEA-RO 7 Office instead of at the place of arrest.

This notwithstanding, however, the first link in the chain of custody was still violated. During the inventory of the seized item at the PDEA office at Barangay Pinyahan, Quezon City, only Kagawad Ruiz, an elected public official, was present. There were no representatives from both the media and the DOJ.

The arresting officers did not give any reason for this procedural lapse. All IO1 Bongkinki said was:

x x x

x x x

x x x

Q: Now, with regard to this Kagawad, is he a regular witness of your office whenever there is a buy bust operation and you are conducting investigation and photographing of the evidence?

A: Yes, sir, because he is just near our office.

Q: Why did you not secure the presence of the representative from the media and the DOJ?

A: That was the only available witness during that time, sir.⁶³

x x x

x x x

x x x

Notably the buy-bust team received the confidential information and planned the buy-bust on September 5, 2011, a day prior to the actual buy-bust operation. Thus, the team actually had ample time to secure the presence of representatives from the media and DOJ. But it did not.

The Court has repeatedly held that the required witnesses must be present even as early as the time of arrest. *People v. Escaran*⁶⁴ is apropos:

⁶² G.R. No. 239471, January 14, 2019.

⁶³ TSN, March 8, 2012, pp. 46-47.

⁶⁴ G.R. No. 212170, June 19, 2019.

x x x It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*, the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so - and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished - does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation". (Emphasis supplied)

In *People v. Seguinte*,⁶⁵ the Court acquitted the accused because there was no showing at all that a representative from the DOJ was present during the inventory and photograph.

⁶⁵ G.R. No. 218253, June 20, 2018.

In *People v. Rojas*,⁶⁶ the Court similarly acquitted the accused because the presence of representatives from the DOJ and the media was not obtained despite the fact that the buy-bust operation on the accused was supposedly pre-planned. The prosecution, too, did not acknowledge, let alone, explain this deficiency.

Recently, in *People v. Vistro*,⁶⁷ the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule during the physical inventory and photograph of dangerous drugs.

Next, the *second link* pertains to the turnover of the illegal drug seized by the apprehending officer to the investigating officer.⁶⁸ Here, SI2 Nebato herself testified that she did not turn over the seized item to an investigating officer, viz:

X X X X X X X X X

Q: Madam Witness, to whom did you turn over the person of the accused as well as the evidence allegedly obtained from the accused again?

A: They were submitted to our laboratory services, ma'am.

Q: So, in this case, there (was) no investigator assigned or were you also the investigator assigned in this case?

A: There was no investigator assigned, ma'am.

Q: So, you acted as the investigator and you were the one who conducted the inventory, you were the one who prepared the request letter for the specimen to be referred to the Chemist, you were the one who prepared the referral letter for the case to be referred to the Fiscal's Office?

A: Yes, ma'am.⁶⁹

X X X X X X X X X

The *third link* pertains to the turnover by the investigating officer to the forensic chemist of the illegal drug for laboratory examination. Here, the Request for Laboratory Examination dated September 6, 2011⁷⁰ shows that SI2 Nebato delivered the alleged seized item to the crime laboratory and was received by Forensic Chemist Cabatic. But, aside from SI2 Nebato's bare allegation that she remained in possession of the alleged item, there was no showing how the same was truly handled after the inventory and while in transit.

⁶⁶ G.R. No. 222563, July 23, 2018.

⁶⁷ G.R. No. 225744, March 6, 2019.

⁶⁸ See *People of the Philippines v. Myrna Gayoso*, supra note 56, at 32.

⁶⁹ TSN, February 23, 2012, p. 26.

⁷⁰ Exhibit "A," Record, p. 58.

In *People v. Gayoso*,⁷¹ the Court acquitted appellant therein because of the absence of proof on how the seized drug was handled during the second and third links. The Court ruled that considering these intervening gaps, it cannot be reasonably concluded that the confiscated item was the same one presented for laboratory examination and eventually presented in court. So must it be.

Lastly, the *fourth link* pertains to the turnover and submission of the seized item from the forensic chemist to the court. Here, after Forensic Chemist Cabatic examined the specimen, she claimed to have returned the same to the evidence custodian. It was not shown, however, how the evidence custodian handled and stored the seized item before the same was retrieved for presentation in court. In fact, Forensic Chemist Cabatic said that he had no more personal knowledge as to how the item was handled after he turned it over to the evidence custodian.⁷² This indubitably is another breach of the chain of custody rule.

In the landmark case of *Mallillin v. People*,⁷³ the Court pronounced:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.⁷⁴ (Emphasis supplied)

In *People v. Año*,⁷⁵ the Court decreed that if the chain of custody had not been complied with, or no justifiable reason exists for its non-compliance, then it is the Court's duty to overturn the verdict of conviction.

Indeed, the multiple violations of the chain of custody rule here cast serious uncertainty on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit, it unjustly restrained appellants' right to liberty. Verily, therefore, a verdict of acquittal is in order.

⁷¹ Supra note 56, at 33-34.

⁷² TSN, February 2, 2012, p. 19.

⁷³ 576 Phil. 576 (2008).

⁷⁴ *Id.* at 587.

⁷⁵ *People v. Año*, G.R. No. 230070, March 14, 2018.



As for Thelma Grezola, while she is not a party to this appeal and the Court of Appeals had already issued a Partial Entry of Judgment insofar as she is concerned, she may still benefit from this verdict of acquittal, in accordance with Section 11, Rule 122 of the Revised Rules on Criminal Procedure, *viz*:

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 later.

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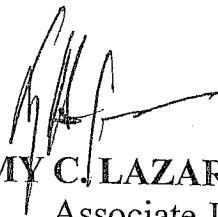
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ACCORDINGLY, the appeal is **GRANTED**. The Decision dated December 4, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06433 is **REVERSED AND SET ASIDE**. The Partial Entry of Judgment dated January 5, 2016 is **LIFTED**. Appellants Efren Posos y Morfe and Thelma Grezola y Cabacang are **ACQUITTED** of violation of Section 5 in relation to Section 26, Article II of Republic Act 9165.


The Court further **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City and the Superintendent of Correctional Institution for Women, Mandaluyong City to: (a) cause the immediate release of Efren Posos y Morfe and Thelma Grezola y Cabacang from custody, respectively unless they are being held for some other lawful cause/s; and (b) inform the Court of the action taken within five (5) days from notice.

Let entry of judgment immediately issue.

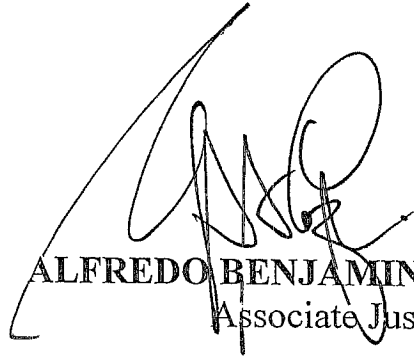
SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

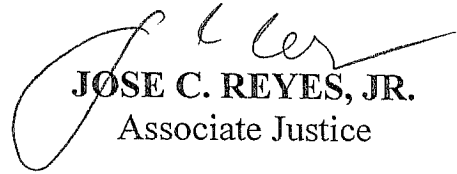
WE CONCUR:



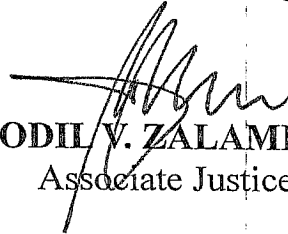
ANTONIO T. CARPIO
Associate Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



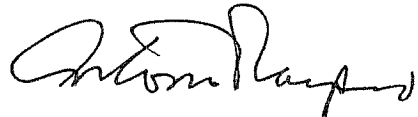
JOSE C. REYES, JR.
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

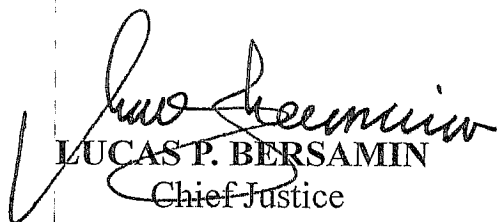
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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

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