



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 242165**

Present:

-versus-

**BERSAMIN, CJ.,**  
*Chairperson,*  
**PERLAS-BERNABE,**  
*Working Chairperson,*  
**JARDELEZA,**  
**GESMUNDO, and**  
**REYES, JR., A.J.,\* JJ.**

**ABUBACAR ABDULWAHAB y**  
**MAMA,**  
 Accused-Appellant.

Promulgated:

**SEP 11 2019**

x

**DECISION**

**JARDELEZA, J.:**

The rule on chain of custody was designed to safeguard the integrity of the confiscated dangerous drugs in buy-bust operations. The failure to comply with this rule without justifiable reasons warrants the accused's acquittal.

This is an appeal from the Decision<sup>1</sup> dated February 2, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08474 which affirmed the Decision<sup>2</sup> dated July 22, 2016 of Branch 127, Regional Trial Court of Caloocan City (RTC) in Criminal Case No. 92353.

*The Factual Antecedents*

An information<sup>3</sup> was filed against Abubacar Abdulwahab y Mama (appellant) for violation of Section 5, Article II of Republic Act No. (RA) 9165.<sup>4</sup> The accusatory portion of the information reads:

That on or about the 9<sup>th</sup> day of July 2014 in Caloocan City, Metro Manila and within the jurisdiction of this

\* Designated as Additional Member in lieu of Associate Justice Rosmari D. Carandang per Raffle dated June 17, 2019.

<sup>1</sup> *Rollo*, pp. 2-14; penned by Associate Justice Rosmari D. Carandang (now a Member of this Court) with Associate Justices Jane Aurora C. Lantion and Zenaida T. Galapate-Laguilles, concurring.

<sup>2</sup> *CA rollo*, pp. 57-72; rendered by Judge Victoriano B. Cabanos.

<sup>3</sup> Records, pp. 1-2.

<sup>4</sup> COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

Honorable Court, the above-named accused without being authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to PO2 WILFRED LEONOR, who posed as buyer, One (1) heat-sealed transparent plastic sachet later marked "WNL-1-7-9-14" containing METAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.62 gram, which when subjected for laboratory examination gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, and knowing the same to be such.

CONTRARY TO LAW.<sup>5</sup>

A plea of not guilty was entered by appellant during arraignment. Thereafter, trial ensued.

According to the prosecution, a regular confidential informant (RCI) arrived at the office of PO2 Wilfredo N. Leonor (PO2 Leonor) of the District Anti-Illegal Drugs-Special Operation Task Group (DAID-SOTG), Northern Police District, at about 9:00 in the morning of July 8, 2014 to relay intelligence on the illegal drug activities in Quiapo of one alias Muslim. The RCI told PO2 Leonor that Muslim was looking for a buyer of shabu. After getting the important details, PO2 Leonor instructed the informant to tell Muslim that the informant already found a buyer. PO2 Leonor reported the information to his superior, who instructed P/Insp. Edsel Ibasco to head the anti-illegal drug operation team against Muslim. The operation was coordinated with the Philippine Drug Enforcement Agency, but was aborted due to another assignment.<sup>6</sup>

The following day, July 9, 2014, the RCI called PO2 Leonor over the cellphone, and through the RCI, PO2 Leonor and Muslim were able to talk. PO2 Leonor told Muslim that he will buy  $\frac{1}{4}$  *bulto* of shabu worth ₱4,000.00 and agreed to meet at the LRT 5<sup>th</sup> Avenue Station, Caloocan City at about 11:00 am to 12:00 pm. PO2 Leonor was designated as the poseur buyer and arresting officer, while PO3 Reymel Villanueva (PO3 Villanueva) was designated as his immediate back up. PO2 Leonor was provided with four pieces of ₱1,000.00 bills to be used as buy-bust money, which he marked with the letters "BBM."<sup>7</sup>

At around 10:30 in the morning, the buy-bust team composed of eight members arrived at the LRT 5<sup>th</sup> Avenue Station. PO2 Leonor positioned himself out front. After a while, the informant arrived together with a man with white complexion in yellow t-shirt. The RCI introduced PO2 Leonor to the man who was identified as Muslim. After a short talk, Muslim asked for the money. Upon seeing the money, Muslim brought out a brown paper containing a transparent plastic sachet with white crystalline substance and showed it to PO2 Leonor. PO2 Leonor then handed the buy-bust money to Muslim and in return, the latter handed him the brown envelope containing

<sup>5</sup> Records, p. 1.

<sup>6</sup> *Rollo*, pp. 4-5.

<sup>7</sup> *Id.* at 5.

the said plastic sachet. After taking the plastic sachet, PO2 Leonor introduced himself as a policeman and arrested Muslim, who was later identified as appellant. Thereafter, PO3 Villanueva arrived and handcuffed appellant. PO2 Leonor informed appellant of his rights and his violations, then brought him to their vehicle where PO2 Leonor marked the evidence with “WNL-1-7-9-14.” He also took photographs of the accused holding the plastic sachet and also marked the brown envelope with “WNL-2-7-9-14.” They went back to their office, keeping in his possession the specimen which he bought from the appellant. After conducting the inventory, he turned over appellant and the evidence to the investigator. The specimen was referred to the crime laboratory for examination which found the same to be positive for shabu. PO2 Leonor identified appellant and the specimen in the course of the proceedings.<sup>8</sup>

The prosecution also presented PO3 Villanueva who corroborated PO2 Leonor’s testimony on the events of July 9, 2019.<sup>9</sup>

On the other hand, according to the defense, no buy-bust operation took place against appellant on July 9, 2014. Appellant claimed that he was illegally arrested at Carriedo, Sta. Cruz, Manila near the LRT Station. He narrated that on July 8, 2014 at about 11:30 in the morning, he was at Carriedo near the LRT station to buy housing for his cellphone. After bargaining with the store owner, a man suddenly held his hands. Another man subsequently approached him and poked a gun on the right side of his body. He was then dragged into a vehicle. When he asked them, he was ordered to remain silent and was told “[p]utang ina mo, palpak ang lakad namin.” He did not know the place where he was brought and detained. He was also frisked and his possessions were taken from him. At about 5:00 in the afternoon of the same day, he was told to tell his mother to give money in the amount of ₱1,000,000.00. He then told his mother the same thing through his cellphone which was lent to him. He came to know after a few days that the men were SPO1 Fidel Cabinta (SPO1 Cabinta) and a certain Dela Cruz who kept on cursing and hitting him on his head. SPO1 Cabinta talked to the appellant’s mother who said that they will sell their cow.<sup>10</sup>

On July 10, 2014, he was brought outside his detention cell to the vehicle he boarded earlier, and made to stand beside it. SPO1 Cabinta drew out a plastic containing something like *tawas* from his pocket and told him “[e]to, hawakan mo para ma-piktyuran ka.” He was then brought back inside the detention cell where he sat in front of a table with the ₱4,000.00 on top of it. A man on the left side of the table signed something and also made him sign a paper which states that appellant was arrested in Caloocan City. Subsequently, on July 11, 2014, SPO1 Cabinta offered him a bottle of water which the appellant observed was already opened and appeared to be sticky and mixed with *tawas*. He accepted it but replaced it with the mineral water brought in by visitors. SPO1 Cabinta brought him to Valenzuela City

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<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> *Id.* at 6-7.

<sup>10</sup> *Id.* at 8-9.

for laboratory examination but his urine tested negative for the presence of shabu. SPO1 Cabinta was furious upon learning that appellant did not drink the water from the already opened bottle. Consequently, appellant was brought to the DAID in Larangay, Caloocan City on July 14, 2014 where he was subjected to inquest proceedings.<sup>11</sup>

In the Decision dated July 22, 2016, the RTC found appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. The RTC gave credence to the straightforward testimony of the prosecution witnesses and found them to have properly observed the chain of custody rule during the buy-bust operation. It found appellant's unsubstantiated defense of denial and frame-up to be unworthy of belief. Alparo Bangcoga's (Bangcoga) and Teresita Mallari's (Mallari) testimonies were likewise given no merit for being unsupported by evidence.<sup>12</sup> The dispositive portion of the Decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered finding Accused ABUBACAR ABDULWAHAB y MAMA alias "Muslim" guilty beyond reasonable doubt of the offense of Violation of Section 5, Article II, of R.A. 9165, and he is hereby sentenced to suffer the penalty of life imprisonment and to pay the fine of Five hundred thousand pesos (Php500,000.00).<sup>13</sup>

The CA, in the Decision dated February 2, 2018, affirmed the ruling of the RTC. It ruled that credence should be given to the arresting officers because they are presumed to have regularly performed their duty in the absence of proof to the contrary. It found Bangcoga's and Mallari's testimonies unsupported by proof and inconsistent, respectively, thus unreliable. It also found no basis on the defense's claim of violation of the chain of custody rule since there was convincing evidence to account for the crucial links in the chain of custody of the seized sachet of shabu, starting from confiscation from appellant up to presentation as evidence in court.<sup>14</sup> The dispositive portion of the Decision reads:

**WHEREFORE**, the appeal is **DENIED** for lack of merit.

**SO ORDERED.**<sup>15</sup>

### *The Issue Before the Court*

<sup>11</sup> *Id.* at 9-10. The defense also presented Bangcoga and Mallari to corroborate appellant's claim that he was arrested at Carriedo, Santa Cruz, Manila near the LRT station. Bangcoga also testified that he searched for appellant in different police stations within the vicinity and in other parts of the City of Manila to no avail (*Id.* at 10).

<sup>12</sup> *CA rollo*, pp. 67-72.

<sup>13</sup> *Id.* at 72.

<sup>14</sup> *Rollo*, pp. 11-14.

<sup>15</sup> *Id.* at 14.

In this appeal, appellant contends that the apprehending officers' failure to comply with the procedure provided in Section 21 of RA 9165 placed reasonable doubt on the integrity and evidentiary value of the allegedly seized drugs.<sup>16</sup> On the other hand, the people posits that the prosecution was able to establish the elements of the crime<sup>3</sup> charged since the apprehending officers substantially complied with the requirements in Section 21.<sup>17</sup>

### *The Court's Ruling*

The appeal is meritorious.

The following elements must be proved beyond reasonable doubt for a conviction in a prosecution for the sale of illegal drugs: (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.<sup>18</sup> Proof that the transaction actually occurred, coupled with the presentation before the court of the *corpus delicti* is essential. Therefore, the prosecution must also establish the integrity of the dangerous drug, because the dangerous drug is the very *corpus delicti* of the case.<sup>19</sup> To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>20</sup>

Section 21, Article II of RA 9165, the applicable law at the time of the commission of the crime, provides that 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. The presence of these witnesses is required "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."<sup>21</sup>

Compliance with the procedure set forth in Section 21 of RA 9165 is a matter of substantive law which cannot be brushed aside as mere technicality or ignored as an impediment to the conviction of illegal drug suspects.<sup>22</sup>

The law, in exceptional circumstances, also allows<sup>3</sup> non-compliance with the procedure where the following requisites are present: (1) the

<sup>16</sup> CA rollo, pp. 46-47.

<sup>17</sup> *Id.* at 104-106.

<sup>18</sup> *People v. Cordova*, G.R. No. 231130, July 9, 2018.

<sup>19</sup> *People v. Cadiante*, G.R. No. 228255, June 10, 2019.

<sup>20</sup> *Limbo v. People*, G.R. No. 238299, July 1, 2019.

<sup>21</sup> *Aranas v. People*, G.R. No. 242315, July 3, 2019, citing *People v. Miranda*, G.R. No. 229671, January 31, 2018.

<sup>22</sup> *People v. Lim*, G.R. No. 231989, September 4, 2018. See also *People v. Pascua*, G.R. No. 227707, October 8, 2018 and *People v. Ocampo*, G.R. No. 232300, August 1, 2018.

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existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. In these cases, the seizures and custody over the confiscated items shall not be rendered void and invalid.<sup>23</sup> Thus, for the absence of the necessary witnesses not to render the seized items inadmissible, a justifiable reason for such absence or a showing of any genuine and sufficient effort to secure their presence must be adduced and proved.<sup>24</sup>

*People v. Ramos*<sup>25</sup> elucidated that actual serious attempts to contact the required necessary witnesses must be adduced to qualify as a justifiable ground for non-compliance with the rules:

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 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 non-compliance. 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 fully 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.

After careful review of the case, We find the deviations from the rule chain of custody unjustified. The prosecution failed to offer, much less prove, justifiable reasons for the absence of two of the necessary witnesses, and to show that it undertook genuine and sufficient efforts to secure their presence.

During cross-examination, PO3 Villanueva testified that among the three necessary witnesses, only a media representative was present:

<sup>23</sup> *People v. Adobar*, G.R. No. 222559, June 6, 2018.

<sup>24</sup> *People v. Lim*, G.R. No. 231989, September 4, 2018, citing *People v. Ramos*, G.R. No. 233744, February 28, 2018. See also *People v. Pascua*, G.R. No. 227707, October 8, 2018.

<sup>25</sup> G.R. No. 233744, February 28, 2018.

ATTY. YU:

Q Now, Mr. Witness, in this inventory, you know that you have to have a witness from the Prosecutor, from the barangay official and from the mass media, am I correct?

A Yes, your Honor.

Q In this case, you did not follow that procedure, is it not?

A But we conducted inventory in front of a media representative, your Honor.

Q Only before a mass media not before the barangay official not before the Fiscal?

A Yes, sir.

Q Despite the fact that you know that Fiscal Cañete is leaving [*sic*] near C3 and there are several barangay hall before you reach your office, am I correct?

A Yes, sir.<sup>26</sup>

The record is bereft of any explanation to account for the absence of a representative from the DOJ and an elected public official. Both the CA and the trial court glossed over this material lapse on the part of the prosecution. Curiously though, during PO2 Leonor's cross-examination, the trial court acknowledged the absence of the necessary witnesses,<sup>27</sup> but proceeded to convict appellant on the ground that the latter's defense of denial and frame up must fail in light of the positive identification and declarations of the prosecution witnesses.<sup>28</sup>

We emphasize that pursuant to RA 9165, the attendance of all three necessary witnesses during the physical inventory and photograph of the seized items is *mandatory*. In the absence of the representative from the DOJ and elected public official during the physical inventory and the photographing of the seized drugs, the evils of switching, "planting" or contamination of the evidence create serious lingering doubts as to its integrity and evidentiary value. In the context of these circumstances, the conviction of appellant cannot be upheld.<sup>29</sup>

<sup>26</sup> TSN, January 27, 2015, p. 43.

<sup>27</sup> During the hearing on September 29, 2014, the trial court directed the defense counsel to go direct to the point:

COURT-BUTT-IN: Can you go direct to the point there were no persons present during the inventory in the area?

See TSN, September 29, 2014, p. 36.

<sup>28</sup> CA rollo, pp. 71-72.


<sup>29</sup> *People v. Cadiente*, *supra* note 19.


**WHEREFORE**, the appeal is **GRANTED**. The Decision dated February 2, 2018 of the Court of Appeals in CA-G.R. CR HC No. 08474, which affirmed the Decision of Branch 127, Regional Trial Court of Caloocan City in Criminal Case No. 92353 finding appellant Abubacar Abdulwahab y Mama guilty beyond reasonable doubt of the charge against him, is **REVERSED** and **SET ASIDE**. Abubacar Abdulwahab y Mama is **ACQUITTED** on reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause.


**SO ORDERED.**

  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

WE CONCUR:

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


  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*  
*Working Chairperson*

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

  
**ANDRES B. REYES, JR.**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified 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*