



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff -Appellee,

G.R. No. 245391

Present:

- versus -

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

NIÑA CARAY y EMMANUEL,  
Accused -Appellant.

Promulgated:

X-----11 SEP 2019-----X  
*[Signature]*

DECISION

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision dated January 12, 2018<sup>1</sup> of the Court of Appeals in CA-G.R. CR-H.C. No. 07846 affirming appellant's conviction for violation of Section 5, Republic Act (RA) 9165.<sup>2</sup>

The Proceedings Before the Trial Court

The Charge

Under Information dated January 10, 2012<sup>3</sup>, appellant Niña Caray y

<sup>1</sup> Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Ricardo R. Rosario and Maria Elisa Sempio Diy; *Rollo*, pp. 3-14.

<sup>2</sup> Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

<sup>3</sup> *CA rollo*, p. 14.

*[Handwritten mark]*

Emmanuel was charged with violation of Section 5, RA 9165, thus:

That on or about the 7th day of January, 2012 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to PO3 ALEXANDER ARGUELLES, who posed as buyer, Two (2) heat-sealed transparent plastic sachets each containing METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.65 gram & 0.73 gram, which when subjected for laboraotry (sic) examination gave POSITIVE result top (sic) the tests for Methylamphetamine Hydrochloride, a dangerous drug, knowing the same to be such.

Contrary to Law.<sup>4</sup>

The case was raffled to the Regional Trial Court (RTC) – Branch 120, Caloocan City.

On arraignment, appellant pleaded *not guilty*. Trial proper ensued.

PO3 Alexander R. Arguelles, PO2 Carlo T. Pineda, SPO1 Fidel B. Cabinta and PCI Stella S. Garciano testified for the prosecution. The defense presented appellant as its lone witness.

### **The Prosecution's Version**

**PO3 Alexander R. Arguelles** testified that on January 7, 2012, around 5 o'clock in the afternoon, two (2) confidential informants arrived at the office of the District Anti-illegal Drugs-Special Operations Task Group (DAID-SOTG) and reported to him the illegal drug-selling activity of "Niña", herein appellant Niña Caray y Emmanuel. He asked one of the informants to inform appellant that they found a buyer of *shabu* worth Php13,000.00. The informant concerned did as instructed and agreed to meet with appellant on the same day around 10 o'clock in the evening at a convenience store in Maypajo, Caloocan City.<sup>5</sup>

To entrap appellant, DAID-SOTG Chief PCI Romeo C. Ricalde organized a buy-bust team and designated him (PO3 Arguelles) as poseur-buyer. PCI Ricalde gave him thirteen (13) pieces of marked one hundred peso bills and paper cutouts to be used as boodle money. The team then coordinated with the Philippine Drug Enforcement Agency for the entrapment.<sup>6</sup> One of the informants accompanied the team to the place of operation.

Around 7 o'clock in the evening, while he and the informant were standing next to the convenience store, appellant approached them. The informant then pointed to him and told appellant "*Niña, siya ang bibili ng kalahati.*" When appellant asked him to confirm, he showed her part of the

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<sup>4</sup> CA rollo, p. 14.

<sup>5</sup> *Id.* at 17.

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



buy-bust money. He then asked her if she brought the *shabu* he was supposedly buying.

Appellant then retrieved from her waist two (2) transparent plastic sachets wrapped in a packing tape. Upon seeing this, PO3 Arguelles handed the buy-bust money to appellant who in turn handed him the plastic sachets. After the exchange, PO3 Arguelles lit a cigarette to signal the team that the sale had been consummated. When he saw PO2 Pineda rushing in, he immediately held on to appellant and introduced himself as a police officer. He and PO2 Pineda arrested appellant.

He showed PO2 Pineda the items he purchased from appellant and marked the two (2) plastic sachets with his initials and the date: "ARA-1-1-7-12" and "ARA-2-1-7-12". They did a search on appellant and recovered the buy-bust money from her. The team then returned to the DAID-SOTG.

He took custody of the items and immediately turned them over, along with the accused, to duty investigator SPO1 Cabinta. An inventory was thereafter done in the presence of appellant and Ka Maeng, a media representative, as well as the arresting officers. Pictures of the inventory were taken. SPO1 Cabinta subsequently brought the items to PCI Garciano of the NPD-CLO for laboratory examination. The items tested positive for *shabu*.

The prosecution and the defense later on stipulated on the proposed testimonies of PO2 Pineda, SPO1 Cabinta, and PCI Garciano.

### **The Defense's Version**

Appellant claimed that on January 6, 2012, around 9 o'clock in the morning, she went to OWWA, Intramuros. Around 1 to 2 o'clock in the afternoon, she walked inside a convenience store across the street to have a snack. All of a sudden, about ten (10) men approached and asked her to empty her bag. Although nothing illegal was found in her possession, they made her board a vehicle and brought her to the Langaray Police Station. There, she was made to contact a relative. She called and asked help from her father. When the latter arrived, the men who arrested her asked her father for P500,000.00 in exchange for her release. But since her father was not able to produce the amount, she was charged with illegal sale of dangerous drugs.

### **The Trial Court's Ruling**

As borne by its Decision dated August 19, 2015,<sup>7</sup> the trial court rendered a verdict of conviction, *viz*:

Premises considered, this Court finds and so holds that accused Niña Caray y Emmanuel is GUILTY beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and

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<sup>7</sup> Penned by Presiding Judge Aurelio R. Ralar, Jr.; CA *rollo*, pp. 54-60.

imposes upon her the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00).

The drugs subject matter of this case are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.<sup>8</sup>

It ruled that the prosecution successfully established all the elements of illegal sale of dangerous drugs to a moral certainty. PO3 Arguelles proved that on the occasion of the buy-bust operation, appellant was caught *in flagrante delicto* selling two (2) heat-sealed transparent plastic sachets containing *shabu* in exchange for Php13,000.00.<sup>9</sup> Despite the absence of an elected official and a representative from the Department of Justice (DOJ) during inventory, the integrity of the seized items had been duly preserved.<sup>10</sup>

### **The Proceedings Before the Court of Appeals**

On appeal, appellant faulted the trial court for rendering a verdict of conviction despite the procedural lapses committed by the arresting officers, and the attendant gaps in the chain of custody: *first*, PO3 Arguelles did not mark the seized item at the place of arrest; *second*, PO3 Arguelles failed to indicate the time and place of seizure as prescribed under the Philippine National Police Operations Manual; *third*, no representative from the media, the Department of Justice (DOJ) or any elective official was present when the inventory was done; *finally*, the prosecution failed to show how the seized items were preserved from the time they were turned over to the investigator, forensic chemist, and the court.<sup>11</sup>

The Office of the Solicitor General (OSG), through Senior State Solicitor Maria Lourdes C. Gutierrez defended the verdict of conviction.<sup>12</sup> It argued that the links necessary to establish the chain of custody had been proved by the prosecution through the testimonies of PO3 Arguelles and SPO1 Cabinta, as well as the stipulations of the parties pertaining to the testimony of the forensic chemist. Appellant's denial and frame-up, therefore, failed against the evidence of the prosecution.<sup>13</sup>

### **The Court of Appeals' Ruling**

By Decision dated January 12, 2018, the Court of Appeals affirmed.<sup>14</sup> It found that: *first*, the seized items were marked at the place of arrest, contrary to appellant's claim; *second*, PO3 Arguelles marked the items with his initials and the date of seizure, in compliance with legal requirements; *third*, despite

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<sup>8</sup> CA rollo, p. 64.

<sup>9</sup> *Id.* at 61.

<sup>10</sup> *Id.* at 63.

<sup>11</sup> *Id.* at 43-51.

<sup>12</sup> *Id.* at 88-104.

<sup>13</sup> *Id.* at 95-104.

<sup>14</sup> Rollo, pp. 3-14.

the absence of the required witnesses during the inventory of the items, the integrity of the *corpus delicti* was duly preserved; **finally**, the totality of the prosecution evidence and the parties' stipulations led to an unbroken chain of custody over the items in question.

### The Present Appeal

Appellant now seeks for a verdict of acquittal from the Court.

In compliance with Resolution dated June 3, 2019, the OSG manifested that in lieu of supplemental briefs, it was adopting its brief before the Court of Appeals.<sup>15</sup> On the other hand, appellant failed to file her supplemental brief within thirty (30) days from notice.

### The Threshold Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the inventory of the seized items?

### Ruling

We rule in the affirmative.

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.<sup>16</sup>

Here, appellant is charged with unauthorized sale of dangerous drug allegedly committed on January 7, 2012. The governing law, therefore, 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:

**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**

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<sup>15</sup> *Id.* at 23.

<sup>16</sup> *People vs. Barte*, 806 Phil. 533, 542 (2017).

**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 added)

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The Implementing Rules and Regulations of RA 9165 further commands:

**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: 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. (emphasis added)

It is a matter of record that only appellant and media representative Maeng Santos were present to witness the inventory of the seized items. Both the trial court and the Court of Appeals even noted the absence of any elected official and representative from the DOJ during inventory. No explanation was offered for this omission.

In *People v. Abelarde*,<sup>17</sup> the accused was acquitted of violation of Section 5, RA 9165 because there was no evidence that the inventory of the seized dangerous drugs was done in the presence of an elected official, a media representative and a representative from the DOJ.

Similarly, in *People v. Macud*,<sup>18</sup> the buy-bust team similarly failed to secure the presence of the required witnesses to the conduct of inventory of the seized drug items. For this, the Court, too, rendered a verdict of acquittal.

Indeed, the presence of the insulating witnesses during inventory is vital. In the absence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items.<sup>19</sup> Non-compliance with the requirement is, therefore, fatal to the prosecution's case.

<sup>17</sup> G.R. No. 215713, January 22, 2018.

<sup>18</sup> G.R. No. 219175, December 14, 2017, 849 SCRA 294, 321.

<sup>19</sup> *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

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The OSG insists, nonetheless, as the courts below had held, that the integrity of the *corpus delicti* was duly preserved despite non-compliance with the witness requirement in the conduct of inventory. Hence, appellant may still be held guilty for violation of Section 5, RA 9165.

We disagree.

Although the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever there are justifiable grounds to deviate from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved, the prosecution offered no such explanation here. It merely stated that no elected official and representative from the DOJ were available at that time. But as the Court held in *People v. Umipang*,<sup>20</sup> the prosecution must still have shown that earnest efforts were employed in contacting the representatives enumerated under the law; a sheer statement that said representatives were unavailable without so much as an explanation on whether serious attempts were made to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.

In fine, the condition *sine qua non* for the saving clause to become operational was not complied with. For the same reason, the proviso “so long as the integrity and evidentiary value of the seized items are properly preserved”, too, will not come into play.<sup>21</sup> Absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule, the *corpus delicti* cannot be deemed preserved.

**ACCORDINGLY**, the appeal is **GRANTED**. The Decision dated dated January 12, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 07846 is **REVERSED** and **SET ASIDE**.

Appellant **NIÑA CARAY y EMMANUEL** is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellant Niña Caray y Emmanuel from custody unless she is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.

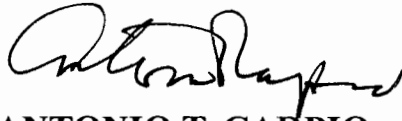
**SO ORDERED.**

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

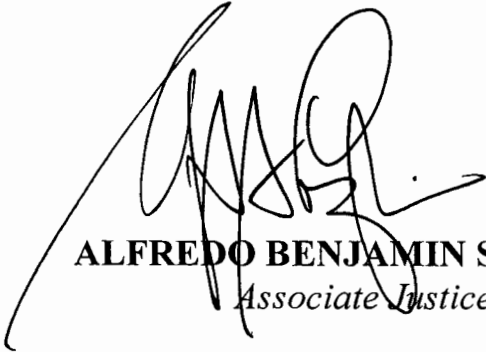
<sup>20</sup> 686 Phil. 1024, 1052-1053 (2012).

<sup>21</sup> *Jocson v. People*, G.R. No. 199644, June 19, 2019.

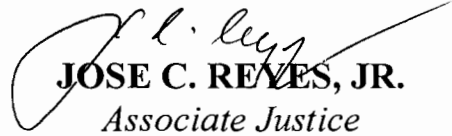
**WE CONCUR:**



**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Chairperson*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



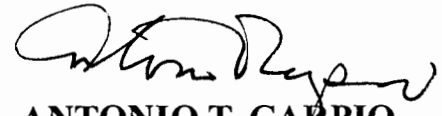
**JOSE C. REYES, JR.**  
*Associate Justice*



**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**  
*Senior Associate Justice*  
*Chairperson, Second Division*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the above Division Chairperson's Attestation, 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*

