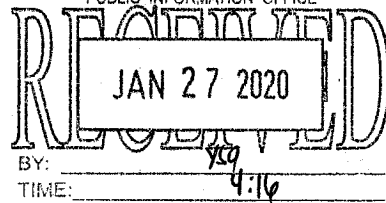


Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated December 10, 2019 which reads as follows:

“G.R. No. 242016– People of the Philippines, Plaintiff-appellee vs. Jomar Apol y Angel, Accused-appellant

This appeal assails the Decision¹ dated June 27, 2018 of the Court of Appeals in CA-G.R. CR HC No. 01697-MIN affirming with modification the trial court’s verdict of conviction against appellant Jomar Apol y Angel for violations of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165).

The Facts and the Plea

Appellant was charged in two (2) separate Informations dated September 15, 2015 for violations of Sections 5 and 11 of RA 9165, viz.:

Amended Information - Criminal Case No. CR-DRG-2015-515
(For violation of Section 5, Article II of R.A. No. 9165)

The undersigned Assistant City Prosecutor accuses JOMAR APOL y ANGEL and DARIO RETUERTO of the crime of violation of Section 5 of R.A. No. 9165, committed as follows:

That on September 13, 2015, at about 1:30 o’clock (sic) in the afternoon at Upper 20th St., Nazareth, Cagayan de Oro, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with conspiracy (sic) with each other, without authority of law and legal justification, did then and there, willfully, unlawfully, and feloniously, sell, deliver and

- over – twenty-five (25) pages ...
278-B,

¹ Penned by Associate Justice Walter S. Ong concurred in by Associate Justice Edgardo A. Camello, and Associate Justice Perpetua T. Atal-Paño, all members of the Twenty-Second Division, *rollo*, pp. 3-40.

give away, to PO1 Cleover Sumagang, acting as poseur-buyer, four (4) sachets of dried leaves, weighing 0.7448 gram, 0.8057 gram, 0.8054 gram and 0.8343 gram, respectively, in consideration of the buy-bust money consisting of two (2) pieces of Php50.00 peso bills and after confirmatory test gave positive result of the presence of Marijuana, a dangerous drug.

CONTRARY TO LAW.²

Criminal Case No. CR-DRG-2015-514 (For violation of Section 11, Article II of R.A. No. 9165)

That on September 13, 2015 at around 1:30 o'clock (sic) in the afternoon at Upper 20th St., Nazareth, Cagayan de Oro, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with a known person, who is at-large, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously, have in his possession and control one (1) bag of dried leaves/fruited tops weighing 144.3905 grams and after confirmatory test conducted by the PNP Crime Laboratory, gave positive result of the presence of Marijuana, accused knowing the same as a dangerous drug.

CONTRARY TO LAW.³

Version of the Prosecution

SPO2 Mark Anthony Daclag testified that around 11 o'clock in the morning of September 13, 2015, he received a report from a confidential informant regarding the rampant sale of illegal drugs on Upper 20th St., Nazareth, Cagayan De Oro. He immediately relayed this information to their station commander, PSI Ericson Sabanal, who in turn, directed them to confirm the information. Thereafter, he prepared the marked money consisting of two (2) fifty peso (P50.00) bills and coordinated with the Philippine Drug Enforcement Agency (PDEA). PO2 Cleover R. Sumagang was designated as poseur-buyer while he acted as back-up. Upon receipt of the control number, the confidential informant contacted alias Dario and Jomar. Dario replied instructing the confidential informant to proceed to Upper 20th St., Nazareth, Cagayan de Oro.⁴

There, the buy-bust team noticed that the place was hilly and accessible only by motorcycle. Alias Dario instructed the confidential informant to proceed to the "*patag*" area where they saw Dario and Jomar. He (SPO2 Daclag) positioned himself five (5) meters away

- over -

278-B

² Record, p. 33.

³ CA rollo, p. 42.

⁴ *Id.* at 45-46.

from the area where the sale of drugs was to take place. The other members of the buy bust team were seven (7) to twelve (12) meters away. He witnessed the transaction between PO2 Sumagang and Dario. When PO2 Sumagang handed the marked money to Dario, the latter gave it to Jomar. Thereupon, Jomar pulled out a sachet from a Terranova cellophane bag and handed it to Dario who gave to PO2 Sumagang.⁵

PO2 Sumagang gave the pre-arranged signal and introduced himself to Dario and Jomar as a police officer. Dario, however, managed to escape. He (SPO2 Daclag) assisted PO2 Sumagang in the arrest of Jomar while the other members of the buy-bust team chased Dario but was unable to catch him. Thereafter, he searched the cellophane bag from where Jomar pulled out the sachet and discovered inside another bag containing marijuana. Meanwhile, PO2 Sumagang recovered from appellant the marked money and the four (4) sachets of marijuana. They immediately conducted the inventory and took pictures of them at the crime scene. PO2 Sumagang marked the four (4) sachets while he (SPO2 Daclag) marked the cellophane bag containing the big bundle of marijuana.⁶

PO2 Cleover R. Sumagang corroborated the testimony of SPO2 Daclag. He testified that around 11 o'clock in the morning of September 13, 2015, SPO2 Daclag received a report from a confidential informant regarding the widespread sale of illegal drugs on Upper 20th St., Nazareth, Cagayan De Oro. The information was immediately relayed to the station commander, PSI Ericson Sabanal. After confirming the information, SPO2 Daclag prepared the marked money consisting of two (2) fifty peso (₱50.00) bills and coordinated with the PDEA. He was designated as poseur-buyer while SPO2 Daclag as back-up. Upon receipt of the control number from the PDEA, the confidential informant contacted alias Dario and Jomar. Dario instructed the confidential informant to proceed to Upper 20th St., Nazareth, Cagayan De Oro.⁷

The buy-bust team arrived at the area of operation around 1:30 in the afternoon and strategically positioned themselves where they could observe the transaction. They saw Dario and Jomar. He and the confidential informant immediately approached the two (2). Dario asked in the local dialect, "*Pila man gyud inyoha?*" (How much would you order?). He handed the two (2) fifty peso (₱50.00) marked

- over -

278-B

⁵ *Id.* at 46-47.

⁶ *Id.* at 47-48.

⁷ *Id.* at 50.

money to Dario who, in turn, gave it to Jomar. Thereafter, Jomar pulled out four (4) heat-sealed sachets containing dried leaves from a violet Terranova cellophane bag. Jomar gave the sachets to Dario, who in turn; handed them to him.⁸

After the transaction, he introduced himself as a police officer and immediately effected the arrest of Jomar, albeit Dario managed to escape. SPO2 Daclag closed in and assisted him in the arrest of Jomar while the other members of the buy-bust team chased Dario, but in vain. After the arrest of Jomar, SPO2 Daclag recovered from the former, the buy bust money and a big cellophane bag containing dried leaves wrapped in a white T-shirt. Jomar turned out to be appellant Jomar Apol y Angel.⁹

He and SPO2 Daclag did the marking and inventory at the place of arrest. It was SPO2 Daclag who marked the big cellophane containing the dried leaves while he (PO2 Sumagang) marked the four (4) heat-sealed sachets also containing dried leaves. PO3 Reursora photographed the seized items at the crime scene. Barangay Kagawad Rommel Pimentel did not go to the crime scene as the area was hilly and since he is stout, it was difficult for him to proceed to the area. But he proceeded to the police station.

He did the inventory at the area of operation in the presence of SPO2 Daclag, PO3 Reursora and Jomar who refused to sign it. On their way to the police station, he had in his custody, the four (4) heat-sealed sachets containing dried leaves while SPO2 Daclag, the cellophane bag also containing dried leaves.

At the police station, Barangay Kagawad Rommel Pimentel refused to sign the inventory as he was not present at the crime scene. Only he (PO2 Sumagang) and SPO2 Daclag signed the inventory. Thereafter, police investigator PSI Ericson Enerio Sabanal¹⁰ prepared the request for laboratory examination. Around 4:30 in the afternoon of the same day, he and SPO2 Daclag delivered the seized items and the letter request to the crime laboratory. En route, he was in possession of the four (4) heat-sealed sachets while SPO2 Daclag, the big cellophane bag.¹¹ He (PO2 Sumagang) deposited the items at the crime laboratory. SPO2 Adlaon initially received the seized items and turned them over to the Forensic Chemist PSI Caceres.¹²

- over -

278-B

⁸ *Id.* at 51.

⁹ *Id.*

¹⁰ Record, p. 12.

¹¹ CA rollo, p. 52.

¹² *Id.* at 99.

Forensic Chemist PSI Charity Peralta Caceres testified that she did the laboratory examination on the seized items delivered by PO2 Sumagang. Subject specimens were four (4) heat-sealed sachets containing dried leaves. The bigger plastic bag which contained subject specimens was unsealed. Per Chemistry Report No. D-672-2015 and Chemistry Report No. DTCRIM-605-2015, the laboratory examination yielded positive results for marijuana, a dangerous drug. Thereafter, she turned over the specimens to the evidence custodian for safekeeping and retrieved them only when she testified in court. On cross, she manifested she had no personal knowledge of the measures adopted by the evidence custodian after she surrendered them to the latter for safekeeping.¹³

The prosecution offered in evidence the following: Request for Laboratory Examination on Seized Evidence (Exhibit A); stamped portion of the request for examination on seized evidence (Exhibit A-2); Request for Drug Test on Arrested Suspects (Exhibit A-1); stamped portion of the request for drug test (Exhibit A-3); one heat-sealed transparent plastic sachet with markings A-1 CRS 09/13/15 and signature (Exhibit B); one heat-sealed transparent plastic sachet with markings A-2 CRS 09/13/15 and signature (Exhibit B-1); one heat-sealed transparent plastic sachet with markings A-3 CRS 09/13/15 and signature (Exhibit B-2); one heat-sealed transparent plastic sachet with markings A-4 CRS 09/13/15 and signature (Exhibit B-3); unsealed transparent plastic bag containing dried marijuana fruiting tops with markings A1-MAD, 09/13/2015 and signature (Exhibit C); Chemistry Report No. D-672-2015 (Exhibit D); Chemistry Report No. DTCRIM-605-2015 (Exhibit E); two pieces fifty peso (₱50.00) bills (Exhibit F and F-1); Certificate of Coordination issued by the PDEA (Exhibit G); Inventory Receipt/Property Receipt of Drugs and Non-Drugs, signatures of the seizing officer and arresting officers (Exhibit H-H2); picture of accused, the evidence confiscated and recovered from accused and the place of apprehension (Exhibit I-I5); and police blotter report (Exhibit J).¹⁴

Version of the Defense

Appellant testified that on September 13, 2015, around 9 o'clock in the morning, he was in his employer's house fixing his tricycle. Suddenly, seven (7) men in civilian clothes whose identities he did not know, kicked the gate. They were chasing someone, but in vain. When they returned, one (1) of these men shouted "*Catch that one because he is included,*" referring to him. Stunned, he asked

- over -

278-B

¹³ *Id.* at 44-45.

¹⁴ Record, pp. 60-62.

“*what is this?*” He was instructed “*Do not make any noise. Do not complain.*” Fearful and clueless, he obliged and was taken to the Macasadig Police Station. There, he was instructed to stand as the police authorities took pictures of him. He complained “*What is this, Sir?*” The police officer replied he would be interrogated. Then, a certain Laglag kicked and slapped him. He was told he was going to be interviewed and to just keep quiet. He obliged, fearful that he would be slapped again. No lawyer assisted him during the interrogation. Too, nothing illegal was recovered from him. The only thing laid on the table was the marijuana allegedly found in his possession. He actually never had marijuana in his possession.¹⁵

The Trial Court’s Decision: As borne by Decision¹⁶ dated June 19, 2017, the trial court rendered a verdict of conviction for the crimes charged, *viz.*:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. CR-DRG-2015-514, the court finds the accused, **JOMAR APOL y ANGEL, GUILTY** beyond reasonable doubt of the charge of violation of Section 11, Article II, R.A. 9165 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day and to pay a fine of Three Hundred Thousand Pesos P300,000.00.

2. In Criminal Case No. CR-DRG-2015-515, the court finds the accused **JOMAR APOL y ANGEL, GUILTY** beyond reasonable doubt of the charge of violation of Section 5, Article II, R.A. 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos P500,000.00.

The four (4) heat-sealed transparent plastic sachets containing dried Marijuana fruiting tops with the following net weights, to wit: 0.7448 gram; 0.8057 gram; 0.8054 gram and 0.8343 gram respectively marked as Exhibits “B” to “B-3” and the unsealed transparent plastic bag with dried marijuana fruiting tops with a total net weight of 144.3905 grams marked Exh. “C” for the prosecution are hereby ordered confiscated and destroyed pursuant to R.A. 9165.

SO ORDERED.¹⁷

- over -

278-B

¹⁵ CA rollo, pp. 54-56.

¹⁶ *Id.* at 42-63.

¹⁷ *Id.* at 62.

The trial court rejected appellant's denial and gave credence to the prosecution witnesses' testimonies. It accorded the police officers concerned with the presumption of regularity in the performance of their official functions. It held that the prosecution sufficiently proved appellant's guilt beyond reasonable doubt for the crime of illegal sale of dangerous drugs. They positively identified appellant as the seller and PO2 Sumagang as buyer; the four (4) heat-sealed sachets containing dried marijuana fruiting tops weighing 0.7448 gram, 0.8057 gram, 0.8054 gram and 0.8343 gram respectively were recovered by PO2 Sumagang together with the unsealed cellophane bag with dried marijuana fruiting tops with a total net weight of 144.3905 grams was recovered by SPO2 Daclag as objects of the sale; and the two (2) fifty peso (₱50.00) bills as consideration.

Too, the prosecution sufficiently established the elements of illegal possession of dangerous drugs. Appellant was found in possession of a cellophane bag which contained a bundle of marijuana.

On the absence of the required witnesses during the inventory, it noted that SPO2 Daclag contacted the barangay official and the media to attend the inventory but the barangay kagawad manifested he would just proceed to the police station as the area of operation was hilly. This attempt to secure the attendance of the required witnesses was sufficient to excuse the police from compliance with this requirement. Lastly, the lack of signatures of an elected official and a media representative on the inventory report did not render appellant's arrest illegal nor the items seized inadmissible.¹⁸

The Proceedings before the Court of Appeals: On appeal, appellant faulted the trial court for rendering the verdict of conviction despite the presence of lingering doubt on whether the sale actually took place. PO2 Sumagang testified that he bought four (4) sachets of marijuana from appellant and Dario. This was, however, belied by SPO2 Daclag himself. He testified that the four (4) sachets were recovered from appellant while PO2 Sumagang was searching him. Thus, if a sale indeed took place, the seized items should not be in the possession of appellant as these already changed hands during the transaction.

Too, the prosecution failed to establish an unbroken chain of custody. One, the property custodian of the PNP Crime Laboratory, who held the seized items for a relatively long period, was not

- over -

278-B

¹⁸ *Id.* at 42-63.

presented to testify on the precautions observed to insure the *corpus delicti's* integrity and identity. Two, the plastic cellophane bag which contained the bundle of marijuana was not sealed when forensic chemist PSI Caseres received it, impeaching its integrity.

There was non-compliance with Section 21(1), Article II of RA 9165 since there were no representatives from the Department of Justice (DOJ) and the media, nor an elected public official during the inventory of the seized items. More, not even appellant's name nor signature appeared on the inventory receipt. Lastly, appellant attacked the credibility of PO2 Sumagang's testimony. According to the latter, he was able to hold on to appellant when he declared himself as a police officer while Dario managed to escape. This is belied by PO2 Sumagang's own testimony since during the transaction, Dario was positioned closer to him such that it would have been more credible if he was able to arrest Dario.¹⁹

On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Ma. Antonia Edita C. Dizon and Associate Solicitor Jeanne Madeleine C. Tang defended the verdict of conviction and countered that the prosecution successfully proved all the elements of every offense charged. Appellant and Dario were in conspiracy when they sold four (4) plastic sachets containing dried marijuana leaves.

The prosecution clearly established the elements of illegal sale of dangerous drugs here; one, appellant was positively identified in open court as the person who sold dangerous drugs to PO2 Sumagang; two, there was no doubt as to the object of the sale which were the four (4) plastic sachets containing dried marijuana leaves; and three, the two (2) fifty peso (₱50.00) bills paid as consideration were duly presented in evidence. For the offense of illegal possession of dangerous drugs, the prosecution sufficiently proved that appellant was in possession of a purple cellophane bag which contained dried leaves. Further, the apprehending officer established compliance with Section 21 of RA 9165 on the chain of custody rule. Lastly, the absence of representatives from the media and the DOJ was sufficiently justified by the prosecution.²⁰

The Court of Appeals' Ruling: By Decision²¹ dated June 27, 2018, the Court of Appeals affirmed the trial court's disposition in Criminal

- over -

278-B

¹⁹ *Id.* at 27-40.

²⁰ *Id.* at 69-108.

²¹ *Rollo*, pp. 3-40.

Case No. CRDRG-2015-515 for violation of Section 5, Article II, RA 9165. The appellate court, however, modified the trial court's disposition in Criminal Case No. CR-DRG-2015-514 only insofar as the prison term was concerned, thus:

WHEREFORE, the appealed *Decision* dated 19 June 2017 of the Regional Trial Court, 10th Judicial Region, Branch 23, in Cagayan de Oro City finding appellant Jomar A. Apol guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of R.A. No. 9165 in Criminal Cases No. CR-DRG-2015-515 and No. CR-DRG-2015-514, is AFFIRMED with MODIFICATION, only insofar as Criminal Case No. CR-DRG-2015-514 is concerned for the crime of illegal possession, and only with respect to the prison term, in that appellant is sentenced to suffer the indeterminate sentence of twelve (12) years and one (1) day, as minimum, to fourteen (14) years as maximum.²²

The Court of Appeals rejected appellant's defenses of denial and frame-up and gave credence to the narration of the incident by the prosecution witnesses. It held that the prosecution had indubitably established the elements of the crime of illegal sale of dangerous drugs. The prosecution's witnesses positively identified appellant as one of the duo who peddled the four (4) sachets of marijuana to PO2 Sumagang in exchange for the two (2) fifty peso (₱50.00) bills marked money. Too, the elements of illegal possession of dangerous drugs were sufficiently established. Appellant was caught in possession of the big bundle of marijuana at the place of arrest. The seized items' integrity and evidentiary value were duly preserved. There was no showing that PO2 Sumagang and SPO2 Daclag lost control of the seized items from the time of confiscation until their turn-over to the PNP Crime Laboratory.

The Court of Appeals noted that while the inventory was not signed by appellant, the prosecution witnesses explained that it was so because appellant refused to sign it. Further, the absence of the elected public officer during the inventory was sufficiently explained as Barangay Kagawad Rommel Pimentel refused to go to the crime scene. Too, the media representative only arrived at the police station. The witnesses, however, were present during the investigation at the police station.

The Present Appeal

- over -

278-B

²² *Id.* at 39.

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. Both appellant²³ and the OSG²⁴ manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellant's conviction for the offenses charged?

Ruling

We acquit.

Appellant and Dario were charged with illegal sale and illegal possession of dangerous drugs. The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (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. On the other hand, the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.²⁵

Appellant and Dario here were charged as a co-conspirators in the sale of a dangerous drug. The pertinent provisions of RA 9165 as amended, read:

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SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

- over -

278-B

²³ *Id.* at 49-50.

²⁴ *Id.* at 58-59.

²⁵ See *People v. Cuevas y Martinez*, G.R. No. 238906, November 5, 2018.

XXX XXX XXX

SECTION 26. *Attempt or Conspiracy.* — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

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(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

XXX XXX XXX

In the prosecution of drug related cases, the identity of the dangerous drug must be established with moral certainty. It is imperative to show that the substance illegally possessed and sold by the accused is the same substance offered and identified in court.²⁶ Failure to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.²⁷

Here, the Informations alleged that the offenses were committed on September 13, 2015. The governing law, therefore, is RA 9165, as amended by RA 10640.²⁸ Section 21(1) reads:

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:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or

- over -

278-B

²⁶ See *People v. Bangcola y Maki*, G.R. No. 237802, March 18, 2019.

²⁷ See *People v. Flores*, G.R. No. 241261, July 29, 2019.

²⁸ 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," July 15, 2014.

counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally*, That noncompliance of 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 and custody over said items.

XXX XXX XXX

Chain of custody is defined under Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA 9165, thus:

“Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *Mallillin v. People*,²⁹ the Court had the occasion to highlight the significance of the chain of custody rule, *viz.*:

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 in 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.

- over -

278-B

²⁹ 576 Phil. 576, 587-588 (2008).

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination, and even substitution and exchange. In other words, the exhibits' level of susceptibility to fungibility, alteration or tampering – without regard to whether the same is advertent or otherwise not – dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.

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A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases by accident or otherwise in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

In *People v. Kamad*,³⁰ the Court underscored the following links to establish the chain of custody of the seized item:

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

- over -

278-B.

³⁰ 624 Phil. 289, 304 (2010).

Fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

The prosecution must be able to account for **each link** in the chain of custody from the moment of confiscation up to their presentation in court as evidence of the offense.³¹ Compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law. This is because the law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.³²

Here, the apprehending officers utterly disregarded the chain of custody rule, committed serious procedural lapses, which effectively impeached the seized items' integrity.

First, the required insulating witnesses were not present during the marking and inventory of the seized items.

The first link in the chain of custody refers to seizure and marking, if practicable, of the illegal drugs recovered from the accused by the apprehending officer. The immediate marking of these items is necessary because it serves as reference for and by the subsequent handlers of the item.³³ Section A.1. in relation to Section A.1.3 of the Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of RA 9165 as amended by RA 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:

xxx xxx xxx

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.

- over -

278-B

³¹ See *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

³² See *People v. Gabunada y Talisic*, G.R. No. 242827, September 9, 2019.

³³ *People v. Bugtong*, G.R. No. 220451, February 26, 2018, 856 SCRA 419, 430.

The seized items here were marked immediately at the place of apprehension. SPO2 Daclag thus testified:

SPO2 MARK ANTHONY DACLAG

xxx xxx xxx

Q. Where did you mark the exhibits?

A. At the area, sir.

Q. Let us make it clear. You were the one who marked the bundle of Marijuana?

A. Yes, sir.

Q. And it was PO1 (PO2) Sumagang who marked the four (4) sachets of Marijuana?

A. Yes, sir.

Q. So, when you and PO1 (PO2) Sumagang made the markings, where was Jomar Apol?

A. In front, sir.

Q. He was present?

A. Yes, sir.

Q. So, what else transpired there?

A. We made an inventory, sir.

Q. Who made the inventory?

A. Me, sir.

Q. You and?

A. PO1 (PO2) Sumagang, sir.

Q. Do you have a copy of the inventory?

A. Yes, sir.³⁴

The marking is required to be made in the presence of the accused and upon immediate confiscation.³⁵ Here, it was SPO2 Daclag who marked the big cellophane containing the dried leaves while PO2 Sumagang marked the four (4) heat-sealed sachets also containing dried leaves. PO3 Reursora photographed the seized items at the crime scene.

The required two-witness rule, however, was not complied with during the marking and inventory of the seized items. Section A.1.5 of the Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of RA 9165 as amended by RA 10640, provides:

- over -

278-B

³⁴ TSN dated March 29, 2016, p. 13.

³⁵ See *People v. Ramos*, 791 Phil. 162, 174 (2016).

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his representative or counsel, **with elected public official and a representative of the National Prosecution Service (NPS) or the media**, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer. (*Emphasis supplied*)

The law demands that the inventory and photographing should 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 in the presence of the required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media **AND** the DOJ, and any elected public official; or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service **OR** the media.³⁶

The presence of the required witnesses from the media [*or*] the Department of Justice (DOJ), *and* of any elected public official is necessary precisely to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. Too, their presence is to establish the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.³⁷ Simply put, their presence is a safeguard against planting of evidence and frame-up.

Securing the presence of these persons is not impossible. It is not enough for the apprehending officers to merely mark the seized item; the buybust team must also conduct a physical inventory and photographing of the seized item in the presence of these persons required by law.³⁸

Here, the prosecution witnesses testified:

SPO2 MARK ANTHONY DACLAG

xxx xxx xxx

Q. I noticed in the inventory, Mr. Witness that only you and PO1 (PO2) Sumagang signed the inventory receipt. Why was there no media representative or a barangay kagawad?

A. We called up the barangay kagawad, but he was not able to

- over -

278-B

³⁶ See *People v. Piñero*, G.R. No. 242407, April 1, 2019.

³⁷ See *People v. Bangalan y Mamba*, G.R. No. 232249, September 3, 2018.

³⁸ See *People v. Bayang*, G.R. No. 234038, March 13, 2019.

pursue to that area sir. Because he is fat, sir. And he cannot climb the hill. But, after the operation sir, the barangay kagawad went to our station, sir.

Q. So, he went to your station?

A. Yes, sir.

Q. He was not able to go up the hill?

A. Yes, sir.

Q. Where did you issue the inventory?

A. At the area, sir.

Q. Why did he not sign the inventory?

A. Because he was not at that particular area, sir.

Q. Why did he not sign the inventory?

A. [He] failed to sign, but the kagawad want[ed] to be in the pictorial, sir.

Q. No, I mean the accused?

A. As for that sir, he failed to sign.

Q. But, was he present when you executed this?

A. Yes, sir.

Q. The media representative, was he present?

A. After the operation, sir, he immediately proceeded.³⁹

xxx xxx xxx

Q. When you made the inventory, under the inventory sheet or receipt for property seized/goods recovered dated September 13, 2015, only the names of SPO2 Daclag and SPO1 (PO2) Sumagang, the names and signatures appear at the bottom of the portion. Correct?

A. Yes, sir.

Q. There is no name and signature of the accused. Correct?

A. Yes, sir.

Q. There is no name and signature of any barangay official, or any media person aside from SPO2 Daclag and SPO1 (PO2) Sumagang. Correct?

A. Yes, sir.⁴⁰

xxx xxx xxx

PO2 CLEOVER R. SUMAGANG

- over -

278-B

³⁹ TSN dated March 29, 2016, p. 14.

⁴⁰ TSN dated April 26, 2016, p. 5.

Q. You said you also contacted the Barangay Kagawad? Who was that Barangay Kagawad who arrived?

A. It was in the person of Rommel Pimentel, Sir.

Q. Did he arrive at the crime scene or only in the office?

A. Only in the office, Sir?

Q. Why is that?

A. He said he will just proceed to the office because the area is slopping hills and he finds it hard to reach the crime scene.⁴¹

xxx xxx xxx

Q. I noticed Mr. Witness that there are no other statements here regarding the accused. Did you require him to sign this Inventory?

A. Yes, Sir. I required him but he refused to sign.

Q. Did you give him a copy of the Inventory Receipt?

A. No, Sir.

Q. I noticed there is no signature also of the witness, Barangay Kagawad Pimentel?

A. Yes, Sir. He refused to sign because he was not at the area when the Inventory was made.⁴²

The buy-bust team members here claimed they coordinated with the barangay kagawad and the media after effecting appellant's arrest, but none of them arrived at the place of seizure and arrest. Thus, the required witnesses were not present during the marking and inventory of the seized items.

Notably, the prosecution must be able to prove a justifiable ground where the police officers concerned omitted certain requirements provided under Sec. 21 of RA 9165 such as, but not limited to the following: (1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, for the same reason, failed to find an available representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21.⁴³

- over -

278-B

⁴¹ TSN dated October 27, 2016, pp. 8-9.

⁴² *Id.* at 10.

⁴³ *People v. Reyes y Ginove*, G.R. No. 219953, April 23, 2018, 862 SCRA 352, 367-368.

Here, the barangay kagawad was not able to go to the place of apprehension because the area was hilly and he was stout, making it difficult for him to walk the trail. But he did arrive at the police station, nay, witness the interrogation of appellant. The media representative also arrived late, not at the place of seizure and arrest, but much later at the police station. These so-called excuses are shallow and leave much to be desired. There is no honest to goodness effort to ensure the presence of these witnesses during the marking, inventory, and photographing required under Section 21. Considering that a buy-bust operation is, by its nature, a planned activity,⁴⁴ the buy-bust team had sufficient time to secure the prompt presence of these witnesses, but as things stand, inexplicably failed to do so. In *People v. Cadungog*,⁴⁵ the failure of the apprehending officers to secure the presence of the required witnesses warranted the acquittal of the accused.

In fact, the only signatures that appeared on the Inventory Sheet/Receipt for Property/Goods Recovered⁴⁶ were only those of the supposed seizing officers', SPO2 Daclag and PO2 Sumagang. Appellant here refused to sign the inventory.⁴⁷ But then, there was no annotation that he refused to sign it. Section A.1.5 of the Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of RA 9165 as Amended by RA 10640 provides:

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. *In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.* (Emphasis supplied)

Second, custody over the seized items were not transferred to the investigating officer.

The second link in the chain of custody refers to the apprehending officers' turnover of the seized items to the investigating officer. Here the apprehending police officers remained in possession of the seized items while the request for laboratory examination was being prepared:

- over -

278-B

⁴⁴ See *People v. Tanes y Belmonte*, G.R. No. 240596, April 3, 2019.

⁴⁵ See *People v. Cadungog*, G.R. No. 229926, April 3, 2019.

⁴⁶ Record, p. 9.

⁴⁷ TSN dated October 27, 2016, p. 10.

SPO2 MARK ANTHONY DACLAG

Q. Let us make this clear. You did not lost possession of that bundle of Marijuana?

A. Yes, sir.

Q. When you went to the office, and PO1 (PO2) Sumagang went to the office, you have with you your respective object evidences?

A. Yes, sir.

Q. What transpired after that?

A. We proceeded to the Crime Lab.⁴⁸

xxx xxx xxx

Q. During the documentation in your office, who was in possession of the bundle of Marijuana?

A. I, sir.

Q. How about the four (4) sachets of marijuana?

A. PO1 (PO2) Sumagang, sir.⁴⁹

The bundle of marijuana remained in the possession of SPO2 Daclag, and the four (4) sachets of marijuana subject of the illegal sale, in the custody of PO2 Sumagang up until their turn over to the forensic chemist. There was no showing that these items were handed over to the investigating officer for the purpose of conducting the investigation and documentation as part of case building.⁵⁰ This procedural breach necessarily casts doubt on the integrity and evidentiary value of the seized items.

In *People v. Remigio*,⁵¹ the Court acquitted the accused for failure of the apprehending police officer to transfer the seized items to the investigating officer. The Court noted this serious breach which the arresting police officers did not acknowledge, much less explain.

Third, the person who received the seized items at the PNP Crime Laboratory was not presented

The third link in the chain of custody refers to the turnover of custody over the illegal drug to the forensic chemist for laboratory examination. On this score, the prosecution witnesses testified:

- over -

278-B

⁴⁸ TSN dated March 29, 2016, p. 16.

⁴⁹ TSN dated March 29, 2016, p. 18.

⁵⁰ See *People v. Dahil*, 750 Phil. 212, 231 (2015).

⁵¹ 700 Phil. 452-471 (2012).

SPO2 MARK ANTHONY DACLAG

xxx xxx xxx

Q. When you went to the office, and PO1 (PO2) Sumagang went to the office, you have with you your respective object evidences?

A. Yes, sir.

Q. What transpired after that?

A. We proceeded to the Crime Lab.⁵²

xxx xxx xxx

Q. Who received the requests?

A. It was the in-charge. I forgot the name.

Q. Was it a female or a male? The male officer there? Not Caceres?

A. It was the pairing of PSI Caceres. Adlawan

Q. There were two who received the requests?

A. Yes, sir.⁵³

xxx xxx xxx

PO2 CLEOVER R. SUMAGANG

Q. So, you were the one who deposited all of the items?

A. Yes, Sir.

Q. Who received the said items at the Crime Lab?

A. It was SPO2 ADLAON, Sir.⁵⁴

The prosecution, however, did not present police officer Adlawan/Adlaon to testify on the precautions adopted to ensure the seized items' integrity and evidentiary value. Surely, this constitutes a break in the chain of custody.

The Court has ordained that non-presentation of the necessary witness constitutes a gap in the chain of custody rendering the third link in the chain of custody, infirm, for which, therefore, the acquittal of the accused is justified.⁵⁵

***Fourth, the PNP Crime Laboratory
Property Custodian was not presented***

- over -

278-B

⁵² TSN dated March 29, 2016, p. 16.

⁵³ *Id.* at 17.

⁵⁴ TSN dated October 27, 2016, p. 12.

⁵⁵ See *People v. Gajo y Buenafe*, G.R. No. 217026, January 22, 2018, 852 SCRA 274, 290.

The fourth link in the chain of custody refers to the turn over and submission of the marked illegal drug seized from the forensic chemist to the court. Here, PSI Caceres testified:

“Q. In what condition when you received these items?

A. The four (4) sachets were all heat-sealed and was placed on the tape-sealed transparent plastic sachets. But the bigger plastic cellophane containing marijuana is **unsealed**.⁵⁶ (*Emphasis supplied*)

Evidently, the big bundle of marijuana when submitted to PSI Caceres was unsealed. The prosecution, however, did not offer any explanation why it was so. This breach in the chain of custody raises serious doubt on whether the seized item at the place of apprehension was the same item presented as evidence in court. Consequently, the seized drugs' integrity and evidentiary value were impeached.

Forensic Chemist PSI Caceres testified that she conducted the laboratory examination on the drugs. Per Chemistry Report No. D-672-2015,⁵⁷ she certified that the four (4) heat-sealed sachets containing dried leaves marked A-1, A-2, A-3 and A-4 yielded positive results for marijuana. So did the bundle of marijuana found inside the Terranova plastic bag. After the examination, she turned over the seized items to the property custodian:

Q. After examination, what happened?

A. The drug specimens were turned it over to the property custodian.

Q. Did you prepare a report?

A. Yes, Sir.

xxx xxx xxx

Q. You said that you turned it over the specimens to the evidence custodian and what happened this morning?

A. I retrieved the specimens to the evidence custodian before going to the Court.⁵⁸

xxx xxx xxx.

Q. Ma'am, you did know the origins of these specimens that were submitted to you for examination?

A. Yes, Sir.

- over -

278-B

⁵⁶ TSN, dated February 9, 2016, p. 5.

⁵⁷ Record, p. 11.

⁵⁸ TSN dated February 9, 2016, p. 5.

Q. You did not also know how the laboratory custodian handled these specimens?

A. Yes, Sir.

Q. Did I get you correctly, Ma'am, that the cellophane containing marijuana is not sealed?

A. Yes, Sir.⁵⁹

The seized items thus, remained in the possession of the PNP Crime Laboratory Custodian until PSI Caceres retrieved them for presentation in court. The property custodian, however, was not presented in court. Neither was his name disclosed by the prosecution, nor the precautions adopted to preserve the seized items' integrity. Surely, this gap in the chain of custody opened the possibility of tampering and switching of evidence.

The Court, in *People v. Plaza*,⁶⁰ found a gap or break in the fourth link of the chain of custody arising from the absence of evidence to show how the seized *shabu* was handled, stored, and safeguarded pending its presentation in court. In this regard, the prosecution ought to establish that after the laboratory examination, there would have been no change in the condition of the seized drug and no opportunity for someone not in the chain to have possession of and to tamper with the same. Absent any testimony regarding these precautions, doubt, that the illegal drug allegedly confiscated from the accused is not the same as that presented in court, remains. As a result, this creates reasonable doubt on the integrity and evidentiary value of the seized items.⁶¹

In *People v. Abelarde*,⁶² the Court acquitted the accused on ground that the prosecution did not proffer any evidence to indicate how the seven (7) packets of *shabu* were handled after the laboratory examination and the identity of the person who had custody of these seven (7) packets of *shabu* before their presentation in court.

The Court recognizes that strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The

- over -

278-B

⁵⁹ *Id.* at 6.

⁶⁰ G.R. No. 235467, August 20, 2018.

⁶¹ See *People v. Pajarin*, 654 Phil. 461, 466 (2011).

⁶² See G.R. No. 215713, January 22, 2018, 852 SCRA 252, 270.

foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. For the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.⁶³

In sum, the prosecution here utterly failed to establish the elements of either illegal possession or sale of dangerous drugs by proof beyond reasonable doubt. For the utter disregard of the chain of custody rule, appellant's acquittal necessarily must follow.

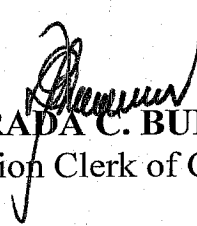
WHEREFORE, the appeal is **GRANTED**. The Decision dated June 27, 2018 of the Court of Appeals in CA-G.R. CR HC No. 01697-MIN is **REVERSED AND SET ASIDE**. Appellant Jomar Apol y Angel is **ACQUITTED** of violations of Sections 5 and 11, Article II of Republic Act No. 9165.

The Court **DIRECTS** the Regional Director of the Davao Prison and Penal Farm, DAPECOL, Davao Del Norte to cause the immediate release of Jomar Apol y Angel from custody unless he is being held for some other lawful cause and to submit his report on the action taken within five (5) days from notice.

Let an entry of final judgment immediately issue.

SO ORDERED."

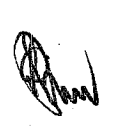
Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

278-B

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⁶³ See *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.



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9000 Cagayan de Oro City
(CA-G.R. CR HC No. 01697-MIN)

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(Crim. Case Nos. CR-DRG-2015-514
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278-B

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