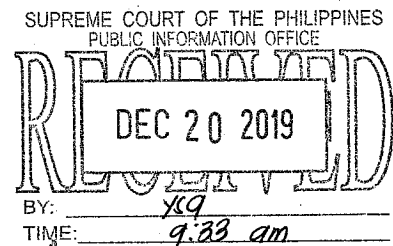




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated December 5, 2019 which reads as follows:

“G.R. No. 243954 — PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus ROLANDO BALBOA y VELA @ REYNALDO TAN, accused-appellant.

Facts

This is an Appeal¹ under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated March 23, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09171, which affirmed the Judgment³ dated January 30, 2017 rendered by the Regional Trial Court of Pasig City, Branch 164 (RTC), in Criminal Case Nos. 21110-D and 21111-D, finding accused-appellant Rolando Balboa y Vela also known as Reynaldo Tan (Balboa) guilty of violating Section 5 and Section 11 (Illegal Sale and Illegal Possession of Prohibited Drugs), Article II of Republic Act No. (RA) 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The present indictment of Balboa stemmed from two Informations⁴ which read as follows:

[Criminal Case No. 21110-D]

On or about March 13, 2016, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Al Ryan R.

- over – thirteen (13) pages ...

95-B

¹ Notice of Appeal dated May 10, 2018, *rollo*, pp. 15-16.

² *Id.* at 2-14. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Remedios A. Salazar-Fernando and Zenaida T. Galapate-Laguilles, concurring.

³ CA *rollo*, pp. 61-68.

⁴ Records, pp. 1-4.

Mangat, a police poseur buyer, one (1) heat sealed transparent plastic sachet containing 0.11 gram of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.⁵

[Criminal Case No. 21111-D]

On or about March 13, 2016, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law to possess any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control four (4) heat sealed transparent plastic sachets containing 0.13 gram, 0.10 gram, another 0.10 gram and 0.40 gram of white crystalline substance, which were found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.⁶

When arraigned on April 27, 2006, Balboa pleaded not guilty to both charges.⁷

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

At around 11 o'clock in the evening of March 12, 2016, Police Chief Inspector Renato B. Castillo gathered the members of the Pasig City Police Anti-Illegal Drugs Special Operation Task Group (SAIDSOTG) because they received a confidential information that a certain Reynaldo Tan, the accused-appellant, is involved in the sale of *shabu*. According to the informant, accused-appellant can be found in Afafe Street, Barangay Sagad, Pasig City. Following [PCI Castillo's] instructions, PO2 Al Ryan Mangat and the confidential informant of the Anti-Illegal Drug Council of Pasig (ADCOP) proceeded to the target area where they observed several people going in and out of accused-appellant's house at such an unusual hour. After validating the information, PO2 Mangat and the confidential informant reported to PCI Castillo the result of the surveillance.

- over -

95-B

⁵ Id. at 1.

⁶ Id. at 3.

⁷ Id. at 31.

PCI Castillo conducted a briefing to discuss the buy-bust operation against accused-appellant. According to PCI Castillo, [1] the confidential informant will accompany PO2 Mangat who will act as the poseur-buyer; [2] three (3) pieces of one-hundred peso bills, marked with PO2 Mangat's initials [will be] given as buy-bust money; [3] PO2 Mangat will light his cigarette as a pre-agreed signal to show that the sale was consummated.

At around 2:30 in the morning of March 13, 2016, the team arrived in the target area in Afable Street. The confidential informant and PO2 Mangat proceeded towards accused-appellant's house while the rest of the team positioned themselves strategically at a safe distance. As they were walking along Afable Street, the confidential informant pointed to a man standing in front of accused-appellant's house and told PO2 Mangat that [the man] is the subject of the buy-bust operation. The confidential informant approached accused-appellant and told him that they wanted to score "halagang-tres." Then PO2 Mangat handed over to accused-appellant the buy-bust money worth Php300.00 which accused-appellant placed in his right pocket. Thereafter, accused-appellant brought out from his left pocket a small, black metal case from which he took out a small plastic sachet containing white crystalline substance suspected to be shabu and handed it over to PO2 Mangat. PO2 Mangat received the plastic sachet containing white crystalline substance, briefly examined it, and put it in his right pocket. Shortly thereafter, he lit his cigarette. When PO2 Mangat saw [his] team rushing towards them, he held accused-appellant's arm and seized the black metal case. PO2 Mangat recovered four (4) more plastic sachets containing white crystalline substance from the metal case. PO2 Mangat confiscated all of them, put them in his left pocket and recovered also the buy-bust money. After checking that accused-appellant was not armed, PO2 Mangat informed accused-appellant of his violations and his constitutional rights.⁸

Version of the Defense

On the other hand, the version of the defense, as summarized by the CA, is as follows:

Accused ROLANDO V. BALBOA [alias Reynaldo Tan, herein Appellant] denied the charges against him. On March 12, 2016, the accused was inside his rented house with his live-in partner. They were chatting after partaking of the food prepared for his live-in partner's birthday celebration when Jeffrey, their neighbor, accompanied by an unidentified companion approached them [asking for] accused's help so they could sell a grinder and drill. The accused agreed to help Jeffrey and left his wife inside their house. The accused rode on the motorcycle of Jeffrey's

- over -

95-B

⁸ *Rollo*, pp. 5-6; italics in the original.

companion and left behind Jeffrey. Instead of going to the house of Jeffrey's companion, the accused was brought to the motorpool. His companion told him that they would get the grinder and the drill therein. The latter further instructed the accused to go inside the office and just mention his name but when he went inside, he was immediately handcuffed. After a few hours, he was brought out of the room and was photographed with the plastic sachets spread on the table. When he asked why pictures were taken of him, he was told to be silent. He begged to be set free as his wife was pregnant but the men did not listen and ordered him to go back to the room. Thereafter, they boarded him to a taxi and was told by the men, who turned out to be police officers, that they will bring him to the hospital. He was subjected to a medical check-up and a drug test in Mandaluyong. He was returned to the motorpool where he was detained. He only found out that he was charged with the selling and possession of illegal drugs when he was brought for inquest. It was even his first time to see the plastic sachets when he went inside the office at the motorpool.⁹

Ruling of the RTC

In the Judgment¹⁰ dated January 30, 2017, the RTC found Balboa guilty beyond reasonable doubt of violating Section 5 and Section 11, Article II of RA 9165. According to the RTC, Balboa's defense of denial was doubtful and uncorroborated, and that the defenses of denial and of frame-up have been invariably viewed by the courts with disfavor for they can easily be concocted and are common and standard defense ploys in prosecutions for violation of RA 9165.¹¹ The RTC also held that the prosecution was able to establish the chain of custody of the sachets of *shabu* bought and confiscated from Balboa, and has successfully proven his guilt beyond reasonable doubt.¹²

The dispositive portion of the Judgment reads:

WHEREFORE, judgment is rendered as follows:

1. In Criminal Case No.[.] 21110-D, the Court finds accused Rolando Vela Balboa **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of RA No. 9165, and hereby imposed upon him the **penalty of life imprisonment and a fine of five hundred thousand pesos (P500,000.00)**.

- over -

95-B

⁹ Id. at 6-7.

¹⁰ Supra note 3.

¹¹ CA *rollo*, p. 66.

¹² Id.

2. In Criminal Case No. 21111-D, the Court finds accused Rolando Vela Balboa **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165, and hereby imposes upon him an indeterminate penalty of imprisonment from **twelve (12) years and one (1) day, as the minimum term, to fifteen (15) years, as the maximum term, and to pay a fine of three hundred thousand pesos (P300,000.00).**

The sachets of *shabu* subject matter of these cases are hereby ordered confiscated and the Branch Clerk of this Court is directed to turn over the said evidence to the Philippine Drug Enforcement Agency for destruction in accordance with law.

SO ORDERED.¹³

Aggrieved, Balboa appealed to the CA.¹⁴

Ruling of the CA

In a Decision¹⁵ dated March 23, 2018, the CA dismissed the appeal and upheld Balboa's conviction. The CA found that the integrity and evidentiary value of the *shabu* seized from Balboa were preserved, and thus, there is no reason to reverse the ruling of the RTC.¹⁶ The CA explained that non-compliance with the procedure relative to the seizure and custody of prohibited drugs shall not render void and invalid said seizure and custody of the prohibited drugs as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team.¹⁷

The dispositive portion of the CA Decision is as follows:

WHEREFORE, the instant appeal is **DISMISSED**. The *Consolidated Decision* dated 30 January 2017 of the Regional Trial Court of Pasig City, Branch 164, in Criminal Case Nos. 21110-D and 21111-D are hereby **AFFIRMED**.

SO ORDERED.¹⁸

Hence, this Appeal.

- over -

95-B

¹³ Id. at 68; emphasis and underscoring in the original.

¹⁴ Id. at 74-99.

¹⁵ Supra note 2.

¹⁶ *Rollo*, p. 13.

¹⁷ Id. at 12.

¹⁸ Id. at 14; emphasis and italics in the original.

Issue

Whether the CA erred in finding Balboa guilty beyond reasonable doubt of violating Section 5 and Section 11, Article II of RA 9165.

The Court's Ruling

The Appeal is meritorious. Balboa is accordingly acquitted.

It must first be emphasized that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.¹⁹ The appeal confers the appellate court full jurisdiction over the appealed case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provisions of the penal law.²⁰

Balboa is accused of violating Section 5 and Section 11 of RA 9165, or of Illegal Sale of Prohibited Drugs and Illegal Possession of Prohibited Drugs, respectively. To sustain a conviction for Illegal Sale of Prohibited Drugs, the prosecution must prove: (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.²¹ In Illegal Possession of Prohibited Drugs, the prosecution must establish that: (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.²²

In both offenses, the prosecution must establish the identity of the seized prohibited drug — the *corpus delicti* of the crime. To maintain the integrity and evidentiary value of the *corpus delicti*, police officers are enjoined to ensure that the chain of custody in handling the same is not compromised. This “chain of custody” refers to 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

- over -

95-B

¹⁹ *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, 861 SCRA 305, 314; citation omitted.

²⁰ *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380, 388; citation omitted.

²¹ *People v. Ismael*, 806 Phil. 21, 29 (2017).

²² *Id.*

seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.²³ The procedure is specifically outlined in Section 21, Article II of RA 9165, as amended by RA 10640,²⁴ viz.:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

“(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 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.**[”]²⁵

The procedure laid down in Section 21 is mandatory, and nothing less than strict compliance is expected from the apprehending officers. Procedural lapses may only be permitted under justifiable circumstances, and as long as the integrity and the evidentiary value

- over -

95-B

²³ Dangerous Drugs Board Regulation No. 1-02, “Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment,” October 18, 2002, Section 1(b).

²⁴ 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.”

²⁵ Emphasis supplied.

of the seized items are properly preserved. As similarly stated in Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, thus:

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:

- (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[.]***²⁶

For the above “saving clause” to apply, the prosecution must demonstrate and prove as a fact (1) that justifiable grounds exist to warrant procedural deviations, and (2) that the integrity and evidentiary value of the seized prohibited drugs are preserved. Otherwise, the acquittal of the accused is in order, thus:

In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court. Since compliance with this

- over -

95-B

²⁶ Emphasis supplied.

procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perform, overturn a conviction.²⁷

Here, the prosecution failed to discharge its burden of proving that justifiable grounds exist which warrant non-compliance with Section 21 of RA 9165, thereby putting into question the integrity and evidentiary value of the prohibited drugs seized from Balboa.

The records of the case also show that only Kagawad Randy Cruz (Kagawad Cruz) was present at the Pasig City Police Station Anti-Illegal Drugs Special Operations Task Group (SAID SOTG) office during the preparation of the inventory and the taking of the photographs. As testified to by PO2 Al Ryan R. Mangat (PO2 Mangat), *viz.*:

Q- After you marked the evidence, you went to your office?

A- Yes ma'am.

Q- And it was there that you prepared the inventory of seized evidence?

A- Yes ma'am.

Q- During that time, there was no representative from the media or from the DOJ?

A- Kagawad Randy Cruz was there when I prepared the inventory.

Q- Mr. witness, I asked if there was no representative from the media or from the DOJ?

A- Yes ma'am, only elected barangay official, ma'am.

Q- It was only after that you prepared the inventory that you asked Kagawad Randy Cruz to sign, is that correct?

A- Yes ma'am.

- over -

95-B

²⁷ *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 376; italics in the original, emphasis omitted.

Q- Did you take photograph?

A- Yes ma'am.

Q- Who took the photograph?

A- Our team leader PO3 Allan Caponga.

Q- During that time there was no representative from the DOJ and from the media, is that correct?

A- Yes ma'am.²⁸

Anent the other witnesses, the records reveal that the apprehending team made no attempt to summon a representative from the National Prosecution Service (NPS), and no reason was given for such failure. On the other hand, PO2 Mangat testified that their team leader tried to contact a representative from the media but the latter is not available.²⁹

This contravenes the two-witnesses rule under Section 21 of RA 9165. The presence of the insulating witnesses enumerated therein, *i.e.*, (1) an elected public official *and* (2) a representative of the NPS *or* media is required to "guarantee 'against planting of evidence and frame up,' *i.e.*, they are 'necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.'"³⁰

To justify non-compliance with the two-witnesses rule, the Court requires that earnest efforts or serious attempts be made to secure the attendance of said witnesses, *viz.*:

Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, 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

- over -

95-B

²⁸ TSN, September 7, 2016, p. 12.

²⁹ TSN, August 24, 2016, pp. 22-23.

³⁰ *People v. Señeres, Jr.*, G.R. No. 231008, November 5, 2018; citation omitted.

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 chain of custody rule.³¹

The apprehending team failed to offer justifiable grounds to excuse the foregoing procedural lapses.

Kagawad Cruz's representation that he will just proceed to the SAID SOTG office is not sufficient reason for the apprehending team to inventory and photograph the sachets of *shabu* at their office instead. Had they prepared to secure the attendance of the two insulating witnesses beforehand, they would have been able to comply not only with the requirement that the seized prohibited drug be inventoried and photographed immediately after, at the place of apprehension, but also with the two-witnesses rule.

To stress, the apprehension of Balboa was on the occasion of a buy-bust operation. Thus, the apprehending officers had sufficient time to prepare and ensure compliance with the requirements of Section 21 of RA 9165 prior to the execution of their entrapment operation. As testified to by PO2 Mangat and as stated in his *Sinumpaang Salaysay ng Pag-Aresto*,³² they received a tip regarding the sale of prohibited drugs from their confidential informant at around 11:00 in the evening of March 12, 2016, and executed the buy-bust operation at 2:30 in the morning of March 13, 2016. During the interim, the apprehending team was able to surveil the area for validation and prepare the necessary pre-operation documents.³³ In this intervening period, spanning about four and a half hours, the apprehending officers could have also exerted efforts to contact the required witnesses as part of their preparation for the buy-bust operation. Thus, they could have ensured compliance with Section 21 of RA 9165, and their efforts would not have been rendered naught.

The procedure outlined in Section 21, Article II of RA 9165 was put in place as safety precautions to address potential police abuses, especially considering that the penalty involved may be life imprisonment.³⁴ Thus, it cannot be simply brushed aside as a simple procedural technicality.³⁵ In view of the less stringent requirements on the number of witnesses following the amendment of RA 9165, the same should be complied with down to the letter.

- over -

95-B

³¹ *People v. Bangalan*, G.R. No. 232249, September 3, 2018; citations omitted.

³² Records, pp. 55-56.

³³ Id. at 55; TSN, September 7, 2016, pp. 2-3.

³⁴ *People v. Ancheta, et al.*, 687 Phil. 569, 577 (2012); citation omitted.

³⁵ Id. at 579; citation omitted.

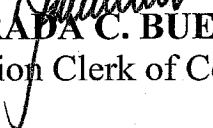
Considering that the handling and custody of the *corpus delicti* in this case are tainted with unjustified procedural lapses, compromising its integrity and evidentiary value, the acquittal of Balboa is in order.

WHEREFORE, in view of the foregoing, the Appeal is hereby **GRANTED**. The Decision dated March 23, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09171, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **ROLANDO BALBOA y VELA also known as REYNALDO TAN** is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED. *Inting, J., additional member per Special Order 2726 dated October 25, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court _{12/19}
95-B

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09171)

The Hon. Presiding Judge
Regional Trial Court, Branch 164
1600 Pasig City
(Crim. Case Nos. 21110-D & 21111-D)


PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Accused-Appellant
DOJ Agencies Building
Diliman, 1101 Quezon City

Mr. Rolando V. Balboa @ (x)
Reynaldo Tan
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court


95-B

UR

MBF