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THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
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NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **November 27, 2019**, which reads as follows:*

“G.R. No. 243983 (People of the Philippines v. Ivan Kristopher Selles y Loayon). –This is an ordinary appeal¹ filed by accused-appellant Ivan Kristopher Selles y Loayon (Selles) assailing the Decision² dated March 22, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07054. The CA affirmed the Decision³ dated September 10, 2014 of the Regional Trial Court of Caloocan City, Branch 120 (RTC) in Criminal Case No. 87323, the *fallo* of which states:

WHEREFORE, Premises considered, this Court finds and so holds accused **Ivan Kristopher Selles y Loayon GUILTY** beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00).

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

SO ORDERED.⁴

The Antecedents

Selles was charged with violation of Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in an Information that reads:

That on or about the 2nd day of December, 2011, in Caloocan City, Metro Manila and within the jurisdiction of

¹ Rollo, pp. 17-18.

² Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino, concurring; id. at 2-16.

³ Penned by Judge Aurelio R. Ralar, Jr.; CA rollo, pp. 46-56.

⁴ Id. at 56.

this Honorable Court, the above-named accused, without being authorized by law and without corresponding license or prescription therefor, did then and there willfully, unlawfully and feloniously sell and deliver to PO2 SHERWIN BOY WILLIAM BULARAN, who posed as buyer, One (1) heat-sealed transparent plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.14 gram, which when subjected for laboratory examination gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, and knowing the same to be such.⁵

According to the witnesses for the prosecution, a confidential informant went to the Station Anti-Illegal Drugs-Special Operation Task Group (SAID-SOTG) of the Philippine National Police in Caloocan City on December 2, 2011 to tell them that someone would be selling *shabu* at the Light Rail Transit (LRT) station in 5th Avenue, Caloocan City. Selles was later identified as the seller. Police Inspector Leoven Ong formed a team to conduct a buy-bust operation composed of Senior Police Officer 2 (SPO2) Arnel Victoriano, Police Officer 3 (PO3) Noel Gregorio, PO3 Remigio Valderama, Jr. (PO3 Valderama, Jr.), PO3 Ronald Allan Mateo, Police Officer 1 (PO1) Borban Paras, and Police Officer 2 (PO2) Sherwin Boy William Bularan (PO2 Bularan). PO2 Bularan was designated as the *poseur*-buyer and was given two ₱1,000.00 bills as buy-bust money. He placed his initials "SBWB" on its lower left portion. The team coordinated with the Philippine Drug Enforcement Agency (PDEA) for the conduct of the buy-bust operation.⁶

At around 2:00 p.m. of the same day, the buy-bust team went to the LRT station, where they met with the confidential informant. PO2 Bularan and the confidential informant waited for Selles at the stairway on the side of the Monumento-bound trains. When Selles arrived, he made eye contact with the confidential informant and approached him and PO2 Bularan. PO2 Bularan gave the buy-bust money to Selles who then gave one heat-sealed transparent plastic sachet containing white crystalline granules to the former. PO2 Bularan made the pre-arranged signal by throwing away his cigarette. Thus, his colleagues approached them.⁷ PO2 Bularan introduced himself to Selles and arrested him. PO2 Bularan recovered the buy-bust money and marked the plastic sachet "IK-S-L 12-2-2011." He also informed Selles of his constitutional rights.⁸ PO2 Bularan held custody over the buy-bust money and the plastic sachet.⁹

Thereafter, the buy-bust operation team went back to their office together with Selles. PO2 Bularan prepared a Chain of Custody Form and Inventory. He also took a photograph of Selles holding the seized items. PO2 Bularan turned over the buy-bust money and the plastic sachet to PO3

⁵ Records, p. 2; see *rollo*, p. 3.

⁶ *Rollo*, p. 4.

⁷ Id.

⁸ Id.

⁹ See Exhibit "J," Chain of Custody of Evidence Form, Records, pp. 16-17.

Valderama, Jr., desk officer of the SAID-SOTG, who also turned over the items over to PO1 Jerome Pascual (PO1 Pascual), investigator-on-case.¹⁰ PO1 Pascual stapled the buy-bust money to a bond paper and returned it to PO2 Bularan.¹¹ As for the plastic sachet, he placed it inside another plastic sachet and marked it "SAID-SOTG 12-2-11."

PO1 Pascual prepared a Request for Laboratory Examination.¹² He submitted it together with the plastic sachet to Police Senior Inspector Bernardo R. Roque (PSI Roque), forensic chemist of the National Headquarters of the Philippine National Police Crime Laboratory in Camp Crame, Quezon City.¹³ PSI Roque conducted a qualitative examination on the contents of the plastic sachet, yielding a positive result for methamphetamine hydrochloride. He also conducted a screening test on Selles' urine sample, which also tested positive for methamphetamine hydrochloride. PSI Roque stated in his findings in the Chemistry Reports.¹⁴

When arraigned, Selles pleaded not guilty.¹⁵ According to him, he was on his way to his brother to report for work when four persons approached him and asked about a certain "Ben." He told them that he did not know "Ben." Nonetheless, he was arrested and brought to a vehicle, where he was handcuffed and kicked repeatedly. Selles was taken to the Sangandaan police station where he was again hit inside the detention cell when he again denied knowing "Ben." PO2 Bularan threatened to charge him with violation of Section 5 of R.A. 9165. Selles claimed that no urine sample was taken from him. He did not file a complaint against the police for lack of financial capacity to do so.¹⁶

Ruling of the RTC

On September 10, 2014, the RTC rendered its Decision¹⁷ finding Selles guilty of the crime charged and sentencing him to a penalty of life imprisonment and ordering him to pay ₱500,000.00 as fine.¹⁸ *First*, the RTC held that all the elements of Section 5 were proven in this case.¹⁹ PO2 Bularan gave a detailed account of how Selles sold him *shabu*.²⁰ It was not proven that he and the other members of the buy-bust operation team had an improper motive or did not properly perform their duties. Hence, the RTC upheld the presumption of regularity in the performance of their official duties. As for Selles, his denial and alibi were not corroborated by clear and convincing evidence. It is, therefore, insufficient to prove his innocence. *Second*, the

¹⁰ Id.

¹¹ *Rollo*, p. 5.

¹² Id.

¹³ Exhibit "J," Chain of Custody of Evidence Form, Records, p. 17.

¹⁴ *Rollo*, p. 5.

¹⁵ Id. at 3.

¹⁶ Id. at 6.

¹⁷ *CA rollo*, pp. 46-56.

¹⁸ Id. at 56.

¹⁹ Id. at 51.

²⁰ Id. at 52.

identity of the prohibited drug recovered from Selles was proven with moral certainty.²¹ PO2 Bularan seized the evidence from Selles. He turned it over to PO1 Pascual, who also turned it over to PSI Roque. All the persons who took possession and custody of the seized items were presented in court.²² The conduct of the inventory at the police station, instead of at the place of arrest, did not affect the integrity and evidentiary value of the dangerous drug.²³ Selles appealed to the CA.

Ruling of the CA

The CA affirmed the RTC ruling in its March 22, 2017 Decision.²⁴ *First*, the CA concurred with the RTC that the prosecution was able to establish all the elements of Section 5. PO2 Bularan gave a clear account of how the buy-bust operation was conducted, and positively identified Selles in court as the one who sold him *shabu*. The result of the laboratory examination also confirmed that the plastic sachet given by Selles contained the dangerous drug.²⁵ *Second*, the chain of custody of the seized prohibited drug was not broken.²⁶ The testimonies of the prosecution's witnesses established how the evidence was handled from the time that PO2 Bularan seized it from Selles until PSI Roque brought it to the RTC.²⁷ The evidence presented showed that the conduct of the inventory and taking of the photograph at the police station did not compromise the integrity and evidentiary value of the evidence.²⁸ In addition, Selles did not contest the admissibility of the seized evidence when it was presented in court.²⁹

Selles appealed the ruling of the CA before this Court.

Issue

Whether it was proven beyond reasonable doubt that Selles violated Section 5, Article II of R.A. 9165.

Ruling of the Court

We grant the appeal.

The sachet containing *shabu* marked as Exhibit B-1³⁰ is the *corpus delicti* of the crime penalized under Section 5, Article II of R.A. 9165. As such, its identity and integrity must be established with moral certainty to prove the guilt of Selles beyond reasonable doubt. Accordingly, there must be

²¹ Id. at 53.
²² Id. at 55.
²³ Id. at 56.
²⁴ *Rollo*, pp. 2-16.
²⁵ Id. at 9.
²⁶ Id. at 11.
²⁷ Id. at 11-12.
²⁸ Id. at 14.
²⁹ Id. at 13.
³⁰ Records, p. 53.

strict observance of the chain of custody rule laid down in Section 21 of R.A. 9165,³¹ as amended by R.A. 10640,³² which took effect on July 23, 2014.³³ As We held in *People v. Miranda*,³⁴ “the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.”³⁵

The applicable law in this case is the original provision under R.A. 9165 because the incident took place on December 2, 2011. The pertinent portion of Section 21 provides:

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 drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x xx

The general rule is that the foregoing procedure must be strictly complied with. In *People v. Lim*,³⁶ citing *People v. Sipin*,³⁷ the Court *En Banc* held that the prosecution has the positive duty to demonstrate observance of the chain of custody rule under Section 21 “in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.”³⁸ Any procedural lapses must be explained, and the justifiable ground for non-compliance must be proven as a fact by the prosecution. If any of the required witnesses is absent, the

³¹ *Limbo v. People*, G.R. No. 238299, July 1, 2019; *People v. Aure*, G.R. No. 237809, January 14, 2019; and *People v. Misa*, G.R. No. 236838, October 1, 2018.

³² 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.”

³³ *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

³⁴ G.R. No. 229671, January 31, 2018, 854 SCRA 42.

³⁵ *Id.*

³⁶ G.R. No. 231989, September 4, 2018.

³⁷ G.R. No. 224290, June 11, 2018, 866 SCRA 73.

³⁸ *People v. Lim*, *supra* note 36.

prosecution must show that the apprehending officers exerted genuine and sufficient efforts to secure their presence.³⁹

PO2 Bularan and the rest of the buy-bust team failed to comply with Section 21 of R.A. 9165. None of the required witnesses, namely a representative from the media and the Department of Justice, and any elected public official, were present during the inventory and taking of photographs of the seized evidence. The prosecution did not explain their absence or even alleged that an attempt was made to secure their presence. Therefore, non-compliance with the requirement on witnesses is clearly inexcusable in this case.

In addition, the inventory and taking of the photograph was not done immediately at the place of arrest. Similar to the requirement on the presence of certain witnesses, the prosecution did not justify the need to deviate from the requirement under Section 21. Failure to conduct the inventory and to take photographs at the place of arrest is unacceptable without justifiable explanation.

All told, the identity and integrity of the drug specimen in this case were not established with moral certainty due to the unjustified non-observance of the procedure laid down in Section 21 of R.A. 9165. Accordingly, Selles must be acquitted.

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 22, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07054 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Ivan Kristopher Selles y Loayon is **ACQUITTED** of the crime charged against him, and is ordered to be immediately released, unless he is being lawfully held in custody for any other reason. The Director of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED." (Gesmundo, J., on official business; Lazaro-Javier, J., designated as Additional Member of the Third Division per Special Order No. 2728.)

Very truly yours,

Mis-DC Batt
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

gm
11/27/20

³⁹ *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548, 577.

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134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 120, 1400 Caloocan City
(Crim. Case No. 87323)

The Director
Bureau of Corrections
1770 Muntinlupa City

CSSupt. Gerardo F. Padilla
Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Ivan Kristopher L. Selles
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 243983

-versus-

IVAN KRISTOPHER SELLES y
LOAYON,
Accused-Appellant.

x-----/

ORDER OF RELEASE

TO: The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: CSSupt. Gerardo F. Padilla
Superintendent
New Bilibid Prison North
BUREAU OF CORRECTIONS
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on November 27, 2019 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

“WHEREFORE, the appeal is **GRANTED**. The Decision dated March 22, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07054 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Ivan Kristopher Selles y Loayon is **ACQUITTED** of the crime charged against him, and is ordered **M**

to be immediately released, unless he is being lawfully held in custody for any other reason. The Director of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED." (Gesmundo, J., on official business; Lazaro-Javier, J., designated as Additional Member of the Third Division per Special Order No. 2728.)

NOW, THEREFORE, You are hereby ordered to immediately release **IVAN KRISTOPHER SELLES y LOAYON** unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **27th** day of **November 2019**.

Very truly yours,

Mis DCBatt
MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

*gmd
11/27/20*

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