



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **24 August 2020** which reads as follows:*

“G.R. No. 248111 (People of the Philippines v. Darlyn Aviso y Diolata a.k.a. ‘Analyn’). – The Court **NOTES:** (a) the manifestation and motion (in lieu of supplemental brief) dated 7 February 2020 of the Office of the Solicitor General, praying that it be allowed to adopt the Brief for the Plaintiff-Appellee dated 10 November 2017 as its supplemental brief in this case; and (b) the manifestation (in lieu of supplemental brief) dated 3 March 2020 of counsel for accused-appellant, adopting the Appellant’s Brief dated 19 October 2017 as supplemental brief in this case.

Assailed in this ordinary appeal¹ is the Decision² dated June 7, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09469, which affirmed the Judgment³ dated May 8, 2017 of the Regional Trial Court of Taguig City, Branch 267 (RTC) in Crim. Case No. 17743-D-TG, finding accused-appellant Darlyn Aviso y Diolata a.k.a. ‘Analyn’ (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”.

The Facts

This case stemmed from an Information⁵ charging accused-appellant with the crime of Illegal Sale of Dangerous Drugs, as defined and penalized

¹ See Notice of Appeal dated June 29, 2018; *rollo*, 23-25.

² *Id.* at 3-22. Penned by Associate Justice Henri Jean Paul B. Inting (now a member of the Court) with Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser, concurring.

³ *CA rollo*, pp. 51-61. Penned by Judge Antonio M. Olivete.

⁴ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

⁵ Records, p 1.

under Section 5, Article II of RA 9165. The prosecution alleged that at around 1:00 o'clock in the afternoon of November 4, 2011, acting upon confidential information, the Station Anti-Illegal Drugs – Special Operations Task Group (SAID-SOTG) of Taguig Police Station successfully implemented a buy-bust operation at the Philippine National Railways (PNR) site, Western Bicutan, Taguig City targeting accused-appellant. During the operation, police officers were able to confiscate two (2) plastic sachets containing white crystalline substance from her. In the presence of accused-appellant, the arresting team, and media representative Peter Corpus (Corpus), the arresting officers marked and conducted an inventory of the seized items.⁶ Thereafter, accused-appellant was brought to the police station where photographs were taken. Subsequently, the seized items were forwarded to the crime laboratory for examination,⁷ where they tested positive for *methamphetamine hydrochloride*, or *shabu*, a dangerous drug.⁸

For her part, accused-appellant denied the charges against her. She claimed that on November 4, 2011, she was at her house cooking rice and attending to her baby when six (6) persons forcibly entered their house and searched it without a warrant. They then forced her to board a car and brought her to a police station where she learned that the men who forcibly entered her house were policemen. One of them fished from an attaché case a small plastic sachet, which she was asked to hold. A police officer then photographed her against her will. Since then, she was detained at the police station and was never given an opportunity to contact her relatives nor was she given a lawyer during the inquest proceedings.⁹

In a Judgment¹⁰ dated May 8, 2017, the RTC found accused-appellant **guilty** beyond reasonable doubt of the crime charged and accordingly, sentenced her to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.¹¹ The RTC ruled that the prosecution successfully established all the elements of the crime of Illegal Sale of Dangerous Drugs, and that the chain of custody rule had been complied with. It found that the absence of a duly elected public official and a representative from the Department of Justice (DOJ) during the inventory was not fatal to the prosecution given that the apprehending team tried to secure their attendance but efforts proved futile. Finally, it did not give credence to accused-appellant's defense of denial, the same being self-serving and unsupported by evidence.¹² Aggrieved, accused-appellant appealed¹³ to the CA.

⁶ See Inventory of Seized and/or Bought Property/ies, Item/s dated November 4, 2011; records, p. 13.

⁷ See Chemistry Report No. D-600-11S; records, p. 8.

⁸ See *rollo*, pp. 4-6. See also *CA rollo*, pp. 52-55.

⁹ See *rollo*, p. 6-7. See also *CA rollo*, p. 56.

¹⁰ *CA rollo*, pp. 51-61.

¹¹ *Id.* at 61.

¹² See *id.* at 57-61.

¹³ See Notice of Appeal dated May 9, 2017; *id.* at 10-11.

In a Decision¹⁴ dated June 7, 2018, the CA **affirmed *in toto*** the RTC ruling. It found no reason to disturb the factual findings of the trial court considering that all the essential elements of the illegal sale of *shabu* were proven, the integrity of the *corpus delicti* was duly preserved, and all links in the chain of custody were established. Anent the procedural lapses, it held that the police officers were able to provide justifiable reasons for their non-compliance.¹⁵

Hence, this appeal seeking that accused-appellant's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale of Dangerous Drugs under RA 9165,¹⁶ it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.¹⁷ Failing 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.¹⁸

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.¹⁹ As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.²⁰ The law further requires that said inventory and photography be

¹⁴ *Rollo*, pp. 3-22.

¹⁵ See *id.* at 10-21.

¹⁶ 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. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015].)

¹⁷ See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

¹⁸ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

¹⁹ See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380, 389; *People v. Crispo*, *supra* note 16; *People v. Sanchez*, *supra* note 16; *People v. Magsano*, *supra* note 16; *People v. Manansala*, *supra* note 16; *People v. Miranda*, *supra* note 16; and *People v. Mamangon*, *supra* note 16. See also *People v. Viterbo*, *supra* note 17.

²⁰ In this regard, case law recognizes that “[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.” (*People v. Mamalumpon*, 767

done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,²¹ a representative from the media **and** the DOJ, and any elected public official;²² or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service²³ **or** the media.²⁴ The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”²⁵

As a general rule, 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.²⁶ This is because “[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.”²⁷

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.²⁸ 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 and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.²⁹ The foregoing is based on the saving clause found

Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*, 618 Phil. 520, 532 [2009]) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumalak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015]).

²¹ Entitled “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.’” As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro Section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; World News Section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

²² Section 21 (1), Article II of RA 9165; emphasis and underscoring supplied.

²³ Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE AND THE OFFICES OF THE PROVINCIAL AND CITY FISCALS, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of RA 10071, entitled “AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE” otherwise known as the “PROSECUTION SERVICE ACT OF 2010” [lapsed into law on April 8, 2010].)

²⁴ Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

²⁵ See *People v. Miranda*, supra at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²⁶ See *People v. Miranda*, id at 60-61. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra at 1038.

²⁷ See *People v. Segundo*, 814 Phil. 697, 733 (2017), citing *People v. Umipang*, id.

²⁸ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

²⁹ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

in Section 21 (a),³⁰ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which has now been crystallized into the text of RA 10640.³¹ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³² 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.³³

Anent the witness requirement, 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.³⁴ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.³⁵ These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.³⁶

Notably, the Court, in *People v. Miranda*,³⁷ issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, x x x the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”³⁸

³⁰ Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.**” (Emphasis supplied)

³¹ Section 1 of RA 10640 pertinently states: “**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.**” (Emphasis supplied)

³² *People v. Almorfe*, supra note 29.

³³ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁴ See *People v. Manansala*, supra note 16, at 375.

³⁵ See *People v. Gamboa*, supra note 18, citing *People v. Umipang*, supra note 18, at 1053.

³⁶ See *People v. Crispo*, supra note 16, at 376-377.

³⁷ Supra note 16.

³⁸ See id. at 61.

In this case, there was a deviation from the witness requirement rule, as the conduct of the inventory and photography of the seized items was only witnessed by a media representative; there were no duly elected public official as well as a representative from the DOJ,³⁹ taking into account the date of the buy-bust operation on November 4, 2011 and the applicable law at that time. The procedural lapse may be easily gleaned from the Inventory of the Seized and/or Bought Property/ies, Item/s,⁴⁰ which only bears the signature of Corpus, the media representative. This is further confirmed by the testimony of PO3 Jowel Briones (PO3 Briones), to wit:

Testimony of PO3 Briones

[Prosecutor Vincent L. Villena]: Who else signed the inventory?

[PO3 Briones]: The media representative Peter Corpuz.

Q: So, you saw him affixing his signature thereon?

A: Yes, sir.

Q: **Why was it only Peter Corpuz who witnessed the Inventory as required under Section 21 of R.A. 9165?**

A: **Our team leader called the attention of the Barangay Official but no one came.**

Q: How long did you wait for the arrival of this Barangay officials that were contacted by your team leader?

A: Almost one (1) hour.

Q: Who else were contacted, if any, to witness the inventory?

A: Our team leader called the others who could witness the Inventory.

Q: **How about the DOJ, representative from the DOJ?**

A: **The time was already 7:00 P.M. No one from the DOJ responded to our call.**

³⁹ The arrest in this case happened prior to the enactment of RA 10640, and as such, the required witnesses are: (a) an elected public official, (b) a DOJ representative; and (c) a media representative.

⁴⁰ See Inventory of Seized and/or Bought Property/ies, Item/s dated November 4, 2011; records, p. 13.

x x x x⁴¹

Notably, while the failure of the apprehending team to strictly comply with the witness requirement rule would not *ipso facto* render the seizure and custody over the items as void, it is nevertheless incumbent upon the prosecution to account for such deviation by presenting a justifiable reason therefor or, at the very least, by showing that **genuine and sufficient efforts** were exerted by the apprehending officers to secure the presence of said witnesses. Here, records show that the prosecution failed to establish justifiable grounds for non-compliance, *viz*:

Testimony of PO1 Jerry Balbin

[Atty. Claudette Claudel]: So you were only told. You did not actually witness the call or the personal calling in the barangay hall?

[PO1 Jerry Balin]: When our team leader said that he will call the barangay, he called them through his cellphone.

Q: So he used his cellphone to call the barangay?

A: Yes, Ma'am.

Q: **Do you recall if your team leader was able to talk to anybody from the barangay?**

A: **He told us that nobody was answering from the barangay. After that, he did not wait any longer.**

Q: **So nobody answered?**

A: **Yes, Ma'am.**

Q: **How many times did your team leader called?**

A: **Three (3) times Ma'am and we also waited in the area.**

Q: **In those three (3) attempts by your team leader nobody answer the phone of the barangay?**

A: **None Ma'am.**

⁴¹ TSN, September 25, 2013, pp. 5-6; emphases supplied.

x x x x⁴²

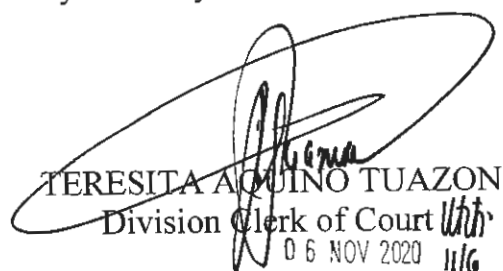
As stated earlier, **mere statements of unavailability, absent actual serious attempts to contact the required witnesses**, are unacceptable as justified grounds for non-compliance.⁴³ Moreover, the apparent non-availability of any barangay official did not preclude the arresting officers from contacting *other* elected public officers. Likewise, even if the Court were to accept as sufficient the attempts of the arresting officers to secure the presence of a barangay official, a similar failure on their part to find a DOJ representative and to provide an acceptable reason for the latter's absence will still militate against the prosecution. In view of the foregoing, the Court is constrained to rule that the integrity and evidentiary value of the items purportedly seized from accused-appellant had been compromised. Under such circumstances, accused-appellant's acquittal is performe in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 7, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09469 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Darlyn Aviso y Diolata Alias "Analyn" is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to: (a) cause accused-appellant's immediate release, unless she is being lawfully held in custody for any other reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

SO ORDERED. (Lazaro-Javier, *J.*, designated as Additional Member *vice* Inting, *J.*; Baltazar-Padilla, *J.*, on official leave.)"

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
06 NOV 2020 11/6

⁴² TSN, June 24, 2015, pp. 3-4; emphases supplied.

⁴³ See *People v. Gamboa*, supra note 16, citing *People v. Umipang*, supra note 18, at 1053.

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THE DIRECTOR (x)
Bureau of Corrections
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THE SUPERINTENDENT (x)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 267
1630 Taguig City
(Crim. Case No. 17743-D-TG)

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