



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 2, 2020 which reads as follows:*

**“G.R. No. 233690 (*People of the Philippines v. Mervin Mabait y Hibek and Raymond Ayroso y Hibek*).** - The blatant and complete disregard of the established procedures under Section 21 of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, without any justifiable grounds, trumps the presumption of regularity.

On appeal is the March 21, 2017 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07591 which affirmed the March 12, 2015 Judgment<sup>2</sup> of the Regional Trial Court (RTC), Branch 37, Calamba City, Laguna, in Criminal Case No. 16483-2009-C, finding accused-appellants Mervin Mabait y Hibek (hereinafter, Mabait) and Raymond Ayroso y Hibek (hereinafter, Ayroso) guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165.

In the Information filed on June 4, 2009, Mabait and Ayroso were charged with violation of Section 5, Article II of R.A. No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, committed as follows:

That on or about June 5, 2009, at Brgy. Uwisán, Calamba City, and within the jurisdiction of this Honorable Court, the

<sup>1</sup> *Rollo*, pp. 2-12. Penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles.

<sup>2</sup> Penned by Presiding Judge Caesar C. Buenagua; *CA rollo*, pp. 65-76.

A handwritten signature in black ink, located in the bottom right corner of the page.

above-named accused, conspiring, confederating and mutually helping with one another, without any authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur[-]buyer one (1) transparent plastic sachet containing Methamphetamine Hydrochloride, otherwise known as “Shabu”, a dangerous drug, having a weight of [0].01 gram, in violation of the aforementioned law.

CONTRARY TO LAW.<sup>3</sup>

Upon arraignment on July 8, 2009, Mabait and Ayroso pleaded not guilty<sup>4</sup> to the charges. Thereafter, trial ensued.

The prosecution presented the following four (4) witnesses: (1) Police Senior Inspector Rose Acero Merino (hereinafter, FC Merino); (2) Lalaine Ong-Rodrigo (hereinafter, FC Rodrigo); (3) Police Inspector Laurence Abowac (hereinafter, P/Insp. Abowac), the arresting officer; and (4) Police Inspector 1 Erdi Canlas (hereinafter, PO1 Canlas). The defense for its part presented both the accused Mabait and Ayroso.

### *Version of the Prosecution*

Acting on the information gathered from a confidential informant (CI), police operatives led by SPO3 Melvin Llanes (hereinafter, SPO3 Llanes) organized a buy-bust operation against Mabait and Ayroso.<sup>5</sup> Preparations included a pre-coordination with the Philippine Drug Enforcement Agency (PDEA) Region IV-A, a briefing about the operation and marking of the money in the amount of ₱300.00.<sup>6</sup> At around 3:30 p.m. on June 4, 2009, SPO3 Llanes, P/Insp. Abowac, PO3 Arnel Sanque and PO2 Jose Marie Peña went to *Barangay* Uwisán, Calamba City, where Mabait allegedly sold *shabu*.<sup>7</sup> P/Insp. Abowac approached the house of Mabait, pinpointed by their CI, and saw Ayroso standing at the side of the house.<sup>8</sup> The three (3) other police officers stood around 10 to 15 meters away from him.<sup>9</sup> Ayroso approached P/Insp. Abowac and asked him, “*gusto mong umiscore ng bato?*”<sup>10</sup> P/Insp. Abowac replied, “yes” and handed him

<sup>3</sup> Records, p. 1.

<sup>4</sup> *Id.* at 13-16.

<sup>5</sup> TSN, June 27, 2012, p. 5.

<sup>6</sup> *Id.* at 6-8.

<sup>7</sup> *Id.* at 5-7.

<sup>8</sup> TSN, May 30, 2014, p. 6.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> TSN, June 27, 2012, p. 7.

the marked money.<sup>11</sup> Ayroso then went inside the house and came back with Mabait who took the marked money from Ayroso.<sup>12</sup> Mabait pulled out a plastic sachet from his right pocket and gave it to P/Insp. Abowac.<sup>13</sup> Immediately, P/Insp. Abowac got hold of Mabait and signaled his companions to help arrest the two (2) men.<sup>14</sup>

Subsequently, at the place of arrest, the seized plastic sachet was marked in the presence of *barangay* officials and a representative from the media.<sup>15</sup> Said item was turned over to the Philippine National Police (PNP) Crime Laboratory for testing.<sup>16</sup> The results thereof, which were conducted and affirmed by PNP FC Rodrigo during trial, yielded positive for Methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>17</sup> Likewise, the urine drug tests of Mabait and Ayroso resulted positive for the presence of *shabu*, as affirmed by FC Merino during trial.<sup>18</sup>

### *Version of the Defense*

At around 4:00 p.m. on June 4, 2009, Ayroso was taking care of his two (2) nieces when police officers in civilian clothes approached him at the terrace of his house, looking for his cousin, Mabait.<sup>19</sup> When Ayroso responded that he did not know where Mabait was, the police officers arrested him.<sup>20</sup> Thereafter, the police officers went inside Mabait's house while he was taking care of his four children.<sup>21</sup> He was preparing milk for his youngest child when the police officers suddenly barged into his house, searched his person and handcuffed him.<sup>22</sup> Mabait asked the police officers why he was being arrested but said officers refused to answer.<sup>23</sup> The police officers dragged him out of the house and boarded him into a tricycle, together with Ayroso,

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<sup>11</sup> *Id.* at 7-8.

<sup>12</sup> *Id.* at 10.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> TSN, May 30, 2014, pp. 10-11.

<sup>16</sup> Request for Laboratory Examination dated June 4, 2009, records, p. 5.

<sup>17</sup> Chemistry Report No. D-176-09 dated June 5, 2009, records, p. 9; *see also* TSN, June 8, 2011, pp. 3-5.

<sup>18</sup> Chemistry Report No. CRIMDT-204-09 and CRIMDT-205-09 dated June 7, 2009, records, p. 8; *see also* TSN, February 2, 2011, pp. 2-3.

<sup>19</sup> TSN, February 25, 2015, pp. 3-4, 11.

<sup>20</sup> *Id.* at 4-5.

<sup>21</sup> TSN, November 6, 2014, pp. 3-4.

<sup>22</sup> *Id.* at 4-5.

<sup>23</sup> *Id.* at 5.

going to *Brgy. San Juan*.<sup>24</sup> Then, the police officers brought them to the detention cell at the Municipal Hall of Calamba.<sup>25</sup>

### ***RTC Ruling***

After trial, the RTC held that although there was no compliance with the requirements of Section 21 of R.A. No. 9165, the integrity and the evidentiary value of the seized specimens were preserved, and said lapse is not fatal to the prosecution's case nor by itself warrant an acquittal.<sup>26</sup> The RTC gave credence to the testimony of the police officers based on the presumption of regularity in the performance of their duties.<sup>27</sup> Thus, in view thereof, the RTC rendered a Decision<sup>28</sup> convicting Mabait and Ayroso of the crime charged, to wit:

**IN VIEW OF THE FOREGOING**, the Court finds the accused, **[MERVIN] MABAIT y HIBEK** and **RAYMOND AYROSO y HIBEK**, **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 5, Article II of Republic Act 9165[,] in relation to Section 26 of the same law. Both accused are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and **TO PAY A FINE OF FIVE HUNDRED THOUSAND (P500,000.00) PESOS**.

The Branch Clerk of Court is hereby ordered to turn over the illegal drug subject of this case to [the] PDEA for proper disposition and destruction.

**SO ORDERED.**<sup>29</sup>

### ***CA Ruling***

On appeal, the CA affirmed the RTC Decision.<sup>30</sup> The CA agreed with the findings of the trial court that the prosecution established all the elements of illegal sale of dangerous drugs.<sup>31</sup> It stated in its decision that non-compliance with the requirements of Section 21 of R.A. No. 9165 is not necessarily fatal to the

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<sup>24</sup> TSN, February 25, 2015, p. 6.

<sup>25</sup> *Id.* at 8.

<sup>26</sup> CA *rollo*, p. 73.

<sup>27</sup> *Id.* at 68.

<sup>28</sup> *Id.* at 65-76.

<sup>29</sup> *Id.* at 76.

<sup>30</sup> *Rollo*, pp. 2-12.

<sup>31</sup> *Id.* at 11.

prosecution's case.<sup>32</sup> The CA found that the prosecution's evidence sufficiently demonstrated the unbroken chain of custody of the seized *shabu* beginning from the time it was confiscated from the accused by P/Insp. Abowac up to the time it was presented before the RTC.<sup>33</sup> It found no cogent reason to deviate from the findings of the RTC.<sup>34</sup>

Before us, the People and the accused Ayroso manifested that that they would no longer file a Supplemental Brief, taking into account the extensive discussion of all the relevant matters and issues raised in their respective appeal briefs before the CA. On the other hand, Mabait submitted a supplemental brief adding further statements to support his argument of the prosecution's failure to establish the chain of custody, to wit: (a) the prosecution failed to show that there was physical inventory and photographing of the alleged contraband; and (b) no showing that there were representatives from the media or the Department of Justice, or any elected public official present during the inventory.

Essentially, both the accused maintain their innocence. In addition, they both claim that the chain of custody in the handling of the evidence was not established.

### ***Our Ruling***

We find the appeal meritorious. This Court rules in favor of Mabait and Ayroso, and thus acquit them based on reasonable doubt.

In order to secure a conviction for the illegal sale of prohibited drugs under Section 5, Article II of R.A. No. 9165, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>35</sup>

The State bears the burden of proving that the sale of illegal drugs was consummated, along with the proper presentation of the *corpus delicti* of the charge. What consummates said sale is the

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<sup>32</sup> *Id.* at 10.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 11.

<sup>35</sup> *People v. Juanita Goyenoche y Gepiga a.k.a. "Nita,"* G.R. No. 243985, September 3, 2020, citing *People v. Vicente Sipin y De Castro*, G.R. No. 224290, June 11, 2018.

delivery of the illicit drugs to the poseur-buyer and the receipt of the marked money by the accused.<sup>36</sup> Thus, the *corpus delicti* are the illicit drugs confiscated from the accused and the buy-bust money. The identity of the dangerous drug must be established beyond reasonable doubt.<sup>37</sup> Consequently, an unbroken chain of custody ensures that unnecessary doubts concerning the identity of the evidence are removed.<sup>38</sup>

This Court agrees with the appellee's argument that the factual findings of the trial court should not be disturbed absent glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions. However, the trial court's finding of credence to the testimony of the prosecution witnesses based on the presumption of regularity cannot be given deference considering the arresting officers' blatant and complete disregard of the established procedures under Section 21 of R.A. No. 9165.

Section 21(1) of R.A. No. 9165, as amended provides:

(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 person/s 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 non-compliance 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.

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<sup>36</sup> *People v. Joel Limson y Ferrer, et al.* G.R. No. 233533, June 30, 2020.

<sup>37</sup> *Jesus Edangalino y Dionisio v. People*, G.R. No. 235110, January 8, 2020.

<sup>38</sup> *People v. Marlon Bob Sanico a.k.a. "Marlon Bob,"* G.R. No. 240431, July 7, 2020, citing *People v. Ismael*, 806 Phil. 21, 29 (2017).

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

(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.

In this case, it is worthy to note that the quantity of the drugs seized has a weight of only 0.01 gram. It is an extremely small amount which is highly susceptible to planting, tampering or alteration. Thus, a strict compliance with Section 21 of R.A. No. 9165 must be required.

The records show that the arresting officers completely disregarded the above provisions. P/Insp. Abowac testified that no inventory was prepared, thus:

CROSS BY ATTY. LLARENA:

**Q: Could you again go over the records of this case and show to us if there was an inventory that was prepared?**

**A: There is none, ma'am.**

Q: So, there being no inventory, the presence of the representative from the DOJ, the media and the Barangay were not followed at all?

A: But members of the Barangay Official as well as the representative from the media were present, ma'am.

Q: But, you did not ask for this Barangay Official to sign whatever paper you have to prove that they are present at the time, correct?

A: Yes, ma'am.

Q: **Likewise, there was no photograph of the specimen which was taken, correct?**

A: **Yes, ma'am.**<sup>39</sup>

The records show that no grounds were given at all by the arresting officers on their non-compliance with the requirements of Section 21 of R.A. No. 9165. Even the appellee's brief is bereft of any grounds to excuse the lapses. It merely offered an arbitrary conclusion that despite the lapses, "there was absolutely no doubt that the very same illegal drugs seized from appellant during the buy-bust operation by P/Insp. Abowac were the same ones eventually presented during trial."<sup>40</sup> This Court is not satisfied with such reasoning. Hence, the saving clause under Section 21(a) of the IRR of R.A. No. 9165 cannot apply at all. Such non-compliance puts into question the integrity and evidentiary value of the dangerous drugs allegedly seized from the accused-appellants.

In addition, although P/Insp. Abowac testified that a pre-coordination was made with the PDEA, the absence of the pre-operation report casts a serious doubt on whether the alleged buy-bust operation actually transpired. If it were indeed a buy-bust operation and preparations were made as represented by the arresting officers, they would have carried an inventory sheet and a ready camera, and they would have checked the availability of the required witnesses.

Further, the arresting officers did not previously record the buy-bust money in the police blotter before the operation was undertaken. Neither did they present the original buy-bust money before the court. Lastly, P/Insp. claimed that there were four of them who were part of the buy-bust team, three of which served as back-up who positioned themselves at a seeing distance from the actual location of transaction. However, not one of them was presented in court to corroborate the testimony of P/Insp. Abowac. The other police officer, PO1 Canlas, who was presented in court, was not part of the buy-bust team and has

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<sup>39</sup> TSN, May 30, 2014, p. 11. (Emphases added)

<sup>40</sup> CA rollo, p. 153.



no personal knowledge of the incident.<sup>41</sup> He merely testified that he delivered the subject specimen to the crime laboratory for examination.<sup>42</sup> Likewise, FC Rodrigo and FC Merino have no personal knowledge of the incident and merely testified as to the examination results of the specimen delivered to them.<sup>43</sup>

The prosecution's blatant and complete disregard of the required procedures under Section 21 of R.A. No. 9165 failed to establish the unbroken chain of custody of the seized item from the accused; thus, tainting the integrity and evidentiary value of the drugs seized. Moreover, the occurrence of the alleged buy-bust operation is highly doubtful considering the factors mentioned above; thus, overcoming the presumption of regularity. Tilting the scales of justice towards the accused, this Court acquits Mabait and Ayroso based on reasonable doubt to restore the balance of the scales of justice.

**WHEREFORE**, premises considered, the March 21, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 07591, which affirmed the March 12, 2015 Judgment of the Regional Trial Court, Branch 37, Calamba City in Criminal Case No. 16483-2009-C, finding the accused-appellants Mervin Mabait y Hibek and Raymond Ayroso y Hibek, guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Mervin Mabait y Hibek and Raymond Ayroso y Hibek are **ACQUITTED** on reasonable doubt, and are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. Said Director is **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Resolution the action he/she has taken.

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<sup>41</sup> *Id.* at 176.

<sup>42</sup> *Id.*

<sup>43</sup> TSN, February 2, 2011, pp. 7-8; TSN, June 8, 2011, p. 4.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *lib*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**163-C**

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The Presiding Judge  
Regional Trial Court, Branch 37  
Calamba City, 4027 Laguna  
(Crim. Case No. 16483-2009-C)

Mr. Mervin Mabait y Hibek and  
Raymond Ayroso y Hibek (x)  
Accused-Appellants  
c/o The Director General  
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