



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **27 January 2020** which reads as follows:*

“**G.R. No. 245392 (People of the Philippines v. Roderick Bundalian y Capol)**. – Assailed in this ordinary appeal<sup>1</sup> is the Decision<sup>2</sup> dated September 18, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10035, which affirmed the JuPdgment<sup>3</sup> dated October 25, 2017 of the Regional Trial Court of Calamba City, Branch 37 (RTC) in Criminal Case Nos. 23869-2015-C and 23870-2015-C, finding accused-appellant Roderick Bundalian y Capol (accused-appellant) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

**The Facts**

This case stemmed from two (2) Informations<sup>5</sup> filed before the RTC charging accused-appellant with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around 11:45 in the morning of December 12, 2014, acting on an information received from a confidential informant, officers of the Bay Municipal Police Station successfully conducted a buy-bust operation against accused-appellant at a car repair shop near the entrance of Encarnacion Village in Barangay Maitim, Municipality of Bay, Province of Laguna, during which one (1) plastic sachet containing 0.15 gram of white crystalline substance was recovered from him. When accused-appellant was

<sup>1</sup> See Notice of Appeal dated October 9, 2018; *rollo*, pp. 19-20.

<sup>2</sup> *Id.* at 3-18. Penned by Associate Justice Ramon R. Garcia with Associate Justices Eduardo B. Peralta, Jr. and Geraldine C. Fiel-Macaraig, concurring.

<sup>3</sup> *CA rollo*, pp. 84-96. Penned by Presiding Judge Caesar C. Buenagua.

<sup>4</sup> 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.

<sup>5</sup> Criminal Case No. 23869-2015-C is for the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165 (records [Criminal Case No. 23869-2015-C], p. 1); while Criminal Case No. 23870-2015-C is for the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165; (records [Criminal Case No. 23870-2015-C], p. 1.0

searched upon arrest, police officers found six (6) more plastic sachets containing a total of 0.65 gram of the same substance inside a black card case in his possession. The police officers then marked, inventoried,<sup>6</sup> and photographed<sup>7</sup> the seized items in the presence of barangay *Kagawad* Marcelino Castro (Kgw. Castro) right at the place of arrest. Thereafter, the seized items were brought<sup>8</sup> to the Laguna Provincial Crime Laboratory where, after examination,<sup>9</sup> their contents tested positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug.<sup>10</sup>

In defense, accused-appellant denied the charges against him, claiming that, at the time of the alleged incident, he had just arrived in Barangay Maitim on board of a jeepney, and upon alighting, a man suddenly grabbed his back, pointed a gun at him, and forcibly brought him to the police station without just cause.<sup>11</sup>

In a Judgment<sup>12</sup> dated October 25, 2017, the RTC found accused-appellant **guilty** beyond reasonable doubt of the crimes charged, and accordingly, sentenced him to suffer the following penalties: (a) in Criminal Case No. 23869-2015-C, for the crime of Illegal Sale of Dangerous Drugs, the penalty of life imprisonment and a fine of ₱500,000.00; and (b) in Criminal Case No. 23870-2015-C, for the crime of Illegal Possession of Dangerous Drugs, the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of ₱300,000.00.<sup>13</sup> Giving credence to the testimonies of the prosecution witnesses, the RTC held that all the respective elements of the alleged crimes had been sufficiently established, and that the integrity and evidentiary value of the confiscated drugs had been properly preserved. Meanwhile, it found accused-appellant's defenses of denial and frame-up untenable for lack of evidence.<sup>14</sup>

Aggrieved, accused-appellant appealed<sup>15</sup> to the CA, arguing, among others, that he should be acquitted on account of the arresting officers' failure to strictly comply with the chain of custody rule, particularly because the inventory of the alleged drugs was not done in his presence, nor of that of a representative from either the Department of Justice (DOJ) or the media.<sup>16</sup>

In a Decision<sup>17</sup> dated September 18, 2018, the CA **affirmed** the conviction of accused-appellant.<sup>18</sup> Echoing the trial court's findings, it held that the prosecution was able to successfully prove that accused-appellant indeed sold a plastic sachet containing 0.15 gram of *shabu* to a poseur-buyer during a legitimate buy-bust operation, and as he was searched upon arrest, six (6) more plastic sachets containing a total of 0.65 gram of the same substance was recovered from him.<sup>19</sup> Further, it found that the alleged deviation from the chain of custody rule

<sup>6</sup> See Receipt/Inventory of Evidence Seized dated December 12, 2014; records (Criminal Case No. 23870-2015-C), p. 7.

<sup>7</sup> Id. at 13.

<sup>8</sup> See Request for Laboratory Examination dated December 12, 2014; id. at 11.

<sup>9</sup> See Chemistry Report No. LD-1206-14 dated December 13, 2014; id. at 14.

<sup>10</sup> See *rollo*, pp. 4-8. See also CA *rollo*, pp. 84-87.

<sup>11</sup> See *rollo*, pp. 8-9. See also CA *rollo*, p. 87.

<sup>12</sup> CA *rollo*, pp. 84-96.

<sup>13</sup> Id. at 96.

<sup>14</sup> See id. at 88-95.

<sup>15</sup> See Notice of Appeal dated November 14, 2017; records (Criminal Case No. 23870-2015-C), p. 127.

<sup>16</sup> See Brief of the Accused-Appellant dated May 30, 2018; CA *rollo*, pp. 34-82.

<sup>17</sup> Id. at 3-18.

<sup>18</sup> Id. at 17.

<sup>19</sup> See id. at 11-17.

was inconsequential, considering that the integrity and evidentiary value of the confiscated items had been properly established.

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

### The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup> 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. 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.”<sup>24</sup> 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.<sup>25</sup>

The law further requires that the said inventory and photography 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 certain required witnesses, namely: (a) if

<sup>20</sup> 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; while 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. (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].)

<sup>21</sup> 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).

<sup>22</sup> See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

<sup>23</sup> See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 20; *People v. Sanchez*, *supra* note 20; *People v. Magsano*, *supra* note 20; *People v. Manansala*, *supra* note 20; *People v. Miranda*, *supra* note 20; and *People v. Mamangon*, *supra* note 20. See also *People v. Viterbo*, *supra* note 21.

<sup>24</sup> *People v. Mamalumpon*, 767 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).

<sup>25</sup> See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

prior to the amendment of RA 9165 by RA 10640,<sup>26</sup> “a representative from the media and the DOJ, and any elected public official”;<sup>27</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, “an elected public official and a representative of the National Prosecution Service (NPS) or the media.”<sup>28</sup> 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.”<sup>29</sup>

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.”<sup>30</sup> 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.”<sup>31</sup>

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>32</sup> 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.<sup>33</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>34</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>35</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,<sup>36</sup> 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.<sup>37</sup>

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient

<sup>26</sup> 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.

<sup>27</sup> Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

<sup>28</sup> Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

<sup>29</sup> See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, supra note 20. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

<sup>30</sup> See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 22, at 1038.

<sup>31</sup> See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

<sup>32</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>33</sup> See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>34</sup> 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)

<sup>35</sup> 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)

<sup>36</sup> *People v. Almorfe*, supra note 33.

<sup>37</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

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.<sup>38</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>39</sup> 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.<sup>40</sup>

Notably, the Court, in *People v. Miranda*,<sup>41</sup> 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, 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.”<sup>42</sup>

In this case, there was a deviation from the chain of custody procedure as the prosecution failed to establish that the conduct of inventory of the seized items was witnessed by accused-appellant or his representative/counsel, as well as by a representative from either the NPS or the media. Indeed, as held by the CA,<sup>43</sup> and as shown by the records, the conduct of inventory was only witnessed by an elected public official, *i.e.* Kgw. Castro. This may be easily gleaned from the Receipt/Inventory of Evidence Seized,<sup>44</sup> which visibly contains only the signatures of the poseur-buyer, Police Officer 1 Raymond Geminiano (PO1 Geminiano) and Kgw. Castro. Such finding is also supported by the testimony of PO1 Geminiano, where he failed to mention whether accused-appellant, the latter’s representative/counsel, or representatives from the NPS or the media were present when the inventory of the alleged drugs was accomplished, and merely stated that the same was “prepared together with the Chairman,” who presumably was Kgw. Castro, to wit:

### Direct Examination

[Prosecutor Ricardo Wagan, Jr.]: From the place of arrest, where did you go next because according to you, you did not accompany PO Medalla and PO Arriescado in bringing the accused to the hospital, where did you go next?

<sup>38</sup> See *People v. Manansala*, supra note 20, at 375.

<sup>39</sup> See *People v. Gamboa*, supra note 22, citing *People v. Umipang*, supra note 20, at 1053.

<sup>40</sup> See *People v. Crispo*, supra note 20, at 376-377.

<sup>41</sup> Supra note 20.

<sup>42</sup> See *id.*

<sup>43</sup> *Rollo*, pp. 7-8 and 15.

<sup>44</sup> Records (Criminal Case No. 23870-2015-C), p. 7.

[PO1 Geminiano]: After the **inventory was prepared together with the Chairman**, we proceeded to the police station.<sup>45</sup> (emphasis supplied)

As earlier stated, for the saving clause in Section 21, Article II of RA 9165 to apply, it is incumbent upon the prosecution to justify non-compliance with the chain of custody procedure by presenting an acceptable reason based on proven facts. Here, records show that the prosecution **did not acknowledge**, much less justify, the arresting officers' failure to conduct the inventory of the seized items in the presence of accused-appellant or his representative/counsel, as well as a representative from either the NPS or the media. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellant were compromised, which consequently warrants his acquittal.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated September 18, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 10035 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Roderick Bundalian y Capol is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to: (a) cause accused-appellant's immediate release, unless he 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.** (Reyes, A., Jr. and Hernando, JJ., on official leave.)"

Very truly yours,

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court

12 AUG 2020

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c/o The Director  
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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 37  
Calamba City, Laguna  
(Crim. Case Nos. 23869-2015-C &  
23870-2015-C)

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