



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 2, 2020** which reads as follows:*

“G.R. No. 240439 (*People of the Philippines v. Sahaboden Colalo y Mamle and Asral Cabugatan y Mansungayad*)

Antecedents

Accused-appellants Sahaboden Colalo y Mamle and Asral Cabugatan y Mansungayad were charged with violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002, *viz*:

That on or about the 18th day of December 2013 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court the abovenamed accused, conspiring together and mutually helping one another, without being authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 ISAGANI DELA CRUZ, who posed as buyer, METHAMPHETAMINE HYDROCHLORIDE (*Shabu*) weighing 0.60 grams, knowing the same to be such, with Sahaboden Colalo y Mamle @ Baloloy receiving the buy bust money from said PO1 Isagani dela Cruz, immediately turned over the same to accused Asral Cabugatan y Mansungayad who handed to PO1 Isagani dela Cruz subject plastic sachet and from whom the buy bust money was recovered.

CONTRARY TO LAW.¹

On arraignment, appellants pleaded not guilty.²

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¹ *Rollo*, p. 3.

² *Id.*

Prosecution's Version

On December 18, 2013, around 1 o'clock in the afternoon, a regular confidential informant arrived at the Office of the District Anti-Illegal Drug-Special Operation Task Group, Northern Police District (DAID-SOTG, NPD). He relayed to Police Officer 1 Isagani dela Cruz (PO1 dela Cruz) that he met alias Baloloy, later identified as Colalo, who was engaged in illegal drug-selling activities in Kawal, Maypajo, Caloocan City and looking for a buyer of *shabu*. PO1 dela Cruz relayed the information to Police Superintendent Bartolome Arnate, who, in turn, instructed Police Inspector Edsel Ibasco to lead a team that would conduct a buy-bust operation against Colalo.³

Around 3:00 in the afternoon, the buy-bust team conducted a briefing. PO1 dela Cruz was designated as the buyer and given the buy-bust money which he marked. PO3 Ferdinand Modina (PO3 Modina), on the other hand, was tasked to act as the back-up of PO1 dela Cruz. Thereafter, the buy-bust team proceeded to the target area.⁴

There, the buy-bust team parked their vehicles in a secluded place. PO1 dela Cruz and the informant proceeded to the location of appellants. When Colalo saw PO1 dela Cruz and the informant, he immediately approached. The informant introduced PO1 dela Cruz to Colalo and told the latter "*Pare, biyahero.*" Colalo asked PO1 dela Cruz how much he was buying. PO1 dela Cruz responded "₱1,500." Colalo then took the money from PO1 dela Cruz and handed the same to Cabugatan. Colalo took a pink coin purse from Cabugatan and gave it to PO1 dela Cruz, saying "*Pare, nasa loob niyan ang paninda.*" PO1 dela Cruz opened the purse and saw a small plastic sachet containing white crystalline substance believed to be *shabu*. PO1 dela Cruz kept it inside his pocket and then took off his cap as a signal that the sale was already consummated.⁵

PO1 dela Cruz introduced himself to Colalo as a police officer and arrested him. Meanwhile, PO3 Modina arrested Cabugatan. PO1 dela Cruz asked Cabugatan to take out the buy-bust money. She handed the same to PO1 dela Cruz. PO1 dela Cruz and PO3 Modina then informed appellants of their violation and constitutional rights. PO1 dela Cruz marked the pink coin purse and the plastic sachet and then placed both items in a brown envelope.⁶

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³ *Id.* at 3-4.

⁴ *Id.* at 4.

⁵ *Id.* at 5.

⁶ *Id.* at 5-6.

Appellants were brought to the Office of the DAID-SOTG, NPD. Thereat, PO1 dela Cruz immediately turned over the confiscated items to Senior PO1 Fidel Cabinta (SPO1 Cabinta), the investigator. Subsequently, an inventory of the confiscated items was conducted in the presence of Colalo, Cabugatan, and Ka Maeng, a media representative. SPO1 Cabinta prepared a Letter-Request for Laboratory Examination of the evidence submitted to him and a Letter-Request for Drug Test of appellants. Thereafter, SPO1 Cabinta brought the confiscated items and appellants to the Northern Police District Crime Laboratory Office, Valenzuela City Satellite Office Crime Laboratory for laboratory examination.⁷

Police Chief Inspector Lourdeliza G. Cejes, the forensic chemist, received the request for laboratory examination and the items listed therein. She examined the marked plastic sachet which tested positive for Methamphetamine Hydrochloride, otherwise known as *shabu*, a dangerous drug. She then prepared Chemistry Report No. D-545-13 and signed the Chain of Custody Form.⁸

Defense's Version

Appellants denied the charges. According to Colalo, on December 6, 2013, around 9:30 in the evening, he was at the house of his friend, Abdul Kim, located on Pajo, Caloocan City. While waiting for Kim, two (2) persons arrived and introduced themselves as Allan Llantino and Isagani dela Cruz. They asked him if he was alias Baloloy. He answered no. Thereafter, Llantino and dela Cruz asked him to come along with them, assuring him that they would explain everything at their headquarters. Accordingly, he was brought to the Office of DAID-SOTG, NPD where he met Cabugatan for the first time. There, he was detained and his mobile phone was taken from him. Llantino asked him to produce ₱100,000 in exchange for his freedom. When he told Llantino that he did not have the money, the latter told him that a case would be filed against him. Cabugatan, for her part, claimed that, on December 6, 2013, she was at a house located on Kalaw Street, Caloocan City to borrow money from her friend, Jamalia. While waiting for Jamalia, armed men in civilian clothes arrived, grabbed her, and handcuffed her. The armed men told her to come along with them in a vehicle. While in the vehicle, the armed men asked ₱30,000 from her in exchange for her liberty. When she failed to give the same, she was detained in a police station. During the inquest proceedings, she met Colalo for the first time.⁹

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⁷ *Id.* at 6.

⁸ *Id.* at 6-7.

⁹ *Id.* at 7-8.

Trial Court's Ruling

By Decision dated November 8, 2016, the RTC found appellants guilty of violation of Section 5 in relation to Section 26, Article II of RA 9165.¹⁰ It held that although the inventory was not conducted in the presence of a representative of the National Prosecution Service and an elected public official, the integrity and evidentiary value of the seized dangerous drug were well-preserved.¹¹

Court of Appeals' Proceedings

In their appeal, appellants contended that the procedure laid down in Section 21, Article II of RA 9165 and its Implementing Rules and Regulations (IRR) was not complied with. The inventory of the purported illegal drug seized from them was conducted without the presence of a representative of the Department of Justice and an elected public official. Hence, the seizure of the illegal drug was invalid.¹²

For its part, the Office of the Solicitor General (OSG) maintained that the integrity and evidentiary value of the seized illegal drug from appellants were duly safeguarded.¹³

Court of Appeals' Ruling

Under assailed Decision dated January 16, 2018, the Court of Appeals affirmed.¹⁴

The Present Petition

Appellants now seek affirmative relief from the Court and pray anew for their acquittal. In compliance with Resolution dated August 29, 2018 of the Court, the OSG¹⁵ and appellants¹⁶ manifested that in lieu of supplemental briefs, they were adopting their respective briefs submitted before the Court of Appeals.

Issue

Did appellants violate Section 5 in relation to Section 26, Article II of RA 9165?

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¹⁰ *Id.* at 8.

¹¹ *CA rollo*, p. 47.

¹² *Rollo*, p. 9.

¹³ *CA rollo*, p. 73

¹⁴ *Rollo*, p. 19.

¹⁵ *Id.* at 30-31.

¹⁶ *Id.* at 37-38.

Ruling

The appeal is meritorious.

Section 21, Article II of RA 9165 lays down the procedure in handling dangerous drugs starting from their seizure until they are finally presented as evidence in court. This makes up the **chain of custody rule**.¹⁷

Paragraph 1, Section 21, Article II of RA 9165 reads:

Section 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;** (Emphasis supplied)

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This provision is related to Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165:

(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

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¹⁷ *People v. Frias*, G.R. No. 234686, June 10, 2019.

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.** (Emphasis supplied)

On July 15, 2014, RA 10640 was approved, amending Paragraph 1, Section 21, Article II of RA 9165 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 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 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.

Hence, under the present law, the conduct of physical inventory and photographing of the seized items must be done in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.¹⁸

Here, it is undisputed that the inventory of the alleged dangerous drug seized from appellants was not done in the presence of an elected public official.

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¹⁸ *People of the Philippines v. Charles Rosales y Permejo*, G.R. No. 233656, October 2, 2019. (Emphasis supplied)

To be sure, it is the prosecution which has the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21, Article II of RA 9165, as amended. It has the positive duty to establish observance thereto in such a way that, during the trial court proceedings, it must acknowledge and justify any perceived anomalies from the requirements of the law. Evidently, the prosecution's failure to follow the required procedure must be sufficiently explained and proven as a fact, in accordance with the rules on evidence. It is required from the apprehending officers not only to mention a justified ground but also to clearly state such ground in their sword affidavit, together with a statement regarding the steps they took to preserve the integrity of the seized items. A stricter adherence to the requirements laid down by Section 21, Article II of RA 9165, as amended, is necessary where the quantity of the dangerous drug seized is miniscule, since it is highly susceptible to planting, tampering, or alteration.¹⁹

Here, the prosecution utterly failed not only to acknowledge but also to offer an acceptable excuse for its deviation from the prescribed procedure. This is undeniably a serious breach of the chain of custody rule which warrants a verdict of acquittal.²⁰

In *People v. Seguinte*,²¹ the Court acquitted the accused because the prosecution's evidence was totally bereft of any showing that a representative from the DOJ was present during the inventory and photographing. The Court keenly noted that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegation of frame up.

The Court likewise acquitted the accused in *People v. Rojas*²² because the presence of representatives from the DOJ and the media was not obtained despite the buy-bust operation against the accused being supposedly preplanned. The prosecution, too, did not acknowledge, let alone, explain such deficiency.

The Court did the same in the recent case of *People of the Philippines v. Charles Rosales y Permejo*.²³ There, the prosecution

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¹⁹ *Id.*

²⁰ *Id.*

²¹ G.R. No. 218253, June 20, 2018.

²² G.R. No. 222563, July 23, 2018.

²³ G.R. No. 233656, October 2, 2019.

failed to give a justifiable explanation as to why the marking, inventory, and photographing of the seized dangerous drugs were not made in the presence of a representative from the media and the DOJ.

So must it be.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated January 16, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08926 is **REVERSED** and **SET ASIDE**.

Accused-appellants **SAHABODEN COLALO Y MAMLE** and **ASRAL CABUGATAN Y MANSUNGAYAD** are **ACQUITTED** of violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City: (a) to cause the immediate release of Sahaboden Colalo y Mamle and Asral Cabugatan y Mansungayad from custody unless they are being held for some other lawful cause; and (b) to inform the Court of the action taken within five (5) days from notice.

Let entry of judgment immediately issue.

SO ORDERED.” *Peralta, C.J., on official business;*
Caguioa, J., Acting Chairperson.

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

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The Solicitor General
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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 08926)

The Hon. Presiding Judge
Regional Trial Court, Branch 120
1400 Caloocan City
(Crim. Case No. C-91239)

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