



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 19, 2020 which reads as follows:

“G.R. No. 235559 (*People of the Philippines v. Reynaldo Ramos y Barredo*). - This is an appeal from the Court of Appeals (CA) Decision,¹ promulgated on July 31, 2017, denying accused-appellant Reynaldo B. Ramos’ appeal and affirming the Joint Decision² dated March 16, 2016 of the Regional Trial Court (RTC), Branch 64, Tarlac City, convicting accused-appellant of violation of Section 5, Article II of Republic Act (R.A.) No. 9165.³

The facts follow.

On February 27, 2013, the Gerona Police Station received an information from a police asset that accused-appellant was engaged in the sale of illegal drugs in *Barangay Magaspac*, Gerona, Tarlac. Led by Police Superintendent Ponciano Pastrana Zafra, a pre-operational briefing was conducted and a buy-bust team was formed where Police Officer 2 (PO2) Mike Lester M. Bustillos was assigned as the poseur-buyer. The team prepared a five-hundred-peso bill which was marked for use in the operation. In preparation for the buy-bust operation, coordination was made with the Philippine Drug Enforcement Agency.⁴

It was arranged that the asset would facilitate the transaction to buy shabu from accused-appellant, but it would be PO2 Bustillos who would pick up and pay for the shabu. In accord with the arrangement,

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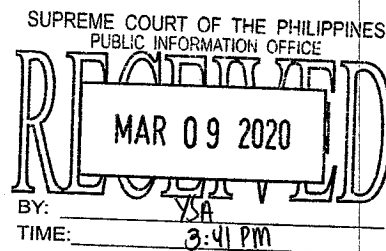
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¹ *Rollo*, pp. 2-13; penned by Associate Justice Mario V. Lopez (now a member of this Court), and concurred in by Associate Justice Remedios A. Salazar-Fernando and Associate Justice Zenaida T. Galapate-Laguilles.

² *CA rollo*, pp. 49-62; penned by Presiding Judge Lily C. De Vera-Vallo.

³ Comprehensive Dangerous Drugs Act of 2002.

⁴ *Rollo*, p. 4.



the asset, through a cellular phone, called accused-appellant, and it was settled that accused-appellant would meet with PO2 Bustillos to deliver the shabu. PO2 Bustillos proceeded to the target area in *Barangay Magaspac, Gerona, Tarlac*, where accused-appellant was already waiting. Thereafter, PO2 Bustillos passed the marked money to accused-appellant who, in exchange, handed the sachet containing the alleged shabu. The transaction having been consummated, PO2 Bustillos executed the pre-arranged signal by wearing his cap. He then introduced himself as a police officer and arrested accused-appellant, while the other members of the team rushed to the area. Initial search was made where the team recovered the marked money and a cell phone from accused-appellant, and an ice pick from the ceiling of the sidecar of his tricycle.⁵ Thereafter, the inventory, markings, and taking of photographs were conducted in the place of operation in the presence of accused-appellant and three witnesses from the *barangay*.⁶

After the inventory, PO2 Bustillos, together with the Duty Investigator, brought accused-appellant and the seized item for examination to the Tarlac Provincial Crime Laboratory Office. A Request for Laboratory Examination was prepared, and it was received by Police Senior Inspector Angelito Angel. The urine of accused-appellant and the seized item both tested positive for the presence of methamphetamine hydrochloride,⁷ as evidenced by Chemistry Report Nos. CDT-054-13 TARLAC⁸ and D-043-13 TARLAC.⁹

Thus, two Informations were filed against accused-appellant for violation of Section 5, Article II of R.A. No. 9165 and COMELEC Resolution No. 9561-A that read as follows:

Criminal Case No. 2098-2013

The undersigned Assistant Provincial Prosecutor, upon his inquest investigation, accuses REYNALDO RAMOS y Barredo, a resident of Brgy. Magaspac, Gerona, Tarlac[,] but presently detained at Gerona, Tarlac, of the crime of Violation of Section 5, Article II of R.A. 9165, committed as follows:

That on or about February 27, 2013, at around 5:05 o'clock (*sic*) in the afternoon, in the Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable

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⁵ *Id.*

⁶ *Id.* at 5.

⁷ *Id.*

⁸ Records, p. 7.

⁹ *Id.* at 8.

Court, the above-named accused did then and there willfully, unlawfully and criminally, without being authorized by law[,] sell, trade and deliver one (1) small piece heat-sealed transparent plastic sachet of Methamphetamine Hydrochloride, known as Shabu, a dangerous drug, weighing 0.021 gram.

CONTRARY TO LAW.

Criminal Case No. 2099-2013

That on or about February 27, 2013 at around 5:05 o'clock (*sic*) in the afternoon, in the Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously has in his possession and control of deadly weapon 12 inches (*sic*) ice pick without authority to possess or permit to carry or transport from the COMELEC.

CONTRARY TO LAW.¹⁰

Accused-appellant used denial as a defense. He claimed that on February 27, 2013, while waiting for passengers, a white private car stopped in front of his tricycle. Thereafter, four police officers, who were all wearing civilian clothes, alighted from the car and handcuffed him. When he asked why he was being arrested, they answered that it was because they bought drugs from him.¹¹

The RTC of Tarlac City, Branch 64, acquitted him of violation of COMELEC Resolution No. 9561, but convicted him of illegal sale of dangerous drugs and sentenced him,¹² thus:

WHEREFORE, in view of the foregoing, this Court finds the accused REYNALDO RAMOS Y Barredo GUILTY beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs (Section 5, ART. II of R.A. 9165) and hereby sentences him to suffer the penalty of life imprisonment. Likewise, he is ordered to pay a fine of P500,000.00.

Anent, the crime of Violation of Comelec Resolution No. 9561, this Court hereby ACQUITS the accused.

The Branch Clerk of Court is hereby directed to immediately transmit to the PDEA the dangerous drug for proper disposal.

SO ORDERED.¹³

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¹⁰ *Id.*
¹¹ *Id.* at 5.
¹² *CA rollo*, pp. 49-62.
¹³ *Rollo*, p. 62.

The RTC ruled that all the elements of the sale were duly proven by the prosecution, holding that although the initial transaction for the sale of shabu was made between the asset and accused-appellant, the sale however was consummated between accused-appellant and PO2 Bustillos.¹⁴ It also held that the crucial links in the chain of custody were sufficiently established.¹⁵ Further, the trial court ruled that accused-appellant's defense of denial cannot be accepted when there is no clear and convincing evidence, and in the absence of ill motive on the part of the buy-bust team which would affect the credibility of the testimonies of the prosecution witnesses.¹⁶

On July 31, 2017, the CA promulgated its assailed Decision which affirmed the decision of the RTC. However, it held that the illegal sale was not duly established by the prosecution because the designated poseur-buyer did not personally transact with accused-appellant. The appellate court noted that it was the asset who negotiated the alleged sale with accused-appellant. Since the prosecution failed to present the asset in court to testify, the testimony of PO2 Bustillos regarding the sale of shabu was merely hearsay. Nonetheless, the CA held that as per the Information, accused-appellant was charged not only for the sale of shabu, but also for the delivery of dangerous drugs which is punishable under the same Section 5, Article II of R.A. No. 9165. Thus, the CA ruled that although accused-appellant cannot be convicted of illegal sale of dangerous drugs, accused-appellant can be convicted of the crime of delivery of dangerous drugs because he appeared at the agreed place to receive the marked money and to deliver the shabu to PO2 Bustillos. Since accused-appellant had no authority to deliver the shabu to PO2 Bustillos, accused-appellant is guilty of illegal delivery of dangerous drugs. Moreover, the CA ruled that the prosecution indubitably showed an unbroken chain of custody of the seized shabu.

Hence, the present appeal with the lone issue of whether the CA erred in convicting accused-appellant for violation of Section 5, Article II of R.A. No. 9165. According to accused-appellant, the prosecution failed to establish all the elements of sale of illegal drugs. He also claims that the team should have first secured a warrant of arrest, considering that there was a prior test-buy which confirmed suspicion that accused-appellant was selling illegal drugs.

OUR RULING

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¹⁴ CA rollo, p. 57.

¹⁵ *Id.* at 60.

¹⁶ *Id.* at 61.

There is merit in the appeal.

At the outset, it must be noted that the appeal opens the entire record for review, thus, enabling the Court to determine whether the findings against accused-appellant should be sustained or struck down in his favor.¹⁷ The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.¹⁸

In cases involving illegal drugs, the identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to remove any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime.¹⁹ The rule is essential since narcotic substances are not readily identifiable, hence prone to tampering, alteration or substitution either by accident or otherwise.²⁰ With the rule on chain of custody, it can be ensured that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit.²¹

To guarantee an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 provides the procedural safeguards to be followed in the seizure, custody and disposition of the confiscated drugs:

(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[.]

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

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¹⁷ *People of the Philippines v. Nasrollah Macaumbang, et al.*, G.R. No. 208836, April 1, 2019.

¹⁸ *People of the Philippines v. Raul Manansala*, G.R. No. 229092, February 21, 2018.

¹⁹ *People of the Philippines v. Joy Jigger P. Bayang, et al.*, G.R. No. 234038, March 13, 2019.

²⁰ *People of the Philippines v. Roberto Andrada*, G.R. No. 232299, June 20, 2018.

²¹ *The People of the Philippines v. Almaser Jordan*, G.R. No. 234773, June 3, 2019.

(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[.]

On July 15, 2014, R.A. No. 10640 was approved, which amended R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, and requires only two (2) witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; and (b) either a representative from the National Prosecution Service or the media,²² viz.:

(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.

Accused-appellant committed the crime charged in 2013, hence the original provision of Section 21 of R.A. No. 9165 and its IRR

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²² *People of the Philippines v. Roben D. Duran*, G.R. No. 233251, March 13, 2019.

apply in this case. Under the old provision, the apprehending team is required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of (a) accused-appellant or his counsel or representative; (b) a representative from the media; (c) a representative from the Department of Justice (DOJ); and (d) any elected public official, all of whom shall be required to sign copies of the inventory and be given a copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame-up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."²³

An examination of the records shows that although *barangay* officials were present during the inventory, it was readily admitted that the inventory was not witnessed by a media representative and a representative from the DOJ, thus:

Q: Were you able to call this time the representatives from the media?

A: Yes, sir, but the contact number that we had with the media is no longer active that was why they were not able to come.

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Q: But in this case, you were able to contact them?

A: They were not able to come but we tried contacting them, ma'am.

Q: How about DOJ representatives, Mr. Witness, did they arrive?

A: No, also, sir.

Q: It seems that in all your operations, you do not have DOJ representatives and media representatives, Mr. Witness, do you have proof to show that you tried to contact the same?

A: None, sir.²⁴

As gleaned above, PO2 Vic O. Perez justified the absence of a representative from the media by stating that the contact number that they had was already inactive. On the other hand, a review of the transcript of stenographic notes readily shows that no explanation, whatsoever, was provided as to the absence of a representative from the DOJ. In his testimony, PO2 Perez only confirmed that no representative from the DOJ arrived at the place of seizure, and

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²³ *The People of the Philippines v. Almaser Jodan*, *supra* note 21.

²⁴ TSN, November 11, 2014, pp. 7-8.

admitted that they had no proof to show that they tried to contact the same. Also, no evidence was presented that would show that the team tried to secure the presence of another person to substitute.

It is imperative for the prosecution to show the courts that the non-compliance with the procedural safeguards provided under Section 21 of R.A. No. 9165 was not consciously done because the procedure is a matter of substantive law. Thus, it cannot be brushed aside as a simple procedural technicality or ignored as an impediment to the conviction of illegal drug suspects.²⁵ Also, it must be stressed that the presence of the required witnesses at the time of the apprehension and inventory is mandatory because their presence serves an essential purpose — to prevent or insulate against the planting of drugs.²⁶ Nonetheless, the Court has recognized that non-compliance with Section 21 of R.A. No. 9165 is not fatal to the prosecution's case provided that (1) the prosecution recognized the procedural lapses and, thereafter, presented a justifiable ground for non-compliance; and (2) the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.²⁷

Here, the prosecution failed to allege and prove any of the reasons and instances when the absence of the required witnesses may be justified, as enumerated in *People of the Philippines v. Lulu Battung*,²⁸ to wit: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

The prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate

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²⁵ *People of the Philippines v. Joy Jigger P. Bayang, et al.*, *supra* note 19.

²⁶ *People of the Philippines v. Garry Briones*, G.R. No. 239077, March 20, 2019.

²⁷ *People of the Philippines v. Roberto Andrada*, *supra* note 20.

²⁸ G.R. No. 230717, June 20, 2018.

observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules further require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.²⁹ Moreover, a stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.³⁰

For the failure of the prosecution to establish an unbroken chain of custody of the drugs seized from appellant, and to prove as a fact any justifiable reason for non-compliance with Section 21 of R.A. No. 9165, the identity of the seized items has not been established beyond reasonable doubt. Accordingly, accused-appellant must be acquitted of the crime charged.

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 31, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08334 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Reynaldo Barredo Ramos is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections 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.

SO ORDERED.” *Lopez, J., no part; Leonen, J., Additional Member per Raffle dated January 29, 2020.*

Very truly yours,


LIBRADA C. BUENA

Division Clerk of Court *slr*

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²⁹ *People of the Philippines v. Emmanuel Oliva, et al.*, G.R. No. 234156, January 7, 2019.

³⁰ *People of the Philippines v. Ansari Sarip*, G.R. No. 231917, July 8, 2019.