



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **September 8, 2020** which reads as follows:*

“G.R. No. 233103 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus RODOLFO CABRAL Y SANTOS, alias “Rudy”, accused-appellant.

Assailed in this ordinary appeal¹ is the Decision² dated March 30, 2016 of the Court of Appeals, Special Third Division (CA), in CA-G.R. CR.-H.C. No. 05571, which affirmed the Decision³ dated April 18, 2012 of the Regional Trial Court of Valenzuela City, Branch 172 (RTC) in Criminal Case No. 85-V-09, which found accused-appellant Rodolfo Cabral y Santos, alias “Rudy” (accused-appellant) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”.

The Facts

An Information docketed as Criminal Case No. 85-V-09 was filed against accused-appellant and his brother and co-accused Ronnie Cabral y Santos, alias “Ronnie” in this case, the accusatory portion of which reads:

“That on or about October 9, 2008, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and actually helping one another, without any authority of law, did then and there wilfully, unlawfully and feloniously sell to PO1 LESTER AGUADO, who

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¹ Notice of Appeal dated May 3, 2016; *rollo*, p. 17.

² *Rollo*, pp. 2-16. Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Francisco P. Acosta and Renato C. Francisco.

³ *CA rollo*, pp. 11-21. Penned by Judge Nancy Rivas-Palmones.

posed as poseur buyer of zero point zero two gram (0.02) found to be Methylamphetamine Hydrochloride (Shabu), knowing the same to be a dangerous drug.

“Contrary to law.[”]⁴

By virtue of an order of arrest issued by the RTC,⁵ accused-appellant was apprehended on February 26, 2009, while his co-accused remained at-large. During arraignment, accused-appellant pleaded not guilty.⁶

Evidence of the Prosecution

During trial, the prosecution presented the testimonies of P/Insp. Dexter Perez (P/Insp. Perez), PO2 Dexter Antonio V. Aguado (PO2 Aguado), and SPO2 Ronald C. Sanchez (SPO2 Sanchez).

The totality of the prosecution’s evidence alleged that on October 8, 2008, the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) of the Valenzuela Police Station received a call from a concerned citizen of Dulong Tangke, Malinta, Valenzuela, who complained about a certain alias Rudy who was allegedly selling *shabu*.⁷ The team verified and validated said information, and found that accused-appellant was previously apprehended for the same offense. The SAID-SOTG thereafter constituted a 10-member buy-bust team with PO2 Aguado as the poseur-buyer, conducted surveillance, and coordinated with the Philippine Drug Enforcement Agency (PDEA).⁸ The following day, after the PDEA’s confirmation, the buy-bust team proceeded to the target place where, upon arrival, the confidential informant (CI) accompanied PO2 Aguado to where accused-appellant and his brother were allegedly engaging in illegal drug sale. When accused-appellant and his brother approached PO2 Aguado and asked how much the latter would purchase, PO2 Aguado told them that he intended to purchase “*limang piso*”, which in street register meant ₱500.00 worth of *shabu*,⁹ in exchange for which, accused-appellant gave PO2 Aguado one heat-sealed sachet.

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⁴ Id. at 1. Emphasis omitted.

⁵ Id. at 41-42.

⁶ Id. at 12.

⁷ Id. at 14.

⁸ Id. at 12.

⁹ Id. at 13.

After the purchase was consummated, PO2 Aguado gave the pre-arranged signal and the back-up police officers arrived at the scene. However, accused-appellant and his brother managed to escape and evade arrest, supposedly with the help of their mother, Isabel Cabral (Isabel), who blocked the arresting team's path.¹⁰ The team then proceeded to Barangay Malinta to conduct the marking, inventory, and photographing of the seized item,¹¹ as witnessed by barangay investigator Benjamin Buñe and barangay Kagawad Jeffrey Abriera. The team added that although they tried to get in touch with a Department of Justice (DOJ) representative and a media representative, neither was available.¹²

When the confiscated item weighing 0.02 gram was submitted to the Northern Police District Crime Laboratory for examination, the seized item tested positive for Methylamphetamine Hydrochloride or *shabu*.¹³

Evidence of the Defense

In his defense, accused-appellant testified on his behalf, and presented as well the testimonies of his wife, Evelyn Cabral (Evelyn), and his sister, Rosalina Cabral (Rosalina).¹⁴ Accused-appellant countered that on October 9, 2008, at around 5:00 to 6:00 in the afternoon, he was with Evelyn in their house at 485 Dulong Tangke, Malinta, Valenzuela, when he heard noise coming from his mother's house located about two meters from theirs. He overheard people looking for him and his brother Ronnie, and he was about to go out when Evelyn stopped him for fear that he might get involved in trouble. Instead, Evelyn went out to see what the commotion was about, and returned and warned her husband to stay inside as the noise was caused by police officers who were looking for him.¹⁵

Accused-appellant further recalled that in April of the same year, he figured in an earlier case of arrest based on a false charge, where police officer named PO1 Cristobal, Fe and their companions pinpointed him to have been involved in the illegal drug sale, and thereafter attempted to extort a substantial amount of money from him in order for the charges against him to be dropped. Accused-appellant, however, refused to give in to the extortion and posted bail instead,

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¹⁰ Id. at 14.

¹¹ Id. The team was unable to recover the marked money as the same was in the possession of accused-appellant who evaded arrest.

¹² Id. at 14.

¹³ Id.

¹⁴ Id. at 15.

¹⁵ Id.

but failed to file a complaint against PO1 Cristobal and Fe. Accused-appellant submitted that PO2 Aguado and SPO2 Sanchez belonged to the same group as PO1 Cristobal, and he suspected that the former two have framed him up to get back at him.¹⁶

Evelyn, for her part, corroborated her husband's testimony and added that after the incident, her sister-in-law Rosalina accompanied her mother-in-law Isabel to go to the Barangay Hall to report the incident.¹⁷

Finally, Rosalina testified in her brother's defense by corroborating the testimonies of accused-appellant and Evelyn, additionally alleging that at the time of the incident, she and her nephews and nieces were in her mother's house when she noticed two persons peeping through the door, and later on inquired if accused-appellant was around. After replying that she did not know where her brother was, three more police officers arrived and forced their way into her mother's house. When she asked if the police officers had a warrant of arrest to show for their intrusion, the latter could not present any. Rosalina shouted and called the attention of neighbors who came to their house, which prompted the police to leave.¹⁸

Ruling of the RTC

After trial on the merits, the RTC convicted accused-appellant in its Decision dated April 18, 2012, with the dispositive portion reading thus:

WHEREFORE, judgment is hereby rendered finding accused[-appellant] RODOLFO CABRAL y SANTOS alias Rudy guilty beyond reasonable doubt of a violation of Section 5, Article II of R.A. 9165 and hereby sentenced him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00).

The Acting Branch Clerk of Court is directed to forward the specimen in this case to the Philippine Drug Enforcement Agency for proper disposition.

Let an alias warrant of arrest be issued against accused Ronnie Cabral y Santos @ Ronnie.

SO ORDERED.¹⁹

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¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 15-16.

¹⁹ Id. at 21.

In finding accused-appellant guilty, the RTC found that all the elements of illegal sale of dangerous drugs were proven beyond reasonable doubt. It gave full faith and credence to PO2 Aguado's testimony and positive identification of accused-appellant as the one who sold him *shabu*.²⁰ The RTC likewise upheld the presumption of regularity in the performance of the official duties of the arresting officers.²¹ It ruled that with the absence of proof of ill motive on the part of the police officers to falsely impute such a serious crime against accused-appellant, the latter failed to present evidence to sufficiently oust such presumption of regularity in favor of the arresting team.²²

Aggrieved, accused-appellant filed an appeal to the CA.

Ruling of the CA

In the assailed Decision dated March 30, 2016, the CA was unpersuaded by accused-appellant's contentions, and held instead that the prosecution successfully established its case with moral certainty.²³ It affirmed that the commission of the crime as charged occurred the moment PO2 Aguado received the illegal drug from accused-appellant and his brother, and held that as long as a police officer or civilian asset went through the operation as a buyer, whose offer was accepted by the seller, followed by the delivery of the dangerous drug to the former, the crime of illegal sale of dangerous drugs was consummated.²⁴

The CA likewise dismissed as unmeritorious accused-appellant's assertions of fatal inconsistencies in the testimonies of the prosecution's witnesses, ruling them out instead as those that pertained to peripheral matters which do not bear upon the establishment of the elements of the crime.²⁵ It also found accused-appellant's imputation of prior extortion against the arresting team incredible, weak, self-serving and easily fabricated.²⁶ It held that since accused-appellant failed to adduce proof to support his denial and averment of a frame-up, and instead only relied on the irregularities in the buy-bust operation, the presumption of regular performance of official duties held for the arresting team prevailed.²⁷ Finally, it observed that the alleged non-compliance with Section 21 of R.A.

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²⁰ Id. at 16-17.

²¹ Id. at 20.

²² Id. at 20-21.

²³ Supra note 2.

²⁴ Id. at 10.

²⁵ Id. at 11.

²⁶ Id at 12-13.

²⁷ Id.

9165, particularly with respect to the absence of representatives from the media and the DOJ during the inventory, was not fatal to the prosecution's burden of proof, since the integrity and evidentiary value of the seized item were nevertheless preserved.²⁸

Hence, the instant appeal.

Issue

The sole issue for the Court's resolution is whether the lower courts erred in convicting accused-appellant for violating Section 5, Article II of R.A. 9165.

The Court's Ruling

The appeal is meritorious.

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II, R.A. 9165, the following must first be shown: (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. In the prosecution of crimes involving illegal drugs, the State bears not only the burden of proving the elements of the crime, but also that the *corpus delicti*, the dangerous drug itself, is the same object which was seized from the accused, tested positive for dangerous drug and thereafter presented in court.²⁹ In order to discharge this burden, it is imperative that the prosecution prove an unbroken chain of custody of the seized item.³⁰ This is in view of the notoriety of anti-narcotics operations, with the facility with which illegal drugs may be planted, switched or otherwise adulterated.³¹

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²⁸ Id. at 14.

²⁹ *People v. Quijano*, G.R. No. 247558, February 19, 2020.

³⁰ Id.

³¹ *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

Pursuant to this end, Section 21,³² Article II of R.A. 9165, as amended by R.A. 10640,³³ provides for the procedure that police operatives are required to observe in order to assure the integrity of the confiscated drugs. Known as the Chain of Custody Rule, said provision requires that: (1) the seized items must be inventoried and photographed at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. Notably, all three insulating witnesses are required in this case since the commission of the crime as alleged was in 2008, or prior to the amendment of R.A. 9165 by R.A. 10640.

The indispensable insulating presence of key witnesses was aptly elaborated on in *People v. Tomawis*.³⁴

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the

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³² The said section reads as follows:

Sec. 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;

x x x x

³³ 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’,” approved on July 15, 2014.

³⁴ G.R. No. 228890, April 18, 2018, 862 SCRA 131.

seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.³⁵

In the present case, during the marking, inventory, and photographing of the item seized from accused-appellant, there were no representatives from the media and the DOJ, as the same was only witnessed by a barangay elected official.³⁶

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³⁵ Id. at 149-150.

³⁶ CA rollo, p. 18. SPO2 Aguado narrated in open court the absence of the two insulating witnesses, thus:

FISCAL STA. CRUZ:

x x x x

Q After your colleagues failed to arrest Rudy and Ronnie, what did your team do next?

A After that we went to Barangay Malinta to have the inventory and the certificate that the buy bust was made and we presented one of the local officials and the [*shabu*] that we have bought, sir.

Q And that is Barangay Hall of?

A Malinta, sir.

Q Do you have a copy of that inventory that you mentioned?

A Yes, sir.

Q If you see this copy, will you be able to recognize it?

A Yes, sir.

Q I am showing to you this inventory of the seized evidence/items which is marked as Exhibit L. Will you please tell us whether this is the inventory which your team brought in the Barangay Hall of Malinta?

A Yes, sir.

Q And there appear to be several signatures at the bottom part of this document, whose signatures are these?

A As I could recall, one is my signature, here, sir. (Pointing to his signature).

Q And whose signatures are these?

A **Those are the signatures of the arresting officer, SPO1 Ronald Sanchez, sir, the barangay investigator and the staff of Barangay Malinta.**

Q **Why do you know that these are the signatures of SPO1 Sanchez, the barangay investigator and barangay staff?**

A **All of these three (3) persons were inside the barangay hall and they signed in front of me, sir.**

x x x x

Q What else did you do at the barangay hall of Malinta?

A During the inventory we took photographs so as to prove that there was an inventory made at the barangay hall, sir.

Q What photographs did you take on the place?

A Signing of the inventory and the barangay investigator on the case, sir. (Emphasis supplied)

To be sure, the failure to obtain the presence of all three insulating witnesses does not automatically render the seizure of the item void, but the prosecution must satisfactorily prove that such non-compliance was fully justified. As the Court has stressed in *People v. Sipin*:³⁷

The prosecution bears the burden of proving a valid cause for noncompliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of 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. It should take note that the rules 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 items. Strict 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 of evidence.³⁸

Furthermore, the Court relatedly held in *People v. Umipang*,³⁹ that in justifying any departure from the requirement of insulating witnesses, the prosecution must be able to prove that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.

In *People v. Lim*,⁴⁰ the Court outlined the proper manner by which the prosecution may justify the absence of the three witnesses at the time of the physical inventory and photographing, to wit:

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

- (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**

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³⁷ G.R. No. 224290, June 11, 2018, 866 SCRA 73.

³⁸ Id. at 98-99.

³⁹ G.R. No. 190321, April 25, 2012, 671 SCRA 324.

⁴⁰ G.R. No. 231989, September 4, 2018.

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[d] 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.⁴¹

In this case, the prosecution failed to show that the arresting officers exerted genuine and sufficient effort to secure the required witnesses. It also betrays that the buy-bust team did not prepare or bring with them any of the required witnesses at or near the place of the buy-bust operation, and that the witnesses were a mere afterthought. Additionally illustrative of such lack of the effort required under the rules is the fact that during PO2 Aguado's testimony in open court, he admitted that they tried to contact both the DOJ and media representatives, but the duty guard whom they were able to speak to on the phone said neither was available.⁴² This call, decidedly perfunctory, is far from the earnest effort contemplated by Section 21. Certainly, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance.

In *People v. Reyes*,⁴³ this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

x x x It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: (1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, with the same reason, failed to find an available

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⁴¹ Id. Emphasis in the original, citation omitted.

⁴² CA *rollo*, p. 20. SPO2 Aguado admitted during direct examination thus:

FISCAL STA. CRUZ:

Q I noticed that there was no signature of the representative of the DOJ and media, could you tell us why?

A We tried to contact the representative from DOJ during that time, however, according to the duty guard in our Justice Hall there was no available representative from DOJ, sir. (Emphasis supplied)

⁴³ G.R. No. 219953, April 23, 2018, 862 SCRA 352.

representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.⁴⁴

Demonstrably, the prosecution here failed to offer and substantiate any of the above justifiable reasons for its failure to comply with Section 21 of R.A. 9165, and consequently compromised the integrity and evidentiary value of the seized item in question beyond excuse. The Court therefore finds that accused-appellant's acquittal of the crime charged is in order.

Lastly, the Court further finds the lower courts' reliance on the presumption of regularity in the performance of official duty mistaken, in the face of two important lapses that are clearly illustrative of irregularity. The Court reminds that judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.⁴⁵ It bears repeating that in drugs cases, this presumption arises only when there is a showing that the apprehending officer/buy-bust team followed the requirements of Section 21, or when the saving clause may be properly applied.⁴⁶ The invocation of the presumption of regularity was not designed to cure unjustified lapses in the apprehension and seizure pursuant to drug operations. Instead, this presumption holds only until proof to the contrary is shown, as in this case, and may not overcome the stronger presumption of innocence in favor of accused-appellant.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated March 30, 2016 of the Court of Appeals Special Third Division, in CA-G.R. CR.-H.C. No. 05571 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Rodolfo Cabral y Santos alias "Rudy" is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate

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⁴⁴ Id. at 367-368.


⁴⁵ *Edangalino v. People*, G.R. No. 235110, January 8, 2020.

⁴⁶ *Supra* note 37.

implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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The Hon. Presiding Judge
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