



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 12, 2021** which reads as follows:*

“G.R. No. 205880 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee, v. ROBIN ABALLARI y BAUTISTA, accused-appellant). – Assailed in this ordinary appeal is the Decision¹ dated May 23, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04531, which affirmed the Decision² dated April 30, 2010 of the Regional Trial Court of Binangonan, Rizal, Branch 67 (RTC) in Criminal Case Nos. 08-714 and 08-715 finding Robin Aballari y Bautista (accused-appellant) guilty beyond reasonable doubt for violating Section 5, Article II of Republic Act (R.A.) No. 9165.

The Facts

This case stemmed from two Informations filed before the RTC, charging accused-appellant with violation of Sections 5 and 11 of R.A. No. 9165, the accusatory portion of each of the Information reads:

Criminal Case No. 08-714
[Violation of Sec. 5, Art. II, R.A. No. 9165]

X X X X

That on or about the 2nd day of October 2008, in the Municipality of Angono, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and knowingly sell and give away to a poseur-buyer, PO1 Nathaniel Lopena, 0.18 gram of white crystalline substance,

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¹ *Rollo*, pp. 2-18; penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring.

² *CA rollo*, pp. 12-14; penned by Judge Dennis Patrick Z. Perez.

contained in a heat-sealed transparent plastic, which substance was found positive to the test for Methylamphetamine hydrochloride also known as “shabu”, a dangerous drug, in consideration of the amount of Php200.00, in violation of the above-cited law.

Contrary to law.

Criminal Case No. 08-715
(Viol. of Sec. 11, Art. II, R.A. 9165)

That on or about the 2nd day of October 2008, in the Municipality of Angono, Province of Rizal, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, without being authorized by law did then and there willfully, unlawfully, and knowingly have in his possession, custody and control 0.22 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methylamphetamine hydrochloric also known as “shabu” a dangerous drug in violation of the above-cited law.

Contrary to law.³

Version of the Prosecution

The prosecution presented the following witnesses: (1) Police Officer 1 Nathaniel Lopeña (PO1 Lopeña), who acted as the poseur-buyer; and (2) Police Inspector Beaune Villaraza (PI Villaraza), the forensic chemist.⁴ PO2 Mario Natividad (PO2 Natividad), the arresting officer failed to testify despite the repeated service of summons by the RTC.⁵

According to the prosecution, in the morning of October 2, 2008, a confidential informant relayed to the Chief of Police of Angono, Rizal that the accused-appellant was engaged in illegal drug pushing activities in the vicinity of Savemore Supermarket at the town proper of Angono, Rizal. Accordingly, a team was formed to conduct a buy-bust operation, composed of PO1 Lopeña, acting as poseur-buyer, and Senior Police Officer 2 Diosdado Ambrosio (SPO2 Ambrosio) and PO2 Natividad, as back-up.⁶ Later in the afternoon, the buy-bust team proceeded to the target area in front of Jollibee, Angono, Rizal. The poseur-buyer, PO1 Lopeña and informant approached accused-appellant and told him that they wanted to buy *shabu* and handed accused-appellant two pieces of ₱100.00 bills.

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³ *Rollo*, pp. 3-4.

⁴ *CA rollo*, pp. 12-13.

⁵ *Id.* at 14.

⁶ *Rollo*, p. 6.

Thereafter, accused-appellant turned his back on them and handed over a sachet of *shabu* (0.18 gram) to PO1 Lopeña. PO1 Lopeña then made the signal for the arresting team to come over.⁷

PO2 Natividad arrested accused-appellant and frisked him which resulted in the recovery of one plastic sachet of suspected *shabu* (0.22 gram) and the marked money. The two plastic sachets of suspected *shabu* were surrendered to their investigator SPO1 Ian Albert Voluntad (SPO1 Voluntad), who placed the markings “RAB-1” and “RAB-2”. These two sachets of suspected *shabu*, together with the letter request for laboratory examination were later forwarded to PI Villaraza, forensic chemist officer of the Rizal PPO Chemistry Section for chemical analysis.⁸

The Chemistry Report No. D-343-08 prepared by PI Villaraza revealed that the contents of the two seized sachets yielded positive results for Methylamphetamine Hydrochloride, commonly known as “*shabu*”, a dangerous drug.⁹

Version of the Defense

The defense presented accused-appellant as its sole witness, who denied the allegations of the prosecution and averred that he was in fact allegedly arrested on October 1 and not October 2, 2008 and that the charges against him are allegedly fabricated.

According to accused-appellant, around 11 to 12 o'clock in the morning of October 1, 2008, while he was inside the Mercury Drug Store buying milk, three male persons approached and forcibly brought him to the Angono Police Station.¹⁰ At the police station, accused-appellant was forced to admit that the plastic sheets containing prohibited drugs was his. Accused-appellant likewise claimed that PO1 Natividad demanded ₱20,000.00 in exchange for his release, however accused-appellant refused to accede to such demand, claiming innocence. The police officers detained accused-appellant and placed a plastic bag over his head. It was only during the inquest proceedings that accused-appellant learned that he was being charged with violating R.A. No. 9165.¹¹

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⁷ Id. at 6-7.

⁸ Id. at 7.

⁹ Id.

¹⁰ Id. at 7-8.

¹¹ Id. at 8.

The Ruling of the RTC

In a Decision¹² dated April 30, 2010, the RTC found accused-appellant guilty beyond reasonable doubt of illegal sale of *shabu* in violation of Section 5, Article II of R.A. No. 9165, *viz.*:

In light of the above, we find accused Robin Aballari **GUILTY** beyond reasonable doubt of violating Section 5, Article II, R.A. No. 9165 and sentence him to suffer a penalty of life imprisonment and to pay a fine of P500,000.00. But we find him **NOT GUILTY** of violating Section 11, Article II, R.A. No. 9165 because of reasonable doubt.

Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.

SO ORDERED.¹³

Aggrieved, accused-appellant appealed the RTC's Decision and elevated his conviction before the CA.¹⁴

The Ruling of the CA

In a Decision¹⁵ dated May 23, 2012, the CA affirmed the RTC's Decision, likewise finding that all the elements of both charges were present:

WHEREFORE, premises considered, the Decision dated April 30, 2010 of the Regional Trial Court of Binangonan, Rizal, Fourth Judicial Region, Branch 67 is AFFIRMED IN TOTO, in that appellant ROBIN ABALLARI y BAUTISTA is guilty beyond reasonable doubt of Violation of Section 5, Article II, RA 9165 and sentenced to suffer the penalty of life imprisonment and to pay a fine of Php500,000.00.

No costs.

SO ORDERED.¹⁶

The appellate court concluded that the trial court correctly convicted accused-appellant as the prosecution was able to sufficiently prove the essential elements of illegal sale of dangerous

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¹² CA rollo, pp. 12-14.

¹³ Id. at 14.

¹⁴ Id. at 15.

¹⁵ Rollo, pp. 3-18.

¹⁶ Id. at 17.

drugs.¹⁷ Also, the CA was convinced that the prosecution had properly established the unbroken chain of custody resulting in the preservation of the integrity and evidentiary value of the seized items.¹⁸

Thereafter, accused-appellant filed his Notice of Appeal.¹⁹ On March 11, 2013, the CA elevated to this Court the records of this case,²⁰ pursuant to its Resolution dated July 12, 2012²¹ which gave due course to the Notice of Appeal.

In the Resolution²² dated April 10, 2013, this Court noted the records of the case forwarded by the CA and the parties were then ordered to file their respective supplemental briefs, should they so desire, within thirty days from notice.

On July 2, 2013, accused-appellant filed a Manifestation²³ dated July 2, 2013 stating that he would no longer file a supplemental brief. A similar Manifestation²⁴ dated July 1, 2013 was made by the Office of the Solicitor General on behalf of the People of the Philippines.

It is accused-appellant's contention that his guilt had not been proven beyond reasonable doubt because the prosecution: (1) failed to establish the identity of the prohibited drugs allegedly seized from him and; (2) likewise failed to comply with the strict requirements of Section 21 of R.A. No. 9165.

Our Ruling

After an exhaustive examination of the records, this Court finds the appeal to be meritorious and rules that the trial and appellate court misapprehended material facts in this case.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (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.²⁵ On the one hand, the essential elements of illegal possession of dangerous drugs under Section 11

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¹⁷ Id. at 9.

¹⁸ Id. at 14-17.

¹⁹ Id. at 19-20.

²⁰ Id. at p. 1.

²¹ Id. at 22.

²² Id. at 24.

²³ Id. at 26-29.

²⁴ Id. at 30-32.

²⁵ *People v. Ismael*, 806 Phil. 21, 29 (2017).

are as follows: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.²⁶

In cases involving illegal possession of dangerous drugs, conviction cannot be sustained if doubt persists on the identity of said drugs, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the dangerous drug illegally possessed and sold, is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.²⁷ Accordingly, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, 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 drugs are seized up to their presentation in court as evidence of the crime.²⁸

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court until destruction.²⁹

In this regard, Section 21, Article II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crime, established certain procedural safeguards which the police officers must strictly follow to preserve and ensure the identity and integrity of the substance seized:

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:

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²⁶ *People v. Minanga*, 751 Phil. 240, 248 (2015).

²⁷ *People v. Del Mundo*, 818 Phil. 575, 585 (2017), citing *People v. Gayoso*, 808 Phil. 19, 30 (2017).

²⁸ *People v. Viterbo*, 739 Phil. 593, 601 (2014).

²⁹ *Ramos v. People*, 826 Phil. 663, 675 (2018).

(1) The apprehending team having initial custody and control of the drug 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.

Under the said section, prior to its amendment by R.A. No. 10640,³⁰ the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, and in addition, in the presence of the following: (1) a representative from the media; (2) a representative from the Department of Justice (DOJ); and (3) any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.³¹

This Court, in *People v. Tomawis*³² underscored the importance of the requirement and the purpose for placing such procedural safeguards:

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 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.

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³⁰ 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. The crime subject of this case was allegedly committed before the enactment of R.A. No. 10640, or on October 2, 2008.

³¹ *People v. Lim*, G.R. No. 231989, September 4, 2018, *People v. Que*, 824 Phil. 882, 903-905 (2018).

³² G.R. No. 228890, April 18, 2018, 826 SCRA 131.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest.

It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and ‘calling them in’ to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs ‘immediately after seizure and confiscation.’³³

In the present case, the prosecution miserably failed to present evidence that the buy-bust team complied with the foregoing mandatory requirements under Section 21, paragraph 1 of R.A. No. 9165.

First, the buy-bust/apprehending team failed to mark the seized drugs immediately after its seizure and confiscation, in the presence of accused-appellant.

Marking after seizure is the starting point in the custodial link.³⁴ It consists of affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, which should be made in the presence of the apprehended violator immediately upon arrest.³⁵

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³³ Id. at 149-150. Citation omitted.

³⁴ *People v. Coreche*, 612 Phil. 1238, 1244 (2009).

³⁵ *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

We emphasized in *People v. Gonzales* that the prompt marking of the seized drugs or related items is crucial, because succeeding handlers will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**³⁶

On record is the testimony of the prosecution's witness, PO1 Lopeña who testified on the steps taken by the arresting team and how the seized substances were handled after confiscation:

Q: And after you were handed the shabu, what did you and your companion do?

A: I made a signal to PO2 Natividad that I was able to buy shabu ma'am.

Q: After you made the signal, what happened next?

A: PO2 Natividad arrested Robin, Ma'am.

Q: After the accused was arrested, by your co-police officer what did you recover from him if any?

A: I was able to recover the shabu that I bought ma'am.

Q: How about your co-police officers?

A: As far as I know, PO2 Natividad also recovered plastic sachet, ma'am.

Q: Where were you when police officer Natividad recovered a plastic sachet from the accused?

A: Also in the area but a little far, ma'am.

Q: How far were you from the accused?

A: Around 5-6 meters, ma'am.

Q: How about the buy-bust money, who recovered it?

A: Yes ma'am, it was recovered by PO2 Natividad ma'am.

Q: And what did you do with the plastic sachet which was handed to you by the accused as well as the plastic sachet which was recovered by PO2 Natividad?

A: I surrendered it to our investigator SPO1 Ian Albert Voluntad and he put markings, ma'am.

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³⁶ Id. at 131.

- Q: And after placing the marking on the plastic sachets, what did you do with them?
- A: We forwarded it to the Rizal PPO Chemistry Section, for examination, ma'am."³⁷ (Emphasis in the original)

According to the testimony of PO1 Lopeña the plastic sachets recovered from accused-appellant were turned over to the investigator in charge, SPO1 Voluntad, and it was SPO1 Voluntad who made the markings on the plastic sachets. PO1 Lopeña's testimony did not specify the circumstances of his turn-over of the seized drugs to SPO1 Voluntad nor the circumstances surrounding the marking of the same. Neither was SPO1 Voluntad presented during trial to elucidate these crucial facts. However, the record reveals that SPO1 Voluntad was not part of the buy-bust or apprehending team nor was he present when accused-appellant was arrested and the seized items were recovered.³⁸ Clearly, SPO1 Voluntad did not make the markings immediately after the plastic sachets were recovered and confiscated from accused-appellant. The record is likewise silent of any justification proffered by the prosecution as to why the markings were not made immediately after the seizure and confiscation of the plastic sachets in the presence of accused-appellant.

In *People v. Ismael*,³⁹ the arresting officers did not mark the seized drugs immediately after they were confiscated and neither was the marking done in the presence of accused therein. Similarly, the arresting officers gave no explanation for their failure to comply with the mandatory guidelines under R.A. No. 9165. We ruled that there was a significant break in the chain of custody, and thus, there can be no assurance that switching, planting, or contamination did not actually take place.⁴⁰

Second, the apprehending team completely failed to prepare a physical inventory and take photographs of the seized items.

A review of the record shows that neither an inventory nor photographs of the seized items were presented in court. In fact, the testimony of the prosecution's witness, PO1 Lopeña is bereft of any indication that an inventory was prepared and signed by him. Likewise, none of the required witnesses under Section 21, Article II of R.A. No. 9165 was present, as the apprehending team did not even

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³⁷ CA rollo, p. 27-28.

³⁸ Rollo, p. 6.

³⁹ 806 Phil. 21 (2017).

⁴⁰ Id. at 34-36.

bother to prepare a physical inventory of the seized items. Similarly, the apprehending team offered no explanation or justification as to why the same was impracticable.

The lack of the inventory signed by accused-appellant himself or by his representative as well as by the representative of the media, the DOJ, and the elected official as required by law could very well be held to mean that no dangerous drug had been seized from accused-appellant on that occasion.⁴¹

While Section 21 of the Implementing Rules and Regulations of R.A. No. 9165 provides a saving clause for non-compliance with the guidelines, there must exist justifiable grounds for its non-observance and the integrity and the evidentiary value of the seized items must be preserved by the apprehending officer or team.

In the instant case, the apprehending team neither offered a justification nor even recognized the flagrant irregularities in their apprehension of accused-appellant and the seizure and confiscation of the illegal drugs. In fact, the apprehending team displayed an egregious indifference towards the mandatory guidelines under R.A. No. 9165. Thus, the RTC and the CA gravely erred in relying on the saving clause under Section 21(1) and on the presumption of regularity in the performance of duties to justify the conviction of accused-appellant.

Suffice it to state that the presumption of regularity in the performance of official functions cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.⁴²

Based on the foregoing, it is clear that the integrity and evidentiary value of the *corpus delicti* have thus been compromised. Accordingly, the quantum of evidence needed to convict, that is proof beyond reasonable doubt, has not been adequately established by the prosecution, which warrants the acquittal of accused-appellant.

WHEREFORE, the Decision dated May 23, 2012 of the Court of Appeals in CA-G.R. CR-HC No. 04531 is **REVERSED and SET ASIDE**. Accused-appellant Robin Aballari y Bautista is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

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⁴¹ *Casona v. People*, 818 Phil. 76, 87 (2017).

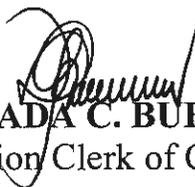
⁴² *People v. Bumanglag*, G.R. No. 228884, August 19, 2019.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Resolution, the action he has taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgement be issued immediately.

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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