



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 242525 (*People of the Philippines v. Francisco Ignacio y Bunag a.k.a. “Chug-Chug”*). — For this Court’s resolution is a Motion for Reconsideration¹ filed by accused-appellant Francisco Ignacio y Bunag, also known as Chug-chug (Francisco), assailing our Resolution² dated September 2, 2019, which dismissed Francisco’s appeal for failure to sufficiently show that the Court of Appeals (CA) committed reversible error in rendering the Decision dated March 22, 2018, in CA-G.R. CR-HC No. 06727.³

In the meantime, the Court resolves to GRANT the motion of the Office of the Solicitor General for extension of thirty (30) days from August 9, 2020 within which to file a comment on accused-appellant’s motion for reconsideration of the Resolution dated September 2, 2019, and to NOTE aforesaid comment (re: motion for reconsideration dated December 20, 2019), dated August 25, 2020, in compliance with the Resolution dated February 10, 2020.

After a careful review of the case, we reverse and set aside the Resolution dated September 2, 2019, and acquit Francisco for failure of the prosecution to prove that the apprehending team complied with the mandatory requirements of Section 21 of Republic Act (RA) No. 9165.⁴ We find that the identity of the *corpus delicti* had been compromised.

¹ *Rollo*, pp. 31-37.

² *Id.* at 29-30.

³ *Id.* at 2-12; penned by Associate Justice Zenaida F. Galapate-Laguilles, with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion.

⁴ 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.

Notably, the crime happened before RA No. 10640⁵ amended RA No. 9165. Thus, the original provisions of Section 21 and its Implementing Rules and Regulations (IRR) shall apply.⁶ The law and rules outline the post-seizure procedure for the custody and disposition of seized drugs. The law mandates that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory of the same and take a photograph thereof 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.⁷

⁵ 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, states that it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." Verily, a copy of the law was published on July 23, 2013 in the respective issues of the "The Philippines Star" (Vol. XXVIII, No. 359, Philippine Star Metro Section, p. 21) and the "Manila Bulletin" (Vol. 499, No. 23; World News Section, p. 6); hence, RA NO. 10640 became effective on August 7, 2014.

N.B. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be 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.

⁶ RA No. 9165, 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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous 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 (Emphasis supplied.)

This provision is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations of RA No. 9165 which states:

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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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[.]

x x x x

⁷ All three insulating witnesses are required under RA No. 9165 before its amendment; See *People v. Lim*, G.R. No. 231989, September 4, 2018, citing *People v. Ocampo*, 838 Phil. 157, 174-175 (2018); *People v. Allingag*, G.R. No. 233477, July 30, 2018, 374 SCRA 573, 589; *People v. Sipin*, 833 Phil. 67, 91-92 (2018); *People v. Reyes*, 830 Phil. 619 (2018); and *People v. Mola*, 830 Phil. 364, 377-378

Here, the absence of the required insulating witnesses during the inventory and photograph of the seized item puts serious doubt as to the integrity of the confiscated items. Admittedly, no representative from the media and from the DOJ were present.⁸ Meanwhile, the local government representative present was not an elected one.⁹ Aside from stating that the buy-bust team called for representatives from the media, the DOJ, and the local government, no other effort was done by the team to comply with the law and its implementing rules despite the planned buy-bust operation. The operatives also failed to prove that the integrity of the evidence was preserved despite these lapses.

The prosecution bears the positive duty to bring the Court's attention to any perceived deviations from the requirements of the law and to justify the same. 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.¹⁰ Specifically, it must be alleged and proved that the absence of the three (3) witnesses to the physical inventory and taking of photographs of the illegal drug seized was due to just and valid circumstances, and that they exercised earnest effort to secure the attendance of the necessary witnesses.¹¹

We emphasize that the presence of the persons who should witness the post-operation measures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.¹² The insulating presence of such witnesses would have preserved an unbroken chain of custody,¹³ considering that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed. Moreover, we cannot merely gloss over the glaring lapses committed by the police officers, especially when what had been allegedly seized from Francisco was 0.04 gram of *shabu* (methamphetamine hydrochloride), a miniscule amount that can be readily planted, tampered, or altered.¹⁴

(2018).

⁸ *Id.*; CA rollo, p. 98.

⁹ CA rollo, p. 98.

¹⁰ *People v. Padua* (Resolution), G.R. No. 239781. February 5, 2020, citing *People v. Sipin*, 833 Phil. 67, 93 (2018).

¹¹ *Id.* The following are the reasons to justify the absence of any of the necessary insulating: (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 persons 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.

¹² *People v. Macud*, 822 Phil. 1016, 1041 (2017), citing *People v. Mendoza*, 576 Phil. 576, 761-762 (2008).

¹³ *Id.*, citing *People v. Mendoza*, *id.* at 764

¹⁴ See *People v. Adobar*, 832 Phil. 731, 769 (2018); *People v. Alvarado*, 830 Phil. 785, 810 (2018);

In sum, it must be stressed that the prosecution has the burden of proving compliance with Section 21, Article II of RA No. 9165, and providing a sufficient explanation in case of non-compliance. Breaches of the procedure outlined in Section 21 committed by police officers, if left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.¹⁵

FOR THESE REASONS, the motion for reconsideration is **GRANTED**. The Court's Resolution dated September 2, 2019 is **REVERSED** and **SET ASIDE**. Francisco Ignacio y Bunag is **ACQUITTED** of the crime charged, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five (5) days from receipt of this Resolution.

SO ORDERED." (J. Lopez, J., designated additional Member per Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

01 JUL 2021

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People v. Abelarde, 824 Phil. 122, 131-132 (2018); *People v. Jaafar*, 803 Phil. 582, 592 (2017); *People v. Macud*, 822 Phil. 1016, 1029 (2017); *Tuano v. People* (Resolution), 788 Phil. 283, 289 (2016); *People v. Holgado*, 741 Phil. 78, 92 (2014).

¹⁵ *People v. Dela Cruz*, G.R. No. 234151, December 5, 2018, 888 SCRA 604, 625-626.

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HON. PRESIDING JUDGE (reg)
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