



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff-Appellee,*

**G.R. No. 224210**

Present:

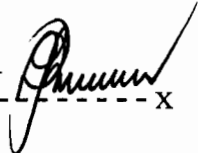
- versus -

**MARYLOU GUMBAN y CARANAY**  
**and JOEL CHENG NG,**  
*Accused,*

BERSAMIN, C.J.,  
 DEL CASTILLO,  
 PERLAS-BERNABE,\*  
 GESMUNDO, *and*  
 CARANDANG, JJ.

**MARYLOU GUMBAN y CARANAY,**  
*Accused-Appellant.*

Promulgated:  
**JAN 23 2019**

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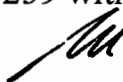
**DECISION**

**DEL CASTILLO, J.:**

On appeal is the April 24, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R.CR-HC No. 06601 which affirmed the December 3, 2013 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Parañaque City, Branch 259 in Criminal Case No. 12-0901 convicting Marylou Gumban y Caranay (appellant) for violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

***Antecedent Facts***

Appellant, along with Joel Cheng Ng, was charged before the RTC of Parañaque City, Branch 259 with violation of Section 5, Article II of RA 9165 committed as follows:



\* Per October 3, 2018 raffle vice J. Jardeleza who recused due to prior participation as Solicitor General.  
<sup>1</sup> CA *rollo*, pp. 104-116; penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Franchito N. Diamante and Carmelita Salandanan-Manahan.  
<sup>2</sup> Id. at 60-73; penned by Presiding Judge Danilo V. Suarez.

That on or about the 31<sup>st</sup> day of July 2012, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport One (1) brown corroborated [sic] box wrapped with packaging tape with markings Exh A CCD 7/31/2012 to poseur-buyer IO1 Cesar C. Dealagdon Jr., containing the following, to wit:

A-1 to A 40-Forty (40) white boxes labeled 'Nalbin Injection 10 mg with marking[s] Exh A-1 CCD 7/31/12 to A-40 CCD 7/31/2012, each containing ten (10) transparent ampoules of colorless liquid with a net volume of 1.0 ml per ampoule, with the total net volume of 400 ml.

A-41-one (1) yellow plastic bag with marking Exh B CCD 7/31/2012 containing thirty (30) bundles of blister packs containing three thousand (3000) [sic] pieces of round blue tablets with a total net weigh of 390 grams.

A-42-One (1) yellow plastic bag with marking Exh C CCD 7/31/12 thirty one (31) bundles of blister packs containing three thousand four (3400) pieces of round blue tablet with a total net weight of 442 grams.

A-43 to A-122 Eighty (80) transparent plastic packs with markings Exh D CCD 7/31/12 to Exh D-79 CCD 7/31/12, respectively, each containing five (5) transparent ampoules of colorless liquid with a net volume of 5ml per ampoule, with a total net volume of 2000 ml and when tested were found to be positive for nalbup[h]ine, Diazepam and Midazolam, all dangerous drug, under RA 9165.

Contrary to law[.]<sup>3</sup>

The CA summarized the material points of the testimony of the prosecution's principal witness Intelligence Officer 1 Cesar Dealagdon (IO1 Dealagdon) of the Philippine Drug Enforcement Agency Regional Office, National Capital Region (PDEA-NCR) as follows:

x x x At around 8 o'clock in the morning of 31 July 2012, a Confidential Informant (CI) went to the PDEA-NCR and informed team leader IO2 Leverette Lopez (Lopez) that a certain MARYLOU was selling illegal drugs in *Brgy. BF Homes*, Parañaque City. Lopez told Dealagdon to handle the transaction.

Dealagdon asked the CI to call MARYLOU. The CI x x x called MARYLOU [then] handed the phone to Dealagdon x x x. MARYLOU assured Dealagdon that she could sell illegal drugs or medicine [worth] ₱1,100,000.00. Thereafter, they agreed to meet at Jeek's Restobar, Elsie Gaches corner Kalaw St., *Brgy. BF Homes*, Parañaque City.



<sup>3</sup> Records, p. 1.

x x x Lopez conducted a briefing where Dealagdon was designated as the poseur-buyer and IO2 Aldwin Pagaragan (Pagaragan) as the arresting officer. They agreed that the pre-arranged signal to inform the team that the buy-bust operation had been consummated would be the raising of Dealagdon's right hand. The evidence custodian provided Dealagdon with two pieces of One Thousand Peso bills where the latter placed his initials 'CCD' on the upper right portion thereof. Subsequently, Dealagdon placed it on the top and bottom of the boodle money.

At around 1:30 x x x in the afternoon of even date, the team x x x proceeded to the subject location. x x x. At 7:00 o'clock in the evening, Dealagdon asked the CI to call MARYLOU to inform her that they were already at Jeek's Restobar. At approximately 7:30 x x x in the evening, MARYLOU x x x called the CI to tell him that she was already in the area. She then invited the CI and Dealagdon [to join her inside her car]. While inside the [vehicle], the CI introduced Dealagdon to MARYLOU who they later learned was Marylou Gumban y Caranay. MARYLOU, in turn, introduced to them the driver, Joel.

Posthaste, MARYLOU asked for the agreed amount. Dealagdon replied that he wanted to see the items first. Joel then told him, '*Andun sa likod puntahan mo lang.*' MARYLOU and Dealagdon alighted from the vehicle and went to the compartment. Upon opening it, Dealagdon saw one brown box which MARYLOU opened by removing its scotch tape. When he saw that it contained different tablets, he then gave MARYLOU the money, saying, '*Pakibilang mo na lang.*' In a jiff, he raised his right hand. The team rushed to their location upon seeing the pre-arranged signal. Dealagdon arrested MARYLOU and recovered from her the buy-bust money while Pagaragan effectuated the arrest of Joel. Since the crowd was beginning to grow in number, Lopez instructed the team to proceed to the nearest police station to undertake the markings, listing and taking of photographs of the subject pieces of evidence.

At the police station, Dealagdon prepared the inventory and marked the pieces of evidence. Pictures were taken during the inventory. These proceedings were witnessed by two *Brgy. Kagawads*, namely, John Carlo Marquez and Alfredo Lazatin as well as JL Asayo, a media representative from TV 5.

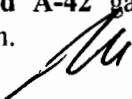
After the inventory and marking of the subject pieces of evidence, Dealagdon closed the box and sealed it with a scotch tape. He brought it to the PDEA office for laboratory examination and upon arriving thereat, Dealagdon immediately turned over the box containing the suspected dangerous drugs to the Laboratory Service together with the request for laboratory examination. The specimens were received by Chemist Jerome Garcia who conducted an examination divulging the following results:

**'FINDINGS:**

Qualitative examination conducted on the above-stated specimens gave the following results:

Specimens A-1 to A-40 gave **POSITIVE** results for the presence of Nalbuphine.

Specimens A-41 and A-42 gave **POSITIVE** results for the presence of Diazepam.



Specimens A-43 to A-122 gave positive result for the presence of Midazolam.

x x x

x x x

**CONCLUSION:**

Specimens A-1 to A-40 contain **Nalbuphine**, a dangerous drug. Specimens A-41 and A-42 contain **Diazepam**, a dangerous drug under RA 9165.

Specimens A-43 to A-122 contain **Midazolam** a dangerous drug under R.A 9165.’

When it was the turn of Joel and MARYLOU to prove their innocence, they both waived their right to present evidence.<sup>4</sup>

***Ruling of the Regional Trial Court***

The RTC gave credence to the testimonies of the prosecution witnesses police officers IO1 Dealagdon, IO1 Aldwin Pagarigan and PDEA Chemist Jerome Garcia. It ruled that the elements of the offense of selling illegal drugs were clearly established; there was substantial compliance with the requirements of Section 21, Article II of RA 9165; and that the *corpus delicti* was properly identified and its integrity and evidentiary value was preserved. With respect to accused Joel Ng, the RTC found the prosecution’s evidence insufficient to pronounce a verdict of conviction. Thus, on December 3, 2013, the RTC rendered its Decision, the decretal portion of which reads:

WHEREFORE, premises considered the Court renders judgment as follows:

1. Accused MARYLOU CARANAY GUMBAN in *Criminal Case No. 12-0901* is found GUILTY beyond reasonable doubt for violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Php1,000,000.00.

2. Accused JOEL CHENG NG in the same case is hereby ACQUITTED on ground of reasonable doubt.

It appearing that accused MARYLOU CARANAY GUMBAN is detained at the Parañaque City Jail and considering the penalty imposed, the OIC-Branch Clerk of Court is hereby directed to prepare the *Mittimus* for her immediate transfer from the Parañaque City Jail to the Women’s Correctional Institute, Mandaluyong City.

x x x x



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<sup>4</sup> CA rollo, pp. 106-108.

Considering that the bulk of the specimens have already been turned over to the PDEA for disposal, the remaining representative samples of the specimens subject of this case marked as *Exhibit 'B'* which is ten (10) ampoules of Nalbuphine in the total weight of 26.3 grams, *Exhibit 'B-1'* which is one hundred (100) blue Diazepam tablets, *Exhibit 'B-2'* which is one hundred (100) round blue Diazepam tablets and *Exhibit 'B-3'* which is five (5) ampoules of Midazolam in the total weight of forty-two (42) grams, are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to turn over the same with dispatch to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Section 21[, Article II] of RA 9165 and Supreme Court OCA Circular No. 51-2003.

SO ORDERED.<sup>5</sup>

Appellant appealed to the CA.

### ***Ruling of the Court of Appeals***

The CA gave great respect to the RTC's findings that appellant was caught in *flagrante delicto* selling dangerous drugs. It ruled that there was an unbroken chain of custody of the confiscated items since the prosecution was able to maintain their integrity and evidentiary value. The CA rejected appellant's allegation of instigation for being contradictory to her defense of denial. Besides, this defense was only raised on appeal as appellant waived the presentation of her evidence before the RTC. The CA also sustained the RTC's finding that the buy-bust team members were regularly performing their official duty. Thus, in its assailed Decision of April 24, 2015, the CA disposed of appellant's appeal as follows:

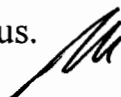
WHEREFORE, the *Appeal* is hereby DENIED. The *Decision* dated 3 December 2013 of the Regional Trial Court of Parañaque City, Branch 259, in Crim[.] Case No. 12-0901, is AFFIRMED.

SO ORDERED.<sup>6</sup>

Hence this appeal.

### **Our Ruling**

The appeal is meritorious.



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<sup>5</sup> Id. at 73.

<sup>6</sup> Id. at 116.

Section 21, Article II of RA 9165 provides the mandatory procedural safeguards in buy-bust operations, thus:

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:

x x x x

In addition, Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 reads:

x x x x

(1) 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

Going over the records, the Court notes that the apprehending officers did not faithfully observe the foregoing mandatory requirements. While



admittedly there was marking, inventory and photographing of the seized items, all these were done only in the presence of the elected public officials and media representative. No representative from the Department of Justice (DOJ) appeared as witness thereto as required by law.<sup>7</sup> In addition, the witnesses present during the inventory were not given copies thereof,<sup>8</sup> another mandatory procedural safeguard outlined by the law.

Indeed, non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs as long as there were justifiable grounds for the non-compliance and the integrity of the *corpus delicti* was preserved.<sup>9</sup> Records of the instant case reveal that the absence of a DOJ representative during the marking, inventory and photographing of the seized items was due to the fact that it was already late at night.<sup>10</sup> This explanation, however, was found unjustifiable and unacceptable in *People v. Miranda*<sup>11</sup> and recently in *People v. Lim*.<sup>12</sup> Moreover, assuming to be true, coordination with the mayor in securing the attendance of a DOJ representative was not tantamount to a genuine and serious attempt to secure the presence of the DOJ representative. No follow up was made as regards the outcome of the alleged coordination; besides, the mayor is not duty-bound to secure the attendance of a DOJ representative. The duty is vested by law on the apprehending officers. It is significant to note that the apprehending officers were already enroute to the target area as early as 1:30 p.m. and arrived at 4:00 p.m. Thus, they had more than sufficient time to make the necessary arrangements regarding the presence of a DOJ representative to serve as witness during the inventory and photography of any illegal item that they might seize from the suspect. This omission, to our mind, is a clear violation of the procedure provided by law. Strict compliance with the required witnesses as mandated in the procedure is necessary because of the alleged drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise.<sup>13</sup>

In addition, there was an obvious gap in the chain of custody of the seized items.



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<sup>7</sup> TSN, October 25, 2012, p. 80.

<sup>8</sup> Id.

<sup>9</sup> *People v. Miranda*, 788 Phil. 657, 668 (2016).

<sup>10</sup> TSN, November 28, 2012, p. 39.

<sup>11</sup> Supra note 9 at 669.

<sup>12</sup> G.R. No. 231898, September 4, 2018.

<sup>13</sup> *People v. Nandi*, 639 Phil. 134, 143 (2010).

In *People v. Cayas*,<sup>14</sup> citing *Mallillin v. People*,<sup>15</sup> the Court explained the importance of the chain of custody of the confiscated drugs as follows:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

X X X X

“The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court.”<sup>16</sup>

In the present case, appellant raised doubt on the identity of the items confiscated from her arguing that there were other personalities belonging to a so-called Compliance Team who touched and examined the drugs as admitted by IO1 Dealagdon but nobody from the team testified. According to her “needless to state, as the members of the said Compliance Team touched the illegal drugs, no matter how brief, they were necessary links in the chain of custody and their testimonies as regards the circumstances of such custody [are] indispensable in the determination of [her] guilt. It bears stressing that the prosecution did not bother to provide the names of the members of the said Compliance Team.”<sup>17</sup> Thus, since the seized items were left for some time in the custody and possession of the Compliance Team who failed to describe how and from whom the items were received by them, the distinct possibility that the items were tampered with, contaminated, substituted or pilfered could not be ruled out. Substantial gaps in the chain of custody of the seized drugs would cast serious doubts on the authenticity of the evidence presented in court. “[A]lthough testimony about a perfect chain does not always have to be the standard because it is almost always impossible to obtain, an unbroken

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<sup>14</sup> 789 Phil. 70, 80 (2016).

<sup>15</sup> 576 Phil. 576, 587 (2008).

<sup>16</sup> *People v. Enad*, 780 Phil. 346, 358 (2016) citing *People v. Dalawis*, 772 Phil. 406, 417 (2015).

<sup>17</sup> *Rollo*, p. 31; Supplemental Brief for the Accused-Appellant, pp. 6-7.





chain of custody indeed becomes indispensable and essential when the item of real evidence is a narcotic substance.”<sup>18</sup>

In view of the failure of the arresting officers to comply with a mandatory requirement in Section 21, Article II of RA 9165 coupled with the obvious break in the chain of custody of the seized items as heretofore discussed, a serious doubt arises as to the identity of the seized illegal drugs. There is no absolute certainty if the seized items were the very same drugs object of the sale, transmitted to the crime laboratory and eventually presented in court as evidence.

Indeed, appellant’s failure to present any evidence for her defense as she waived her right to do so was inconsequential. The well-entrenched dictum in criminal law is that “the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.”<sup>19</sup> If the prosecution cannot, to begin with, establish the guilt of accused beyond reasonable doubt, the defense is not even required to adduce evidence.<sup>20</sup>

All told, the totality of the prosecution’s evidence presented in this case did not support appellant’s conviction for violation of Section 5, Article II, RA 9165 as the prosecution failed to prove beyond reasonable doubt the identity of the object of the sale which is an element of the offense. Consequently, we find no need to discuss the other issues raised by appellant.

**WHEREFORE**, premises considered, the appeal is **GRANTED**. The April 24, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06601 is **REVERSED and SET ASIDE**. Appellant Marylou Gumban y Caranay is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention unless she is confined for another lawful cause.

Let a copy of this Decision be **FURNISHED** the Superintendent of the Correctional Institution for Women, City of Mandaluyong for immediate implementation and is **DIRECTED** to make a report to this Court within five (5) days from receipt of this Decision.



<sup>18</sup> *People v. Obmiranis*, 594 Phil. 561, 571 (2008).

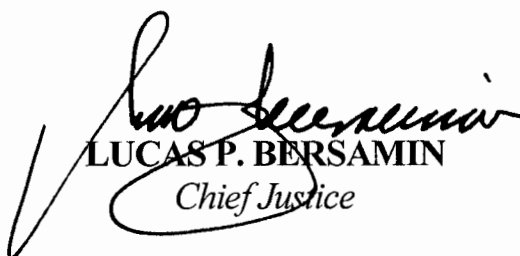
<sup>19</sup> *People v. Dacuma*, 753 Phil. 276, 287 (2015).

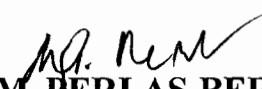
<sup>20</sup> *People v. Pepino-Consulta*, 716 Phil. 733, 761 (2013).

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**LUCAS P. BERSAMIN**  
*Chief Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

  
**ROSMARI D. CARANDANG**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**LUCAS P. BERSAMIN**  
*Chief Justice*