



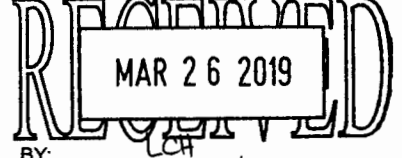
Republic of the Philippines

Supreme Court

Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



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PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 225744

Present:

- versus -

BERSAMIN, C.J.,  
DEL CASTILLO,  
CAGUIOA,\*  
GESMUNDO, *and*  
CARANDANG, JJ.

JONATHAN VISTRO y BAYSIC,  
*Accused-Appellant.*

Promulgated:  
MAR 05 2019

X -----

DECISION

**DEL CASTILLO, J.:**

Jonathan Vistro y Baysic (appellant) appeals the September 4, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06497, that affirmed his conviction for violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Drugs Act of 2002, by the Regional Trial Court (RTC) of San Carlos City, Pangasinan, Branch 57.

The Information against appellant contained the following accusatory allegations:

That on or about June 4, 2009 in the afternoon in Acosta St., Poblacion, Urbiztondo, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with each other, did, then and there, willfully, unlawfully and felon[i]ously sell, trade, and deliver, one (1) heat sealed plastic sachet containing 0.01 gram of Methamphetamine Hydrochloride/Shabu, a dangerous drug to an agent of [the] Phil. Drug[s] Enforcement Agency (PDEA) acting as a [poseur]-buyer, without any license or authority to sell the same.

CONTRARY to Sec. 5, Art. II of RA 9165 (Comprehensive Dangerous Drugs Act of 2002).<sup>2</sup>

\* Per raffle dated January 21, 2019.

<sup>1</sup> CA *rollo*, pp. 106-121; penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Japar B. Dimaampao and Franchito N. Diamante.

<sup>2</sup> Records, p. 1.

During arraignment, appellant pleaded “not guilty”. After the termination of the pre-trial conference, trial ensued.

### ***Version of the Prosecution***

On June 4, 2009, Philippine Drugs Enforcement Agency (PDEA) officers in Pangasinan formed a buy-bust team and planned an entrapment operation against appellant after verifying a report from a police asset that he was peddling *shabu*. Intelligence Officer Jaime Clave (IO Clave) was designated as poseur-buyer and given ₱500.00 as buy-bust money. IO Noreen Bautista (IO Bautista) was assigned as his immediate back-up while the other members of the buy-bust team were detailed as perimeter back-up.

Upon arrival of the buy-bust team at the target area, the police asset introduced IO Clave to appellant as a buyer of *shabu*. Appellant asked IO Clave how much he would like to purchase and the latter replied that he wanted to buy ₱500.00 worth of *shabu*. Appellant handed to IO Clave a sachet of *shabu* and the latter gave the ₱500.00 marked money as payment. When IO Clave made the pre-arranged signal that the transaction was consummated, IO Bautista rushed to the scene of the crime and arrested appellant. Recovered from his possession was the ₱500.00 marked money. The buy-bust team withdrew from the area after discovering that the *barangay* captain of the place where the scene of the crime was located was the cousin of appellant’s mother while the other *barangay* officials were also relatives of appellant.

While on their way to the PDEA office, IO Clave was in possession of the seized *shabu*. Upon arrival, he marked the same in the presence of appellant. IO Bautista prepared the Certificate of Inventory of the seized *shabu* and photographed the same in the presence of appellant. A *barangay* official from a different *barangay* signed as witness. IO Clave and IO Bautista proceeded to the police crime laboratory to deliver the sachet of *shabu* for examination. Police Senior Inspector Myrna C. Malojo (PSI Malojo) received the same and conducted tests that confirmed the contents of the sachet to be *shabu*.

### ***Version of the Defense***

Appellant denied the charges against him. He claimed that at the time of the incident, PDEA officers in civilian clothes went to their house looking for his parents, Reynaldo and Elma Vistro, for their alleged involvement in illegal drug activities. However, he informed them that his parents no longer lived in the house. The police officers then brought him downstairs where he saw the *barangay* captain, who was the cousin of his mother, being handcuffed for alleged possession of drug paraphernalia and a gun. The other PDEA officers interrogated his siblings

and searched the house. Meanwhile, Teresita A. Baysic (Teresita), their laundry woman, was washing clothes at the back of the house. When the PDEA officers did not find any dangerous drug, they took him, his brother, the *barangay* captain and Teresita, to the PDEA office. His sibling was eventually sent home, but he and Teresita were charged with illegal sale of *shabu*. He did not know what happened to the *barangay* captain.

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

In its Judgment<sup>3</sup> dated November 14, 2013, the RTC found appellant guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165. It ruled that the prosecution evidence established the elements of the offense. The RTC gave credence to the testimony of the PDEA officers, who are presumed to have performed their duties in a regular manner in the absence of evidence that they were impelled by ill-feelings to testify falsely. The RTC ruled that the chain of custody of the seized *shabu* was unbroken since its integrity and evidentiary value had been properly preserved from the moment the buy-bust operation was consummated until its presentation during the trial. The RTC thus sentenced appellant to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

However, the RTC acquitted Teresita for insufficiency of evidence. It held that she was only doing the laundry when the PDEA officers arrived at appellant's residence. Thus, the dispositive portion of the Judgment reads:

WHEREFORE, finding accused JONATHAN VISTRO GUILTY beyond reasonable doubt for violating Sec. 5[,] Article II of R.A. 9165, he is hereby sentenced to suffer [the] penalty of life imprisonment and a fine of Five Hundred Thousand (Php500,000.00) pesos and to pay the cost of this suit. The Court however declares the acquittal of the other accused TERESITA BAYSIC Y ALMAZAN from the crime charged for reasons discussed above. Her immediate release from custody of the Bureau of Jail Management and Penology (BJMP), San Carlos City, Pangasinan is hereby ordered unless she is being held for some other lawful cause.

The items seized comprising of one (1) heat-sealed plastic sachet is hereby ordered confiscated in favor of the government for destruction.

SO ORDERED.<sup>4</sup>

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

In its Decision<sup>5</sup> dated September 4, 2015, the CA affirmed the Judgment of the RTC. The CA was not persuaded by appellant's contention that he should be

<sup>3</sup> Id. at 147-158; penned by Presiding Judge Renato D. Pinlac.

<sup>4</sup> Id. at 157.

<sup>5</sup> CA rollo, pp. 106-121.

acquitted. It declared that non-compliance with Section 21, Article II of RA 9165 and Section 21(a) of its Implementing Rules and Regulations is not fatal to the prosecution's case since what is vital is the preservation of the integrity and evidentiary value of the seized *shabu*. It found that the testimonies of the PDEA officers established the crucial links in the chain of custody of the seized *shabu*.

Unfazed, appellant filed the instant appeal, seeking a reversal of his conviction based on the same arguments he raised in the CA.

### Our Ruling

There is merit in the appeal.

Appellant argues that he should be exonerated since the prosecution failed to establish the chain of custody of the seized *shabu*. He contends that there was non-compliance by the arresting team of PDEA and police officers with the requirement in Section 21, Article II of RA 9165, which was the law applicable during the commission of the crime charged. Appellant specifically points out the failure by the PDEA arresting team and police officers to conduct a physical inventory and take photographs of the seized *shabu* in the presence of the witnesses mentioned in the law.

In a successful prosecution for violation of Section 5, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: "(1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*. The prosecution must also establish the integrity of the dangerous drug, being the *corpus delicti* of the case."<sup>6</sup>

Section 21, Article II of RA 9165, which was the law applicable during the commission of the crime, delineates the mandatory procedural safeguards in a buy-bust operation. The pertinent portion reads:

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:

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<sup>6</sup> *People v. Caiz*, 790 Phil. 183, 196-197 (2016).

(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;

In *People v. Lim*,<sup>7</sup> this Court stressed the importance of the three witnesses, namely, any elected public official, the representative from the media, and the representative from the Department of Justice (DOJ), at the time of the physical inventory and taking of photograph of the seized items. In the event of their absence, this Court ruled that:

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 [from] the accused or any person/s acting for and in his/her behalf;** (3) **the elected official[s] 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[d] futile through no fault of the arresting officers, who face[d] 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.**

Moreover, there must be evidence of earnest efforts to secure the attendance of the necessary witnesses. In *Ramos v. People*,<sup>8</sup> this Court instructs:

x x x [I]t is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for ‘a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.’ Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses

<sup>7</sup> G.R. No. 231989, September 4, 2018. Emphasis in the original.

<sup>8</sup> G.R. No. 233572, July 30, 2018. Emphasis in the original. Citations omitted.

are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. **As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.**

In other words, jurisprudence requires that in the event that the presence of the essential witnesses was not obtained, the prosecution must establish not only the reasons for their absence, but also the fact that serious and sincere efforts were exerted in securing their presence. Failure to disclose the justification for non-compliance with the requirements and the lack of evidence of serious attempts to secure the presence of the necessary witnesses result in a substantial gap in the chain of custody of evidence that shall adversely affect the authenticity of the prohibited substance presented in court.

In this case, while a *barangay* official signed as a witness in the Certificate of Inventory, there was no mention that the inventory and photograph of the seized *shabu* was done in the presence of representatives from the media and the DOJ. The arresting officer merely testified that the buy-bust team marked the seized *shabu* in the police station since the *barangay* captain and other officials of the place where the crime was committed were relatives of the appellant. He failed to provide a justifiable ground for the absence of the representatives from the media and the DOJ during the inventory and photograph of the seized *shabu* at the police station. The failure of the prosecution to secure the attendance of these witnesses, without providing any reasonable justification therefor, creates doubt as to the integrity and evidentiary value of the seized *shabu*. Thus, there is no recourse for this Court other than to reverse the conviction of appellant.

**WHEREFORE**, the appeal is **GRANTED**. The September 4, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06497 is **REVERSED and SET ASIDE**. Appellant Jonathan Vistro y Baysic 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 another lawful cause.


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

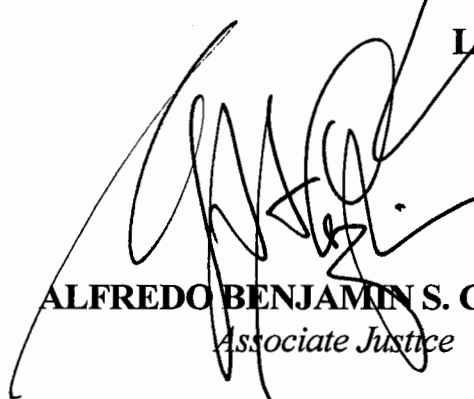


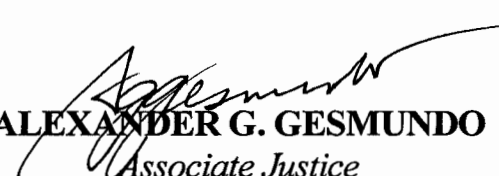
**SO ORDERED.**


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

WE CONCUR:

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

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

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

  
**ROSMAR 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*