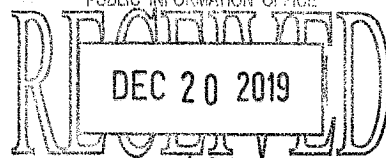


9.



BY: XG
TIME: 9:33 am

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:*

“G.R. No. 233872 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus CARLOS MABALO y ANGELES, accused-appellant.

This is an Appeal¹ under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated June 15, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08383, which affirmed with modification the Decision³ dated March 10, 2016 rendered by the Regional Trial Court, Branch 57, Angeles City (RTC) in Criminal Case No. DC-11-1940, finding accused-appellant Carlos Mabalo y Angeles (Carlos) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, as amended.

The Facts

The Information⁵ filed against Carlos for violation of Section 5, Article II of RA 9165 pertinently reads:

That on or about the 4th day of November 2006, in the municipality of Mabalacat, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being a person authorized to sell any dangerous drug, did then and there willfully, unlawfully and knowingly, sell one (1)

- over – eleven (11) pages ...

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¹ See Notice of Appeal dated July 3, 2017, *rollo*, pp. 21-23.

² *Rollo*, pp. 2-20. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Danton Q. Bueser and Marie Christine Azcarraga-Jacob.

³ *CA rollo*, pp. 42-48. Penned by Judge Omar T. Viola.

⁴ Entitled “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” (2002).

⁵ Records, p. 2.

heat-sealed transparent plastic sachet containing methylamphetamine hydrochloride, commonly known as shabu, weighing ONE THOUSAND ONE HUNDRED SEVENTY FIVE TEN THOUSANDTHS (0.1175) of a gram, more or less, a dangerous drug.

Contrary to law.⁶

Upon arraignment, Carlos pleaded not guilty to the charge.⁷

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

On 04 November 2006, PO1 Edward Pineda [(PO1 Pineda)] and Police Officer 2 Emmeraldo Nunag ("**PO2 Nunag**"), police officers assigned at the Mabalacat Police Station Anti-[I]llegal Drugs Special Operation Task Group (AIDSOTG), received a confidential information regarding the drug pushing activities of a certain alias "*Carlos*" at South Daang Bakal, Brgy. Dau, Mabalacat, Pampanga.

An operation was thereafter planned by the police officers in order to apprehend alias "*Carlos*." A buy-bust team was formed comprising of five (5) policemen operatives with PO1 Pineda as the designated poseur buyer, while the rest of the team served as his back-up. A piece of P500.00 bill was provided to PO1 Pineda which he marked with his initials, "*ECP*". PO1 Pineda likewise coordinated with the Philippine Drug Enforcement Agency (PDEA) by accomplishing the necessary coordination form which was acknowledged and received by the PDEA.

At about 6:30 in the evening of the same day, the buy-bust team arrived at South Daang Bakal, Brgy. Dau, Mabalacat for the conduct of the buy-bust operation. As the rest of the team positioned themselves strategically in places where they can monitor the transaction, PO1 Pineda, as the poseur buyer, accompanied by the informant, was introduced to the target person as the buyer of *shabu* after they spotted the target person standing in front of his house. PO1 Pineda thereafter asked from the accused-appellant P500.00 worth of *shabu* and the latter handed to PO1 Pineda a medium-sized, plastic sachet containing the suspected *shabu* in exchange [for] the P500.00 bill marked money.

The transaction having been consummated, PO1 Pineda gave the pre-arranged signal by scratching his head. One of the back-up police officers, PO2 Nunag, upon seeing the pre-arranged signal, rushed to the scene where the entrapment took place and

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⁶ Id.

⁷ *Rollo*, p. 3.

assisted in effecting the arrest of the accused-appellant. Sensing that the people around were police officers, alias Carlos, who was later identified to be accused-ap[p]ellant Carlos A. Mabalo, immediately ran into a dark portion of a multi-branched alley, eluded arrest and managed to make good his escape. He was able to bring along with him the P500.00 bill marked money.

After the buy-bust operation, the team returned to their office, the police station, with the confiscated plastic sachet containing the suspected *shabu*.

A *Confiscation Receipt* was thereafter executed in the presence of the barangay-elected official, Barangay Captain Louie P. Cunanan of Dau, Mabalacat, Pampanga and the confiscating officers PO1 Pineda and PO[2] Nunag. The confiscated subject drug item was described as “one (1) piece medium size heat-sealed plastic sachet containing suspected *shabu* with markings ‘ECP’.” The plastic sachet containing white crystalline substance subject of the sale was consequently brought by PO1 Pineda himself to the crime laboratory for examination and analysis. The laboratory examination revealed that the substance was positive for *methylamphetamine hydrochloride*, otherwise known as *shabu*, a dangerous drug.

During the cross-examination, PO1 Pineda testified that the word “*confiscation*” in the *Confiscation Receipt* was incorrect because what was conducted was a buy-bust operation and nothing was in fact “*confiscated*.” Likewise, the marked money where he placed his initials “ECP” was not visible when the defense counsel asked him to point out the markings that he wrote.

On re-direct examination, PO1 Pineda narrated that they used a *Confiscation Receipt*, which contains sentences and blank spaces where they only fill up the name of the arrested person as well as the confiscated evidence; that the word “*confiscated*” was the subject of the sale; and that it was PO2 Nunag who actually made the *Confiscation Receipt*.

On his re-cross examination, PO1 Pineda testified that despite the fact that it was a buy-bust operation, he did not indicate that the plastic sachet was a product of a buy-bust operation. Likewise, he testified that PO2 Nunag, who prepared the document, may have simply overlooked the matter.⁸

Version of the Defense

On the other hand, the version of the defense, as summarized by the CA, is as follows:

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⁸ Id. at 4-7.

In his defense, the accused-appellant denied the charge against him and claimed that between 7:00 PM and 7:30 PM of 04 November 2006, he was just coming from work.

On 27 February 2012, he was arrested by certain individuals in civilian clothes and was invited to the police station where he was informed that he has a pending warrant of arrest for Violation of Section 5, Article II of RA 9165, but no warrant of arrest was show[n] to him.

On cross-examination, the accused-appellant testified that he does not have any proof that indeed he went to work on 04 November 2006; that he did not know the police officers; that it was the first time that he saw the police officers; and that he did not know any reason why the police officers knew his residence where the buy[-]bust operation transpired.⁹

Ruling of the RTC

In the assailed Decision¹⁰ dated March 10, 2016, the RTC ruled that the prosecution established all the elements of the crime¹¹ and proved that the accused was guilty beyond reasonable doubt of the crime charged.¹² The arresting officer had substantially complied with the procedural safeguards under RA 9165.¹³ Since the chain of custody was not broken, the integrity and evidentiary value of the evidence seized were preserved.¹⁴

The dispositive portion of the RTC Decision reads:

WHEREFORE, the prosecution having established its case against the accused and having proven the guilt of the accused beyond reasonable doubt, the Court hereby finds **CARLOS MABALO y ANGELES a.k.a CARLOS GUILTY** beyond reasonable doubt of the crime, as alleged in the Information, and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** for violation of Section 5, R.A. 9165 and a fine of Php500,000.00.

SO ORDERED.¹⁵

Aggrieved, Carlos appealed to the CA.

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⁹ Id. at 7-8.

¹⁰ CA *rollo*, pp. 42-48.

¹¹ Id. at 45.

¹² Id. at 47-48.

¹³ Id. at 46.

¹⁴ Id.

¹⁵ Id. at 47-48.

Ruling of the CA

In the assailed Decision dated June 15, 2017, the CA affirmed the RTC Decision with modification. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is **DENIED**. Consequently, the assailed *Decision* is **AFFIRMED with MODIFICATION** that the appellants shall not be eligible for parole.

IT IS SO ORDERED.¹⁶

The CA ruled that: (1) the elements of illegal sale were proven; (2) the warrantless arrest of Carlos was justified and he was deemed to have waived any objection to the defects that might have attended his arrest; (3) the presumption of regularity in the police officers' performance of their duty prevailed over Carlos' defense of bare denial; (4) the chain of custody requirement had been sufficiently complied with and the failure to strictly comply with RA 9165 did not affect the evidentiary weight of the dangerous drug seized; and (5) the penalty imposed by the RTC is sustained but it must be added that Carlos is not eligible for parole pursuant to the Indeterminate Sentence Law.¹⁷

Hence, the instant appeal.

Issue

Whether the CA erred in affirming the RTC Decision finding Carlos guilty beyond reasonable doubt of the crime charged.

The Court's Ruling

The appeal is meritorious. Carlos is accordingly acquitted.

For the successful prosecution of the offense of illegal sale of dangerous drugs under RA 9165, the following elements must be proven: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and the seller were identified.¹⁸

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¹⁶ *Rollo*, pp. 19-20.

¹⁷ See *id.* at 9-19.

¹⁸ *People v. Bartolini*, 791 Phil. 626, 633-634 (2016).

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense¹⁹ and the fact of its existence is vital to sustain a judgment of conviction.²⁰ It is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court.²¹ The rationale for this requirement is the great possibility of abuse in drug cases. Indeed, “by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.”²²

Section 21,²³ Article II of RA 9165 and Section 21(a),²⁴ Article

¹⁹ See *People v. Sagana*, 815 Phil. 356, 367 (2017).

²⁰ *Derilo v. People*, 784 Phil. 679, 686 (2016).

²¹ *People v. Bartolini*, supra note 18, at 634, citing *People v. Gatlabayan*, 669 Phil. 240, 252 (2011).

²² *People v. Saragena*, 817 Phil. 117, 128-129 (2017), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

²³ 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[.]

²⁴ The said section reads as follows:

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 x x x 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**

II of the Implementing Rules and Regulations (IRR) of RA 9165 outline the procedure the police operatives must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provisions enumerate the⁹ following requirements:

1. The initial custody requirements must be done **immediately after seizure or confiscation**;

2. The **physical inventory and photographing** must be done in the presence of:

- a. the **accused or his representative or counsel**;
- b. a representative from the **media**;
- c. a representative from the **Department of Justice (DOJ)**; and
- d. any **elected public official**.

3. The conduct of the physical inventory and photograph shall be done at the:

- a. **place where the search warrant is served**; or
- b. **nearest police station**; or
- c. **nearest office of the apprehending officer/team**, whichever is practicable, in case of warrantless seizure.

The phrase “immediately after seizure and confiscation” means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.²⁵

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void and invalid such seizures of and custody over said items[.] (Emphasis supplied)

²⁵ *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 146.

The reason for requiring the three witnesses at the time of apprehension is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.²⁶

Assuming that the version of the prosecution is true, it is readily apparent that the buy-bust team failed to comply with the above requirements.

For one, the required witnesses were not present during the conduct of the inventory. During the conduct of the supposed inventory, apart from the buy-bust team, only Barangay Captain Louie P. Cunanan was present. Noteworthy is the fact that the records are bereft of any allegation that the buy-bust team even attempted to secure the required representative witnesses from the media and from the DOJ.

Moreover, the prosecution's evidence does not include any photographs of the drug. Again, this refusal to follow the prescribed procedure under Section 21 was not adequately justified or explained by the prosecution.

The highly suspicious circumstances in this case further bring into question the veracity of the prosecution's story.

Based on PO1 Pineda's testimony, there were at least seven people present in the buy-bust operation, which happened on November 4, 2006: (1) PO1 Edward Pineda (PO1 Pineda); (2) PO2 Emmeraldo Nunag (PO2 Nunag); (3) three other police officers who positioned themselves within the area and acted as back-up; (4) the confidential informant; and (5) Carlos. All five members of the buy-bust team scattered around the area during the buy-bust operation failed to apprehend Carlos because the latter ran towards an alley to evade arrest and because "[i]t happened so fast." Thereafter, to ascertain the identity of the accused, PO1 Pineda and PO2 Nunag allegedly conducted an "investigation" by merely questioning the neighbors of the target person.²⁷

Fast forward to February 7, 2011 — or more than four years later — an Information was filed against Carlos, accusing him of

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²⁶ *People v. De Leon*, G.R. No. 214472, November 28, 2018, p. 7.

²⁷ TSN, December 3, 2012, pp. 9-11.

selling illegal drugs allegedly confiscated years ago. Carlos was eventually arrested on February 27, 2012 — more than five years after the alleged buy-bust operation.

Indeed, it is baffling how, despite all these glaring irregularities and violations of the mandatory requirements under Section 21 of RA 9165, both the RTC and CA still found the prosecution's version convincing and deemed the chain of custody as unbroken. Contrary to the assessment of the RTC and CA, the lapses committed by the buy-bust team did not constitute "substantial compliance" of the law. These were evident violations of the procedure which was designed precisely to safeguard against abuses.

While there have been instances when the Court had relaxed the application of the rules, this is with the caveat that the prosecution still needs to satisfactorily prove that: **(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.** The Court has repeatedly emphasized that **the prosecution should explain the reasons behind the procedural lapses.**²⁸

Here, there was no explanation or excuse proffered by the prosecution for the deviation from the mandatory procedure. This evident failure to follow the prescribed procedure under Section 21 casts serious doubts on the integrity and evidentiary value of the *corpus delicti*.

It is important to emphasize that the right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.²⁹ The burden lies with the prosecution to prove the guilt of the accused beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.³⁰

Clearly, the reliance of the RTC and the CA on the presumption of regularity in the performance of official duty, at the expense of the constitutionally-protected right of the accused to be presumed innocent, is grossly misplaced. To emphasize, the presumption of

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²⁸ *People v. Malana*, G.R. No. 233747, December 5, 2018, p. 9.

²⁹ CONSTITUTION, Art. III, Sec. 14, par. (2) provides: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

³⁰ *People v. Dela Cruz*, G.R. No. 234151, December 5, 2018, p. 12.

regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.³¹ Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.³²

In the case at bar, the presumption of regularity cannot stand because of the buy-bust team's brazen disregard of the established procedure under Section 21 of RA 9165. Accordingly, Carlos' presumption of innocence stands and he must be acquitted.

As a final note, this Court reminds the trial and appellate courts to exercise extra vigilance in trying drug cases, and directs the Philippine National Police (PNP) to conduct an investigation on this incident and other similar cases, lest another innocent person be made to suffer the unusually severe penalties for drug offenses.

The PNP is hereby directed to conduct an investigation on the police officers involved in this purported buy-bust operation.

The Court likewise exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.³³

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated June 15, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 08383 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Carlos Mabalo y**

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³¹ *People v. Mendoza*, 736 Phil. 749, 770 (2014).

³² *Id.* at 770.

³³ *People v. Dela Cruz*, supra note 30, at 13.

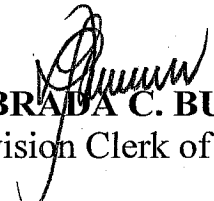
Angeles is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

Further, let a copy of this Resolution be furnished the Chief of the Philippine National Police. The Philippine National Police is **ORDERED to CONDUCT AN INVESTIGATION** on the blatant violation of Section 21 of Republic Act No. 9165 committed by the buy-bust team, as well as other similar incidents, and **REPORT** to this Court within thirty (30) days from receipt of this Resolution the action taken.

SO ORDERED.” *Inting, J., additional member per Special Order 2726 dated October 25, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court *librada*
96-B

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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 08383)

The Hon. Presiding Judge
Regional Trial Court, Branch 57
Angeles City, 2009 Pampanga
(Crim. Case No. DC-11-1940)

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