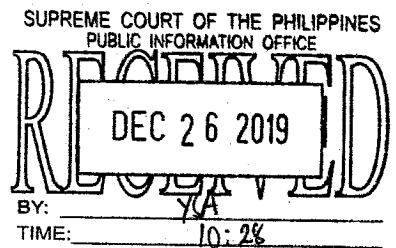




Republic of the Philippines
Supreme Court
Manila



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. 234037 - PEOPLE OF THE PHILIPPINES v. GENEVA ATON y PAMALLOY

The Case

This appeal assails the Decision¹ dated November 23, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 07693, affirming the verdict of conviction against appellant Geneva Aton y Pamaloy for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165) and imposing on her the corresponding penalties.

The Proceedings Before the Trial Court

The Charge

By Information dated July 2, 2010, appellant was charged with violation of Section 5, Article II of RA 9165, viz:

That on or about the 30th day of June, 2010, in Quezon City, Philippines, accused, without lawful authority did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit: One (1) small piece of transparent heat sealed plastic sachet marked as “AP-GA-06-30-10” with three point twenty eight (3.28) grams of white crystalline substance containing Methylamphetamine Hydrochloride also known as “shabu”, a dangerous drug.

CONTRARY TO LAW.

- over – eleven (11) pages ...

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¹ Penned by Associate Justice Priscilla J. Baltazar-Padilla concurred in by Associate Justice Remedios A. Salazar-Fernando and Associate Justice Socorro B. Inting, *rollo*, pp. 2-13.

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The case was raffled to the Regional Trial Court (RTC)-Branch 79, Quezon City.

On arraignment, appellant pleaded not guilty.² Trial ensued.

The Prosecution's Version

The testimonies of PO3 Wilfredo Blanco, PO3 Anthony Pamilar, SPO1 Jeffrey Flores, members of the Quezon City Police's District Anti-Illegal Drugs-Special Operation Task Group, and Forensic Chemist Bernardino M. Banac, Jr. may be summarized, in this wise:

On June 30, 2010, a confidential informant reported that appellant Geneva Aton was selling illegal drugs in Brgy. Botocan, Quezon City. SPO4 Mario Abong relayed the information to Police Senior Inspector Chief Roberto Razon, Sr. who consequently instructed him to conduct a buy-bust operation on appellant. PO3 Anthony Pamilar was designated as poseur-buyer and SPO4 Abong, PO3 Wilfredo Blanco, PO3 Joel Diomampo, PO3 Jorge Santiago, and PO1 Alex Jimenez, as back up.³

P/S Insp. Chief Razon, Sr. gave PO3 Pamilar two (2) pieces of P500.00 as buy-bust money. The latter marked the bills with his initials "AP" and placed them on top of fifty-two (52) pieces of boodle money. After coordinating with the Philippine Drug and Enforcement Agency (PDEA), the team instructed the confidential informant to call appellant and schedule the purchase from appellant P20,700.00 worth of drugs. Appellant agreed to meet the confidential informant at Jollibee Anonas corner Kamias Street, Quezon City at 6 o'clock in the evening.⁴

At the designated meeting place, the confidential informant and PO3 Pamilar walked inside the Jollibee restaurant while the rest of the team positioned themselves nearby. The confidential informant introduced PO3 Pamilar to appellant as the person interested to buy shabu. Appellant then took a plastic sachet containing white crystalline substance from her pocket and gave it to PO3 Pamilar who, in turn, handed appellant the buy-bust money. PO3 Pamilar then touch his nose to signal the team of the consummated sale.⁵

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² Record, p. 23.

³ TSN dated August 17, 2012, pp. 4-5; TSN dated September 26, 2013, pp. 9-11.

⁴ TSN dated August 17, 2012, pp. 5-7; TSN dated September 26, 2013, p. 11.

⁵ TSN dated August 17, 2012, pp. 8-10; TSN dated September 26, 2013, pp. 11-12.

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Thereupon, the team closed in and arrested appellant. PO3 Blanco frisked appellant and recovered the buy-bust money from her. Inside the Jollibee restaurant, PO3 Pamilar marked the plastic sachet he bought from appellant with "AP-GA-06-30-10". They brought appellant to the police station where the seized plastic sachet and buy-bust money were turned over to desk officer PO3 Joselito Dela Cruz who entered it in the blotter. In turn, PO3 Dela Cruz handed the seized items to SPO1 Jeffrey Flores who photographed the same and prepared the inventory and request for examination. The inventory was witnessed by a media representative. Subsequently, PO3 Pamilar, SPO1 Flores, and PO3 Blanco brought the seized plastic sachet and request for examination to the crime laboratory.⁶

Forensic Chemist Bernardino M. Banac, Jr. received the request and specimen and conducted a qualitative test thereon. Per Chemistry Report No. D-234-10 dated July 1, 2010, the specimen was found positive for methylamphetamine hydrochloride, a dangerous drug.⁷

After the examination, Forensic Chemist Banac, Jr. re-sealed the plastic sachet, placed it inside a bigger plastic sachet, marked it with D-23410-BMB, and gave it to the evidence custodian. He only retrieved it from the evidence custodian when he was about to present it in court.⁸

The prosecution offered the following in evidence: Referral letter to the Office of the City Prosecutor for Inquest Proceeding;⁹ Joint Affidavit of Arrest;¹⁰ Photographs of appellant and the buy-bust money;¹¹ Coordination Form;¹² Pre-Operation Report;¹³ Receipt/Inventory of Property Seized;¹⁴ Request for Laboratory Examination;¹⁵ Requests for Drug Test and Medical Examination;¹⁶ Affidavit of Attestation;¹⁷ Arrest and Booking Sheet;¹⁸ and, Chemistry Report No. D-234-10.¹⁹

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⁶ TSN dated August 17, 2012, pp. 11-12; TSN dated November 23, 2012, pp. 3-8; TSN dated September 26, 2013, pp. 12-17; Record, p. 36.

⁷ Record, p. 31.

⁸ *Id.* at 76-77.

⁹ *Id.* at 97.

¹⁰ *Id.* at 98-99.

¹¹ *Id.* at 107.

¹² *Id.* at 100.

¹³ *Id.* at 101.

¹⁴ *Id.* at 102.

¹⁵ *Id.* at 32.

¹⁶ *Id.* at 103-104.

¹⁷ *Id.* at 105.

¹⁸ *Id.* at 106.

¹⁹ *Id.* at 31.

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The Defense's Version

Appellant testified that on June 25, 2010, she was cooking at home when several men suddenly barged in. Two (2) men held her by the shoulder and ordered her to go with them. She was boarded into their vehicle, brought to the police station, and locked in jail. The men turned out to be police officers. They asked P100,000.00 for her release. She could not have sold PO3 Pamilar the alleged shabu on June 30, 2010 because she had been locked in jail since five (5) days before the so-called sale took place.²⁰

The Trial Court's Ruling

By Judgment²¹ dated August 18, 2015, the trial court rendered a verdict of conviction, thus:

WHEREFORE, judgment is hereby rendered finding accused GENEVA ATON y PAMALOY GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165. Accordingly, she is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of Five Hundred Thousand (P500,000.00) Pesos.

X X X X X X X X X

SO ORDERED.²²

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The trial court gave full credence to the testimonies of the prosecution witnesses who were police officers performing their official functions. The chain of custody had been duly established, thus, the integrity and evidentiary value of the seized drug were deemed properly preserved.²³

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for overlooking the following procedural lapses in the buy-bust operation: the inventory and photograph were not made immediately after arrest and the same

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²⁰ TSN dated July 30, 2015, pp. 3-11.

²¹ CA *rollo*, pp. 41-50.

²² *Id.* at 49.

²³ *Id.* at 45-49.

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were not witnessed by a representative from the Department of Justice (DOJ) and a local elected official. Too, the trial court gave credence to the testimonies of the prosecution witnesses despite the improbability of a drug transaction taking place inside the Jollibee restaurant in full public view.

For its part, the Office of the Solicitor General (OSG), through Assistant Solicitor General Magtanggol M. Castro and Senior State Solicitor Diana H. Castañeda-De Vera countered in the main: 1) the elements of illegal sale of drugs were proven; 2) there was substantial compliance with the chain of custody rule; 3) the presumption of regularity in the performance of the agents' official functions prevails over appellant's bare defenses of denial and frame up. The OSG also pointed out that illegal sale of drugs can now be done any time, or at any place, be it public or private.

The Court of Appeals' Ruling

In its assailed Decision dated November 23, 2016, the Court of Appeals affirmed. It found that there was substantial compliance with the chain of custody rule and the integrity of the seized drug was deemed properly preserved. Thus, despite the absence of a DOJ representative and local elected official during the inventory, the chain of custody had remained intact. There was, therefore, no doubt that the seized dangerous drug was the same one submitted to the crime laboratory for testing and subsequently presented in court as evidence.²⁴

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for her acquittal. In compliance with the Court's Resolution dated December 14, 2017, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.²⁵

The Core Issue

Was the chain of custody complied with here?

The Ruling

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²⁴ *Rollo*, pp. 9-13.

²⁵ OSG's Manifestation, *rollo*, pp. 21-23; Appellant's Manifestation, *rollo*, pp. 29-31.

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Appellant is charged with illegal sale of dangerous drugs allegedly committed on June 30, 2010. The governing law is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, viz:

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;** (Emphasis added)

x x x

x x x

x x x

The Implementing Rules and Regulations (IRR) of RA 9165 further commands:

Section 21. (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**

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seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphases added)

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X X X

X X X

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally sold by the accused is the same substance eventually presented in court.²⁶

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.²⁷

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.²⁸

Here, the prosecution failed to establish an unbroken chain of custody.

First, the venue for making the inventory and taking of photograph was not properly complied with. Section 21 (a) of the IRR requires that the inventory and taking of photograph be conducted immediately after seizure and confiscation, thus it must be done at the place of the arrest.²⁹

Here, PO3 Blanco testified that upon appellant's arrest, she was immediately brought to the police station where an inventory of the seized items was conducted. He offered no reason why the seized items had to be brought all the way to the police station to have them inventoried and photographed when they could have been easily done right where the drug was confiscated, and appellant, arrested.

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²⁶ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

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In *People v. Dela Torre*, the inventory was also not conducted in the place of arrest but in the barangay hall. The Court noted that the prosecution failed to sufficiently explain this deviation. Such failure to comply with the inventory requirement resulted in the acquittal of the accused.³⁰

Second, the physical inventory and taking of photograph were not done in the presence of a representative from the Department of Justice (DOJ) and local elected official.

PO3 Anthony Pamilar testified:

Q: I am showing to you an Inventory Receipt, what relation has this document with the one you are referring to?

A: This is the same Inventory made by our investigator SPO1 Jeffrey Flores.

Q: Do you recognize whose signatures appearing on this document as witnesses?

A: That one is my signature, ma'am, and the other one is the signature of the Media representative.

Q: And do you recall his name?

A: I cannot recall, ma'am.³¹

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PO3 Pamilar admitted that the inventory was only witnessed by a media representative. He did not mention that a DOJ representative and a local elected official were also present during the inventory. The prosecution utterly failed to acknowledge this deficiency, let alone, offer any explanation therefor. PO3 Pamilar did not even know the name of the media representative who supposedly witnessed the inventory. This indubitably triggered more questions, *i.e.* who was the media representative, and was he really present during the conduct of inventory and taking of photograph? Notably, the prosecution was simply silent on this point.

In *People v. Martin*, there was also no DOJ representative during the inventory. The prosecution further failed to acknowledge this deficiency. The Court, therefore, concluded that this lapse, among others, cast serious doubt on the integrity and identity of the *corpus delicti* especially in the face of allegations of frame up.³²

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³⁰ *Id.*

³¹ TSN dated September 26, 2013, pp. 16-17.

³² G.R. No. 231007, July 1, 2019.

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Third, who took custody of the seized drug from the place of arrest *en route* the police station? Who turned it over to the police investigator?

While PO3 Blanco and PO3 Pamilar testified that the seized items were turned over to the desk officer PO3 Dela Cruz who entered it in the blotter, they did not identify who actually had possession of the drug from the time it was seized until the police officers concerned reached the police station. Again, the prosecution failed to offer any answer to these questions.

More, PO3 Dela Cruz did not take the stand to testify on the circumstances surrounding his alleged receipt of the seized drug. This failure is another fatal breach in what already was a broken chain of custody.

On this score, *People v. Burdeos* ordained that every person who takes possession of seized drugs must show how they were handled and preserved while the same were in his or her custody to prevent any switching or replacement. The prosecution's failure to present the police officer who received the seized items constituted a ground for dismissal of the case.³³

Fourth, whatever happened to the confiscated drug after Forensic Chemist Banac, Jr. gave the specimen to the evidence custodian for safekeeping? This question has remained unanswered even up to this time.

In *People v. Baltazar*, there was absolutely no showing how the alleged seized item was stored after it was examined by the forensic chemist. Neither was there any evidence, testimonial or documentary, offered to identify the person to whom the forensic chemist gave the specimen after examination and where the same was kept until it was retrieved and presented in court. Indubitably, the Court held that this is a breach in the chain of custody rule.³⁴

Indeed, the repeated breach of the chain of custody rule here was a fatal flaw which had destroyed the integrity and evidentiary value of the *corpus delicti*.

Admittedly, a perfect chain may be impossible to obtain at all times because of varying field conditions. In fact, the IRR of RA 9165

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³³ G.R. No. 218434, July 17, 2019 citing *People v. Ismael*, 806 Phil. 21, 35 (2017).

³⁴ G.R. No. 229037, July 29, 2019.

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offers a saving clause allowing leniency whenever justifiable grounds exist which warrant a deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.³⁵

The prosecution, however, bears the burden of proof to show valid cause for non-compliance with Section 21 of RA 9165, as amended. It must acknowledge and justify any perceived deviation from the procedural requirements of the law. Its failure to follow the mandated procedure must be adequately explained and proven as a fact in accordance with the rules on evidence.³⁶

Here, the prosecution witnesses offered no explanation which would have excused the buy-bust team's stark failure to comply with the chain of custody rule. In other words, the condition for the saving clause to become operational was not complied with. For the same reason, therefore, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved," does not come into play.

In light of the prosecution's failure to provide justifiable grounds for non-compliance with the chain of custody rule, appellant's acquittal is in order. *People v. Crispo* is apropos:

Since compliance with the procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.³⁷

The presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers unjustifiably failed to comply with the requirements laid down in Section 21 of RA 9165

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³⁵ See Section 21 (a), Article II, of the IRR of RA 9165; *People v. Burdeos*, G.R. No. 218434, July 17, 2019.

³⁶ *Supra* note 26.

³⁷ G.R. No. 230065, March 14, 2018.

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and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused.³⁸

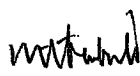
WHEREFORE, the appeal is **GRANTED**. The Decision dated November 23, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 07693 is **REVERSED** and **SET ASIDE**. Appellant **GENEVA ATON Y PAMALOY** is **ACQUITTED** in Criminal Case No. Q-10-164855. The Superintendent of the Correctional Institution for Women, Mandaluyong City is ordered to a) immediately release **GENEVA ATON Y PAMALOY** from custody unless she is being held for some other lawful cause; and b) submit a report on the action taken within five (5) days from notice. Let an entry of final judgment be issued immediately.

SO ORDERED.” *Inting, J., took no part; Hernando, J., acting member per S.O. No. 2726-B dated November 21, 2019.*

Very truly yours,

LIBRADA C. BUENA
Division Clerk of Court

By:


MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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134 Amorsolo Street, Legaspi Village
1229 Makati City

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The Superintendent (x)
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The Hon. Presiding Judge
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³⁸ *People v. Omamos*, G.R. No. 223036, July 10, 2019.

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