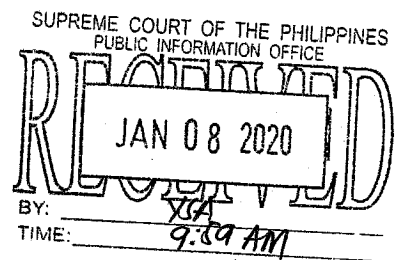




Republic of the Philippines
Supreme Court
Manila



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. 236585 (People of the Philippines v. Ricardo Caringal y Olegenio, alias Rey Nguso)

The Case

This appeal¹ assails the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 07894 dated July 18, 2017² affirming appellant’s conviction for violation of Sections 5 and 11, Article II of Republic Act (RA) 9165.³

The Proceedings Before the Trial Court

The Charge

By Information dated February 20, 2009, appellant Ricardo Caringal y Olegenio alias *Rey Nguso* was charged with violation of Sections 5 and 11, Article II of RA 9165, thus:

Crim Case No. Q-09-160411

That on or about the 24th day of July 2009, in Quezon City, Philippines, the accused, without authority of law, did then and there, willfully, unlawfully and knowingly possess zero point zero two hundred twenty-five thousandths (0.0225) gram of Methylamphetamine Hydrochloride, a dangerous drug.

Contrary to Law.

- over – eleven (11) pages ...

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¹ Filed under Rule 45 of the Rules of Court.

² Penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Maria Elisa Sempio Diy; *Rollo*, pp. 2-15.

³ Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Crim Case No. Q-09-160412

That on or about the 24th day of July 2009 in Quezon City, 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: zero point zero three hundred twelve thousandths (0.0312) gram of Methylamphetamine Hydrochloride, a dangerous drugs. (sic)

Contrary to Law.⁴

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

On arraignment, appellant pleaded *not guilty* to both charges.

During the trial, Police Officer 2 (PO2) Arman Labrador testified for the prosecution. Appellant was the lone witness for the defense.⁵

The Prosecution's Version

PO2 Labrador testified that on July 23, 2009, a confidential informant went to the police station in Batasan Hills, Quezon City to report that a certain *Rey Nguso* was selling *shabu*. Acting on this report, PCI Ariel Capocao instructed his subordinates to conduct a buy-bust operation. He was designated as poseur-buyer and SPO2 Dante Nagera as back-up. They prepared the buy-bust money consisting of two (2) Php100 bills marked with his initials "LA-1" and "LA-2." Thereafter, the confidential informant accompanied the team to Kasunduan Street, Brgy. Commonwealth, Quezon City.⁶

Around noon, the buy-bust team arrived at the place of operation. From a distance of about fifteen (15) meters, the confidential informant pointed to appellant as *Rey Nguso*. At that time, appellant was handing over a plastic sachet containing white crystalline substance to an unidentified man. When the man left, he and the confidential informant approached appellant. The confidential informant introduced him to appellant as an interested buyer. He told appellant he was buying Php200-worth of *shabu* and then handed the marked bills to appellant who slipped them inside his pocket. In turn,

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⁴ Rollo, p. 3.

⁵ Rollo, p. 4-6; CA Rollo, pp. 53-55.

⁶ Rollo, pp. 4-5.

appellant brought out one (1) heat-sealed plastic sachet containing white crystalline substance from his left pocket and turned it over to him.⁷

Thereupon, he signaled SPO2 Nagera to rush to the scene. He and SPO2 Nagera introduced themselves as police officers and arrested appellant. They searched his person recovered from the latter the buy-bust money and another plastic sachet from appellant's left pocket. He immediately marked the plastic sachet he bought from appellant with "AL/RC-1-24-07-09"; while the plastic sachet recovered from appellant's pocket, with "AL/RC-2-24-07-09."

The buy-bust team decided to do the inventory and take photographs of the seized items at Police Station 6, Batasan Hills, Quezon City.⁸ There, media representative Erwin de Lara⁹ arrived. The police officers prepared the inventory receipt and took photographs of the seized items in his presence.¹⁰ He kept the seized items in his possession from seizure until their turn over to the Philippine Drug Enforcement Agency (PDEA) Crime Laboratory. It was he who also did the delivery to the PDEA Crime Laboratory. The results of the forensic examination showed that the contents of the seized items tested positive for Methamphetamine Hydrochloride.¹¹

The parties stipulated on the proposed testimony of forensic chemist Severino P. Uy, Jr., viz:

1. That the witness, Severino P. Uy, Jr. is a Qualified Forensic Chemist at the PDEA Laboratory Service;
2. That he personally received a Request for Laboratory Examination, together with the specimens subject of this case;
3. That he can identify the Request for Laboratory Examination, already marked as Exhibit "D";
4. That the witness upon receiving the same conducted Qualitative Examination and found that the specimen is positive for the presence of Methamphetamine Hydrochloride;

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⁷ *Id.* at 5.

⁸ *Id.* at 5-6.

⁹ Of the DILG-Press Corp Lingkod Bayan.

¹⁰ *Rollo*, p. 6.

¹¹ *Id.*

5. That he can identify the Final Chemistry Report No. "E" indicating his findings already marked as Exhibit "___"; (Emphasis in the original)¹²

XXXX

The prosecution offered the following evidence: Affidavit of PO2 Labrador; Sworn Affidavit of Back-up of SPO2 Dante Nagera; Request for Laboratory Examination; Chemistry Report; Coordination Form; Pre-Operation Report; buy-bust money consisting of two (2) one hundred peso bills; two plastic sachets marked "AL/RC-1-24-07-09" and "AL/RC-2-24-0709"; Inventory Receipt; Arrest and Booking Sheet; and photos of the seized items and the accused.¹³

The Defense's Evidence

On July 23, 2009 around 4 o'clock in the afternoon, he was on Kasunduan Street on his way home from the market when a van stopped near him. A passenger signaled him to approach, which he did. The passenger introduced himself as a police officer and asked appellant to board the vehicle. But as soon as he boarded, the police officer and two (2) others inside the van immediately arrested him. He later identified two (2) of them as PO2 Labrador and SPO2 Nagera. They told appellant that he was *Rey Nguso*, a drug dealer. He denied this accusation, but they just continued to call him *Rey Nguso* as they brought him to the police station. There, for the first time, he saw the *shabu* he allegedly sold.¹⁴

The Trial Court's Ruling

As borne by its Joint Judgment dated November 16, 2015,¹⁵ the trial court rendered a verdict of conviction, *viz.*:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. 09-160411, the Court finds accused Ricardo Caringal y Olegeno, GUILTY beyond reasonable doubt of violation of Sec. 11, Art. II, of Republic Act 9165, and sentences him to suffer the penalty of imprisonment of Twelve (12) years and one (1) day as minimum to Twenty (20) years as maximum and to pay a fine of Three Hundred Thousand (P300,000.00);

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¹² Minutes of Preliminary Conference dated November 11, 2009; Original Records, pp. 47-49.

¹³ CA Rollo, pp. 53-55.

¹⁴ Rollo, pp. 6-7.

¹⁵ Penned by Presiding Judge Nadine Jessica Corazon J. Fama.

2. In Criminal Case No. 09-160412, the Court finds accused Ricardo Caringal y Olegenio, GUILTY beyond reasonable doubt of violation of Sec. 5, Art. II, of Republic Act 9165 and sentences him to suffer LIFE imprisonment and to pay a fine of FIVE hundred Thousand (₱500,000.00) pesos.

The Acting Branch Clerk of this Court is directed to immediately turn over to the Philippine Drug Enforcement Agency, the dangerous drugs subject hereof for proper disposition and final disposal.¹⁶

It ruled that all the elements of the crimes were sufficiently established, the seized items and their evidentiary value were properly preserved, and the *corpus delicti* in both cases were positively identified.¹⁷

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction despite the prosecution's purported failure to establish the integrity and identity of the seized items, and notwithstanding the arresting officers' failure to observe the chain of custody rule:

First, there was a material inconsistency in the marking of the items – PO2 Labrador wrote thereon his initials “AL/RC” and those of appellant Ricardo Caringal. PO2 Labrador's testimony, however, did not establish that he already knew appellant's full name when they arrested the latter.¹⁸

Second, the police officers failed to exert earnest effort to secure the presence of the required witnesses to the inventory and photograph under Section 21(1) of RA 9165.¹⁹

Finally, the prosecution did not present any witness to testify on the handling and safekeeping of the seized items from the time they were turned over to the forensic chemist until they were delivered to the trial court. While the parties stipulated on what would have been the testimony of the forensic chemist, they did not stipulate on the handling, safekeeping, and preservation of the items after their examination.²⁰

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¹⁶ *CA rollo*, pp. 50-56.

¹⁷ *Id.* at 52-60.

¹⁸ *Id.* at 34-41.

¹⁹ *Id.* at 41-44.

²⁰ *Id.* at 44-49.

The Office of the Solicitor General (OSG), through Assistant Solicitor General John Emmanuel F. Madamba, Associate Solicitor Melissa A. Santos, and Associate Solicitor Angelica Anne B. Recto defended the verdict of conviction.²¹ It argued that all the elements of illegal sale and illegal possession of dangerous drugs were established; the integrity and evidentiary value of the seized items were preserved despite non-compliance with Section 21 of RA 9165; the *corpus delicti* was identified in open court; the buy-bust operation and subsequent handling and preservation of the seized items, including the fourth custodial link carried the presumption of regularity; hence, the court may fully rely on the chemistry report although the handling chemist did not testify.

The Court of Appeals' Ruling

By Decision dated July 18, 2017, the Court of Appeals affirmed.²² It found that all the elements of the crimes were present and appellant was positively identified as the subject of the buy-bust operation. More, non-compliance with the procedural safeguards prescribed under Section 21, RA 9165 and its Implementing Rules and Regulations was not fatal to the prosecution's case since the integrity of the seized items were preserved. Finally, the buy-bust operation as well as the handling and preservation of the seized items enjoyed the presumption of regularity which appellant failed to overturn.²³

The Present Appeal

Appellant now asks the Court for a verdict of acquittal.²⁴

In compliance with Resolution dated April 23, 2018, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.²⁵

Issue

Did the Court of Appeals err in affirming the trial court's twin verdicts of conviction despite the attendant procedural deficiencies relative to the chain of custody over the *corpus delicti*?

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²¹ *Id.* at 78-90.

²² *Rollo*, pp. 2-15.

²³ *Id.* at 9-13.

²⁴ *Id.* a. 16-17.

²⁵ *Id.* at 23-30.

Ruling

We acquit.

Petitioner was charged with unauthorized sale and possession of dangerous drug allegedly committed on July 24, 2009. The governing law, therefore, is RA 9165. Section 21 thereof 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)

XXXX

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 seized items are properly preserved by the apprehending officer/team, shall not render void

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and invalid such seizures of and custody over said items. (emphasis added)

To ensure the integrity of the seized drug items, the prosecution must account for each link in its chain of custody:²⁶ *first*, the seizure and marking of the illegal drugs recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drugs seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drugs to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drugs 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

Records show that the arresting officers here had repeatedly breached the chain of custody rule.

Prosecution witness PO2 Labrador testified:

XXXX

Q Who were present during the Inventory, Mr. Witness?

A I together with my fellow officers, the arrested person and the media representative, sir.

Q I am showing this document, Mr. Witness. Will you please show to us the name and signature of the media represent (sic) if he was indeed present during that time?

A This Edwin De Lara, sir.
(Emphases supplied)

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²⁶ As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

XXXX

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

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²⁷ *Jacson v. People*, G.R. No. 199644, June 19, 2019, citing *People v. Dahil*, 750 Phil. 212, 231 (2015).

²⁸ *Jacson v. People*, G.R. No. 199644, June 19, 2019, citing *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

PO2 Labrador on cross

Q And the inventory was also conducted in your office?

A Yes, sir.

Q And likewise the photograph was also conducted in your office?

A Yes, sir.

Q **And that provision in the law it requires the presence of the representative from the DOJ, the Media and elected Barangay Official at the place where you arrested the accused?**

A Yes, sir.

Q **In this case, Mr. witness, you failed to comply with the provision of Section 21 of RA 9165.**

A **We tried to contact them but only the representative from the Media arrived, sir.**
(Emphases supplied)

XXXX

Here, neither an elected official nor a representative from the DOJ witnessed the physical inventory and photograph of the seized items. No valid reason was offered for this omission. PO2 Labrador merely testified that these witnesses simply did not arrive.

In *People v. Lim*,²⁹ the Court held that mere statements of unavailability of the required witnesses, by themselves do not excuse non-compliance with Section 21, RA 9165. It is still necessary for the prosecution to establish that earnest efforts were made to secure the presence of the required witnesses. Here, the police officers failed to show genuine and sufficient effort to secure the presence of the representatives as witnesses to the inventory and photograph requirements under Section 21, RA 9165.

More, the prosecution did not present any witness to testify on how the forensic chemist handled the specimens during laboratory examination and how the evidence custodian preserved them until they reached the trial court. Rather, it relied on the presumption of regularity in maintaining that the fourth link in the custodial chain had been sufficiently established.

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²⁹ G.R. No. 231989, September 4, 2018, citing *People v. Ramos*, G.R. No. 233744, February 28, 2018.

In the recent cases of *People v. Ubungen*³⁰ and *People v. Victoria*,³¹ the Court ruled that absent any testimony on the management, storage, and preservation of the seized illegal drug, the fourth link in the chain of custody could not be reasonably established. Too, in *People v. Pajarin*,³² the Court noted that in stipulating to dispense with the attendance of the police chemist, the parties should stipulate: 1) he received the seized article marked, properly sealed and intact; 2) he resealed it after examination of the content; 3) and he placed his own marking on the same to ensure that it could not be tampered pending trial.

Here, the prosecution failed to establish that the parties stipulated on the handling, safekeeping, and preservation of the seized items after their examination in accordance with the guidelines set forth in *Ubungen* and *Victoria*. They also failed to comply with the required stipulations on the forensic chemist's testimony in *Pajarin*, the parties having merely stipulated on the chemist's qualification, his receipt of the seized item, its identification and the positive result thereof.

Indeed, the chain of custody was broken from its incipience until its final stages. Although a saving clause in the IRR of RA 9165 allows deviation from established protocol, this is subject to the condition that justifiable grounds exist and "so long as the integrity and evidentiary value of the seized items are properly preserved."³³ Since the arresting officers offered no valid explanation for the procedural deficiencies here, the saving clause cannot be invoked, barring the proviso from coming into play.

Suffice it to state that the presumption of regularity in the performance of official functions³⁴ cannot substitute for compliance in an attempt to reconnect the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.³⁵ And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule. Verily, a verdict of acquittal is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 18, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 07894 is **REVERSED** and **SET ASIDE**.

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³⁰ G.R. No. 225497, July 23, 2018.

³¹ G.R. No. 238613, August 19, 2019.

³² *People v. Pajarin, et al.*, 654 Phil. 461, 466 (2011).

³³ See Section 21 (a), Article II, of the IRR of RA 9165.

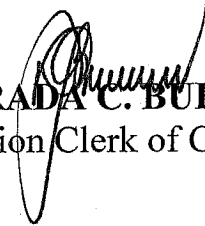
³⁴ Section 3(m), Rule 131, Rules of Court.

³⁵ *People v. Cabiles*, June 7, 2017, G.R. No. 220758, 827 SCRA 89, 98.

Appellant **RICARDO CARINGAL y OLEGENIO** alias *Rey Nguso* is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellant Ricardo Caringal y Olegenio from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.

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

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court
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The Solicitor General
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1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 07894)

The Hon. Presiding Judge
Regional Trial Court, Branch 79
1100 Quezon City
(Crim. Case Nos. Q-09-160411 to 12)

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