

BY: Y/A  
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Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated November 28, 2019 which reads as follows:*

**“G.R. No. 246974 – People of the Philippines vs. Roderick Manuel y Guevarra**

This petition assails the Decision<sup>1</sup> dated July 16, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09267 affirming the conviction of Roderick Manuel Guevara (appellant) for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).

**The Facts and the Plea:**

In Criminal Case No. 21181, appellant was charged with illegal sale of dangerous drug under the following Information:

That on the 3<sup>rd</sup> day of December 2012, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not authorized by law, did then and there, willfully unlawfully and feloniously sell and deliver one (1) heat-sealed transparent plastic sachet of white crystalline substance, a Methamphetamine Hydrochloride or Shabu, weighing ZERO POINT ZERO TWO (0.02) gram, a dangerous drug, then in his possession and custody.

CONTRARY TO LAW.<sup>2</sup>

The case was raffled to the Regional Trial Court (RTC)-Branch 86, Cabanatuan City.

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<sup>1</sup> Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justice Jane Aurora C. Lantion and Associate Justice Zenaida T. Galapate-Laguilles, all members of the Second Division, CA *rollo*, pp. 133-140.

<sup>2</sup> CA *rollo*, pp. 95-96.

On arraignment, appellant pleaded "not guilty."<sup>3</sup> Thereafter, trial ensued.

During the trial, Police Officer 1 Ramon F. Miguel IV (PO1 Miguel) testified for the prosecution. The parties dispensed with the testimony of forensic chemist P/Insp. Jemie Timario upon the defense's admission of the existence of Chemistry Report No. D-301-2012.<sup>4</sup> Appellant was the lone witness for the defense.

### *The Prosecution's Evidence*

**PO1 Miguel** testified that on December 3, 2012, he was on duty at the police station when an informant reported to him that someone was selling *shabu* (*methamphetamine hydrochloride*) in Aduas, Cabanatuan City. He relayed this information to Police Chief Superintendent Peter Naboya and coordinated with the Philippine Drug Enforcement Agency (PDEA) to conduct a buy-bust operation. Upon receipt of a control number from the PDEA, they prepared a pre-operation report and three (3) one hundred peso bills (₱100.00) marked with his initials "RFM." He was designated as poseur-buyer and PO1 Geoffrey Bernardo (PO1 Bernardo) as back-up.<sup>5</sup>

Around 8 o'clock in the evening, the team together with the informant arrived at the place of operation. The informant texted the seller who turned out to be appellant, that he (informant) would like to buy drugs. Appellant replied, instructing them to go to his house. They entered appellant's house while PO1 Bernardo stood by about ten (10) meters away. Inside, he gave the marked money to appellant who, in turn, handed him a plastic sachet uttering "*this is the one you bought.*" After the transaction, he arrested appellant and apprised him of his constitutional rights. PO1 Bernardo also entered appellant's house to assist in the arrest.<sup>6</sup>

They marked the seized item at the '*tarangkahan*,' proceeded to the police station, and turned over the seized item to the investigator for inventory. Representatives from the Department of Justice (DOJ), media and the barangay council witnessed the inventory, albeit none of the members from the media signed the inventory receipt.<sup>7</sup> He and PO1 Bernardo also prepared a request for laboratory examination of

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<sup>3</sup> *Id.* at 51.

<sup>4</sup> *CA rollo*, p. 60.

<sup>5</sup> *Rollo*, p. 5.

<sup>6</sup> *CA rollo*, p. 97.

<sup>7</sup> *Id.*

the seized item and urinalysis for appellant which both tested positive for *methamphetamine hydrochloride* as shown in Chemistry Report No. D-301-2012.<sup>8</sup>

The prosecution offered in evidence the *Sinumpaang Salaysay* of the arresting officers, inventory of the property seized, request for laboratory examination on the seized evidence, coordination form, pre-operational report, photocopies of the three (3) ₱100.00 bills marked "RFM," Chemistry Report No. D-301-2012, two (2) pictures showing the inventory procedure and the subject specimen.<sup>9</sup>

### ***The Defense's Evidence***

Appellant denied the charge. He testified that on December 3, 2012, around 6 o'clock in the evening, he went to buy viand at a nearby store. He noticed a car parked in front of their gate. From the store, he saw six (6) persons enter his yard and close the gate. He only recognized the driver because the other five (5) were wearing bonnets.<sup>10</sup>

Alarmed, he approached the men and asked why they closed the gate. Suddenly, one (1) of them held him by the arm and handcuffed him. The men in bonnets went inside his house and forcibly searched the rooms but found nothing illegal. Subsequently, PO1 Miguel arrived with other police officers. PO1 Miguel poked a gun at the driver only to discover that the men in bonnets were police officers too. They brought him (appellant) to the police station where he was accused of selling drugs.<sup>11</sup>

**The Trial Court's Ruling:** By Decision dated December 19, 2016,<sup>12</sup> the trial court found appellant guilty as charged, *viz.*:

WHEREOF, premises considered, judgment is hereby rendered in this case finding accused RODERICK MANUEL y GUEVARRA guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act 9165 and hereby sentences him to LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

Let the subject shabu in this case be transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition pursuant to A.M. No. 145-2002 of the Supreme Court.

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<sup>8</sup> CA rollo, p. 98.

<sup>9</sup> *Id.* at 100.

<sup>10</sup> Rollo, p. 6.

<sup>11</sup> *Id.*

<sup>12</sup> CA rollo, pp. 49-62.

\* Furnish copies of this Decision the Prosecuting Fiscal, the accused, the defense counsel, the complaining police officers, and Philippine Drug Enforcement Agency for their information and record.

SO ORDERED.<sup>13</sup>

The trial court held that an illegal sale of dangerous drug indeed took place between appellant and the police poseur-buyer. The *corpus delicti* was sufficiently established through the presentation in court of the seized item and Chemistry Report No. D-301-2012. It disregarded appellant's defense of denial and gave full credence to the testimonies of the police officers. Finding that the police authorities not to have been impelled by any ill-motive, the presumption of regularity in the performance of their official duty was upheld.

**The Proceedings before the Court of Appeals:** On appeal, appellant faulted the trial court for rendering the verdict of conviction despite the prosecution's alleged failure to prove that the arresting officers actually conducted a buy-bust operation. In any event, the prosecution failed to establish the chain of custody of the *corpus delicti*.<sup>14</sup> The testimony of PO1 Miguel lacked specificity as to what transpired in the exchange of text messages between the informant and PO1 Miguel. Further, the inconsistency in the testimony of PO1 Miguel on the identity of the police investigator raised serious doubt on the integrity of the seized item.

On the other hand, the Office of the Solicitor General (OSG) through Senior State Solicitor Jonathan L. De La Vega and Associate Solicitor II Ina Beatriz R. De Vera countered that the illegal sale of dangerous drug was proven beyond reasonable doubt. The testimony of PO1 Miguel provided a detailed account of the transaction,<sup>15</sup> and the integrity and evidentiary value of the evidence were duly preserved.<sup>16</sup>

**The Court of Appeals' Ruling:** By Decision dated July 16, 2018, the Court of Appeals affirmed the verdict of conviction. It ruled that PO1 Miguel's testimony clearly established the identities of both buyer and seller, the 0.02 gram of *shabu* as the object of the sale, and the three

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<sup>13</sup> *Id.* at 61-62.

<sup>14</sup> *Id.* at 76-94.

<sup>15</sup> *Id.* at 116-121.

<sup>16</sup> *Id.* at 121-124.

(3) one hundred peso bills (P300.00) marked money as consideration. The inconsistency on the identity of the investigating officer did not diminish the value of PO1 Miguel's testimony.

### **The Present Appeal**

Appellant now asks the Court to reverse the assailed disposition of the Court of Appeals and prays anew for his acquittal.

He faults the Court of Appeals for concluding that there was an actual buy-bust operation. Too, the testimony of PO1 Miguel on the alleged illegal drug transaction should be considered hearsay since the police asset did not testify in court. At any rate, it erred in admitting the seized item in evidence despite the arresting officers' deviation from the chain of custody rule.

On the other hand, the OSG defends the verdict of conviction and argues that the illegal sale was proven beyond reasonable doubt; the non-presentation of the confidential informant was not fatal to the prosecution's case; and the integrity and evidentiary value of the seized item was preserved.

### **Issue**

Did the Court of Appeals err in affirming the verdict of conviction against appellant for illegal sale of drugs?

### **Ruling**

We acquit.

Appellant was charged with illegal sale of dangerous drug allegedly committed on December 3, 2012. The governing law, therefore, is RA 9165 prior to its amendment in 2014.

The essential elements in a prosecution for illegal sale of dangerous drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) delivery of the thing sold and payment for it. The prohibited drug is an integral part of the crime; proof of its identity, existence, and presentation in court are crucial. A conviction cannot be sustained if there is a persistent doubt on the identity of the drug.<sup>17</sup>

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<sup>17</sup> See *People v. Barba y Biazon*, 611 Phil. 330, 336-337.

The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of sale are present, the fact that the substance illegally sold is the same substance offered in evidence during the trial must likewise be established with the same degree of certitude needed to sustain a guilty verdict. This is accomplished by showing compliance with the chain of custody rule.<sup>18</sup>

Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements RA 9165 defines chain of custody, thus:

“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.

The importance of the chain of custody rule was explained in *Mallillin v. People*,<sup>19</sup> viz.:

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 in 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.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The

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<sup>18</sup> *Id.*

<sup>19</sup> Phil. 576, 587-588 (2008).

same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination, and even substitution and exchange. In other words, the exhibits level of susceptibility to fungibility, alteration or tampering – without regard to whether the same is advertent or otherwise not – dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.

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A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases by accident or otherwise in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

In *People v. Dahil*<sup>20</sup> the Court restated the links in the chain of custody:

**First**, the seizure and marking, if practicable, 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.

Here, We focus on the first, second and third links in the chain of custody.

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<sup>20</sup> Phil. 576, 587-588 (2008).

***First Link: The three-witness rule was not complied***

No representative from the media signed the inventory. The prosecution did not offer any explanation for this omission.

Section 21(1) of RA 9165<sup>21</sup> provides:

- (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 supplied*)

Section 21(a) of the Implementing Rules and Regulations of RA 9165 further commands:

- (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 noncompliance 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;

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The presence of insulating witnesses from the media, the DOJ, and an elected public official is a requirement during inventory to guard against the possibility of planting, contamination, or loss of the

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<sup>21</sup> 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.



seized drug.<sup>22</sup> Non-compliance with the requirement without justifiable ground negates the integrity and credibility of the seizure, and adversely affects the trustworthiness of the incrimination against the accused.<sup>23</sup>

Conspicuously, the inventory here was signed by a representative of the DOJ and a barangay official only. Although PO1 Miguel testified that members from media arrived at the police station, he failed to explain why none of them signed the inventory as witness as required.<sup>24</sup> Consequently, his testimony on the alleged presence of media representatives becomes doubtful, belied as it was by the inventory he himself prepared.

In *People v. Crispo*,<sup>25</sup> the Court acquitted appellant therein for failure of the arresting officers to comply with the three (3)-witness rule under Section 21(1) of RA 9165. The absence of a representative from the media and DOJ during the inventory was fatal to the prosecution's case.

Under varied field conditions, strict compliance with procedure laid out in Section 21 of RA 9165 may not always be possible and failure of the apprehending team to do so does not *ipso facto* render the seizure and custody over the items void.<sup>26</sup> This saving clause, however, comes with a caveat: the prosecution must prove (a) there is justifiable ground for non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved.

The prosecution has the positive duty to explain the reasons behind the procedural lapses. Without offering any justifiable explanation for the deviation from procedure, as here, the *corpus delicti* becomes unreliable, and the acquittal of the accused should follow on ground that his guilt has not been proven beyond reasonable doubt.

***Second Link: The turnover of the illegal drug from the apprehending officer to the investigating officer***

The second link in the chain of custody refers to the turnover of the seized item from the apprehending officer to the investigating officer. This is a necessary link in the chain because it will be the

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<sup>22</sup> *People v. Tomawis*, G. R. No. 228890, April 18, 2018.

<sup>23</sup> See *People v. Año*, G. R. No. 230070, March 14, 2018.

<sup>24</sup> CA rollo, p. 3.

<sup>25</sup> G.R. No. 230065, March 14, 2018.

<sup>26</sup> G.R. No. 212170, June 19, 2019.

latter who shall conduct the proper investigation and prepare the necessary documents for developing the case against the person arrested. Certainly, the investigating officer must first acquire possession of the illegal drugs to properly prepare these documents.<sup>27</sup>

Here, PO1 Miguel failed to establish the identity of the investigating officer who received the seized item from him. He testified:

FISCAL CRUZ:

(On Direct Examination)

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Q: And on the portion 'received by' there is a name PSI Timario do you know who is this PSI Timario?

A: Yes Sir, she is Captain Timario.

[Q:] Who received the specimen together with the document, the Request?

A: PSI Timario Sir.<sup>28</sup>

On cross:

ATTY. MARRACK:

xxx xxx xxx

Q. Who was the officer who first received the specimen from you?

A. I can no longer remember, sir but if I am not mistaken the name is Antonio dela Cruz.<sup>29</sup>

The inconsistency in the testimony of PO1 Miguel on the identity of the investigating officer is fatal. For the prosecution must prove that the *corpus delicti* was preserved at **every link** in the chain of custody. This becomes difficult, nay impossible, if there is serious doubt on the identity of the inspector who received the seized item for investigation.

At any rate, the prosecution failed to present either Police Officer dela Cruz or PSI Timario as witness. Neither of them testified as to the precautions made during their purported custody of the seized item, impeaching its integrity. Similarly, in *Jocson y Cristobal v. People*,<sup>30</sup> the Court acquitted petitioner for failure of the

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<sup>27</sup> Supra note 20.

<sup>28</sup> TSN, February 24, 2015. CA rollo, p. 91.

<sup>29</sup> CA rollo, pp. 91-92.

<sup>30</sup> G.R. No. 199644, June 19, 2019.

investigator to take the stand and testify on how he handled the seized item from the time he received it from the apprehending officer until it left his custody.

***Third Link: The turnover of the seized item from the investigator to the forensic chemist***

The third link in the chain of custody refers to the turnover of the seized item from the investigating officer to the forensic chemist for laboratory examination.<sup>31</sup> The prosecution's evidence relating to this link further casts doubt on the integrity of the *corpus delicti*:

ATTY. MARRACK  
(On Cross-Examination)

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Q: What time on that date the specimen was received by Officer dela Cruz as to who had the custody of the seized items during the time interval?

A: After we made the Inventory of the specimen, sir.

Q: What was that time?

A: 9:00 p.m., sir, onwards.

Q: Can you tell the time written on the document?

A: It is 11:23 in the morning.

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COURT: I see, I thought it was December 4.

ATTY. MARRACK:

Q: But you said you delivered the specimen at 9:00 o'clock onwards after the operation and your request for drug examination was already at 11:00 December 4 the next day, is that correct?

FISCAL CRUZ: Please translate

ATTY. MARRACK: There is nothing to translate because there is no answer from the witness, Your Honor.

COURT: Translate the question.

ATTY. MARRACK: And the answer of the witness was "*kasi pina drug test namin siya.*"<sup>32</sup>

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<sup>31</sup> Supra note 20.

<sup>32</sup> CA rollo, pp. 88-90.

The prosecution admitted that appellant was brought to the police station on December 3, 2012 around 9 o'clock in the evening but the request for the laboratory examination of the seized item was only made on December 4, 2012 at 11 o'clock in the morning. As for who had custody of the seized item in the interim and what precautionary measures were in place to preserve its integrity and evidentiary value, the prosecution failed to elaborate. The Court cannot close its eyes on this glaring lapse committed by the police officers. For it exposed the seized item to possible substitution, alteration or contamination.

All told, the failure of the arresting officers to observe the proper procedure negates the presumption of regularity in their favor. As a general rule, the testimony of police officers who apprehended the accused is usually accorded full faith and credit because of the presumption. But, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed. As such, it cannot prevail over the constitutional right of the accused to be presumed innocent and cannot by itself constitute proof beyond reasonable doubt.<sup>33</sup>

In sum, the prosecution utterly failed to establish the elements of illegal sale of dangerous drug by proof beyond reasonable doubt. The acquittal of appellant, therefore, is in order.

**WHEREFORE**, the appeal is **GRANTED** and the Decision dated July 16, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09267, is **REVERSED** and **SET ASIDE**.

Roderick Manuel y Guevarra is **ACQUITTED** of violation of Section 5, Article II of Republic Act No. 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to cause the immediate release of Roderick Manuel y Guevarra from custody unless he is being held for some other lawful cause, and to submit his report on the action taken within five (5) days from notice.

Let the corresponding entry of final judgment be immediately issued.

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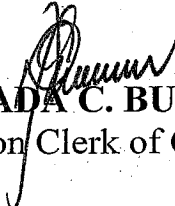
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<sup>33</sup> See *People v. Santos, Jr.*, G.R. No. 175593, 17 October 2007, 536 SCRA 489.

**SO ORDERED.”** *Caguioa, J., on official leave; Inting, J., designated as Additional Member per S.O. No. 2726 dated October 25, 2019.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court <sup>of the</sup>  
**106-A**

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Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 09267)

The Hon. Presiding Judge  
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