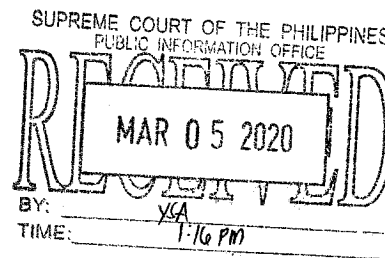




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila  
SECOND DIVISION



**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 29 January 2020 which reads as follows:*

“G.R. No. 242523 (People of the Philippines v. Jonathan Balubal y Balager). – Assailed in this ordinary appeal<sup>1</sup> is the Decision<sup>2</sup> dated March 19, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08979, which affirmed the Decision<sup>3</sup> dated August 25, 2016 of the Regional Trial Court of Angeles City, Branch 57 (RTC) in Crim. Case Nos. DC-13-2711 and DC-13-2712 finding accused-appellant Jonathan Balubal y Balager (Balubal) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

**The Facts**

This case stemmed from two (2) Informations<sup>5</sup> filed before the RTC accusing Balubal of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around 5:00 p.m. of June 3, 2013, a confidential informant (CI) tipped off the members of Porac, Pampanga Police Station of the illegal drug activities of a certain “Chris,” later identified as accused-appellant Balubal, at Barangay Jalung, Porac, Pampanga. Acting on the report, a buy-bust team was formed with Senior Police Officer 2 Edwin Cariño (SPO1 Cariño) as team leader, Police Officer 2 Niño Mallari (PO2 Mallari) as poseur-buyer, and three (3) other police officers as back-up/arresting officers. They then proceeded to the Barangay Hall of Jalung to meet Barangay Captain Armando Reyes (Brgy. Capt. Reyes) for coordination. Afterwards, they proceeded to the target area at Purok 1, Barangay Jalung. Upon reaching the area at around 5:45p.m., PO2 Mallari and the CI approached a man standing in front of his house

<sup>1</sup> See Notice of Appeal dated April 16, 2018; *rollo*, pp. 15-17.

<sup>2</sup> *Id.* at 2-14. Penned by Associate Justice Socorro B. Inting with Associate Justices Apolinario D. Bruselas, Jr. and Rafael Antonio M. Santos, concurring.

<sup>3</sup> *CA rollo*, pp. 48-56. Penned by Judge Omar T. Viola.

<sup>4</sup> 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,” approved on June 7, 2002.

<sup>5</sup> *Rollo*, p. 3. See also *CA rollo*, p. 48.

who turned out to be Balubal. The CI introduced PO2 Mallari to him as a buyer of *shabu*. PO2 Mallari then handed the pre-marked five-hundred peso (P500.00) bill to Balubal who, in turn, gave him one (1) sachet containing 0.029 gram of white crystalline substance. At this point, PO2 Mallari executed the pre-arranged signal by scratching his head and introducing himself as a police officer, which prompted the rest of the team to rush to the scene. When Balubal was advised to empty his pockets, the police officers were able to seize another sachet containing 0.04 gram of crystalline substance, as well as recover the pre-marked five-hundred peso (P500.00) bill. PO2 Mallari immediately marked the three (3) seized items at the place of incident. Thereafter, SPO2 Cariño prepared the Confiscation Receipt which was signed by PO2 Mallari, as arresting officer, Brgy. Capt. Reyes, as elected official, Jesus T. Baltazar, as media representative, and Abner R. Lapuz, as Department of Justice (DOJ) personnel, while Balubal refused to sign. Photographs were taken while the seized items were being marked and inventoried. PO2 Mallari kept custody of the seized items until he turned over the two (2) sachets to PCI Angel C. Timario, the forensic chemist of Regional Criminal Laboratory Office 3 of the Philippine National Police.<sup>6</sup> After examination, the contents thereof yielded positive for methamphetamine hydrochloride, or *shabu*, a dangerous drug.<sup>7</sup>

In defense, Balubal denied the charges against him, claiming instead, that at around 5:00 p.m. of June 3, 2013, he was in the house of Ashley, the sister of his live-in partner, Noemi, in Barangay Jalung, Porac, Pampanga, when he was arrested by four (4) male individuals. He also averred that he was only there to give money to pay for the house rental and denied his illegal drug activities. Thereafter, Balubal was brought to the police station and maintained that he only learned of the charges against him during his arraignment.<sup>8</sup>

In a Decision<sup>9</sup> dated August 25, 2016, the RTC found Balubal guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (a) in Criminal Case No. DC-13-2711, he was sentenced to suffer the penalty of life imprisonment, and to pay a fine in the amount of P500,000.00; and (b) in Criminal Case No. DC-13-2712, he was sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine in the amount of P300,000.00.<sup>10</sup> The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt the validity and existence of the buy-bust operation and the commission of the crimes charged – specifically, that Balubal indeed sold one (1) sachet containing 0.029 gram of *shabu* for a consideration of five-hundred pesos (P500.00) to the poseur-buyer, resulting in his arrest, and that during the search incidental thereto, he was discovered to be in illegal and knowing possession of another sachet containing 0.04 gram of *shabu*, a dangerous drug. The RTC likewise found that the prosecution sufficiently established the chain of custody which showed that the integrity and evidentiary value of the illegal drugs were duly preserved. On the other hand, the RTC found Balubal's defense of denial as inherently weak as it can be easily fabricated. Hence, absent any substantiation by clear and convincing

<sup>6</sup> See *rollo*, pp.4-6. See also *CA rollo*, pp. 50-52.

<sup>7</sup> Records, p. 68.

<sup>8</sup> See *rollo*, pp. 4-5. See also *CA rollo*, p. 53.

<sup>9</sup> *CA rollo*, pp. 48-56. Penned by Judge Omar T. Viola.

<sup>10</sup> *Id.* at 56.

evidence, mere denial cannot prevail over the positive testimonies by the prosecution's witnesses and the physical evidence presented.<sup>11</sup> Aggrieved, Balubal appealed<sup>12</sup> to the CA.

In a Decision<sup>13</sup> dated March 19, 2018, the CA affirmed the RTC ruling. It held that the supposed inconsistency surrounding the Confiscation Receipt was adequately addressed during the cross-examination of PO2 Mallari. In any event, it did not go into the elements of the crime, hence, not a ground to reverse a conviction. The CA likewise found that the prosecution proved beyond an iota of doubt the preservation of the integrity and evidentiary value of the seized items as provided for by the rules.<sup>14</sup>

Hence, this appeal seeking that Balubal's conviction be overturned.

### The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>15</sup> it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>16</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.<sup>17</sup>

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>18</sup> As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.<sup>19</sup> In this regard,

<sup>11</sup> See *id.* at 53-56.

<sup>12</sup> See Notice of Appeal dated September 9, 2016; CA *rollo*, pp. 13-14.

<sup>13</sup> *Rollo*, pp. 2-14. Penned by Associate Justice Socorro B. Inting with Associate Justices Apolinario D. Bruselas, Jr. and Rafael Antonio M. Santos, concurring.

<sup>14</sup> See *id.* at 8-13.

<sup>15</sup> The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

<sup>16</sup> See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.* at 53; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

<sup>17</sup> See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

<sup>18</sup> See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 15; *People v. Sanchez*, *supra* note 15; *People v. Magsano*, *supra* note 15; *People v. Manansala*, *id.*; *People v. Miranda*, *supra* note 15; and *People v. Mamangon*, *supra* note 15. See also *People v. Viterbo*, *supra* note 16.

<sup>19</sup> *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520,

case law recognizes that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”<sup>20</sup> Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.<sup>21</sup>

However, the law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640, “a representative from the media AND the Department of Justice (DOJ), and any elected public official”;<sup>22</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, “[a]n elected public official and a representative of the National Prosecution Service OR the media.”<sup>23</sup> The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”<sup>24</sup>

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded “not merely as a procedural technicality but as a matter of substantive law.”<sup>25</sup> This is because “[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.”<sup>26</sup>

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>27</sup> As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>28</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>29</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>30</sup> It should, however, be emphasized that for the saving clause to apply, the

532 (2009). See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

<sup>20</sup> *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

<sup>21</sup> See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

<sup>22</sup> Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>23</sup> Section 21 (1), Article II of RA 9165, as amended by RA 10640.

<sup>24</sup> See *People v. Miranda*, supra note 15 at 57. See also *People v. Mendoza*, 739 Phil. 749, 764 (2014).

<sup>25</sup> See *People v. Miranda*, id. at 60-61. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, supra note 17, at 1038.

<sup>26</sup> See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, id.

<sup>27</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>28</sup> See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>29</sup> Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “*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 and invalid such seizures of and custody over said items[.]*”

<sup>30</sup> Section 1 of RA 10640 pertinently states: “*Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the*

prosecution must duly explain the reasons behind the procedural lapses,<sup>31</sup> and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>32</sup>

Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>33</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>34</sup> These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>35</sup>

Notably, the Court, in *People v. Miranda*,<sup>36</sup> issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”<sup>37</sup>

In this case, there was a deviation from the required witnesses rule as evidenced by the irregularities surrounding the execution of the Confiscation Receipt.<sup>38</sup> While the Confiscation Receipt itself bears the name of the three (3) required witnesses, *i.e.*, an elected official, a media representative, and a DOJ personnel, their presence during the actual inventory-taking is doubtful as may be gleaned from PO2 Mallari’s own testimony:

### Cross-Examination

[Atty. Medina]: And where did you make the inventory of your seized items as well as the marked money?

[PO2 Mallari]: **At the place where we had the transaction**, in front of the house at Purok 1, Jalung, Porac, Pampanga, ma’am.

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

<sup>31</sup> *People v. Almorfe*, supra note 28.

<sup>32</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>33</sup> See *People v. Manansala*, supra note 15.

<sup>34</sup> See *People v. Gamboa*, supra note 17, citing *People v. Umipang*, supra note 17, at 1053.

<sup>35</sup> See *People v. Crispo*, supra note 15.

<sup>36</sup> Supra note 15.

<sup>37</sup> See *id.*

<sup>38</sup> Records, p. 9.

Q: And are you telling us that the said inventory was witnessed by these persons allegedly signed (sic) the said confiscation receipt on that said place?

A: Who, ma'am?

Q: Representative coming from the DOJ, media and barangay official.

A: Yes, ma'am.

Q: And at what point in time did they arrive prior to the conduct of the inventory?

A: **About 6:00p.m.**, ma'am.

x x x x

Q: Who made the confiscation receipt?

A: The typing was made by our team leader, SPO1 Edwin Cariño, ma'am.

Q: And where did he make the said confiscation receipt?

A: **In our office**, ma'am.

Q: But you have mentioned earlier that the said inventory was made in the place of incident?

A: Yes, ma'am.

Q: And how come that there was already a confiscation receipt allegedly when you mentioned [that] on the place of incident?

A: Yes, ma'am.

Q: How would it be possible, Mr. Witness?

A: **Our team leader typed the inventory in our office, and upon printout, he returned to the place, ma'am.**

Q: And for how long the travel from the place of the incident up to the office, Mr. Witness?

A: I cannot calculate, **but he returned at 6:00p.m. together with the witnesses, ma'am.**<sup>39</sup> (Emphases supplied)

What may be surmised from the foregoing is that there were two (2) inventories conducted: one right after the arrest at the place of incident, or at around 5:45 p.m., and another after SPO1 Cariño returned from their office with the typewritten version along with the witnesses at around 6:00 p.m. Undoubtedly, the Confiscation Receipt on record pertains to the second one. However, the first

<sup>39</sup> TSN, September 25, 2014, pp. 5-6.

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one, or the draft that formed the basis of the contents of the typewritten version, was never presented. It is likewise clear from PO2 Mallari's testimony that the witnesses were not present during the first one as they supposedly arrived with SPO1 Cariño at around 6:00 p.m.

The absence of the required witnesses at the actual inventory-taking conducted was neither explained nor justified. As earlier stated, it is incumbent upon the prosecution to account for the witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. This was clearly absent in this case.

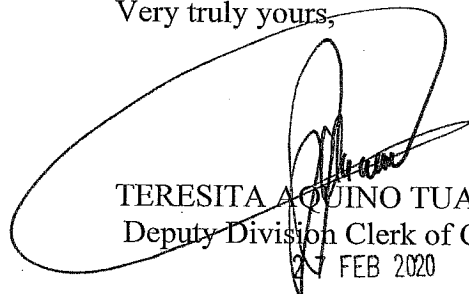
In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Balubal were compromised, which consequently warrants his acquittal.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated March 19, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 08979 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jonathan Balubal y Balager is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to: (a) cause Balubal's immediate release, unless he is being lawfully held in custody for any other reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution..

Let entry of judgment be issued.

**SO ORDERED.** (Zalameda, *J.*, designated Additional Member *vice* Inting, *J.*, per Raffle dated January 6, 2020. Reyes, A., Jr. and Hernando, *JJ.*, on official leave.)"

Very truly yours,



TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *Wtk*, 2/26  
27 FEB 2020