



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 15, 2020 which reads as follows:

“G.R. No. 246157 (People of the Philippines v. Arturo Judaya, Raul Esoto, Marianito Lagahit, and Agustin Semblante [accused]; Arturo Judaya, Raul Esoto, and Agustin Semblante [accused-appellants])

Appellants fault the Court of Appeals for affirming the trial court’s verdict of conviction against them for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002. Appellants argue that the prosecution did not comply with Section 21 of RA 9165. Notably, there is doubt on where exactly the marking of the confiscated plastic sachets of *shabu* took place. More, the inventory and photographing of the seized items were witnessed by a member of the media and an elected public official only. The prosecution did not even justify the absence of a representative from the Department of Justice (DOJ).¹

We grant the appeal.

Appellants Arturo Judaya, Raul Esoto, and Agustin Semblante were charged with violation of Section 5 of RA 9165 on February 23, 2005. Thus, the applicable law is RA 9165, before its amendment in 2014.²

In cases involving violations of RA 9165, the drug itself constitutes the *corpus delicti* of the offense. It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court.³

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¹ Rollo, p. 93.

² *People v. Bumanglag*, G.R. No. 22884, August 19, 2019.

³ *People v. Burdeos*, G.R. No. 218434, July 17, 2019.

Section 21 of RA 9165 lays down the chain of custody rule or the procedure in handling dangerous drugs and instruments or paraphernalia starting from their seizure until they are finally presented as evidence in court, thus:

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 supplied)

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In relation thereto, Section 21 (a), Article II of the Implementing Rules of RA 9165 ordains:

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**

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

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Thus, the conduct of physical inventory, which includes the marking of the items by the seizing police officers⁴ and photographing of the seized items, must be done in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his or her representative or counsel, (2) **a representative from the media and the DOJ**, and (3) any elected public official, who shall sign the copies of the inventory and be given a copy thereof.⁵

Here, prosecution witness SPO3 Janelito Marquez (SPO3 Marquez) testified that only media representative Paican and Brgy. Councilor Ligan witnessed the inventory and photographing. He acknowledged the absence of an insulating witness in the person of a DOJ representative, thus:

Q: How come that there was no representative from the Department of Justice? There is no person who signed here, Mr. witness.

A: Sometimes we call a representative from the Department of Justice, but sometimes they have so many things to do, but sometimes we don't call them anymore when the integrity of the subject evidence is maintained.

Q: So you tried to contact a representative from the Department of Justice but they refused because they have so job or works to do?

A: Sometimes, sir.⁶

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Q: But you tried to contact?

A: Yes sir.

Q: Who was that person whom you contacted?

A: I cannot remember anymore sir.

Q: What time?

A: Because my...

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⁴ *People v. Lumaya*, G.R. No. 231983, March 7, 2018; *People v. Salvador*, 726 Phil. 389, 406-407 (2014).

⁵ *People v. Rosales*, G.R. No. 233656, October 2, 2019.

⁶ TSN dated June 19, 2006, p. 44-45.

- Q: Were you the one who contacted the Department of Justice or the Regional Director?
A: I cannot recall sir.⁷

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It is, thus, undisputed that the inventory and photographing of the alleged dangerous drug seized from appellants were not done in the presence of a representative from the DOJ. Notably, the prosecution failed to offer an acceptable excuse for its deviation from the prescribed procedure.

To stress, the Implementing Rules and Regulations of RA 9165 offer a saving clause which allows leniency whenever justifiable grounds exist warranting deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. Section 21 (a) of the Implementing Rules and Regulations of RA 9165 contains the following proviso:

Section 21. (a) xxx 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.

*People v. Jugo*⁸ specified the twin conditions for the saving clause to apply:

[F]or the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, 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.

Here, the prosecution did not offer a justifiable ground for the procedural lapse, which would have excused the buy-bust team's failure to comply with the chain of custody rule. Thus, the condition not having been complied, the saving clause did not become operational.

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure

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⁷ TSN dated June 19, 2006, pp. 45-46.

⁸ G.R. No. 231792, January 29, 2018.

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.⁹

Going now to the marking of the alleged seized items, there were material inconsistencies in SPO3 Marquez's testimony on where exactly the same took place, thus:

Q: So what did you do with the evidence inside your office, if there was any?

A: I mark it sir, the date and my initial, I mark the record then I put my signature so that during the identification I would be able to recognize the subject evidence.

Q: So, meaning, Mr. witness, it is now clear that you mark the evidence inside your office, is that correct?

A: Yes, sir.¹⁰

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He subsequently contradicted his own testimony in this wise:

Q: What happened next?

A: On our way to the office we had it marked.

Q: Let's clarify this, you marked the evidence in question while the vehicle was running?

A: After the confiscation, we mark it right at once. And the other markings was done in the office.

Q: So, let's put this clear, did you mark the evidence at the place of the incident of the crime?

A: Yes sir.¹¹

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As a rule, inconsistencies or discrepancies in the testimonies of witnesses on minor details do not impair the credibility of the witnesses. But irreconcilable inconsistencies on material facts, as in this case, diminish, or even destroy, the veracity of their testimonies.¹²

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⁹ *People v. Dahil*, 750 Phil. 212, 231 (2015).

¹⁰ TSN dated June 19, 2006, p. 26.

¹¹ TSN dated June 19, 2006, p. 51.

¹² *People v. Binasing*, G.R. No. 221439, July 4, 2018.

The irreconcilable inconsistencies here on the exact place where the marking took place cast serious doubt on whether the seized drugs were truly immediately marked from seizure, for identification purposes. It is, thus, evident that there was already a break in the very first link of the chain. Because of this gap, there is no assurance against switching, planting, or contamination. This gap in the chain of custody immediately affected the proof of the *corpus delicti*, warranting an acquittal on reasonable doubt.¹³

In light of such dismal failure of the prosecution to establish that the supposed seized drugs were properly marked and that all three (3) required insulating witnesses were present during the marking, inventory, and photographing; or at least cite a justifiable ground for the procedural deviation, appellants' acquittal is in order.

What is most appalling in this case is that despite these clear multiple procedural infirmities, it is only now, after fifteen (15) long years in prison, that appellants finally get the kind of justice they long deserve. While the Court now reverses this grave injustice by ordering appellants' immediate release, we are reminded of the time-honored precept that justice delayed is justice denied. Such injustice must never happen again.¹⁴

WHEREFORE, appellants **ARTURO JUDAYA, RAUL ESOTO**, and **AGUSTIN SEMBLANTE** are **ACQUITTED** of violation of Section 5, Article II of Republic Act 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City: (a) to cause the immediate release of Arturo Judaya, Raul Esoto, and Agustin Semblante from custody, unless they are being held for some other lawful cause; and (b) to inform the Court of the action taken within five (5) days from notice.

Let entry of judgment immediately issue.

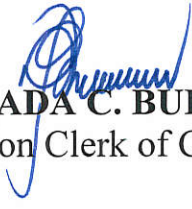
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¹³ *People v. Ismael*, 806 Phil. 21, 33 (2017).

¹⁴ *People v. Doria*, G.R. No. 227854, October 9, 2019.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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