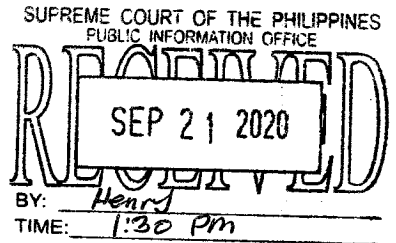




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **March 4, 2020**, which reads as follows:

“**G.R. No. 238400 (People of the Philippines, Plaintiff-Appellee, v. Gilbert Estavillo y Malla, Accused-Appellant)**. – This appeal¹ assails the 24 October 2017 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08791. The CA affirmed the 17 November 2016 Decision³ of Branch 79, Regional Trial Court of Quezon City (RTC) in Criminal Case No. R-QZN-14-02077, finding accused-appellant Gilbert Estavillo y Malla (accused-appellant), guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Accused-appellant was charged in an Information, the accusatory portion of which stated:

That on or about the 2nd day of March 2014, in Quezon City, Philippines, the above-named accused, without any lawful authority, did then and there wilfully and unlawfully, sell, deliver and give away to another, a dangerous drug to wit: ninety nine point thirty three zero three (99.3303) grams of Methamphetamine Hydrochloride (shabu), a dangerous drug.

CONTRARY TO LAW.⁴

¹ Rollo, pp. 11-12.

² Rollo, pp. 2-10.; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Mario V. Lopez and Ramon Paul L. Hernando (now Members of this Court), First Division, Court of Appeals, Manila.

³ CA rollo, pp. 41-52; penned by Presiding Judge Nadine Jessica Corazon J. Fama.

⁴ Records, Criminal Case No. 1440R-QZN-14-02077, pp. 1-2.

Upon arraignment, accused-appellant entered a plea of "not guilty." After pre-trial, trial on the merits ensued.

Version of the Prosecution

At around 8:00 in the morning on 02 March 2014, an informant reported the alleged drug activity of an *alias Ate and Bugoy* to the Philippine Drug Enforcement Agency (PDEA) Regional Office-National Capital Region (RO-NCR) in *Barangay Pinyahan*, Quezon City. A team, with Arcadio S. Saplan, Jr. (Agent Saplan) acting as poseur-buyer and Agent Marc Junef Avenido (Agent Avenido) as the back-up arresting officer, was formed for a buy-bust operation. Thereafter, the informant called *alias Bugoy* introduced Agent Saplan as an interested buyer of 100 grams of *shabu* valued at P240,000.00. The buy-bust team proceeded to the target area in Quezon City.⁵

Once there, Agent Saplan and the confidential informant waited for several minutes, then a man wearing a red shirt and black pants, which turned out to be accused-appellant, approached the informant. Agent Saplan asked accused-appellant to show the items and the latter handed a Nestle Low Fat Milk pack, which contained several plastic sachets with white crystalline substance. After examining the same, Agent Saplan handed the buy-bust money to accused-appellant and subsequently executed the pre-arranged signal.⁶

Agent Avenido rushed to their location and arrested accused-appellant while Agent Saplan kept custody of the buy-bust money and the drugs subject of the sale. Thereafter, accused-appellant and the buy-bust team went to the PDEA NCR Office. The marking and inventory was conducted inside the office, as witnessed by *Barangay Kagawad* Marites Palma. Thereafter, Agent Saplan turned over the drugs for chemical analysis to the forensic laboratory.⁷ Chemistry Report No. PDEA-DD014-065 revealed that the twenty (20) plastic sachets, containing white crystalline substance and with a total net weight of 99.3303 grams, were positive for the presence of methamphetamine hydrochloride.⁸

Version of the Defense

Accused-appellant denied the charges against him. He claimed that on 02 March 2014, he was standing alone in front of KFC in Farmers, Cubao,

⁵ *Rollo*, p. 3-4, Records, p. 8, TSN dated 2 October 2014, p. 9.

⁶ *Rollo*, p. 4, Records, p. 9, TSN dated 4 November 2014, pp. 2-3.

⁷ *Rollo*, pp. 4-5.

⁸ *Rollo*, p. 3, Records, p. 17.

when two (2) men approached and boarded him inside a vehicle. He was then brought to an office in *Barangay Pinyahan*, Quezon City, where he saw for the first time certain wrapped items which looked like salt.⁹

Ruling of the RTC

In its 17 November 2016 Decision, the RTC found accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and sentenced him to life imprisonment and pay a fine of P500,000.00.¹⁰ The RTC found that accused-appellant committed illegal sale of prohibited drugs as he was caught *in flagrante delicto* selling twenty (20) sachets of *shabu*. The RTC also held that the integrity and evidentiary value of the drugs sold had been preserved since the prosecution established an unbroken chain of custody despite the PDEA agents' non-compliance with Section 21 of RA 9165.¹¹

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In its 24 October 2017 Decision, the CA affirmed the RTC ruling. The CA held that the inconsistencies alleged by accused-appellant were minor and insignificant. The elements of Section 5, Article II of RA 9165 were established. The CA also ruled that the absence of the representatives from the media and the DOJ did not affect the admissibility of the drugs seized because the chain of custody remained intact.¹²

Hence, this appeal.

Ruling of the Court

The appeal is meritorious.

In order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, the prosecution must prove: (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.¹³ In the instant case, both the RTC and the CA found accused-appellant guilty of the offense charged, uniformly ruling that the prosecution

⁹ *Rollo*, pp. 5-6.

¹⁰ *CA rollo*, pp. 51-52.

¹¹ *CA rollo*, pp. 50-51.

¹² *Rollo*, pp. 7-10.

¹³ *People v. Sumili*, G.R. No. 212160, 04 February 2015; 753 Phil. 342, 348 (2015).

satisfactorily established that he sold twenty (20) plastic sachets of *shabu* to Agent Saplan during a legitimate buy-bust operation.

Generally, factual findings of the appellate court, which affirmed those of the trial court, are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness, or palpable error.¹⁴ However, it is axiomatic that an appeal in criminal cases leaves the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, whether or not assigned or unassigned. The appeal vests in the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.¹⁵ This rule is strictly observed, particularly where the liberty of the accused is at stake, as in the extant case.¹⁶

After a scrutiny of the records, We find cogent reasons to reverse the conviction of accused-appellant.

Case law states that in illegal sale of prohibited drugs, it is essential that the identity of the prohibited drug be established with moral certainty. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody of the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.¹⁷

The procedure is enshrined in statute, specifically in Section 21 of RA 9165, which states:

- (1) The apprehending team having initial custody 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.

This is further expanded in the Implementing Rules and Regulations (IRR) of RA 9165 which, in addition to what is already in the law, provides further that:

¹⁴ See *People v. Santos*, G.R. No. 223142, 17 January 2018; 852 SCRA 23, 17 January 2018.

¹⁵ *Santos v. People*, G.R. No. 232950, 13 August 2018; 877 SCRA 160, 13 August 2018.

¹⁶ *Tabobo III v. People of the Philippines*, G.R. No. 220977, 19 June 2017; 811 Phil. 235-249 (2017); 827 SCRA 435, 19 June 2017.

¹⁷ See *People v. Viterbo*, G.R. No. 203434, 23 July 2014; 739 Phil. 593, 601 (2014); 730 SCRA 672, 23

xxxx [T]he 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; xxx [and] 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.¹⁸

Section 21 of RA 9165 was recently amended by RA 10640, which took effect on 7 August 2014. With the amendment, it is no longer required that a representative from both the media AND the DOJ be present; it is sufficient that there be a representative of either the media OR the National Prosecution Service as witnesses. However, since the offense charged against the accused-appellant allegedly occurred on 2 March 2014, the original provision of Section 21 of RA 9165, along with its IRR, apply.¹⁹

The evidence for the prosecution clearly established the failure of the police officers to secure the presence of the required witnesses without any justifiable reason for such lapse.

Ideally, the presence of the insulating witnesses must be secured not only during the inventory but, more importantly, at the time of the warrantless arrest. It is at this point that the presence of the three (3) witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug.²⁰ Verily, without the insulating presence of the witnesses required by law during the seizure and marking of the seized items, the evils of switching, "planting," or contamination of the evidence that had tainted buy-bust operations in prior years again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu*. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.²¹

July 2014.

¹⁸ Section 21 (a), Implementing Rules and Regulations of RA 9165.

¹⁹ RA 10640 or so-called "Sotto Amendment to the Anti-Drug Law" or otherwise known as "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the 'Comprehensive Dangerous Drugs Act of 2002.'" As the Court noted in *People v. Gutierrez*, G.R. No. 236304, 05 November 2018, RA 10640 was approved on 15 July 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on 23 July 2014 in "The Philippine Star" (Vol. XXVIII, No. 359, Philippine Star Metro Section, p. 21) and "Manila Bulletin" (Vol. 499, No. 23; World News Section, p. 6). Thus, RA 10640 appears to have become effective on 07 August 2014.

²⁰ *People v. Tomawis*, G.R. No. 228890, 18 April 2018, 862 SCRA 131, 18 April 2018, cited in *People v. Fatallo*, G.R. 218805, 07 November 2018.

²¹ See *People v. Mendoza*, G.R. No. 192432, 23 June 2014; 736 Phil 749-771 (2014); 727 SCRA 113, 23 June 2014.

As borne out by the Inventory of Seized Properties/Items,²² as well as the affidavits of Agent Saplan and Agent Avenido, *Kagawad* Palma was the only witness present during the inventory. The absence of the other two (2) other required witnesses during the inventory was confirmed by Agent Saplan in court:

Q: Are you the one who prepared the inventory?

A: Yes, sir.

Q: **Am I correct to say, Mr. Witness, that there were no representatives from the DOJ and from the media?**

A: **There were none, sir.**²³ (Emphases supplied)

While the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid, this is with the caveat that the prosecution still needs to satisfactorily prove the existence of a justifiable ground for non-compliance, as well as the proper preservation of the integrity and evidentiary value of the seized items.²⁴

Relative to this, it is incumbent for the prosecution to convincingly explain the reasons behind the procedural lapses. As stated in *People v. Miranda*,²⁵ “[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.”²⁶ Thus, where, any or all of the three (3) insulating witnesses were absent, the prosecution must allege and prove cogent reasons for their absence and likewise show that earnest efforts were made to secure their attendance.²⁷

In this case, however, it appears that the PDEA agents failed to exert genuine and sufficient efforts to secure the presence of the necessary witnesses under the law. The testimonies of the PDEA agents were bereft of any attempt to contact the required witnesses under Section 21 of RA 9165. Although they claimed in their affidavit that they exerted earnest efforts to secure the presence of the DOJ and media representatives, they failed to proffer any explanation or justification to support such allegation, *viz*:

²² Inventory of Seized Properties/Items, Records, p. 20.

²³ TSN dated 17 March 2015, Criminal Case No. R-QZN-11-02077-CR, pp. 7.

²⁴ See *People v. Malana*, G.R. No. 233747, 05 December 2018.

²⁵ G.R. No. 229671, 31 January 2018, 854 SCRA 42.

²⁶ *Grefaldo v. People*, G.R. No. 246362, 11 November 2019, citing *People v. Miranda*, *supra*.

²⁷ *People v. Lim*, G.R. No. 231989, 04 September 2018.

Before starting with the inventory, the team first secured the presence of the required witnesses under Section 21, Article II of R.A. 9165. We managed to get an elected public official in the person of **BRGY. KAGAWAD MARITES M. PALMA** of **BRGY. PINYAHAN, QUEZON CITY**. We exerted earnest efforts to secure the presence of a representative from the Prosecutor's Office of Quezon City and a Media[*sic*] Representative, but to no avail[.]²⁸

Evidently, this does not suffice as substantial compliance with the requirement of the law. Hence, the exception clause in Section 21 (a) of the IRR of RA 9165 finds no application because the prosecution failed to provide a justifiable reason for its non-compliance with the procedures mandated in Section 21 of RA 9165. As held in *People v. Umipang*,²⁹ the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.³⁰ Furthermore, as required in *People v. De Guzman*,³¹ the justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.

Since the representatives of the media and DOJ were absent during the seizure, marking and inventory of the PDEA agents, and no cogent justification for such lapse was offered by the prosecution, there is serious doubt whether the drugs taken from the accused-appellant were the same drugs presented in court. And when there are doubts on whether the seized substance was the same substance examined and established to be the prohibited drug, there can be no crime of illegal sale of a prohibited drug.³² Hence, accused-appellant's acquittal is in order.

WHEREFORE, the appeal is hereby **GRANTED** and the 24 October 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08791 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **GILBERT ESTAVILLO Y MALLA** is **ACQUITTED** of the offense charged on the ground of reasonable doubt.

²⁸ Affidavit of Poseur-Buyer, Records, p. 9; Affidavit of Arresting Officer, Records, p. 12.

²⁹ G.R. No. 190321, 25 April 2012; 686 Phil. 1024-1055 (2012); 671 SCRA 324, 25 April 2012.

³⁰ *Ramos v. People*, G.R. No. 233572, 30 July 2018; 874 SCRA 595, 30 July 2018, citing *People v. Umipang*, 686 Phil. 1024-1055 (2012).

³¹ 630 Phil. 637 (2010).

³² *People of the Philippines v. Hilario*, G.R. No. 210610, 11 January 2018.

The Superintendent of the New Bilibid Prison, Muntinlupa City, is hereby **DIRECTED** to implement the **IMMEDIATE RELEASE** of **GILBERT ESTAVILLO Y MALLA** from detention unless he is being lawfully held in custody for any other reason. The said Superintendent is **ORDERED** to **REPORT** to this Court his compliance within five (5) days from receipt.

SO ORDERED.”

By authority of the Court:

Misa DC Batt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
9/15/2020

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The Presiding Judge
REGIONAL TRIAL COURT
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