



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 7, 2020** which reads as follows:*

**“G.R. No. 227858 – People of the Philippines v. Rey Garcia y Ancheta**

**The Case**

This appeal assails the Decision<sup>1</sup> dated April 18, 2016, of the Court of Appeals in CA-G.R. CR-HC No. 06955 entitled “*People of the Philippines v. Rey Garcia y Ancheta*”<sup>2</sup> affirming appellant’s conviction for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).<sup>3</sup>

**Proceedings before the Trial Court**

**The Charge**

Appellant Rey Garcia y Ancheta was indicted for violation of Section 5, Article II of RA 9165 under the following Information in Criminal Case No. 8222, *viz.*:

That on or about the 6<sup>th</sup> day of December 2008, in the City of San Fernando, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and deliver one (1) heat-sealed sachets (sic) of methamphetamine hydrochloride (shabu) weighing zero point zero sixteen grams (0.016) worth FIVE HUNDRED PESOS in a buy bust operation to

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<sup>1</sup> Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justice Noel G. Tijam and Associate Justice Eduardo B. Peralta, Jr., all members of the Fourth Division, *rollo*, pp. 2-12.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

a poseur-buyer, IO1 Rosario Vicente and paid one (1) Hundred Peso bill with serial number WR469426 to REY A. GARCIA, without necessary permit or authority from the proper government agency or Office to sell said shabu or methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>4</sup>

The case was raffled to the Regional Trial Court (RTC) – Branch 26, San Fernando, La Union. On arraignment, appellant pleaded not guilty.

During the trial, the prosecution presented Forensic Chemist P/Insp. Anamelisa Bacani (P/Insp. Bacani), IO1 Rosario Vicente (IO1 Vicente), IO1 Anabel Cabarles (IO1 Cabarles), Abraham Ocasion of Bombo Radyo, and Barangay Kagawad Marvin Milanes (Kagawad Milanes). On the other hand, the defense presented appellant and Henrietta Buccat.

### **The Prosecution's Version**

On December 6, 2008, around 8 o'clock in the morning, PO3 Roy Allan Abang (PO3 Abang) received a report from a confidential informant about appellant's illegal drug activities. After confirming that appellant was included in the Philippine Drug Enforcement Agency's (PDEA) Order of Battle,<sup>5</sup> he planned an entrapment operation on appellant. IO1 Vicente was designated as poseur-buyer, IO1 Cabarles as immediate back-up, and the rest of the team as perimeter security. IO1 Vicente marked the buy-bust money, a P500.00 bill bearing her initials "RDV."<sup>6</sup>

As instructed, the confidential informant informed appellant about a potential buyer and arranged a meeting with him. Appellant agreed to meet on P. Burgos Street in front of Dunkin Donuts around 11 o'clock in the morning.<sup>7</sup> The meeting was moved to 1 o'clock in the afternoon when appellant failed to show up as he ran out of stock.<sup>8</sup> The buy-bust team returned to the area around 12:30 in the afternoon. The confidential informant and IO1 Vicente pretended to be lovers. When appellant approached them, the confidential informant introduced appellant to IO1 Vicente. Appellant asked IO1 Vicente to

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<sup>4</sup> *Rollo*, pp. 2-3.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 4.

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

<sup>8</sup> *Id.*

hand him the money first. IO1 Vicente gave the marked money to appellant who, in turn, handed her a transparent plastic sachet from his pocket.<sup>9</sup>

Thereafter, IO1 Vicente made the pre-arranged signal (taking off her sunglasses) and the team immediately closed in to apprehend appellant. Appellant ran away but IO1 Jimmy Carangue (IO1 Carangue) and PO3 Abang caught up with him. The team did a body search on appellant, yielding the marked money from his right front pocket, which the team confiscated.<sup>10</sup>

The team then decided to bring appellant to the PDEA office as many onlookers started surrounding them in the area. At the PDEA office, IO1 Vicente marked the plastic sachet with her initials "RDV," while IO1 Cabarles took appellant's mug shot and prepared the Certificate of Inventory. A media representative, Abraham Ocasion of Bombo Radyo, arrived to witness the process and attest to the Certificate of Inventory and the marking of the plastic sachet.<sup>11</sup>

To complete the Inventory receipt, the team went to the barangay hall and presented appellant and the seized item to Kagawad Milanés. After Kagawad Milanés had signed the Certificate of Inventory, the team returned to the PDEA office where they prepared the requests for laboratory examination of the specimen and appellant's medical examination.<sup>12</sup>

Thereafter, IO1 Vicente brought the requests, appellant, and the specimen to the crime laboratory for examination. The requests and the specimen were initially received by Duty Officer PO1 Bocasas and immediately turned over to Forensic Chemist P/Insp. Bacani.<sup>13</sup>

IO1 Vicente remained in custody of the seized item from the time it was confiscated until it was submitted for examination.<sup>14</sup> Forensic Chemist Bacani confirmed that the seized item and appellant's urine sample both tested "positive for the presence of methamphetamine hydrochloride or shabu" per her Chemistry Reports Nos. D-123-08 and DT-155-08. Bacani resealed the sachet and marked it with her initials "ASB," signature, case number, and date.<sup>15</sup>

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<sup>9</sup> *Id.*  
<sup>10</sup> *Id.*  
<sup>11</sup> *Rollo*, p. 4; *CA rollo*, p. 51.  
<sup>12</sup> *Rollo*, p. 5.  
<sup>13</sup> *CA rollo*, p. 51.  
<sup>14</sup> *Rollo*, p. 4; *CA rollo*, p. 51.  
<sup>15</sup> *Rollo*, p. 5; *CA rollo*, p. 52.

### The Defense's Version

Appellant testified that on December 6, 2008, around 11:30 in the morning, he and his niece Christine Joy Oyando (Christine) were waiting for a ride in front of Dunkin Donuts at the corner of P. Burgos and Ortega Streets. When Christine left him to buy cigarettes, five (5) unknown individuals (two female and three male) approached, forced him to lie face down on the ground, and handcuffed him. They forced him to board a vehicle and, while inside, frisked him, but found nothing.<sup>16</sup> They brought him to the PDEA office and presented to him a plastic container which they took out from a drawer and told him it contained shabu. They detained him afterwards.<sup>17</sup>

Henrietta Buccat testified that she saw appellant talking with someone. When appellant's companion left, a vehicle stopped in front of appellant. Four persons alighted, had a brief altercation with appellant, and forcibly took appellant with them.<sup>18</sup>

### The Trial Court's Ruling

In its Decision dated June 3, 2014,<sup>19</sup> the trial court rendered a verdict of conviction. It ruled that the elements of illegal sale of dangerous drugs were duly proven by the prosecution. The integrity and evidentiary value of the *corpus delicti* had been preserved, hence, the same was sufficient to convict appellant. It disregarded appellant's denial and theory of frame-up. Thus:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused REY GARCIA y Ancheta GUILTY beyond reasonable doubt of the offense of Violation of Section 5[,] Article II of Republic Act No. 9165 for Sale of Dangerous Drugs and sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00, with subsidiary imprisonment in case of insolvency.

The subject item is hereby forfeited in favor of the Government, the same to be disposed in accordance with the law.

SO ORDERED.<sup>20</sup>

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<sup>16</sup> Rollo, p. 5.

<sup>17</sup> Rollo, p. 5; CA rollo, p. 52.

<sup>18</sup> CA rollo, pp. 52-53.

<sup>19</sup> Penned by Judge Caroline S. Rojas Jaucian, RTC, Branch 26, San Fernando, La Union, CA rollo, pp. 48-59.

<sup>20</sup> *Id.* at 58.

### The Proceedings Before the Court of Appeals

On appeal,<sup>21</sup> appellant faulted the trial court for rendering the verdict of conviction despite the prosecution's alleged failure to prove his guilt beyond reasonable doubt. He essentially argued: (1) His warrantless arrest was illegal as he was not performing any overt act indicating he had committed, was actually committing, or was attempting to commit an offense. (2) The integrity and evidentiary value of the *corpus delicti* were not properly preserved in view of the following gaps: (a) The marking, inventory, and taking of photograph were not made immediately at the crime scene; (b) There was no representative from the Department of Justice (DOJ) during the marking and inventory; (c) The marking, inventory, and taking of photographs were not done in the presence of both the media representative and elected public official;<sup>22</sup> and (d) There was no showing how the seized items reached the forensic chemist.<sup>23</sup>

For its part, the People, through the Office of the Solicitor General (OSG),<sup>24</sup> riposted: The prosecution has sufficiently established all the elements of illegal sale of dangerous drugs. The chain of custody rule was observed and the integrity of the seized drug, duly preserved.<sup>25</sup>

### The Court of Appeals' Ruling

By its assailed Decision dated April 18, 2016,<sup>26</sup> the Court of Appeals affirmed. It ruled that all the elements of the offense were duly established by the prosecution. The alleged non-compliance with Section 21 of RA 9165 was not fatal since the prosecution had sufficiently established an unbroken chain in the handling of the seized item. Thus, the integrity and evidentiary value of the *corpus delicti* remained intact. Too, appellant's warrantless arrest was legal as he was caught in *flagrante delicto* selling one (1) heat-sealed sachet containing shabu in exchange of Php500.00. Thus:

**WHEREFORE**, premises considered, the instant Appeal is **DISMISSED**. Accordingly, the assailed Decision of the Regional Trial Court of San Fernando, La Union, dated 3 June 2014 in Criminal Case No. 8222, is hereby **AFFIRMED in toto**.

**SO ORDERED.**<sup>27</sup>

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<sup>21</sup> *Id.* at 24-46.

<sup>22</sup> *Id.* at 35.

<sup>23</sup> *Rollo*, pp. 6-7.

<sup>24</sup> Represented by Assistant Solicitor General Thomas M. Laragan and Associate Solicitor Isar O. Pepito.

<sup>25</sup> *CA rollo*, pp. 82-100.

<sup>26</sup> *Rollo*, pp. 2-12.

<sup>27</sup> *Id.* at 11.

### The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

In compliance with Resolution dated January 25, 2017,<sup>28</sup> both appellant and the People manifested that, in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.<sup>29</sup>

### Issue

Did the prosecution prove beyond reasonable doubt appellant's guilt for violation of Section 5, Article II of RA 9165?

### Ruling

We acquit.

Appellant was charged with illegal sale of 0.016 gram of shabu allegedly committed on December 6, 2008. The governing law, therefore, is RA 9165, prior to its amendment in 2014.<sup>30</sup>

In cases involving violations of RA 9165, the drug itself constitutes the *corpus delicti* of the offense. The prosecution must, therefore, establish that the drug seized from the accused was the same substance eventually presented in court.<sup>31</sup>

Section 21 of RA 9165<sup>32</sup> and its implementing rules and

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<sup>28</sup> *Id.* at 18-19.

<sup>29</sup> *Id.* at 25-27, 20-22.

<sup>30</sup> *People v. Bumanglag*, G.R. No. 22884, August 19, 2019.

<sup>31</sup> *People v. Burdeos*, G.R. No. 218434, July 17, 2019; *People v. Barte*, 806 Phil. 533, 542 (2017).

<sup>32</sup> 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)

regulations<sup>33</sup> prescribe the standard in preserving the *corpus delicti* in illegal drug cases. This makes up the chain of custody rule. The conduct of physical inventory, including the marking and photographing of the seized items by the seizing police officers,<sup>34</sup> must be done immediately after seizure and confiscation<sup>35</sup> and in the presence the accused or his/her representative or counsel and the required insulating witnesses, *i.e.*, a representative each from the media and the Department of Justice (DOJ), and any elected public official,<sup>36</sup> to ensure that they are the same items which entered the chain of custody.<sup>37</sup>

The phrase “immediately after seizure and confiscation” means that the law intends the physical inventory and photographing of the drugs to be made immediately after, or at the place of apprehension. The marking of the seized drugs immediately after they have been seized from the accused is crucial in proving the chain of custody as it is the starting point of the custodial link. It is important that the seized item be immediately marked because the succeeding handlers of the specimen will use the markings as reference. The marking separates the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting, or contamination of evidence.<sup>38</sup>

The Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done at the nearest police station or the nearest office of the apprehending officer/team but only when the same is not practicable. In any event, the buy-bust team should have already secured the presence of the three insulating

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<sup>33</sup> 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 and invalid such seizures of and custody over said items.** (Emphasis supplied)

<sup>34</sup> *People v. Lumaya*, 827 Phil. 473, 489 (2018); *People v. Salvador*, 726 Phil. 389, 405-406 (2014).

<sup>35</sup> *See People v. Alfredo Doctolero, Jr.*, G.R. No. 243940, August 20, 2019.

<sup>36</sup> *People v. Rosales*, G.R. No. 233656, October 2, 2019.

<sup>37</sup> *People v. Ramirez and Lachica*, 826 Phil. 1215, 1225 (2018) citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).

<sup>38</sup> *People v. Hementiza*, 807 Phil. 1017, 1030-1031 (2017).



witnesses during the conduct of the physical inventory considering that a buy-bust operation is, by its nature, a planned activity.<sup>39</sup>

In *People v. Escaran*,<sup>40</sup> the Court stressed that the presence of the insulating witnesses from the DOJ, media, and public elective office during the seizure, marking, inventory and photograph of the dangerous drugs is necessary in order to prevent the evils of switching, planting or contamination of the *corpus delicti* and belie any doubt as to the source, identity, and integrity of the seized drug. Non-compliance with the requirement is, therefore, fatal to the prosecution's case.<sup>41</sup>

Here, the prosecution failed to establish the chain of custody of the seized sachet of *shabu* from the time it was recovered from appellant up to the time it was presented in court. The buy-bust team committed several procedural lapses concerning the chain of custody of the seized drug: (1) The marking, inventory and taking of photographs were not made immediately at the crime scene, but at the PDEA office and the barangay hall; (2) The three witnesses were not present during the apprehension and seizure of the illegal drugs; (3) No representative from the DOJ was present during the inventory and no justification was given therefor. It was only the media representative and the barangay kagawad who signed the Certificate of Inventory separately, one at the PDEA office, the other at the barangay hall. With these procedural lapses in the chain of custody, it cannot be said that the identity, integrity, and evidentiary value of the *corpus delicti* were deemed preserved.

While Section 21 (a), Article II of the IRR of RA 9165 offers a saving clause allowing leniency under justifiable grounds, there are twin conditions for the saving clause to apply: a) the prosecution must explain the reasons behind the procedural lapses; and, b) the integrity and value of seized evidence had been preserved. A justifiable ground for non-compliance must be proven as fact.<sup>42</sup> The Court cannot apply such liberality in this case for there was no occasion for such proviso to even come into play.

For one, the prosecution failed to justify the absence of three insulating witnesses during the apprehension of appellant and the absence of a DOJ representative during the marking, photographing, and inventory of the seized item.

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<sup>39</sup> *People v. Tanes*, G.R. No. 240596, April 3, 2019.

<sup>40</sup> G.R. No. 212170, June 19, 2019.

<sup>41</sup> *People v. Caray*, G.R. No. 245391, September 11, 2019.

<sup>42</sup> *People v. Nabua*, G.R. No. 235785, August 14, 2019.



For another, while IO1 Vicente explained why they decided to conduct the marking and inventory at the PDEA office and why the two other witnesses had to sign the Certificate of Inventory at separate places and time -- that onlookers were already starting to gather in the *situs criminis*, and the barangay officer was from a different barangay because no officer was available in Ilocanos Sur,<sup>43</sup> the same are insufficient to render the saving clause applicable.

Bare invocation of inconvenience by the apprehending officers does not justify non-compliance with the chain of custody rule. In *People v. Dumanjug*,<sup>44</sup> the Court rejected the buy-bust team's argument that it failed to conduct the marking, inventory, and photographing of the seized drug immediately at the place of arrest because a crowd of two hundred (200) onlookers had gathered in the area.

Having third-party witnesses present only during the subsequent physical inventory and photographing renders the whole requirement of their presence futile. For it reduces them to passive automatons, utilized merely to lend hollow legitimacy by belatedly affixing signatures on final inventory documents despite lacking authentic knowledge on the items confronting them.<sup>45</sup>

In *People v. Belmonte*,<sup>46</sup> the accused was acquitted because the required three insulating witnesses were not present during the buy-bust operation, there was no representative from the DOJ during the inventory of the seized item, and the two other witnesses were merely called in to witness the inventory of the seized drug and sign the inventory sheet.

Similarly, in *People v. Dela Victoria*,<sup>47</sup> the accused was also acquitted because there was no DOJ representative during the conduct of the inventory and no justification was given for the absence. Only the two other witnesses signed the inventory after they separately arrived and were shown the confiscated item and the inventory.

Indubitably, the deviations from the procedure mandated by Section 21 of RA 9165 cast serious doubt if the illegal drug presented in court was the same one seized from appellant. Notably, the

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<sup>43</sup> CA rollo, p. 29.

<sup>44</sup> G.R. No. 235468, July 1, 2019.

<sup>45</sup> *People v. Castillo y Maranan*, G.R. No. 238339, August 7, 2019.

<sup>46</sup> G.R. No. 240596, April 3, 2019.

<sup>47</sup> 829 Phil. 675, 688 (2018).

miniscule quantity of the illegal drug seized from appellant (0.016 gram) makes it highly susceptible to planting and tampering, which, makes strict adherence to Section 21 a must.<sup>48</sup>

Where there was non-compliance with the requirements of Section 21 of RA 9165, as in this case, it cannot be presumed that the police officers have regularly performed their official duties.<sup>49</sup> The presumption of regularity cannot preponderate over the presumption of innocence in favor of the accused.<sup>50</sup> Since the prosecution failed to establish an unbroken chain of custody here, appellant's acquittal must perforce follow.

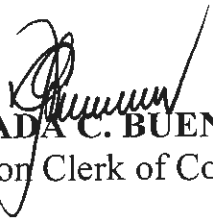
**WHEREFORE**, the appeal is **GRANTED**. The assailed Decision dated April 18, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06955 is **REVERSED AND SET ASIDE**.

Appellant Rey Garcia y Ancheta is **ACQUITTED** in Criminal Case No. 8222. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release Rey Garcia y Ancheta 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 an entry of final judgment be issued immediately.

**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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<sup>48</sup> *People v. Sali y Alawaddin*, G.R. No. 236596 (Resolution), January 29, 2020.

<sup>49</sup> *People v. Balibay*, 742 Phil. 746, 757 (2014).

<sup>50</sup> *Largo v. People*, G.R. No. 201293, June 19, 2019.



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Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 06955)

The Hon. Presiding Judge  
Regional Trial Court, Branch 26  
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(Crim. Case No. 8222)

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