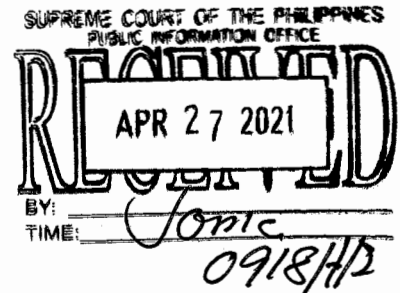




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

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

“G.R. No. 237775 (*People of the Philippines v. Edgardo Claudel y Ibañez a.k.a. “Egay”*). – The present notice of appeal seeks the reversal of the December 11, 2017 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR No. 08380, whereby the CA affirmed the May 11, 2016 Decision² of the Regional Trial Court, Muntinlupa City, Branch 203 (RTC) which found Edgardo Claudel y Ibañez a.k.a. “Egay” (*accused-appellant*) guilty of the crime of illegal sale of *shabu* under Section 5, Article II of Republic Act (R.A.) No. 9165.³

Antecedents

Due to the rampant illegal sale of *shabu* along PNR Site, Purok 7C, Barangay Alabang in Muntinlupa City, the Chief of Police of the Muntinlupa City Police Station S/Supt. Elmer M. Jamias, ordered a surveillance operation on accused-appellant and a certain Felipe “Wawang” Ogsimer (*Ogsimer*).

After the surveillance, the police officers were able to confirm accused-appellant’s and Ogsimer’s illegal activities. Subsequently, a buy-bust team was formed where PO2 Salvador Genova (*PO2 Genova*) was assigned as the poseur-buyer and SPO1 Cirilo Zamora (*SPO1 Zamora*) was designated as the immediate back-up and arresting officer.⁴ The team prepared the Pre-Operational Report dated November 27, 2009⁵ and coordinated with the Philippine Drug Enforcement Agency (PDEA) as evidenced by a Certificate of Coordination.⁶

¹ *Rollo*, pp. 2-20; penned by Associate Justice Maria Filomena D. Singh with Associate Justices Ramon R. Garcia and Edwin D. Sorongon, concurring.

² *CA rollo*, pp. 47-62; penned by Presiding Judge Myra B. Quiambao.

³ Otherwise known as “*The Comprehensive Dangerous Drugs Act of 2002*.”

⁴ *Rollo*, p. 4.

⁵ Records, p. 17; Control Number PDEA MMRO1109-00202.

⁶ *Id.* at 15.

The team arrived at the target area at around 11:15 p.m. and saw accused-appellant standing under an improvised light post. The informant and accused-appellant nodded at each other while the former and PO2 Genova approached. The informant then introduced PO2 Genova to accused-appellant as a call center agent who wanted to buy *shabu*. Ogsimer arrived shortly and made a high-five gesture with accused-appellant who then told Ogsimer, "*Ibigay mo na yun kailangan nila, tapos tirahin na natin tong huling kasa.*" Ogsimer thereafter showed a plastic sachet containing white crystalline substance to PO2 Genova and the informant. When accused-appellant tasked for the payment, PO2 Genova handed the ₱300.00 marked money (consisting of a ₱200.00 bill with Serial No. GX578192 and ₱100.00 bill with Serial No. C441266). In return, accused-appellant brought out a small heat-sealed plastic sachet containing white crystalline substance from his pocket and gave the same to PO2 Genova. After inspecting the item, PO2 Genova gave the pre-arranged signal by removing his cap.⁷

PO2 Genova immediately restrained accused-appellant when SPO1 Zamora hurried to the scene. SPO1 Zamora then restrained Ogsimer and recovered from him a plastic sachet containing white crystalline substance. At this juncture, PO2 Genova and SPO1 Zamora introduced themselves as police officers, arrested both accused-appellant and Ogsimer, and brought them to the Muntinlupa City Police Station.

PO2 Genova and SPO1 Zamora prepared the inventory of the confiscated items at the station. PO2 Genova marked the item he recovered from accused-appellant with the initials "EC," while SPO1 Zamora marked the item he seized from Ogsimer with the initials "FO."⁸ PO2 Genova and SPO1 Zamora separately kept custody of the items they confiscated until they turned them over to SPO1 Dondon Villaralbo (*SPO1 Villaralbo*) of the Southern Police District Crime Laboratory. Both specimens tested positive for Methamphetamine Hydrochloride or *shabu* as shown by the Physical Science Report No. D-553-09S dated November 28, 2009.⁹

Based on these incidents and documents, accused-appellant was charged with illegal sale of *shabu*. The accusatory portion of the Information¹⁰ reads:

That on or about 27th day of November, 2009, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there wilfully and unlawfully sell, trade, deliver and give away to another, Methylamphetamine [H]ydrochloride, a dangerous drug, contained in one (1)

⁷ *Rollo*, p. 5.

⁸ Records, p.14.

⁹ Id.

¹⁰ Ogsimer who was charged with violation of Sec. 11, Article II of R.A. No. 9165 died on April 5, 2016. The case docketed as Criminal Case No. 09-784 was dismissed on April 18, 2016; see *CA rollo*, p.52.

heat sealed transparent plastic sachet weighing more or less 0.02 grams [sic], in violation of the above-cited law.

Contrary to law.¹¹

Accused-appellant pleaded not guilty. Trial on the merits ensued thereafter.

Accused-appellant denied the charges against him. He narrated that on November 27, 2009 at around 2:00 p.m., he borrowed the motorcycle of his brother-in-law to see his tricycle operator when he chanced upon Ogsimer, a fellow tricycle driver. Ogsimer flagged him down and asked for a ride to Bayanan, Muntinlupa City. After accused-appellant dropped Ogsimer off, he stopped at a store to buy a cigarette. Suddenly, four (4) armed men in civilian clothes forcefully took Ogsimer inside a white Toyota Revo, while another police officer whom he later identified as PO2 Genova, grabbed him and forced him to ride the same vehicle. The armed men then asked them if they have money to settle the case, but when they answered in the negative, they were brought to the Muntinlupa City Police Station.

The officers continued to extort ₱40,000.00 from accused-appellant and Ogsimer in exchange for their freedom. Ogsimer was able to raise the amount and was subsequently released while accused-appellant stayed incarcerated because of his failure to raise the sum.

RTC Ruling

On May 11, 2016, the RTC rendered a Decision finding accused-appellant guilty of the crime of illegal sale of dangerous drugs and disposed as follows:

WHEREFORE, premises considered, the Court finds accused Edgardo Claudel y Ibañez @ Egay GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and hereby sentences him to *life imprisonment* and a fine of Five Hundred Thousand Pesos (₱500,000.00).

The preventive imprisonment undergone by the accused shall be credited in his favor.

The Branch Clerk of Court is directed to turn-over the methylamphetamine hydrochloride and the ₱300.00 buy-bust money subject of these cases to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

¹¹ Rollo, p. 3.

SO ORDERED.¹²

CA Ruling

On appeal, the CA affirmed the RTC and held that the elements of the crime of illegal sale of *shabu* were proven beyond reasonable doubt. The CA noted that accused-appellant was caught *in flagrante delicto* through a valid buy-bust operation; that PO2 Genova positively testified that a sale took place; that accused-appellant sold the 0.02 gram of *shabu*; and that the ₱300.00 marked money was the consideration.

As regards accused-appellant's claim that the requirements under Sec. 21, Article II of R.A. No. 9165 were not complied with, the CA held that noncompliance does not render the evidence inadmissible or diminish its evidentiary weight. The totality of evidence pointed to an unbroken chain of custody which ensured the integrity and identity of the confiscated items. The CA also found that the arresting officers had substantially complied with Sec. 21 since they tried to invite representatives from the DOJ, elected officials, and the media, but it was only Manny Alcala (*Alcala*) who showed up. The CA also found the arresting officers' decision to conduct the marking and inventory at the police station for security reasons as justified.

Finally, the CA found that the testimony of the prosecution witnesses categorically confirmed that the item seized from accused-appellant was the same one marked, tested, introduced, identified, and testified to in open court. PO2 Genova took custody of the seized *shabu* from the moment the sale was consummated until its delivery to the Southern Police District Crime Laboratory. All the persons who took custody of the seized item were duly recorded until it was turned over to the court.¹³ Since the prosecution had established that the chain of custody was not broken, accused-appellant's denial and his claim of extortion and frame-up shall not prevail.

Issues

Accused-appellant submits the following grounds in support of his appeal:

1. The integrity and identity of the confiscated items were not preserved because there was a break in the chain of custody;
2. The arresting officers failed to comply with the rules provided in Sec. 21 of R.A. No. 9165; and

¹² CA rollo, p. 61.

¹³ Rollo, pp. 17-18.

3. The buy-bust operation is invalid because it suffers from several irregularities. Among others, there was no surveillance conducted prior to the entrapment operation as the police officers merely validated the information from their alleged informant that [accused-appellant] was selling illegal drugs.

Maintaining his innocence, accused-appellant argues that the prosecution failed to establish an unbroken chain of custody, and that the apprehending officers did not comply with the requirements under Sec. 21 of R.A. No. 9165.

Court's Ruling

We find merit in the appeal.

In order for the prosecution to successfully prosecute a case of illegal sale of drugs, the following elements should be established: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and payment therefor.¹⁴ To prove guilt beyond reasonable doubt, the prosecution must present in evidence the *corpus delicti* or the seized illegal drugs.

Hence, it becomes essential for the prosecution to establish that the drug confiscated from the accused is the same item being presented in court. To ensure the identity of the *corpus delicti* with moral certainty, the apprehending officers must comply with the requirements provided in Sec. 21, Art. II of R.A. No. 9165, which provides:

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

¹⁴ *People v. Lorenzo*, 633 Phil. 393, 402 (2010).

be given a copy thereof.¹⁵

Sec. 21 requires that upon seizure of illegal drugs, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media, the DOJ, and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof. The inventory and photograph of the seized items should be conducted “*immediately after seizure and confiscation*” in the presence of the three (3) required witnesses—the representatives from the DOJ and the media, and any local public official—at the place of apprehension, or if not practicable, at the nearest police station or office. Because by its nature, buy-bust operations are carefully planned, arresting officers are expected to be able to comply with the requirements, allowing the witnesses to be present even at the time of the apprehension, seizure, and the inventory.¹⁶

Nevertheless, noncompliance with the regulations is not necessarily fatal as to render accused-appellant’s arrest illegal or the items confiscated from him inadmissible as evidence of his guilt, for what is of the utmost importance is the preservation of the integrity and the evidentiary value of the confiscated items that will be utilized in the determination of his guilt or innocence.¹⁷ Such that, when there is a failure to follow strictly the said procedure, the crime can still be proven, *i.e.*, that the nonfulfillment of the requirements was under justifiable grounds and that the *shabu* taken is the same one presented in court by proof of chain of custody.¹⁸ In line with these principles, Sec. 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides for the saving proviso in case of noncompliance, *viz*:

(a) The apprehending office/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 requirement 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.***

¹⁵ Sec. 21, Art. II, R.A. No. 9165.

¹⁶ *People v. Salenga*, G.R. No. 239903, September 11, 2019.

¹⁷ *People v. Pringas*, 558 Phil. 579, 593 (2007).

¹⁸ *Id.*

The Court notes herein that the arresting officers failed to comply with the requirements laid down by Sec. 21 by (1) failing to mark the seized articles at the crime scene; and (2) by failing to conduct an inventory and photograph of the said items in the presence of all the three necessary witnesses.

As regards the apprehending officers' failure to immediately conduct the inventory and taking of photographs in the presence of the three mandatory witnesses, they reasoned that they invited representatives from the DOJ, the elected officials, and the media. Unfortunately, only Alcala, a media representative, cooperated with them by showing up during the inventory and photograph of the seized contraband. We find this justification by the apprehending officers to be insufficient to merit substantial compliance with Sec. 21.

In *People v. Salenga*¹⁹ (*Salenga*) citing *Limbo v. People*,²⁰ the Court explained that merely contacting such representatives does not suffice.²¹ The arresting officers must exert efforts to comply with the witness requirement.²² Once there is noncompliance, it is incumbent upon the police officers to allege and prove they exerted genuine and sufficient effort to secure the witnesses' presence and that serious attempts were employed to look for other representatives.²³ Sheer mention of a justifiable ground is not enough. The arresting officers must clearly state the ground in their sworn affidavit, coupled with a statement of the steps they took to preserve the integrity of the seized item.²⁴

We note herein that the buy-bust team had almost the whole day to secure the presence of the required witnesses. From the time they were informed of accused-appellant's illegal activities at 10:00 a.m. until they conducted the buy-bust operation at around 11:00 p.m., the buy-bust team had sufficient time to secure these witnesses.²⁵ Assuming that the representatives from the DOJ and elected official they initially called were indeed unavailable, they had the opportunity to make other arrangements knowing fully well that they have to strictly comply with the set procedure prescribed in Sec. 21. We failed to see this eagerness when, based on records, the buy-bust team contacted the representatives only once without exerting further any effort in ensuring their attendance:

Q: Can you please tell the Honorable Court how come there is nobody from the DOJ and any elected official assigned?

A: Ang cooperative lang sir ay si Manny Alcala? (sic)

¹⁹ Supra note 16.

²⁰ G.R. No. 238299, July 01, 2019.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

²⁵ TSN, September 7, 2012, p. 6.

- Q: So what do you mean by that?
A: We tried to invite representative from the DOJ, and elected official and from the media, but only Manny Alcala arrived, sir.
- Q: **And how come you did not wait for those representatives?**
A: **Because it is already after midnight, sir.**²⁶ (emphasis supplied)

The attendant circumstances falling squarely with that in *Salenga*,²⁷ the Court ruled that “[t]he mere fact that the witnesses contacted by the police officers failed to appear at their office within a brief period of two hours is not reasonable enough to justify noncompliance with the requirements of the law. Indeed, the police officers did not even bother to follow up on the persons they contacted. Thus, it cannot be said that genuine and sufficient efforts were exerted to comply with the witness requirement.”²⁸ Verily, the time being past midnight is not a justifiable ground to deviate from the rules. The failure of the prosecution to provide a justifiable reason for the deviation from the rule creates doubt as to the integrity and evidentiary value of the confiscated drugs.²⁹

While a media representative, Alcala, had witnessed the marking and inventory of the seized items, such falls short of the requirements of the law. The presence of the media representative cannot validate the inadequacies committed during the buy-bust operation.³⁰ The attendance of all three (3) necessary witnesses during the conduct of inventory and taking of photographs of the seized items is mandatory.³¹ The purpose for such requirement is not a *pro forma* exercise. Its *raison d’etre* is to insulate against police practices of planting, contaminating, or tampering of evidence in any manner.³²

Aside from failing to secure the presence of the required witnesses, the Court further notes that the arresting officers did not immediately mark and photograph the recovered items upon accused-appellant’s arrest as provided under Sec. 21. The prosecution justified the deviation from this procedure by stating that the safety and security of the police officers were threatened at that time, thus:

- Q: And where are you when Officer Zamora placed the markings?
A: We are in the same table, sir.
- Q: In your office?
A: Yes, sir.

²⁶ Id. at 15.

²⁷ *People v. Salenga*, supra note 16.

²⁸ Id.

²⁹ *People v. Pringas*, supra note 17.

³⁰ *People v. Salenga*, supra note 16.

³¹ Id.

³² Id.

Q: Please tell the Honorable Court how come you placed the markings and prepare the inventory in your office instead of on the very same spot or place where you arrested Felipe Ogsimer and Edgardo Claudel.

A: For safety reasons, sir.

Q: What do you mean by safety reasons?

A: People might meddle with the investigation, sir.³³
(emphases supplied)

Indeed, the Court has held that failure to immediately inventory and photograph the seized items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger.³⁴ Given the nature of buy-bust operations, arresting officers know fully well the hazards of their work and thus have acquired the ability to repel any retaliatory action.

However, insinuation alone that the safety and security of the arresting officers or of the items seized was under immediate or extreme danger is not a blanket excuse. Without proof, pure allegation of threat is deemed to be nothing but mere speculation as the prosecution has the burden to adduce evidence to support such claim.

In here, the testimony of PO2 Genova failed to support his claim that an imminent threat to their security and safety was present at the time and place of arrest. His recollection of the events that transpired in the evening of November 27, 2009 lacked in details regarding their compromised state when they conducted the buy-bust operation. Verily, the Court cannot rely on bare allegations as they are self-serving and uncorroborated.

Noncompliance with the procedural requirements laid down in Sec. 21, Art. II of R.A. No. 9165 is tantamount to failure in establishing the identity of the *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs.³⁵ Tersely put, without establishing the identity of the *corpus delicti*, the prosecution failed to ascertain that the integrity and evidentiary value of the seized items have been preserved. Without the identity of the *corpus delicti*, the acquittal of accused-appellant is in order.

WHEREFORE, the Court **ACQUITS** accused-appellant Edgardo Claudel y Ibañez *a.k.a.* "Egay"; **REVERSES** and **SETS ASIDE** the December 11, 2017 Decision of the Court of Appeals in CA-G.R. CR No. 08380; and **ORDERS** his **IMMEDIATE RELEASE** from detention unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

³³ Supra note 25 at 15.

³⁴ *Limbo v. People*, supra note 20.

³⁵ *Id.*

Let a copy of this Resolution be furnished to the Penal Superintendent, New Bilibid Prison, Muntinlupa City for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED.” (Padilla, J., on leave)

By authority of the Court:

Misael DC Batt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court *8/25/21*

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(Criminal Case No. 09-783)

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