



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **10 February 2020** which reads as follows:*

“**G.R. No. 233202 (People of the Philippines v. Romeo Dipon y Pescante a.k.a. ‘Isloy’)**. – Assailed in this ordinary appeal<sup>1</sup> is the Decision<sup>2</sup> dated November 24, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02180, which affirmed the Decision<sup>3</sup> dated November 25, 2015 of the Regional Trial Court of Bacolod City, Branch 47 (RTC) in Criminal Case Nos. 12-36029 and 12-36030 finding accused-appellant Romeo Dipon y Pescante alias “Isloy” (accused-appellant) 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 charging accused-appellant with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around 2:45 in the afternoon of March 6, 2012, acting on the information received from a confidential informant, operatives of the City Anti-Illegal Drugs Special Operation Task Group of the Bacolod City Police Office successfully conducted a buy-bust operation against accused-appellant at his residence in Purok Mapinalangga-on, Barangay 35, Bacolod City, during which, one (1) plastic sachet containing 0.03 gram of white crystalline substance was recovered from him. When accused-appellant was searched upon his arrest, police officers found eleven (11) more plastic sachets containing a total

<sup>1</sup> See Notice of Appeal dated January 3, 2016; *rollo*, pp. 23-24.

<sup>2</sup> *Id.* at 4-21. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Edward B. Contreras and Geraldine C. Fiel-Macaraig, concurring.

<sup>3</sup> *CA rollo*, pp. 51-61. Penned by Judge Therese Blanche A. Bolunia.

<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> Criminal Case No. 12-36030 is for the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165 (records [Criminal Case No. 12-36030], p. 1); while Criminal Case No. 12-36029 is for the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165; records (Criminal Case No. 12-36029), p. 1.

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weight of 0.45 gram of the same substance from his possession. The police officers then marked, inventoried,<sup>6</sup> and photographed<sup>7</sup> the seized items in the presence of accused-appellant himself, as well as Barangay *Kagawads* Gil Guadana (Kgw. Guadana) and Enrique Sevilla (Kgw. Sevilla), right at the place of arrest. Subsequently, the seized items were brought<sup>8</sup> to the Negros Occidental Provincial Crime Laboratory where, after examination,<sup>9</sup> their contents tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>10</sup>

In defense, accused-appellant denied the charges against him, claiming instead that, at the time of the alleged incident, he was sleeping at home, when several police officers suddenly barged in, conducted a search, and falsely made it appear that illegal drugs had been seized from him.<sup>11</sup>

In a Decision<sup>12</sup> dated November 25, 2015, the RTC found accused-appellant **guilty** beyond reasonable doubt of the crimes charged, and accordingly, sentenced him to suffer the following penalties: (a) in Criminal Case No. 12-36030, for the crime of Illegal Sale of Dangerous Drugs, the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and (b) in Criminal Case No. 12-36029, for the crime of Illegal Possession of Dangerous Drugs, the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine in the amount of ₱300,000.00.<sup>13</sup> Giving credence to the testimony of the poseur buyer, Police Officer 3 Ian S. Piano (PO3 Piano), the trial court ruled that the prosecution was able to establish all the respective elements of the crimes charged, and held that the integrity and evidentiary value of the confiscated drugs had been properly preserved. Meanwhile, it found accused-appellant's defenses of denial and frame-up untenable for lack of evidence.<sup>14</sup>

Aggrieved, accused-appellant appealed<sup>15</sup> to the CA, arguing that he should be acquitted on account of defects in the testimony of PO3 Piano, which allegedly cast doubt as to whether a valid buy-bust operation had actually been conducted. In particular, it was contended that PO3 Piano failed to establish the identity and reliability of the confidential informant, as well as the fact that the latter was personally acquainted with accused-appellant even prior to the alleged transaction.<sup>16</sup>

In a Decision<sup>17</sup> dated November 24, 2016, the CA **affirmed** the conviction of accused-appellant.<sup>18</sup> Agreeing with the findings of the trial court, it ruled that the alleged defects in the testimony of PO3 Piano pertained to matters which did

<sup>6</sup> See Receipt/Inventory of Property Seized dated March 6, 2012; records (Criminal Case No. 12-36029), p. 52.

<sup>7</sup> Id. at 53

<sup>8</sup> See Request for Laboratory Examination dated March 6, 2012; id. at 55.

<sup>9</sup> See Chemistry Report No. D-064-2012 dated March 7, 2012; id. at 56.

<sup>10</sup> See *rollo*, pp. 4-9.

<sup>11</sup> See id. at 9-10.

<sup>12</sup> *CA rollo*, pp. 51-61.

<sup>13</sup> Id. at 60.

<sup>14</sup> See id. at 56-60.

<sup>15</sup> See Notice of Appeal dated December 10, 2015; records (Criminal Case No. 12-36029), pp.106-107.

<sup>16</sup> See Brief of the Accused-Appellant dated May 16, 2016; *CA rollo*, pp. 34-50.

<sup>17</sup> *Rollo*, pp. 4-21.

<sup>18</sup> Id. at 21.

not affect the outcome of the case, especially considering that the actual conduct of the buy-bust operation was still clearly established.<sup>19</sup>

Hence, this appeal seeking that accused-appellant's conviction be overturned.

### The Court's Ruling

The appeal is meritorious, but not for the reasons advanced by accused-appellant in his brief.

Accused-appellant claims that he should be acquitted in view of the prosecution's failure to establish the identity and reliability of the confidential informant, as well as the fact that the latter was personally acquainted with him even prior to the alleged transaction.<sup>20</sup> The Court, however, finds the same untenable.

It has been consistently held that, for purposes of confidentiality and security, informants need not be identified nor presented as witnesses in court, especially in cases where their testimony is merely corroborative of evidence already presented.<sup>21</sup> Equally settled is the rule that the failure to conduct a prior test-buy or surveillance, to verify information received from an informant, is not fatal since discretion is given to police officers in selecting the most effective means of apprehending drug dealers.<sup>22</sup> Likewise, it is also not necessary to establish the informant's personal acquaintance with an alleged dealer, considering that "[p]eddlers of illicit drugs have been known with ever increasing casualness and recklessness to offer and sell their wares for the right price to anybody, be they strangers or not."<sup>23</sup> At any rate, it bears to stress that findings of facts of the trial court, including its calibration of the testimonies of witnesses, its assessment of their credibility, and attribution of probative weight, are entitled to great respect, if not conclusive effect, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case.<sup>24</sup>

In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers 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.<sup>25</sup>

Guided by the foregoing parameter and as will be explained hereunder, the Court finds that accused-appellant's conviction must be set aside, notwithstanding the validity of the buy-bust operation.

<sup>19</sup> See *id.* at 12-20.

<sup>20</sup> See Brief of the Accused-Appellant dated May 16, 2016; *CA rollo*, pp. 34-50.

<sup>21</sup> See *People v. Magalong*, G.R. No. 231838, March 4, 2019.

<sup>22</sup> See *Cruz v. People*, 597 Phil. 722, 730 (2009).

<sup>23</sup> See *People v. Mendoza*, 814 Phil. 31, 41 (2017).

<sup>24</sup> *People v. Fajardo, Jr.*, 541 Phil. 345, 359 (2007); citations omitted.

<sup>25</sup> See *People v. Acosta*, G.R. No. 238865, January 28, 2019, citing *Sindac v. People*, 794 Phil. 421, 427 (2016).

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>26</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>27</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>28</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>29</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. In this regard, case law recognizes that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”<sup>30</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>31</sup>

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,<sup>32</sup> a representative from the media AND the Department of Justice (DOJ), and any elected public official,<sup>33</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official

<sup>26</sup> 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, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *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>27</sup> See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

<sup>28</sup> See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

<sup>29</sup> See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 381, 389; *People v. Crispo*, *supra* note 26; *People v. Sanchez*, *supra* note 26; *People v. Magsano*, *supra* note 26, at 153; *People v. Manansala*, *supra* note 26, at 370; *People v. Miranda*, *supra* note 26, at 53; and *People v. Mamangon*, *supra* note 26. See also *People v. Viterbo*, *supra* note 21.

<sup>30</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>31</sup> See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

<sup>32</sup> Entitled “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,’” approved on July 15, 2014. As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640, which was approved on July 15, 2014, states that it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” Verily, a copy of the law was published on July 23, 2014 in the respective issues of “The Philippine Star” (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and the “Manila Bulletin” (Vol. 499, No. 23; World News section, p. 6); hence, **RA 10640 became effective on August 7, 2014.**

<sup>33</sup> Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

and a representative of the National Prosecution Service *OR* the media.<sup>34</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>35</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>36</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>37</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>38</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>39</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>40</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>41</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,<sup>42</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>43</sup>

Anent the witness requirement, 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>44</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>45</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

<sup>34</sup> Section 21, Article II of RA 9165, as amended by RA 10640.

<sup>35</sup> See *People v. Miranda*, supra note 26. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

<sup>36</sup> See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 28, at 1038.

<sup>37</sup> See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, id.

<sup>38</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>39</sup> See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>40</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>41</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 seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.**”

<sup>42</sup> *People v. Almorfe*, supra note 39.

<sup>43</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>44</sup> See *People v. Manansala*, supra note 26, at 375.

<sup>45</sup> See *People v. Gamboa*, supra note 28, citing *People v. Umipang*, supra note 28, at 1053.

consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>46</sup>

Notably, the Court, in *People v. Miranda*,<sup>47</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>48</sup>

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by representatives from the DOJ and the media. This may be easily gleaned from the Receipt/Inventory of Property Seized<sup>49</sup> which only confirms the presence of elected public officials, *i.e.*, Kgw. Guadana and Kgw. Sevilla. Such finding is also confirmed by the testimony of PO3 Piano, on direct examination, to wit:

#### Direct Examination

[Prosecutor Emmanuel Lope Lupisan]: Who witnessed the inventory of the recovered items?

[PO3 Piano]: It was Brgy. Kagawad Guadana and Brgy. Kagawad Sevilla.<sup>50</sup>

x x x x

Q: Who were present during the inventory and during the marking of these items?

A: Brgy. Kagawad Gil Guadana and E. Sevilla of Brgy. 35, Bacolod City, in the presence of the suspect Romeo Dipon.<sup>51</sup>

As earlier stated, it is incumbent upon the prosecution to account for the absence of the required witnesses 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. Here, records show that the prosecution **failed to acknowledge**, much less justify, the absence of respective representatives from the DOJ and the media. 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 accused-appellant were compromised, which consequently warrants his acquittal.

<sup>46</sup> See *People v. Crispo*, supra note 26, at 376-377.

<sup>47</sup> Supra note 26.

<sup>48</sup> See *id.* at 61.

<sup>49</sup> Records (Criminal Case No. 12-36029), p. 52.

<sup>50</sup> TSN, August 22, 2012, p. 18.

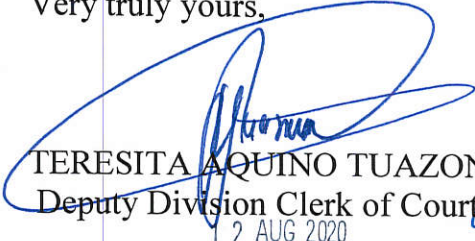
<sup>51</sup> TSN, September 5, 2012, p. 7.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated November 24, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 02180 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Romeo Dipon y Pescante alias "Isloy" is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to: (a) cause accused-appellant'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.** (GESMUNDO, J., designated Additional Member *vice* DELOS SANTOS, J., per Raffle dated January 6, 2020.)"

Very truly yours,

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court  
2 AUG 2020

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 47  
Bacolod City  
(Crim. Case Nos. 12-36029 & 12-36030)

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