



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 240448– PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus MERLY D. CASI, accused-appellant.

The conviction of the accused for the offense of illegal sale of dangerous drugs is the subject of review in this appeal assailing the Court of Appeals’ Decision¹ dated March 26, 2018 in CA-G.R. CR-HC No. 01566-MIN, which affirmed the Regional Trial Court’s Judgment dated May 19, 2016 in Criminal Case No. 644-2011.

ANTECEDENTS

On June 15, 2011, the Kidapawan City Police Station planned a buy-bust operation against Merly Casi and Jeshram Descalzo Ballos, a.k.a. “Teacher”, who were included in the drug watch list. After the briefing, PINSP Rolando Longakit Dillera, Jr. and PO1 Jhake Jimenez Busain were designated as poseur-buyers. After coordinating with the Philippine Drug Enforcement Agency Regional Office, the buy-bust team and the confidential informant proceeded to Merly’s house at Talisay Street, Kidapawan City. Thereat, the police officers saw Merly and Jeshram going out from the house.²

The confidential informant then introduced PINSP Dillera, Jr. and PO1 Busain to Merly and Jeshram. Thereafter, PINSP Dillera, Jr. handed two pieces of five hundred peso bills with marking “RL” to Jeshram. On the other hand, PO1 Busain handed a five hundred peso bill with marking “RL” to Merly. Upon receipt of the money, Jeshram

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¹ Rollo, pp. 3-15. Penned by Associate Justice Tita Marilyn Payoyo-Villordon, and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles.

² Records, p. 61.

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handed one small plastic sachet to PINSP Dillera, Jr., while Merly handed one piece of plastic sachet to PO1 Busain, both containing suspected *shabu*. At that moment, PINSP Dillera, Jr. and PO1 Busain introduced themselves as police officers, gave the signal to the rest of the buy-bust team, and arrested Merly and Jeshram. Aside from the plastic sachets that were subject of the sale, PINSP Dillera, Jr. recovered one big plastic sachet from Jeshram.³

Immediately, PINSP Dillera, Jr. and PO1 Busain conducted the marking and inventory of the seized items inside Merly's house.⁴ PO1 Busain and media man Paquito Jacolbe, Sr. signed the inventory of items seized from Merly.⁵ Thereafter, the buy-bust team brought Merly and Jeshram to the police station. Afterwards, PO1 Busain submitted a request for laboratory examination, together with the seized items, to the Kidapawan City Provincial Crime Laboratory.⁶ After qualitative examination, PI Bernard Ramilo Papay prepared a Chemistry Report stating that the substance tested positive for the presence of Methamphetamine Hydrochloride.⁷ With these findings, criminal actions were filed before the RTC. Merly was charged with violation of Sections 5 and 12 of Article II of R.A. No. 9165, docketed as Criminal Case Nos. 644-2011 and 645-2011, respectively. On the other hand, Jeshram was charged with violation of Sections 5 and 11 of the same law, docketed as Criminal Case Nos. 642-2011 and 643-2011, respectively.

Merly denied the accusation and claimed that she was cleaning when Jeshram arrived. They were eating together when somebody suddenly kicked the door open. Thereafter, five men rushed into the house and ordered her and Jeshram to lie down on the ground. She was handcuffed while one of the men entered her bedroom. The man placed "articles" on the table after coming out of the room. She asked about the "articles" but was ordered to be quiet.⁸

In support, Jeshram explained that he was at Merly's house attending a fiesta celebration. However, intruders entered the house and required them to lie on the floor face down. He noticed that the one of the intruders are arranging things on the table. Later, a media man arrived. The intruder then told that media man that the items on the table belong to him and Merly.

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³ Ibid.
⁴ Id. at 68.
⁵ Id. at 74.
⁶ Id. at 71.
⁷ Id. at 72.
⁸ Id. at 96.

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After joint trial, the RTC convicted Merly of illegal sale of dangerous drugs. It gave credence to the version of the prosecution as to the transaction that transpired between Merly and the poseur buyers. It added that the absence of an elected official and a DOJ representative was justified because the police officers contacted them but they were “busy” and “not available.” The other charges were all dismissed for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt. The RTC noted that PINSP Dillera, Jr. and PO1 Busain contradicted each other's testimony on the number of sachets that Jeshram sold to them,⁹ thus:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. **ACQUITTING** accused **JESHAM DESCALZO BALLOS** in Criminal Cases 642-2011 and 643-2011 for the failure of the Prosecution to prove his guilt beyond reasonable doubt. The Warden of the North Cotabato District Jail, Amas, Kidapawan City is directed to immediately **RELEASE** said accused from detention unless there are any other just causes to justify his continue stay in jail.

2. **CONVICTING** accused **MERLY D. CASI** for the crime defined and penalized in the first paragraph of Section 5, Article II, of RA 9165 beyond reasonable doubt (sic) in Criminal Case No. 644-2011. She is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay **FINE** in the amount of ONE MILLION PESOS (Php1,000,000.00).

3. **ACQUITTING** accused **MERLY D. CASI** in Criminal Case No. 645-2011 for the failure of the Prosecution to prove his guilt beyond reasonable doubt. The Warden of The Kidapawan City District Jail, Amas, Kidapawan City is directed to immediately **RELEASE** said accused from detention unless there are other just causes to justify his continued stay in jail.

The Acting Branch Clerk of Court is directed to turn-over to the Philippine Drug Enforcement Agency (PDEA), RegionXII, the object evidence in these cases for proper disposition and destruction.

SO ORDERED.

In its Decision dated March 26, 2018,¹⁰ the CA affirmed the findings of the RTC. Applying the presumption of regularity in the performance of official functions, it ruled that the police officers “sufficiently complied” with the procedure laid down in Section 21 of

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⁹ Id. at 91-108.

¹⁰ Id. at 3-15.

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R.A. No. 9165. Hence, this petition. Merly argued that the prosecution failed to establish the elements of illegal sale of dangerous drugs and that the police officers did not observe the proper handling and custody of the seized items in the course of the buy-bust operation.

RULING

We acquit.

In illegal sale of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.¹¹ Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.¹² Indeed, the prosecution must satisfactorily established the movement and custody of the seized drug through the following links: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.¹³ Here, the records reveal a broken chain of custody.

Foremost, the absence of a DOJ representative and an elected official as insulating witnesses to the inventory¹⁴ puts serious doubt as to the integrity of the first link. In *People v. Maralit y Casilang*,¹⁵ this Court emphasized that the presence of the insulating witnesses is the first and foremost requirement to ensure the preservation of the integrity and evidentiary value of the seized drugs. The absence of these witnesses may only be excused in cases where earnest efforts were made by police operatives to contact them, and such earnest efforts must be duly proven by the prosecution. Sheer statements of unavailability cannot pass this standard.¹⁶

Here, only a media representative signed the inventory of evidence.¹⁷ Worse, PINSP Dillera, Jr. admitted that their “standard operating procedure” was to proceed even without the required witnesses:

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¹¹ *People v. Partoza*, G.R. No. 182418, May 8, 2009.

¹² *People v. Ismael y Radang*, G.R. No. 208093, February 20, 2017.

¹³ *People v. Bugtong y Amoroso*, G.R. No. 220451, February 26, 2018.

¹⁴ Since the offense was allegedly committed on June 15, 2011, RA 9165, the old law which requires the presence of three (3) insulating witnesses, applies in this case.

¹⁵ G.R. No. 232381, August 1, 2018.

¹⁶ *People v. Flores*, G.R. No. 241261, July 29, 2019.

¹⁷ See Note 4.

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[Court]:

Mr. witness, if the representative of the DOJ is necessary in a buy-bust operation, why did you proceed even in the absence of the representative coming from the DOJ?

[PINSP Dillera, Jr.]:

I think **that is the standard operating procedure that [even] without the representative of the DOJ we can proceed.**

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Q: Okay, in other words you can proceed with the buy-bust operation even without the presence of a representative from the Department of Justice?

A: Yes, Your Honor. That is the reality, Your Honor.

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[Atty. Vergara]:

Meaning to say no elected official was with you during the inventory of evidence/property?

A: During that operation, sir.

Q: Is it not that the Office of the Sangguniang Bayan, Sangguniang Panlalawigan, the office of the Punong Barangay of Kidapawan City, the Office of the Department of Justice are just within the vicinity of Kidapawan City Police Station and as a matter of fact it is just a (sic) walking distance?

A: Yes, I know that, sir.

Q: But despite that, they were not present during the buy-bust operation?

A: As far as I know, sir, **even [if] the three (3) representatives will not be present we will proceed with our operation.**¹⁸
(Emphasis Ours)

The above testimony shows on the part of the buy-bust team an utter disregard of the required procedure laid down in Section 21 of R.A. No. 9165. Contrary to the police officer's belief, the presence of the insulating witnesses is a mandatory requirement. The absence of any of these witnesses must be justified.¹⁹ Yet, the allegations that the police officers contacted witnesses but they were "busy" and "not available" is not acceptable. They should have exerted earnest efforts to secure the presence of other elected officials and DOJ representatives in the area.

Similarly, the turnover of the seized item by the apprehending officer to the investigating officer was not established. Again, the

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¹⁸ TSN, PINSP Rolando Longakit Dillera, Jr., June 17, 2013, pp. 25-27.

¹⁹ People v. Tubera, G.R. No. 216941, June 10, 2019.

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testimony of PINSP Dillera, Jr. shows how carelessly the seized drugs in this case were handled and stored. Notably, the seized drugs were casually left on top of a table, unattended for two hours:

[Atty. Vergara]:

You returned to your police station about 3:15 and you delivered the two sachets of shabu to the crime laboratory at about 5:30 in the afternoon?

[PINSP Dillera, Jr.]:

Yes, sir.

Q: There is a difference of about two (2) hours?

A: Yes, sir.

Q: Who kept these two (2) sachets of shabu in these two (2) hours before the sachets were delivered to the crime laboratory?

A: We, the apprehending officers.

Q: Who, particularly, in your instance, these (sic) two (2) sachets which you said you seized from Jeshram Ballos, who kept these during these (sic) 2-hour time?

A: Me and PO1 Busain.

Q: In what particular safety place in your police station?

A: In the Investigation Section.

Q: What particular place in your Investigation Section?

A: At my table.

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Q: What particular part of the table?

A: **Just on top of the table.**

Q: You just placed it on top of the table?

A: Yes, sir.

Q: **So, for two (2) hours those two (2) sachets of shabu were just on top of your table?**

A: **Yes, sir.**²⁰ (Emphasis ours)

Evidently, the seized drugs were not given for safekeeping to an investigator, despite being sent to the “investigating section.” This is a huge gap in the chain of custody. The actions of the police operatives show a complete disregard of the required procedure. On this point, we reiterate that the provisions of Section 21 embody the constitutional aim to prevent the imprisonment of an innocent man.

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²⁰ TSN, PINSP Rolando Longakit Dillera, Jr., June 17, 2013, pp. 59-61.

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The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Merly must be acquitted of the charge against her given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the appeal is **GRANTED**. The March 26, 2018 Decision of the Court of Appeals is **REVERSED** and **SET ASIDE**. The accused-appellant Merly D. Casi is **ACQUITTED** in Criminal Case No. 644-2011, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent is likewise **ORDERED** to **REPORT** to this Court within five days from receipt of this Decision the action that has been undertaken.

SO ORDERED. *Reyes, J. Jr, J., on leave.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

by:


MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CR HC No. 01566-MIN)

The Superintendent (x)
Correctional Institution for Women
1550 Mandaluyong City

The Hon. Presiding Judge
Regional Trial Court, Branch 17
9400 Kidapawan City
(Crim. Case No. 644-2011)

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

PAULINO PIÑOL AND
GUADALUPE LAW OFFICES
Counsel for Accused-Appellant
Paulino Compound, #0006 Rizal Avenue
San Jose, Digos City, 8002 Davao del Sur

Public Information Office (x)
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Supreme Court
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No. 12-7-1-SC)

Ms. Merly D. Casi (x)
Accused-Appellant
c/o The Superintendent
Correctional Institution for Women
1550 Mandaluyong City

Judgment Division (x)
Supreme Court

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