



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **07 September 2020** which reads as follows:*

“**G.R. No. 245253** (*People of the Philippines v. Roberto Esteban y Garcia*). — Before the Court is an ordinary Appeal¹ assailing the Decision² dated 20 August 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09535, which affirmed the Decision³ of the Regional Trial Court (RTC) of Parañaque City, Branch 259, in Crim. Case Nos. 12-0530 and 12-0531 finding Roberto Esteban y Garcia (accused-appellant) guilty beyond reasonable doubt of violating Section 5 (Illegal Sale of Dangerous Drugs) and Section 11 (Illegal Possession of Dangerous Drugs), Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

FACTS

This case originated from two (2) Informations⁴ filed before the RTC charging accused-appellant of the crimes of Illegal Sale and/or Illegal Possession of Dangerous Drugs.

The prosecution alleged that on 15 May 2012, the Parañaque City Police Station’s Anti-Illegal Drugs Special Operation Task Group (task group), acting on the information of a regular informant, conducted a buy-bust operation against accused-appellant. At around 5:00 in the afternoon of the said day, the task group proceeded to Sta. Monica St., *Barangay* Don Galo, Parañaque City. Upon arrival at the area, the informant introduced Police Officer 3 Elbert Ocampo (PO3 Ocampo) to accused-appellant as his cousin and a call center agent who wants to buy *shabu*. PO3 Ocampo told accused-appellant that he would buy ₱500.00 worth of *shabu* and handed to

¹ *Rollo*, pp. 25-26.

² Penned by Associate Justice Stephen Cruz, with Associate Justices Zenaida Galapate-Laguilles and Gabriel Robeniol, concurring; *id.* at 3-23.

³ Penned by Presiding Judge Danilo Suarez; records, pp. 588-602.

⁴ See Information in Criminal Case Nos. 12-0530 and 12-0531; *id.* at 1-4.

the latter the buy bust money consisting of five ₱100.00 bills. Accused-appellant took the money, kept it in his right pocket, and handed to PO3 Ocampo one piece of transparent heat-sealed plastic sachet. Acting on his suspicion that the plastic sachet contained *shabu*, PO3 Ocampo executed the pre-arranged signal by making a “missed call” to his immediate back-up, PO3 Domingo Julaton (PO3 Julaton), to signify the consummation of the transaction. When PO3 Ocampo saw PO3 Julaton approaching, he grabbed the hand of accused-appellant, introduced himself as a policeman, and arrested him. PO3 Ocampo was able to recover from accused-appellant a black coin purse containing another six (6) pieces of heat-sealed transparent plastic sachets of white crystalline substance while PO3 Julaton was able to recover the buy-bust money. Afterwards, the task group leader, Police Senior Inspector Roque Tome (PSI Tome), immediately requested the presence of the *barangay* captain or *barangay* official to witness the conduct of inventory and marking of the seized items at the place of arrest. When *Barangay* Captain Marilyn Burgos (Brgy. Captain Burgos) and *Barangay Kagawad* Reynaldo Gatmaitan (Brgy. *Kagawad* Gatmaitan) arrived, PO3 Ocampo conducted the physical inventory and marking of the seized items in the presence of the aforesaid *barangay* officials and of accused-appellant while PO3 Julaton took pictures. Thereafter, the task group returned to their office with the seized items in the possession of PO3 Ocampo. At their office, PO3 Ocampo prepared the Request for Laboratory Examination and Request for Drug Examination. Upon completion of the said documents, PO3 Ocampo brought the same, the seized items and accused-appellant to the Philippine National Police (PNP) Crime Laboratory in Makati City. The request for laboratory examination together with the seized items were received by PO3 Villar of Makati PNP Laboratory. These items were later examined by Forensic Chemist PSI Ana Melisa Bacani (PSI Bacani). The laboratory examination revealed that all of the seized items tested positive for the presence of methamphetamine hydrochloride commonly known as *shabu*, a dangerous drug.⁵

For his part, accused-appellant denied the allegations against him and averred that the case stemmed from the revenge of Brgy. Captain Burgos and other *barangay* officials after criminal complaints for grave coercion, maltreatment and arbitrary detention were initiated by his brother and nephew. This explains why Brgy. Captain Burgos and Brgy. *Kagawad* Gatmaitan testified against them and corroborated the testimonies of the apprehending police officers. As to what happened on 15 May 2012, the evidence for the defense proffered that one of the police officers, later identified as PO3 Julaton, forcibly went inside accused-appellant’s compound by climbing up over the locked gate. Accused-appellant’s wife saw this and shouted, “*Bobby, Bobby, may lalaking umakyat sa gate natin.*” Accused-appellant rushed out of the house and saw PO3 Julaton, who drew out his gun and pointed the same to accused-appellant. PO3 Julaton then opened the gate from the inside of the compound to allow his companions to

⁵ *Rollo*, pp. 6-8.

get in. The police officers grabbed accused-appellant's hands and told him not to fight. They searched the house of accused-appellant where PO3 Ocampo was able to recover and show to accused-appellant a black coin purse containing dangerous drugs. Accused-appellant denied owning the black coin purse and alleged that it actually came from the pocket of PO3 Ocampo's pants. The police officers then laid several pieces of drug evidence on top of a table and started preparing a list. Brgy. Captain Burgos and Brgy. *Kagawad* Gatmaitan later arrived only to sign the already prepared inventory listing. There were no representatives from the media and from the Department of Justice (DOJ) present during the inventory. Accused-appellant heard one of the officers saying, "*Basta pirmahan niyo na 'to Kap. Ayos na 'tong mga kalaban mo. Malakas ka sa 'min eh.*" He also heard Brgy. Captain Burgos telling the police officers to make sure that accused-appellant be jailed as her revenge to the cases filed against her. Thereafter, accused-appellant was brought to the PNP office where he was investigated. He was later brought and detained at Station Investigation Division (SID). Accused-appellant did not file any case against the police officers out of fear for the lives of his family.⁶

In a Decision⁷ dated 12 January 2017, the RTC found accused-appellant guilty beyond reasonable doubt of Illegal Sale and/or Illegal Possession of Dangerous Drugs, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court renders judgment as follows:

- 1.) The Court finds the accused ROBERTO ESTEBAN y GARCIA in Criminal Case No. 12-0530 for violation of Sec. 11, Art[.] II of R.A. No. 9165 (otherwise known as the Comprehensive Dangerous Drugs Act of 2002), for unlawful possession of dangerous drugs contained in six (6) heat-sealed transparent plastic sachet with markings: "EO-1" containing white crystalline substance weighing 0.02 gram, "EO-2" containing white crystalline substance weighing 0.02 gram, "EO-3" containing white crystalline substance weighing 0.03 gram, "EO-4" containing white crystalline substance weighing 0.02 gram, "EO-5" containing white crystalline substance weighing 0.03 gram, "EO-6" containing white crystalline substance weighing 0.25 gram, with a total weighing of 0.37 grams (sic), GUILTY beyond reasonable doubt and is sentenced to suffer the penalty of twelve (12) years and one (1) day as minimum to seventeen (17) years as maximum imprisonment and to pay a fine in the amount of Php 300,000.00.
- 2.) The Court finds accused ROBERTO ESTEBAN y GARCIA in Criminal Case No. 12-0531 for violation of Sec. 5, Art II of R.A. No. 9165 (otherwise known as the Comprehensive Dangerous Drugs [A]ct of 2002), for unlawful selling of dangerous drug with a weight of 0.03 gram, GUILTY beyond reasonable doubt and is sentenced to suffer the penalty of LIFE IMPRISONMENT and to

⁶ Id. at 8-10.

⁷ Records, pp. 588-602.

pay fine in the amount of Php 500,000.00.

Considering that the judgment is for conviction as well as the penalty imposed, the Branch Clerk of Court is hereby directed to prepare the *Mittimus* for accused ROBERTO ESTEBAN y GARCIA to be detained at the New Bilibid Prison, Munti[n]lupa City.

The sachets of shabu marked as “EO” weighing 0.03 gram, “EO-1” weighing 0.02 gram, “EO-2” weighing 0.02 gram, “EO-3” weighing 0.03 gram, “EO-4” weighing 0.02 gram, “EO-5” weighing 0.03 gram, “EO-6” weighing 0.25 gram and subject of these cases, are forfeited in favor of the government and the Branch Clerk of Court is directed to immediately turn over the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Section 21 of RA 9165 and Supreme Court OCA Circular No. 51-2003.

SO ORDERED.⁸

The RTC denied accused-appellant’s defenses of denial or frame-up and ill-motive on the part of the *barangay* officials, and held that the prosecution was able to establish all the elements of unlawful possession and sale of dangerous drugs. It also ruled that while the arresting officers failed to strictly comply with Section 21, Article II of RA 9165, in that no witness from the DOJ or media was present during the inventory, the same does not render the arrest invalid considering that there was an elected public official present in the persons of Brgy. Captain Burgos and Brgy. *Kagawad* Gatmaitan. The RTC stressed that minor deviations from the procedure under RA 9165 would not automatically exonerate an accused from the crimes of which he or she was charged with. What is essential is for the prosecution to prove that the prohibited drug confiscated is the very same substance offered in court. In connection thereof, the RTC observed that the chain of custody form as well as the testimonies of the prosecution witnesses reveal that there were no gaps or missing links in the handling of the seized evidence, hence, the integrity and evidentiary value of the seized items were properly preserved.⁹

Aggrieved, accused-appellant appealed to the CA.

In a Decision dated 20 August 2018, the CA affirmed the RTC ruling, the dispositive portion of which reads:

WHEREFORE, the instant appeal is DENIED. The Decision dated January 12, 2017 of the Regional Trial Court of Parañaque City, Branch 259, in Criminal Case Nos. 12-0530 and 12-0531, finding Roberto Esteban y Garcia guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165, is AFFIRMED *in toto*.

SO ORDERED.

⁸ Id. at 601-602.

⁹ Id. at 597-601.

The CA concurred with the RTC that all the elements of Illegal Sale and/or Illegal Possession of Dangerous Drugs are present as proven by the evidence of the prosecution. It rejected accused-appellant's defenses of prosecution's failure to present the marked money, ill-motive on the part of the *barangay* officials and denial or frame-up. The CA also agreed with the RTC that non-compliance with Section 21, Article II of RA 9165 does not automatically render void and invalid the seizure of and custody over the seized item, as long as the integrity and the evidentiary value of the same were properly preserved by the apprehending officers. In the instant case, the CA found that the totality of the evidence adduced by the prosecution shows an unbroken chain of custody. The appellate court pointed out that the law recognizes that although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the seized item" is sufficient. Behind this is an acknowledgment that the chain of custody rule is difficult to comply with. While a testimony about a perfect and unbroken chain is ideal, such is not always the standard as it is most always impossible to obtain an unbroken chain.¹⁰

Dissatisfied with the CA Decision, accused-appellant filed the instant appeal.

ISSUE

The issue for the Court's resolution is whether or not accused-appellant's guilt for violations of Sections 5 and 11 of RA 9165 was proven beyond reasonable doubt.

RULING

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, 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.¹¹ Therefore, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. This requirement necessarily arises from the unique characteristic of the illegal drugs that renders them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.¹² Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court

¹⁰ *Rollo*, pp. 12-23.

¹¹ *People v. Corral*, G.R. No. 233883, 7 January 2019.

¹² See *People v. Yagao*, G.R. No. 216725, 18 February 2019.

as evidence of the crime.¹³

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.¹⁴ The aforesaid section provides, among others, that:

(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 and underscoring supplied.)

Meanwhile, Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165 provides:

(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 and underscoring supplied)

Subsequently, RA 10640,¹⁵ which became effective on August 7, 2014,¹⁶ amended Section 21, Article II of RA 9165 and incorporated the saving clause contained in the IRR, and requires that the conduct of the physical inventory and taking of photograph of the seized items be done in the presence of (1) the accused or the person/s from whom such items were

¹³ *People v. Gamboa*, G.R. No. 233702, 20 June 2018.

¹⁴ *People v. Sumili*, 753 Phil. 342, 348 (2015).

¹⁵ 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.

¹⁶ As the Court noted in *People v. Gutierrez* (G.R. No. 236304, 5 November 2018, footnote 26), RA 10640 was approved on July 15, 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 7 August 2014. The acts subject of this case allegedly occurred on 23 and 24 November 2014, hence, after the effectivity of RA 10640.

confiscated and/or seized, or his/her representative or counsel; (2) an elected official; and (3) a representative of the National Prosecution Service or the media.¹⁷

As it stands now, the law 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) *prior* to the amendment of RA 9165 by RA 10640, a representative from the media **and** the Department of Justice (DOJ), **and** any elected public official; or (b) *after* the amendment of RA 9165 by RA 10640, an elected public official **and** a representative of the National Prosecution Service or the media.¹⁸

Since the alleged crimes charged against accused-appellant in the instant case were committed in 2012, the old provisions of Section 21, Article II of RA 9165 and its IRR are applicable which provide that after seizure and confiscation of the drugs, the apprehending team is required to **immediately conduct a physical inventory and photograph the seized items 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, and **three witnesses**: (1) a representative from the media, (2) the DOJ, **and** (3) any elected public official.

After the examination of the records, the Court finds that the apprehending police officers failed to comply with the *three-witness rule*. Based on the testimonies of the witnesses both from the prosecution and from the defense, only elected *barangay* officials were present when the alleged inventory took place, and they are the only ones who signed the

¹⁷ Section 1, R.A. 10640 reads:

Section 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read as follows:

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, 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.

¹⁸ *People v. Corral*, supra note 11; see also *People v. Maganon*, G.R. No. 234040, 26 June 2019, citing *People v. Gutierrez*, supra note 16.

inventory receipt.¹⁹ It is undisputed that the inventory was not conducted in the presence of the other required witnesses, namely, the representatives from the media and the DOJ. Moreover, the aforesaid *barangay* officials did not even witness the actual inventory of the seized *shabu* as they were only called in to sign the already accomplished Inventory Report. As testified to by PO3 Ocampo, Brgy. Captain Burgos and Brgy. *Kagawad* Gatmaitan, immediately after the arrest and prior to the arrival of the required witnesses, the seized items were placed on the table and PO3 Ocampo prepared and finished the inventory. When the aforementioned *barangay* officials arrived, they were asked to just sign the inventory of properties seized.²⁰

Based on the foregoing, it is very clear that the apprehending officers failed to comply with the mandatory requirements of Section 21, Article II of RA 9165 which plainly requires that the inventory must be **done in the presence** of the **accused or his counsel or representative, a representative of the DOJ, the media and an elected public official**, who shall be required to sign the copies of the inventory and be given a copy thereof.

While the failure of the apprehending team to strictly comply with the procedure laid down in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, it must be stressed that the prosecution must satisfactorily prove that (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items have been properly preserved. There must be proof that these two (2) requirements were met before such non-compliance may be said to fall within the scope of the proviso.²¹

With regard to the justifiable ground for non-compliance, the same must be proven as a fact. The court cannot presume what these grounds are or that they even exist.²² Accordingly, non-compliance with the witness requirement may be permitted only 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 earnest 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. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. 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 consequently, make the necessary

¹⁹ TSN, 14 August 2013, pp. 24-27; TSN, 14 May 2014, pp. 7-8.

²⁰ TSN, 15 March 2014, p. 11; TSN, 18 June 2014, pp. 6-7; RTC Decision, p. 6.

²¹ See *People v. De Guzman*, 630 Phil. 637, 649 (2010).

²² *Id.*

arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.²³

In this case, there is no showing that the apprehending officers tried to contact the required witnesses, namely, representatives from the media and the DOJ, nor did the prosecution offer any justifiable reason for the non-compliance with the three-witness rule. Likewise, there was no explanation why the apprehending officers conducted the inventory prior to the arrival of the required witnesses. 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.²⁴ Consequently, the prosecution failed to prove the *corpus delicti* of the offense of sale and possession of illegal drugs due to the unexplained breaches of procedure committed by the buy-bust team in the seizure, custody and handling of the seized drug. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant.

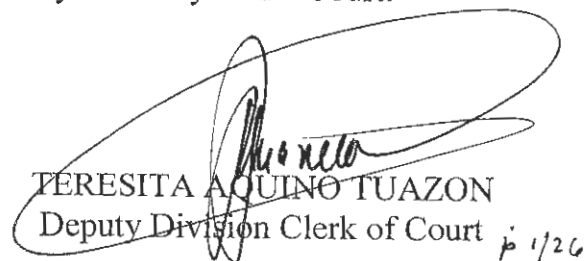
WHEREFORE, the appeal is **GRANTED**. The Decision dated 20 August 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09535 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Roberto Esteban y Garcia is **ACQUITTED** of the crimes charged on the ground of reasonable doubt.

The Director of the Bureau of Corrections, Muntinlupa City, is **ORDERED** to: (a) cause the immediate release of accused-appellant Roberto Esteban y Garcia, unless he is being held in custody for any other lawful reason; and (b) inform the Court the action hereon within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

SO ORDERED." (*Inting, J., on official leave; Baltazar-Padilla, J., on leave.*)

By authority of the Court:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court p 1/26
26 JAN 2021

²³ *People v. Corral*, supra note 11.

²⁴ See *People v. Dela Victoria*, G.R. No. 233325, 16 April 2018, 861 SCRA 305, citing *People v. Miranda*, G.R. No. 229671, 31 January 2018, 854 SCRA 42.

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 259
Parañaque City
(Crim. Case Nos. 12-0530 and 12-0531)

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