



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 12, 2021** which reads as follows:*

“GR. No. 219890 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. SALEM PALAO a.k.a. “Salem Raja”, accused-appellant) – This is an ordinary appeal under Rule 122 of the Rules of Court, seeking to reverse and set aside the Decision¹ dated September 27, 2013 of the Court of Appeals (CA) in CA-GR. CR-HC No. 05365. The said issuance affirmed the September 15, 2011 Decision² of Branch 44 of the Regional Trial Court (RTC) of Dagupan City in Criminal Case No. 2009-0426-D which, in turn, found accused-appellant Salem Palao a.k.a. “Salem Raja” (appellant) guilty beyond reasonable doubt of violation of Article 11, Section 5 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and imposing upon him the penalty of life imprisonment and a fine of ₱500,000.00.

Antecedents

Appellant was indicted of the crime charged in an Information dated July 29, 2009, the accusatory portion of which reads as follows:

That on or about the 28th day of July, 2009, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, SALEM PALAO Y RANDY AKA SALEM RAJA, did then and there willfully, unlawfully and criminally sell and deliver to a customer Methamphetamine Hydrochloride (Shabu) contained in one (1) heat-sealed plastic sachet, weighing more or less 0.2 gram, without authority to do so.

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¹ *Rollo*, pp. 2-12. Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser.

² *Records*, pp. 103-110. Rendered by Judge Genoveva Coching-Maramba.

Contrary to Article II, Section 5, RA 9165.³

When he was arraigned on February 4, 2010, appellant, assisted by counsel, pleaded not guilty to the offense charged.⁴ Thereafter, pre-trial ensued, followed by trial on the merits.

The evidence for the prosecution established that at around 7:00 in the morning of July 28, 2009, the Special Operations Group of the Pangasinan Police Provincial Office, stationed at Lingayen, Pangasinan, received a tip from a confidential informant about appellant's illegal activities.⁵ Upon ascertaining the veracity of the information that was relayed to them, they informed their superior, Police Superintendent Wilson Joseph Lopez who, in turn, formed the buy-bust team.⁶ Police Officer 3 Camilo P. Bautista, Jr. (PO3 Bautista, Jr.) was designated as poseur-buyer.⁷ A ₱500.00 bill was designated as marked money.⁸ The operation took place at Fernandez St., Nueva, Dagupan City, Pangasinan at around 12:00 noon, during which, one plastic sachet containing white crystalline substance weighing 0.5 grams, more or less, was confiscated from appellant and marked with the letters "CPB".⁹ PO3 Bautista, Jr. and PO3 Randolph Lagonoy (PO3 Lagonoy), another member of the buy-bust team, then immediately prepared the inventory receipt¹⁰ of the seized item, in the presence of Francisco Mejia, a member of the *barangay* Civilian Volunteer Organization (CVO), and Leslie Iñigo (Iñigo), a reporter from the Manila Bulletin, albeit Iñigo's signature does not appear in the said document. Photographs¹¹ of appellant, the seized item and the marked money were also taken by the buy-bust team. The seized item was then brought to the Pangasinan Provincial Crime Laboratory for examination. Chemistry Report No. D-054-09L,¹² which was prepared by Police Senior Inspector Myrna Castro Malojo, confirmed that the confiscated substance was indeed methamphetamine hydrochloride or *shabu*, a dangerous drug.

Professing innocence, appellant denied the accusations against him. He claimed that while on his way home after buying viand from a canteen, two male persons approached him and introduced themselves as police officers, one of whom even hugged him. Thereafter, the said police officers forced appellant to go with him and proceeded to file

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³ Id. at 1.
⁴ Id. at 29.
⁵ TSN, October 1, 2010, p. 4.
⁶ Records, p. 13.
⁷ TSN, October 1, 2010, p. 4.
⁸ Records, p. 6.
⁹ TSN, October 1, 2010, pp. 4-6.
¹⁰ Records, p. 12.
¹¹ Id. at 10-11.
¹² Id. at 5.

charges against him for selling illegal drugs.¹³ Appellant likewise averred that the same police officers tried to extort from him the amount of ₱50,000.00 as settlement for the charges against him.¹⁴

On September 15, 2011, the RTC rendered a Decision finding appellant guilty beyond reasonable doubt of the crime charged. The trial court found credence in the positive testimony of PO3 Bautista, Jr. and PO3 Lagonoy *vis-à-vis* appellant's defense of denial and alibi. Thus:

WHEREFORE, judgment is hereby rendered finding accused SALEM PALAO y RANDY AKA SALEM RAJA guilty beyond reasonable doubt with Violation of Art. 11, Sec. 5 of RA 9165 otherwise known as the Dangerous Drugs Act of 2002 and is hereby sentenced to suffer life imprisonment and to pay a fine in the amount of Five Hundred Thousand (Php500,000.00) Pesos.

With costs against said accused.

SO ORDERED.¹⁵

Undaunted, appellant interposed an appeal with the CA contending, *inter alia*, the police officers' failure to comply with Section 21 of R.A. No. 9165, as well as the failure on the part of the prosecution to establish an unbroken chain in the custody of the seized drug item. Said appeal was, however, denied by the appellate court in the herein assailed Decision dated September 27, 2013, the dispositive portion of which states:

WHEREFORE, premises considered, the appeal is *DISMISSED*. The challenged decision of the Regional Trial Court of Dagupan City, Branch 44 in Criminal Case No. 2009-0426-D is *AFFIRMED*. Costs against the accused-appellant.

SO ORDERED.¹⁶

Hence, the present recourse.

On November 4, 2013, the CA¹⁷ issued a minute resolution¹⁸ giving due course to the Notice of Appeal¹⁹ filed by appellant, thereby ordering the elevation of the records of the instant case to this Court.

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¹³ TSN, May 3, 2011, pp. 3-7.

¹⁴ Id. at 8.

¹⁵ Records, p. 110.

¹⁶ *Rollo*, p. 12.

¹⁷ Composed of Associate Justices Amelita G. Tolentino, Rodil V. Zalameda (now a Member of this Court) and Danton Q. Bueser.

¹⁸ CA *rollo*, p. 124.

¹⁹ *Rollo*, pp. 13-14.

In a Resolution²⁰ dated November 9, 2015, this Court noted the records of the case forwarded by the CA. The parties were then ordered to file their respective supplemental briefs, should they so desire, within 30 days from notice.

On February 18, 2016, the Office of the Solicitor General filed a Manifestation²¹ on behalf of the People stating that it would no longer file a supplemental brief because all of its contentions have been amplified in full in the Appellee's Brief²² that it submitted to the CA. On March 30, 2016, appellant, through the Public Attorney's Office, filed a similar Manifestation.²³

The Court now resolves the instant case.

Issue

The issue raised for the Court's consideration is whether or not the CA erred in affirming appellant's conviction.

Ruling of the Court

There is merit in the appeal.

To secure a conviction for illegal sale of dangerous drugs under Article II, Section 5 of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.²⁴ The State bears the burden not only of proving the elements of the offenses of sale of dangerous drug and of the offense of illegal possession of dangerous drug, but also of proving the *corpus delicti*, the body of the crime.²⁵ The only way by which the State could lay the foundation of the *corpus delicti* is to establish beyond reasonable doubt the illegal sale or illegal possession of the dangerous drug by preserving the identity of the drug offered as evidence against the accused. The State does so only by ensuring that the drug presented in the trial court was the same substance bought from the accused during the buy-bust operation or recovered from his possession at the moment

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²⁰ Id. at 18.

²¹ Id. at 20-22.

²² CA rollo, pp. 79-92.

²³ Rollo, pp. 26-28.

²⁴ *People v. Ismael*, 806 Phil. 21, 29 (2017).

²⁵ *People v. Calates*, 829 Phil. 262, 269 (2018).

of arrest.²⁶ Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved.²⁷ In *People v. Jaafar*,²⁸ the Court explained further:

Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.²⁹

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002³⁰ defines chain of custody in the following manner:

“Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

In *People v. Lim*,³¹ the Court ruled that the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.

Corollarily, Article II, Section 21(1) of R.A. No. 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.³² Thus:

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²⁶ *People v. Nepomuceno*, G.R. No. 216062, September 19, 2018.

²⁷ *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

²⁸ 803 Phil. 582 (2017).

²⁹ Id. at 591.

³⁰ GUIDELINES ON THE CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS, CONTROLLED PRECURSORS AND ESSENTIAL CHEMICALS, AND LABORATORY EQUIPMENT. See https://www.ddb.gov.ph/images/Board_Regulation/2002/Bd.%20Reg.%201%2002.pdf.

³¹ G.R. No. 231989, September 4, 2018.

³² *People v. Baptista*, G.R. No. 225783, August 20, 2018.

SEC. 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[.]

Under the foregoing section, prior to its amendment by R.A. No. 10640,³³ the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.³⁴ The law requires the presence of an elected public official, as well as representatives from the DOJ and the media to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case.³⁵

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.³⁶ The provisions were crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed

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³³ 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", signed by President Benigno S. Aquino III on July 15, 2014.

³⁴ *People v. Dela Victoria*, 829 Phil. 675, 683 (2018).

³⁵ *People v. Crispo, et al.*, 828 Phil. 416, 439 (2018).

³⁶ *People v. Flores*, G.R. No. 241261, July 29, 2019.

may be life imprisonment.³⁷ It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. No. 9165 does not *ipso facto* render the seizure and custody over the items as void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.³⁸ The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.³⁹

In the instant case, the inventory and photography of the seized item was not witnessed by any of the three persons required by law. No DOJ representative or elected public official was present. The presence of a member of the *barangay* CVO – a *barangay tanod* – is immaterial because *barangay tanods* are not elected public officials.⁴⁰ Moreover, while the inventory receipt⁴¹ purportedly bears the name of Ifigo as media representative, her signature on the same is lacking. Particularly glaring in this regard is the following pronouncement by PO3 Lagonoy, during his direct examination, which reveals the police officers' lackadaisical attitude towards the witness requirement:

Q: After effecting the arrest of the accused, what did you do next?

A: We presented some CVOs who were there, we let them witnessed [sic] the transaction and after that we went to our police officer at Lingayen, Pangasinan for proper documentation, ma'am.⁴²

In the landmark case of *People v. Lim*,⁴³ this Court stressed the importance of the presence of the three insulating witnesses and ruled that where they are absent, the prosecution must allege and prove the reasons for their absence and likewise show that earnest efforts were made to secure their attendance.⁴⁴ Thus:

The Court stressed in *People v. Vicente Sipin y De Castro*:

The prosecution bears the burden of proving a valid cause for noncompliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that

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³⁷ *People v. Ancheta, et al.*, 687 Phil. 569, 579 (2012).

³⁸ *People v. Musor*, G.R. No. 231843, November 7, 2018.

³⁹ *Id.*

⁴⁰ *People v. Rodriguez*, G.R. No. 213760, July 1, 2019.

⁴¹ *Rollo*, p. 12.

⁴² TSN, December 6, 2010, p. 4.

⁴³ *Supra* note 31.

⁴⁴ *People v. Manansala*, G.R. No. 229509, July 3, 2019.

during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule [sic], since it is highly susceptible to planting, tampering or alteration of evidence.

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. 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 arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21 of R.A. No. 9165, to explain why the procedure was not followed and to prove that the reason provided a justifiable ground.⁴⁵ In the instant case, no such earnest efforts were exerted by the apprehending officers to exhibit compliance with the requirements of Section 21 of R.A. No. 9165. The result of the prosecution's failure to provide such an explanation is the acquittal of the accused. In *People v. Barte*,⁴⁶ the Court so declared:

When there is failure to comply with the requirements for proving the chain of custody in the confiscation of contraband in a drug buy-bust operation, the State has the obligation to credibly explain such noncompliance; otherwise, the proof of the *corpus delicti* is doubtful, and the accused should be acquitted for failure to establish his guilt beyond reasonable doubt.⁴⁷

Applying the above principles, the Court finds that the police officers in this case committed unexplained and unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the item purportedly seized from appellant.⁴⁸ Considering that the procedural lapses committed by the arresting officers, which were unfortunately left unjustified, militate against a finding of guilt beyond reasonable doubt against appellant, as the integrity and evidentiary value of the *corpus delicti* had been compromised, the Court is constrained to rule that appellant's acquittal is in order.⁴⁹

It is a basic principle of constitutional law that the accused shall be presumed innocent until the contrary is proved, and this by the most convincing evidence constituting proof beyond reasonable ground.

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⁴⁵ *People v. Adobar*, G.R. No. 222559, June 6, 2018.

⁴⁶ 806 Phil. 533 (2017).

⁴⁷ *Id.* at 536.

⁴⁸ *People v. Libre*, G.R. No. 235980, August 20, 2018.

⁴⁹ *People v. Dela Torre*, G.R. No. 238519, June 26, 2019.

Lacking such certainty, the trial court has the duty to render a verdict of acquittal indeed even if the prisoner on the dock utters not a word on his behalf on the equally well-known precept that the strength of the prosecution lies not in the weakness of the defense.⁵⁰ A battle waged against illegal drugs that tramples on the rights of the people is not a war on drugs. *It is a war against the people.*⁵¹ Those who are supposed to enforce the law are not justified in disregarding the rights of the individual in the name of order. Order is too high a price for the loss of liberty.⁵²

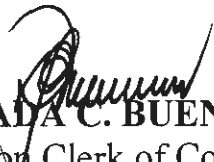
WHEREFORE, the appeal is **GRANTED**. The Decision dated September 27, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 05365 is hereby **REVERSED** and **SET ASIDE**. For failure on the part of the prosecution to prove his guilt beyond reasonable doubt, accused-appellant Salem Palao a.k.a. Salem Raja is **ACQUITTED** of the crime charged. He is **ORDERED** immediately **RELEASED** from detention unless he is being detained for some other lawful cause.

Let a copy of this Resolution be furnished the Director of the Bureau of Corrections for immediate implementation and to report the action he has taken to this Court within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.” *Zalameda, J., recused himself from the case due to prior participation in the CA; Inting, J., designated Additional Member per Raffle dated January 4, 2021.*

By authority of the Court:


LIBRALA C. BUENA
Division Clerk of Court
6249

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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⁵⁰ *People v. Macasinag*, 25 Phil. 279, 280-281 (1989).

⁵¹ *People v. Sapla*, G.R. No. 244045, June 16, 2020.

⁵² *People v. Aminnudin*, 246 Phil. 424, 435 (1988).



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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 05365)

The Hon. Presiding Judge
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(Crim. Case No. 2009-0426-D)

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