



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 19, 2021** which reads as follows:*

**“G.R. No. 238209 (People of the Philippines, Plaintiff-Appellee, v. Junard Viado y Veloria @ “Tuko,” Dominador Viado y Navarro, and Maria Cecilia Amistroso y Guyagoy, Accused-Appellants).** – On appeal is the Decision<sup>1</sup> promulgated on 26 October 2017 by the Court of Appeals (CA) in CA G.R. CR-HC No. 08636, which affirmed the 07 March 2016 Joint Decision<sup>2</sup> of Branch 1, Regional Trial Court (RTC) of Balanga City, Bataan in Criminal Case Nos. 14988 and 14989. The RTC found all three (3) accused-appellants Junard Viado y Veloria @ “Tuko” (Junard), Dominador Viado y Navarro (Dominador), and Maria Cecilia Amistroso y Guyagoy (Cecilia) (collectively, appellants) guilty in Crim. Case No. 14988 for violation of Section 5, Article II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002. In Crim. Case No. 14989, only Dominador was charged with and found guilty of violation of Section 11 of RA 9165.

**Antecedents**

An Information for violation of Section 5, Article II of RA 9165 was filed against appellants:

Criminal Case No. 14988

That on or about July 4, 2015 in Abucay, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, conspiring, confederating and mutually aiding one another, did then and there,

- over – ten (10) pages ...

**159-B**

<sup>1</sup> *Rollo*, pp. 2-10; penned by Associate Justice (now a Member of this Court) Mario V. Lopez and concurred in by Associate Justices Remedios A. Salazar-Fernando, and Ramon Paul L. Hernando (now a Member of this Court) of the First Division, Court of Appeals, Manila.

<sup>2</sup> *CA rollo*, pp. 46-62; penned by RTC Assisting Judge Gen. M. Gito.

willfully, sell, distribute and give away to another one (1) heat-sealed transparent sachet containing methamphetamine hydrochloride commonly known as “shabu”, weighing ZERO POINT ZERO FOUR FOUR THREE (0.0443) GRAM, and that the accused [were] found positive for the use of Methamphetamine, a dangerous drug.

CONTRARY TO LAW.<sup>3</sup>

A separate Information against Dominador was filed for violation of Section 11 of RA 9165 in Crim. Case No. 14989:

That on or about July 4, 2015 in Abucay, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the sa[i]d accused, not being authorized by law, did then and there willfully have in his possession, custody and control three (3) heat-sealed transparent sachets containing Methamphetamine Hydrochloride, commonly known as “shabu”, with the total weight of ZERO POINT ZERO NINE TWO NINE (0.0929) GRAM, a dangerous drug.

CONTRARY TO LAW.<sup>4</sup>

Appellants entered their respective pleas of “not guilty” during arraignment on 13 July 2015. The RTC ordered the consolidation of the cases as they arose from the same incident. Pre-trial was conducted on 24 August 2015, after which, trial on the merits ensued.

#### **Version of the Prosecution**

On 04 July 2015, PO1 Edward Gacutan (PO1 Gacutan) received information that Junard and two (2) other persons were selling illegal drugs. PO1 Gacutan relayed the information to the Chief of Police of Abucay Municipal Police Station (Abucay police chief). PO1 Gacutan, PO1 Peter Taguiam, Jr. (PO1 Taguiam), and PO3 Niel Valencia (PO3 Valencia) were the apprehending team members who coordinated with the Provincial Police Office – Provincial Intelligence Bureau (PPO-PIB) and the Drug Enforcement Unit of the Balanga City Police (DEU-Balanga). PO1 Gacutan, who was designated as poseur buyer, marked a Php500 bill with the acronym “AMPS,” for Abucay Municipal Police Station. The apprehending team, with the PPO-PIB and the DEU-Balanga, proceeded to TabunTabunan St., Brgy. Omboy, Abucay, Bataan.

- over -

159-B

---

<sup>3</sup> *Id.* at 46-47.

<sup>4</sup> *Id.* at 47.

PO1 Gacutan and the confidential informant approached appellants. After talking with the confidential informant, Junard asked PO1 Gacutan "*magkano ba iscorin mo?*" In reply, PO1 Gacutan simply handed Junard the marked Php500 bill. Junard gave the marked money to Cecilia, who put it in her pocket, and instructed her to get a small plastic sachet from Dominador. Cecilia went to Dominador, who gave her the sachet which she then handed to Junard. As soon as PO1 Gacutan received the sachet, he lit a cigarette as a signal to the apprehending team that the transaction has been consummated.

PO1 Gacutan held Junard's hands and introduced himself as a police officer. He was also able to recover a .22 pistol from Junard. The sachet of *shabu* was marked with "JV." Meanwhile, PO3 Valencia and PO1 Taguiam arrested Cecilia and Dominador. The marked Php500 bill was recovered from Cecilia, while three (3) plastic sachets were recovered from Dominador. The three (3) plastic sachets were marked with "JV-1," "JV-2," and "JV-3." Appellants were brought to the police station for the physical inventory of the seized items despite an earlier objection from Police Officer Michael Yutuc that Cecilia should not be included.

The inventory was conducted with the following persons as mandatory witnesses: Emma Sangalang from the Department of Justice (DOJ), Danny Cumilang from the media, and Ronnie De Jesus as the elective official. Photographs were also taken during the conduct of inventory. PO1 Gacutan then brought all four (4) sachets to the Philippine National Police Crime Laboratory for examination. After confirming that the sachets indeed contained *shabu*, charges were filed against appellants.

### **Version of the Defense**

Appellants alleged the defense of frame-up. At around 9 o'clock in the evening of 04 July 2015, Junard and Dominador were inside their house in *Brgy. Omboy, Abucay, Bataan* where Junard was taking care of his two-year old child. Cecilia, Junard's partner, was just outside their house nursing her seven-month old child. Six (6) to seven (7) armed men suddenly appeared, introduced themselves as police officers, entered their house, and handcuffed Junard. The police officers did not reply when Junard asked why he was being handcuffed; they merely told Junard to bring out the *shabu*. Junard told the police officers that he does not keep *shabu* in his house.

- over -

159-B

The police officers proceeded to search the house but did not find anything. A certain Jamby, cousin of Police Officer Benjie Gloria (PO Gloria), was also with the police officers when they entered the house. The police officers told appellants that Jamby was the confidential informant. Junard knew Jamby because she was a constant visitor at their house and even offered him a job in construction. PO Gloria dropped a sachet of *shabu* beside Cecilia and when Cecilia insisted that the *shabu* was not hers, PO Gloria hit her in the forehead. Appellants were brought to the police station by a mobile patrol car.

### **Ruling of the RTC**

The RTC found appellants guilty of violating Section 5, Article II of RA 9165 in Crim. Case No. 14988. Dominador was also found guilty of violating Section 11, Article II of RA 9165 in Crim. Case No. 14989.

The defenses of frame-up and denial did not convince the RTC. Instead, the RTC found that the prosecution was able to satisfactorily establish all the elements constituting the crime of illegal sale of dangerous drugs in Crim. Case No. 14988 and the crime of illegal possession of dangerous drugs in Crim. Case No. 14989.

The dispositive portion of the RTC's Joint Decision read:

**WHEREFORE**, in view of the foregoing, **JUDGMENT** is hereby **RENDERED** as follows:

- a. In Criminal Case No. 14988, all the accused, **JUNARD VIADO y VELORIA, DOMINADOR VIADO y NAVARRO**, and **MARIA CECILIA AMISTROSO y GUYAGOY** are found **GUILTY BEYOND REASONABLE DOUBT** for violation of Section 5, Article II of Republic Act No. 9165 and hereby **SENTENCED** to suffer the penalty of **LIFE IMPRISONMENT** without eligibility for parole and to **PAY** a fine of **FIVE HUNDRED THOUSAND PESOS (PHP500,000.00)**.
- b. In Criminal Case No. 14989, accused **DOMINADOR VIADO y NAVARRO** is found **GUILTY BEYOND REASONABLE DOUBT** for violation of Section 11, Article II of Republic Act No. 9165 and is hereby **SENTENCED** to suffer the penalty of imprisonment of

- over -

**159-B**

TWELVE (12) YEARS AND ONE (1) [DAY] as *minimum* to TWENTY (20) YEARS as *maximum* without eligibility for parole and to pay the fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00).

**SO ORDERED.**<sup>5</sup>

### **Ruling of the CA**

On appeal, appellants claimed that deviations from procedure cast doubt on the identity of the seized drugs and highlighted gaps in the chain of custody of the evidence. The CA, however, found the appeal bereft of merit and affirmed the RTC's ruling that the prosecution satisfactorily established the movement and custody of the seized *shabu* through the following links:

- (1) At the crime scene, PO1 Gacutan received the sachet of shabu from appellants and marked it with Junard's initials "JV", while the three sachets recovered from Dominador were marked "DV-1", "DV-2", and "DV-3".
- (2) At the police station, the seized items were inventoried and photographed in the presence of the accused, elected official Ronnie De Jesus, DOJ representative Emma Sangalang, and media representative Danny Cumilang;
- (3) A request for laboratory examination of the seized items was prepared and signed by PSI Karl Jayson P. Dela Cruz while custody of the items remained with PO1 Gacutan; PO1 Gacutan then personally delivered the sachets and the request for laboratory examination to the Crime Laboratory which were received by PO2 Carbonel;
- (4) At the crime laboratory, the specimens were turned over to PSI Maria Cecilia Tang, and subsequently, to PSI Christine Joy Sia who conducted the laboratory examination;
- (5) Chemistry Report No. D-214-15 confirmed that the contents of the marked items seized from the accused were shabu;
- (6) The confiscated items were offered in evidence as Exhibits "N", "O", "P", and "Q".<sup>6</sup>

The CA also no longer considered appellants' defense of frame-up for their failure to offer any explanation why the police singled them out. In modifying the penalty, the CA took note of the quantity of the drugs involved in Criminal Case No. 14989. Considering that

- over -

**159-B**

---

<sup>5</sup> *Id.* at 61-62.

<sup>6</sup> *Rollo*, pp. 7-8.

Dominador only had 0.0929 gram of *shabu* in his possession, which is less than five (5) grams, the CA determined that the penalty for illegal possession of dangerous drugs should be within 12 years and one (1) day to 20 years and a fine ranging from Php300,000.00 to Php400,000.00. The appellate court also applied the Indeterminate Sentence Law and omitted the qualification “without eligibility of parole.” The dispositive portion of the CA’s Decision reads:

**WHEREFORE**, the March 7, 2016 Decision of the Regional Trial Court is hereby **AFFIRMED** with **MODIFICATION** that in Criminal Case No. 14989, accused-appellant Dominador Viado is sentenced to suffer the indeterminate penalty of 12 years and one day, as minimum, to 14 years and eight months, as maximum, and to pay the fine of three hundred thousand pesos (Php300,000.00).

**SO ORDERED.**<sup>7</sup>

Appellants filed their Notice of Appeal on 05 December 2017.<sup>8</sup> Both sets of parties manifested that they will be adopting their respective briefs filed in the CA.

**Issues**

In their brief, appellants assigned the following errors:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THAT THE IDENTITY, INTEGRITY, AND EVIDENTIARY VALUE OF THE SEIZED ALLEGED DRUGS HAD BEEN PRESERVED THROUGH AN UNBROKEN CHAIN OF CUSTODY.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE PROSECUTION ESTABLISHED THE *CORPUS DELICTI* OF THE OFFENSE.

III

THE COURT *A QUO* GRAVELY ERRED IN REJECTING THE ACCUSED-APPELLANTS’ DEFENSE OF DENIAL.<sup>9</sup>

- over -

**159-B**

<sup>7</sup> *Id.* at 10.

<sup>8</sup> *Id.* at 11-12.

<sup>9</sup> CA *rollo*, pp. 30-31.

### Ruling of the Court

We find merit in the appeal and reverse the rulings of the RTC and the CA; the prosecution's evidence actually emphasized the apprehending team's failure to preserve the chain of custody.

Section 5 of Republic Act No. (RA) 9165, as amended by RA 10640, applicable at the time of the commission of the offense, reads in pertinent part:

*Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. x x x

In prosecuting this charge, the State bears the burden of proving the following elements: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale took place as a matter of fact, coupled with the presentation in court of the dangerous drug seized as evidence.<sup>10</sup>

The testimonies of PO1 Gacutan, PO3 Valencia and PO1 Taguam corroborated each other in identifying appellants as sellers of *shabu*: Junard received the marked money from PO1 Gacutan; Cecilia received the marked money from Junard, kept it, and asked for a sachet of *shabu* from Dominador; and Dominador handed a sachet of *shabu* to Cecilia, who in turn, handed it to Junard.

The manner of handling and disposing of the seized drugs is prescribed in Section 21(1) of Republic Act No. (RA) 9165, as amended by RA 10640, which reads:

*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

- over -

**159-B**

---

<sup>10</sup> *People v. Lopez*, G.R. No. 247974, 13 July 2020, [Per J. Caguioa]. (Citations omitted)

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 persons 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.

A plain reading of Section 21(1) requires the apprehending team to conduct a physical inventory of the seized items and to photograph the same (1) in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) 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.<sup>11</sup> The presence of these required witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items. The requirement of conducting the inventory and taking of photographs "immediately after seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure or confiscation.<sup>12</sup>

Indeed, this process may be excused in some cases for justifiable reasons. However, the prosecution in this case, despite its admission during trial that the physical inventory and taking of photographs were not done at the scene of the crime, and the mandatory witnesses were not present during the seizure or confiscation, failed to offer any justification for their lapses. The non-

- over -

**159-B**

<sup>11</sup> *Tumabini v. People*, G.R. No. 224495, 19 February 2020 [Per J. Gesmundo].

<sup>12</sup> *People v. Merando*, G.R. No. 232620, 05 August 2019 [Per J. Leonen].



observance of the procedure set out under the law raises serious doubt if the illegal drugs presented in court are the same illegal drugs seized from the appellant.<sup>13</sup>

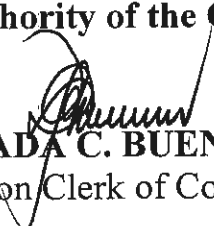
The burden of proving the guilt of an accused rests on the strength of evidence of the prosecution and not on the weakness of the defense. The testimonies of the prosecution witnesses showed that they failed to follow the mandated procedure and that they did not offer a justifiable ground for their failure. After all, a stricter adherence to Section 21 is required considering the quantity of illegal drugs seized is miniscule, and hence, highly susceptible to planting, tampering, or alteration.<sup>14</sup>

**WHEREFORE**, the appeal is hereby **GRANTED**. The assailed Decision promulgated on 26 October 2017 by the Court of Appeals in CA G.R. CR-HC No. 08636 is **REVERSED and SET ASIDE**. Accused-appellants Junard Viado y Veloria @ "Tuko," Dominador Viado y Navarro, and Maria Cecilia Amistroso y Guyagoy are **ACQUITTED** on reasonable doubt and are **ORDERED IMMEDIATELY RELEASED** from detention unless they are being lawfully held for another cause. Let entry of final judgment be issued immediately.

The Superintendents of the Correctional Institution for Women in Mandaluyong City and of the New Bilibid Prison in Muntinlupa City should be furnished copy of this Resolution for its immediate implementation. Said Superintendents are **ORDERED to REPORT** to this Court within five (5) days from receipt of Resolution of the action that they have taken.

**SO ORDERED."**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *pk 511*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**159-B**

- over -

<sup>13</sup> See *People v. Sali*, G.R. No. 236596 (Resolution), 29 January 2020 [Per J. (now CJ) Peralta].

<sup>14</sup> See *People v. Sanico*, G.R. No. 240431, 07 July 2020 [Per J. (now CJ) Peralta].



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

Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 08636)

The Hon. Presiding Judge  
Regional Trial Court, Branch 1  
Balanga City, 2100 Bataan  
(Crim. Case Nos. 14988 & 14989)

PUBLIC ATTORNEY'S OFFICE  
Special and Appealed Cases Service  
Counsel for Accused-Appellants  
DOJ Agencies Building  
Diliman, 1101 Quezon City

Messrs. Junard V. Viado & Dominador  
N. Viado (x)  
Accused-Appellants  
c/o The Director General  
Bureau of Corrections  
1770 Muntinlupa City

Ms. Maria Cecilia G. Amistroso (x)  
Accused-Appellant  
c/o The Superintendent  
Correctional Institution for Women  
1550 Mandaluyong City

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

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

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M.  
No. 12-7-1-SC)

Judgment Division (x)  
Supreme Court

**159-B**

UR