



Republic of the Philippines  
Supreme Court  
Manila

SPECIAL FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 251741

Members:

GESMUNDO, CJ,\*  
CAGUIOA, *Acting Chairperson*  
LAZARO-JAVIER,  
LOPEZ, M., and  
LOPEZ, J., JJ.

- versus -

Promulgated:

CHRIS JOHN CUSTODIO y  
ARGOTE a.k.a.  
"BOLONGKOY",  
Accused-Appellant.

JUN 14 2023 *withhold*

X-----X

RESOLUTION

LAZARO-JAVIER:

The Case

This Motion for Reconsideration<sup>1</sup> dated June 17, 2022 assails the Resolution<sup>2</sup> dated November 11, 2021 of the Supreme Court, First Division, which affirmed the conviction of accused-appellant Chris John Custodio y Argote a.k.a. "Bolongkoy" (accused-appellant) for violations of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165) otherwise known as the Comprehensive Dangerous Drugs Act of 2002.<sup>3</sup>

\* On official leave.

<sup>1</sup> *Rollo*, pp. 61-76.

<sup>2</sup> *Id.* at 40-51.

<sup>3</sup> Approved on June 7, 2002.

As borne in the Resolution<sup>4</sup> dated November 11, 2021, the antecedents are, as follows:

### **The Charges**

By separate Informations, accused-appellant was charged with violations of Sections 5 and 11 of RA 9165 for illegal sale and illegal possession of dangerous drugs, respectively, *viz.*:

#### **Criminal Case No. 2015-23224**

That on or about the 19th day of October, 2015, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law, did, then and there willfully, unlawfully and criminally sell and/or deliver to PO3 AL LESTER AVILA a poseur buyer one (1) heat-sealed transparent plastic sachet containing 0.04 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly called as “shabu”, a dangerous drug.

Contrary to law.<sup>5</sup>

#### **Criminal Case No. 2015-23225**

That on or about the 19th day of October, 2015 in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess five (5) heat- sealed transparent plastic sachets containing 3.07 grams of Methamphetamine Hydrochloride, commonly called “shabu”, a dangerous drug.

Contrary to law.<sup>6</sup>

The cases were raffled to the Regional Trial Court, Branch 30, Dumaguete City.<sup>7</sup> On arraignment, accused-appellant pleaded *not guilty* to both charges. Thereafter, the cases got consolidated.<sup>8</sup>

During the trial, Police Officer 3 Al Lester Avila (PO3 Avila), Senior Police Officer 1 Elmer Calugcugan (SPO1 Calugcugan), Senior Police Officer 4 Allen June Germodo (SPO4 Germodo), PO3 Rulymar Laquinon (PO3 Laquinon), Department of Justice Representative Anthony Chilius Benlot (DOJ Representative Benlot), Barangay Kagawad Julito Zerna (Kagawad Zerna), Agent Carlito Mascardo (Agent Mascardo), PO3 Edilmar Manaban (PO3 Manaban), and Police Chief Investigator Josephine Llana (PCI Llana)

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<sup>4</sup> *Rollo*, pp. 40–51.

<sup>5</sup> *CA rollo*, p. 6.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 28–35, RTC Decision.

<sup>8</sup> *Id.* at 6.

testified for the prosecution,<sup>9</sup> while accused-appellant testified alone for the defense.<sup>10</sup>

### Version of the Prosecution

PO3 Avila testified that on October 19, 2015, around 9:30 a.m., he received a call from a confidential informant who reported that a certain “Bolongkoy” was selling *shabu* in Barangay Cadawinonan. He called the head office to relay this information. He was thereafter tasked to verify the report and conduct a buy-bust deal. Thus, he coordinated with the confidential informant who was able to arrange a sale at 1:30 p.m. of the same day.<sup>11</sup>

PO3 Avila reported the planned buy bust to team leader SPO4 Germodo who then briefed him and the other members of the team. SPO4 Germodo assigned him as poseur buyer and SPO1 Calugcugan, as his immediate back-up. The team prepared the boodle money, coordinated with the Philippine Drug Enforcement Agency (PDEA), and proceeded to the target area.<sup>12</sup>

At the Cadawinonan Housing Project, PO3 Avila met with the informant while the rest of the team strategically positioned themselves nearby. He and the confidential informant walked towards the agreed meet-up place near the basketball court where they saw a skin-head young male wearing a sleeveless shirt and pink shorts. The informant identified the male as “Bolongkoy,” herein accused-appellant.

Accused-appellant asked the confidential informant if he (PO3 Avila) was the buyer. He responded by giving accused-appellant three ₱100.00 bills which he tucked into the waistband of his shorts. Accused-appellant then took out a black plastic container and retrieved therefrom one small plastic sachet which he handed over to him in exchange for the money. As an experienced police officer, he suspected the plastic sachet to contain *shabu*, hence, he immediately arrested accused-appellant.<sup>13</sup>

PO3 Avila frisked accused-appellant and found in his possession five transparent plastic sachets, two tin foils, two lighters, the three ₱100.00 bills boodle money, and three more ₱100.00 bills.<sup>14</sup> He immediately marked them with the accused-appellant’s initials, the date, and a symbol to distinguish the sachet subject of the sale from the ones which were seized from accused-appellant following his arrest.<sup>15</sup> He kept the plastic sachet subject of the sale

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 7–8.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 3–5.

<sup>14</sup> TSN, May 25, 2017, p. 9.

<sup>15</sup> CA *rollo*, p. 10, “CJC- BB 10/19/15” for the one (1) heat-sealed transparent plastic sachet containing white crystalline substance that he had bought from Bolongkoy; with initials “CJC-P1 10/19/15” to “CJC-P5 10/19/15” for the five (5) heat-sealed transparent plastic sachets all containing white crystalline substance that he had found in the rectangular plastic container in the possession of Bolongkoy; and collectively with the initials “CJC-P6 10/19/15” for the two (2) pieces hand-rolled tin foils; with the initials “CJC-P7 10/19/15” for the black rectangular plastic container; and collectively with the initials “CJC-P8 10/19/15” for the two (2) pieces disposable lighters. PO3 Avila also placed his signature on

and the five other plastic sachets from the subsequent search in different brown envelopes to properly distinguish one from the others.<sup>16</sup>

PO3 Avila and the rest of the team then proceeded to the Provincial Intelligence Branch/Special Operations Group (PIB/SOG) of the Negros Oriental Provincial Police Office. There, he conducted the inventory of the items which he signed as seizing officer, together with the insulating witnesses Kagawad Zerna, media practitioner Neil Rio, and DOJ Representative Benlot.<sup>17</sup> After the inventory, he prepared a letter request for qualitative examination and turned it over to PO3 Manaban at the crime laboratory, together with the seized items.<sup>18</sup>

**SPO2 Calugugan** corroborated the testimony of PO3 Avila and added that as immediate back-up, he witnessed the transaction between PO3 Avila and accused-appellant, as he stood only seven to eight meters away from them. He assisted PO3 Avila with the arrest after he saw the former take hold of accused-appellant.<sup>19</sup>

On cross, he admitted that he did not hear the conversation between PO3 Avila and accused-appellant because of the distance between them. He took photographs of the seized items, but the markings could not be seen on said photographs.<sup>20</sup>

**SPO4 Germodo** testified that he was a back-up officer during the buy-bust operation, but he did not witness the transaction himself because he only waited for the signal that the sale had been consummated.<sup>21</sup> As team leader, he decided to conduct the inventory and photograph of the seized items at the PIB/SOG office for security reasons.<sup>22</sup>

**PO3 Laquinon** also testified that he was a member of the buy-bust team and he prepared the boodle money for the transaction. He did not see the sale itself because he only arrived at the scene when PO3 Avila was already arresting accused-appellant.<sup>23</sup>

**Agent Mascardo** testified that he was an agent of the PDEA and the police officers coordinated with him on the buy-bust operation they had planned. He was tasked to issue the Certificate of Coordination and to record the PDEA blotter entries.<sup>24</sup>

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each of the items that he marked. The initials "CJC" refer to the name of Bolongkoy, which he had earlier given as Chris John Custodio. The letters "BB" refer to the buy-bust operation while the letter "P" refers to the offense of illegal possession of dangerous drugs. The number immediately after the letter "P" differentiates one sachet/item from the other while the series of numbers following refer to the date of the incident.

<sup>16</sup> TSN, May 25, 2017, p. 11.

<sup>17</sup> *CA rollo*, pp. 10–12.

<sup>18</sup> *Id.* at 19.

<sup>19</sup> *Id.* at 20.

<sup>20</sup> *Id.*

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

<sup>22</sup> *Id.* at 12.

<sup>23</sup> *Id.* at 13.

<sup>24</sup> *Id.* at 21.

**DOJ Representative Benlot** testified that he was an employee of the Prosecutor's Office in Dumaguete City and he was called by SPO4 Germodo to witness the inventory of the seized items at the PIB/SOG office.<sup>25</sup>

On cross, he explained that the items were already prepared and laid on the table in the PIB/SOG office. He checked the items and the inventory form before affixing his signature thereto.<sup>26</sup>

**Kagawad Zerna** further testified that he was asked to be one of the witnesses to the inventory of the seized item as an elected official of Barangay Cadawinonan. On cross, he clarified that the items were already laid on a table in the office and he only checked the items and the forms before affixing his signature on the form.<sup>27</sup>

**PO3 Manaban** testified that he received a letter request with the seized items from PO3 Avila for qualitative examination. Before he handed over the items to PCI Llana, he kept them in his locker to which he alone had access. He identified the seized items in open court.<sup>28</sup>

**PCI Llana** testified that on October 19, 2015, she received the letter request and seized items from PO3 Manaban. She conducted the qualitative examination on the seized items, and per her Chemistry Report No. D-411-15, all the specimens submitted to her tested positive for *methamphetamine hydrochloride*, a dangerous drug.<sup>29</sup> After conducting the qualitative examination, she kept the seized items in the evidence vault of the crime laboratory to which only she had access. She only removed them from storage when she submitted them to the court as evidence.<sup>30</sup>

On cross, she noted that there were corrections in the request for laboratory examination when she received it, but she had no personal knowledge about these corrections.<sup>31</sup>

### Version of the Defense

**Accused-appellant** testified that on October 19, 2015, around 11:00 a.m., he went out of their house to buy food for his siblings. He noticed a white vehicle stop in front of him. A man whom he recognized as PO2 Hans Baguio (PO2 Baguio) disembarked, held and frisked him – but found nothing. PO2 Baguio and another man whom he later identified as SPO4 Germodo took him to the PIB/SOG office. On the way, the police officers asked if he knew who killed a certain “Harris” to which he answered in the negative. At the PIB/SOG office, SPO4 Germodo showed him a firearm which accused-appellant said did not belong to him. Then, the police officers made him sit

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<sup>25</sup> *Id.* at 20.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 21.

<sup>28</sup> *Id.* at 18.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 12.

<sup>31</sup> *Id.* at 18.

near a table with items laid on top of it before taking photographs of him. He learned that he was being charged of having sold and possessed illegal drugs, which he denied.<sup>32</sup>

### **Ruling of the Trial Court**

As borne by its Joint Judgment<sup>33</sup> dated July 17, 2017, the trial court rendered a verdict of conviction, *viz.*:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 2015-23224, the accused CHRIS JOHN CUSTODIO y ARGOTE @ Bolongkoy is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale and delivery of 0.04 gram of shabu in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet with markings "CJC-BB-10/19/15" with signature containing 0.04 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 2015-23225, the accused CHRIS JOHN CUSTODIO y ARGOTE @ Bolongkoy is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 3.07 gram of shabu in violation of Section 11, Article II of RA 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The five (5) heat-sealed transparent plastic sachets with markings "CJC-P1 10/19/15" to "CJC-P5 10/19/15," respectively, containing 3.07 grams of shabu are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused CHRIS JOHN CUSTODIO y ARGOTE @ Bolongkoy shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.<sup>34</sup>

It ruled that accused-appellant's guilt for violations of Sections 5 and 11 of RA 9165 was established to a moral certainty, the seized items and their

<sup>32</sup> *Id.* at 12-13.

<sup>33</sup> *Id.* at 28-35. Penned by Judge Rafael Crescencio C. Tan, Jr. [NB. The pages were marked per sheet, but the Joint Judgment was printed back-to-back].

<sup>34</sup> *Id.* at 28-29.

evidentiary value were properly preserved, the chain of custody duly observed, and the *corpus delicti*, positively identified.

On appeal, the Court of Appeals affirmed through its Decision<sup>35</sup> dated August 29, 2019. It noted that the absence of the insulating witnesses during the actual filling out of the inventory form does not *per se* render the items subject thereof inadmissible in evidence. It was not unreasonable for the arresting team to have conducted the inventory at the office instead of the place of arrest, especially since the markings by PO3 Avila protected the items' evidentiary value.<sup>36</sup>

### **Ruling of the Court**

Through Resolution<sup>37</sup> dated November 11, 2021, the Court also affirmed. We ruled that *first*, all the elements of the illegal sale of dangerous drugs and illegal possession of dangerous drugs were present and *second*, the prosecution sufficiently established all the links in the chain of custody.

### **Motion for Reconsideration of the Accused-Appellant**

In his Motion for Reconsideration<sup>38</sup> dated June 17, 2022, accused-appellant pleads anew for his acquittal. He assails the regularity of the buy-bust operation, asserting that the chain of custody was breached and the subsequent presence of the required witnesses during the inventory did not cure the irregularities as the integrity of the seized items had already been compromised at the inception when the insulating witnesses **were not present at the site of arrest and were merely called when the inventory was done at the police station.**

### **Our Ruling on the Motion for Reconsideration of the Accused-Appellant**

We grant reconsideration.

In the recent case of *People v. Casa*,<sup>39</sup> the Court settled that, in case of warrantless seizures, the inventory and taking of photographs generally **must** be conducted **at the place of seizure**. The exception to this rule—where the physical inventory and taking of photographs of the seized item may be conducted at the nearest police station or at the nearest office of the apprehending officer or team—is when the police officers provide justification that: (1) it is not practicable to conduct the same at the place of seizure; or (2) the items seized are threatened by immediate or extreme danger at the place of seizure.

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<sup>35</sup> *Rollo*, pp. 5–22; Penned by Associate Justice Marilyn B. Lagura-Yap, and concurred in by Associate Justices Edgardo L. Delos Santos (now retired Associate Justice of the Supreme Court) and Dorothy P. Montejo-Gonzaga, of the Eighteenth Division, Court of Appeals, Cebu City.

<sup>36</sup> *Id.* at 18–19.

<sup>37</sup> *Id.* at 40–51.

<sup>38</sup> *Id.* at 61–76.

<sup>39</sup> G.R. No. 254208, August 16, 2022 [Per C.J. Gesmundo, *En Banc*].

As held in *Casa*, when the police officers are able to provide a sensible reason, which is practicable, consistent, and not merely generic or an afterthought, then the courts ought to recognize that the police officers indeed may conduct the inventory at the nearest police station or the nearest office of the apprehending officer/team. Such reason must be indicated in the affidavits of the police officers who participated in the buy-bust operation.<sup>40</sup>

As it was, the prosecution here failed to give any justification, much less, a sufficient one, on why the inventory had to be conducted at the PIB/SOG of the Negros Oriental Provincial Police Office instead of the place of arrest. Evidently, therefore, the first and most important link was already broken early on.

As for the succeeding links, compliance with the requirements does not serve to cure the incipient breach which attended early on the first link in the chain of custody. In *People v. Ismael*,<sup>41</sup> the Court ruled that there was already a significant break such that there can be no assurance against switching, planting, or contamination even though the subsequent links were not similarly infirm. In other words, there is no way by which the already compromised identity and integrity of the seized drug items be ever cleansed of its incipient defect. Hence, appellants must be acquitted as a matter of right.

In view of the procedural infirmities in the chain of custody, the integrity and evidentiary value of the seized items cannot be said to have been preserved. These procedural infirmities cast serious doubt on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link all, albeit it unjustly restrained accused-appellant's right to liberty. If the chain of custody procedure had not been complied with, or no justifiable reason exists for its non-compliance, as in this case, then it is the Court's duty to overturn the verdict of conviction.<sup>42</sup>

As the Court stated in *People v. Macud*,<sup>43</sup> we recognize the pernicious effects of dangerous drugs in our society, but the efforts to defeat or eradicate these cannot trample on the constitutional rights of individuals, particularly those at the margins of our society who are prone to abuse at the hands of the armed and uniformed officers of the State. Time and again, we have exhorted courts "to be extra vigilant in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses."<sup>44</sup>

**FOR THESE REASONS**, the Motion for Reconsideration dated June 17, 2022 is **GRANTED**. The Resolution dated November 11, 2021 of the Court is **REVERSED**. Accused-appellant **CHRIS JOHN CUSTODIO y ARGOTE a.k.a. "BOLONGKOY"** is **ACQUITTED** and **ORDERED**

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<sup>40</sup> *Id.*

<sup>41</sup> 806 Phil. 21, 35 (2017), [Per *J. Del Castillo*, First Division].

<sup>42</sup> *People v. Año*, 828 Phil. 439, 452-453 (2018), [Per *J. Perlas-Bernabe*, Second Division].

<sup>43</sup> 822 Phil. 1016, 1042 (2017), [Per *J. Del Castillo*, First Division].

<sup>44</sup> *People v. Rangaig*, G.R. No. 240447, April 28, 2021, [Per *J. Leonen*, Third Division].



**IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. He is directed to report to this Court the action taken within five days from receipt of this Resolution.

**SO ORDERED.**

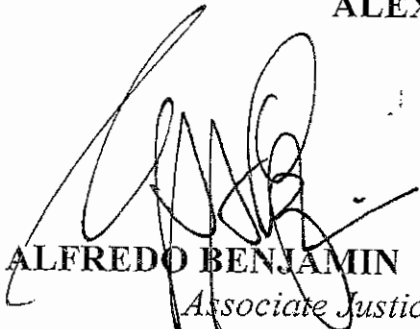
  
AMY C. LAZARO-JAVIER  
*Associate Justice*

**WE CONCUR:**

(On official leave)

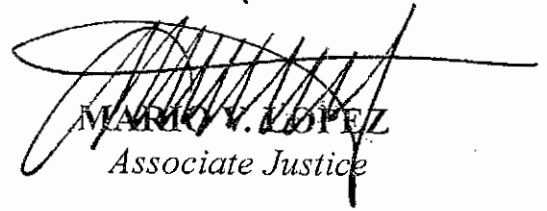
**ALEXANDER G. GESMUNDO**

*Chief Justice*



**ALFREDO BENJAMIN S. CAGUIOA**

*Associate Justice  
Acting Chairperson*



**MARIO V. LOPEZ**

*Associate Justice*

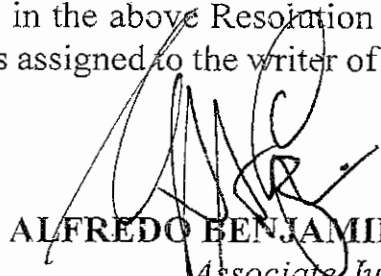


**JHOSEP V. LOPEZ**

*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALFREDO BENJAMIN S. CAGUIOA**

*Associate Justice  
Acting Chairperson  
Special First Division*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M.V.F. LEONEN**

*Acting Chief Justice*

Per Special Order No. 2977 dated June 1, 2023

