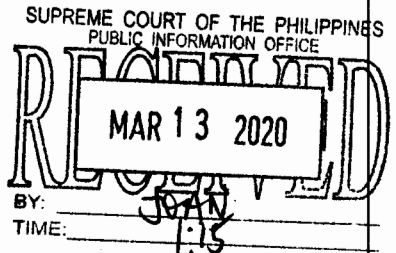




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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated December 2, 2019, which reads as follows:

“G.R. No. 237044 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. CRISTINA AGATON Y BODILLO, *accused-appellant*). — For the prosecution to be excepted from proving strict compliance with the requirements of the chain of custody rule, it must allege and prove justifiable grounds for any deviation and show the positive steps taken to ensure that the integrity and evidentiary value of the seized items have been preserved.

This Court resolves an appeal from the Decision¹ of the Court of Appeals, which affirmed the Regional Trial Court’s Judgment² convicting Cristina Agaton y Bodillo (Agaton) of the illegal sale and possession of dangerous drugs.

Agaton was charged with these offenses penalized under Sections 5 and 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act. The Informations for the charges read:

Crim. Case. No. 758-M-2009

That on or about the 18th day of February, 2009, in the City [of] San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there wil[l]fully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of six (6) sticks of THC metabolites with the following weights, to wit:

¹ Id. at 2–23. The September 7, 2017 Decision, in CA-G.R. CR HC No. 08370, and was penned by Associate Justice Ramon Paul L. Hernando (now a member of this Court) and concurred in by Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez (now a member of this Court) of the First Division, Court of Appeals, Manila.

² CA rollo, pp. 70–87. The May 31, 2016 Judgment, in Crim. Case No. 758-M-2009 and Crim. Case No. 759-M-2009 was penned by Judge Maria Zenaida Bernadette T. Mendiola of Branch 80, Regional Trial Court, Malolos City. The CA rollo lacked the Judgment’s last page containing part of the ruling’s dispositive portion.

“A1 (P.J A)” = 0.249 grams (*sic*) “A2 (P.J A)” = 0.280 grams (*sic*)

“A3 (P.J A)” = 0.304 grams (*sic*) “B1 (P.J B)” = 0.220 grams (*sic*)

“B2 (P.J B)” = 0.354 grams (*sic*) “B3 (P.J B)” = 0.192 grams (*sic*)

having a total weight of 1.599 grams.

Contrary to law.³

Crim. Case No. 759-M-2009

That on or about the 18th day of February, 2009, in the City of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there wil[l]fully, unlawfully and feloniously have in her possession and control THC metabolites consisting of three (3) plastic sachets containing marijuana weighing 25.606 grams; 26.107 [grams]; and 26.687 grams with a total weight of 78.4 grams.

Contrary to law.⁴

Agaton had requested a preliminary investigation, but the prosecutor eventually still found probable cause to indict her of the offenses charged. After she pleaded not guilty during arraignment, trial ensued.⁵

The prosecution presented as its witnesses Police Officer 2 Pedro Jose Arellano (PO2 Arellano) and PO2 Jophey Cucal (PO2 Cucal). The testimony of Police Senior Inspector Gina C. Ledesma, the forensic chemist, was dispensed with after the parties had stipulated on her capacity as a forensic chemist and the genuineness and due execution of the request to examine Agaton, the seized items, and the results of the examination.⁶

According to the prosecution, on February 18, 2009, Police Chief Inspector Reginald Francisco (Chief Inspector Francisco) of the Bulacan Anti-Illegal Drug Special Operation Task Force received a text message about a certain “Cristy” selling illegal drugs in Area D, Sapang Palay, San Jose Del Monte. Acting on the tip, he instructed PO2 Arellano to find a confidential asset to help in the conduct of a buy-bust operation.⁷

That same day, the task force surveilled the target area, from which PO2 Arellano reported that tricycle and jeepney drivers frequented Cristy’s house. The task force then held a briefing for a buy-bust operation and prepared the marked money. PO2 Arellano was assigned as the poseur-buyer, with PO2

³ Id. at 70.

⁴ Id. at 71.

⁵ *Rollo*, p. 5.

⁶ Id. at 5–6 and CA *rollo*, p. 78.

⁷ Id. at 3.

Cucal and Senior Police Officer 1 Eduardo Bautista (SPO1 Bautista) as back-up.⁸

Before proceeding to the area, the task force coordinated with the Philippine Drug Enforcement Agency. The team also tried to get hold of a Department of Justice representative but was told that no one was available as it was already nighttime. The task force also contacted one Jun Sese (Sese), who was supposed to be the media representative, but who would fail to proceed to the target area despite telling them that he would follow. There was also no barangay official, as Chief Inspector Francisco instructed the officers not to coordinate with the local officials, who might be Cristy's relatives.⁹

The task force then proceeded to the area of operation. PO2 Arellano and the informant walked toward the front door of Cristy's house while the rest stayed in a vehicle 20 meters away.¹⁰ When PO2 Arellano and the informant knocked on the door, they were answered by Cristy, who was later identified as Agaton. The asset told Agaton that PO2 Arellano was seeking to buy marijuana. Agaton then drew from her pocket two (2) plastic sachets, each with three (3) sticks of suspected marijuana, and gave them to PO2 Arellano in exchange for three (3) ₱20.00 bills. PO2 Arellano then removed his cap to signal that the sale had been consummated. Acting on this, the other task force members secured the area.¹¹

PO2 Arellano, meanwhile, informed Agaton that he was a police officer, before arresting and apprising her of her constitutional rights. He also ordered Agaton to take out the contents of her pockets, revealing three (3) more plastic sachets containing suspected marijuana sticks. Two (2) of these sachets contained 100 sticks each, while the remaining sachet contained 94 sticks. After taking the seized items in his custody, PO2 Arellano marked and inventoried them at the area of arrest. He marked the two (2) sachets from the sale as "PJA" and "PJB," and the others found in Agaton's possession as "PJ1" to "PJ3."¹²

The team then brought Agaton and the seized items to the barangay hall, where the inventory was signed by Gorgonio Danao, a member of the barangay's Peace and Order Committee.¹³ Afterward, the officers proceeded to the police station to have the seized items undergo laboratory examination. Only at the police station did Sese, the media representative, come and sign the inventory.¹⁴ It was also only there that the officers took photographs of

⁸ Id.

⁹ Id. at 8.

¹⁰ CA *rollo*, pp. 71-72.

¹¹ *Rollo*, p. 3.

¹² Id. at 3-4.

¹³ Id. at 7.

¹⁴ Id. at 9.

the marked money and Agaton.¹⁵ They failed, however, to take photographs of the seized items.¹⁶

The prosecution alleged that PO2 Arellano had the confiscated items in his custody from the crime scene, to the barangay hall, to the police station, up to the crime laboratory, where the suspected drugs were turned over to PO2 Cucal for examination. PO2 Cucal had it received by the personnel at the crime laboratory. Upon testing, the specimens yielded positive results for marijuana. Meanwhile, Agaton's urine sample, which had also been subjected to chemical analysis, yielded negative results for the presence of methylamphetamine and THC metabolites.¹⁷

For its part, the defense presented Agaton as its sole witness.

Agaton narrated a different version of the events. She alleged that at 7:30 p.m. on February 18, 2009, she was at the house of her friend Mercy's boyfriend, having a drinking session, when they heard strangers knocking on the door. These turned out to be police officers, who held them at gunpoint as they looked for a certain "Ryan" alias "Tisoy." When Agaton denied knowing him, the officers proceeded to search the house. Thereafter, they brought Agaton, Mercy, and Mercy's boyfriend outside the house. Mercy and her boyfriend were made to board a van while Agaton was made to board a different vehicle. She was brought to Camp Alejo and was detained there for two (2) weeks, where the police officers insisted that she disclose the location of "Ryan" alias "Tisoy." She reiterated not knowing him.¹⁸

Later, Agaton was brought to a barangay hall in San Juan where she was made to sign a piece of paper. The police officers then told her that a drug case would be filed against her. From there, she was transported to Gaya-gaya, San Juan, where PO2 Arellano and SPO1 Bautista demanded ₱50,000.00 from her. When she told them she did not have that amount, she was brought back to Camp Alejo. Agaton claimed that she did not have the means to file cases against the police officers as there was no one who could assist her, and neither did she have any money to finance a lawsuit.¹⁹

During trial, the defense pointed out that PO2 Arellano had never actually seen this "Cristy" in the act of selling illegal drugs during the surveillance operation. Upon cross-examination, PO2 Arellano stated:

[Atty. Joaquin]: Now, this surveillance that you said you have conducted, was it entered into the blotter of your station?

¹⁵ Id. at 7.

¹⁶ Id. at 20.

¹⁷ Id. at 4.

¹⁸ Id.

¹⁹ Id.

[PO2 Arellano]: No, [ma'am].

[Atty. Joaquin]: What time was this surveillance conducted?

[PO2 Arellano]: More or less, [ma'am], after lunch, about 1 pm.

....

[Atty. Joaquin]: During the last time you were asked about this surveillance, you said you were fifteen to twenty (15-20) meters away from the house of your target, am I correct?

[PO2 Arellano]: Yes, [ma'am].

....

[Atty. Joaquin]: Now, you were also asked of your observation, when you were conducting your surveillance fifteen to twenty (15-20) [meters] away from the house of Cristy and you said that you saw persons coming in and out of the place of this @ Cristy, am I correct?

[PO2 Arellano]: Yes, [ma'am].

[Atty. Joaquin]: But at that time you did not see @ Cristy?

[PO2 Arellano]: Yes, [ma'am].

....

[Atty. Joaquin]: So am I correct in saying, Mr. Witness, that at the time you were conducting surveillance you did not see the target in the act of selling illegal drugs?

[PO2 Arellano]: Yes, [ma'am].

[Atty. Joaquin]: But despite the fact that you did not see the target in the act of selling illegal drugs, you still reported to your Chief of Police that the information he received was positive or confirmed?

[PO2 Arellano]: Yes, [ma'am].²⁰ (Citation omitted)

In its May 31, 2016 Judgment,²¹ the Regional Trial Court found Agaton guilty beyond reasonable doubt of the illegal sale and possession of dangerous drugs.²² It ruled that the elements of the offenses were present during the buy-bust operation despite PO2 Arellano's failure to actually see Agaton selling drugs during the surveillance operations. It also lent credence to PO2 Arellano's testimony stating that he observed the rules on chain of custody.²³ The dispositive portion of the Judgment read:

WHEREFORE, after a careful and meticulous study of the evidence adduced by the prosecution and the defense, the court finds accused GUILTY beyond reasonable doubt of the crimes charged against her.

Accordingly, accused CRISTINA AGATON Y BODILLO is sentenced to suffer life imprisonment and to pay a fine of Five Hundred Thousand Pesos

²⁰ CA rollo, pp. 83-84.

²¹ Id. at 70-87.

²² Id. at 87.

²³ Id. at 83-85.

(P500,000.00) for violation of Section 5, Article II of R.A. 9165. Likewise, she is meted the penalty of imprisonment for twelve (12) years and one (1) day to fourteen (14) years and to pay the fine of Three Hundred Thousand Pesos (P300,000.00) for violation of Section 11, Article II of R.A. 9165.

The accused shall be credited in the service of her sentence the full time during which she had undergone preventive imprisonment, if she agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, she shall be credited in the service of her sentence with only four-fifths of the time during which she had undergone preventive imprisonment.

The Branch Clerk of Court is directed to turnover (*sic*) the specimens subject matter of these cases to the Philippine Drug Enforcement Agency (PDEA) with corresponding receipt for proper disposition.

The three (3) pieces of twenty peso (P20.00) bills used as marked money with Serial Numbers YF377585, EJ948330 and XJ679117 respectively are hereby ordered confiscated in favor of the government and ordered deposited to the National Treasury.

SO ORDERED.²⁴ (Citation omitted)

On appeal, Agaton alleged that the Regional Trial Court erred in convicting her of the crimes charged and in lending credence to the inconsistent testimonies of the prosecution's witnesses. She likewise asserted that the prosecution failed to establish the chain of custody in handling the seized illegal drugs.²⁵

In its assailed September 7, 2017 Decision,²⁶ the Court of Appeals affirmed the decision of the Regional Trial Court:

WHEREFORE, the instant Appeal is hereby DENIED. The Judgment dated May 31, 2016 rendered by the Regional Trial Court (RTC), Branch 80 of Malolos City, Bulacan in Criminal Case Nos. 758-M-2009 & 759-M-2009 is hereby AFFIRMED.

SO ORDERED.²⁷

The Court of Appeals held that the testimonies of the prosecution's witnesses in establishing the elements of the offenses charged were more persuasive as they were straightforward, consistent, detailed, and corroborated each other on material points. It found that the inconsistencies pointed out by Agaton were not substantial enough to completely disregard the credibility of the police officers.²⁸

²⁴ Id. at 87, RTC Judgment, and *rollo*, pp. 12-13, CA Decision.

²⁵ *Rollo*, p. 13.

²⁶ Id. at 2-23.

²⁷ Id. at 22.

²⁸ *Rollo*, pp. 15-16.

Agaton thus filed her Notice of Appeal,²⁹ which was given due course by the Court of Appeals on October 26, 2017.³⁰ Accordingly, the case records were elevated to this Court.³¹

In a March 5, 2018 Resolution,³² this Court ordered the parties to file their supplemental briefs. However, as noted in this Court's July 23, 2018 Resolution,³³ the Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines, and accused-appellant manifested that they would no longer do so, and would instead adopt their Briefs filed before the Court of Appeals.³⁴

In her Brief, accused-appellant alleges that the Regional Trial Court erred in convicting her of the offenses charged since the police officers committed procedural lapses in maintaining custody of the seized drugs. She argues that the police officers presented weak excuses for their failure to secure the required witnesses' presence during the seized items' marking and inventory. She also alleges that PO2 Arellano and PO3 Cucal had conflicting testimonies regarding the time of the police operation.³⁵

The Office of the Solicitor General, on the other hand, argues that the prosecution was able to prove all the elements of the crimes charged.³⁶ It likewise asserts that it was able to establish the *corpus delicti*, as the chain of custody remained unbroken.³⁷ Even if the arresting officers failed to strictly comply with Section 21, it maintains that this was not fatal as the integrity and evidentiary value of the seized item were preserved.³⁸

The Office of the Solicitor General also asserts that Agaton's defense of denial is weak and cannot prevail over the positive testimony of the prosecution witnesses. It maintains the presumption of regularity in the police officers' official duties.³⁹

The sole issue in this case is whether or not accused-appellant Cristina Agaton y Bodillo is guilty beyond reasonable doubt of the illegal sale and possession of dangerous drugs.

²⁹ Id. at 24–26.

³⁰ Id. at 27.

³¹ Id. at 1.

³² Id. at 28.

³³ Id. at 42–43.

³⁴ Id. at 31–36, plaintiff-appellee's Manifestation, and 37–41, accused-appellant's Manifestation.

³⁵ Id. at 52–56.

³⁶ Id. at 102.

³⁷ Id. at 107 and 113.

³⁸ Id. at 116.

³⁹ Id. at 119–120.

Accused-appellant's conviction is reversed. The prosecution failed to prove her guilt beyond reasonable doubt.

This Court has explained the elements in order to sustain convictions for illegal sale⁴⁰ and illegal possession of dangerous drugs.⁴¹ The following must be established to sustain a conviction for the illegal sale of dangerous drugs:

- (1) the identity of the buyer and the seller, the object of the sale and consideration; and (2) the delivery of the thing sold and its payment. What

⁴⁰ Republic Act. No. 9165 (2002), sec 5 states:

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.

⁴¹ Republic Act. No. 9165 (2002), sec 11 states:

SECTION 11. Possession of Dangerous Drugs. — 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
- (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five (hundred) 500 grams of marijuana; and
- (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.⁴²

On the other hand, convictions for illegal possession of dangerous drugs must be based on findings that:

- (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.⁴³

In both crimes, the preservation of the dangerous drug as the *corpus delicti* is vital. To preserve the *corpus delicti*, Section 21 of Republic Act No. 9165 provides the chain of custody rule,⁴⁴ which enumerates the requirements for the handling, custody, and disposition of the seized dangerous drugs:⁴⁵

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 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;*
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

⁴² *People v. Basilio*, 754 Phil. 481, 485 (2015) [Per J. Del Castillo, Second Division] *citing People v. Campos*, 643 Phil. 668 (2011) [Per J. Carpio Morales, Third Division].

⁴³ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 501 [Per J. Leonen, Third Division] *citing People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division].

⁴⁴ *People v. Gayoso*, 808 Phil. 19, 30 (2017) [Per J. Del Castillo, First Division] *citing People v. Havana*, 776 Phil. 462 (2016) [Per J. Del Castillo, Second Division].

⁴⁵ Republic Act No. 9165 has been amended by Republic Act No. 10640 in 2014. However, since the incident happened in 2009, the applicable law is still Republic Act No. 9165.

- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.] (Emphasis supplied)

The chain of custody is the recorded movement of the seized or confiscated item from the time of its confiscation, to its marking, inventory and photographing, to its examination and safekeeping in the forensic laboratory, to its presentation in court, and finally, to its destruction.⁴⁶ All those who take custody of seized items must ensure that the evidence presented in court is actually what it is claimed to be—untampered, uncontaminated, and unsubstituted.⁴⁷

The chain of custody rule is, therefore, meant to ensure the integrity and identity of the *corpus delicti*, which is an essential element of the crime of illegal sale and possession of dangerous drugs. If the police officers fail to comply with the chain of custody rule, they fail to prove an element of the offense, which produces reasonable doubt as to whether the crimes have been committed at all.⁴⁸ In *People v. Holgado*:⁴⁹

By failing to establish identity of corpus delicti, non-compliance with Section 21 indicates a failure to establish an element of the offense of illegal sale of dangerous drugs. It follows that this non-compliance suffices as a ground for acquittal. As this court stated in People v. Lorenzo:

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same

⁴⁶ *People v. Gayoso*, 808 Phil. 19, 30 (2017) [Per J. Del Castillo, First Division] citing *People v. Havana*, 776 Phil. 462 (2016) [Per J. Del Castillo, Second Division].

⁴⁷ *Mallillin v. People*, 576 Phil. 576, 588 (2008) [Per J. Tinga, Second Division].

⁴⁸ See *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per J. Leonen, Third Division]; *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division]; *People v. Dela Cruz*, 744 Phil. 816 (2014) [Per J. Leonen, Second Division]; and *People v. Royol*, G.R. No. 224297, February 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005>> [Per J. Leonen, Third Division].

⁴⁹ 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

degree of certitude as that needed to sustain a guilty verdict.⁵⁰ (Emphasis supplied, citations omitted)

Pertinent in this case is the required presence of any elected public official, and representatives from the media and the Department of Justice during the physical inventory and photographing of the confiscated items. In *People v. Mendoza*,⁵¹ this Court elaborated on the rationale for requiring the presence of these witnesses:

Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of shabu that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.⁵²

In this case, the prosecution failed to prove that the task force complied with Section 21’s requirements. While the marking and inventory were done immediately after the items’ seizure and at the place of arrest, no media representative, Department of Justice representative, or local elected official was present to witness what happened. Furthermore, the police officers failed to photograph the seized items.

The rule admits an exception to the required compliance with Section 21:⁵³

[N]on-compliance with [Section 21(1)’s] 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[.]⁵⁴ (Emphasis supplied)

This Court has also enumerated instances when noncompliance with Section 21(1) may be excused:

(1) [The absent representatives’] 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

⁵⁰ Id. at 93.

⁵¹ 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

⁵² Id. at 764.

⁵³ CA Rollo, pp. 116-118.

⁵⁴ See Implementing Rules and Regulations of Republic Act No. 9165 (2002), sec. 21.

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.*⁵⁵ (Emphasis supplied)

However, in *People v. Que*,⁵⁶ this Court explained that the prosecution must not only allege justifiable grounds, but must also prove it. Furthermore, it must demonstrate the steps the police officers took to properly preserve the integrity and evidentiary value of the seized items:

In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: *first, the prosecution must specifically allege, identify, and prove "justifiable grounds"; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.*⁵⁷ (Emphasis supplied)

Here, the reasons given by the buy-bust operatives are insufficient to be deemed justifiable grounds for their failure to comply with Section 21 of Republic Act No. 9165.

The police officers explained that prior to the buy-bust operation, they coordinated with the Department of Justice to secure the representative. However, they were told that no Department of Justice official could be sent since it was already nighttime when the operation started.

As to Sese, the media representative, the task force also contacted him before the operation. He had told the police officers that he would be present at the area of the arrest, but he failed to arrive in time for the inventory; instead, he opted to wait at the police station.

As to the elected public official, the police officers explained that they did not contact barangay officials since they might be relatives of accused-

⁵⁵ *People v. Lim*, G.R. No. 231989, September 4, 2018 <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/64400>> [Per J. Peralta, Third Division] citing *People v. Sipin*, G.R. No. 224290, June 11, 2018 [Per J. Peralta, Second Division].

⁵⁶ G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per J. Leonen, Third Division].

⁵⁷ *Id.* at 523.

appellant. They attempted to remedy the absence by having the inventory signed by a barangay official at the barangay hall.

This Court is aware that in buy-bust operations, efficiency, speed, and furtiveness are key. Police officers are expected to be at least a step ahead of criminals in order to arrest them. However, unlike other warrantless searches, buy-bust operations also entail careful preparation and planning. Considering the arrangements made before they are conducted, the speed required of public officers in their execution still does not justify the absence of *all* required witnesses.

In this case, not a single one of the required representatives witnessed the operation, or even the marking or inventory of the seized items. The only ones who could account for what happened to the items were accused-appellant and the police officers themselves. Moreover, the prosecution did not even provide any basis for suspecting that the barangay officials could be related to accused-appellant.

Likewise, the police officers failed to show the steps they took to ensure that the integrity of the seized items was preserved. No photographs of the seized items were taken at the place of arrest or at the police station. Moreover, because the barangay official and media representative signed the inventory *after* the procedure, they did not actually witness it and cannot attest to its proper conduct. Consequently, the police officers did not have any other impartial third-party witness to the procedure. This puts serious doubt as to whether the items inventoried and brought to the police station were the same items seized from accused-appellant.

In light of the buy-bust operatives' failure to comply with the chain of custody rule, the prosecution failed to establish the *corpus delicti* by proof beyond reasonable doubt. Accused-appellant, then, cannot be convicted of the offenses of illegal sale and illegal possession of dangerous drugs.

WHEREFORE, the September 7, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 08370 is **REVERSED AND SET ASIDE**. Accused-appellant Cristina Agaton y Bodillo is **ACQUITTED** for the prosecution's failure to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Superintendent of the Correctional Institution for Women for immediate implementation. She is directed to report to this Court, within five (5) days from receipt of this Resolution, the action she has taken. Copies shall also be furnished to the

Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

SO ORDERED.” (Gesmundo, J., on official business.)

Very truly yours,

Mis PDC Both
MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court *3/6/2020*

Atty. Maria Rovi Estopia
Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
East Avenue cor. NIA Road
Diliman, 1104 Quezon City

COURT OF APPEALS
CA G.R. CR HC No. 08370
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 80, Malolos City
3000 Bulacan
(CRIMINAL CASE NOS. 758-M-2009
& 759-M-2009)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
CORRECTIONAL INSTITUTION FOR WOMEN
1550 Mandaluyong City

Ms. Cristina B. Agaton
c/o The Superintendent
CORRECTIONAL INSTITUTION FOR WOMEN
1550 Mandaluyong City

The Director General
PHILIPPINE NATIONAL POLICE
National Headquarters
Camp Crame, Quezon City

The Director General
PHILIPPINE DRUG ENFORCEMENT AGENCY
PDEA Bldg., NIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

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