

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated December 5, 2019 which reads as follows:*

**“G.R. No. 241789 – (People of the Philippines v. Jomar Gaon y Halog)**

Before the Court is an appeal of the Decision<sup>1</sup> dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08117, convicting Jomar Gaon y Halog (accused-appellant) of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165.

**The Antecedents**

In two separate Information both dated April 12, 2013, accused-appellant was charged with the crimes of illegal sale and possession of dangerous drugs, to wit:

**Criminal Case No. 9839<sup>2</sup>**

That on or about the 10<sup>th</sup> day of April 2013 in the City of San Fernando, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, without authority of law and without first securing the necessary permit, license or prescription from the proper government agency, did then and there [willfully], unlawfully, and feloniously sell, dispense and deliver one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as [“Shabu”], a dangerous drug, weighing ZERO POINT ONE ZERO ONE FOUR (0.1014) gram to PO3 ELVIS L. YARIS who posed as a poseur buyer thereof using marked money one (1) piece of One

<sup>1</sup> Penned by Associate Justice Ramon Paul L. Hernando (now a Member of the Court), with Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez, concurring; *rollo*, pp. 2-17.

<sup>2</sup> Records (Criminal Case No. 9839), p. 1.

Thousand Peso boodle money bearing serial number B971971.

CONTRARY TO LAW.

**Criminal Case No. 9840<sup>3</sup>**

That on or about the 10<sup>th</sup> day of April 2013 in the City of San Fernando, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, without authority of law and without first securing the necessary permit, license or prescription from the proper government agency, did then and there [willfully], unlawfully, and feloniously have in his possession, control and custody of two (2) heat-sealed transparent plastic sachets containing methamphetamine hydrochloride otherwise known as [*“Shabu”*,] a dangerous drug, with the individual weight of ZERO POINT ZERO FOUR SEVEN TWO (0.0472) gram and ZERO POINT FOUR ZERO FOUR FIVE (0.4045) gram with a total weight of ZERO POINT FOUR FIVE ONE SEVEN (0.4517) gram.

CONTRARY TO LAW.

Accused-appellant pleaded not guilty to both charges.<sup>4</sup>

It appears that at around 8:30 in the evening of April 10, 2013, PO3 Elvis Yaris (PO3 Yaris) and PO2 John Ely Bayan (PO2 Bayan), members of the Anti-Illegal Drug Special Task Group of San Fernando Police Station, were advised by a confidential informant that a certain person, later on identified as herein accused-appellant, was in the business of selling prohibited drugs. The confidential informant notified them of his pending transaction for the purchase of *shabu* with said person which will take place in Barangay Sevilla. The information was referred to the team leader, Police Senior Inspector Rogelio Miedes (PSI Miedes) who then informed the Chief of Police, Police Superintendent Manuel Apostol.<sup>5</sup>

A conference was called to discuss the conduct of the buy-bust operation. PO3 Yaris was assigned as the poseur-buyer while PO2 Bayan as the immediate back-up. It was discussed that the pre-arranged signal, signifying the consummation of the transaction, would be a head scratch from PO3 Yaris. Consequently, a Pre Operational Report,<sup>6</sup> Coordination Report and the boodle money was prepared, copies of which were furnished to the Philippine Drug

<sup>3</sup> Records (Criminal Case No. 9840), p. 1.

<sup>4</sup> Id.

<sup>5</sup> Id at 4.

<sup>6</sup> Id.

Enforcement Agency (PDEA).<sup>7</sup>

PO3 Yaris and the confidential informant left the police station in a motorcycle and proceeded to Barangay Sevilla. PO2 Bayan, PSI Miedes and PO2 Walter Lucena (PO2 Lucena) used a separate vehicle. When PO3 Yaris and the confidential informant arrived thereat, accused-appellant requested for a change of venue to Viluan Inn at Barangay Ilocanos Norte. The confidential informant agreed and the team thereafter proceeded to said place.<sup>8</sup>

When the team arrived at the Viluan Inn, they saw the accused-appellant standing alone outside. PO2 Bayan, PO2 Lucena, and PSI Miedes positioned themselves at a nearby tricycle terminal. The confidential informant identified the accused-appellant to PO3 Yaris as the person with whom he has a pending transaction for *shabu*. They then approached the accused-appellant and introduced PO3 Yaris as the buyer.<sup>9</sup>

The accused-appellant asked PO3 Yaris as to how much he would like to buy. The latter replied that he wanted *shabu* worth ₱1,000.00. After the accused-appellant showed a sachet containing suspected *shabu*, PO3 Yaris handed the boodle money, which the accused-appellant placed in his pocket. The pre-arranged signal was subsequently executed by PO3 Yaris.<sup>10</sup>

As the transaction was consummated, PO3 Yaris held unto accused-appellant and introduced himself as a police officer. The rest of the team approached them, and PO2 Bayan pronounced the accused-appellant's constitutional rights. PO3 Yaris subsequently frisked the accused-appellant and recovered two plastic sachets containing white crystalline substance, cellular phone, the boodle money, two lighters and two ₱1,000.00 bill.<sup>11</sup>

Prior to the conduct of inventory, the seized items were marked by PO3 Yaris with "A" to refer to the plastic sachets subject of illegal possession; while "B" to refer to the plastic sachets subject of the illegal sale.<sup>12</sup>

Rico Valdez, a media representative and Paulo Lubirin,<sup>13</sup> a

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id. at 4-5.

<sup>11</sup> Id. at 5.

<sup>12</sup> Id.

<sup>13</sup> Also referred to as "Paulo Lubirin" in some parts of the *rollo*.

*barangay kagawad* from Barangay Ilocanos Sur were invited by the police officers to witness the inventory of the seized items. The seized items were then marked by PO3 Yaris with his initials "ELY" (for illegal sale) and "ELY-1" and "ELY-2" (for illegal possession) in their presence.<sup>14</sup>

In the Certification of Inventory,<sup>15</sup> PO3 Yaris stated the following items: (1) as Exhibit "A," two pieces of elongated heat-sealed transparent sachets containing suspected *shabu*; (2) as Exhibit "B," one piece of elongated heat-sealed transparent sachet containing suspected *shabu*; (3) as Exhibit "C," one cellular phone; (4) as Exhibit "D," one piece of ₱1,000.00 as boodle money; (5) as Exhibit "E," two pieces of ₱100.00 bill; and (6) as Exhibit "F," a lighter. Subsequently, photographs and post-operation activities were undertaken.

PO3 Yaris secured the seized drugs by placing them in his handkerchief and thereafter transferred them to a folder along with the rest of the evidence. The seized drugs remained in his custody from the time of confiscation until the surrender to the laboratory.<sup>16</sup>

PO3 Yaris subsequently handed over the seized items to PO3 Joseph Randy Velasco for examination. The latter notified PSI Maria Theresa Manuel (PSI Manuel) thereof and further transferred the possession of the sachets to her.<sup>17</sup>

The Chain of Custody Report stated the following: (1) three pieces of elongated, heat-sealed transparent sachets containing white crystalline substance with initials "ELY," "ELY 1," and "ELY 2" were confiscated; (2) the seized items were delivered by PO3 Yaris and turned over to PO3 Velasco; (3) from PO3 Velasco, the seized items were subsequently turned over to PSI Manuel; (4) after the conduct of laboratory examination by PSI Manuel, the seized items were turned over to PO3 Bucasas; and (5) from PO3 Bucasas, the seized items were again turned over to PSI Manuel.<sup>18</sup>

In a Laboratory Report<sup>19</sup> dated April 11, 2013, PSI Manuel examined the seized items. The same yielded positive for the presence of methamphetamine hydrochloride. Such result was confirmed by Report No. D-029-2013<sup>20</sup> executed by PSI Manuel.

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<sup>14</sup> *Rollo*, p. 5.

<sup>15</sup> Records (Criminal Case No. 9839), p. 5.

<sup>16</sup> *Supra* note 11.

<sup>17</sup> *Id.*

<sup>18</sup> Records (Criminal Case No. 9839), p. 35-dorsal portion.

<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.* at 34.

For his defense, the accused-appellant denied the charges. He claimed that he was on board a tricycle on his way home when two men alighted from their motorcycle and frisked him. He was then brought to the police station and was charged with the crimes attributed to him by the prosecution.<sup>21</sup>

In a Consolidated Decision<sup>22</sup> dated December 15, 2015, the trial court found the accused-appellant guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of R.A. No. 9165 as the elements of the crimes of illegal sale and illegal possession of dangerous drugs were proven by the prosecution. The *fallo* thereof reads:

**WHEREFORE**, premises considered, judgment is hereby rendered as follows:

(1) In Criminal Case No. 9839, accused **JOMAR GAON y Halog** is found **GUILTY** beyond reasonable doubt for violating Section 5, Article II of Republic Act No. 9165 and is sentenced to suffer the penalty of life imprisonment and to pay a fine of five hundred thousand pesos (Php 500,000.00);

(2) In Criminal Case No. 9840, accused **JOMAR GAON y Halog** is found **GUILTY** beyond reasonable doubt for violating Section 11, Article II of Republic Act No. 9165 and is sentenced to suffer a penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years and one (1) day as maximum and to pay a fine of three hundred thousand pesos (Php 300,000.00).

The sachets of *shabu* recovered from the accused are ordered confiscated and turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Moreover, considering that the Decision is one of conviction, let a Mittimus/Commitment Order be issued for the transfer of accused Jomar Gaon to the New Bilibid Prison (NBP) pursuant to OCA Circular No. 163-2013.

SO ORDERED.<sup>23</sup>

Consequently, accused-appellant filed a Notice of Appeal before the CA. In his Appellant's Brief,<sup>24</sup> accused-appellant argued that the prosecution failed to sufficiently establish the identity of the *corpus delicti* as there were inconsistencies in the testimonies of PO3 Yaris and PO2 Bayan as to the handling of the seized items after confiscation. Accused-appellant likewise raised that there was an

<sup>21</sup> Supra note 5.

<sup>22</sup> Penned by Judge Victor O. Concepcion; CA *rollo*, pp. 13-24.

<sup>23</sup> Id. at 24.

<sup>24</sup> Id. at 42-66.

unbroken chain of custody because the seized items were placed in unsealed containers and the certificate of inventory did not contain appropriate markings and the same was not signed by the accused-appellant or his representative, and by a member of the Department of Justice (DOJ).

The People of the Philippines, through the Office of the Solicitor General filed its Appellee's Brief,<sup>25</sup> insisted that the prosecution proved all the elements of the crimes as charged and that there was no break in the chain of custody as integrity and evidentiary value of the seized drugs were preserved, considering the police officers' compliance with the requirements under Section 21, Article II of R.A. No. 9165. The OSG opined that the seized items need not be placed in a container as the seized drugs were already contained in heat-sealed sachets. Also, the law does not require that the certificate of inventory must indicate the markings and weight of the seized items.

Finding that the prosecution was able to establish the existence of all the elements of the crimes as charged, the CA rendered a Decision<sup>26</sup> dated November 29, 2017, denying accused-appellant's appeal and upholding the ruling of the RTC.

Hence, this appeal.

### **The Issue**

Whether or not accused-appellant's guilt beyond reasonable doubt was established.

### **The Court's Ruling**

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II 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.<sup>27</sup>

On the other hand, for illegal possession of dangerous drugs, the following elements must be established: (1) the accused was in possession of dangerous drugs; (2) such possession was not

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<sup>25</sup> Id. at 83-112.

<sup>26</sup> Supra note 1.

<sup>27</sup> *People v. Hilario*, G.R. No. 210610, January 11, 2018, 851 SCRA 1, 17, citing *People v. Ismael*, 806 Phil. 21, 29 (2017).

authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.<sup>28</sup>

In these cases, the paramount consideration is the identity and integrity of dangerous drug, which is the *corpus delicti* of the offense. It is imperative, therefore, to utilize a mode of authenticating evidence,<sup>29</sup> to wit:

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.<sup>30</sup>

The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.<sup>31</sup> To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.<sup>32</sup>

Section 21, Article II of R.A. No. 9165, prior to its amendment, prescribes the procedure and guidelines in the handling of the seized drugs, to wit:

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

<sup>28</sup> *People v. Ismael*, id.

<sup>29</sup> *People v. Mercado*, 755 Phil. 863, 875 (2015).

<sup>30</sup> *People v. Ismael*, supra.

<sup>31</sup> *People v. Tamaño*, 801 Phil. 981, 999 (2016).

<sup>32</sup> *People v. Badilla*, 794 Phil. 263, 278 (2016).

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[.] x x x

From the foregoing, the law requires that immediately after seizure and confiscation, the physical inventory and photograph of the seized items must be conducted in the presence of the accused or his representative. The law likewise demands the presence of three witnesses: (1) media representative; (2) DOJ representative; and (3) any public official. The three-witness requirement negates the possibility of planting, switching or contamination of the evidence.<sup>33</sup>

A judicious review of the records of the case divulges that the prosecution failed to establish that the apprehending team complied with the law.

An evident lapse is the failure of the police officers to take the signature of the accused-appellant or his representative in the Certificate of Inventory.

In addition, there were only two witnesses, that is, a media representative and a *barangay kagawad*, who were present in the conduct of the physical inventory and photograph of the seized items. More so, the witnesses were invited only after the accused-appellant was frisked and the items in his possession were confiscated and placed in the custody of the police officers.

At this point, it bears stressing that the presence of the three witnesses must be secured not only during the inventory, but more importantly at the time of the warrantless arrest.<sup>34</sup> As explained in the case of *People v. Tomawis*,<sup>35</sup> the importance of securing the witnesses at the time of the arrest goes into the preservation of the integrity of the seized items, *viz.*:

It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in

<sup>33</sup> See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380, 390.

<sup>34</sup> *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131.

<sup>35</sup> *Id.*



accordance with Section 21 of [R.A. No.] 9165.<sup>36</sup>

While the tenor of R.A. No. 9165 is mandatory, its Implementing Rules and Regulations appended a saving clause, in case the procedure was not strictly followed, to wit:

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: (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

The apprehending team's failure to faithfully comply with the procedural rules does not automatically render invalid the seizure and custody over the seized items as long as: (1) the integrity and the evidentiary value of the seized items are properly preserved; and (2) justifiable reasons must be proffered for such non-compliance. In the course of proving such compliance before the trial courts, prosecutors must have the initiative to not only acknowledge, but also justify, any perceived deviations from the procedural requirements of Section 21.<sup>37</sup>

Foremost, there was no recognition on the part of the prosecution of the fact that there were blunders in observing the procedure under Section 21. Naturally, no explanation was supplied by the police officers as to their failure to secure a DOJ representative nor was there any reason given as to why the witnesses were called in

<sup>36</sup> Id. at 150.

<sup>37</sup> *People of the Philippines v. De Vera*, G.R. No. 218914, July 30, 2018.

only after the operation was completed. Likewise, the apprehending team's failure to obtain the signature of the accused-appellant or his representative in the Certificate of Inventory was not rationalized. Verily, the foregoing circumstances create uncertainty as to the integrity and identity of the seized items.

Departure from the criterion under Section 21 of R.A. No. 9165 without the application of the saving clause leaves this Court with no other option but to pronounce an acquittal.

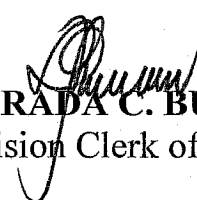
**WHEREFORE**, the appeal is hereby **GRANTED**. Accordingly, the Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08117 is **REVERSED and SET ASIDE**. Accused-appellant **JOMAR GAON y HALOG** is hereby **ACQUITTED** of the crime of violation of Sections 5 and 11, Article II of Republic Act No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt.

His immediate release from the National Penitentiary is hereby **ORDERED** unless there are other lawful causes warranting his continuing confinement thereat. The Director of the Bureau of Corrections is **DIRECTED** to implement the release of accused-appellant **JOMAR GAON y HALOG** in accordance with this Resolution, and to report on his compliance within ten (10) days from receipt.


The Office of the Solicitor General's manifestation (in lieu of supplemental brief), pursuant to the Resolution dated October 17, 2018, stating that it will no longer be filing a supplemental brief is **NOTED**.

**SO ORDERED.**"

Very truly yours,

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

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