

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. 242635 - People of the Philippines v. Amero T. Basari and Rachele Anne M. San Esteban

On appeal is the September 29, 2017 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08467 which affirmed the May 4, 2016 Decision² of the Regional Trial Court, Branch 164, Pasig City (RTC) in Criminal Case No. 19270-D finding accused-appellants Amero T. Basari³ (Basari) and Rachele Anne M. San Esteban (San Esteban) guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165 of the Comprehensive Dangerous Drugs Act of 2002. Accused-appellant Basari was also found guilty in Criminal Case No. 19271-D for violating Section 11, Article II of R.A. No. 9165.

The Facts

Basari a.k.a. Basco and San Esteban were charged with illegal sale of Methamphetamine Hydrochloride (*shabu*) committed as follows:

Criminal Case No. 19270-D

On or about June 3, 2014, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together, and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there wilfully, unlawfully and feloniously sell, deliver and give away to PO1 Marvin Santos, a member of Philippine National

- over – twelve (12) pages ...

142-B

¹ Penned by Associate Justice Rosmari D. Carandang (now a member of the Court), with Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela, concurring; *rollo*, pp. 2-17.
² Penned by Presiding Judge Jennifer Albano Pilar; *CA rollo*; pp. 54-69.
³ “Basari T. Amero” in some parts of the *rollo*.

Police, who acted as poseur-buyer, one (1) heat-sealed transparent plastic sachet containing 0.22 gram of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.⁴

Basari was also indicted for illegal possession of *shabu* committed as follows:

Criminal Case No. 19271-D

On or about June 3, 2014, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there wilfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed plastic sachet containing 3.10 grams of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.⁵

San Esteban was charged with illegal possession of *shabu* committed as follows:

Criminal Case No. 19272-D

On or about June 3, 2014, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed plastic sachet containing 0.11 gram of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.⁶

Upon arraignment, Basari and San Esteban pleaded not guilty to the charges. Thereafter, a joint trial on the merits ensued.

Version of the Prosecution

The prosecution presented five witnesses, namely: 1) Police Senior Inspector Anghelisa S. Vicente, the forensic chemist (PSI

- over -

142-B

⁴ CA rollo, p. 55.

⁵ Id.

⁶ Id. at 55-56.

Vicente); 2) Police Officer 2 (PO2) Marvin A. Santos, the police poseur-buyer; 3) PO2 Fidel R. Anggati, back-up officer; 4) Police Officer 1 (PO1) Lodjie N. Coz, investigator on case; and 5) PO1 Jerico Armando A. Galimba (PO1 Galimba), back-up officer.⁷ Their combined testimonies tended to establish the following:

Acting on a report from a confidential informant (CI), Police Chief Inspector (PCI) Renato B. Castillo (PCI Castillo) of the Pasig City Police Station called for a meeting at around 5:00 a.m. of June 3, 2014 for the conduct of a buy-bust operation. According to the CI, a certain "Basco," later on identified as Basari, was engaged in the selling of illegal drugs in Villa Evangelista, Barangay Palatiw, Pasig City. The CI further narrated that Basari would usually conduct his illegal trade on the street from 7:00 a.m. up to 12:00 noon. PO2 Santos and PO1 Galimba were designated as the poseur-buyer and back-up officer, respectively.⁸

At around 8:00 a.m. of the same day, the buy-bust team and the CI arrived at Barangay Palatiw. PO2 Santos and the CI proceeded to the specific areas where Basari was selling illegal drugs. While walking along San Agustin Street, PO2 Santos saw two men and one woman talking to one another. The CI told PO2 Santos that the man wearing blue shirt was Basari. PO2 Santos and the CI approached the three persons. Then, the CI introduced PO2 Santos to Basari as a "scorer" or someone who intended to purchase illegal drugs. PO2 Santos told Basari that he would want to buy ₱500.00 worth of *shabu* while simultaneously handing to Basari the marked 500-peso bill. Basari, however, directed PO2 Santos to give the money to his female companion who was later identified as San Esteban. San Esteban received the buy-bust money and placed it inside the pocket of her short pants. Then, Basari brought out a black digital weighing scale and weighed in a sachet of *shabu*. PO2 Santos noticed a gun tucked in the waistline of Basari. After securing the plastic sachet in his left pocket, PO2 Santos reversed the cap he was wearing, which was the pre-arranged signal. Thereafter, PO2 Santos grabbed Basari's gun and introduced himself as a police officer. PO1 Galimba and other operatives arrived. PO2 Santos arrested Basari and ordered him to empty the contents of his pockets. Basari brought out from his pocket a plastic sachet which was confiscated by PO2 Santos and secured it in his right pocket.⁹

- over -

142-B

⁷ Id. at 56.

⁸ Id. at 58.

⁹ Id. at 58-59.

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On the other hand, PO1 Galimba arrested San Esteban and ordered her to bring out the contents of her pockets. San Esteban brought out from her pocket a plastic sachet of *shabu* and the 500-peso bill she received from PO2 Santos.¹⁰

At the place of the arrest and in the presence of the arrested persons, PO2 Santos and PO1 Galimba marked the three sachets confiscated from Basari and San Esteban as well as the digital weighing scale taken from Basari.¹¹

After the marking, PCI Castillo called a representative from the media but nobody arrived. Punong Barangay Dinah Guevarra and Barangay Kagawad Chester Guevarra of Barangay Palatiw arrived at the place of arrest. PO2 Santos accomplished the inventory of evidence, which was signed by Basari, San Esteban, Dinah Guevarra, Chester Guevarra and the arresting officers. Photographs of the evidence were likewise taken at the place of arrest.¹²

The police officers and the arrested persons then proceeded to the Pasig City Police Station. PO2 Santos and PO1 Galimba turned over the marked sachets to PO1 Coz who submitted the request for laboratory examination to the Crime Laboratory in Mandaluyong City. The request was personally received by forensic chemist PSI Vicente.¹³

Version of the Defense

On June 3, 2014, at around 6:30 a.m., accused-appellants were sleeping in their room when several men awakened them and pointed guns at them. The men asked them the whereabouts of the man who entered their house. Accused-appellants answered that they did not see anybody entering the house. The men handcuffed accused-appellants and brought them outside the house. Accused-appellants were surprised when they saw guns, weighing scales and sachets containing *shabu* placed on top of a table. When the *barangay* captain arrived, the men ordered them to point at the items on the table. Thereafter, accused-appellants were brought to the Pasig City Police Station. One of the men told Basari to give them ₱75,000.00 in exchange for their release, which demand was later reduced to ₱50,000.00. Basari told them that he had no money. The men said they would be charged with illegal sale and illegal possession of *shabu*.¹⁴

- over -

142-B

¹⁰ Id. at 59.

¹¹ Id.

¹² Id. at 59-60.

¹³ Id. at 60.

¹⁴ Id. at 61.

The Regional Trial Court's Ruling

In a Decision, dated May 4, 2016, the RTC found accused-appellants guilty of illegal sale of *shabu* as they acted in conspiracy with each other. It also handed a guilty verdict on Basari for illegal possession of *shabu*. The trial court opined that in these cases, an unbroken chain of custody of evidence had been established by the prosecution from PO2 Santos to PO1 Coz and finally to the forensic chemist, PSI Vicente. There is no doubt that the sachet of *shabu* bought from accused-appellants and the sachet of *shabu* confiscated from Basari were also the same sachets of *shabu* marked by PO2 Santos who turned it over to PO1 Coz, and, who in turn, submitted the same to the forensic chemist for testing.

The RTC acquitted San Esteban of the charge of illegal possession of *shabu* because the identity of the *corpus delicti* was not established with moral certainty. The item allegedly confiscated by PO1 Galimba from San Esteban was marked "JAAG-ANNE 07-03-14" and his signature. The marking was done at the place of arrest. However, PO1 Galimba testified that the name given by San Esteban at the place of arrest was "Rachelle." He came to know San Esteban's full name as "Rachelle Anne M. San Esteban" only at the police station. PO1 Galimba had no prior knowledge that San Esteban's second name was "Anne." This inconsistency created a cloud of doubt on the issues of where the marking really took place and whether the integrity and evidentiary value of the seized item was preserved. The *fallo* reads:

WHEREFORE:

1. In *Criminal Case No. 19270-D*, the Court finds accused Basari T. Amero (Amero T. Basari) *alias* Basco and accused Rachelle Anne M. San Esteban GUILTY beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of RA 9165, and hereby imposed upon them the penalty of **life imprisonment and a fine of five hundred thousand pesos (P500,000.00) each with all the accessory penalties under the law.**
2. In *Criminal Case No. 19721-D*, the Court finds accused Basari T. Amero (Amero T. Basari) *alias* Basco GUILTY beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposes upon him an indeterminate penalty of imprisonment from **twelve (12) years and one (1)**

- over -

142-B



day, as minimum, to sixteen (16) years, [as] maximum, and a fine of three hundred thousand pesos ([P]300,000.00) with all the accessory penalties under the law.

3. In *Criminal Case No. 19272-D*, accused Rachele Anne M. San Esteban is hereby ACQUITTED of violation of Section 11, Article II of RA 9165 based on reasonable doubt.

The transparent plastic sachets of *shabu* subject matter of these cases are hereby ordered confiscated in favor of the government and turned over to the PDEA for destruction in accordance with law.

SO ORDERED.¹⁵

Aggrieved, accused-appellants elevated an appeal before the CA.

The Court of Appeals Ruling

In a Decision, dated September 29, 2017, the CA affirmed the RTC ruling. It agreed with the findings of the trial court that the prosecution adequately established all the elements of illegal sale of a dangerous drug as the collective evidence presented during the trial showed that a valid buy-bust operation was conducted. Likewise, all the elements of illegal possession of a dangerous drug was proven. The prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated drugs were not compromised. The witnesses for the prosecution were able to testify on every link in the chain of custody, establishing the crucial link in the chain from the time the seized items were first discovered until they were brought for examination and offered in evidence in court. Thus, it disposed the case in this wise:

WHEREFORE, the appeal is **DENIED** for lack of merit.

SO ORDERED.¹⁶

Hence, this appeal. Accused-appellants and the People manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA. Accused-appellants argue that the buy-bust team failed to follow the procedure mandated in Section 21(1), Article II of R.A. No. 9165.

- over -

142-B

¹⁵ Id. at 68-69.

¹⁶ *Rollo*, p. 16.

The Court's Ruling

The judgment of conviction is reversed and set aside and accused-appellants are acquitted of the crimes charged.

Chain of custody is a procedural mechanism that ensures that the identity and integrity of the *corpus delicti* are clear and free from any unnecessary doubt or uncertainty. It secures the close and careful monitoring and recording of the custody, safekeeping, and transfer of the confiscated illegal drug so as to preclude any incident of planting, tampering, or switching of evidence. The links in the chain, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized, from the forensic chemist to the court must be adequately proved in such a way that no question can be raised as to the authenticity of the dangerous drug presented in court.¹⁷ Thus, in *Mallillin v. People*,¹⁸ the Court declared:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

Section 21 (1), Article II of R.A. No. 9165 states:

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

- over -

142-B

¹⁷ *People v. Lim*, G.R. No. 231989, September 4, 2018.

¹⁸ 576 Phil. 576, 587 (2008).

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[.] (Emphasis supplied)

Supplementing the above-quoted provision, Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 mandates:

(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[.] (Emphasis supplied)

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165, thus:

(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 person/s 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. (Emphasis supplied)

Since the offenses were committed on June 3, 2014, the Court must evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165.

In this case, while the immediate physical inventory and photograph of the confiscated items were done at the place of arrest, only two (2) elected *barangay* officials were present. There were no representatives from the DOJ and the media to witness the physical inventory and photograph of the seized items.

The Court stressed in *People v. Vicente Sipin*:¹⁹

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

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

- (1) their attendance was impossible because the place of arrest was a remote area;
- (2) their safety during the inventory and photograph

- over -

142-B

¹⁹ G.R. No. 224290, June 11, 2018.

of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.²⁰ (Citation omitted)

Further, earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos*²¹ requires:

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

While it is true that less than strict compliance with the guidelines²⁰ stated in Section 21 does not necessarily render void and

- over -

142-B

²⁰ Id.

²¹ G.R. No. 233744, February 28, 2018.

invalid the confiscation and custody over the evidence obtained, the saving clause would only be set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers.²²

The first requirement enjoins the prosecution to identify and concede the lapses of the buy-bust team and thereafter give a justifiable and credible explanation therefor. In this case, PCI Castillo himself admitted that he only called a representative from the media and the elected *barangay* officials. There was no attempt to secure the presence of a representative from the DOJ and despite his call, no media representative arrived. Anent the second requirement, the prosecution was not able to prove that the integrity and evidentiary value of the seized items remained intact from the time of confiscation, marking, submission to the laboratory for examination, and presentation in court. The lack of a DOJ representative and media representative during the actual physical inventory and photograph of the seized drugs without offering a credible justification created a gap in the chain of custody. Considering the miniscule amount of the confiscated illegal drugs involved, rigid compliance with Section 21 of R.A. No. 9165 is expected from the apprehending officers. As aptly held in *People v. Plaza*,²³ "buy-bust teams should be more meticulous in complying with Section 21 of R.A. No. 9165 to preserve the integrity of the seized *shabu* most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with." As a result of the apprehending officers' non-compliance with Section 21 of R.A. No. 9165, accused-appellants must therefore be acquitted.

WHEREFORE, premises considered, the September 29, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08467, which affirmed the May 4, 2016 Decision of Regional Trial Court, Branch 164, Pasig City in Criminal Case No. 19270-D, finding accused-appellants Amero T. Basari and Rachelle Anne M. San Esteban guilty of violating Section 5 of Article II of Republic Act No. 9165, and in Criminal Case No. 19271-D, finding accused-appellant Amero T. Basari guilty of violating Section 11 of Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Amero T. Basari and Rachelle Anne M. San Esteban are **ACQUITTED** on reasonable doubt, and are

- over -

142-B

²² *People v. Fatallo*, G.R. No. 218805, November 7, 2018.

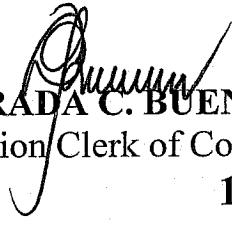
²³ G.R. No. 235467, August 20, 2018.

ORDERED IMMEDIATELY RELEASED from detention, unless they are being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendent of the Correctional Institution for Women and the Chief Superintendent of the New Bilibid Prison, for immediate implementation. The said Directors are **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action they have taken.

SO ORDERED.” *Inting, J., additional member per Special Order 2726.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ¹¹⁶
142-B

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(CA-G.R. CR HC No. 08467)

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