



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 2, 2020** which reads as follows:*

**“G.R. No. 236543 (*People of the Philippines v. Jay Bucotan Cabangon*).** - On appeal is the August 24, 2017 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08728 which affirmed the September 20, 2016 Joint Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 69, Lingayen, Pangasinan in Criminal Case Nos. L-10672 and L-10673, finding the accused-appellant Jay Bucotan Cabangon (*Cabangon*) guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

In view of the accused-appellant’s acquittal for violation of Section 11, Article II of R.A. No. 9165 in Criminal Case No. L-10673, the present discussion will revolve around the resolution of Criminal Case No. L-10672 for his conviction of violation of Section 5, Article II of R.A. No. 9165.

In an Information<sup>3</sup> dated October 5, 2015, Cabangon was charged with violation of Section 5, Article II of Republic Act No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, committed as follows:

That on or about the morning of October 5, 2015 at Barangay Poblacion (East), Sual, Pangasinan and within the

<sup>1</sup> Penned by Associate Justice Franchito N. Diamante, with Associate Justices Magdangal M. De Leon and Zenaida T. Galapate-Laguilles, concurring; *rollo* pp. 2-21, CA *rollo*, pp. 101-120.

<sup>2</sup> CA *rollo*, pp. 48-57.

<sup>3</sup> Records, p. 1.

jurisdiction of the Honorable Court, the above-named Accused, did then and there, unlawfully, feloniously and deliberately have sold, traded and delivered to a poseur-buyer (PO1 Brent Fernandez), in exchange for marked money (PHP500 bill), ONE (1) heat[-]sealed plastic sachet containing white crystalline substance[,] which were suspected to be "SHABU" (marked as "BPF-1" 10-5-15), and when the contents of the plastic sachet was tested the same[,] was found POSITIVE for the presence of METHAMPHETAMINE HYDROCHLORIDE, a prohibited and dangerous drug, and Accused was without any valid and lawful authority to possess, sell and deliver the same.

CONTRARY TO LAW.

In his arraignment, Cabangon pleaded not guilty<sup>4</sup> to both charges in Criminal Case Nos. L-10672 and L-10673. He was detained at the Pangasinan Provincial Jail during the trial of the case.

The prosecution presented two (2) witnesses, namely, Police Officer 1 (PO1) Brent Fernandez and Police Chief Inspector (P/C Insp.) Myrna Malojo-Todeño as witnesses. The defense for its part presented three (3) witnesses: the accused-appellant, Larry Natividad and Atty. Amado Sison, Sr.

*Version of the Prosecution*

Weeks prior to October 5, 2015, when a buy-bust operation was conducted, the Sual Police Station received a confidential information that a certain "Joker" was selling "shabu" to helpers (*kargador*) of PCP Aqua Farm Corporation, engaged in the Bangus industry, located at Sual, Pangasinan. Having the information at hand, Police Senior Inspector (P/S Insp.) Leo Sison Llamas asked his men to validate the report and upon validation, plan the buy- bust operation for the immediate arrest of Joker. During the validation and surveillance, the police authorities found out that Joker is a certain Jay Cabangon who is a resident of Alaminos City, Pangasinan. By reason thereof, PNP-Sual planned a buy-bust operation against the accused-appellant and designated PO1 Fernandez as the poseur-buyer, while PO1 Carmelita Bron with other police officers were tasked to provide back-up. A buy-bust money of five hundred pesos (₱500.00) bill was prepared

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<sup>4</sup> *Id.* at 34.

and the operation was coordinated with the Philippine Drug Enforcement Agency (*PDEA*).

Using the cellular phone of the confidential informant, PO1 Fernandez made a transaction with the accused-appellant for the purchase of “shabu.” It was agreed upon by Cabangon and PO1 Fernandez, as the poseur-buyer to meet on October 4, 2015 at RRJ Resto Bar situated at Barangay Poblacion, Sual, Pangasinan. However, it was cancelled due to the fact that the accused-appellant was not able to obtain on time the “shabu” from Alaminos City, Pangasinan, thus, the meeting was reset the following day. At around 4 o’clock in the morning of October 15, 2015, PO1 Fernandez and PO1 Bron, together with the other the police officers, proceeded to RRJ Resto Bar to strategically position themselves. Thereafter, Cabangon called PO1 Fernandez informing him that he was already outside the RRJ Resto Bar. PO1 Fernandez then went outside, and having acquired familiarity because of prior surveillance, approached Cabangon. Without uttering a word, PO1 Fernandez gave Cabangon the five hundred pesos (₱500.00) marked bill in exchange for one (1) plastic sachet. As the sale was already consummated, PO1 Fernandez raised his left hand as a pre-arranged signal for PO1 Bron and the other police officers to come in to execute the arrest. Immediately thereafter, Cabangon was arrested by PO1 Fernandez, apprising him of the cause thereof and of his constitutional rights. After the arrest, PO1 Bron conducted a body search on Cabangon and found in his possession the marked money, one heat-sealed transparent plastic sachet containing suspected “shabu” and a Lacoste branded pouch containing two (2) strips of aluminum foil, two (2) empty transparent plastic sachet, two (2) lighters and money of different denominations amounting to three thousand nine hundred pesos (₱3,900.00).

Due to inclement weather and darkness of the place, the police authorities decided to bring Cabangon and the seized items to the Sual Police Station. *En route*, PO1 Fernandez held the sachet sold to him, while PO1 Bron carried the items she recovered from Cabangon. At the station, PO1 Fernandez marked the plastic sachet subject of the sale with “BPF-1,” while PO1 Bron did the same on the items she seized, including the plastic sachet suspected to be “shabu” marked with “CBB-1,” in the presence of *Barangay Kagawad* Mherlie Osana and Department of Justice (*DOJ*) Representative Orlando Peralta as witnesses. Physical inventory of the seized items and accomplishment of confiscation receipts were, likewise, undertaken in front of the suspect and the witnesses. Efforts to request for a media

representative were undertaken, but the said representative was not able to come. Subsequently, P/S Insp. Llamas made a request for laboratory examination and this was brought, together with the seized plastic sachets, by PO1 Fernandez to the Pangasinan Provincial Crime Laboratory Office in Lingayen, Pangasinan. In the crime laboratory, the seized items were received by P/C Insp. Todeño and a certain PO3 Manuel. After receiving the specimen, P/C Insp. Todeño conducted a qualitative examination and issued Chemistry No. D-825-2015L. Her findings yielded a positive result for Methamphetamine Hydrochloride with the following weights: BPF-1- 0.10 gram and CBB1- 0.05 gram. Following the laboratory examination, P/C Insp. Todeño placed the items inside a white envelope, which she signed and endorsed to the evidence custodian Elmer J. Manuel, who signed the same. P/C Insp. Todeño later retrieved the said envelope from the evidence custodian for submission to the trial court and testified that the contents of the envelope were the same items she endorsed to the evidence custodian and that there is no evidence to show that the same were adulterated.

### *Version of the Defense*

At around 2 o'clock in the morning of October 5, 2015, Cabangon who works as a helper (*kargador*) at the PCP Aqua Farm Corporation in Sual, Pangasinan, together with Larry Natividad (*Natividad*) the truck driver, and Gerald Fernandez another helper, just arrived at the PCP Aqua Farm after they picked-up feeds from Bulacan. As a routine, Cabangon, made a listing of their remittance upon arrival. After a short rest, he asked permission from Natividad to go home to Alaminos, which he usually does, and he was expected to be back at 9 o'clock that same morning for another trip to Bulacan. Subsequently, Cabangon walked towards the town plaza of Sual to catch a bus going to Alaminos when a motorcycle, on which two people were aboard, stopped beside him. They introduced themselves as police officers. Thereafter, the male person, who was the driver of the motorcycle, drew out his gun, poked the same at Cabangon and ordered him to raise his hands. Out of fear, Cabangon was obliged to do so, while the passenger of the motorcycle, a female person, took his wallet and talked to somebody on her phone. After a while, four other persons arrived on board a police patrol car, arrested Cabangon, and handcuffed, photographed and boarded him to the patrol car and was brought to the police station. Thereat, he was made to wait for about two hours and was shown a plastic sachet containing prohibited

drugs that is claimed to have come from his wallet. Cabangon vehemently denied the claim and any involvement from the charges lodged against him.

Meanwhile at about 9 o'clock in the morning of October 5, 2015, Natividad, while waiting for Cabangon to return from Alaminos City, received an information that the latter was in the custody of the police officers because of involvement with dangerous drugs. Natividad testified that having worked with Cabangon for about four (4) years, he was surprised because he never noticed that Cabangon had any involvement with illegal drugs. He added that during their trip back to Sual in the evening of October 4, 2015, Cabangon remained asleep and never used his cellular phone. On the other hand, Atty. Amado Sison, the lawyer of PCP Aqua Farm, submitted to the trial court documents pertinent to the travel activities of the truck driven by Natividad for which Cabangon served as truck loader.

### *RTC Ruling*

After trial, the RTC handed a guilty verdict on Cabangon for sale of *shabu*, while acquitting him of the charge of illegal possession of dangerous drugs. The dispositive portion of the September 20, 2016 Joint Decision states:

WHEREFORE, premises considered, the accused, in Criminal Case No. L-10672, is hereby found guilty beyond reasonable doubt of sale of dangerous drugs defined and penalized under Section 5, Article II of Republic Act No. 9165 and is accordingly sentenced to suffer the penalty of life imprisonment, as well as such accessory penalties provided for in the law, and to pay a fine of P500,000.00.

The accused is ACQUITTED in Criminal Case No. L-10673.

The two (2) sachets of methamphetamine hydrochloride presented in evidence in these cases are confiscated in favor of the government to be dealt with as the law directs.

SO ORDERED<sup>5</sup>

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<sup>5</sup> CA rollo, p. 57.

***CA Ruling***

On appeal, the CA affirmed the RTC Decision. The CA agreed with the findings of the trial court that the prosecution effectively established that the chain of custody of the seized dangerous drugs from the seizure, marking, submission to the laboratory for testing, and presentation in court was not compromised. With regard to the issue of giving credence to the testimony of PO1 Fernandez, the CA was in the position that minor discrepancies in the testimonies are, in fact, to be expected. They neither vitiate the essential integrity of the evidence in its material entirety nor reflect adversely on the credibility of witnesses. Likewise, the CA was not convinced that the buy-bust operation was conducted in an illegal manner. For the CA, the instant case squarely falls within a valid *in flagrante delicto* arrest. Lastly, the appellate court was in the position that the defense of denial and alibi by the accused-appellant cannot prevail over the prosecution witnesses' positive testimonies, coupled with the presentation in court by the prosecution of the *corpus delicti*.

Before Us, the People and Cabangon 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. Essentially, Cabangon maintained his arguments that: (1) the inconsistencies in the testimony of PO1 Fernandez cast doubt into the credibility and veracity of his declarations; (2) the defense of denial should not be disregarded; and (3) there is a failure to establish the chain of custody, failing to prove his guilt beyond reasonable doubt.

***Our Ruling***

We find the appeal meritorious. The judgment of conviction is reversed and set aside, and Cabangon should be acquitted based on reasonable doubt.

Under Section 5, Article II of R.A. No. 9165, or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

x x x (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.

In illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge. In *People v. Gatlabayan*, the Court held that “it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.” Thus, the chain of custody carries out this purpose “as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”

The prosecution failed to establish the chain of custody of the seized “*shabu*” from the time they were recovered from accused-appellant up to the time they were presented in court. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the Comprehensive Dangerous Drugs Act of 2002, defines chain of custody as follows:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

To ensure an unbroken chain of custody, Section 21(1) of R.A. No. 9165 specifies:

- (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.

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

(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.

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the *IRR*, 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 non-compliance 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.<sup>6</sup>

In the instant case, the Court finds that the arresting officers committed unjustified deviations from the prescribed chain of custody rule, thus, putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from the accused-appellant.

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. “*Marking*” means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.<sup>7</sup>

Here, the marking, physical inventory and photograph as evidenced by the Joint-Affidavit of Seizing and Arresting Officers,<sup>8</sup> were done at the Sual Police Station, and not where the buy-bust operation was conducted. For this reason, in the initial step of the chain of custody, a gap already occurred. The seized items were not marked immediately at the place where accused-appellant was arrested. Hence, the integrity and evidentiary value of the seized items were already compromised making it susceptible to alteration, substitution or contamination during the time that the police officers were in transit going to the police station.

Although this process may be excused in some cases for justifiable reasons, the present case is not one of those. The allegation that the marking, physical inventory, and photograph were not done in the crime scene because of the torrential rains will not suffice. The prosecution failed to expound why it was not possible to make the

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<sup>6</sup> Emphasis ours.

<sup>7</sup> *People v. Diputado*, 813 Phil. 16, 171 (2017).

<sup>8</sup> Record, pp. 17-20.

marking, physical inventory, and photograph at crime scene, considering that RRJ Resto Bar can provide the police officials a shelter and enough room from the torrential rain, to conduct the said procedures.

The phrase "*immediately after seizure and confiscation*" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable would the IRR allow that the inventory and photographing be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team, considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.<sup>9</sup>

In the present case, the required witnesses were not present at the time of apprehension. The witnesses were merely called at the police station only after the conduct of the buy-bust operation, which is a patent violation of Section 21 of the IRR. While the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension, is not dispensed with. The reason is simple, it is at the time of arrest — or at the time of the drugs' "*seizure and confiscation*" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.<sup>10</sup>

The testimonies of the witnesses in open court, and in the Joint-Affidavit, miserably failed to mention the causes for the non-compliance with Section 21. Hence, the prosecution failed to prove valid causes for non-compliance of the procedure laid down in Section 21 of R.A. 9165, as amended.

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<sup>9</sup> *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 146.

<sup>10</sup> *Id.* at 147.

The Court stressed in *People v. Vicente Sipin y De Castro*.<sup>11</sup>

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.<sup>12</sup>

The non-observance of the procedure mandated by Section 21 of R.A. No. 9165, as amended, casts a serious doubt if the illegal drug presented is the same from the one seized from the accused-appellant. It is worthy to note that the quantity of the amount of drug seized is only 0.10 gram. It is an extremely small amount which is highly susceptible to planting and tampering. This is the very reason why strict adherence to Section 21 is a must.

It should be noted that the herein accused-appellant was acquitted for the crime of illegal possession of dangerous drugs in Criminal Case No. L-10673 for failure to establish the identity of the dangerous drug presented in court to be the same as the substance seized. Now, it is hard not to cast any doubt as to the integrity and evidentiary value of a dangerous drug, particularly the one with markings "BPF-1." Taking into consideration that another dangerous drug of almost the same quantity, and went on almost the same processes, specifically "CBB-1," was found to be doubtful as to its evidentiary value, causing the acquittal of the accused-appellant in that particular case.

There being no justifiable reason in this case for the non-compliance with Section 21 of R.A. No. 9165, as amended, this Court

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<sup>11</sup> G.R. No. 224290, June 11, 2018.

<sup>12</sup> *People v. Reyes*, G.R. No. 219953, April 23, 2018, 862 SCRA 352, 368; and *People v. Mola*, G.R. No. 226481, April 18, 2018, 862 SCRA 112, 127-128.

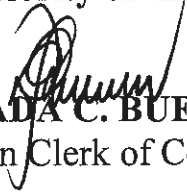
finds it necessary to acquit Cabangon for failure of the prosecution to prove his guilt beyond reasonable doubt.

**WHEREFORE**, premises considered, the August 24, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08728, which affirmed the September 20, 2016 Joint Decision of the Regional Trial Court, Branch 69, Lingayen, Pangasinan in Criminal Case Nos. L-10672 and L-10673, finding the accused-appellant Jay Bucotan Cabangon guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jay Bucotan Cabangon is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is 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 Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. Said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Resolution the action he has taken.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court 7/12/14

by:

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

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