



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **13 July 2020** which reads as follows:*

“**G.R. No. 246583 (People of the Philippines v. Joel Abaigar y Carlita)**. – Assailed in this ordinary appeal¹ is the Decision² dated August 3, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09738, which affirmed *in toto* the Judgment³ dated July 31, 2017 of the Regional Trial Court of Manila, Branch 20 (RTC) in Criminal Case Nos. 15-319380-81 finding accused-appellant Joel Abaigar y Carlita (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the ‘Comprehensive Dangerous Drugs Act of 2002.’

The Facts

This case stemmed from two (2) Informations⁵ filed before the RTC charging accused-appellant with the crimes of Illegal Sale and Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, Article II of RA 9165, respectively. The prosecution alleged that on August 22, 2015, members of the Station Anti-Illegal Drugs-Special Operations Task Unit successfully implemented a buy-bust operation along R-10 Moriones, Tondo, Manila, against accused-appellant, during which, one heat-sealed plastic sachet containing 0.137 gram of white crystalline substance was recovered from him. Thereafter, Police Officer Dylan L. Verdán (PO2 Verdán) ordered accused-appellant to open his other hand, and recovered from him another heat-sealed plastic sachet containing 0.112 gram of white crystalline substance. Noticing that people were beginning to gather around, the arresting officers decided to head to the police station where the marking of the seized items took place. Thereafter, inventory and photography of

¹ See Notice of Appeal dated August 17, 2018; CA *rollo*, pp. 126-127.

² *Rollo*, pp. 3-18. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Rodil V. Zalameda (now a member of this Court) and Renato C. Francisco, concurring.

³ CA *rollo*, pp. 67-74. Penned by Presiding Judge Marivic Balisi-Umali.

⁴ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

⁵ Records, pp. 2-5.

the seized items were conducted in the presence of media representative Leonard Basilio (Basilio). The seized items were then brought to the crime laboratory, which, after examination,⁶ yielded positive for *methamphetamine hydrochloride*, a dangerous drug.⁷

In defense, accused-appellant denied the charges against him, claiming instead that during that time, he was assisting the trucks parking at Pier 12 when three (3) police officers arrived with an informant. They asked him of his involvement in a robbery with a certain 'Ardie,' and after he denied the same, he was brought to the police station. At the police station, he alleged that he was mauled by seven (7) police officers for three (3) days while repeatedly asking for Ardie's whereabouts.⁸

In a Judgment⁹ dated July 31, 2017, the RTC found accused-appellant **guilty** beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, and accordingly, sentenced him to suffer the penalty of life imprisonment, and to pay a fine of ₱500,000.00.¹⁰ However, it acquitted accused-appellant of Illegal Possession of Dangerous Drugs on the ground of reasonable doubt.¹¹ It held that the prosecution witnesses were able to prove all the elements of Illegal Sale of Dangerous Drugs. It did not give credence to accused-appellant's claim that he was mauled in the police station since his medical certificate showed no signs of physical injuries, and considering further that he did not file a case against the concerned officers for the alleged mauling incident.¹² Aggrieved, accused-appellant appealed¹³ to the CA.

In a Decision¹⁴ dated August 3, 2018, the CA affirmed *in toto* the RTC ruling.¹⁵ It found that the prosecution was able to establish all the elements of the crime charged, as well as the compliance with the chain of custody rule in handling the seized items. It gave credence to the prosecution witnesses' testimonies pointing to accused-appellant as the perpetrator since as police officers, they enjoy the presumption of regularity in the performance of their duties. Said presumption must prevail over accused-appellant's unsubstantiated allegations of inconsistencies in the testimonies of the prosecution witnesses. Finally, it held that the prosecution's failure to present the informant in the witness stand cannot negate the illegal sale of dangerous drugs since the same was not indispensable to the success of the prosecution of dangerous drugs cases.¹⁶ However, it appears that the CA wrongfully convicted accused-appellant of the

⁶ Id. at 10.

⁷ *Rollo*, pp. 5-7.

⁸ Id. at 7. See also *CA rollo*, pp. 71-72.

⁹ *CA rollo*, pp. 67-74.

¹⁰ Id. at 73.

¹¹ Id. at 74.

¹² Id. at 73.

¹³ Records, pp. 208-209.

¹⁴ *Rollo*, pp. 3-18.

¹⁵ It appears, however, that the CA inadvertently included a portion in its Decision stating that it is "sustain[ing] the conviction of appellant for violating Sections 5 and 11 of RA 9165 x x x" when it is clear from the records that accused-appellant is only convicted for the crime of Illegal Sale of Dangerous Drugs (Section 5, RA 9165). (See *id.* at 17).

¹⁶ Id. 13-18.

crime of Illegal Possession of Dangerous Drugs¹⁷ since the RTC already acquitted him of the said crime.

Hence, this appeal seeking that accused-appellant's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,¹⁸ it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.¹⁹ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.²⁰

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.²¹ As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that '[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.'²² Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.²³

¹⁷ See *id.* at 17.

¹⁸ The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015].)

¹⁹ See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

²⁰ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548, 563 and 570, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²¹ See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 388-390; *People v. Crispo*, *supra* note 18; *People v. Sanchez*, *supra* note 18; *People v. Magsano*, *supra* note 18; *People v. Manansala*, *supra* note 18; *People v. Miranda*, *supra* note 18; and *People v. Mamangon*, *supra* note 18. See also *People v. Viterbo*, *supra* note 19.

²² *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

²³ See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,²⁴ ‘a representative from the media **and** the Department of Justice (DOJ), and any elected public official;’²⁵ or (b) if **after** the amendment of RA 9165 by RA 10640, ‘an elected public official and a representative of the National Prosecution Service **or** the media.’²⁶ The law requires the presence of these witnesses primarily ‘to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.’²⁷

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded ‘not merely as a procedural technicality but as a matter of substantive law.’²⁸ This is because ‘[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.’²⁹

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.³⁰ As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items were properly preserved.³¹ The foregoing is based on the saving clause found in Section 21 (a),³² Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.³³ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³⁴ and that

²⁴ Entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.’” As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro Section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; World News Section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

²⁵ Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

²⁶ Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

²⁷ See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, supra note 17. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²⁸ See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 20, at 1038.

²⁹ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44 citing *People v. Umipang*, id.

³⁰ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³¹ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³² Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**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)

³³ Section 1 of RA 10640 pertinently states: “**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)

³⁴ *People v. Almorfe*, supra note 31.

the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.³⁵

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.³⁶ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.³⁷ 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 fully well that they would have to strictly comply with the chain of custody rule.³⁸

Notably, the Court, in *People v. Miranda*,³⁹ issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”⁴⁰

In this case, records reveal that the arresting officers had committed several deviations from the Chain of Custody Rule.

First, the marking of the seized items was not made in the presence of the required witnesses, as testified by PO2 Verdán during his direct examination, to wit:

ACP [Rosalie T.] Mazo-Atienza:

x x x After you marked the evidence before turning over to the investigator, what did you do?

Witness [PO2 Verdán]:

When the MPD Press arrived, ah.. (paused).. together with suspect, we took our photography and inventory.

X X X X

³⁵ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁶ See *People v. Manansala*, supra note 18, at 375.

³⁷ See *People v. Gamboa*, supra note 20, citing *People v. Umipang*, supra note 20, at 1053.

³⁸ See *People v. Crispo*, supra note 18, at 376-377.

³⁹ Supra note 18.

⁴⁰ See *id.*

ACP Mazo-Atienza:

So, the media men arrived after you have already marked the evidence?

Witness:

Yes, Your Honor.⁴¹

Second, the conduct of the inventory and photography of the seized items was not witnessed by an elected official. As evinced by the Receipt/Inventory of Property/Seized Evidence/s,⁴² only Basilio, a media representative, was present as witness to the activities. This lapse was further confirmed by the testimony of PO2 Verdan on direct and cross-examinations, *viz.*:

Direct Examination

Court:

Aside from the media representative, there was no other person when you marked... (interrupted)

Witness:

The suspect, Your honor.

Court:

So there was no Barangay official... (interrupted)

Witness:

None, Your Honor.⁴³

Cross-examination

Atty. [Joker Paul A.] De Ala:

Who were present when you were conducting the inventory and the marking?

Witness:

The suspect the investigator, and the media representative, Mr. Leonard Basilio of the MPD Press.⁴⁴

As earlier stated, it is incumbent upon the prosecution to account for the absence of a required witness by presenting a justifiable reason therefor or, at the

⁴¹ TSN, February 6, 2017, pp. 20-21.

⁴² Records, p. 11.

⁴³ TSN, February 6, 2017, p. 21.

⁴⁴ TSN, April 10, 2017, p. 20.


very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure his or her presence. Here, records show that the prosecution **failed to justify** the absence of the required witnesses in the marking of the seized items, and of an elected official during its inventory and photography. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellant were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 3, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09738 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Joel Aباigar y Carlita is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to: (a) cause accused-appellant's immediate release, unless he is being lawfully held in custody for any other reason; (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED. (Gaerlan, J., designated Additional Member per Special Order No. 2780 dated May 11, 2020.)”

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Utah 8/24*

24 AUG 2020

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