



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 November 2020** which reads as follows:*

“G.R. No. 230463 (*Sunny Hop Otuwa v. People of the Philippines*).
— The conviction of petitioner for Illegal Sale of Dangerous Drugs and Illegal Possession of Drug Paraphernalia is the subject of review in this petition assailing the Court of Appeals’ (CA) Decision¹ dated November 9, 2016 in CA-G.R. CR-HC No. 07047, which affirmed the findings of the Regional Trial Court (RTC).

ANTECEDENTS

On October 29, 2009, a confidential informant (CI) reported to the Philippine Drug Enforcement Agency (PDEA), Barangay Pinyahan, Quezon City that a certain “Sonny,” later identified as Sunny Hop Otuwa (Otuwa), a Lesotho national, was engaged in selling heroine and *shabu* (methamphetamine hydrochloride). After receiving the information, a buy-bust team was formed with IO1 Ludovico S. Octaviano, Jr. (IO1 Octaviano, Jr.) as *poseur-buyer*. The CI contacted Otuwa and was able to broker a deal for ₱55,000.00 worth of *shabu* and heroine. IO1 Octaviano, Jr., prepared the buy-bust money, composed of two ₱500 bills, marked with his initials “LOJ,” and boodle money to make it appear to be ₱55,000.00 cash. The buy-bust team coordinated with Police Station 1 of Olongapo City and proceeded to the meeting place agreed upon by the CI and Otuwa at Victory Liner Terminal, Anonas St., West Bajac Bajac, Olongapo City.²

On October 30, 2009, at around 1:00 a.m., a “black guy” alighted from a bus, who the CI identified as Otuwa. The CI approached Otuwa and both of them boarded the buy-bust team’s service vehicle where IO1 Octaviano, Jr. was waiting. Inside the vehicle, the CI introduced IO1 Octaviano, Jr. to Otuwa as the prospective buyer. Otuwa took out two strips

¹ *Rollo*, pp. 31-53; penned by Associate Justice Ramon R. Garcia, with the concurrence of Associate Justices Leoncia R. Dimagiba and Marie Christine Azcarraga-Jacob.

² Records, p. 51.

of aluminum foil and one heat-sealed transparent plastic sachet containing white crystalline substance from his pocket and started to prepare the suspected *shabu* for smoking. IO1 Octaviano, Jr. asked Otuwa to show the “items” he was going to purchase. Otuwa pulled out five small heat-sealed transparent plastic sachets, three of which contained suspected *shabu*, while the other two contained suspected heroine. Thereafter, IO1 Octaviano, Jr. gave the envelope containing the marked money and boodle money to Otuwa. IO1 Octaviano, Jr. then executed the pre-arranged signal by opening the vehicle’s door. The rest of the buy-bust team rushed in and arrested Otuwa. The seized items were immediately marked and photographed at the place of arrest.³

At around 2:00 a.m. of the same day, the buy-bust team brought Otuwa and the seized items to the Barangay Hall of West Bajac Bajac, Olongapo City. The operatives conducted the inventory of the seized items, which was witnessed and signed by Barangay Chairman Rafael R. Santulan, Jr., and the Executive Officer of the Barangay Police Security Officers (BPSO) or *tanod*. After the inventory, IO1 Octaviano, Jr. submitted the seized items to the PDEA Laboratory Service for examination. The laboratory results showed that the items were positive for heroine and methamphetamine hydrochloride. Meanwhile, Otuwa refused to undergo drug testing.⁴ The PDEA Chemist who examined the seized drugs, Maria Therese Anne Domingo (Domingo) attested that IO1 Octaviano, Jr. turned over the seized items to her, and after conducting a qualitative test she placed the seized drugs in a sealed container and deposited it in the evidence room, where only the officer-in-charge and the evidence custodian had access.⁵ From the evidence room, Domingo personally brought the seized items to court during her testimony.⁶

In three separate Informations, Otuwa was charged with two counts of illegal sale of dangerous drugs and one count of illegal possession of drug paraphernalia before the RTC, to wit:

Criminal Case No. 612-2009 [Illegal Sale of heroine]

That on or about October 30, [2009] in the City of Olongapo and within the jurisdiction of this Honorable Court, above-named accused, with criminal and malicious intent, did then and there, knowingly, unlawfully, feloniously, maliciously, sell, transport, distribute, negotiate, dispense, offer, trade, transfer, present, deliver, give away, dispatch in transit, transport, administer, give, deal to PDEA Intelligence Officer Ludovico S. Octaviano, Jr., who acted as poseur-buyer, heroine, a prohibited and dangerous drug, placed inside two (2) individual heat-sealed plastic sachets, all with a total weight of 1.7227 grams, without any

³ *Id.* at 51-52.

⁴ *Id.* at 89-90.

⁵ *Id.* at 592-593.

⁶ *Id.* at 601.

license, permit or authority from any office, agency, bureau of the government to the damage of the Republic of the Philippines.

CONTRARY TO LAW.

Criminal Case No. 613-2009 [Illegal Sale of *shabu*]

That on or about October 30, 2009 in the City of Olongapo and within the jurisdiction of this Honorable Court, above-named accused, with criminal and malicious intent, did then and there, knowingly, unlawfully, feloniously, and maliciously, sell, transport, distribute, negotiate, dispense, offer, trade, transfer, present, deliver, give away in transit, administer, give, deal to PDEA Intelligence Officer Ludovico S. Octaviano, Jr., who acted as poseur-buyer, methamphetamine hydrochloride otherwise known as *shabu*, a prohibited and dangerous drug, placed inside five (5) individual heat[-]sealed plastic sachets, all with a total weight of 1.9589 grams[,] without any license, permit or authority from any office, agency, bureau of the government to the damage of the Republic of the Philippines.

CONTRARY TO LAW.

Criminal Case No. 614-2009 [Illegal Possession of drug paraphernalia]

That on or about October 30, 2009 in the City of Olongapo and within the jurisdiction of this Honorable Court, above[-]named accused, with criminal and malicious intent, did then and there, knowingly, unlawfully, feloniously, maliciously, have in his possession, custody, and control aluminum tin foils, a paraphernalia fit for or intended for smoking, and consuming, administering, injecting, ingesting or introducing dangerous drugs into the body, without any license, permit or authority from any office, agency, bureau of the government to the damage of the Republic of the Philippines.

CONTRARY TO LAW.⁷

The defense countered that the PDEA officers framed up Otuwa. At around 6:00 p.m. of October 29, 2009, Otuwa received a call from his friend Robert Mason, who invited him to a party. Otuwa accepted the invitation and rode a Victory Liner bus from Manila to Olongapo at around 9:00 p.m. Upon arriving at Olongapo past midnight on October 30, 2009, Otuwa called Mason, who told him that they should meet at a fast food restaurant near the bus terminal. Mason called Otuwa from his white Mazda car parked near the restaurant and told him to get in. Otuwa boarded the vehicle and Mason drove to the hotel where he was supposedly staying. On their way, Mason suddenly stopped the vehicle and armed PDEA operatives opened the car door and arrested Otuwa. The operatives told Otuwa not to move or else he will be shot. The PDEA officers planted evidence beside Otuwa and took photographs. The authorities brought Otuwa to a *barangay* hall. Thereat, the PDEA officers searched Otuwa but found nothing. Thereafter, Otuwa was

⁷ *Rollo*, pp. 32-33.

detained at the PDEA headquarters in Quezon City. The PDEA officers asked Otuwa if he wanted to be subjected to a drug test. Otuwa told them that he would be willing if the test will be conducted by an agency other than the PDEA. Otuwa later found out that the PDEA officers ransacked his house and took his money and other personal belongings.⁸

On July 17, 2014,⁹ the RTC found Otuwa guilty of the crimes charged. The RTC held that the prosecution was able to establish all the elements of the offenses and that there was a “*tight and almost perfect chain established by the Prosecution.*”¹⁰ The RTC did not discuss the lack of the required witnesses under Section 21 of Republic Act (RA) No. 9165, thus:

WHEREFORE, the Court renders judgment as follows:

1. In Criminal Case No. 612-2009 the court finds **SUNNY HOP OTUWA GUILTY** beyond reasonable doubt of Violation of Section 5, RA 9165 and hereby sentences him to suffer the penalty of **life imprisonment** and to **pay a fine of ₱500,000.00 plus costs**, and to suffer the accessory penalties under Section 35 thereof;

2. In Criminal Case No. 613-2009 the court finds **SUNNY HOP OTUWA GUILTY** beyond reasonable doubt of Violation of Section 5, RA 9165 and hereby sentences him to suffer the penalty of **life imprisonment** and to **pay a fine of ₱500,000.00 plus costs**, and to suffer the accessory penalties under Section 35 thereof; and

3. In Criminal Case No. 614-2009 the court finds **SUNNY HOP OTUWA GUILTY** beyond reasonable doubt of Violation of Section 12, RA 9165 and hereby sentences him to suffer the penalty of imprisonment ranging from **six (6) months and one (1) day to two (2) years** and to **pay the fine of ₱10,000.00 plus costs**, and to suffer the accessory penalties under Section 35 thereof.

The accused being under detention shall be credited [*sic*] in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Article 29 of the Revised Penal Code, as amended.

The object evidence consisting of two (2) plastic sachets of heroin, five (5) plastic sachets of methamphetamine hydrochloride, aluminum tin foils used as drug paraphernalia are forfeited in favor of the government and to be disposed of [*sic*] in accordance with law.

SO DECIDED.¹¹

Aggrieved, Otuwa elevated the case to the CA. On November 9, 2016,¹² the CA affirmed the RTC’s findings and declared that Otuwa “*has*

⁸ *Id.* at 13-14.

⁹ Records, pp. 591-602.

¹⁰ *Id.* at 601.

¹¹ *Id.* at 602.

¹² *Supra* note 1.

the burden of proof to overcome the presumption that the police officers handled the seized drugs with regularity."¹³ Hence, this petition.¹⁴ Otuwa argues that the prosecution failed to establish the integrity of the chain of custody. Moreover, the CA and the RTC erred in giving credence to the testimony of the prosecution witnesses and in upholding the presumption of regularity in favor of the PDEA officers.

RULING

We acquit.

In illegal sale of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.¹⁵ Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.¹⁶ The prosecution must satisfactorily establish the movement and custody of the seized drugs through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized items by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the items by the forensic chemist to the court.¹⁷ The same links in the chain of custody must be established in the prosecution for the offense of illegal possession of drug paraphernalia.¹⁸ Here, the records reveal a broken chain of custody.

Notably, the alleged crimes happened before RA No. 10640¹⁹ amended RA No. 9165. Thus, the original provisions of Section 21 and its Implementing Rules and Regulations (IRR) shall apply, to wit:

[Section 21, paragraph 1, Article II of RA No. 9165]

(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

¹³ *Rollo*, p. 50.

¹⁴ *Id.* at 10-29.

¹⁵ *People v. Partoza*, 605 Phil. 883, 891 (2009).

¹⁶ *People v. Ismael*, 806 Phil. 21, 31 (2017).

¹⁷ *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

¹⁸ *People v. Taboy*, 834 Phil. 73, 87 (2018).

¹⁹ RA No. 10640 took effect on July 23, 2014. See OCA Circular No. 77-2015 dated April 23, 2015. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

be required to sign the copies of the inventory and be given a copy thereof. (Emphases supplied.)

[Section 21(a), Article II of the IRR of RA No. 9165]

(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.** (Emphases supplied.)

In earlier cases, this Court ruled that the deviation from the standard procedure in Section 21 dismally compromises the evidence, unless (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.²⁰ Later, we emphasized the importance of the presence of the three insulating witnesses during the physical inventory and the photograph of the seized items.²¹ In *People v. Lim*,²² it was explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

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. Umpiang*, 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 non-compliance. 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,

²⁰ *People v. De la Cruz*, 591 Phil. 259, 271 (2008).

²¹ *People v. Rodriguez*, G.R. No. 233535, July 1, 2019.

²² G.R. No. 231989, September 4, 2018.

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.²³ (Emphasis and underscoring in the original.)

Here, the absence of the required insulating witnesses puts serious doubt as to the integrity of the chain of custody. There was no representative from the Department of Justice (DOJ) and the media during the inventory and photograph of the seized items. Admittedly, only the *barangay* officials witnessed the inventory. Worse, there was no attempt on the part of the buy-bust team to comply with the law and its implementing rules. The operatives likewise failed to provide any justification showing that the integrity of the evidence had all along been preserved. To be sure, the prosecution witnesses merely explained that “[w]e asked also for the presence of the media, the DOJ, but with the effort of the team [sic], the media and DOJ were not around. The Barangay Chairman made a certification during the inventory that the presence of the media and the DOJ is not available [sic].”²⁴ However, this is unacceptable. The police officers did not describe the precautions taken to ensure that there had been no change in the condition of the seized items and no opportunity for someone not in the chain to have possession of the same. In *People v. Caray*,²⁵ we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule. Similarly, in *Matabilas v. People*,²⁶ sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance. Indeed, the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.²⁷ The utter disregard of the required procedures created a huge gap in the chain of custody.

At any rate, the Certification²⁸ from the *barangay* chairman stating that “[t]here was no available DOJ and Media representative located despite the effort of the PDEA operatives and Barangay Officials” deserves scant consideration. IO1 Octaviano, Jr. admitted during his cross-examination that the certification was prepared even before the buy-bust took place, thus:

²³ *Id.*, citing *People v. Ramos*, 826 Phil. 981, 996-997 (2018).

²⁴ TSN, June 1, 2010, p. 45.

²⁵ G.R. No. 245391, September 11, 2019.

²⁶ G.R. No. 243615, November 11, 2019.

²⁷ *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit*, G.R. No. 232381, August 1, 2018.

²⁸ Records, p. 22.

Q: Mr. Witness, that Exhibit I-1²⁹ that you just showed us signed by the Brgy. Chairman, that was already prepared by your office before this buy[-]bust operation, is that correct?

A: This one, sir?

Q: That was already prepared by your office even before the buy[-]bust operation was conducted?

A: There is no indication of the date. Maybe during the coordination with the police station this was prepared [*sic*].

Q: In other words, what I am asking you is that, that [*sic*] was prepared by your office even before the buy[-]bust operation?

A: Yes, sir.

Q: That is standard operating procedure?

A: Yes, sir.³⁰

The records also show a procedural lapse in the transport of the seized items to the forensic laboratory which is the third link of the chain of custody. IO1 Octaviano, Jr. was both the apprehending and investigating officer, as he himself signed as "Inventory Officer" in the Inventory of Seized Evidence.³¹ IO1 Octaviano, Jr. attested that he kept the seized items until he personally turned it over to the PDEA Laboratory Service for examination. Nevertheless, the seized items were transported from a considerable distance from the *barangay* hall of West Bajac-Bajac, Olongapo City to the PDEA National Headquarters at Quezon City. Based on the testimony of IO1 Octaviano, Jr., the buy-bust team travelled for three hours and thirty minutes to get back to the PDEA headquarters.³² Yet, the prosecution did not substantiate the precautions made to guarantee the integrity of the seized items during such period. This gives rise to a reasonable doubt whether the chain of custody was preserved while the items were in IO1 Octaviano, Jr.'s custody. Verily, keeping the seized drugs and paraphernalia, without safeguards, rendered them extremely vulnerable to switching or planting.

Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be

²⁹ *Id.* at 458.

³⁰ TSN, June 1, 2010, pp. 55-56.

³¹ Records, pp. 20-21.

³² TSN, June 1, 2010, pp. 47-49.

regarded as binding truth.³³ Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.³⁴

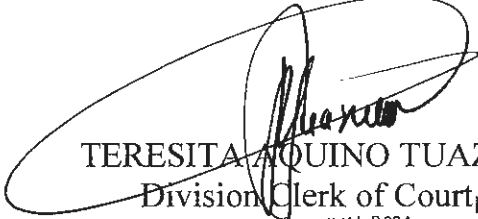
We reiterate that the provisions of Section 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Otuwa must be acquitted of the charges against him given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the petition is **GRANTED**. The Court of Appeals' Decision dated November 9, 2016 in CA-G.R. CR-HC No. 07047 is **REVERSED** and **SET ASIDE**. Sunny Hop Otuwa is hereby **ACQUITTED** in Criminal Case Nos. 612-2009, 613-2009, and 614-2009, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to the Court the action taken within five days from receipt of this Resolution.

SO ORDERED. (Rosario, J., designated additional Member per Special Order No. 2797 dated November 5, 2020.)"

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court 110473
25 JUN 2021

³³ *People v. Cañete*, 433 Phil. 781, 794 (2002); and *Mallillin v. People*, 576 Phil. 576, 593(2008).

³⁴ *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

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