



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated November 18, 2020 which reads as follows:*

**“G.R. No. 233196 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. ABUBAKAR LOMIGIS y GARAY, accused-appellant)** – Before this Court is an Appeal filed by Abubakar Lomigis y Gara (accused-appellant) from the Decision<sup>1</sup> dated May 5, 2017 of the Court of Appeals (CA) Cagayan De Oro City Station in CA-G.R. CR-HC No. 01464-MIN. The assailed Decision dismissed the appeal and affirmed the Decision<sup>2</sup> dated August 28, 2015 of the Regional Trial Court (RTC) of Butuan City, Branch 4, which found accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act, as amended.

This case stemmed from an Information dated March 30, 2011, filed before the RTC charging accused-appellant of the crime of Illegal Sale of Dangerous Drugs, allegedly committed as follows:

That at more or less 11:25 o'clock in the morning of March 15, 2011 at Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver one (1) sachet of methamphetamine hydrochloride, otherwise known as shabu weighing of zero point zero one six zero (0.0160) gram, a dangerous drug to a poseur buyer for a consideration of five hundred (P500.00) pesos.

CONTRARY TO LAW.<sup>3</sup>

<sup>1</sup> *Rollo*, pp. 3-12; penned by Associate Justice Edgardo A. Camello with Associate Justices Rafael Antonio M. Santos and Ruben Reynaldo G. Roxas, concurring.

<sup>2</sup> *CA rollo*, pp. 47-57; penned by Judge Godofredo B. Abul, Jr.

<sup>3</sup> *Id.* at 47.



Accused-appellant was arraigned on July 25, 2011 and assisted by counsel, entered a plea of not guilty.<sup>4</sup> After pre-trial, trial proceeded.

The prosecution presented as witnesses: Philippine Drug Enforcement Agency (PDEA) agents: Intelligence Officer 2 Cheryl Legaspi (Legaspi) and Intelligence Officer 1 Myrian A. Balbada (Balbada).<sup>5</sup>

The testimonies of the prosecution witnesses tend to establish that at around 7:00 a.m. of March 15, 2011, a confidential informant (CI) went to the PDEA Regional Office XIII, Libertad, Butuan City, and reported to Legaspi that herein accused-appellant was engaged in sale of illegal drugs. Legaspi relayed the information to her superior Director Joel B. Plaza (Director Plaza), who then directed the PDEA Intelligence team to conduct a surveillance operation in order to verify the information.<sup>6</sup>

After confirmation, Director Plaza convened a team composed of Legaspi, Balbada, and other PDEA agents for the conduct of a buy-bust operation. Legaspi was designated as the poseur-buyer, Balbada as the arresting officer, and the rest of the team as back-up. Legaspi marked the ₱500 bill with "LEE" and recorded the same in their office blotter.<sup>7</sup>

At around 10:30 a.m. of March 15, 2011, the buy-bust team accompanied by the CI proceeded to D'Arthur Restaurant and stayed there for around 10-15 minutes. Thereafter, the team proceeded to Purok 8, Barangay Ong Yiu. Legaspi and the CI went to a waiting shed in the area where the CI arranged to meet the accused-appellant, were the rest of the team are at their assigned places nearby.<sup>8</sup>

At around 11:25 a.m., Legaspi and the CI were approached by accused-appellant. The CI introduced Legaspi to accused-appellant as the buyer of *shabu*. Accused-appellant drew from his right pocket a plastic sachet and handed the same to Legaspi who, in turn, gave accused-appellant the marked ₱500 bill. Legaspi then discreetly performed the pre-arranged signal. Balbada and the rest of the team then rushed towards the scene. Accused-appellant was arrested and

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<sup>4</sup> Id. at 48.

<sup>5</sup> Id. at 48-49.

<sup>6</sup> *Rollo*, p. 4, *CA rollo*, p. 48.

<sup>7</sup> Id.

<sup>8</sup> *CA rollo*, p. 48.

informed of his violation and of his constitutional rights. Legaspi marked the plastic sachet as “LEE-1” in the presence of spectators, a photographer who took the picture of the marking of the sachet, and the other members of the buy-bust team. After considering the crowd, the team left the scene and proceeded back to their office. Legaspi took custody of the marked sachet.<sup>9</sup>

At the PDEA Regional Office, Legaspi and the other agents took an inventory and a photograph of the seized items in the presence of accused-appellant, Department of Justice (DOJ) representative Ronaldo Bedrijo, and media representative Larry Diez. The agents submit that they tried to secure the presence of a barangay official but no one was available at that time.<sup>10</sup>

On the same day, Legaspi sent the seized plastic sachet along with the request for its examination to the crime laboratory. Forensic Chemist Police Superintendent Noemi Pingol Austero examined the specimen and found it positive for methamphetamine hydrochloride.<sup>11</sup>

Accused-appellant testified in his defense. In the main, accused-appellant denied the allegations against him. He narrated that on March 15, 2011, at around 11:00 a.m., he was in his *trisikad* awaiting passengers, when suddenly a white vehicle stopped in front of him. Two men wearing bonnets disembarked, approached him, brought him to a waiting shed, and handcuffed him. Accused-appellant was then asked to get inside the vehicle. While on the way, one of the men inserted a cellphone in his pocket. He was then brought to the PDEA Office at Libertad.<sup>12</sup>

On August 28, 2015, the RTC rendered its Decision<sup>13</sup> finding accused-appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Court finds accused Abubakar Lomigis y Garay guilty beyond reasonable doubt of violation of Section 5 (selling) of Article II of Republic Act 9165 (Comprehensive Dangerous Drugs Act of 2002), and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of five hundred thousand (P500,000.00) pesos without subsidiary imprisonment in case of insolvency.

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<sup>9</sup> *Rollo*, pp. 4-5, *CA rollo*, pp. 48-50.

<sup>10</sup> *Id.* at 5; *id.* at 50.

<sup>11</sup> *Id.*; *id.* at 50-51.

<sup>12</sup> *CA rollo*, p. 52.

<sup>13</sup> *Id.* at 47-57.

Accused shall serve his sentence at the Davao Prison and Penal farm at Braullo E. Dujali, Davao del Norte.

He shall be entitled to the benefits of his preventive imprisonment conformably with Article 29 of the Revised Penal Code, as amended.

The sachet of shabu is declared forfeited in favor of the government to be dealt with as the law provides.

SO ORDERED.<sup>14</sup>

Accused-appellant appealed to the CA, which rendered the herein assailed Decision,<sup>15</sup> affirming accused-appellant's conviction, viz.:

FOR THESE REASONS, the Decision in Criminal Case No. 14838 appealed from is AFFIRMED *in toto*.

SO ORDERED.<sup>16</sup>

Thus this appeal.

The parties manifested that they will no longer file their respective supplemental briefs as they have already exhaustively discussed the issues in their briefs before the CA.<sup>17</sup>

Accused-appellant argues that the evidence presented by the prosecution failed to establish his guilt beyond reasonable doubt. He claims that the conflicting testimonies of the PDEA agents support his allegation that no buy-bust operation took place. Accused-appellant also submits that there are blatant gaps in the chain of custody of the seized plastic sachet; as a result, he must be acquitted from the crime charged.<sup>18</sup>

The appeal is **meritorious**.

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<sup>14</sup> Id. at 57.

<sup>15</sup> *Rollo*, pp. 3-12.

<sup>16</sup> Id. at 11.

<sup>17</sup> Id. at 20-24, 29-32.

<sup>18</sup> Id. at 37-44.

In order to sustain conviction for the sale of illegal drugs under Section 5 of the Comprehensive Dangerous Drugs Act, the following elements must be established beyond reasonable doubt: (1) proof that the transaction or sale took place, and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.<sup>19</sup>

The element of *corpus delicti* is established by showing compliance with the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia as set forth under Section 21 of R.A. No. 9165, *viz.*:

**Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

**(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items 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 and underscoring supplied)

In the same vein, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides for the proper procedure to be observed in accordance with the foregoing provision and the effect of non-compliance therewith, *viz.*:

(a) The apprehending office/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:

<sup>19</sup> *People v. Que*, 824 Phil. 882, 893 (2018), citing *People v. Morales*, 630 Phil. 215, 236 (2010)

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;

In the case at bar, accused-appellant was arrested in *flagrante delicto* of selling *shabu* in the quantity of 0.0160 gram, during a buy-bust operation. The plastic sachet seized was marked at the scene, in the presence of accused-appellant, the members of the buy-bust team, and spectators in the area. The act of marking was photographed. After assessing the situation at the scene, the team decided to bring accused-appellant and continue the processing of the seized plastic sachet to the PDEA Regional Office. Therein, the plastic sachet was inventoried and photographed in the presence of accused-appellant, and representatives from the DOJ and the media.<sup>20</sup>

Clearly, the apprehending officers committed procedural lapses that justifies the accused-appellant's acquittal. In particular, there was no third person present at the time of confiscation and seizure of drugs.<sup>21</sup> For which, no justification was offered by the PDEA agents; neither did they state at the very least, whether the presence of the required representatives were sought but could not be obtained. At the PDEA Regional Office, the seized item was inventoried and photographed without an elected public official present. The prosecution merely rationalized that none was available at that point in time, without establishing the details of an earnest effort to coordinate with and secure the presence of the required witnesses. To recall, the buy-bust operation was conducted early morning of March 15, 2011.<sup>22</sup> Prior to which, the PDEA Intelligence team was able to conduct surveillance operations. As presented by the attendant circumstances there was no obstacle for the team to secure the presence of the required witnesses. To be sure, it is incumbent upon the prosecution to allege and prove that the situation excuses compliance with the prescribed procedure; it is not for the courts to assume or supply the justification.

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<sup>20</sup> *Rollo*, pp. 4-5, *CA rollo*, pp. 48-50.

<sup>21</sup> *Id.*

<sup>22</sup> See *People v. Lim*, G.R. No. 231989, September 4, 2018.

In the case of *People v. Que*,<sup>23</sup> the Court emphasized that “[t]he presence of third persons is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items”<sup>24</sup> in order to ensure the possibility of “switching, planting, or contamination.”<sup>25</sup> Herein, the seizure and marking was unwitnessed; as well, the inventory and taking of photographs were made without an elective public official present. Notable, too, the photograph taken merely shows accused-appellant beside Legaspi who was writing something down, nowhere in the photo can the plastic sachet be seen. Likewise, there was no photograph of the seized item as it was being marked at the scene.<sup>26</sup> As the representatives from the DOJ and the media were present only at the PDEA office, there is no assurance that the item that was marked at the crime scene and inventoried and photographed at the PDEA Office was the same item subject of the sale.

The importance of observing the chain of custody requirements in this case is amplified by the miniscule amount of *shabu* obtained from accused-appellant. This renders the circumstances more susceptible to substitution, planting or contamination, the very evils R.A. No. 9165 seeks to prevent.

The miniscule amount of dangerous drugs seized is not *per se* a badge of innocence on the part of accused-appellant. However, it demands upon the Court to exert extreme caution in determining his guilt, considering that the possibility of switching, planting or contamination is likely. Simply, when a miniscule amount of dangerous drugs is involved, the Court must be rigorous in ensuring that Section 21 of R.A. No. 9165 is strictly complied with.<sup>27</sup>

Notably, at the scene of the crime, accused-appellant was frisked but nothing was retrieved from him. However, when accused-appellant was brought to the PDEA office and bodily searched, a Blackberry phone and the marked ₱500 bill were found in his possession and seized.<sup>28</sup> To be sure, this lends doubts whether the accused-appellant’s allegation that these items were merely inserted in his pocket while en route to the PDEA Regional Office. Taken together with the aforementioned irregularities, this provides ground for reasonable doubt for which a judgment of acquittal must ensue.

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<sup>23</sup> Supra note 19.

<sup>24</sup> Id. at 911.

<sup>25</sup> Id., citing *People v. Mendoza*, 736 Phil. 749, 771 (2014).

<sup>26</sup> CA rollo, p. 44.

<sup>27</sup> Id., citing *Lescano v. People*, 778 Phil. 460, 470 (2016).

<sup>28</sup> CA rollo, pp. 40-41.

In the same vein, in view of non-compliance with the procedure in the handling of the seized drugs, the customary presumption of regularity in the performance of official duties would not suffice. The presumption applies only when the officers have shown compliance with the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise or be relied upon.<sup>29</sup>

Finally, while the accused-appellant has only offered the defense of “denial and frame-up,” still, the burden is upon the prosecution to establish the guilt of the accused beyond reasonable doubt. In doing so, it must rise on its own merits, without regard to the weakness of the defense.<sup>30</sup> Should the prosecution fail to discharge this burden, as in the case at bar, acquittal must follow.

**WHEREFORE**, in view of the foregoing, the appeal is **GRANTED**. The Decision dated May 5, 2017 of the Court of Appeals Cagayan de Oro City Station in CA-G.R. CR-HC No. 01464-MIN, which affirmed the Decision dated August 28, 2015 of the Regional Trial Court of Butuan City, Branch 4, in Criminal Case No. 14838, is hereby **REVERSED** and **SET ASIDE**.

Accused-appellant Abubakar Lomigis y Garay is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to: (a) cause the immediate release of accused-appellant Lomigis, unless he is being lawfully held for another cause; and (b) inform this Court of the date of his release, or the reason for his continued confinement as the case may be, within five (5) days from notice.

Copies of this Resolution must be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

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<sup>29</sup> Id., citing *People v. Kamad*, 624 Phil 289, 311 (2010).

<sup>30</sup> *Daayata v. People*, 807 Phil. 102, 118 (2017).



**SO ORDERED.”** *Carandang, J.*, on official leave.

**By authority of the Court:**

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

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**106**

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