



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **11 November 2020** which reads as follows:*

“G.R. No. 247828 (People of the Philippines v. Ricardo Gaitan y Contreras a.k.a. ‘Ricky Bombom’ and Dante Suazo y Villapaz a.k.a. ‘Dan’). – The Court **NOTES** the manifestation (in lieu of supplemental brief) dated 17 September 2020 of the Office of the Solicitor General in compliance with the Resolution dated 8 June 2020, dispensing with the filing of its supplemental brief to avoid a repetition of arguments.

Assailed in this ordinary appeal¹ is the Decision² dated July 27, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09050, which affirmed the Decision³ dated December 14, 2016 of the Regional Trial Court of Makati City, Branch 135 (RTC) in Criminal Case Nos. R-MKT-16-00868-CR, R-MKT-16-00869-CR, and R-MKT-16-00870-CR finding accused-appellants Ricardo Gaitan y Contreras a.k.a. ‘Ricky Bombom’ (Ricardo) and Dante Suazo y Villapaz a.k.a. ‘Dan’ (Dante, collectively; accused-appellants) guilty beyond reasonable doubt of violating Sections 5 and 11, 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 three (3) separate Informations⁵ filed before the RTC accusing Ricardo and Dante with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, respectively, Article II of RA 9165, the accusatory portions of which read:

Criminal Case No. R-MKT-16-00868-CR⁶

¹ See Compliance and Notice of Appeal dated August 14, 2018; *rollo*, pp. 16-18.

² *Id.* at 3-15. Penned by Associate Justice Samuel H. Gaerlan (now a member of the Court) with Associate Justices Celia C. Librea-Leagogo and Marie Christine Azcarraga-Jacob, concurring.

³ *CA rollo*, pp. 45-54. Penned by Presiding Judge Josephine M. Advento.

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 See records, pp. 2-13.

⁶ See *id.* at 3-4.

On June 18, 2016, in the City of Makati, the Philippines, accused (Ricardo and Dante), conspiring and confederating with each other, not being lawfully authorized by law, and without the corresponding license, did then and there willfully, unlawfully and feloniously sell, give away, distribute and deliver to another methamphetamine hydrochloride (*shabu*) weighing zero point one forty (0.140) gram, which is a dangerous drug, in consideration of five hundred pesos (Php500) in violation of the aforesaid law.

CONTRARY TO LAW.

Criminal Case No. R-MKT-16-00869-CR⁷

On June 18, 2016, in the City of Makati, the Philippines, accused (Ricardo), not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding prescription, did then and there willfully, unlawfully, and feloniously have in his possession, direct custody and control a total of zero point two sixty-five (0.265) gram of white crystalline substance containing methamphetamine hydrochloride (*shabu*), which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.

Criminal Case No. R-MKT-16-00870-CR⁸

On June 18, 2016, in the City of Makati, the Philippines, accused (Dante), not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding prescription, did then and there willfully, unlawfully, and feloniously have in his possession, direct custody and control one nineteen (0.119) gram of white crystalline substance containing methamphetamine hydrochloride (*shabu*), which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.

The prosecution alleged that on June 17, 2016, acting on an information received from a confidential informant, operatives of the Station Anti-Illegal Drugs – Special Operation Task Group (SAID-SOTG) planned the conduct of a buy-bust operation against Ricardo and Dante, who were allegedly peddling illegal drugs at H. Santos Street, Barangay Tejeros, Makati City. On the evening of the next day, the confidential informant, together with the poseur-buyer, Police Officer 2 Leonard Serbial⁹ (PO2 Serbial), went to the target area, where they encountered Dante. The confidential informant introduced Dante to PO2 Serbial

⁷ See id. at 7-8.

⁸ See id. at 11-12.

⁹ “Sebial” in some parts of the records.

and told him that the latter wanted to buy *shabu*. Dante then led them to a side stretch along the area, where they were introduced to Ricardo, who gave PO2 Serbial one (1) plastic sachet containing 0.140 gram of white crystalline substance in exchange for the amount of ₱500.00. After the transaction was consummated, PO2 Serbial casually executed the pre-arranged signal, prompting back-up operatives to rush into the area and arrest Ricardo and Dante. When the suspects were frisked after their arrest, police officers were able to recover two (2) plastic sachets containing a total of 0.265 gram of white crystalline substance from the possession of Ricardo, while one (1) plastic sachet containing 0.119 gram of the same substance was found inside one of Dante's pockets. Since a commotion was brewing at the place of arrest, the officers immediately brought Ricardo and Dante back to the SAID-SOTG office, where the seized items were marked, inventoried,¹⁰ and photographed¹¹ in their presence, as well as that of Teresita Brillante (Brillante), the barangay captain of Barangay Tejeros. The seized items were then brought to the Southern Police District Crime Laboratory¹² where, after examination,¹³ their contents tested positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug.¹⁴

In defense, accused-appellants denied the charges against them. Ricardo claimed that, at the time of the alleged incident, he was sleeping inside a tricycle, when several armed men woke him up and conducted a search on his person. Despite failing to find any kind of contraband, he was still arrested and brought to the SAID-SOTG office, where police officers falsely made it appear that dangerous drugs had been recovered from him. Meanwhile, Dante asserted that, at the time of the alleged incident, he was simply walking on the sidewalk, on his way to buy a bottle of water for his wife, when he was suddenly arrested without cause by armed persons, and brought to the police headquarters on the dubious pretext that he was selling illegal drugs.¹⁵

In a Decision¹⁶ dated December 14, 2016, the RTC found accused-appellants **guilty** beyond reasonable doubt of the crimes charged, and accordingly, imposed the following penalties: (a) in Criminal Case No. R-MKT-16-00868-CR for the crime of Illegal Sale of Dangerous Drugs, accused-appellants were each sentenced to suffer the penalty of life imprisonment and to each pay a fine in the amount of ₱500,000.00; (b) in Criminal Case No. R-MKT-16-00869-CR, for the crime of Illegal Possession of Dangerous Drugs, Ricardo was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum, and to pay a fine in the amount of ₱300,000.00; and (c) in Criminal Case No. R-MKT-16-00870-CR, for the crime of Illegal Possession of Dangerous Drugs, Dante was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum, and to pay a fine in the amount of ₱300,000.00.¹⁷ The trial court ruled that the prosecution was able to successfully

¹⁰ See Inventory Receipt dated June 18, 2016; records, p. 24.

¹¹ Id. at 28.

¹² See Request for Laboratory Examination dated June 18, 2016; id. at 21.

¹³ See Chemistry Report No. D-655-16 dated June 18, 2016; id. at 23.

¹⁴ See *rollo*, pp. 4-7.

¹⁵ See *rollo*, pp. 7-8.

¹⁶ CA *rollo*, pp. 45-54.

¹⁷ Id. at 54.

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prove that, during a legitimate buy-bust operation, accused-appellants confederated with each other to sell a sachet of *shabu* to PO2 Serbial, and that upon lawful search after their arrest, it was found that Ricardo was in unlawful possession of a total of 0.265 gram of *shabu*, while Dante was in unlawful possession of 0.119 gram of *shabu*. The RTC also held that the *corpus delicti* had been properly established, in accordance with the chain of custody rule. Meanwhile, it found accused-appellants' defenses of denial and frame-up untenable for lack of evidence.¹⁸

Aggrieved, accused-appellants appealed¹⁹ to the CA, arguing, among others, that they should be acquitted on account of the failure of the arresting officers to comply with the chain of custody rule, particularly for not securing a representative from either the National Prosecution Service or the media to witness the inventory of the alleged drugs.²⁰

In a Decision²¹ dated July 27, 2018, the CA **affirmed** the conviction of accused-appellants.²² Concurring with the findings of the RTC, it found that there was substantial compliance with the chain of custody rule, since the integrity and evidentiary value of the confiscated items had been properly preserved.²³

Hence, this appeal seeking that the conviction of accused-appellants be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,²⁴ 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.²⁵ 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.²⁶

¹⁸ See *id.* at 51-54.

¹⁹ See Notice of Appeal dated December 20, 2016; CA *rollo*, pp. 12-13.

²⁰ See Brief for the Accused-Appellants dated July 3, 2017; CA *rollo*, pp. 26-43.

²¹ *Id.* at 3-15.

²² *Id.* at 15.

²³ See *id.* at 13-15.

²⁴ 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; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

²⁵ 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).

²⁶ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

To establish the identity of the dangerous drug 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.²⁷ 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 ‘marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.’²⁸ 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.²⁹

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 10640,³⁰ a representative from the media **and** the Department of Justice (DOJ), and any elected public official;³¹ or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) **or** the media.³² 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.’³³

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.’³⁴ This is because the law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.³⁵

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be

²⁷ See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, supra note 24; *People v. Sanchez*, supra note 24; *People v. Magsano*, supra note 24; *People v. Manansala*, supra note 24; *People v. Miranda*, supra note 24; and *People v. Mamangon*, supra note 24. See also *People v. Viterbo*, supra note 25.

²⁸ *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).

²⁹ See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

³⁰ 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,’” approved on July 15, 2014. As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640, which was approved on July 15, 2014, states that it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” Verily, a copy of the law was published on July 23, 2014 in the respective issues of “The Philippine Star” (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and the “Manila Bulletin” (Vol. 499, No. 23; World News section, p. 6); hence, **RA 10640 became effective on August 7, 2014.**

³¹ Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

³² Section 21, Article II of RA 9165, as amended by RA 10640.

³³ See *People v. Miranda*, supra note 24. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

³⁴ 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 26, at 1038.

³⁵ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

possible.³⁶ 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 are properly preserved.³⁷ The foregoing is based on the saving clause found in Section 21 (a),³⁸ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.³⁹ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,⁴⁰ and that 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.⁴¹

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.⁴² Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.⁴³ 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.⁴⁴

Notably, the Court, in *People v. Miranda*,⁴⁵ 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.”⁴⁶

In this case, there was a deviation from the witness requirement, as the conduct of inventory and photography was not witnessed by a representative from

³⁶ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³⁷ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁸ 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.**”

³⁹ 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.**”

⁴⁰ *People v. Almorfe*, supra note 37.

⁴¹ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

⁴² See *People v. Manansala*, supra note 24.

⁴³ See *People v. Gamboa*, supra note 26, citing *People v. Umipang*, supra note 26, at 1053.

⁴⁴ See *People v. Crispo*, supra note 24.

⁴⁵ Supra note 24.

⁴⁶ See *id.*

either the NPS or the media. This may be easily gleaned from the Inventory Receipt,⁴⁷ which only confirms the presence of the arresting officers, PO2 Serbial and PO2 Joemar Cahanding (PO2 Cahanding), as well as an elected public official, *i.e.*, Brillante. Furthermore, such finding is also supported by the testimony of PO2 Serbial on direct and cross-examination, and the testimony of PO2 Cahanding on cross-examination, to wit:

Direct Examination of PO2 Serbial

[Fiscal Lily Joy A. Labayo-Patria]: His name and signature was marked as Exh. "O-2". Who was present when the inventory was conducted?

[PO2 Serbial]: PO2 Cahanding and Brillante, ma'am.⁴⁸

Cross-Examination of PO2 Serbial

[Atty. Ruby Ryza G. Abuan.]: And during the inventory, Mr. Witness, aside from Brgy. Capt. Brillante, who else were present?

[PO2 Serbial]: My co-police officer, my back up, ma'am.

Q: Who else, Mr. Witness?

A: And the two (2) subject, ma'am.⁴⁹

Cross Examination of PO2 Cahanding

[Atty. Jose Domingo Aizpuru, Jr.]: And who witnessed the inventory, Mr. Witness?

[PO2 Cahanding]: It was Brgy. Captain Brillante, sir.

Q: So you just called her to go to SAID?

A: Yes, sir.⁵⁰

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 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 acknowledge**, much less justify, the absence of a representative from either the National Prosecution Service or the media as a required witness. 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-appellants were compromised, which consequently warrants their acquittal.

⁴⁷ See records, p. 24.

⁴⁸ TSN, October 24, 2016, p. 16.

⁴⁹ TSN, October 26, 2016, pp. 38-39.

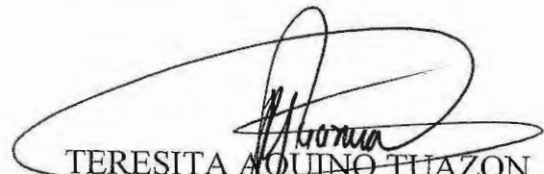
⁵⁰ TSN, September 7, 2016, p. 36.

WHEREFORE, the appeal is **GRANTED**. The Decision⁵¹ dated July 27, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09050 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Ricardo Gaitan y Contreras a.k.a. 'Ricky Bombom' and Dante Suazo y Villapaz a.k.a. 'Dan' are **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to: (a) cause accused-appellants' immediate release, unless they are being lawfully held in custody for any other reason; and (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. (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
02 DEC 2020

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DANTE SUAZO y VILLAPAZ @ "DAN" (x)
Accused-Appellants
c/o The Director
Bureau of Corrections
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THE DIRECTOR (x)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 135
Makati City
(Crim. Case Nos. R-MKT-16-00868-CR,
R-MKT-16-00869-CR & R-MKT-16-00870)

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⁵¹ Id. at 3-15.