



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **01 March 2021** which reads as follows:*

“G.R. No. 247524 (People of the Philippines v. Rudy Ortega, Jr. y Geograpia alias “Molmol”). – The Court **NOTES:** (1) the separate letters of CS/Supt. Bonifacio Lambiquit, Superintendent, New Bilibid Prison-South, Muntinlupa City dated September 8, 2019, and of C/Supt. Marites D. Luceño, Chief, Inmates’ Documents and Processing Division, Bureau of Corrections, Muntinlupa City dated September 9, 2019, both confirming the confinement of Rudy Ortega, Jr. y Geograpia alias “Molmol” (*accused-appellant*) at the New Bilibid Prison, Muntinlupa City since May 3, 2018; (2) the manifestation (to be excused from filing supplemental brief) dated September 25, 2019 of the Office of the Solicitor General (*OSG*), stating that the facts and issues of the instant case have been sufficiently discussed in the Appellees’ Brief dated September 18, 2018 filed before the Court of Appeals (*CA*), and dispensing with the filing of supplemental brief to expedite the resolution of the case; and (3) the manifestation in lieu of supplemental brief dated October 1, 2019 of counsel for accused-appellant, adopting the accused-appellant’s brief filed before the *CA* as accused-appellant’s supplemental brief.

After a careful review of the records, the Court resolves to **GRANT** the appeal. The February 22, 2019 Decision¹ of the *CA* in *CA G.R. CEB CR-HC No. 02780*, which affirmed *in toto* the November 6, 2017 Decision² of the Regional Trial Court of Bago City, Branch 62 (*RTC*), in Criminal Case Nos. 4151 and 4152, is **REVERSED** and **SET ASIDE**.

¹ *Rollo*, pp. 5-23; penned by Associate Justice Edgardo L. Delos Santos (now a Member of this Court) with Associate Justices Marilyn B. Lagura-Yap and Emily R. Alifio-Geluz, concurring.

² *CA rollo*, pp. 45-53; penned by Judge Frances V. Guanzon.

Antecedents

In two (2) separate Informations, accused-appellant was charged before the RTC as follows:

CRIMINAL CASE NO. 4151

That on or about the 23rd day of August 2017, in the Municipality of Valladolid, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, trade, administer, dispense, deliver, give away, distribute or dispatch any dangerous drug, or act as a broker in any transaction thereof, did then and there wilfully, unlawfully and knowingly sell, trade, deliver, or act as a broker thereof, and give away to a police poseur[-]buyer one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride (*shabu*), a dangerous drug, marked as "RGO", weighing 0.006 gram, in exchange of buy-bust marked moneys of two (2) ₱100-bills with serial numbers DP01175 and ZD602669, without any license or permit or authority, in violation of the aforementioned law.

ACT CONTRARY TO LAW.

CRIMINAL CASE NO. 4152

That on or about the 23rd day of August 2017, in the Municipality of Valladolid, Province of Negros Occidental, Philippines, and within jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to prepare, administer, or otherwise use any dangerous drug, did then and there wilfully, unlawfully, and knowingly have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride (*shabu*), a dangerous drug, marked as "RGO-1", weighing 0.019 gram, without any license or permit or authority of law.

*ACT CONTRARY TO LAW.*³

Accused-appellant pleaded "not guilty" to both charges. Trial thereafter ensued.⁴

Evidence for the Prosecution

Testimonies of prosecution witnesses Police Officer 1 Rommel Cometa (*PO1 Cometa*)⁵ and Police Officer 2 Mario Rey Frias (*PO2 Frias*)⁶ were

³ Id. at 45-46.

⁴ Id. at 46.

⁵ Also referred to as "PO2 Cometa" in some parts of the *rollo*.

⁶ Also referred to as "PO3 Frias" in some parts of the *rollos*

presented to narrate and prove accused-appellant's illegal sale and possession of dangerous drugs through the conduct of a legitimate buy-bust operation.⁷

Upon receiving a tip from a confidential informant (*CI*), Police Senior Inspector Junji Liba (*PSI Liba*) called the duty Alert Team on August 18, 2017 and directed them to conduct casing and surveillance at the fish port. The team proceeded to the area and learned that "Molmol's" name is Rudy Ortega.⁸

In the evening of the following day, August 19, 2017, the team conducted another casing and surveillance. They noticed that accused-appellant was transacting with drivers of fish carriers. *PSI Liba* directed the team to conduct a test-buy.⁹

The team conducted a test-buy on August 20, 2017, however, the same failed because accused-appellant was not in his house. Another test-buy was attempted on August 21, 2017, but the same also failed because accused-appellant was out of stock that time. The next day, when the *CI* learned that accused-appellant had restocked, the team was accordingly informed. *PSI Liba* immediately organized the team and planned a buy-bust operation against accused-appellant. *PO1 Cometa* was designated as poseur-buyer, while *PO2 Frias* was assigned as arresting officer. *PO1 Cometa* was given two (2) ₱100-bills as marked money. The team then proceeded to the fish port.¹⁰

In the early morning of August 23, 2017, accused-appellant approached *PO1 Cometa* and the *CI*. *PO1 Cometa* was introduced to accused-appellant and said he wanted to buy *shabu*. He handed the marked money to accused-appellant, who in turn handed over the sachet of *shabu*. *PO1 Cometa* then executed the pre-arranged signal and *PO2 Frias* approached them and arrested accused-appellant.¹¹

Upon arrival of two (2) barangay officials, *PO2 Frias* conducted a body search on accused-appellant and recovered the buy-bust money from accused-appellant's left pocket, and one (1) sachet of *shabu* and a lighter from the latter's right pocket. *PO1 Cometa* marked the sachet of *shabu* with "RGO" for

⁷ *Rollo*, p. 6.

⁸ *Id.* at 6-7.

⁹ *Id.* at 7.

¹⁰ *Id.*

¹¹ *Id.*

“Rudy Geograpia Ortega,” while PO2 Frias marked the other sachet of *shabu* and the lighter with “RGO-1” and “RGO-2,” respectively.¹²

The team proceeded to the police station to enter the incident in the blotter after the inventory and photographing. The chain of custody form and request for laboratory examination were likewise prepared. The seized items were then submitted to the Philippine National Police (*PNP*) Crime Laboratory for examination. Later, the examination yielded a positive result for the presence of methamphetamine hydrochloride.¹³

Evidence for the Defense

Accused-appellant averred that he was sitting at the seaside waiting for the fish vendors when a man whom he called “Sir Pancho” and a companion, whom he later knew as “Sir Frias,” passed by. He knew Sir Pancho as a police officer. The two entered the tennis court and after parking their motorcycle, they approached accused-appellant. The two then asked accused-appellant if he was “Molmol,” to which the latter answered yes. Accused-appellant was immediately handcuffed and brought inside the tennis court. The arresting officers waited for the barangay officials and, upon their arrival, showed accused-appellant the two (2) ₱100-bills and one sachet of *shabu*, which accused-appellant claimed to have been placed inside his pocket when he was handcuffed.¹⁴

Another witness, Reynold Serenio (*Serenio*), testified that he saw accused-appellant enter the basketball court. Accused-appellant was approached by two men who arrested him. Serenio saw accused-appellant was frisked and that PO1 Cometa took out a sachet of *shabu* from accused-appellant’s pocket.¹⁵

The RTC Ruling

The RTC rendered Judgment on November 6, 2017 finding accused-appellant guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs, the dispositive portion of which reads:

¹² Id. at 8.

¹³ Id.

¹⁴ Id. at 9

¹⁵ Id. at 10-11.

WHEREFORE, premises considered, this court hereby renders judgment as follows:

In Criminal Case No. 4151, **RUDY ORTEGA, JR. y GEOGRAPIA**, is **GUILTY** beyond reasonable doubt and he is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **FIVE HUNDRED THOUSAND (₱500,000.00) PESOS**;

In Criminal Case No. 4152, **RUDY ORTEGA, JR. y GEOGRAPIA**, is **GUILTY** beyond reasonable doubt and he is hereby sentenced to suffer an imprisonment of **TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS** and to pay the fine of **THREE HUNDRED THOUSAND (₱300,000.00) PESOS**.

Accused who is detained is entitled to the full credit of his preventive detention and he is ordered immediately committed to the National Penitentiary for service of sentence.

COSTS AGAINST THE ACCUSED.¹⁶

The trial court rejected accused-appellant's claim that the evidence against him was planted, ruling that defense of *alibi* and denial cannot prevail over the positive and categorical testimonies of the prosecution witnesses.¹⁷

The CA Ruling

On appeal, accused-appellant contended that: 1) the sale transaction was not sufficiently established considering that PO1 Cometa's testimony was uncorroborated and inconsistent; 2) the prosecution failed to establish the identity and integrity of the seized items; 3) SPO1 Garde¹⁸ should have been presented in court being the one who recorded the seized items in the inventory; and 4) the sachets of *shabu* were commingled as PO1 Cometa did not testify as to how he properly segregated the items.¹⁹

The Office of the Solicitor General (*OSG*), on the other hand, maintained that the totality of evidence for the prosecution, from the complete testimony of PO1 Cometa which was corroborated by PO2 Frias, to the corresponding documentation, sufficiently proves each link in the chain of custody of the sachets of *shabu* from accused-appellant up to the transmittal to the trial court.²⁰

¹⁶ CA rollo, pp. 52-53.

¹⁷ Rollo, p. 10.

¹⁸ Also referred to as "PO2 Garde" in some parts of the rollo.

¹⁹ Rollo, p. 11.

²⁰ Id. at 11-12.

Accordingly, the CA denied the appeal and affirmed *in toto* the RTC decision. It ruled that the prosecution adequately established the occurrence and consummation of the illegal sale transaction of dangerous drugs between accused-appellant and the poseur-buyer, PO1 Cometa.²¹ Accused-appellant's defense of denial and frame-up were overcome by the positive and established evidence of the prosecution on his criminal liability. Accused-appellant's defenses are unavailing considering that he was caught *in flagrante delicto* in a legitimate buy-bust operation.²²

The CA further opined that the testimonies of the police officers were consistent that the seized illegal drugs were marked immediately after seizure right at the place of arrest.²³ With the proper marking of the seized illegal drugs immediately after the arrest, the two (2) sachets of *shabu* were properly distinguished and designated as to which one was the subject of the buy-bust and which one was found in the possession of accused-appellant after the arrest. Thus, accused-appellant's insinuation of switching or commingling of the evidence was clearly unfounded.²⁴ More, an inventory was immediately conducted, after marking, in the presence of accused-appellant and the required witnesses, as evidenced by the Receipt of Property Seized, which affirms the testimony of the police officers that an inventory of the seized illegal drugs was conducted at the place of arrest and was witnessed by *Barangay* Captain Larry G. Garde and *Barangay Kagawad* Jimmy Tembrevilla.²⁵

Hence, the present appeal.

Issue

The lone issue to be resolved is whether or not accused-appellant is guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165.

The Court's Ruling

The appeal is meritorious.

²¹ Id. at 12.

²² Id. at 15.

²³ Id. at 18.

²⁴ Id. at 19.

²⁵ Id.

per/29

It is settled that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite and appreciate errors in the appealed judgment, whether they are assigned or unassigned.²⁶

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.²⁷

The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.²⁸

There are four (4) links in the chain of custody, to wit: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.²⁹

One of the most important links in the chain of custody is the first link which refers to marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the

²⁶ *People v. ZZZ*, G.R. No. 232500, July 28, 2020.

²⁷ *People v. Ismael*, 806 Phil. 21, 29 (2017).

²⁸ *People v. Ubungen*, 836 Phil. 888, 897 (2018).

²⁹ *People v. Bangcola*, G.R. No. 237802, March 18, 2019.

moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.³⁰

Here, the markings of “RGO,” “RGO-1,” and “RGO-2,” which were immediately placed after confiscation, clearly identified and separated the illegal drugs from all other similar or related evidence. Thus, appellant’s claim of commingling utterly lacks merit.

However, concomitant with the immediate marking, inventory and photographing of the seized items after seizure and confiscation is the presence of not just the accused or his representative/counsel, but also of the insulating witnesses such as an elected public official and a representative of the National Prosecution Service (*NPS*) or the media.³¹ The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter possible planting of evidence. Failure to strictly comply with this rule, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that “(a) there is justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.”³²

In this case, records show that the immediate marking, inventory and photographing of the seized items were done at the place of arrest in the presence of the accused and two (2) barangay officials. There was no representative from the *NPS* or the media. Although the Court recognizes that strict compliance with the requirements of Section 21 of R.A. No. 9165 is not always possible as actual ground conditions may render its compliance impractical or place the success of the entire operation in jeopardy,³³ it must be emphasized that the prosecution must be able to satisfactorily explain the reasons for its noncompliance with the rule. The justifiable ground for noncompliance must be proven as a fact because the Court cannot presume what these grounds are or that they even exist.³⁴ Unfortunately, here, the records do not show that the prosecution offered any justifiable ground or any genuine and sufficient effort to secure the required witnesses. In *People v.*

³⁰ *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

³¹ Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640.

³² *People v. Binasing*, G.R. No. 221439, July 4, 2018, 870 SCRA 602, 610.

³³ *People v. Malabanan*, G.R. No. 241950, April 10, 2019.

³⁴ *People v. Pagsigan*, G.R. No. 232487, September 3, 2018.

Lim,³⁵ citing *People v. Sipin*,³⁶ the Court reiterated that strict adherence to Sec. 21 is required where the quantity of illegal drugs seized is miniscule, as in this case, since it is highly susceptible to planting, tampering or alteration of evidence.³⁷

For the above reason, accused-appellant's acquittal based on reasonable doubt is in order.

WHEREFORE, the appeal is **GRANTED**. The February 22, 2019 Decision of the Court of Appeals in CA G.R. CEB CR-HC No. 02780, which affirmed *in toto* the November 6, 2017 Decision of the Regional Trial Court of Bago City, Branch 62, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Rudy Ortega, Jr. y Geograpia alias "Molmol" is hereby **ACQUITTED** of the offenses of Illegal Sale and Possession of Dangerous Drugs under Sections 5 and 11, Article II of Republic Act No. 9165, respectively.

The Director of Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless he is being lawfully held in custody for some other reason and to **INFORM** this Court of the date of his actual release from confinement within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED. (Rosario, J., on leave)"

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *cibdlb 0127*

27 APR 2021

³⁵ G.R. No. 231989, September 4, 2018, 879 SCRA 31.

³⁶ 833 Phil. 67 (2018).

³⁷ Id. at 92.

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c/o The Director
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THE DIRECTOR (x)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 62
Bago City
(Criminal Case Nos. 4151 and 4152)

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