



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. 251147 (*People of the Philippines v. Allan Santos y Ventenilla*). – The Court resolves to:

NOTE the separate manifestations (in lieu of supplemental briefs) of counsel for accused-appellant dated 5 November 2020 and of the Office of the Solicitor General dated 27 November 2020, in compliance with the Resolution dated 15 June 2020, both adopting their respective briefs filed before the Court of Appeals as their supplemental briefs as the same have adequately discussed all the matters pertinent to the case

The Case

This appeal assails the Decision¹ dated March 8, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10765 affirming the conviction of accused-appellant Allan Santos y Ventenilla for violations of Section 5 and Section 11, Article II of Republic Act No. 9165 (RA 9165).²

Proceedings Before the Trial Court

The Charges and Pleas

¹ Penned by Associate Justice Priscilla J. Baltazar-Padilla (now a retired member of the Court) and concurred in by Associate Justice Jhosep Y. Lopez (now a member of the Court) and Associate Justice Perpetua T. Atal-Paño, *rollo*, pp. 3-17.

² The Comprehensive Dangerous Drugs Act of 2002.

Under twin Informations dated January 24, 2011, accused-appellant was charged with violation of Section 5 (illegal sale of dangerous drugs) and Section 11 (illegal possession of dangerous drugs), both of Article II of RA 9165, viz.:

Crim. Case No. 31-V-11

That on or about January 21, 2011 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously sell to SPO1 ARMIN GARCIA, who posed as buyer of zero point zero five grams (0.05) of methamphetamine hydrochloride (shabu), knowing the same to be a dangerous drug.

Contrary to law.³

Crim. Case No. 32-V-11

That on or about January 21, 2011, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) unsealed transparent plastic sachet and one (1) heat-sealed transparent plastic sachet containing zero point zero five grams (0.05) of white crystalline substance methamphetamine hydrochloride (shabu) knowing the same to be dangerous drugs.

Contrary to law.⁴

On arraignment, accused-appellant pleaded not guilty to both charges.⁵

Prosecution's Version

SPO1 Armin Garcia (SPO1 Garcia), a member of the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG), Valenzuela Police, testified that on January 21, 2011, their office received information that illegal drug activities would take place in the Santos Compound, Malinta Bukid, Valenzuela City. The following persons, namely, Myla Sanchez, Gary Sanchez, Allan Santos, Michael Santos, "Bangkay," and certain unnamed police officer from Valenzuela would carry out the activities. On the basis of this information, a buy-bust operation was formed wherein SPO2 Rajean Apolinar Mirando (SPO2 Mirando) was tasked as team leader, SPO1 Garcia as poseur buyer, and SPO2 Ronald Sanchez (SPO2 Sanchez), PO3 Dait, PO3 Malinao, PO2 Lim, and PO2

³ CA rollo, p. 58.

⁴ *Id.*

⁵ *Id.*

Rame as members. SPO2 Miranda gave SPO1 Garcia the buy-bust money consisting of five (5) One Hundred Peso bills.⁶

After coordinating with the Philippine Drug Enforcement Agency (PDEA), the buy-bust team proceeded to the target area. There, SPO1 Garcia and the confidential informant saw a person standing beside a jeepney, later identified as accused-appellant Allan Santos. When they came face to face with accused-appellant, the confidential informant introduced SPO1 Garcia to accused-appellant as the person who wanted to buy *shabu*. Accused-appellant asked SPO1 Garcia “magkano ba?” SPO1 Garcia replied Five Hundred Pesos (₱500.00), took the buy-bust money from his pocket, and gave it to accused-appellant. In exchange, accused-appellant handed SPO1 Garcia a plastic sachet containing white crystalline substance. SPO1 Garcia scratched his head to signal that the sale had been consummated.⁷

When the rest of the buy-bust team had closed in, SPO1 Garcia arrested and frisked accused-appellant. He recovered from the latter the buy-bust money of Five Hundred Pesos (₱500.00), three (3) pieces ₱100 bill, an unsealed plastic sachet, and another heat-sealed plastic sachet containing white crystalline substance. The team then took accused-appellant and the seized items to the barangay hall of Malinta, Valenzuela City but no barangay officials were around at that time. Consequently, they proceeded to another barangay outpost in Malinta where the seized items were marked and inventoried in the presence of accused-appellant and *Barangay Kagawad* Jerwin de Guzman (*Barangay Kagawad* de Guzman). Pictures were also taken during the inventory. Thereafter, the team returned to the police station where case investigator SPO2 Sanchez prepared the request for laboratory examination.⁸

SPO1 Garcia and SPO2 Sanchez delivered the specimens and request for examination to the Northern Police District Crime Laboratory Office, Sangandaan Caloocan City. The same were received by PO2 Baloran who turned them over to Forensic Chemist Police Senior Inspector Margarita Libres (PSI Libres).⁹

Both the defense and the prosecution stipulated on the qualifications of Forensic Chemist PSI Libres and her receipt of the specimens which she tested and found positive for methamphetamine hydrochloride, a dangerous drug. They also stipulated her findings were borne in her Physical Science Report No. D-22-11.¹⁰

⁶ *Id.* at 59.

⁷ *Id.* at 59-60.

⁸ *Id.* at 60.

⁹ *Id.* at 60-62.

¹⁰ *Id.* at 61-62.

Defense's Version

Accused-appellant, on the other hand, testified that on January 21, 2011, he was outside his house cleaning a jeepney when five (5) police officers arrived, asking if he was Allan Santos. When he confirmed his identity, they arrested him. His sister Ruby Vergara, his son, and his neighbor Victoria David (David) tried to approach him but the police officers dragged him away. He was brought to the Malinta Barangay Hall where he noticed plastic sachets containing white crystalline substance on top of a table. The police officers declared that the same were seized from him. They demanded from him Seventy Thousand Pesos (₱70,000.00) in exchange for his freedom. When he failed to produce the amount, he got charged with illegal sale and illegal possession of dangerous drugs.¹¹

David corroborated accused-appellant's testimony.¹²

The Ruling of the RTC

By Joint Decision¹³ dated March 30, 2015, the trial court rendered a verdict of conviction, thus:

PREMISES considered, the Court finds **ALLAN SANTOS y VENTENILLA alias Allan GUILTY** beyond reasonable doubt of the crime of violation of Section 5, Article II of R.A. No. 9165 in Crim. Case No. 31-V-11 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and a fine of **FIVE HUNDRED THOUSAND PESOS (P500,000.00)**.

In Crim. Case No. 32-V-11, the accused **ALLAN SANTOS y VENTENILLA alias Allan** is likewise found **GUILTY** beyond reasonable doubt for Violation of Section 11, Art. II, R.A. 9165 and hereby sentenced to suffer the penalty of **TWELVE (12) YEARS AND ONE (1) DAY AS MINIMUM TO FOURTEEN (14) YEARS AND EIGHT (8) MONTHS AS MAXIMUM**. In addition, the accused is ordered to pay a fine of **THREE HUNDRED THOUSAND PESOS (P300,000.00)**.

The sentence shall be served successfully and the preventive imprisonment served by the accused shall be credited in his favor.

The Branch Clerk of Court is hereby directed to turn over to PDEA the drugs used as evidence in this case for proper disposition.

SO ORDERED.¹⁴

¹¹ *Id.* at 63-64.

¹² *Id.* at 64.

¹³ *Id.* at 57-70.

¹⁴ *Id.* at 69.

The trial court gave full credence to the testimony of the prosecution witness, a police officer performing official functions. It found the chain of custody to have been duly established and, thus, rejected accused-appellant's denial and theory of frame up.

The Proceedings Before the Court of Appeals

On appeal, accused-appellant faulted the trial court for rendering the verdict of conviction allegedly despite 1) the prosecution's failure to prove the elements of illegal sale of dangerous drugs and illegal possession of dangerous drugs, 2) the procedural omissions during the buy-bust operation: (a) the absence of media and Department of Justice (DOJ) representatives during the inventory and photographing of the seized items; (b) the fact that the inventory and photographing were done at the barangay hall, not at the place of arrest; (c) no evidence on how the seized drugs were handled, stored, and safeguarded from seizure until they were presented in court.¹⁵

For its part, the People, through the Office of the Solicitor General (OSG), countered, in the main: 1) the elements of illegal sale of dangerous drugs and illegal possession of dangerous drugs were all proven; 2) there was substantial compliance with the chain of custody rule; and, 3) the presumption of regularity in the performance of the police officers' official functions prevails over accused-appellant's bare denial and theory of frame up.¹⁶

The Ruling of the Court of Appeals

In its assailed Decision¹⁷ dated March 8, 2019, the Court of Appeals affirmed.

The Present Appeal

Accused-appellant now seeks affirmative relief from the Court and prays anew for his acquittal. For the purpose of this appeal, the OSG¹⁸ and accused-appellant¹⁹ both manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

¹⁵ *Id.* at 42-53.

¹⁶ *Id.* at 90-99.

¹⁷ *Rollo*, pp. 3-17.

¹⁸ *Id.* at 32-33.

¹⁹ *Id.* at 27-29.

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction against accused-appellant for violation of both Section 5 and Section 11, Article II of RA 9165?

Ruling

We acquit.

Accused-appellant was charged with illegal sale of dangerous drugs and illegal possession of dangerous drugs allegedly committed on January 21, 2011. The governing law is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 reads:

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;

x x x x

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing the Comprehensive Dangerous Drugs Act of 2002, defines "chain of custody," as follows:

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.²⁰ The chain of evidence is constructed by proper exhibit handling, storage, labelling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence.²¹

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure and marking 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; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.²²

Here, the prosecution failed to establish an unbroken chain of custody. Consider:

Section 21 of RA 9165 requires the inventory and photographing to 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 representative from the media and the Department of Justice (DOJ), and any elected public official.”²³

*People v. Lim*²⁴ stressed the importance of the presence of the three insulating witnesses or in the alternative, the prosecution must allege and prove the reasons for their absence and show that earnest efforts were made to secure their attendance. The Court explained:

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

- (1) their attendance was impossible because the place of arrest was a remote area;
- (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;
- (3) the elected official themselves were involved in the punishable acts sought to be apprehended;
- (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove[d] futile through no fault of the arresting officers, who face the threat of being charged with arbitrary

²⁰ See *People v. Barte*, 806 Phil. 533, 542 (2017).

²¹ *People v. Balibay*, 742 Phil. 746, 756 (2014).

²² *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

²³ *People v. Sanchez*, G.R. No. 239000, November 05, 2018, 884 SCRA 318, 327.

²⁴ G.R. No. 231989, September 4, 2018, 879 SCRA 31, 61-63.

detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

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. Umipang*, 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 noncompliance. 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 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 [the] 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.²⁵

The law requires the presence of these witnesses primarily to ensure not only compliance with the chain-of-custody rule but also to remove any suspicion of switching, planting, or contamination of evidence.²⁶

Here, the physical inventory and photographing were only done in the presence of *Barangay Kagawad* de Guzman. The prosecution made no effort, let alone acknowledge, the absence of a DOJ representative and media representative. The prosecution failed to explain or justify why these required witnesses were absent nor did it show that earnest efforts were exerted to secure their attendance.

²⁵ *People v. Manansala*, G.R. No. 229509, July 3, 2019.

²⁶ *People v. Gutierrez*, G.R. No. 236304, November 05, 2018, 884 SCRA 276, 286.

Next, nothing in the records shows who held the seized drug and how it was handled or stored from the time it was turned over to the laboratory up to its presentation in court.

In *People v. Baltazar*, the accused was acquitted of illegal sale of dangerous drugs because the records are bereft of any evidence as to how the illegal drugs were brought to court. There was no showing how the alleged seized item was stored after it was examined by the forensic chemist, who handled the specimen after examination, and where the same was kept until it was retrieved and presented in court.²⁷

Notably, the parties agreed to dispense with the testimony of Forensic Chemist PSI Libres and instead stipulated that she was a qualified forensic chemist and that she had no personal knowledge about the source of the drug items but only conducted laboratory examination thereon. *People v. Miranda*²⁸ citing *People v. Cabuhay*²⁹ ordained that the parties' stipulation to dispense with the testimony of the forensic chemist should include:

(1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial.

Here, the parties' stipulation to dispense with the testimony of the Forensic Chemist PSI Libres did not contain the vital pieces of information required, *i.e.*, she received the seized drugs as marked, properly sealed, and intact; she resealed the drug items after examination of the content and, she placed her own marking on the drug items. Absent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized herein after its qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be reasonably established.³⁰

In light of the prosecution's failure to establish with moral certainty the identity and the unbroken chain of custody of the dangerous drugs seized from accused-appellant, a verdict of acquittal here is in order.³¹

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 8, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10765 is **REVERSED** and **SET ASIDE**.

²⁷ G.R. No. 229037, July 29, 2019.

²⁸ G.R. No. 218126, July 10, 2019.

²⁹ 836 Phil. 903, 918 (2018).

³⁰ *People v. Miranda*, supra note 28.

³¹ *People v. Villojan, Jr.*, G.R. No. 239635, July 22, 2019.

11
JRM

Accused-appellant **Allan Santos y Ventenilla @ Allan** is **ACQUITTED** in Criminal Case Nos. 31-V-11 and 32-V-11. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release him from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. 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

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *4/5/21*

27 MAY 2021

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
5th Floor, PAO-DOJ Agencies Building
NIA Road corner East Avenue
Diliman, 1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

ALLAN V. SANTOS @ "ALLAN" (x)
Accused-Appellant
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (x)
Bureau of Corrections
1770 Muntinlupa City

THE SUPERINTENDENT (x)
New Bilibid Prison
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 171
1440 Valenzuela City
(Crim. Case Nos. 31-V-11 & 32-V-11)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR-HC No. 10765

Please notify the Court of any change in your address.
GR251147. 3/01/2021B(59)URES(a)