



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 10, 2021 which reads as follows:

“G.R. No. 249464 – (People of the Philippines, Plaintiff-Appellee, v. Ceriaco Gaitera, Jr. y Tuig and Joepee Gaitera y Araula, Accused-Appellants). – This is an appeal seeking to reverse and set aside the Decision¹ dated 27 March 2019 of the Court of Appeals, Cebu station (CA) in CA-G.R. CR-HC No. 02598. The CA affirmed the Decision² dated 19 April 2017 of Branch 30, Regional Trial Court (RTC) of Dumaguete City, in Crim. Case No. 2015-23047, finding Ceriaco³ Gaitera, Jr. y Tuig (Ceriaco) and Joepee Gaitera y Araula (Joepee) (collectively, accused-appellants), guilty beyond reasonable doubt of violation of Section 5,⁴ Article II of Republic Act No. (RA) 9165.

Antecedents

Accused-appellants were indicted for violation of Section 5, Article II of RA 9165 in an Amended Information, the accusatory portion of which states –

That at about 11:30 o'clock in the evening of June 18, 2015 more or less, at Barangay Banilad, in the Municipality of Bacong, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating, conspiring and helping one another without authority from law, did then and there willfully, knowingly, unlawfully and feloniously SELL, GIVE AWAY and DELIVER one (1) transparent plastic sachet containing Methamphetamine

- over – ten (10) pages ...

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¹ Rollo, pp. 5-20.

² CA rollo, pp. 65-72.

³ Ciriaco, in some parts of the record.

⁴ Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

hydrochloride, locally known as Shabu, a dangerous drug, with a net weight of 0.09 gram to a government poseur-buyer, to the damage and prejudice of the Republic of the Philippines.

That accused Ceriaco Gaitera, Jr. was tested positive for [Methamphetamine] under Chemistry Report Dt-174-15.

And that accused Joepee Gaitera was also found positive for Methamphetamine under Chemistry Report DT-175-15.

CONTRARY to Section 5 (sic) Article II of Republic Act No. 9165.⁵

Upon arraignment, accused-appellants entered a plea of “not guilty” to the charge.⁶ Thereafter, trial on the merits ensued.

Version of the Prosecution

On 18 June 2015, a buy-bust team was organized to entrap accused-appellants who were said to be involved in illegal drug activities in *Barangay* Banilad, Bacong, Negros Oriental. PO1 Antonio Cabatingan (PO1 Cabatingan) was designated as poseur-buyer with PO3 Glenn Austero (PO3 Austero) as his back up.⁷

After the briefing of the buy-bust team, the entire team proceeded to the target area at 11:00 P.M. and positioned themselves in strategic locations. At around 11:20 P.M., Joepee went outside the house. PO1 Cabatingan called Joepee, told the latter that he wanted to buy Php500.00 worth of *shabu*, and handed over the marked money. In turn, Joepee instructed his father, accused-appellant Ceriaco, who was standing by the door, to give PO1 Cabatingan Php500.00 worth of *shabu*. Upon receiving one (1) heat-sealed transparent plastic sachet containing white crystalline substance from Ceriaco, PO1 Cabatingan checked its contents. Thereafter, he and PO3 Austero introduced themselves as police officers and arrested accused-appellants. PO1 Cabatingan retrieved from Joepee the marked money while a search on the person of Ceriaco yielded negative for any illicit item.⁸

At the crime scene, PO1 Cabatingan marked the plastic sachet he obtained from Joepee while PO3 Austero took photographs. The inventory of the items bought and seized was witnessed by accused-appellants as well as *Barangay Kagawad* Florencio A. Sojor, Jr. and Cris B. Sardane. The two *Barangay Kagawad* signed as witnesses on

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⁵ *Rollo*, pp. 5-6.

⁶ *Id.* at 6.

⁷ *Id.* at 6-7.

⁸ *Id.* at 7-8.

the Certificate of Inventory (certificate). PO1 Cabatingan then put the plastic sachet inside a brown envelope. Upon reaching the police station in the early morning of 19 June 2015, PO1 Cabatingan placed the brown envelope inside his locker.⁹

Later, at around 8:00 A.M., DOJ representative Lemuel Lagahit and media practitioner Brandon C. Teves signed the certificate after ascertaining that the items shown to them were the same items listed therein. Thereafter, PO1 Cabatingan took accused-appellants and the brown envelope containing the seized specimen to the crime laboratory. Chemistry Report Number D-225-15 showed that the specimen was positive for methamphetamine hydrochloride while Chemistry Report No. DT-174/175-15 indicated that accused-appellants' urine samples tested positive for methamphetamine.¹⁰

Version of the Defense

At around 1:00 A.M. of 19 June 2015, accused-appellants were sleeping when several armed men barged into their house. Ceriaco recognized the men as police officers from the Bacong Police Station. The occupants of the house were told to go outside while the police officers went inside. After an hour, the police officers emerged and called some *barangay* officials. As soon as the *barangay* officials arrived, they, together with accused-appellants, were ushered inside the house. Upon entering, accused-appellants saw a plastic sachet of *shabu* on top of the *orocan* in front of the television and on top of the bed.¹¹

Ruling of the RTC

On 19 April 2017, the RTC rendered its Decision,¹² the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, the accused CERIACO GAITERA, JR. y TUIG and JOEPEE GAITERA y ARAULA are hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.09 gram of *shabu* in violation of Section 5, Article II of RA 9165 and are hereby each sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

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⁹ *Id.* at 8-9.

¹⁰ *Id.* at 9-10.

¹¹ *Id.* at 10-11.

¹² CA rollo, pp. 11-26.

The one (1) heat-sealed transparent plastic sachet with markings "CTG-JAG-BB-06/18/15" containing 0.09 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused CERIACO GAITERA, JR. y TUIG and JOEPEE GAITERA y ARAULA shall be credited with the full time during which they have undergone preventive imprisonment, provided they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.¹³

The RTC held the prosecution was able to establish all the elements of the offense charged. PO1 Cabatingan, the poseur-buyer, as well as PO3 Austero, his back up, positively identified accused-appellants as the persons engaged in the illegal sale of *shabu*. The prosecution likewise satisfactorily proved the presence of conspiracy when accused-appellants sold a sachet of *shabu* to PO1 Cabatingan. The RTC further held that the integrity and evidentiary value of the seized item were properly preserved by the buy-bust team under the chain of custody rule. The RTC disregarded accused-appellants' defenses of denial and frame up.¹⁴

Aggrieved, accused-appellants appealed to the CA.

Ruling of the Court of Appeals

In its Decision,¹⁵ the CA affirmed accused-appellants' conviction. It ruled that the prosecution succeeded in establishing the existence of a legitimate buy-bust operation.¹⁶ The presence of conspiracy was likewise established.¹⁷ Furthermore, it lent no credence to accused-appellants' defense that the chain of custody rule was not observed, as the prosecution was able to establish that there was no break or gap in the chain of custody of the seized illegal drug.¹⁸

Hence, this appeal.

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¹³ *Id.* at 25.

¹⁴ *Id.* at 18, 21-23.

¹⁵ *Rollo*, pp. 5-20.

¹⁶ *Id.* at 14.

¹⁷ *Id.* at 15.

¹⁸ *Id.* at 17.

Issue

The issue is whether or not the CA correctly found accused-appellants guilty beyond reasonable doubt of the offense of illegal sale of prohibited drugs under RA 9165.

Ruling of the Court

The Court finds the appeal meritorious.

Accused-appellants were charged with illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. For the prosecution of the crime of illegal sale of dangerous drugs, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.¹⁹

It is essential that the identity and integrity of the illegal drugs must be shown to have been preserved. To remove any doubt or uncertainty on the identity and integrity of the seized drugs, evidence must definitely show that the illegal drugs offered in court as exhibit are the same as those recovered from the accused.²⁰ This requirement is known as the chain of custody rule under RA 9165, created to safeguard doubts concerning the identity of the seized drugs.²¹

Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.²² Said provision was amended by RA 10640,²³ which was approved on 15 July 2014. Since the offense charged in this case was committed on 18 June 2015, the prescribed procedure under RA 9165, as amended by RA 10640, applies. Thus, as part of the chain of custody procedure, the apprehending team is mandated, immediately after seizure and confiscation, to conduct a physical inventory and to photograph the seized items 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: an elected public official and a representative of the National Prosecution

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¹⁹ *People v. Pantallano*, G.R. No. 233800, 06 March 2019 [Per J. A.B. Reyes, Jr.].

²⁰ *People v. Macaumbang*, G.R. No. 208836, 01 April 2019 [Per J. Gesmundo].

²¹ *People v. Bangcola*, G.R. No. 237802, 18 March 2019 [Per J. Gesmundo].

²² *People v. Alvaro*, G.R. No. 225596, 10 January 2018 [Per J. Perlas-Bernabe].

²³ **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."**

Service (NPS) OR the media. The presence of these witnesses safeguards “the establishment of the chain of custody and remove[s] any suspicion of switching, planting, or contamination of evidence.”²⁴

The requirements of Section 21 of Article II of RA 9165, as amended by RA 10640 were not complied with

It is well-settled that the following links should be established in the chain of custody of the confiscated item: 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; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.²⁵

In the instant case, PO1 Cabatingan marked the sachet with CTG-JAG-BB-06/18/2015.²⁶ The letters “CTG” refer to Ceriaco Tuig Gaitera, Jr., “JAG” to Joepee Araula Gaitera, and “BB” to buy-bust while the figures pertain to the date of the incident.²⁷ However, the time and place of the seizure of evidence were not indicated on the sachet, in clear disregard of Section 13 (c)²⁸ of the PNP Manual on Anti-Illegal Drugs Operation and Investigation, approved by the National Police Commission in its Resolution No. 2010-094 on 26 February 2010.²⁹

More importantly, only the elected official which was represented by two (2) *Barangay Kagawad* was present during the inventory and photographing of the seized item which happened at the crime scene. There was no representative from either the NPS (which

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²⁴ *People v. Doctolero, Jr.*, G.R. No. 243940, 20 August 2019 [Per J. Perlas-Bernabe].

²⁵ *People v. Ubungen*, G.R. No. 225497, 23 July 2018 [Per J. Martires].

²⁶ CA rollo, p. 8.

²⁷ *Id.*

²⁸ Section 13. Handling, Custody and Disposition of Drug Evidence

x x x

c. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found and seized. The seizing officer shall secure and preserve the evidence in a suitable evidence bag or in an appropriate container for further laboratory examinations.

²⁹ See *People v. Otico*, G.R. No. 231133, 06 June 2018 [Per J. Caguioa].

falls under the DOJ)³⁰ or the media at that time. While these representatives eventually arrived, they did so at the police station when the inventory and photographing of the seized drug was already finished, and only to sign the certificate of inventory.

It must be stressed that the presence of the required witnesses at the time of the apprehension and inventory is mandatory. The law imposes the said requirement to serve an essential purpose.³¹ Their presence at the time of seizure and confiscation would belie any doubt as to the source, identity, and integrity of the seized drug. The presence of the insulating witnesses would controvert the usual defense of frame-up, as they would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence, in accordance with Section 21, Article II of RA 9165, as amended.³²

The prosecution failed to give a justifiable ground for non-compliance with Section 21, Article II of RA 9165, as amended by RA 10640

The Court acknowledges that strict compliance with the requirements of Section 21, Article II of RA 9165, as amended, may not always be possible. During such eventualities, 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. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165, which was adopted by RA 10640.³³

In *People v. Dela Torre*,³⁴ however, the Court explained that for the above-saving clause to apply, the prosecution must explain the

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³⁰ See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE AND THE OFFICES OF THE PROVINCIAL AND CITY FISCALS, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" (11 April 1978) and Section 3 of RA No. 10071, entitled "Prosecution Service Act of 2010" (lapsed into law on 08 April 2010). (*People v. Misa*, G.R. No. 236838, 01 October 2018 [Per J. Perlas-Bernabe].)

³¹ *People v. Moreno*, G.R. No. 234273, 18 September 2019 [Per J. Caguioa].

³² *People v. Caranto*, G.R. No. 217668, 20 February 2019 [Per Justice Caguioa] citing *People v. Tomawis*, G.R. No. 228890, 18 April 2018 [Per J. Caguioa].

³³ *Supra* at note 24.

³⁴ G.R. No. 238519, 26 June 2019 [Per J. Peralta].

reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. 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.

Clearly, the prosecution cannot simply invoke the saving clause found in Section 21 – that the integrity and evidentiary value of the seized item have been preserved – without justifying their failure to comply with the requirements stated therein.³⁵ Moreover, a stricter adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, as in the instant case where 0.09 gram of *shabu* was allegedly obtained from accused-appellants, since **it is highly susceptible to planting, tampering or alteration of evidence.**³⁶

With respect to the absence of key witnesses during the arrest, the Court in *People v. Acub*,³⁷ cited the separate concurring opinion of then Associate Justice (now Chief Justice) Diosdado Peralta in the case of *Mariñas v. People (Mariñas case)*.³⁸ In the *Mariñas* case, Chief Justice Peralta stressed that the prosecution, in accordance with the Rules on Evidence, has the burden of proving a justifiable cause for non-compliance with Section 21, Article II of RA 9165. He likewise provided some of the justifiable reasons therefor:

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for any of the following reasons, 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[s] 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 futile through no fault of the arresting officers, who face the threat of being charged with arbitrary 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.³⁹

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³⁵ *People v. Bahoyo*, G.R. No. 238589, 26 June 2019 [Per A.B. Reyes, Jr.].

³⁶ *People v. Bayang*, G.R. No. 234038, 13 March 2019 [Per J. Peralta].

³⁷ G.R. No. 220456, 10 June 2019 [Per J. Leonen].

³⁸ G.R. No. 232891, 23 July 2018 [Per J. Reyes, Jr.].

³⁹ *Supra* at note 37.

None of these instances is present in the instant case. The prosecution must allege and prove the reasons for the absence of the NPS or media representative and convince the Court that earnest efforts were exerted to secure their attendance.⁴⁰ However, it is not borne from the records that earnest efforts were exerted to secure the presence of the NPS or media representative for the buy-bust operation. The lack of evidence of serious attempts to secure the presence of the NPS or media representative results in a substantial gap in the chain of custody of evidence that adversely affects the authenticity of the prohibited substance presented in court.⁴¹

*Accused-appellants must
perforce be acquitted for
reasonable doubt*

In cases of sale of dangerous drugs, the dangerous drug itself seized from the accused constitutes the *corpus delicti* of the offense. Hence, it is of utmost importance that the integrity and identity of the seized drug must be shown to have been duly preserved. The chain of custody rule performs this function as it erases unnecessary doubts concerning the identity of the evidence.⁴² The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit, and the identity of the said drug is established with the same unwavering exactitude as that required to make a finding of guilt.⁴³

The police officers' failure to strictly comply with the requirements of the law, and to give justifiable grounds for their deviations had compromised the integrity and evidentiary value of the *corpus delicti*, warranting accused-appellants' acquittal for reasonable doubt. Verily, when there are doubts on whether the seized substance was the same substance examined and established to be the prohibited drug, there can be no offense of illegal sale of a prohibited drug.⁴⁴

WHEREFORE, the instant appeal is hereby **GRANTED**. The Decision dated 27 March 2019 of the Court of Appeals, Cebu station, finding accused-appellants guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accused-appellants **CERIACO GAITERA, JR. y TUIG and JOEPEE GAITERA y ARAULA** are

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⁴⁰ *People v. Laway*, G.R. No. 227741, 27 March 2019 [Per J. Del Castillo].

⁴¹ *People v. Vistro*, G.R. No. 225744, 06 March 2019 [Per J. Del Castillo].

⁴² *People v. Hilario*, G.R. No. 210610, 11 January 2018 [Per J. Leonardo-De Castro].

⁴³ *People v. Malana*, G.R. No. 233747, 05 December 2018 [Per J. Caguioa].


⁴⁴ *Supra* at note 42.

hereby **ACQUITTED** on the ground of reasonable doubt. They are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are confined for any other lawful cause. Let entry of final judgment be issued immediately.

The Court **DIRECTS** the Director of the Bureau of Corrections to implement the immediate release of **CERIACO GAITERA, JR. y TUIG and JOEPEE GAITERA y ARAULA**, and to report compliance thereof within five (5) days from receipt.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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