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Supreme Court
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THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
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Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **November 27, 2019**, which reads as follows:*

“G.R. No. 238116 (*People of the Philippines v. Gilbert Sayson y Gamboa*) – This appeal¹ seeks to reverse and set aside the Decision² dated 07 February 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01669, affirming the Joint Decision³ promulgated on 21 December 2016 by Branch 6, Regional Trial Court (RTC) of Iligan City, Lanao del Norte in Criminal Case Nos. 06-16821 and 06-16822, convicting accused-appellant Gilbert Sayson y Gamboa (accused-appellant) of violation of Sections 5 and 11, Article II of Republic Act (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

On 15 July 2013, two (2) Informations were filed against accused-appellant, the accusatory portions of which read:

Criminal Case No. 06-16821

That on or about July 12, 2013, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without having been authorized by law, did[,] then and there, willfully, unlawfully, and feloniously, sell and deliver one (1) heat-sealed transparent plastic sachet of Methamphetamine Hydrochloride, a dangerous drug commonly known as [“shabu”], weighing 0.03 grams, for the amount of Php300.00, Philippine currency.

Contrary to law.⁴

¹ CA rollo, pp. 97-99.

² Rollo, pp. 3-13; penned by Associate Justice Edgardo T. Lloren, with Associate Justices Ruben Reynaldo G. Roxas and Tita Marilyn Payoyo-Villordon, concurring.

³ CA rollo, pp. 44-54; penned by Judge Leonor S. Quiñones.

⁴ Records, Book I, p. 1.

Criminal Case No. 06-16822

That on or about July 12, 2013, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without having been authorized by law, did[,] then and there, willfully, unlawfully, and feloniously, have in his possession, custody, and control, fourteen (14) pieces [of] heat-sealed transparent plastic [sachets][,] containing more or less 4.63 grams of Methamphetamine Hydrochloride, a dangerous drug commonly known as [“shabu”].

Contrary to law.⁵

Upon arraignment, accused-appellant pleaded not guilty to the charges.⁶ After the termination of pre-trial proceedings,⁷ trial on the merits ensued.

Version of the Prosecution

On 12 July 2013, a team from the Philippine Drug Enforcement Agency of Iligan City (PDEA) conducted a buy-bust operation against accused-appellant in his house at *Brgy. Saray* in Iligan City. During the operation, accused-appellant sold and handed to the poseur-buyer, Intelligence Officer 2 Rovel Pamisa (IO2 Pamisa), one (1) heat-sealed transparent plastic sachet, containing white crystalline substance, suspected to be *shabu*, worth P300.00.⁸ When the arresting officers frisked accused-appellant, they found one (1) big sachet and fourteen (14) small sachets⁹ of the same substance.¹⁰ The buy-bust team inventoried and marked the confiscated items while inside accused-appellant's house, in the presence of Myla Q. Fuentes (Fuentes), a *barangay* official, and Jun Lino Bacus (Bacus), a representative of the media.¹¹ Upon laboratory examination, the confiscated specimens were confirmed to be methamphetamine hydrochloride.¹²

⁵ Records, Book II, p. 1.

⁶ Records, Book I, p. 22; Book II, p. 15.

⁷ Records, Book I, pp. 29-32; Book II, pp. 32-36.

⁸ TSN dated 03 September 2014, pp. 8-9.

⁹ The Information for the offense of Illegal Possession of prohibited drugs (Criminal Case No. 06-16822) stated that 14 sachets were recovered from accused-appellant while the evidence on record reveals that there were 15 sachets recovered from accused-appellant. (One (1) big sachet marked NCP-1 7-12-13 and 14 sachets marked NCP-2 7-12-13 to NCP-15 7-12-13), *See* records; Book I, pp. 3-8, TSN dated 29 June 2015, p. 10.

¹⁰ TSN dated 29 June 2015, p. 10.

¹¹ Records, Book I, p. 7.

¹² *Id.* at 5-6.

Version of the Defense

Accused-appellant denied the charges against him and averred that on 12 July 2013, he went to the house of a certain Alex to pay for the rent of the latter's tricycle.¹³ He went inside, since the door was open. Not long after, several persons also went in and ordered him to lie face down.¹⁴ They frisked and searched him. When he stood up, he saw the sachets of *shabu* on top of the bed. They made him sit near the items and coerced him to admit ownership thereof, but he resisted.¹⁵

Ruling of the RTC

On 21 December 2016, the RTC convicted accused-appellant of the offenses charged. The RTC disposed:

WHEREFORE, premises considered, the Court hereby finds the accused GILBERT SAYSON y Gamboa in

CRIMINAL CASE NO. 06-16821 [SALE]

GUILTY beyo[n]d reasonable doubt for violation of the provisions of Section 5, Article II of Republic Act 9165, and is hereby sentenced [to] the penalty of life imprisonment and a fine of P500,000.00.

The accused has been under preventive imprisonment since July 15, 2013. The period of such detention shall be credited in full in the service of his sentence.

Exhibit H[,] referring to the drug evidence, and Exhibits F-1 and F-2[,] referring to the [buy-bust] money[,] are ordered confiscated in favor of the government.

SO ORDERED.

CRIMINAL CASE NO. 06-16822 [POSSESSION]

GUILTY beyo[n]d reasonable doubt for violation of the provisions of Section 11, Article II of Republic Act 9165, and is hereby sentenced [to] the penalty of life imprisonment ranging from 12 years and 1 day to 14 years of imprisonment[,] and a fine of P300,000.00[.]

¹³ TSN dated 28 June 2016, pp. 3.

¹⁴ *Id.* at 4-5.

¹⁵ *Id.*

The accused has been under preventive imprisonment since July 15, 2013. The period of detention shall be credited in full in the service of his sentence.

Exhibits F to F-15, referring to the drug evidence[,] are ordered confiscated in favor of the government.

SO ORDERED.¹⁶

The RTC found the prosecution witnesses' testimonies credible, while accused-appellant's defense was lacking in merit.¹⁷ It gave weight to the witnesses' positive identification of accused-appellant as the seller of the prohibited drugs, and their lack of motive to falsely attribute the offenses to accused-appellant.¹⁸

Ruling of the CA

On 07 February 2018, the CA affirmed accused-appellant's conviction, thus:

WHEREFORE, the Appeal is DENIED. The Joint Decision by the Regional Trial Court of Lanao del Norte, 12th Judicial Region, Branch 6, Iligan City in Criminal Case Nos. 06-16821 and 06-16822 finding Accused-Appellant Gilbert Sayson y Gamboa guilty beyond reasonable doubt of violating Sections 5 and 11 of R.A. 9165 is hereby AFFIRMED.

SO ORDERED.¹⁹

The appellate court found that the chain of custody of the seized items was established to be unbroken.²⁰ It opined that the absence of a DOJ representative was a mere irregularity, insufficient to destroy the prosecution's case against accused-appellant.²¹

Hence, this appeal.

¹⁶ CA rollo, pp. 53-54. ✓

¹⁷ Id. at 52-53

¹⁸ Id.

¹⁹ Rollo, p. 13.

²⁰ CA rollo, pp. 94-95. ✓

²¹ Id. at 95.

Issues

Accused-appellant, adopting the arguments he raised in his brief before the CA,²² claims that:

I.

THE [RTC] GRAVELY ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT INSUFFICIENCY OF THE INFORMATION.

II.

THE [RTC] GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE BUY-BUST OPERATION AND THE CHAIN OF CUSTODY OF THE SHABU ALLEGEDLY CONFISCATED.

III.

THE [RTC] GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.²³

Ultimately, the controversy boils down to whether or not the CA correctly affirmed accused-appellant's conviction for the offenses of illegal sale and possession of dangerous drugs.

Ruling of the Court

The appeal is meritorious.

Sections 5 and 11, Article II of RA 9165 state:

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

²² Rollo, pp. 27-28.

²³ CA rollo, p. 67.

XXXX

SECTION 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";

X X X

X X X

X X X

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

XXXX

- (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Therefore, to secure a conviction for illegal sale of dangerous drugs, the prosecution must establish the following elements: (1) "the identity of the buyer and the seller; (2) the object of the sale and its consideration; and (3) the delivery of the thing sold and the payment therefor."²⁴ On the other hand, for the prosecution of illegal possession of dangerous drugs to prosper, the following elements must concur: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of said drugs.²⁵

In addition to the elements of the drug offenses, the State is also burdened with the responsibility of identifying, proving and adducing in court the *corpus delicti*, or the drug subject of the offense.²⁶ The prosecution must also prove beyond reasonable doubt the integrity and preservation of the confiscated prohibited or illegal drug.²⁷

²⁴ *People v. Villarta*, G.R. No. 217887, 14 March 2018, 859 SCRA 193, 210.

²⁵ *Id.*

²⁶ *People v. Angeles*, G.R. No. 229094, 27 February 2019, 841 SCRA 616 (2019).

²⁷ *People v. Advincula*, G.R. No. 201576, 22 July 2019.

Contrary to the findings of the RTC and CA, the Court finds that the prosecution failed to establish the identity of the prohibited drug that constituted the *corpus delicti*.

The required witnesses were not present at the time of seizure and apprehension

As part of the chain of custody procedure,²⁸ RA 9165 requires that the marking, physical inventory, and photographing of the seized items be conducted immediately after the seizure and confiscation of the same. The law further requires that the inventory and photographing 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 10640,²⁹ a representative from the media AND the Department of Justice (DOJ), and any elected public official; or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service OR the media. 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.³⁰

Since the Information charges accused-appellant of committing the offenses on 12 July 2013, or prior to the effectivity of the amendatory RA 10640, Section 21 of RA 9165 applies.³¹ Hence, three (3) witnesses must be present during the inventory and photographing of the seized items.

In this case, however, the prosecution failed to establish the presence of ALL the witnesses required under RA 9165. There was no DOJ representative at the time of the inventory, marking and photographing of the evidence. The record shows that only a *barangay* official and a media representative were present at that time. This was clear from the testimony of IO2 Pamisa:

²⁸ Section 21 of RA 9165.

²⁹ *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 15 July 2014.

³⁰ *People v. Bangalan y Mamba*, G.R. No. 232249, 03 September 2019.

³¹ In *People v. Gutierrez*, G.R. No. 236304, 05 November 2018, 805 SCRA 524 (2018), this Court noted that RA 10640 was approved on 15 July 2014, and published on 23 July 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Metro Section, p. 21) and the *Manila Bulletin* (Vol. 499, No. 23, World News Section, p. 6). Thus, it became effective 15 days thereafter, or on 07 August 2014, pursuant to Section 5 of the law. See also *People v. Bangalan*.

COURT

Q And you conducted the inventory inside his house?

A Yes[,] Your Honor.

Q Who witnessed the inventory?

A It's Kagawad Fuentes and John Lino Bacus, Your Honor.³²

Likewise, the presence of the two (2) witnesses during the marking, inventory and photographing of the seized items could not save the prosecution's case since these two (2) witnesses were not present during the buy-bust operation. IO2 Pamisa testified:

COURT

Q At what point did you call them?

A Our team leader called them.

Q So right after when he was accosted and in fact he was also in possession of 14 sachets, how many minutes after that incident did Bacus and Kagawad Fuentes [come]?

A Five minutes.

Q Just five minutes?

A Yes, Your Honor.

Q Where they already informed of the [buy-bust]?

A No, Your Honor.

Q So could you explain to the Court why was it too fast the two persons reacted right away to your request[.]/[sic]

A Kagawad Fuentes is living in Barangay Saray, Your [Honor], and also we have already the number of the media who will witness the inventory.

Q So you did not call them prior?

A Yes, Your Honor.

Q Only after the operation?

A Yes, Your Honor.³³

This was further confirmed by Kagawad Fuentes' testimony:

ASST. CITY PROSECUTOR ALONTO:

Q Madam Witness, you mentioned, [sic] that you saw items already placed there when you arrived, what [were] these items[,] Madam Witness?

³² TSN dated 03 September 2014, p. 17.

³³ *Id.*

- A There was a *[sic]* money[,] and they said that it was a marked money[,] and there is a white thing[,] and they called it *shabu?* *[sic]*
- Q And what happened next[,] if any[,] Madam Witness, when you saw these items you said *shabu* when you were already inside the house of the accused?
- A [When] [t]hey showed it to me[,] the items that were on the bed[,] then they made the inventory[,] and told me that those were the items that were recovered.³⁴

Evidently, not one of the required three (3) witnesses was present during the buy-bust operation as the two (2) other witnesses (*i.e.*, the media representative and the elected public official) were merely called in after the operation to sign the inventory sheet. Likewise, as aforestated, there was no DOJ representative present.

The RTC and CA seriously erred when they overlooked the police officers' lapses. The presence of the required witnesses during the arrest of the offender and seizure of the illegal drugs is mandatory. In various cases,³⁵ this Court has held that the phrase "immediately after seizure and confiscation" entails that the required witnesses should already be physically present at the time of apprehension. Indeed, it is at the point of arrest that planting of evidence might likely occur, and the presence of the witnesses insulates this possibility.³⁶

The saving clause does not apply

It is true that Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165 contains this *proviso*:

xxx Provided, further, that non-compliance with these requirements [the presence of the required witnesses, and the time and place of inventory and photographing] under justifiable grounds, as long as the integrity and 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; xxx.³⁷

³⁴ TSN dated 27 January 2015, p. 5.

³⁵ *People v. Musor*, G.R. No. 231843, 07 November 2018; *People v. Supat*, G.R. No. 217027, 06 June 2018; *People v. Reyes*, G.R. No. 199271, 19 October 2016.

³⁶ *Id.*

³⁷ See also *Casona v. People*, G.R. No. 179757, 13 September 2017, 839 SCRA 448, 459.

To warrant the application of this saving mechanism, however, the prosecution must recognize the lapse or lapses, and justify or explain them.³⁸ Failure to provide sufficient justification will create doubt as to the identity and evidentiary value of the seized items when presented in court.³⁹

In this case, the testimonies of the prosecution witnesses showed non-compliance with the three-witness rule under Section 21 of RA 9165: first, only two (2) witnesses were present; and second, the two (2) witnesses were merely "called in" to witness the inventory of the seized drug. Despite these lapses, the prosecution witnesses did not explain why they were not able to secure the presence of ALL the witnesses during the conduct of the buy-bust. They did not even establish that they exerted efforts to obtain the presence of a DOJ representative who will attest to the physical inventory and photographing in accordance with the mandated procedure.⁴⁰

For failure to strictly comply with the requirements of a valid buy-bust operation, the prosecution was not able to establish the *corpus delicti*. On this ground alone, the acquittal of accused-appellant is proper. There is, therefore, no need to discuss the propriety of the other issues raised by accused-appellant.

Truly, the government's campaign against illegal drugs is consistent with the constitutional policy of maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare.⁴¹ However, the Constitution also ensures protection of the fundamental rights and liberties of the citizens. These sacred individual rights, fortified further under statutory law, should not be sacrificed for the sheer sake of convenience and expediency.⁴²

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated 07 February 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01669 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Gilbert Sayson y Gamboa** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless detained for any other lawful cause.

³⁸ *People v. Reyes*, G.R. No. 199271, 19 October 2016, 806 SCRA 536.

³⁹ *See People v. Velasco*, G.R. No. 219174, 21 February 2018, 856 SCRA 303.

⁴⁰ *See People v. Tampang*, G.R. No. 222648, 13 February 2019.

⁴¹ *See People v. Narvas*, G.R. No. 241254, 08 July 2019.

⁴² *Id.*

The Director of the Bureau of Corrections is **DIRECTED** to implement this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.” (Gesmundo, J., on wellness leave.)

Very truly yours,

Misa DC Batt
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
gms
11/27/19

Regional Special & Appealed Cases Unit
PUBLIC ATTORNEY'S OFFICE
2/F BJS Building
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OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
1229 Legaspi Village, Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 6, 9200 Iligan City
(Crim. Case Nos. 06-16821 & 16822)

The Director
Bureau of Corrections
1770 Muntinlupa City

CSSupt. Melencio S. Faustino
Regional Superintendent
DAVAO PRISON & PENAL FARM
8105 B.E. Dujali, Davao del Norte

Mr. Gilbert Sayson y Gamboa
c/o The Superintendent
DAVAO PRISON & PENAL FARM
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THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 238116

-versus-

GILBERT SAYSON y
GAMBOA,
Accused-Appellant.
x-----/

ORDER OF RELEASE

TO: The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: **CSSupt. Melencio S. Faustino**
Regional Superintendent
DAVAO PRISON & PENAL FARM
8105 B.E. Dujali, Davao del Norte

GREETINGS:

WHEREAS, the Supreme Court on November 27, 2019 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

“**WHEREFORE**, the appeal is hereby **GRANTED**. The Decision dated 07 February 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01669 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Gilbert Sayson y Gamboa** is **ACQUITTED** for failure of the prosecution to prove his guilt.”

beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to implement this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED." (Gesmundo, J., on wellness leave.)

NOW, THEREFORE, You are hereby ordered to immediately release **GILBERT SAYSON y GAMBOA** unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this 27th day of November 2019.

Very truly yours,

Mis D C Batt
MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

Nov 27/20

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Regional Special & Appealed Cases Unit
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Mr. Gilbert Sayson y Gamboa
c/o The Superintendent
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G.R. No. 238116
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