



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 December 2020** which reads as follows:*

**“G.R. No. 243388 (*People of the Philippines v. Nicanor Hatchaso y Mercader*)**. – This is an appeal filed by accused-appellant Nicanor Hatchaso y Mercader (*Hatchaso*) from the March 14, 2018 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09010, which affirmed the January 27, 2017 Judgment<sup>2</sup> of the Regional Trial Court of Quezon City, Branch 79 (RTC), in Crim. Case No. R-QZN-14-01194-CR, convicting him of violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

**Antecedents**

Hatchaso was indicted for illegal sale of dangerous drugs in an Information dated February 4, 2014, the accusatory portion of which reads:

That on or about the 30<sup>th</sup> day of January 2014, in Quezon City, Philippines, the above-named accused, without lawful authority[,] did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport or act as a broker in the said transaction, a dangerous drug, to wit: One (1) heat[-] sealed transparent plastic sachet marked as “DZ/NMH-1/30/14” with zero point twenty six (0.26) gram of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>3</sup>

<sup>1</sup> *Rollo*, pp. 2-13; penned by Associate Justice Jose C. Reyes, Jr. (now a retired Member of this Court) with Associate Justices Franchito N. Diamante and Maria Elisa Sempio Diy, concurring.

<sup>2</sup> *CA rollo*, pp. 52-59.

<sup>3</sup> *Rollo*, p. 2.

tel

Upon arraignment, petitioner pleaded “not guilty” to the crime charged. Trial on the merits thus ensued.<sup>4</sup>

*Evidence for the Prosecution*

The prosecution presented Police Officer 3 Danilo Zapatero (*PO3 Zapatero*) and Police Officer 2 Neleazar Torrijos (*PO2 Torrijos*), while the presentation of several other witnesses were dispensed with after the parties stipulated on their testimonies.

At around 7:00 p.m. of January 29, 2014, PO3 Zapatero received a report from a confidential informant about the drug activities of a certain “JR” within the vicinity of GMA Network in Barangay South Triangle, Quezon City. The information was relayed to the District Anti-Illegal Drug (*DAID*) Chief Police Senior Inspector Roberto Razon in Camp Karingal. A team was formed to conduct a buy-bust operation, with PO3 Zapatero designated as the poseur-buyer. A ₱500.00-bill was prepared as buy-bust money, and marked “DZ-1/30/14” at its left portion. The confidential informant then made arrangements for the purchase of ₱500.00 worth of *shabu*, and the transaction was scheduled the next morning.<sup>5</sup>

The buy-bust team went to the area of operation at 8:00 a.m. of January 30, 2014. At around 10:00 a.m., Hatchaso arrived and approached the confidential informant, who introduced PO3 Zapatero. Hatchaso asked PO3 Zapatero if he is the buyer, to which the latter responded in the affirmative. Hatchaso then showed a plastic sachet containing a white crystalline substance and asked for payment. PO3 Zapatero handed the marked money to Hatchaso, who in turn gave him the plastic sachet. PO3 Zapatero executed the pre-arranged signal to signify the consummation of the sale.<sup>6</sup>

PO2 Torrijos rushed in and the police officers, identifying themselves as such, placed Hatchaso under arrest. PO3 Zapatero marked the plastic sachet with the marking “DZ-NMH-1/30/14.” PO2 Torrijos frisked Hatchaso and recovered the buy-bust money from him. PO3 Zapatero retained custody of the plastic sachet as the team went back to the police station.<sup>7</sup>

---

<sup>4</sup> Id. at 3.

<sup>5</sup> Id. at 3-4.

<sup>6</sup> Id. at 4.

<sup>7</sup> Id. at 5.

While at the police station, PO3 Zapatero conducted an inventory of the evidence in the presence of Hatchaso, PO2 Torrijos, and a representative from the media, Rey Algana of *Police File Tonite*. Photos of Hatchaso and the recovered evidence were taken.<sup>8</sup>

Afterwards, PO3 Zapatero turned over the plastic sachet to the investigator, PO2 Warlito Cagurungan (*PO2 Cagurungan*),<sup>9</sup> who prepared the request for laboratory examination. PO2 Cagurungan then returned the plastic sachet to PO3 Zapatero who then brought the specimen to the Quezon City Police Department Crime Laboratory. Forensic Chemist Police Chief Inspector Anamelisa Bacani (*PCI Bacani*) conducted a quantitative and qualitative examination of the specimen, which tested positive for Methylamphetamine Hydrochloride. PCI Bacani then turned over the specimen to the evidence custodian, and retrieved the same from the latter on her scheduled date of appearance before the trial court. The specimen was presented during trial and identified by prosecution witnesses as the same item recovered from Hatchaso, sent to the crime laboratory and yielded positive results for *shabu*.<sup>10</sup>

#### *Evidence for the Defense*

For his part, Hatchaso claimed that on the afternoon of January 30, 2014, he was with his sister Nica and a certain "Alex" near GMA Network when he saw two (2) policemen running after a man named JM. Hatchaso claimed that JM approached him and showed him a necklace which the latter stole. JM was able to run away, but the police suspected Hatchaso of conniving with JM. Hatchaso was thus brought to the police station and confronted by the owner of the necklace, who clarified that it was not Hatchaso who stole the necklace. Nevertheless, Hatchaso was kept in detention and later transferred to Camp Karingal. Thereafter he was charged with a drug-related offense, and photographed by police officers. He recalled that one of the policemen borrowed ₱500.00 from the arresting officer and showed him a plastic sachet containing illegal drugs.<sup>11</sup>

#### **The RTC Ruling**

The RTC declared that the essential elements of illegal sale of *shabu* had been established by the prosecution. Hatchaso was caught *in flagrante delicto*

---

<sup>8</sup> Id.

<sup>9</sup> "PO3 Cagurungan" in some parts of the *rollo*.

<sup>10</sup> *Rollo*, p. 5.

<sup>11</sup> Id. at 6.

selling *shabu* in a buy-bust operation. PO3 Zapatero, the poseur-buyer positively identified Hatchaso as the person from whom he purchased the illegal drug. It further ruled that the failure of the arresting team to immediately photograph and prepare an inventory of the confiscated item at the place of the arrest, as well as the absence of a representative from the Department of Justice (*DOJ*) and an elected official during the inventory, does not render the drugs inadmissible in evidence since the prosecution had satisfactorily shown that the integrity and evidentiary value of the seized items were preserved.<sup>12</sup>

The January 27, 2017 RTC Judgment disposed:

**WHEREFORE**, judgment is hereby rendered finding accused NICANOR HATCHASO y MERCADER **GUILTY beyond reasonable doubt** of violation of Section 5, Article II of Republic Act [No.] 9165, and he is sentenced to suffer life imprisonment, and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

x x x x

SO ORDERED.<sup>13</sup>

### The CA Ruling

On appeal, Hatchaso questioned certain inconsistencies in the prosecution's case. Particularly, PO3 Zapatero claiming that he only learned of Hatchaso's real name after the arrest, although his full name already appears in the Pre-Operation Report. Hatchaso also pointed out that the buy-bust money was not dusted with ultraviolet powder, and that no test-buy or prior surveillance was conducted.<sup>14</sup>

Furthermore, Hatchaso alleges that the prosecution failed to justify the absence of an elective official and a DOJ representative during the inventory.<sup>15</sup>

The CA dismissed Hatchaso's contentions. It found that Hatchaso's full name appearing on the Pre-Operation Report was likely provided by the confidential informant, and does not contradict PO3 Zapatero's testimony that he only learned of Hatchaso's full name after the buy-bust operation. On the absence of a test-buy and prior surveillance, the CA held that these were not

---

<sup>12</sup> Id. at 6-7.

<sup>13</sup> CA *rollo*, p. 59.

<sup>14</sup> *Rollo*, pp. 9-10.

<sup>15</sup> Id. at 7-8.

prerequisites for the validity of an entrapment, especially when the buy-bust team is accompanied by the confidential informant. Neither was it necessary for the buy-bust money to be dusted with ultraviolet powder, as the prosecution witnesses sufficiently marked and identified the same in court.<sup>16</sup>

Finally, on the issue of chain of custody of the seized item, the CA ruled that the implementing rules and regulations (*IRR*) of R.A. No. 9165 authorizes substantial compliance with the procedure to establish chain of custody, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. The CA found that the buy-bust team was able to do so in this case.<sup>17</sup>

The preparation of the inventory and taking of photographs at the DAID office instead of the place of arrest was justified considering that the area of operation was near a train station where a large number of people were present, making it impractical, if not risky, to conduct the inventory at said place.<sup>18</sup>

The absence of a DOJ representative and an elective official during the inventory and taking of photographs does not constitute a crucial procedural flaw since the presence of the media representative suffices.<sup>19</sup>

Thus, in its March 14, 2018 Decision, the CA affirmed Hatchaso's conviction, disposing:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The Decision dated January 27, 2017 of the RTC Branch 79 of Quezon City in R-QZN-14-01194-CR is hereby **AFFIRMED**.

**SO ORDERED.**<sup>20</sup>

Undaunted, Hatchaso elevated the case to this Court. Both parties were ordered to file their supplemental briefs, but both manifested that they would just adopt their respective appeal briefs filed before the CA.<sup>21</sup>

---

<sup>16</sup> Id. at 9-10.

<sup>17</sup> Id. at 11-12.

<sup>18</sup> Id. at 12.

<sup>19</sup> Id.

<sup>20</sup> Id. at 13.

<sup>21</sup> Id. at 28-29.

## Issues

### I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED DESPITE THE DOUBTFUL CONDUCT OF THE ALLEGED BUY-BUST OPERATION;

### II.

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE DESPITE THE MATERIAL INCONSISTENCIES IN THE PROSECUTION'S DOCUMENTARY AND TESTIMONIAL EVIDENCE;

### III.

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE DESPITE THE ARRESTING OFFICERS' NONCOMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER SECTION 21, R.A. NO. 9165 AND FOR FAILURE TO PROVE THE DRUGS' INTEGRITY AND IDENTITY;

### IV.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>22</sup>

## The Court's Ruling

The appeal has merit.

After a review of the records, the Court finds that the acquittal of the accused-appellant is in order.

In order to secure the conviction of one accused of illegal sale of dangerous drugs, the prosecution must prove the following elements: the identities of the buyer and seller, the transaction or sale of the illegal drug, and the existence of the *corpus delicti*. The identity and integrity of the *corpus*

---

<sup>22</sup> CA rollo, p. 36.

*delicti*, must be shown to have been preserved.<sup>23</sup> The prosecution's evidence, unfortunately, fails to show that the procedure mandated to preserve the integrity of such evidence was observed.

Sec. 21 of R.A. No. 9165, in force at the time of the incident in question, lays down the procedure to be followed by the apprehending team in the confiscation and seizure of illegal drugs as follows:

(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.

This is the Chain of Custody Rule, which was further expounded under the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165, *viz.*:

a) The apprehending officer/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: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that noncompliance 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;

X X X X

There is no doubt that in the instant case, the apprehending team failed to strictly follow the aforementioned procedural requirements – this much is admitted by plaintiff-appellee. Still, plaintiff-appellee contends that a less than strict compliance with the procedural aspect of the Chain of Custody Rule does not necessarily render the seized drug inadmissible, so long as the integrity and evidentiary value of the seized item is preserved.

---

<sup>23</sup> *People v. Macaumbang*, G.R. No. 208836, April 1, 2019.

Plaintiff-appellee's contention, however, is inaccurate. Concomitantly, the CA erred when it ruled that there was substantial compliance with the chain of custody procedure in accordance with the IRR of R.A. No. 9165.

The IRR of R.A. No. 9165 provide a saving clause in case of deviation from the required procedure. Simply put, the IRR provides that noncompliance will not render the seizure invalid, as long as there are justifiable grounds, and as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. Thus, even before the court tackles the issue of the preservation of the integrity and evidentiary value of the seized items, it must satisfy itself that there are justifiable grounds for the deviation from the standard procedure. Here, the prosecution failed to establish any such ground.

While on the witness stand, PO3 Zapatero and PO2 Torrijos were confronted with two (2) deviations from the required procedure. First, was the fact that the inventory was not conducted immediately after seizure, but only after Hatchaso was brought to the DAID office. Second, was the fact that no DOJ representative and no elected official were present during the inventory.

Sec. 21 directs the conduct of the inventory and taking of photographs immediately after seizure and confiscation. This means that these acts must be done at the place of the arrest. It is the IRR that allow such inventory at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. Such deviations may be excused, but only if the prosecution pleads and proves a justifiable ground.<sup>24</sup>

Here, PO3 Zapatero mentioned that it was their team leader who decided to conduct the inventory at the office. He did not mention any reason given by the team leader, and only speculated that “[m]aybe, sir, because the area was at GMA MRT Station[.]”<sup>25</sup> PO2 Torrijos, on the other hand, posited that it was “[b]ecause that place was along EDSA.”<sup>26</sup> Neither of the witnesses expounded beyond that.

The Court cannot presume the conditions of the said area at the time of the arrest. Just because the arrest took place near a train station or along a main thoroughfare, would not, by such mere fact, preclude the conduct of an inventory immediately at the place of arrest. The prosecution should have

---

<sup>24</sup> *People v. Sebilleno*, G.R. No. 221457, January 13, 2020.

<sup>25</sup> TSN dated April 22, 2015, p. 11.

<sup>26</sup> TSN dated August 3, 2016, p. 6.



impressed upon the courts the conditions at the time of the arrest that would have necessitated moving the conduct of the inventory to a different location.

Nevertheless, even assuming that there was valid reason not to conduct the inventory immediately at the area of operations, the prosecution failed to give any justifiable grounds for the failure to have all the mandatory witnesses on hand for the inventory.

When confronted with such lapse, PO3 Zapatero merely stated that “[o]ur team leader was the one who contacted them and I have no idea why there were no representatives from the DOJ and the elected Barangay Official, sir.”<sup>27</sup> The prosecution bears the burden of establishing that the apprehending officers employed genuine and earnest efforts in contacting and securing the presence of the required representatives.<sup>28</sup> The lapse is made even more egregious by the fact that the operation had been planned the night prior, on January 29, 2014. The team had more than 12 hours, from the time the confidential informant came in, to the actual execution of the entrapment and conduct of inventory, to have tried to secure the presence of the required witnesses.

The prosecution’s failure to give any concrete justification for the absence of any DOJ representative or elected official at the inventory means that We cannot treat the apprehending team as having substantially complied with Sec. 21. The latter provision is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.<sup>29</sup>

The failure to strictly observe the proper procedure and the failure of the prosecution to sufficiently justify the deviations therefrom cast serious doubt on the chain of custody. Therefore, We cannot proclaim that the integrity of the seized items was preserved, the prosecution having failed to prove all the elements of the crime charged beyond reasonable doubt. With this, there is no longer need to dwell on the other errors assigned by the accused-appellant.

---

<sup>27</sup> TSN dated April 22, 2015, p. 12.

<sup>28</sup> See *People v. Umipang*, 686 Phil. 1024, 1052-1053 (2012).

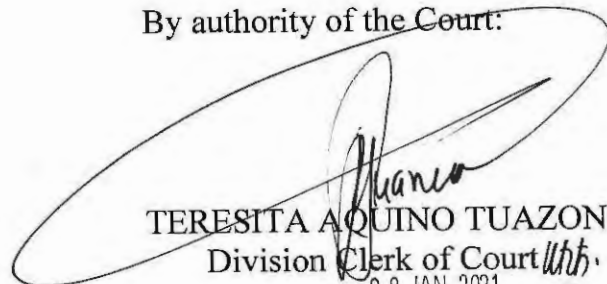
<sup>29</sup> *People v. Balubal*, G.R. No. 234033, July 30, 2018.

**WHEREFORE**, the March 14, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09010 is **REVERSED and SET ASIDE**. Accused-appellant Nicanor Hatchaso y Mercader is hereby **ACQUITTED** of the crime charged on the ground of reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) working days from receipt of this Resolution the action he/she has taken.

**SO ORDERED.** (Perlas-Bernabe, *J.*, on official leave; 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 *Whh*  
 08 JAN 2021 1/8

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

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

MR. NICANOR M. HATCHASO (x)  
 Accused-Appellant  
 c/o The Director  
 Bureau of Corrections  
 1770 Muntinlupa City

THE DIRECTOR (x)  
 Bureau of Corrections  
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
 Regional Trial Court, Branch 79  
 1100 Quezon City  
 (Crim. Case No. R-QZN-14-01194-CR)

JUDGMENT DIVISION (x)  
 Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)  
 LIBRARY SERVICES (x)  
 [For uploading pursuant to A.M. No. 12-7-1-SC]

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

COURT OF APPEALS (x)  
 Ma. Orosa Street  
 Ermita, 1000 Manila  
 CA-G.R. CR HC No. 09010

*Please notify the Court of any change in your address.*  
 GR243388. 12/02/2020(158)URES(a)