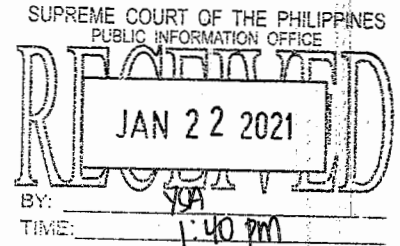




Republic of the Philippines  
Supreme Court  
Manila



THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **March 11, 2020**, which reads as follows:*

**“G.R. No. 234775 (People of the Philippines, Plaintiff-Appellee, v. Rommel Gapasin y Flores, Accused-Appellant).** — This is an appeal<sup>1</sup> seeking to reverse and set aside the Decision<sup>2</sup> dated 14 July 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08309. The CA affirmed the Decision<sup>3</sup> dated 12 April 2016 of Branch 67, Regional Trial Court (RTC) of Bauang, La Union, in Crim. Case No. 4185-Bg., finding Rommel Gapasin y Flores (accused-appellant), guilty beyond reasonable doubt of violation of Section (Sec.) 5,<sup>4</sup> Article (Art.) II of Republic Act (RA) No. 9165.<sup>5</sup>

**Antecedents**

Accused-appellant was indicted for violation of Sec. 5, Art. II of RA No. 9165 in an Information,<sup>6</sup> the accusatory portion of which states:

On the 8<sup>th</sup> day of December, 2011, in the Municipality of Bauang, Province of La Union, Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did[,] then and there, for and in consideration of the amount of FIVE HUNDRED PESOS (P500.00), willfully and unlawfully, sell, convey, deliver[,] and give away to a narcotic agent one [1] heat-sealed plastic sachet[,] containing methamphetamine hydrochloride called [*shabu*], a dangerous [drug], weighing a total of zero point zero one five two (0.0152) gram.

<sup>1</sup> *Rollo*, pp. 12-14.

<sup>2</sup> *Rollo*, pp. 2-11; Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Ricardo R. Rosario and Marja Filomena D. Singh of the Fifteenth (15<sup>th</sup>) Division, Court of Appeals, Manila.

<sup>3</sup> *CA Rollo*, pp. 47-53; Records, pp. 298-304; Penned by Hon. Ferdinand A. Fe!

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

<sup>5</sup> Comprehensive Dangerous Drugs Act of 2002.

<sup>6</sup> Records, p. 1.

Contrary to RA No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.<sup>7</sup>

Upon arraignment, accused-appellant entered a plea of "not guilty" to the charge.<sup>8</sup> After pre-trial was terminated, trial on the merits ensued.<sup>9</sup>

### Version of the Prosecution

On 08 December 2011, a buy-bust team was organized to entrap accused-appellant who, according to a confidential informant, was said to be involved in illegal drug activities in Brgy. Central West, Bauang, La Union. SO2 Anabel Cabarles (SO2 Cabarles) and PO1 Joel Domondon (PO1 Domondon), accompanied by the informant, proceeded to the target area. Upon reaching accused-appellant's house, the informant called out to accused-appellant who immediately appeared. Accused-appellant went back inside his house after SO2 Cabarles asked for P500.00 worth of *shabu*. Upon his return, accused-appellant took from his pocket a plastic sachet believed to contain *shabu* and gave it to SO2 Cabarles who then handed him the marked money. This led to accused-appellant's arrest.

PO1 Domondon retrieved from accused-appellant the marked money and a mobile phone. The police then proceeded inside accused-appellant's house to mark and photograph the seized items. The inventory was witnessed by accused-appellant, *Barangay Kagawad* Oliver Agcaoili (*Kagawad* Agcaoili) and Marlon Caustro (Caustro), a media representative. Afterwards, the buy-bust team brought accused-appellant and the seized specimen to the police station.<sup>10</sup>

On the same day, SO2 Cabarles brought the seized specimen, as well as the request for laboratory examination,<sup>11</sup> to the Philippine Drug Enforcement Agency Regional Office I in Camp Diego Silang, Carlatan, San Fernando City, La Union. Chemistry Report No. PDEAR01-DD011-0044<sup>12</sup> showed that the specimen was positive for methamphetamine hydrochloride.<sup>13</sup>

### Version of the Defense

According to accused-appellant, on 08 December 2011, several persons barged into his house. Allegedly, he was frisked and handcuffed while the unknown individuals, one of whom was a policeman, conducted a

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 21-22; Minutes and Certificate of Arraignment both dated 17 January 2012, respectively.

<sup>9</sup> *Id.* at 42-44; Pre-Trial Order dated 21 May 2012.

<sup>10</sup> *Id.* at 12, TSN dated 03 October 2012, pp. 8-14, 16-17, 24; TSN dated 04 April 2013, pp. 6-13.

<sup>11</sup> Records, p. 10.

<sup>12</sup> *Id.* at 11, Exhibit "F."

<sup>13</sup> *Id.*

search of the house. When they did not find anything, the unknown individuals led accused-appellant outside. After a while, he was brought back inside his house and was shown a packet of shabu and money. Accused-appellant was then accused of selling *shabu* and was brought to the Municipal Hall of Bauang, La Union.<sup>14</sup>

### Ruling of the RTC

On 12 April 2016, the RTC rendered its Decision,<sup>15</sup> the dispositive portion of which reads:

**WHEREFORE,** judgment is hereby rendered[,] finding the accused **GUILTY** beyond reasonable doubt of the crime of Violation of Section 5, Art. II, R.A. 9165[,] and is hereby sentenced to **suffer LIFE imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00).**

The dangerous drug[,] subject matter of the instant case[,] shall be disposed of in the manner provided for by law.

SO ORDERED.<sup>16</sup>

The RTC held that there was a legitimate buy-bust operation when SO2 Cabarles categorically testified that accused-appellant sold to her 0.0152 gram of *shabu*. Also, the identity of the *corpus delicti* was properly established. Finally, the integrity and the evidentiary value of the seized item were properly preserved under the chain of custody rule.<sup>17</sup>

Aggrieved, accused-appellant appealed to the CA.

### Ruling of the Court of Appeals

In its Decision, the CA affirmed accused-appellant's conviction. It ruled that the prosecution succeeded in establishing the existence of a legitimate buy-bust operation.<sup>18</sup> Further, the prosecution was able to establish the unbroken chain of custody of the seized illegal drug.<sup>19</sup>

Hence, this appeal.

<sup>14</sup> TSN dated 22 October 2014, pp. 4, 7-9.

<sup>15</sup> Records, pp. 298-304; CA *Rollo*, pp. 47-53.

<sup>16</sup> *Id.* at 303-304; *Id.* at pp. 52-53.

<sup>17</sup> *Id.* at 303; *Id.* at p. 52.

<sup>18</sup> *Id.* at 10.

<sup>19</sup> *Id.* at 10-11.

### Issue

The issue is whether or not the CA correctly found accused-appellant guilty beyond reasonable doubt of the offense of illegal sale of prohibited drugs under RA No. 9165.

### Ruling of the Court

The Court finds the appeal meritorious.

Accused-appellant was charged with illegal sale of dangerous drugs, defined and penalized under Sec. 5, Art. II of RA No. 9165. For the prosecution of the crime of illegal sale of prohibited 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.<sup>20</sup>

It is essential that the identity of the prohibited drugs be established beyond reasonable doubt and the prohibited drugs offered in court as exhibit are the same as those recovered from the accused.<sup>21</sup> This requirement is known as the chain of custody rule under RA No. 9165, created to safeguard doubts concerning the identity of the seized drugs.<sup>22</sup>

Sec. 21, Art. II of RA No. 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.<sup>23</sup> Said provision was amended by RA No. 10640,<sup>24</sup> which was approved on 15 July 2014. Considering, however, that the offense charged was committed on 08 December 2011, the earlier version of Sec. 21, and its corresponding Implementing Rules and Regulations (IRR), shall apply.

The following procedure must be observed under Sec. 21, Art. II of RA No. 9165:

*Sec. 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*

<sup>20</sup> *People v. Pantallano*, G.R. No. 233800, 06 March 2019.

<sup>21</sup> *People v. Macaumbang*, G.R. No. 208836, 01 April 2019.

<sup>22</sup> *People v. Bangcola*, G.R. No. 237802, 18 March 2019.

<sup>23</sup> *People v. Alvaro*, 850 SCRA 464, 479 (2018).

<sup>24</sup> 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."

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; [Emphasis supplied.]

The IRR of RA No. 9165 further provides:

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:

(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 **non-compliance 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; [Emphases supplied.]

*The requirements of Sec. 21 of Art. II of RA No. 9165 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.<sup>25</sup>

In the instant case, SO2 Cabarles testified that she marked the seized items.<sup>26</sup> The time and place of the seizure of evidence were not indicated, in clear disregard of Section 13 (c)<sup>27</sup> 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.<sup>28</sup>

More importantly, only two (2) of the three (3) required witnesses were present during the buy-bust operation and during the inventory. There was no representative from the Department of Justice (DOJ). In a number of cases,<sup>29</sup> the absence of a representative from the DOJ was frowned upon and resulted in the acquittal of the accused. This is because 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.<sup>30</sup> 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 Sec. 21, Art. II of RA No. 9165.<sup>31</sup>

*The prosecution failed to give a justifiable ground for non-compliance with Sec. 21, Art. II of RA No. 9165*

The Court recognizes that under varied field conditions, strict compliance with the requirements of Sec. 21, Art. II of RA No. 9165 may not always be possible. In fact, the IRR of RA No. 9165 – which is now crystallized into statutory law with the passage of RA No. 10640 – provides that non-compliance with the requirements of Sec. 21, Art. II of RA No. 9165 – under justifiable grounds – will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity

<sup>25</sup> *People v. Ubungen*, G.R. No. 225497, 23 July 2018.

<sup>26</sup> TSN dated 3 October 2012, pp. 13-14.

<sup>27</sup> 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.

<sup>28</sup> See *People v. Otico*, G.R. No. 231133, 06 June 2018.

<sup>29</sup> *People v. Allingag*, G.R. No. 233477, 30 July 2018; *People v. Gumban*, G.R. No. 224210, 23 January 2019; *People v. Sendad*, G.R. No. 242025, 20 November 2019.

<sup>30</sup> *People v. Moreno*, G.R. No. 234273, 18 September 2019.

<sup>31</sup> *People v. Caranto*, G.R. No. 217668, 20 February 2019 citing *People v. Tomawis*, G.R. No. 228890, 18 April 2018.

and evidentiary value of the seized items are properly preserved by the apprehending officer or team.<sup>32</sup>

In *People v. Dela Torre y Arbillon*,<sup>33</sup> however, the Court explained that for the above-saving clause to apply, the prosecution must explain the 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 Sec. 21 – that the integrity and evidentiary value of the seized items have been preserved – without justifying their failure to comply with the requirements stated therein.<sup>34</sup> Moreover, a stricter adherence to Sec. 21 is required where the quantity of illegal drugs seized is minuscule, as in the instant case where 0.0152 gram of *shabu* was allegedly obtained from accused-appellant, since **it is highly susceptible to planting, tampering or alteration of evidence.**<sup>35</sup>

With respect to the absence of key witnesses during the arrest, the Court in *People v. Acub*,<sup>36</sup> cited the separate concurring opinion of then Associate Justice (now Chief Justice) Diosdado Peralta in the case of *Mariñas v. People (Mariñas case)*.<sup>37</sup> 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 noncompliance with Sec. 21, Art. II of RA No. 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.<sup>38</sup>

<sup>32</sup> *People v. Año*, G.R. No. 230070, 14 March 2018.

<sup>33</sup> G.R. No. 238519, 26 June 2019.

<sup>34</sup> *People v. Bahoyo*, G.R. No. 238589, 26 June 2019.

<sup>35</sup> *People v. Bayang*, G.R. No. 234038, 13 March 2019.

<sup>36</sup> G.R. No. 220456, 10 June 2019.

<sup>37</sup> G.R. No. 232891, 23 July 2018.

<sup>38</sup> *People v. Acub*, G.R. No. 220456, 10 June 2019.

None of these instances are present in the instant case. SO2 Cabarles' explanation that they tried to call for the DOJ representative but to no avail<sup>39</sup> does not suffice. Mere statements of the required witnesses' unavailability, absent actual serious attempts to secure their attendance, are unacceptable and do not justify non-compliance.<sup>40</sup> The prosecution must allege and prove the reasons for their absence and convince the Court that earnest efforts were exerted to secure their attendance.<sup>41</sup> However, it is not borne from the records that earnest efforts were exerted to secure the presence of the DOJ representative. The lack of evidence of serious attempts to secure the presence of the DOJ 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.<sup>42</sup>

*Accused-appellant 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 drugs 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.<sup>43</sup> 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.<sup>44</sup>

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-appellant's 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.<sup>45</sup>

**WHEREFORE**, the instant appeal is hereby **GRANTED**. The Decision dated 14 July 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08309, finding accused-appellant guilty of violation of Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accused-appellant **ROMMEL GAPASIN y FLORES** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The accused-

<sup>39</sup> TSN dated 03 October 2012, p. 14.

<sup>40</sup> *People v. Paran*, G.R. No. 220447, 25 November 2019.

<sup>41</sup> *People v. Laway*, G.R. No. 227741, 27 March 2019.

<sup>42</sup> *People v. Vistro*, G.R. No. 225744, 06 March 2019.

<sup>43</sup> *People v. Hilario*, G.R. No. 210610, 11 January 2018.

<sup>44</sup> *People v. Malana*, G.R. No. 233747, 05 December 2018.

<sup>45</sup> *People v. Hilario*, G.R. No. 210610, 11 January 2018.



appellant is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any other lawful case.

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.”**

Very truly yours,

*Mis PDC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
GER  
1/19/21

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