



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 241317 (*People of the Philippines v. Roselito Bacus y Barangan @ “Rosel” a.k.a. “Joselito Bacus y Barangan”*). – This is an appeal¹ seeking to reverse and set aside the Decision² dated August 16, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02274 which affirmed the Decision³ dated May 25, 2016 of Branch 57, Regional Trial Court (RTC), San Carlos City, Negros Occidental in Criminal Case No. RTC-4107. It found Roselito Bacus y Barangan *a.k.a.* Joselito Bacus y Barangan (accused-appellant) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

The prosecution alleged that in January 2008, Senior Police Officer 4 Ramon Bartulin, Sr. (SPO4 Bartulin) received an information about a notorious drug pusher, later identified as accused-appellant, supplying drugs in the city. During a buy-bust operation conducted on April 3, 2008, SPO4 Bartulin asked accused-appellant if he had *shabu* with him. Then his companion, Jimmy Fernandez (Fernandez), took the *shabu* from the right pocket of his pants; SPO4 Bartulin paid for the *shabu*. After accused-appellant received the buy-bust money, SPO4 Bartulin immediately frisked him. Thereupon, the other members of the buy-bust team arrived and brought the accused-appellant and Fernandez to the police station along with the seized item weighing 28.93 grams

¹ *Rollo*, p. 19.

² *Id.* at 5-18; penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Geraldine C. Fiel-Macaraig, concurring.

³ *CA rollo*, pp. 49-90.

and the buy-bust money.⁴

Later, an Information⁵ was filed against accused-appellant and Fernandez with the RTC, which reads:

That on or about 9:00 o'clock A.M., April 3, 2008 at Interior S. Carmona St., Barangay VI, San Carlos City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and helping one another, without authority of law did, then and there willfully, unlawfully and criminally sell to a *poseur*-buyer in the buy-bust operation conducted by the Philippine National Police of San Carlos City, one (1) sachet of shabu, a dangerous drug, with a total weight of 28.93 grams, in gross violation of Sec. 5. Art. II of R.A. No. 9165 also known as the Comprehensive Dangerous Drugs of 2002.

CONTRARY TO LAW.⁶

Ruling of the RTC

On May 25, 2016, the RTC rendered its Decision⁷ finding accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. He was sentenced to suffer the penalty of life imprisonment with a fine of ₱500,000.00. It gave more credence to the testimonies of the police officers, who were presumed to have regularly performed their duties, over the denial and allegation of frame-up of the defense.⁸ Meanwhile, the RTC acquitted Fernandez of the charge holding that there was no clear evidence that he conspired with the accused-appellant towards the establishment of the same unlawful purpose.⁹

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In the assailed Decision,¹⁰ the CA affirmed accused-appellant's conviction and concluded that the testimonies of SPO4 Bartulin and other witnesses proved with moral certainty that an illegal sale of *shabu* transpired between accused-appellant as the seller and SPO4 Bartulin as

⁴ *Rollo*, p. 7.

⁵ Records, p. 1.

⁶ *Id.*

⁷ *CA rollo*, 49-90.

⁸ *Id.* at 74 and 83.

⁹ *Id.* at 88-89.

¹⁰ *Rollo*, pp. 5-18.

the *poseur*-buyer.¹¹ It also upheld the validity of accused-appellant's arrest and the seizure of the illegal drug notwithstanding the failure of the police officers to mark the seized item immediately, and conduct the requisite inventory in the presence of the mandatory witnesses.¹²

In his Supplemental Brief,¹³ accused-appellant questioned the lack of compliance with Section 21, Article II of RA 9165. Specifically, he claimed that: (1) the inventory of the property was not immediately conducted after seizure and confiscation as it was done at the police station without justification;¹⁴ (2) the inventory of the seized item was not done in the presence of an elected official, a representative from the media, and a representative from the Department of Justice (DOJ);¹⁵ and (3) the marking was not done immediately at the place of seizure.¹⁶

The Office of the Solicitor General manifested¹⁷ that it would no longer file a supplemental brief; it adopted the Appellee's Brief¹⁸ filed with the CA.

The Issue

The main issue hinges on whether the arresting police officers strictly complied with the chain of custody rule.

Ruling of the Court

The Court finds the appeal meritorious.

Accused-appellant was charged with the offense of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. To convict a person charged with such offense, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.¹⁹

In prosecution of drug-related cases, the State bears not only the

¹¹ *Id.* at 14.

¹² *Id.* at 16.

¹³ *Id.* at 35-45.

¹⁴ *Id.* at 38.

¹⁵ *Id.*

¹⁶ *Id.* at 40.

¹⁷ *Id.* at 29-31.

¹⁸ *CA roilo*, pp. 102-130.

¹⁹ *People v. Padua*, G.R. No. 239781, February 5, 2020 citing *People v. Opiana*, 750 Phil. 140, 147 (2015).

burden of proving these elements, but also of proving the *corpus delicti* or the body of the offense. The dangerous drug itself is the very *corpus delicti* of the violation of the law. Therefore, compliance with the chain of custody rule is crucial. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.²⁰

As part of the chain of custody procedure, the law further requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted *immediately* after their seizure and confiscation. In this regard, case law recognizes that “[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.” The failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.²¹

The law requires that the inventory and photography 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, a representative from the media and the Department of Justice, 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.”²² This requirement may only be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault.²³

In the present case, no such justification for the police officer’s non-

²⁰ *People v. Padua*, *supra* citing *People v. Guzon*, 719 Phil. 441, 451 (2013).

²¹ *People v. Mina Jr.*, G.R. No. 232307, January 8, 2020 citing *People v. Mamalumpon*, 767 Phil. 845, 854-855 (2015).

²² *People v. Mina Jr.*, *supra*.

²³ *People v. Pilot*, G.R. No. 238398, December 10, 2019 citing *People v. Lim*, G.R. No. 231989, September 4, 2018.

compliance with the requirements was alleged nor proven. Recent jurisprudence has expounded on the policy by consistently ruling that the prosecution must at least adduce a justifiable reason for non-observance of the rules or show a genuine and sufficient effort to secure the required witnesses, in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. Accordingly, a stricter adherence to this rule is required especially when, as in here, the quantity of the illegal drugs is miniscule since it is highly susceptible to planting, tampering, and alteration.²⁴

Here, both the physical inventory and the marking were not done at the place of arrest but only at the police station. Yet, the prosecution did not provide any reason why the inventory was not done at the place of apprehension; and regardless of the distance between the place of apprehension and the police station, the prosecution did not indicate whether it was the nearest police station from where the apprehension took place.²⁵ There was likewise no showing by the prosecution that these were done due to extraordinary circumstances that would threaten the safety and security of the apprehending officers and/or the witnesses required by law or of the items seized.²⁶

Worse, the absence of the witnesses required by law, an elected public official, representative of the DOJ and the media to witness the physical inventory and photograph of the seized items is glaring. In fact, as pointed out by accused-appellant, their signatures do not appear in the inventory Receipt.²⁷ In *People v. Montalban*,²⁸ the Court explained:

It must be emphasized that the required three witnesses must be at, or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs immediately after seizure and confiscation. *The absence of three witnesses, and of not bringing these witnesses to the intended place of arrest when the police operatives could easily do so, do not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.*

²⁴ *Id.* citing *People v. Malazo*, G.R. No. 223713, January 7, 2019.

²⁵ *People v. Montalban*, G.R. No. 235014, December 5, 2019.

²⁶ *People v. Padua*, *supra* note 19.

²⁷ *Id.*

²⁸ *People v. Montalban*, *supra* note 25 citing *People v. De Leon*, G.R. No. 214472, November 28, 2018.

The Court has ruled that strict compliance with the requirements of Section 21 of RA 9165 may not always be possible due to varied field conditions. Both the law and the IRR provides that non-compliance with the requirements under Section 21, Article II of RA 9165 under justifiable grounds will not render void and invalid the seizure and custody over the seized items; provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. The prosecution has the duty to prove the existence of justifiable ground for non-compliance with the rule and that the integrity and evidentiary value of the seized items are properly preserved. (Emphasis supplied)

At this point, the Court emphasizes the failure of the prosecution to explain why the police officers did not secure the presence of an elected public official, a representative from the DOJ, and the media. Notably, the testimonies of the prosecution witnesses even failed to establish that there was earnest effort to coordinate with and secure the presence of the required witnesses.²⁹ It cannot be denied, therefore, that serious breaches of the mandatory procedures required by law in the conduct of buy-bust operations were committed by the police. These cast serious doubt as to the integrity of the allegedly confiscated drug specimen; hence, creating reasonable doubt as to the guilt of accused-appellant.³⁰

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 16, 2017 of the Court of Appeals in CA- G.R. CR-HC No. 02274 is **REVERSED** and **SET ASIDE**.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of accused-appellant Roselito Bacus y Barangan *a.k.a.* Joselito Bacus y Barangan, unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

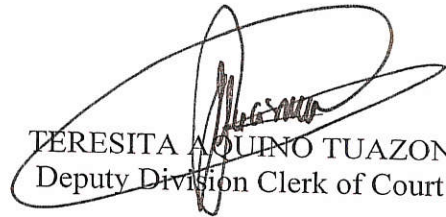
Let entry of judgment be issued.

²⁹ *People v. Padua*, *supra* note 19.


³⁰ *People v. Padua*, *supra*.

SO ORDERED.”

Very truly yours,


 TERESITA AQUINO TUAZON
 Deputy Division Clerk of Court *with 1/29*

CERTIFIED TRUE COPY


ATTY. TERESITA A. TUAZON
 Deputy Division Clerk of Court

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 Accused-Appellant
 c/o The Director
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THE DIRECTOR (x)
 Bureau of Corrections
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 57
 San Carlos City, 6127 Negros Occidental
 (Crim. Case No. RTC-4107)

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 Supreme Court, Manila

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