



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 November 2020** which reads as follows:*

“G.R. No. 246242 (*Esmeralda Nagal y Lazarte a.k.a. Esmeralda Nagal y Dela Cruz a.k.a Esme v. People of the Philippines*). –

The Case

This petition for review on *certiorari* assails the Court of Appeals’ Decision¹ dated August 23, 2018 and Resolution² dated March 14, 2019 in CA-G.R. CR No. 40197 affirming Esmeralda Nagal y Lazarte’s (petitioner) conviction for violations of Section 11 and Section 12, Article II of Republic Act No. 9165 (RA 9165),³ and denying her motion for reconsideration.

Proceedings Before the Trial Court

The Charge and Plea

Under two (2) separate Informations, petitioner was charged, respectively, with violations of Section 11 (illegal possession of dangerous drugs) and Section 12 (illegal possession of drug paraphernalia) of Article II of RA 9165:

¹ Penned by Associate Justice Jane Aurora C. Lantion with concurrence of Associate Justice Pedro B. Corales and Associate Justice Gabriel T. Robeniol, *rollo*, pp. 39-52.

² *Id.* at 54-55.

³ The Comprehensive Dangerous Drugs Act of 2002.

Criminal Case No. 16-1256

That on or about the 22nd day of September 2016, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly have in her possession, control, and custody three (3) pcs. aluminum foil strips, two (2) pcs. rolled aluminum foil, one (1) blue disposable lighter, one (1) digital weighing scale and three (3) empty packs of transparent plastic sachets which are instruments or paraphernalia fit or intended for using, consuming, administering or introducing any dangerous drug into the body, in violation of the above-cited law.

CONTRARY TO LAW.

Criminal Case No. 16-1257

That on or about the 22nd day of September 2016 in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly, without being authorized by law, have in her possession, control and custody twelve (12) pcs. heat-sealed transparent plastic sachets each containing to wit:

- zero point one four (0.14) gram
- zero point three one (0.31) gram
- zero point one three (0.13) gram
- zero point two zero (0.20) gram
- zero point zero five (0.05) gram
- zero point zero five (0.05) gram
- zero point zero eight (0.08) gram
- zero point zero six (0.06) gram
- zero point zero four (0.04) gram
- zero point two three (0.23) gram
- zero point zero eight (0.08) gram
- zero point zero six (0.06) gram

with a total weight of one point four three (1.43) grams of Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.⁴

On arraignment, petitioner pleaded not guilty to both charges. Joint trial ensued.

Respondent's Version

Police Officer 2 Emmanuel Tegio (PO2 Tegio) testified for the prosecution. His testimony may be summarized, in this wise:

⁴ *Rollo*, pp. 78-79.

On September 21, 2016, members of the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG), Las Piñas City secured a search warrant on petitioner's residence in relation to her alleged possession of unidentified amount and quality of illegal drugs and various drug paraphernalia.⁵

The next day, Police Chief Inspector Nicolas Ma-amo (PCI Ma-amo) briefed the members of SAID-SOTG for the implementation of search warrant. PO2 Tegio and PO1 Mamonito Sison (PO1 Sison) were tasked to search petitioner's house, PO2 Domingo Abarico (PO2 Abarico), to take photographs, while the rest of the team, to serve as perimeter back-up.⁶

The team proceeded to petitioner's house at No. 58, Pag-asa Compound, Zapote, Las Piñas City. PCI Ma-amo knocked at the door, introduced himself as a police officer, and read the contents of the search warrant. Thereafter, PO2 Tegio and PO1 Sison commenced the search. PO2 Tegio discovered the following under the kitchen sink inside petitioner's house: a) a pink pouch which had twelve (12) plastic sachets containing white crystalline substance and b) a plastic bowl containing two (2) pieces of rolled aluminum foil, three (3) aluminum foil strips, a disposable lighter, a digital weighing scale and three (3) empty plastic sachets.⁷

PO2 Tegio marked and inventoried the seized items in the presence of petitioner, Barangay Kagawad Joel Piscasio (Barangay Kagawad Piscasio), and the rest of the team. PO2 Tegio secured the seized items inside a ziplock and kept the same inside the evidence box. PO2 Tegio brought the evidence box to the SAID-SOTG office where another inventory was done in the presence of media representative Norman Carandang (media representative Carandang). PO2 Tegio prepared the Chain of Custody Form, Spot Report, Request for Laboratory Examination, and Request for Drug Test.⁸

PO2 Tegio brought the specimens and request for examination to the Philippine National Police (PNP) crime laboratory where they were received by Forensic Chemist Police Chief Inspector Ofelia Vallejo (PCI Vallejo).⁹

Both the defense and the prosecution stipulated on the testimony of Forensic Chemist PCI Vallejo that she could identify the items brought to the crime laboratory for testing, she did a laboratory examination on the specimens, and she reduced her findings in her Chemistry Report No. D-1582-16.¹⁰

⁵ *Id.* at 75-76.

⁶ *Id.* at 76.

⁷ *Id.* at 76-77.

⁸ *Id.* at 77.

⁹ *Id.* at 77-78.

¹⁰ *Id.*

Petitioner's Version

Petitioner, on the other hand, testified that on September 22, 2016, her daughter Maria Jessica dela Cruz (Jessica) woke her up because eight (8) men in civilian clothes had entered her house. The men introduced themselves as police officers and told her that they would search her house. When she asked what they were looking for, she was told to keep quiet. She and her family were ordered to stand near the bathroom as they conducted the search. They rummaged through her things and took their TV plus, Jessica's wallet containing pieces of silver jewelry, tablets, and mobile devices. She then saw them search under the kitchen sink and lay something on the table. They asked her to sign a document she did not understand. She was first brought to the hospital for medical examination and later to the SAID-SOTG station. Jessica told her that the police officers had asked her for ₱30,000.00 in exchange for her release. Since she failed to produce the amount, she was charged with violations of Section 11 and Section 12 of Article II of RA 9165.¹¹

Ruling of the Trial Court

By Joint Decision¹² dated June 27, 2017, the trial court rendered a verdict of conviction, *viz.*:

WHEREFORE, in view of the foregoing disquisitions, judgment is rendered finding Esmeralda Nagal y Lazarte a.k.a. Esmeralda Nagal y dela Cruz a.k.a. Esme guilty with moral certainty of violation of Section 11, Article II, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and is sentenced to suffer the indeterminate sentence of twelve (12) years and eight (8) months, as MINIMUM, to seventeen (17) years and eight (8) months, as MAXIMUM, and a fine in the amount of Php300,000.00, with subsidiary imprisonment in case of insolvency.

For violation of Section 12, Article II, RA No. 9165, the court sentences the accused to six (6) months and one (1) day to two (2) years imprisonment and a fine in the amount of Php10,000.00, with subsidiary imprisonment in case of insolvency.

x x x x x x x x x

SO ORDERED.¹³

The trial court gave full credence to the testimony of the prosecution witness, a police officer who was in the performance of his official functions.

¹¹ *Id.* at 79-80.

¹² Penned by Judge Phoeve C. Meer, *id.* at 75-84.

¹³ *Id.* at 83-84.

It found the chain of custody to have been duly established, thus, rejected petitioner's denial and theory of frame up and extortion.

Proceedings Before the Court of Appeals

On appeal, petitioner faulted the trial court for rendering the verdict of conviction allegedly despite the prosecution's 1) failure to prove the elements of illegal possession of dangerous drugs and illegal possession of drug paraphernalia, and 2) procedural omissions during the operation: a) absence of the required witnesses during the inventory and photographing of the seized drugs, and b) failure to mark the seized items with the arresting officer's own initials.

For its part, the People, through the Office of the Solicitor General (OSG), countered, in the main: 1) the elements of illegal possession of dangerous drugs and illegal possession of drug paraphernalia were all proven; 2) there was substantial compliance with the chain of custody rule; and, 3) the presumption of regularity in the performance of the police officers' official functions prevails over petitioner's bare denial and theory of frame up and extortion.

Ruling of the Court of Appeals

In its assailed Decision¹⁴ dated August 23, 2018, the Court of Appeals affirmed.

Petitioner's motion for reconsideration was denied under Resolution¹⁵ dated March 14, 2019.

The Present Petition

Petitioner now seeks affirmative relief from the Court reiterating her arguments before the Court of Appeals and praying anew for her acquittal.¹⁶

In its comment,¹⁷ the OSG, too, repeats its arguments before the Court of Appeals.

¹⁴ Penned by Associate Justice Jane Aurora C. Lantion with concurrence of Associate Justice Pedro B. Corales and Associate Justice Gabriel T. Robeniol, *id.* at 39-52.

¹⁵ *Id.* at 54-55.

¹⁶ *Id.* at 11-33.

¹⁷ *Id.* at 120-136.

Core Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction against petitioner for violation of Section 11 and Section 12, Art. II of RA 9165?

Ruling

We acquit.

In drug cases, the State bears not only the burden of proving the elements, but also of proving the *corpus delicti* or the body of the crime. The drug itself constitutes the *corpus delicti* of the offense.¹⁸

Petitioner was charged with illegal possession of dangerous drugs and illegal possession of drug paraphernalia which she allegedly committed on September 22, 2016. The applicable law, therefore, is RA 9165 as amended by Republic Act No. 10640 (RA 10640) which was approved on July 15, 2014.

Section 21 of RA 9165, as amended, prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz.*:

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 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, that noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by

¹⁸ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis supplied)

x x x

x x x

x x x

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure and marking 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 by the forensic chemist to the court.¹⁹

The *first link* speaks of seizure and marking including the physical inventory and taking of photographs of the seized or confiscated items.

As part of the chain of custody procedure, the law requires that the marking, physical inventory, and photographing of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photographing be done in the presence of the accused or the person 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 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.²⁰

*People v. Claudel*²¹ instructs:

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has sufficient time to gather and bring with it the said witnesses. (Underscoring supplied)

¹⁹ *Id.*

²⁰ *People v. Dela Cruz*, G.R. No. 238212, January 27, 2020.

²¹ G.R. No. 219852, April 3, 2019.

*People v. Lim*²² stressed the importance of the presence of the insulating witnesses or in the alternative, the prosecution must allege and prove the reasons for their absence and show that earnest efforts were made to secure their attendance. The Court explained:

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s 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 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[d] 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.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to [the] state reasons for their non-

²² G.R. No. 231989, September 4, 2018.

compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

The law requires the presence of these witnesses primarily to ensure not only compliance with the chain-of-custody rule but also to remove any suspicion of switching, planting, or contamination of evidence.²³

Here, records show that on September 21, 2016, members of the SAID-SOTG Las Piñas had secured a search warrant on petitioner who was suspected of possessing illegal drugs and drug paraphernalia. The next day, the police officers conducted the search of petitioner's house. PO2 Tegio recovered twelve (12) plastic sachets containing white crystalline substance which later tested positive for *shabu* and several drug paraphernalia. While still at the *situs criminis*, PO2 Tegio inventoried the seized items in the presence of Barangay Kagawad Piscasio. Thereafter, the team returned to their station wherein another inventory was conducted, this time in the presence of media representative Carandang.

PO2 Tegio, however, did not offer any explanation on the arresting team's failure to secure the presence of **both** Barangay Kagawad Piscasio and media representative Carandang at the same time. Nor did he explain why **two (2) separate** inventories had to be conducted.

Notably, the police officers had secured a search warrant on petitioner on September 21, 2016. The next day, the warrant was implemented. Clearly, they had more than sufficient time prior to the search and seizure operation to secure the presence of the required witnesses at the time of arrest. They were deemed to have already known what to expect during the operation, hence, they should have had the foresight to do all the necessary preparations for it. As it was, the arresting officers failed to comply with the mandatory procedures for the conduct of the operation, specifically to ensure the presence of the insulating witnesses during the search and seizure and arrest.

The Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165, as amended, may not always be possible; and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165, as amended, does not *ipso facto* render the seizure and custody over the items void and invalid. This is with the caveat, however, that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly

²³ *People v. Santos*, G.R. No. 236304, November 5, 2018.

preserved. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.²⁴

Here, the prosecution failed to offer any explanation, let alone, acknowledge its deviation from the required procedure. Verily, there was already a breach of the chain of custody early on during the first link.

Another. There was nothing in the records showing how the seized drugs were handled or stored from the time they were turned over to the laboratory up to their presentation in court.

In *People v. Baltazar*,²⁵ the accused was acquitted of illegal sale of dangerous drugs because the records did not show how the illegal drugs were brought to court. There was no showing either how the alleged seized items were stored after they were examined by the forensic chemist, who handled the specimens after examination, and where the same were kept until they got retrieved and presented in court.

Notably, the parties agreed to dispense with the testimony of Forensic Chemist PCI Vallejo, stipulating that she could identify the items brought to the crime laboratory for testing, she conducted laboratory examination on the specimen, and she reduced her findings in writing. *People v. Miranda*, citing *People v. Cabuhay*, ordained that the parties' stipulation to dispense with the testimony of the forensic chemist should include:

x x x (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial.²⁶

Here, the stipulation to dispense with the testimony of the Forensic Chemist PCI Vallejo did not contain the vital pieces of information required, *i.e.*, she received the seized drugs as marked, properly sealed, and intact; she resealed the drug items after examination of the content; and, she marked the drug items. Absent any testimony regarding the management, storage, and preservation of the illegal drugs allegedly seized herein after their qualitative examination, the *fourth link* in the chain of custody of the said illegal drug could not be reasonably established.²⁷

In light of the prosecution's failure to establish with moral certainty the identity and the unbroken chain of custody of the dangerous drugs seized from petitioner, a verdict of acquittal is in order.²⁸

²⁴ *People v. Claudel*, supra note 21.

²⁵ G.R. No. 229037, July 29, 2019.

²⁶ G.R. No. 218126, July 10, 2019.

²⁷ *Id.*

²⁸ *People v. Villojan, Jr.*, G.R. No. 239635, July 22, 2019.

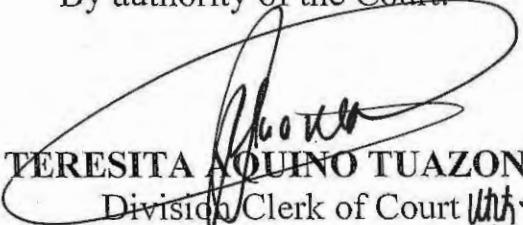
WHEREFORE, the petition is **GRANTED**. The Decision dated August 23, 2018 and Resolution dated March 14, 2019 of the Court of Appeals in CA-G.R. CR No. 40197 are **REVERSED** and **SET ASIDE**. Petitioner **ESMERALDA NAGAL y LAZARTE** a.k.a. **ESMERALDA NAGAL y DELA CRUZ** a.k.a. **ESME** is **ACQUITTED** of violations of Section 11 and Section 12, both of Article II of Republic Act No. 9165 in Criminal Case Nos. 16-1256 & 16-1257.

The Superintendent of the Correctional Institution for Women, Mandaluyong City is ordered to (a) immediately **RELEASE** **ESMERALDA NAGAL y LAZARTE** from custody, unless she is being held for some other lawful cause; and (b) **SUBMIT** her compliance report within five (5) days from notice.

Let entry of judgment immediately issue.

SO ORDERED." (Rosario, J., additional member per S.O. 2797 dated November 5, 2020)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *UTK*
18 DEC 2020 *12/18*

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"ESMERALDA NAGAL y DELA CRUZ" a.k.a.
"ESME" (x)
Petitioner
c/o The Superintendent
Correctional Institution for Women
1550 Mandaluyong City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 275
Las Piñas City
(Crim. Case Nos. 16-1256 & 16-1257)

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1770 Muntinlupa City

THE SUPERINTENDENT (x)
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