



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 7, 2020** which reads as follows:*

**“G.R. No. 247699 (Ruth Mae Bautista y Caedo, Martin Bugagon y Custodio, Roland Flores y Garcia, and Henson Ocon y Acedera v. People of the Philippines)**

**The Case**

This petition seeks to nullify the following dispositions of the Court of Appeals in CA-G.R. CR No. 40115:

1. Decision<sup>1</sup> dated September 27, 2018 affirming the conviction of petitioners Ruth Mae Bautista y Caedo, Martin Bugagon y Custodio, and Roland Flores y Garcia for violation of Section 13, Article II of Republic Act No. (RA) 9165, otherwise known as the “*Comprehensive Dangerous Drugs Acts of 2002*”; and the conviction of petitioner Henson Ocon y Acedera for violation of Section 14 of the same law.
2. Resolution<sup>2</sup> dated May 28, 2019 denying petitioners’ motion for reconsideration.

**The Proceedings Before the Trial Court**

***The Charges***


Petitioners Ruth Mae Bautista y Caedo, Martin Bugagon y Custodio, Roland Flores y Garcia, and their co-accused Andrea

- over – nineteen (19) pages ...  
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<sup>1</sup> Penned by Associate Justice Mariflor P. Punzalan Castillo with the concurrences of Associate Justices Danton Q. Bueser and Ronaldo Roberto B. Martin; *rollo*, pp. 40-56

<sup>2</sup> *Rollo*, pp. 59-60.



Garcia y Aguilar were charged with violation of Section 13 of RA 9165 under four (4) separate Informations, *viz.*:

Criminal Case No. R-MKT-16-03507-CR filed against Ruth Mae Bautista y Caedo:

On the 19<sup>th</sup> day of December 2016, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess any dangerous drug, and while the said accused was then in a gathering and in the proximate company of at least two (2) persons having a pot session, did then and there willfully, unlawfully and feloniously have in her possession, direct custody, and control zero point zero six (0.06) gram of methamphetamine hydrochloride (*shabu*), a dangerous drug, in violation of the above-cited law.

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

The other three (3) Informations essentially bore the same allegations except for the name of the accused and the quantity of illegal drugs confiscated, thus:

Criminal Case No. R-MKT-16-03508-CR	Martin Bugagon y Custodio	zero point twenty (0.20) gram of methamphetamine hydrochloride ( <i>shabu</i> ) <sup>4</sup>
Criminal Case No. R-MKT-16-03509-CR	Roland Flores y Garcia	zero point zero seven (0.07) gram of methamphetamine hydrochloride ( <i>shabu</i> ) <sup>5</sup>
Criminal Case No. R-MKT-16-03506-CR	Andrea Garcia y Aguilar	zero point zero two (0.02) gram of methamphetamine hydrochloride ( <i>shabu</i> ) <sup>6</sup>

On the other hand, petitioner Henson Ocon y Acedera and his co-accused Mark Villegas y Bicaldo were charged with violation of Section 14 of RA 9165 under two (2) separate Informations, *viz.*:

Criminal Case No. R-MKT-16-03510-CR filed against Henson Ocon y Acedera:

On the 19<sup>th</sup> day of December 2016, in the city of Makati, the Philippines, accused, without being authorized by law to possess or otherwise use any equipment, instrument, apparatus,

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<sup>3</sup> *Id.* at 84.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

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

and other paraphernalia fit or intended for smoking, administering or introducing any dangerous drug into the body, without the corresponding license and while the said accused were then in a gathering or meeting and in company of Mary Cris Dizon y Manalo, Martin Bugagon y Custodio, Roland Flores y Garcia, Ruth Mae Bautista y Caedo, and Andrea Garcia y Aguilar having a pot session, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control one (1) empty plastic sachet with suspected shabu residue, a disposable green lighter, and two (2) pieces of aluminum foil, which are dangerous drug paraphernalias (*sic*), in violation of the above-cited law.

CONTRARY TO LAW.<sup>7</sup>

The Information in Criminal Case No. R-MKT-16-03511-CR against accused Mark Villegas y Bicaldo contained the same allegations save for the drug paraphernalia confiscated, thus:

Mark Villegas y Bicaldo	one (1) piece of improvised tooter, two (2) pieces of empty Plastic sachets with suspected shabu residue and one (1) lighter <sup>8</sup>
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The cases were raffled to the Regional Trial Court (RTC) – Branch 65, Makati City. On arraignment, the accused all pleaded not guilty to the respective charges against them.<sup>9</sup>

Meanwhile, accused Andrea Garcia y Aguilar filed a motion to quash<sup>10</sup> Information for lack of jurisdiction on account of her minority.<sup>11</sup> By Order<sup>12</sup> dated January 17, 2017, the trial court granted the motion. Joint trial thereafter ensued against the other accused.

### ***The Prosecution's Version***

During the trial, PO2 Oliver Pallay of the Makati City Police Community Precinct 8 (PCP 8) testified for the prosecution. He was followed by PO2 Vince De Villa, PO2 Jessie-Rom Conge, and SPO2 Timmy Paul Espinola, albeit their cross examination was dispensed with after the prosecution and the defense stipulated that their testimonies corroborated the testimony of PO2 Pallay.<sup>13</sup> Too, the

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<sup>7</sup> *Rollo*, p. 84.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 85.

<sup>10</sup> Record, pp. 269-271.

<sup>11</sup> Accused Andrea Garcia y Aguilar was only sixteen (16) years old at the time of her arrest, hence the family courts have exclusive jurisdiction over her; CA Decision, p. 7.

<sup>12</sup> Record, pp. 274-275.

<sup>13</sup> *Rollo*, p. 85.

testimonies of PO3 Roque Carlo Paredes, Barangay Kagawad Virgilio Awit, and forensic chemist PCI Ofelia Vallejo of the Southern Police District Crime Laboratory were dispensed with after the parties stipulated that: (1) PO3 Paredes was the police investigator who prepared the Investigation Report and the request for laboratory examination of the accused and the seized items; (2) Kagawad Awit acted as an independent witness during the inventory of the seized items; and (3) PCI Vallejo conducted the laboratory examination on the accused and on the seized items per Chemistry Report No. D-2591-16.<sup>14</sup>

On the other hand, petitioner Henson Ocon y Acedera and his co-accused Mark Villegas y Bicaldo testified for the defense.<sup>15</sup>

The collective testimonies of the prosecution witnesses tended to prove that on December 19, 2016, around 2:35 in the morning, PCP 8 Duty Desk Officer SPO2 Rolando Ruivivar received a tip through a telephone call that there were ongoing illegal gambling activities at No. 129L, 12<sup>th</sup> Avenue, Brgy. East Rembo, Makati City. SPO2 Ruivivar immediately dispatched a team composed of PO2 Pallay, PO2 De Villa, PO2 Conge, and SPO2 Espinola to verify the report.<sup>16</sup> At the site, the police officers saw, through an open door,<sup>17</sup> a group of four (4) males and three (3) females engaged in pot session and illegal gambling.<sup>18</sup> One of them, later identified as accused Villegas was holding a tooter.<sup>19</sup> Based on their reasonable belief that the suspects were actually committing criminal offenses, the police officers entered the premises and arrested the suspects.<sup>20</sup>

PO2 De Villa instructed all female suspects to empty their pockets which yielded the following items: from a certain Mary Cris Dizon, ₱40.00 bet money and two (2) pieces of dice; from Garcia, ₱35.00 bet money and one (1) piece plastic sachet containing white crystalline substance suspected as *shabu*; and from petitioner Bautista, one (1) piece plastic sachet containing white crystalline substance suspected as *shabu*.<sup>21</sup> PO2 De Villa confiscated all the items.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> CA Decision, p. 4.

<sup>18</sup> *Rollo*, p. 86.

<sup>19</sup> CA Decision, p. 4.

<sup>20</sup> *Rollo*, p. 86.

<sup>21</sup> CA Decision, p. 5.

On the other hand, PO2 Pally did a procedural body search on the male suspects. The search yielded the following items: from Villegas, one (1) piece improvised tooter, two (2) pieces of unsealed empty plastic sachets containing residue of white crystalline substance suspected as *shabu*, and one (1) piece blue lighter; from petitioner Ocon, one (1) piece empty plastic sachet containing residue of white crystalline substance suspected as *shabu*, one (1) disposable green lighter, two (2) pieces used aluminum foil placed inside an unsealed transparent plastic sachet; from petitioner Bugagon, two (2) pieces small heat-sealed transparent plastic sachet containing white crystalline substance suspected as *shabu*, one (1) black coin purse, and ₱50.00 bet money; and from petitioner Flores, one (1) piece small heat-sealed transparent plastic sachet containing white crystalline substance suspected as *shabu*, one (1) black coin purse, and ₱35.00 bet money.<sup>22</sup> PO2 Pally confiscated all the items. To secure them, he slid the items seized from Villegas into his right pocket, and those from Ocon, into his left pocket. As for the items seized from Bugagon, PO2 Pally placed them inside the pouch he recovered from Bugagon himself; and for those items coming from Flores, inside the pouch he recovered from Flores himself.<sup>23</sup>

SPO2 Espinola then informed the suspects of the nature of their arrest and their constitutional rights. The suspects were thereafter boarded into the police mobile and brought to PCP 8. There, the arresting officers did the marking and inventory of the seized items in the presence of the suspects and Kagawad Awit.<sup>24</sup> The suspects were later brought to the Ospital ng Makati for Medical Inquest Examination, and much later, to the PNP crime laboratory for examination, together with the confiscated items.<sup>25</sup> Forensic Chemist PCI Vallejo of the Southern Police District Crime Laboratory received the seized items from PO2 Pally and thereafter conducted the examination on the seized illegal drugs and drug paraphernalia (the empty plastic sachets and used aluminum foils containing traces of white crystalline substance), all of which yielded positive for presence of methamphetamine hydrochloride per her Chemistry Report No. D-2591-16 dated December 19, 2016 (Exhibit “E”).<sup>26</sup> The following is a summary of the seized items with their corresponding markings and laboratory examination results:<sup>27</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 15.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.*

<sup>26</sup> Record, p. 335.

<sup>27</sup> Record, p. 335 and CA Decision, pp. 6-7.

Name	Seized Item/s	Marking	Findings
Dizon, Mary Cris	Two (2) pieces of dice	“OBP”	Not subjected to examination
Garcia, Andrea	One (1) piece plastic sachet containing white crystalline substance suspected as <i>shabu</i>	“OBP-8”	Weighed 0.02 gram; positive for presence of methamphetamine hydrochloride ( <i>shabu</i> )
Bautista, Ruth Mae	One (1) piece plastic sachet containing white crystalline substance suspected as <i>shabu</i>	“OBP-7”	Weighed 0.06 gram; positive for presence of methamphetamine hydrochloride ( <i>shabu</i> )
Villegas, Mark	One (1) piece improvised tooter	“OBP-A2”	Not subjected to examination
	Two (2) pieces of unsealed empty plastic sachets containing residue of white crystalline substance suspected as <i>shabu</i>	“OBP-1” “OBP-2”	Contained traces of white crystalline substance; positive for presence of methamphetamine hydrochloride ( <i>shabu</i> )
	One (1) piece blue lighter	“OBP-A4”	Not subjected to examination
Ocon, Henson	One (1) piece empty plastic sachet containing residue of white crystalline substance suspected as <i>shabu</i>	“OBP-3”	Contained traces of white crystalline substance; positive for presence of methamphetamine hydrochloride ( <i>shabu</i> )
	One (1) disposable green lighter	“OBP-A3”	Not subjected to examination
	Two (2) pieces used aluminum foil placed inside an unsealed transparent plastic sachet	“OBP-A1”	With traces positive for presence of methamphetamine hydrochloride ( <i>shabu</i> )

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Bugagon, Martin	two (2) pieces small heat-sealed transparent plastic sachet containing white crystalline substance suspected as <i>shabu</i>	“OBP-4” “OBP-5”	Weighed 0.15 and 0.05 gram, respectively; positive for presence of methamphetamine hydrochloride ( <i>shabu</i> )
	one (1) black coin purse	“OBP-A5”	Not subjected to examination
Flores, Roland	one (1) piece small heat-sealed transparent plastic sachet containing white crystalline substance suspected as <i>shabu</i>	“OBP-6”	Weighed 0.07 gram; positive for presence of methamphetamine hydrochloride ( <i>shabu</i> )

Accordingly, charges for violation of RA 9165 were filed against Garcia, Bautista, Villegas, Ocon, Bugagon, and Flores only. Dizon was spared because she was not found to be in possession of either dangerous drugs or drug paraphernalia.<sup>28</sup>

### *The Defense's Version*

Ocon testified that in the early morning of December 19, 2016, he was sleeping with his wife Bautista and their child inside their home. Their friends Garcia, Bugagon, Flores, and Dizon were also staying in the house with them. On the same day, around 2 o'clock in the morning,<sup>29</sup> a certain Mark Batistis came and invited him to play dice. When he refused, Batistis turned to Flores, Bugagon, and Dizon and asked them to play dice with him, instead. Batistis also invited Villegas who was then passing by Ocon's house.<sup>30</sup> During the game, Batistis' cellphone rang and so Batistis went out of the house to answer the call. Several minutes later, Kagawad Awit and the police officers arrived. The police officers told them not to run, scanned the house, took their cellphones and money, handcuffed them, boarded them into a van, and brought them to PCP 8.<sup>31</sup>

The defense did not present any documentary evidence.<sup>32</sup>

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<sup>28</sup> CA Decision, p. 7.

<sup>29</sup> *Rollo*, p. 86.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> CA Decision, p. 7.

<sup>32</sup> Record, p. 364.

### The Trial Court's Ruling

Under Decision<sup>33</sup> dated May 31, 2017, the trial court found petitioners and their co-accused Mark Villegas guilty as charged, thus:

**WHEREFORE**, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case Nos. R-MKT-16-03507-CR, RMKT-16-03508-CR and R-MKT-16-03509-CR, the court finds the accused, Ruth Mae Bautista y Caedo, Martin Bugagon y Custodio and Roland Flores y Garcia, GUILTY beyond reasonable doubt of the crime of violation of Section 13, Article II, of R.A. No. 9165 and sentences each of them to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00) without subsidiary imprisonment in case of insolvency.
2. In Criminal Case Nos. R-MKT-16-03510-CR and R-MKT-16-03511-CR, the court finds the accused, Henson Ocon y Acedera and Mark Villegas y Bicaldo, GUILTY beyond reasonable doubt of the crime of violation of Section 14, Article II, of R.A. No. 9165 and sentences each of them to suffer the penalty of two (2) years, eight (8) months and one (1) day, as minimum, to four (4) years, as maximum, and to pay a fine of Ten Thousand Pesos (₱10,000.00) without subsidiary imprisonment in case of insolvency.

The period of detention of the accused should be given full credit.

The Branch Clerk of Court is directed to transmit the plastic sachets containing shabu and the drug paraphernalias subject matter of these cases to the PDEA for said agency's appropriate disposition.

**SO ORDERED.**<sup>34</sup>

The trial court found that the prosecution was able to establish all the elements of possession of dangerous drugs during parties,

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<sup>33</sup> Penned by Judge Gina M. Bibat-Palamos; *rollo*, pp. 83-91.

<sup>34</sup> *Rollo*, pp. 90-91.



social gatherings, or meetings (Section 13, RA 9165) and possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs during parties, social gatherings, or meetings (Section 14, RA 9165).<sup>35</sup> It gave credence to PO2 Pallay's testimony that (1) they saw through an open door<sup>36</sup> a group of seven (7) individuals engaged in illegal gambling while having a pot session; (2) the police recovered from them illegal drugs and drug paraphernalia; (3) the accused had no authority to possess these illegal drugs and drug paraphernalia; (4) the accused possessed the seized items freely and consciously.<sup>37</sup> Too, the arresting officers substantially complied with the chain of custody rule under Section 21 of RA 9165, as amended. Hence, the presumption of regularity in the performance of their duties must be upheld.<sup>38</sup>

### **The Proceedings Before the Court of Appeals**

Aggrieved, petitioners Ruth Mae Bautista y Caedo, Martin Bugagon y Custodio, Roland Flores y Garcia, Henson Ocon y Acedera challenged their verdict of conviction before the Court of Appeals. Accused Mark Villegas y Bicaldo no longer filed an appeal.

Petitioners faulted the trial court for finding them guilty of the crimes charged despite the prosecution's so called incredulous version of the incident. Petitioners asserted that it was highly improbable for a person committing a crime inside his or her house to do so with the door left open;<sup>39</sup> the trial court overlooked the police officers' failure to observe the mandatory safeguards under Section 21 of RA 9165, viz.: (1) the confiscated drugs and drug paraphernalia were not marked, inventoried, and photographed at the place of arrest; (2) only a barangay official was present during inventory; and (3) no precautionary measures were undertaken in handling the confiscated items prior to and after their physical examination and subsequent presentation before the court.<sup>40</sup>

In refutation, the People through Office of the Solicitor General (OSG) defended the verdict of conviction.<sup>41</sup> According to the OSG, the trial court correctly ruled that the prosecution sufficiently established all the elements of illegal possession of dangerous drugs and paraphernalia during parties, social gatherings, or meetings. The

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<sup>35</sup> *Id.* at 87.

<sup>36</sup> CA Decision, p. 4.

<sup>37</sup> *Rollo*, p. 88.

<sup>38</sup> *Id.* at 89.

<sup>39</sup> CA Decision, pp. 9-10.

<sup>40</sup> *Rollo*, pp. 75-78.

<sup>41</sup> CA Decision, pp. 10-11.

testimonies of the police officers were credible and should be given greater weight than petitioners' bare denial. Finally, the defects in the chain of custody of the seized items were not fatal since there was substantial compliance therewith.<sup>42</sup>

### **The Court of Appeals' Ruling**

By Decision<sup>43</sup> dated September 27, 2018, the Court of Appeals affirmed. It held that all the elements of the crimes charged were established. More, the absence of a representative from the DOJ or the media was not fatal to the prosecution's case. There was substantial compliance with the chain of custody rule and the integrity of the *corpus delicti* was deemed duly preserved.<sup>44</sup>

### **The Present Petition**

Petitioners now seek affirmative relief from the Court and plead anew for their acquittal. They reiterate the alleged non-compliance with Section 21 (a) of RA 9165 from confiscation of the sachets of *shabu* and drug paraphernalia up to their presentation in court, rendering the evidence for the State insufficient to prove their guilt beyond reasonable doubt.<sup>45</sup>

In its Comment,<sup>46</sup> the People, through the OSG ripostes that non-compliance with Section 21 (a) of RA 9165 does not automatically mean that the seized illegal drugs and drug paraphernalia were compromised. For it was sufficiently established that the integrity and evidentiary value of the seized items were preserved when the police officers were able to properly segregate them prior to their marking and inventory at the police station, and thereafter identify the same during the trial.<sup>47</sup>

### **Issue**

Did the Court of Appeals err in affirming the verdict of conviction against Bautista, Bugagon, and Flores for violation of Section 13 of RA 9165 and Ocon for violation of Section 14 of RA 9165, respectively?

### **Ruling**

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<sup>42</sup> *Id.*

<sup>43</sup> Penned by Associate Justice Mariflor P. Punzalan Castillo with the concurrences of Associate Justices Danton Q. Bueser and Ronaldo Roberto B. Martin; *rollo*, pp. 40-56.

<sup>44</sup> CA Decision, pp. 11-16.

<sup>45</sup> *Rollo*, pp. 26-31.

<sup>46</sup> *Id.* at 142-160.

<sup>47</sup> *Rollo*, pp. 153-158.

We acquit.

Petitioners were charged, respectively, with *Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings*<sup>48</sup> and *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings*.<sup>49</sup> Since the crimes were allegedly committed on December 19, 2016, the applicable law is<sup>50</sup> RA 9165, as amended by RA 10640, 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 the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.**

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<sup>48</sup> Section 13, Article II of RA 9165.

<sup>49</sup> Section 14, Article II of RA 9165.

<sup>50</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." *Amendment to R.A. No. 9165 (AntiDrug Campaign of the Government), Republic Act No. 10640, [July 15, 2014].*

This makes up the chain of custody rule. It came to fore to obviate any unnecessary doubts on the identity of the dangerous drugs and/or drug paraphernalia on account of switching, planting, or contamination of evidence.<sup>51</sup> Thus, it is essential that the identity of the prohibited drugs and/or drug paraphernalia be established beyond reasonable doubt considering that these form an integral part of the *corpus delicti* of the crimes.

The prosecution, therefore, has to show an unbroken chain of custody over the dangerous drugs and/or drug paraphernalia.<sup>52</sup> This, it failed to do.

***Possession of Dangerous  
Drugs During Parties, Social  
Gatherings or Meetings***

The offense of illegal possession of dangerous drugs during parties, social gatherings or meetings, requires the following elements: (1) the accused was in possession of the dangerous drug; (2) such possession is not authorized by law; (3) the accused freely and consciously possessed the dangerous drug; and (4) the possession of the dangerous drug must have occurred during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) persons.<sup>53</sup>

In *People v. Lacdan*,<sup>54</sup> the Court decreed that for a successful prosecution of a case involving illegal drugs, the following four (4) links in the chain of custody must be proved: **first**, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer; **second**, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer; **third**, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and **fourth**, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

The **first link** refers to seizure and marking which should be immediately done at the place of arrest and seizure. It includes the physical inventory and taking of photographs of the seized items in the presence of the accused and third-party witnesses. This link has been repeatedly breached by the apprehending officers.

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<sup>51</sup> *People v. Lumaya*, 827 Phil. 473, 489-490 (2018).

<sup>52</sup> *Id.*

<sup>53</sup> *People v. Martinez*, 652 Phil. 347, 368-369 (2010).

<sup>54</sup> G.R. No. 232161, August 14, 2019.

**First.** The marking was not immediately done following petitioners' arrest and seizure of the items. The police officers did not give any explanation why the marking had not been promptly made at the *situs criminis itself*. They simply said they decided to mark the seized items at the police station. Nothing more. *En route* to the police station however, PO2 Pallay merely slid some of the seized items into his left and right pockets while some he placed inside two (2) pouches, *sans* any marking.<sup>55</sup> During the interregnum, there was absolutely no way to distinguish which of these unmarked items came from whom.<sup>56</sup> PO2 Pallay revealed, thus:

Q: Ano po ang nauna? Pag-imbentaryo o pagpunta sa imbestigador?

A: Inventory, ma'am.

Q: Saan?

A: In our station, ma'am.

Q: Pero from the place of arrest bago kayo makapag-imbentaryo dadalhin muna ninyo doon, diba?

A: Yes, ma'am.

Q: Yun po ang tinatanong kung saan inilagay. So, saan ninyo po iniligay iyong kay Bugayon? Iyong nasa right, iyong nasa left. Yung kay Martin Bugayon nasa pouch. Saan po ninyo inilagay yung pouch?

A: I was holding it, ma'am.

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Q: Kasi during the time na ito hindi pa po namamarkahan dadalhin ninyo pa lang doon sa imbentaryo. So, kun pinaghalo-halo ninyo pano ninyo malalaman alin yun kay Bugayon at alin yung kay Flores kaya po tinatanong saan ninyo inilagay? So paano ninyo po madidistinguish alin iyong nakuha ninyo kay Martin alin iyong nakuha ninyo kay Roland?

A: (No answer)<sup>57</sup>

The Court held in *People v. Ramirez*<sup>58</sup> that marking of the seized item immediately after seizure is vital to ensure its integrity and veracity by preventing switching, planting, or contamination of evidence.<sup>59</sup> Thus, the rationale behind the marking requirement was defeated here when PO2 Pallay simply slid the *corpus delicti* into his

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<sup>55</sup> CA Decision, p. 15.

<sup>56</sup> See *People v. Garcia*, G.R. No. 230983, September 4, 2019.

<sup>57</sup> TSN, March 30, 2017, record, pp. 462-464 and *rollo*, p. 76.

<sup>58</sup> Phil. 1215, 1225-1226 (2018), citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).

<sup>59</sup> *Sanchez*, citing *People v. Nuarin*, 764 Phil. 550, 557-558 (2015).

pockets and inside a pouch before they were only subsequently marked at the police station. This casts serious doubt on the identity of the items that were later marked by PO2 Pallay. For we cannot foreclose the possibility that what PO2 Pallay marked at the police station might not have been the same items allegedly found from petitioners and their co-accused.<sup>60</sup>

*Second.* There was no representative from the DOJ or the media to witness the inventory and photographing of the seized items from petitioners and their co-accused. No valid reason was offered for this omission. PO2 Pallay testified, thus:

Q: I understand that an inventory was conducted, saan po kayo nag imbentaryo?

A: At the station, ma'am.

Q: Anong oras po?

A: I cannot recall the time, ma'am.

Q: Who are present during the inventory?

A: We, the arresting officers, the suspects and barangay kagawad of East Rembo, ma'am Virgilio Awit.<sup>61</sup>

In *People v. Rojas*,<sup>62</sup> the witnesses of the State did not provide any explanation on the absence of the representatives from the DOJ and the media during the inventory. The Court ruled that the integrity of the seized *shabu* had been compromised. For this, the Court rendered a verdict of acquittal.

Clearly the *first link* here was already breached.

*Another.* There is nothing on record showing how the seized drugs were handled, stored, and secured before, during, and after the same came to the custody of Forensic Chemist PCI Vallejo. PO2 Pallay failed to testify how he preserved his exclusive custody thereof until they were turned over to the crime laboratory. Clearly, the *third link*, too, had been broken.

In *People v. Bermejo*<sup>63</sup> and *People v. Ramos*,<sup>64</sup> the Court acquitted the accused when the investigating officer who was in custody of the dangerous drug before the same was sent to the crime laboratory for examination failed to testify on how he handled the

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<sup>60</sup> See *People v. Garcia*, supra, note 56.

<sup>61</sup> *Rollo*, pp. 76-77.

<sup>62</sup> G.R. No. 222563, July 23, 2018.

<sup>63</sup> G.R. No. 199813, June 26, 2019; Also see *People v. Gayoso*, 808 Phil. 19 (2017).

<sup>64</sup> 826 Phil. 981 (2018).

drug after it was placed in his custody until it was brought to the forensic chemist. It was emphasized that “*during the interim time - from when the specimen was placed under his custody until the time it was brought to court - the threat of tampering, alteration, or substitution of the corpus delicti still existed.*”

**Finally**, Forensic Chemist PCI Vallejo did not testify on how the illegal drugs were safeguarded, if at all, after she received the same and following her qualitative examination thereof, and prior to her appearance in court.

In *People v. Ubungen*,<sup>65</sup> the Court emphasized that stipulation on the testimony of a forensic chemist should cover the management, storage, and preservation of the seized drugs. It should be stipulated therefore that the forensic chemist would have testified that he or she took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he or she resealed it after examination of the content; and (3) he or she placed his or her own marking on the same to ensure that it could not be tampered pending trial.

Here, the parties dispensed with the testimony of the forensic chemist PCI Vallejo, without stipulating on the vital pieces of information required in *Ubungen*. They simply agreed upon PCI Vallejo’s expertise and qualifications and receipt of the specimens for laboratory examination and its results.<sup>66</sup> The stipulation failed to mention the condition of the seized items when PSI Vallejo received them and how she handled the same before, during, and after the chemical examination until they reached the court. Absent any testimony on the management, storage, and preservation of the illegal drugs allegedly seized after their qualitative examination, the **fourth link** in the chain of custody could not be reasonably established here.<sup>67</sup>

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 Bautista, Bugagon, and Flores, a verdict of acquittal here is in order.<sup>68</sup>

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<sup>65</sup> G.R. No. 225497, July 23, 2018.

<sup>66</sup> *Rollo*, p. 85.

<sup>67</sup> *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

<sup>68</sup> *People v. Villojan, Jr.*, G.R. No. 239635, July 22, 2019.

***Possession of Equipment,  
Instrument, Apparatus and  
Other Paraphernalia for  
Dangerous Drugs During  
Parties, Social Gatherings or  
Meetings***

The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.<sup>69</sup> Additionally, this being a case for violation of Section 14 of RA 9165, an additional element of the crime is the possession of the drug paraphernalia must have occurred during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) persons.<sup>70</sup>

Here, Ocon and Villegas were allegedly found to have been in possession of empty plastic sachets containing traces of white crystalline substance which tested positive for *shabu*. The arresting officers also recovered from Ocon two (2) pieces of used aluminum foil with traces of white crystalline substance that were likewise positive for *shabu* and a disposable green lighter; and from Villegas, a tooter used for inhaling the smoke emitted when *shabu* is heated and a blue lighter.<sup>71</sup>

As with the illegal drugs seized here, the prosecution likewise failed to establish an unbroken chain of custody over the drug paraphernalia confiscated from Ocon and Villegas. PO2 Pallay himself admitted that: (1) they did not mark any of the seized items from Ocon and Villegas at the place of arrest; and (2) there was no representative from the DOJ or the media to witness the inventory and photographing of the drug paraphernalia seized from them. Too, the prosecution failed to adduce evidence how the seizing officers properly handled and preserved the drug paraphernalia kept under their custody until the same were turned over to forensic chemist PCI Vallejo for qualitative examination. Lastly, PCI Vallejo did not testify on how the seized drug paraphernalia were handled after the qualitative examination thereon yielded positive for *methamphetamine hydrochloride*. Notably, from the moment of confiscation up to the

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<sup>69</sup> *People v. Obias, Jr.*, G.R. No. 222187, March 25, 2019.

<sup>70</sup> See *People v. Martinez*, supra, note 53.

<sup>71</sup> *Rollo*, p. 44.



presentation before the court of the seized drug paraphernalia, no safeguards were undertaken to ensure that their identity and integrity were securely preserved. Thus, there is reasonable doubt on whether the drug paraphernalia allegedly seized from Ocon and Villegas were the same items presented in court. With this lingering doubt here pervading, it is the Court's duty to overturn the verdict of conviction.<sup>72</sup>

Verily, in both cases for violation of Section 13 of RA 9165 and for violation of Section 14 of RA 9165, the integrity and evidentiary value of the *corpus delicti* had not been preserved. The chain of custody was broken from its incipience until its final stages. Although a saving clause in the Implementing Rules and Regulations of RA 9165 allows deviation from established protocol, this is subject to the condition that justifiable grounds exist and "so long as the integrity and evidentiary value of the seized items are properly preserved." Here, since the arresting officers offered no valid explanation for the procedural deficiencies, the saving clause cannot be validly invoked, barring the *proviso* from coming into play.<sup>73</sup>

Hence, the Court must acquit as a matter of course.<sup>74</sup>

As for accused Mark Villegas y Bicaldo, while he is not a party to the appeal before the Court of Appeals and the petition here, he may still benefit from this verdict of acquittal in accordance with Section 11, Rule 122 of the Revised Rules on Criminal Procedure,<sup>75</sup> viz.:

Section 11. Effect of appeal by any of several accused. —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter;

xxx xxx xxx

**WHEREFORE**, the petition is **GRANTED**. The Decision dated September 27, 2018 and Resolution dated May 28, 2019 of the Court of Appeals in CA-G.R. CR No. 40115 are **REVERSED** and **SET ASIDE**.

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<sup>72</sup> See *People v. Villojan, Jr.*, G.R. No. 239635, July 22, 2019 and *People v. Bombasi*, G.R. No. 230555, October 9, 2019.

<sup>73</sup> *People v. Garcia*, G.R. No. 230983, September 4, 2019.

<sup>74</sup> *People v. Año*, 828 Phil. 439 (2018).

<sup>75</sup> See *People v. Posos*, G.R. No. 226492, October 2, 2019.

**Ruth Mae Bautista y Caedo, Martin Bugagon y Custodio, Roland Flores y Garcia** are **ACQUITTED** in Criminal Case Nos. R-MKT-16-03507-CR, R-MKT-16-03508-CR, and R-MKT-16-03509-CR, respectively.

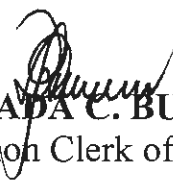
**Henson Ocon y Acedera** and **Mark Villegas y Bicaldo** are **ACQUITTED** in Criminal Case Nos. R-MKT-16-03510-CR and R-MKT-16-03511-CR, respectively.

The Court further **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City and the Superintendent of Correctional Institution for Women, Mandaluyong City to: a) cause the immediate release of Ruth Mae Bautista y Caedo, Martin Bugagon y Custodio, Roland Flores y Garcia, Henson Ocon y Acedera and Mark Villegas y Bicaldo from custody unless they are being held for some other lawful cause; and b) inform the Court of the action taken within five (5) days from notice.

Let entry of judgment be issued immediately.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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Manila  
(CA-G.R. CR No. 40115)

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1229 Makati City

- over -



Ms. Ruth Mae C. Bautista (x)  
Accused-Appellant  
c/o The Superintendent  
Correctional Institution for Women  
1550 Mandaluyong City

The Hon. Presiding Judge  
Regional Trial Court, Branch 65  
1200 Makati City  
(Crim. Case Nos. R-MKT-16-03507-CR  
to 16-03511-CR)

Messrs. Martin C. Bugagon, Roland  
G. Flores, Henson A. Ocon &  
Mark B. Villegas (x)  
Accused-Appellants  
c/o The Director General  
Bureau of Corrections  
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The Director General (x)  
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