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Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 12, 2020 which reads as follows:

“G.R. No. 238620 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus MARILOU ORTIZ y GACUSAN, accused-appellant.

After a careful review of the records of the instant case, the Court reverses and sets aside the assailed Decision¹ dated September 29, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08219, which affirmed the Decision² dated March 1, 2016 rendered by the Regional Trial Court of Manila, Branch 2 (RTC) in Criminal Case Nos. 14-304928 and 14-304929, entitled *People of the Philippines v. Marilou Ortiz y Gacusan, a.k.a. “Elay”*, finding accused-appellant Marilou Ortiz y Gacusan (accused-appellant Ortiz) guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

The Court resolves to acquit accused-appellant Ortiz for failure of the prosecution to prove that the apprehending team complied with the mandatory requirements of Section 21 of RA 9165.

In the conduct of buy-bust operations, Section 21 of RA 9165 provides that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) **the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a**

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¹ *Rollo*, pp. 2-21. Penned by Associate Justice Ramon Paul L. Hernando (now a Member of the Court), with the concurrence of Acting Presiding Justice Remedios A. Salazar-Fernando and Associate Justice Mario V. Lopez (now a Member of the Court).

² *CA rollo*, pp. 54-61. Penned by Presiding Judge Sarah Alma M. Lim.

representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

In this case, the prosecution does not deny that only Barangay Kagawad Rodel Frogosa (Kagawad Frogosa) and media practitioner Stephen Chavez (Chavez) from *Abante* were present to witness the marking and inventory of the seized items. **It was established, through the testimony of police poseur-buyer PO3 Michael Pastor (PO3 Pastor), that there was no representative from the DOJ present.³ PO3 Pastor's testimony also confirmed that Kagawad Frogosa and Chavez were not given copies of the inventory of seized items which they signed.⁴**

The Court has held that the presence of the witnesses from the DOJ, media and public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized items.⁵ In *People v. Tomawis*,⁶ the Court reiterated:

x x x Using the language of the Court in *People v. Mendoza*, **without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.⁷ (Emphasis supplied)**

Concededly, however, there are instances wherein departure from the aforesaid mandatory procedures are permissible. Section 21 of the Implementing Rules and Regulations of RA 9165 provides 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 and custody over said items." However, for this provision to be effective, the prosecution must (i) recognize any lapse on the part of the police officers and (ii) be able to justify the same.⁸

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³ Id. at 57.

⁴ Id.

⁵ *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 149.

⁶ Id.

⁷ Id. at 149-150.

⁸ See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

Here, the prosecution neither recognized the police operatives' failure to observe the three-witness rule nor offer any justification for such failure.

Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would have been compromised.⁹

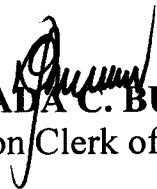
Based on these premises, the Court restores the liberty of accused-appellant Ortiz.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 29, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08219 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Marilou Ortiz y Gacusan is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action she has taken.

SO ORDERED.” *J. Reyes, Jr, J., on leave; Lopez, J., took no part; Gesmundo, J., designated Additional Member per Raffle dated February 3, 2020.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court
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⁹ See *People v. Sumili*, 753 Phil. 342, 352 (2015).