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THIRD DIVISION

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Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated February 17, 2020, which reads as follows:

“**G.R. No. 246982 (People of the Philippines v. Noemi Eduarte y Dañez)**. – Before Us is an ordinary appeal¹ filed by accused-appellant Noemi Eduarte y Dañez (Eduarte) assailing the Decision² dated September 27, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09592, which affirmed the Judgment³ dated July 28, 2017 of the Regional Trial Court (RTC) of Quezon City, Branch 79, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused **NOEMI EDUARTE y DAÑEZ, GUILTY BEYOND REASONABLE DOUBT** of violation of Section 5, Article II, of Republic Act 9165, and she is hereby sentenced to suffer life imprisonment, and to pay a fine of Five hundred thousand (₱500,000.00).

The Branch Clerk of Court is directed to immediately turn over to the Chief of PDEA Crime Laboratory, the drug evidence in this case covered by Chemistry Report No. D-202-14, to be disposed of in strict conformity with the provisions of R.A. 9165 and its implementing rules and regulations on the matter.

SO ORDERED.⁴ (Emphasis in the original.)

Facts of the Case

The Information⁵ charging Eduarte of violation of Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” provides:

¹ *Rollo*, pp. 18-19.

² Penned by Associate Justices Ramon Paul L. Hernando (now a Member of this Court), with Associate Justices Ricardo R. Rosario and Gabriel T. Robeniol, concurring; *id.* at 3-17.

³ Penned by Presiding Judge Nadine Jessica Corazon J. Fama; *CA rollo*, pp. 49-58.

⁴ *Id.* at 57.

⁵ RTC Records, p. 1.

That on or about the 5th day of April 2014, in Quezon City, Philippines, the above-named accused, without lawful authority, did, then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatching transit or transport, or act as broker in the said transaction one (1) heat sealed transparent plastic sachet containing zero point three one (0.31) grams of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁶

The facts as narrated by the two prosecution witnesses, namely, Police Officer 3 Joel Almazan (PO3 Almazan) and Senior Police Officer 2 Leonardo Rowel Dulay (SPO2 Dulay) are as follows:

At around 12:30 a.m. of April 5, 2014, Police Senior Inspector (PSI) Robert Acayan Razon, Sr. (PSI Razon, Sr.) received an information from a male confidential informant that a certain "Noemi" was looking for buyers of *shabu*. PSI Razon, Sr. instructed PSI Don Ante (PSI Ante) to validate the information and organize a briefing for the buy-bust operation.

On the same morning at about 2:30 a.m., PSI Ante conducted the briefing. The buy-bust team was composed of SPO2 Dulay as *poseur*-buyer, PO3 Almazan as the arresting officer, and other operatives were designated as back-up. PSI Razon, Sr. gave SPO2 Dulay the buy-bust money, which consisted of one genuine ₱500.00 bill. SPO2 Dulay placed his initials, "LRD," beside the serial number of the bill.⁷ They also agreed that the pre-arranged signal was for SPO2 Dulay to remove his bull cap after the consummation of the sale. The male confidential informant was able to set a schedule with "Noemi" to buy *shabu* worth ₱500.00.

At around 5:00 a.m., the entire buy-bust team together with the confidential informant proceeded to the target area located at CMP1 Housing, Sitio Mendez, Barangay Baesa, Quezon City. PO3 Almazan and the other back-up members of the buy-bust team strategically positioned themselves about 10 to 15 meters away from the confidential informant and SPO2 Dulay. The confidential informant greeted Eduarte and introduced SPO2 Dulay as the buyer of *shabu*. Eduarte asked SPO2 Dulay if he wanted to buy *shabu* and the latter answered, "*Oo, kasang limang daang piso.*" Eduarte gave SPO2 Dulay a plastic sachet containing white crystalline substance. SPO2 Dulay examined the contents of the sachet. SPO2 Dulay, believing the contents to be *shabu*, handed the buy-bust money to Eduarte. SPO2 Dulay removed his bull cap, which prompted PO3 Almazan to rush towards SPO2 Dulay and confiscated the buy-bust money from Eduarte.⁸

⁶ Id.

⁷ Id. at 14.

⁸ *Rollo*, p. 5.

The plastic sachet was marked by SPO2 Dulay with “04/05/14 – NED,” which stood for the date of the seizure of the plastic sachet and the initials of Eduarte.⁹ Several bystanders started closing in on the operation, hence, the buy-bust team decided to proceed to the Quezon City Police Station.¹⁰ SPO2 Dulay was in custody of the seized item from the time he arrested Eduarte until they reached the police station. While at the police station, SPO2 Dulay, PO3 Almazan, and media representative Rey Argana signed the Inventory of Seized/Confiscated Item/Property,¹¹ which indicated that one plastic sachet and one ₱500.00 bill were confiscated from Eduarte. After which, SPO2 Dulay turned over the plastic sachet to police investigator, PO3 Joebert Garcia (PO3 Garcia). PO3 Garcia took photographs¹² of the seized item and Eduarte at the police station and prepared the Request for Laboratory Examination. Thereafter, PO3 Garcia returned the seized item to SPO2 Dulay. The transfers were reflected in the Chain of Custody Form.¹³

At around 12:40 p.m., SPO2 Dulay submitted the seized item to Police Chief Inspector Anamelisa Sebido Bacani (PCI Bacani) of the Quezon City Police District Crime Laboratory Office for laboratory examination. Per Chemistry Report No. D-202-14,¹⁴ the specimen tested positive of “Methamphetamine Hydrochloride.”

In her defense, Eduarte presented herself, her daughter Rhealyn Eduarte (Rhealyn), and her granddaughter Ellaiza Eduarte Icban (Icban).

Eduarte strongly claimed that she was framed up by the police. She alleged that she was arrested on April 4, 2014.¹⁵ She narrated that she was at her house located at No. 163 Sitio Mendez, Barangay Baesa, Quezon City with her children and granddaughter. She was arranging her belongings, because her entire family was scheduled to be relocated at Pandi, Bulacan. Suddenly, she heard someone shout “*Walang kikilos.*” Thereafter, she saw two men wearing civilian clothes and one of them was poking a gun at her 19-year old son. She approached them and asked what was happening, however, they ignored her. Afterwards, the two men barged into her house and started searching around. When they did not find anything in her house, they went away. However, after several minutes, one of the men came back and invited Eduarte to the police station. She asked the reason of her arrest, but the man remained silent. Eduarte pleaded to let her son accompany her. Upon reaching Camp Karingal, the men released her son, while Eduarte was asked to stay. A police officer asked Eduarte if she had an altercation with anyone. Eduarte denied the allegation. Then, the police officer brought out a

⁹ TSN November 22, 2016, p. 10.

¹⁰ Id. at 11.

¹¹ RTC Records, p. 15.

¹² Id. at 25-26.

¹³ Id. at 16.

¹⁴ Id. at 18.

¹⁵ TSN February 15, 2017, p. 3.

plastic sachet and placed it on top of a table. The police officer forced Eduarte to sit down in front of the table and took pictures of her.¹⁶

Rhealyn corroborated the testimony of her mother. She narrated that a man wearing civilian clothes and armed with a gun entered their house. Eduarte asked what was happening, but the man ignored her and started searching their house. The man searched their house for almost ten minutes, and later on, left. When he returned, he invited Eduarte to the police station. She saw Eduarte board a vehicle and was brought to the police station. While at the police station, Rhealyn heard the man, who arrested Eduarte, demanding money. She saw Eduarte bringing out her coins from her pocket.¹⁷

Icban narrated that on April 4, 2014, she was at Eduarte's house. While Icban was playing with her aunt, a man wearing civilian clothes and armed with a long firearm entered their house. The man inquired about the contents of her bag. Icban answered that her bag contained a mirror, face powder, and a comb. After which, the man took her face powder and arrested Eduarte.¹⁸

In the pre-trial conference, the prosecution and defense agreed on the following stipulations: (1) that PCI Bacani conducted the qualitative examination of the seized item; (2) that PCI Bacani found the specimen, which tested positive for the presence of Methamphetamine Hydrochloride; (3) that PCI Bacani turned over the sealed specimen to evidence custodian, PO1 Junia Tuccad (PO1 Tuccad); (4) that PCI Bacani retrieved the specimen from PO1 Tuccad to present the same in court; (5) PO1 Tuccad did not sign in the Chain of Custody form; (6) that PO1 Tuccad received the specimen from PCI Bacani two days after the conduct of the qualitative examination; (7) that PO3 Garcia was the police investigator of the case; (8) that PO3 Garcia prepared and signed the Chain of Custody form; (9) that PO3 Garcia took the photograph of Eduarte and the seized item; and (10) that PO3 Garcia had no personal knowledge as to the source of the specimen turned over to him for investigation.¹⁹

RTC Ruling

In its Judgment²⁰ dated July 28, 2017, the RTC found Eduarte guilty beyond reasonable doubt of the crime charged against her and sentenced her to suffer the penalty of life imprisonment and a fine of ₱500,000.00.

The RTC ruled that the prosecution was able to prove the essential elements of Illegal Sale of Dangerous Drugs. It gave credence to the

¹⁶ Id. at 3-8.

¹⁷ TSN April 10, 2017, pp. 3-8.

¹⁸ TSN June 14, 2017, pp. 5-7.

¹⁹ RTC Records, pp. 77-79.

²⁰ Supra note 3.

testimony of SPO2 Dulay and PO3 Almazan. The presumption of regularity in the performance of official duties was favorably applied to the buy-bust team in the absence of any proof that they were motivated with ill-will in charging Eduarte. Furthermore, the RTC found that the buy-bust team was able to preserve the identity and integrity of the seized item by completing and authenticating the Chain of Custody form.²¹

Eduarte appealed to the CA.²²

In the Brief²³ of Eduarte, she argued that the trial court erred in convicting her of the crime charged despite the failure of the buy-bust team to comply with the procedural requirements provided in Section 21, Article II of R.A. 9165.²⁴ She discussed that this failure caused serious doubts as to the preservation of the evidentiary value of the dangerous drug.²⁵ She also claimed that the trial court erred in convicting her even if the prosecution failed to establish an unbroken chain of custody. She mentioned that there was a gap in the chain of custody, when PO3 Garcia failed to identify the arresting officers from whom he received the seized item and the manner of safekeeping and custody of the same. Lastly, she contended that the trial court should not have given credence to the testimonies of the prosecution witnesses because of the glaring irregularities in the conduct of the buy-bust operation.²⁶

CA Ruling

In a Decision²⁷ dated September 27, 2018, the CA denied Eduarte's appeal and affirmed her conviction, as ruled by the RTC.²⁸ The CA ruled that the integrity of the evidence was preserved from the time that the dangerous drug was confiscated from Eduarte until it was examined in the laboratory. There being no proof that the seized item was tampered, the CA accorded to the buy-bust team the presumption of regularity in the performance of official duties. It also explained that every link in the chain of custody was sufficiently proven by the prosecution through the presentation of testimonial, documentary, and object evidence. There being no glaring irregularities in the buy-bust operation, the CA ruled against Eduarte.²⁹

Hence, this appeal.³⁰

²¹ CA *rollo*, pp. 56-57.

²² Id. at 11.

²³ Id. at 28-47.

²⁴ Id. at 30.

²⁵ Id. at 36-37.

²⁶ Id. at 31, 44-45.

²⁷ *Rollo*, pp. 3-16.

²⁸ Id. at 16.

²⁹ Id. at 8-16.

³⁰ *Supra* note 1.

In its Manifestation³¹ dated December 5, 2019, the Office of the Solicitor General manifested that it will no longer file a Supplemental Brief. Likewise, in her Manifestation in Lieu of Supplemental Brief³² dated December 17, 2019, the Public Attorney's Office manifested that it would no longer file a supplemental brief, considering that it had exhaustively discussed the assigned errors in the Appellant's Brief before the CA, hence, they will be adopting the same.

Issue

The sole issue for this Court to resolve is whether Eduarte is guilty beyond reasonable doubt of the crime charged.³³

The Court's Ruling

The appeal is meritorious.

The applicable law in this case is R.A. 9165, not its amendatory law, R.A. 10640,³⁴ because the buy-bust operation took place on April 5, 2014. The plain import of Section 21, Article II of R.A. 9165 is that the buy-bust team is to conduct the physical inventory and photographing of the seized items immediately after seizure and confiscation in the presence of the accused, his counsel, or his representative, a representative from the Department of Justice (DOJ), the media, and an elected public official. Said additional witnesses shall be required to sign the copies of the inventory and be given a copy thereof. If not practicable, the buy-bust team must conduct the inventory and photographing in the nearest police station or the nearest office of the apprehending officer/team.³⁵ Section 21, Article II of R.A. 9165 must be strictly followed by the buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia to preserve its integrity and identity, and consequently, to secure a conviction for Illegal Sale of Dangerous Drugs under Section 5, Article II of R.A. 9165.³⁶

After a judicious study of the case, the prosecution failed to show the buy-bust team's compliance with Section 21, Article II of R.A. 9165 and Section 21(a) of its Implementing Rules and Regulations. There was no representative from the DOJ nor an elected public official to witness the marking and physical inventory of the seized drug. Only media representative, Rey Argana of Police Files Tonite, signed the inventory.

³¹ *Rollo*, pp. 31-33.

³² *Id.* at 26-28.

³³ *CA rollo*, p. 35-46.

³⁴ An Act to Further Strengthen the Anti-Drug Campaign of the Government, amending for the purpose of Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," effective on July 23, 2014.

³⁵ *People v. Sood*, G.R. No. 227396, June 6, 2018.

³⁶ *People v. Moner*, G.R. No. 202206, March 5, 2018.

When asked to explain why there was failure to secure the presence of the required witnesses, *poseur*-buyer SPO2 Dulay simply said that they were unavailable:

x x x x

Q: Why is it that there is no representative from the DOJ and from the Brgy. official where the accused was arrested?

A: Nobody arrived, sir.³⁷

x x x x

Q: Was there any particular reason why you were not able to comply with the required number of witnesses as indicated in R.A. 9165?

A: Because no one was available during that time, sir.³⁸

Mere statements of unavailability, absent actual serious attempts to secure the presence of these witnesses, are not justifiable reasons for the non-compliance. As such, police officers are compelled not only to state the reasons for their non-compliance, but must, in fact, also convince the Court that they exerted earnest efforts to comply with the legally prescribed procedure, and that under the given circumstances, their actions were reasonable.³⁹ As discussed, no justifiable reasons were presented.

Although the physical inventory of the seized drug was done immediately after the arrest at the police station, there was no explanation why the buy-bust team failed to take the photographs during the inventory-taking when this was possible. Only a copy of the mug shot⁴⁰ of Eduarte and another copy of her with the buy-bust money and item laid on the table in front of her⁴¹ were presented.

Evidently, the buy-bust team failed to give justifiable grounds for the lapses committed in securing the integrity and evidentiary value of the seized item, particularly, the *shabu* weighing zero to 0.31 gram. This quantity is so minuscule, which underscores the need for a more exacting compliance with Section 21, Article II of R.A. 9165. In *People v. Holgado*,⁴² the Court emphasized the need to employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving minuscule amounts of drugs because these can be easily planted and tampered.

³⁷ TSN November 22, 2016, p. 12.

³⁸ TSN November 24, 2016 p. 8.

³⁹ *People v. Cariño*, G.R. No. 233336, January 14, 2019.

⁴⁰ RTC Records, p. 25.

⁴¹ Id. at 26.

⁴² 741 Phil. 78 (2014).

Given the glaring procedural lapses of the conduct of the buy-bust operation, and the questionable identification of the *shabu*, the Court is compelled to acquit Eduarte for the failure of the prosecution to prove her guilt beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 27, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09592 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Noemi Eduarte y Dañez is **ACQUITTED** of the crime charged against her, and is ordered to be immediately released, unless she is being lawfully held in custody for any other reason. The Director of Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.”

Very truly yours,

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

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The Presiding Judge
REGIONAL TRIAL COURT
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(Crim. Case No. R-QZN-14-03489-CR)

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