



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 09 September 2020 which reads as follows:

“G.R. No. 246581 (*People of the Philippines v. Allan Banlaygas y Pateña*). – This is an Appeal filed by Allan Banlaygas y Pateña (accused-appellant) from the Decision¹ dated September 3, 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 09654, affirming the Decision² dated June 30, 2017 of the Regional Trial Court (RTC) of Quezon City, Branch 228, in Crim. Case Nos. R-QZN-16-07177 to 78-CR, finding herein accused-appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Facts

On July 15, 2016, two (2) separate Informations for violation of Sections 5 and 11, Article II of RA 9165 were filed against accused-appellant before the RTC. The Informations read as follows:

Criminal Case No. R-QZN-16-07177-CR

That on or about the 7th day of July 2016, in Quezon City, Philippines, said accused, without lawful authority did then and there, [willfully], unlawfully, sell[,] trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as a broker in said transaction, a dangerous drug, to wit: one (1) heat sealed transparent plastic sachet containing zero point one three (0.13) gram of white crystalline substance containing METHAMPHETAMINE HYDROCHLORIDE, a dangerous drug.

CONTRARY TO LAW.

¹ Penned by Associate Justice Carmelita Salandanan Manahan, with Associate Justices Mario V. Lopez (now a Member of the Court) and Ronaldo Roberto B. Martin, concurring; *rollo*, pp. 3-17.

² Penned by Judge Mitushealla R. Manzanero-Casiño; *CA rollo*, pp. 49-59.

Criminal Case No. R-QZN-16-07178-CR

That on or about the 7th day of July 2016, in Quezon City, Philippines, the said accused, not authorized by law to possess any dangerous drug, did then and there, [willfully], unlawfully, and knowingly have in his possession and control One (1) heat-sealed transparent plastic sachet containing zero point one three (0.13) gram of white crystalline substance, found positive as METHAMPHETAMINE HYDROCHLORIDE, a dangerous drug.

CONTRARY TO LAW.³

On July 27, 2016, accused-appellant was arraigned and pleaded not guilty to both charges. After the pre-trial conference, trial on the merits ensued.⁴

The prosecution alleged that on July 7, 2016, the Chief of the Station Anti-Illegal Drugs-Special Operation Task Group (SAID-SOTG) ordered Police Officer 2 Dominique B. Narag (PO2 Narag) to conduct a surveillance at *Barangay* (Brgy.) UP Campus due to the report of a Confidential Informant (CI) that a certain "Alan" is selling drugs in the area.⁵

Upon the confirmation of PO2 Narag that Alan was indeed selling drugs, the Chief of SAID-SOTG formed an entrapment team for the conduct of a buy-bust operation. PO2 Narag was assigned as the poseur buyer and Senior Police Officer 1 Benito De Vera, Jr. (SPO1 De Vera, Jr.) served as a back-up.⁶

Upon arriving at Area 17, Brgy. UP Campus, Quezon City, at around 11 o'clock in the evening, the CI called accused-appellant from his house. The CI then introduced PO2 Narag to accused-appellant, who then asked the former: "*Kukuha ba kayo?*" to which, PO2 Narag replied, "*Opo, kukuha kami ng Php 200.00 pang-gamit lang.*" PO2 Narag handed over the buy bust money to accused-appellant, who went inside and then brought out one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride or *shabu*. Upon consummation of the transaction, PO2 Narag signaled the back-up operatives by scratching his head. SPO1 De Vera, Jr. then immediately assisted in the arrest of accused-appellant. PO2 Narag conducted the body search on accused-appellant and recovered from the latter a deadly weapon and another plastic sachet containing *shabu*.⁷

Because a commotion ensued, the police officers decided to bring accused-appellant to the *Barangay* Hall of Brgy. UP Campus, Quezon City for photograph, marking and proper documentation, which was witnessed by

³ Id. at 49.

⁴ Id. at 50.

⁵ Id. at 51.

⁶ Id.

⁷ Id. at 51-52.

Brgy. UP Campus Punong Chairman Isabelita Gravides. PO2 Narag and SPO1 De Vera, Jr. brought accused-appellant and the seized pieces of evidence to the PNP Crime Laboratory.⁸

On the part of the defense, accused-appellant proffered the defenses of denial and alibi. Accused-appellant alleged that at around 11 or 12 o'clock in the evening of July 8, 2016, he was sleeping inside his house when he heard a knock on the door. Upon opening, he saw policemen outside the door who immediately frisked him and searched his house. The police officers found nothing. He was then brought to the Police Station and tagged him as a drug pusher. On the way to the police station, accused-appellant claimed that the police officers brought out a pack of *shabu* and forced him to admit ownership over it. He likewise claimed that the police officers asked him to produce ₱10,000.00 in order to be released. Upon failure to produce the requested amount, accused-appellant was detained. Consequently, accused-appellant was brought to the PNP Criminal Laboratory for urine examination, which yielded a positive result for the presence of *shabu*.⁹

RTC Ruling

The RTC found accused-appellant guilty beyond reasonable doubt for the Illegal Sale of Dangerous Drugs in violation of Section 5, Article II of RA 9165 and acquitted him of the charge of Illegal Possession of Dangerous Drugs or violation of Section 11, Article II of RA 9165. Accused-appellant was sentenced to suffer the penalty of life imprisonment and ordered to pay a fine in the amount of ₱500,000.00.¹⁰

The RTC held that the warrantless arrest effected on accused-appellant is valid. The series of events which transpired before and during the buy-bust operation were done in accordance with Section 21, Article II of RA 9165. The RTC acquitted accused-appellant on the charge of violation of Section 11, Article II of RA 9165 as the prosecution failed to show proof that accused-appellant consented to the search made against him.¹¹

CA Ruling

On appeal, the CA affirmed the findings of the RTC. The CA held that the prosecution was able to duly establish the elements of Illegal Sale of Dangerous Drugs and all the links in the chain of custody.¹²

The CA brushed aside the contention of accused-appellant that there were procedural lapses in the chain of custody. Even if the marking of the

⁸ Id. at 52.

⁹ Id. at 55-56.

¹⁰ Id. at 59.

¹¹ Id. at 56-59.

¹² *Rollo*, pp. 8-9.

items were not done during the inventory at the *barangay* hall, the integrity and evidentiary value of the seized *shabu* were not destroyed since PO2 Narag knew that the specimen confiscated during the buy-bust operation is bigger compared to the one seized from the pocket of accused-appellant. The plastic sachets were then turned over by PO2 Narag to the investigating officer PO2 Richard M. Galvez (PO2 Galvez). PO2 Galvez then turned over the seized items to Forensic Chemist Anamelisa S. Bacani, who certified that the seized items were indeed methamphetamine hydrochloride or *shabu*. The marked specimen were then offered in evidence before the RTC.¹³

The CA accorded respect to the findings of the RTC as regards the credibility of the police officers and acknowledged that the trial court had the opportunity to observe firsthand the deportment and demeanor of the witnesses and was in the position to determine whether the witness was telling the truth or not. Moreover, the police officers enjoy the presumption of regularity in the performance of their duty, unless there is a clear and convincing evidence that the police officers were inspired by any improper motive. In the present case, accused-appellant did not impute any improper motive upon the arresting police officers when he testified in court.¹⁴

Hence, the present appeal praying for the acquittal of accused-appellant.

The Court's Ruling

The appeal is meritorious.

It is well-settled in this jurisdiction that an appeal opens the entire record of this case, thus, enabling this Court to determine whether or not the findings of the RTC against accused-appellant should be upheld or reversed in his favor. This Court has declared that "*the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.*"¹⁵

A buy-bust operation has been utilized by the police officers to arrest those who commit violations under RA 9165. In addition to the burden of proving the validity of the arrest in *flagrante delicto*, the police officers have the burden of preserving the integrity of the seized illegal drugs and in proving the links of the chain of custody set forth under RA 9165 and its Implementing Rules and Regulations (IRR).

¹³ Id. at 10-13.

¹⁴ Id. at 13-16.

¹⁵ *People v. Comboy*, 782 Phil. 187, 196 (2016).

In the present case, accused-appellant was charged and convicted with Illegal Sale of Dangerous Drugs before the RTC, which was affirmed by the CA.

For the prosecution of Illegal Sale of Dangerous Drugs to prosper, the following elements must be proved: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and its payment.¹⁶

Likewise, the *corpus delicti* must also be proven beyond reasonable doubt. Well entrenched in jurisprudence is the mandate that the identity of the dangerous drugs must be established with moral certainty since the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to remove any unnecessary doubt as to the identity of the seized dangerous drugs, the prosecution must be able to prove that the illegal drug seized from the suspect/s is the very same substance offered in court as Exhibit.¹⁷ Failure to prove the integrity of the corpus delicti will render the evidence of the prosecution insufficient to prove the guilt of the accused beyond reasonable doubt, thus, warranting an acquittal.¹⁸

The Chain of Custody Rule, as embodied in Section 21 of RA 9165, as amended by Section 1 of RA 10640, provides that:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read as follows:

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 persons 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,

¹⁶ *People v. Blanco*, 716 Phil. 408, 414 (2013).

¹⁷ *People v. Ladip*, 729 Phil. 495, 515 (2014).

¹⁸ *People v. Barrion*, G.R. No. 240541, January 21, 2019.

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.

x x x x (Emphasis and underscoring Ours)

The law clearly requires that *immediately after seizure and confiscation*, the police officers must conduct a physical inventory of the seized items and photograph the same in the presence of the following witnesses: **an elected public official and a representative of the National Prosecution Service (NPS) or the media**. Otherwise stated, an elected public official must be accompanied either by a representative from the NPS or the media.

In the case at bench, only an elected *barangay* official, Punong Chairman Isabelita Gravides, was present to witness the inventory of the seized items, which was conducted in the *Barangay* Hall of Brgy. UP Campus, Quezon City.

As an exception, RA 10640 allows non-compliance of the aforesaid requisites provided that there are justifiable reasons. However, mere statements of unavailability, absent actual serious attempts to contact representatives from the DOJ or the media are unacceptable as justified grounds for the non-compliance of the law. The police officers should not only state the reasons for their non-compliance but they must also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable.

In *People v. Gamboa*,¹⁹ the Court has explained that:

It is well to note that the absence of these representatives 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, Article II 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

¹⁹ G.R. No. 233702, June 20, 2018, 867 SCRA 549, 569-570.

serious attempts to contact the barangay chairperson, any member of the barangay council, or other elected public official are unacceptable as justified grounds for non-compliance. 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, Article II of RA 9165. **As such, police officers are compelled not only to state reasons for their non-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 circumstance, their actions were reasonable.** (Emphasis and underscoring Ours)

In relation thereto, in *People v. Lim*,²⁰ the Court stressed that the prosecution must duly allege and prove the proffered justifiable reasons. The common reasons usually raised by police officers to justify the failure to obtain the three (3) witnesses are enumerated as follows:

- (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 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.²¹

Simply stated, upon failure to obtain the presence of the necessary witnesses required under RA 9165, as amended, the prosecution must allege and prove the following: (a) the reasons for the absence of the required witnesses and (b) the fact that earnest efforts were made to secure their attendance. Regrettably, the prosecution miserably failed to prove both. The records are devoid of any indication that the police officers offered any justification on the lack of required witnesses. In fact, both the RTC and the CA failed to thresh out the issue on the lack of witnesses to the physical inventory and photograph of the seized items.

The very purpose of the mandate on the presence of the required witnesses is to prevent abuse on the part of the police officers and to protect

²⁰ G.R. No. 231989, September 4, 2018.

²¹ *Id.*

the public against the possibility of planting, contamination, or loss of the seized drug that had tainted buy-bust operations in drug cases. The Court frowns upon the practice of police officers in not bringing the witnesses in the place of arrest but only “calling them in” at the place of inventory after the warrantless search and seizure has been done. The ruling in *People v. Tomawis*,²² elucidates:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. 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.

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so – and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished – does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to 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.” (Emphasis, italics and underscoring in the original)

Again, in preparing for a buy-bust operation, *police officers are* ordinarily given sufficient time to 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 amended.²³ The

²² 830 Phil. 385, 408-409 (2018).

²³ See *People v. Gamboa*, supra note 19.

lack of necessary witnesses in the conduct of the inventory without any justification thereof shows the clear breach of the provisions of RA 9165, as amended.

With the failure of the prosecution to provide justifiable grounds in their non-compliance with the parameters set forth in Section 21 of RA 9165, as amended by RA 10640, the Court is constrained to rule that the integrity and the evidentiary value of the packet of *shabu* seized from accused-appellant has been compromised. It is worthy to emphasize that the State carries the heavy burden of proving not only the elements of the offense, but also in proving the integrity of the *corpus delicti* in the prosecution for the Illegal Sale and Illegal Possession of Dangerous Drugs under RA 9165.

Considering that the integrity of the *corpus delicti* of the crime for which accused-appellant was charged has not been established, it follows that there is no basis for finding him guilty beyond reasonable doubt. It is proper that accused-appellant be acquitted.

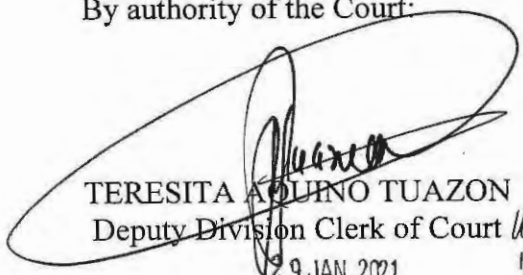
WHEREFORE, in view of the foregoing, the appeal is **GRANTED**. The Decision dated September 3, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09654 is hereby **REVERSED and SET ASIDE**. For failure of the prosecution to prove accused-appellant's guilt beyond reasonable doubt, this Court hereby rules that accused-appellant **ALLAN BANLAYGAS y PATEÑA** is **ACQUITTED** of the charge of violation of Section 5, Article II of Republic Act No. 9165, as amended by Republic Act No. 10640.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Allan Banlaygas y Pateña, 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.

SO ORDERED." (*Inting, J., on official leave; Baltazar-Padilla, J., on official leave.*)

By authority of the Court:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *lth*
29 JAN 2021 *1/28*

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
5th Floor, PAO-DOJ Agencies Building
NIA Road corner East Avenue
Diliman, 1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

ALLAN BANLAYGAS y PATEÑA (x)
Accused-Appellant
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (x)
Bureau of Corrections
1770 Muntinlupa City

THE SUPERINTENDENT (x)
New Bilibid Prison
Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 228
Quezon City
(Crim. Case Nos. R-QZN-16-07177 to 78-CR)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-1-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR-HC No. 09654

Please notify the Court of any change in your address.
GR246581. 09/09/2020(133)URES(a) 114