



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **May 5, 2021** which reads as follows:*

“G.R. No. 238616 (People of the Philippines, Plaintiff-Appellee, v. Reynaldo Ortega y Garino @ Rey or Rey Putol, Accused-Appellant). – This is an appeal seeking to reverse and set aside the Decision¹ dated 15 June 2017 of the Court of Appeals (CA) in CA-G.R.CR H.C. No. 08442, affirming the Decision² dated 15 July 2016 of Branch 270, Regional Trial Court (RTC) of Valenzuela City, in Criminal Case No. 186-V-16.

Antecedents

Reynaldo Ortega y Garino @ Rey or Rey Putol (accused-appellant) was indicted for violation of Section 5,³ Article II of Republic Act No. (RA) 9165⁴ as follows—

That on or about January 28, 2016 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, for and in consideration of Five Hundred Pesos (P500.00) with serial number KN385238 marked as “LAVA” and seven (7) photo copies of five hundred bills, did then and there willfully, unlawfully, and feloniously sell to PO3 LESTER ANTONIO AGUADO, who posed as a buyer of two point forty-six (2.46) grams marked as REY/BUY BUST with date and signature, of white crystalline substance known as

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¹ *Rollo*, pp. 2-21; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Danton Q. Bueser and Marie Christine Azcarraga-Jacob of the Thirteenth Division, Court of Appeals, Manila.

² *CA Rollo*, pp. 49-58; penned by RTC Presiding Judge Evangeline M. Francisco.

³ Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

⁴ Comprehensive Dangerous Drugs Act of 2002.

Methamphetamine Hydrochloride (Shabu), knowing the same to be a dangerous drugs.

CONTRARY TO LAW.⁵

Accused-appellant, upon arraignment, entered a plea of “not guilty” to the charge. During pre-trial,⁶ the parties agreed to the following stipulations:

1. Territorial jurisdiction;
2. Identity of the accused, as the one charged in the Criminal Information;
3. That Engr. Richard Allan Mangalip would be able to identify the seized evidence turned over to him; he will testify that he examined the same and he reduced the result of this examination into writing as reflected in the chemistry reports; he examined the urine of the accused and he issued report therein which was marked as evidence for the prosecution with counter stipulation that he has no personal knowledge as to the source of the seized Object/evidence;
4. That PO3 Randolph Hipolito prepared the other documents such as the request for medical, booking sheet, coordination sheet, salaysay of the witness and he received the object/evidence from PO3 Aguado. He took the pictures during the inventory and photographs marked as Exhibits “E” to “E-4” with counter stipulation that he has no personal knowledge;
5. That PO3 Pedro Jonson will only testify to the fact of arrest with counter stipulation that he has no personal knowledge on the alleged transaction, the exchange of money and drugs.⁷

Afterwards, trial on the merits ensued.

Version of the Prosecution

On 28 January 2016, operatives of the District Anti-Illegal Drugs Special Operation Unit of the Northern Police District in Kaunlaran Village, Caloocan City, received reports regarding the rampant selling of drugs by one alias “Rey” at Puregold Supermarket in Malanday, Valenzuela. A team was immediately formed for the

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⁵ *Records*, p. 1.

⁶ *Id.* at 45-47.

⁷ *Id.* at 46.

conduct of a possible buy-bust operation. PO3 Lester Antonio Aguado (PO3 Aguado), who was designated to act as poseur-buyer, prepared a P500.00 bill with serial number KN385238 (which he marked with "LAVA") as well as photocopies of the same bill to be used as boodle money in the total amount of P4000.00. Another team member, PO3 Pedro Jonson, Jr. (PO3 Jonson), went to the Philippine Drug Enforcement Agency (PDEA) and the District Tactical Operations Center-National Police District Office (DTOC-NPDO) to coordinate the buy-bust operation while the rest of the team boarded a black KIA-RIO with plate number EE 9360 going to the target area - Puregold Supermarket, Malanday, Valenzuela.⁸

The operation commenced when PO3 Jonson arrived at Puregold Supermarket. Upon PO3 Aguado's instructions, the confidential informant approached accused-appellant and accompanied him to the KIA-RIO. The two sat in the back where the confidential informant introduced PO3 Aguado as the buyer. Accused-appellant then asked "*Okay na ba yung pera bossing?*" to which PO3 Aguado replied "*Oo, okay na.*" Upon seeing the money presented by PO3 Aguado, accused-appellant took out a sachet of suspected shabu from the front pocket of his short pants and handed it to PO3 Aguado.⁹

When accused-appellant accepted the money, PO3 Aguado activated the KIA-RIO's hazard lights. Seeing this, the rest of team rushed in and arrested accused-appellant. PO3 Aguado then asked Duty Investigator PO3 Randolph S. Hipolito (PO3 Hipolito) to call for a media representative while PO3 Jonson informed accused-appellant of his constitutional rights.¹⁰

The group thereafter proceeded to the *Barangay* Hall of Malanday, Valenzuela where they conducted an inventory of, and photographed, the items seized from accused-appellant in the presence of reporter Maeng Santos of *Bulgar* and Barangay Kagawad Rey-Ann Dela Cruz. Markings were placed on the items by PO3 Aguado and PO3 Hipolito.¹¹

PO3 Hipolito brought the seized items to the Philippine National Police-National Police District (PNP-NPD) Crime Laboratory where it was received by a certain PO1 Wanawan. Police Chief Inspector (PCI) Richard Allan Mangalip conducted a forensic examination and found that the drug specimen recovered was positive

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⁸ *CA rollo*, pp. 86-88.

⁹ *Id.* at 88.

¹⁰ *Id.*

¹¹ *Id.*

for the presence of methamphetamine hydrochloride (or *shabu*). His findings are contained in Chemistry Report No. D-79-16. The urine sample taken from accused-appellant also yielded positive for the presence of *shabu*.¹²

Version of the Defense

On 22 January 2016, accused-appellant was on his way home from a friend's house in Libo, Malanday, when fifteen (15) individuals in civilian clothing flagged him and asked if his name was "Dondon." When he replied that he was not "Dondon," said individuals mauled him. Afterwards, he was forced into a car and detained. After a few days, he was taken to Puregold Supermarket where the police simulated the inventory of drugs allegedly seized from him.¹³

Ruling of the RTC

On 15 July 2016, the RTC rendered its Decision finding accused-appellant guilty as charged. The dispositive portion of the Decision reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered finding accused REYNALDO ORTEGA y GARINO @ Rey or Rey Putol guilty beyond reasonable doubt of illegal sale of shabu, as defined and penalized under Section 5, Article II of RA 9165 and as amended by RA 9346, and he is hereby sentenced to life imprisonment and a fine of P500,000.00.

The OIC Branch Clerk of Court upon finality of this judgment is directed to turn over the subject specimen to the appropriate government agency for proper disposal.

SO ORDERED.¹⁴

The RTC found that the prosecution was able to establish all the elements of the crime charged.¹⁵ It did not give credence to accused-appellant's defenses of denial and frameup, finding the same to be self-serving and unsupported by evidence. According to the trial court, the presumption of regularity in the performance of official duty applies absent any proof of ill motive on the part of the arresting

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¹² *Id.* at 88-89.

¹³ *Id.* at 89-90.

¹⁴ *Id.* at 58.

¹⁵ *Id.* at 96-99.



officers. It also rejected accused-appellant's claim of illegality of his arrest, holding that the latter has already waived his right to question said arrest due to his failure to raise the matter prior to his arraignment.

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

The CA affirmed the judgment of conviction with modification that accused-appellant shall not be eligible for parole under the Indeterminate Sentence Law.¹⁶ It agreed with the trial court that all the elements for the commission of the crime of illegal sale of dangerous drugs were established by the prosecution. Like the trial court, the CA also rejected accused-appellant's defenses of denial and frameup, stating that allegations of such gravity need showing of clear and convincing evidence, as well as proof of improper motive on the part of the arresting officers. According to the CA, if accused-appellant's version of what transpired is true, "there [was] no reason" for him not to have charged the erring officers with the "severely penalized offense of planting of evidence under Section 29 of Republic Act No. 9165."¹⁷

In addition, the CA did not take issue with the fact that the marking and inventory of the items seized from accused-appellant were made at the Barangay Hall, instead of at the place of arrest. It held that while Section 21 of RA 9165 provides for the *immediate* marking of said items, there was no specific time frame when and where said marking should be done.¹⁸ The CA further noted that amendments to Section 21 in fact allow the conduct of the physical inventory and photography "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures."¹⁹ In any case, it found substantial compliance with the requirements under Section 21 and that the chain of custody over the evidence against accused-appellant was "unbroken under the circumstances of the case."²⁰

Hence, this appeal.

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¹⁶ *Rollo*, pp. 20-21.

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 18.

²⁰ *Id.* at 20.

Issue

The issue is whether the CA correctly found accused-appellant guilty beyond reasonable doubt for the offense of illegal sale of prohibited drugs under RA 9165.

Ruling of the Court

We GRANT the appeal.

In actions involving the illegal sale of dangerous drugs, the following elements must be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. The evidence of the *corpus delicti* must be established beyond reasonable doubt.²¹

There must be evidence showing that the items offered in evidence are those actually recovered from the accused; otherwise, the prosecution for sale of illegal drugs under RA 9165 fails.²²

Section 21 of RA 9165 outlines the procedure to be followed by police officers in the handling of seized drugs to preserve their integrity and evidentiary value.²³ This provision was amended by RA 10640,²⁴ which was approved on 15 July 2014. As the offense charged in this case was allegedly committed on 28 January 2016, the prescribed procedure under RA 9165, as amended by RA 10640, applies.

Thus, and following the chain of custody rule, the apprehending team is mandated, immediately after seizure and confiscation, to conduct a physical inventory of, and photograph, the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: an elected public official and a representative of the National Prosecution Service (NPS) or the media. The requirement of the presence of these witnesses is intended to “remove any suspicion of switching, planting, or contamination of evidence.”²⁵

In this case, reporter Maeng Santos of *Bulgar* and *Barangay Kagawad* Rey-Ann Dela Cruz were present during the marking,

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²¹ *People v. Dela Cruz*, G.R. No. 229053, 17 July 2019 [Per J. Leonen].

²² *People v. Macaumbang*, G.R. No. 208836, 01 April 2019 [Per J. Gesmundo].

²³ *Ramos v. People*, G.R. No. 233572, 30 July 2018 [Per J. Perlas-Bernabe].

²⁴ 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.”

²⁵ *People v. Alfredo Doctolero, Jr.*, G.R. No. 243940, 20 August 2019 [Per J. Perlas-Bernabe].

inventory and photographing of the seized items *at the Barangay Hall in Malanday, Valenzuela*. The Court notes, however, that they were not present *at or near the place of apprehension*. The records also do not show that earnest efforts were exerted to secure their presence at the time of the arrest and seizure. On the contrary, and if PO3 Aguado's testimony is to be believed, the media representative was called *only after accused-appellant had already been arrested*. This lapse is significant, as the presence of these witnesses at the time of arrest would have easily controverted the usual defense of frame-up which, as it happens, is raised by accused-appellant in this case. They would be able to testify that the buy-bust operation and inventory of the seized drugs were done accordingly and in their presence.²⁶

As a general rule, compliance is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."²⁷ [Emphasis removed]

While a saving clause in the IRR of RA 9165 allows for some deviation from established protocol, there must be a showing that justifiable grounds exist and that "the integrity and evidentiary value of the seized items are properly preserved."²⁸ Failure to show these two conditions renders void and invalid the seizure and custody of the seized illegal drugs.²⁹

Here, even granting that there was justifiable ground for the belated presence of the required witnesses, there is insufficient proof to support a view that the integrity and evidentiary value of the seized items were properly preserved.

For a successful prosecution of a case involving illegal drugs, there must be testimony as to how the subject drug specimen was handled in *every* link of the chain of custody over the seized drugs. This is indispensable because the prosecution must satisfy the court that every person who had custody of the exhibit took the necessary precaution to preserve the integrity of the said evidence as well as to ensure that no opportunity would be afforded any other person to contaminate the same.³⁰

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²⁶ *People v. Caranto*, G.R. No. 217668, 20 February 2019 [Per J. Caguioa] citing *People v. Tomawis*, G.R. No. 228890, 18 April 2018 [Per J. Caguioa].

²⁷ *Matabilas v. People*, G.R. No. 243615, 11 November 2019 [Per J. Perlas-Bernabe].

²⁸ *People v. Caringal*, G.R. No. 236585 (Notice), 05 December 2019.

²⁹ *People v. Casilang*, G.R. No. 242159, 05 February 2020 [Per J. Gesmundo].

³⁰ *People v. Ubungen*, G.R. No. 225497, 23 July 2018 [Per J. Martires].

A stricter adherence to the chain of custody rule is, in fact, required in cases involving minuscule quantities of illegal drugs, as in this case where only 2.46 grams of *shabu* were allegedly obtained from accused-appellant during the buy-bust operation. This is an extremely small amount **highly susceptible to planting, tampering or alteration of evidence.**³¹

We agree with the CA when it found that the first link of the chain of custody was established by the testimony of lone prosecution witness PO3 Aguado who narrated the specifics of how, where and when he marked the seized heat-sealed plastic sachet until its turnover to investigating officer PO3 Hipolito who likewise made his markings on the sachet.³²

The same, however, was not established with respect to the subsequent links.

An examination of the Letter Request for Laboratory Examination shows that the seized items were received by a certain PO1 Wanawan of the PNP Crime Laboratory from PO3 Hipolito. Neither, however, were presented to testify that the *shabu* delivered to the crime laboratory was the same *shabu* confiscated from accused-appellant.³³ We note that the stipulation with respect to PO3 Hipolito was limited to the fact that he prepared the pertinent documents, received the evidence from PO3 Aguado, and marked and took pictures of the same. PO1 Wanawan was not presented to identify the evidence he received from PO3 Hipolito or testify as to his manner of handling said evidence prior to its transmittal to the forensic chemist for examination.

The Court, in *People v. Pajarin*,³⁴ also declared that as a rule, the police chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned.

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³¹ *People v. Oliva*, G.R. No. 234156, 07 January 2019 [Per J. Peralta]; *People v. Dela Torre*, G.R. No. 238519, 26 June 2019 [Per J. Peralta].

³² *Rollo*, p. 17.

³³ *Id.* at 18; see *People v. Gayoso*, G.R. 206590, 27 March 2017 [Per J. Del Castillo].

³⁴ G.R. No. 190640, 12 January 2011, 654 Phil. 461-467 (2011) [Per J. Abad]; *People v. Leaño*, G.R. No. 246461, 28 July 2020 [Per J. Lazaro-Javier].

There is no showing of any of the above in this case. The stipulation with respect to forensic chemist PCI Mangalip was limited to the handling of the specimen at the laboratory and to the analytical results obtained; it did **not** cover the manner by which the specimen was handled after it left his possession. Thus, absent any testimony regarding the management, storage and preservation of the illegal drug allegedly seized herein after its qualitative examination by the forensic chemist, the fourth link in the chain of custody of the said illegal drug could not be reasonably established.³⁵

The CA also applied the presumption of regularity in the performance of official functions, saying that accused-appellant failed to destroy the credibility of the members of the buy-bust team.

The presumption of regularity in the performance of official functions, however, cannot substitute for compliance in an attempt to reconnect the broken links.³⁶ In *People v. Obmiranis*,³⁷ the Court held:

Xxx. The Court cannot indulge in the presumption of regularity of official duty if only to obliterate the obvious infirmity of the evidence advanced to support appellant's conviction. In *Mallillin v. People*, we categorically declared that the failure of the prosecution to offer in court the testimony of key witnesses for the basic purpose of establishing a sufficiently complete chain of custody of a specimen of shabu and the irregularity which characterized the handling of the evidence before the same was finally offered in court, materially conflict with every proposition as to the culpability of the accused. For the same plain but consequential reason, we will not hesitate to reverse the judgment of conviction in the present appeal.

Finally, in order to convict, the evidence proving the guilt of the accused must always be beyond reasonable doubt. It may well be that, as found by the CA, accused-appellant failed to substantiate by credible evidence his version of the events that transpired. His conviction must nevertheless stand on the strength of the prosecution's evidence, not on the weakness of his defense. If the evidence of guilt falls short of the requirement of proof beyond

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³⁵ *People v. Ubungen*, *supra* at note 30.

³⁶ *People v. Garcia*, G.R. No. 230983, 04 September 2019 [Per J. Lazaro-Javier].

³⁷ *People v. Obmiranis*, G.R. No. 181492, 16 December 2008, 594 Phil. 561-580 (2008) [Per J. Tinga].

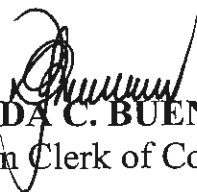
reasonable doubt, the Court will not allow the accused to be deprived of his liberty. His acquittal should come as a matter of course.³⁸

WHEREFORE, the instant appeal is hereby **GRANTED**. The Decision dated 15 June 2017 of the Court of Appeals finding accused-appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accused-appellant **REYNALDO ORTEGA Y GARINO @ "REY" OR "REY PUTOL"** is hereby **ACQUITTED** on the ground of reasonable doubt. He is **ORDERED** immediately **RELEASED**, unless he is being lawfully held in custody for any other reason. Let an entry of final judgment be issued immediately.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
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by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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³⁸ *Reyes v. Court of Appeals*, G.R. No. 180177, 18 April, 2012, 686 Phil. 137-154 (2012) [Per J. Bersamin]; *People v. Bartolini*, G.R. No. 215192, 27 July 2016 [Per J. Carpio].



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