



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **10 February 2021** which reads as follows:*

“G.R. No. 225953 (*People of the Philippines v. Rochelyn Velasco y Rulloda*). – Accused-appellant Rochelyn Velasco y Rulloda faults the Court of Appeals for affirming the trial court’s verdict of conviction against her for violation of Sections 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The prosecution clearly failed to comply with Section 21, Article II of RA 9165.¹

We grant the appeal.

Accused-appellant was charged with violation of Section 5, Article II of RA 9165 on July 27, 2012. Hence, the applicable law is RA 9165 before its amendment in 2014.

In Illegal Drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the items seized from the accused were the same items presented in court.²

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in Illegal Drugs cases. It lays down the chain of custody rule or the procedure in handling dangerous drugs and instruments or paraphernalia

¹ CA rollo, pp. 38-60.

² *People v. Barte*, 806 Phil. 533, 544 (2014).

starting from their seizure until they are finally presented as evidence in court, thus:

Section 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 drugs shall, **immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;** (Emphasis supplied)

x x x x

In relation, Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165 ordains:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official 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, further, 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 of and custody over said items.** (Emphasis supplied)

x x x x

Thus, the physical inventory and photographing of the seized items must be done in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his or her representative or counsel, (2) **a representative from the media and the Department of**

Justice (DOJ), and (3) any elected public official, who shall sign the copies of the inventory and be given a copy thereof.³

Here, **it is undisputed that there was only one (1) insulating witness who was present during the marking and inventory, Barangay Councilor Jeffrey F. Baluyot**. Clearly, the inventory and photographing of the alleged dangerous drug seized from appellant were not done in the presence of a representative of the DOJ and media.

Indeed, the IRR of RA 9165 offers a saving clause which allows leniency whenever justifiable grounds exist warranting deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. Section 21(a), Article II of the IRR of RA 9165 contains the following proviso:

Section 21. (a) x x x Provided, further, 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 of and custody over said items.

*People v. Jugo*⁴ specified the twin conditions for the saving clause to apply:

[F]or the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

Evidently, it is the prosecution which has the burden of proving valid cause for non-compliance with the procedure laid down in Section 21, Article II of RA 9165. The prosecution's failure to follow the required procedure must be sufficiently explained and proven as a fact, in accordance with the rules on evidence. The apprehending officers must not only mention a justified ground, but they must also clearly state such ground in their sworn affidavit, coupled with a statement regarding the steps they took to preserve the integrity of the seized items. A stricter adherence to the requirements laid down by Section 21, Article II of RA 9165 is necessary where the quantity of the dangerous drug seized is miniscule, considering it is highly susceptible to planting, tampering, or alteration.⁵

Here, **the prosecution utterly failed to acknowledge this deviation, let alone, offer any explanation for the lapse, which would have excused**

³ *People v. Rosales*, G.R. No. 233656, October 2, 2019.

⁴ 824 Phil. 743, 753 (2018).

⁵ *People v. Roales*, G.R. No. 233656, October 2, 2019.

the buy-bust team's failure to comply with the chain of custody rule. Thus, the condition not having been complied with, the saving clause never became operational.

In *People v. Abelarde*,⁶ the Court acquitted the accused because the prosecution's evidence was totally bereft of any showing that the inventory and photographing of seized dangerous drugs, if at all, were done in the presence of a media representative, a DOJ representative, and an elected public official. The prosecution likewise miserably failed to establish compliance with the saving clause under Section 21(a), Article II of the IRR of RA 9165.

In *People v. Nabua*,⁷ the Court also acquitted the accused because it was evident that no media representative and DOJ representative were present during the inventory and photographing. The arresting officers also failed to give any justifiable explanation for the absence of these insulating witnesses.

Finally, in *People v. Año*,⁸ the Court decreed that if the chain of custody procedure had not been complied with, or no justifiable reason exists for its non-compliance, then it is the Court's duty to overturn the verdict of conviction.

Consequently, in light of the prosecution's failure to establish with moral certainty the identity and unbroken chain of custody of the dangerous drug seized from accused-appellant, a verdict of acquittal here is in order.⁹

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated November 10, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 06357, which affirmed the Decision dated July 25, 2013 of the Regional Trial Court of Makati City, Branch 65, in Criminal Case No. 12-1463 finding appellant **ROCHELYN VELASCO y RULLODA** guilty of violating Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accused-appellant Rochelyn Velasco y Rulloda is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.

The Director of the Bureau of Corrections is **ORDERED** to **IMMEDIATELY RELEASE** appellant Rochelyn Velasco y Rulloda from custody, unless she is being held for some other lawful cause, and to inform the Court of the action taken within five (5) days from notice.

⁶ 824 Phil. 122, 139 (2018).

⁷ G.R. No. 235785, August 14, 2019.

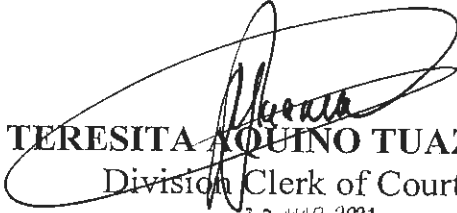
⁸ 828 Phil. 439, 453 (2018).

⁹ *People v. Villojan, Jr.*, G.R. No. 239635, July 22, 2019.

Let entry of judgment be issued immediately.

SO ORDERED.

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
23 MAR 2021 3/23

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THE DIRECTOR (x)
Bureau of Corrections
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HON. PRESIDING JUDGE (reg)
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(Crim. Case No. 12-1463)

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Please notify the Court of any change in your address.
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