



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 247526 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus RICHARD F. RABINO, accused-appellant.

After a careful review of the records of the instant case, the Court **REVERSES AND SETS ASIDE** the Decision¹ dated August 2, 2018 of the Court of Appeals, Special Twenty-Third Division (CA) in CA-G.R. CR-HC No. 01789-MIN, which affirmed with modification the Consolidated Judgment² dated October 13, 2017 rendered by the Regional Trial Court of Kidapawan City, Cotabato, Branch 17 (RTC) in Criminal Cases Nos. 1086-2012 and 1087-2012, finding accused-appellant Richard F. Rabino (accused-appellant) guilty beyond reasonable doubt of violating 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 acquits accused-appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

In cases involving illegal sale and possession of dangerous drugs under RA 9165, as amended by RA 10640, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.³ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants

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¹ *Rollo*, pp. 5-25. Penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justices Edgardo T. Lloren and Walter S. Ong concurring.

² *CA rollo*, pp. 83-89. Penned by Presiding Judge Arvin Sadiri B. Balagot, CPA.

³ *People v. Esguerra*, G.R. No. 243986, January 22, 2020, p. 4.

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an acquittal.⁴ Thus, while a buy-bust operation is recognized as an effective and proven procedure sanctioned by law for apprehending drug peddlers and distributors, the law nevertheless also requires *strict compliance* with the procedures laid down by it to ensure that rights are safeguarded.⁵

In this regard, Section 21,⁶ Article II of RA 9165, the applicable law at the time of the commission of the alleged crimes, imposes the chain of custody rule and lays down the following requirements for the buy-bust team to follow: (1) the seized items must 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 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.⁷

In a long line of cases that includes *People v. Mendoza*,⁸ *People v. Reyes*,⁹ *People v. Sagana*,¹⁰ *People v. Guieb*,¹¹ *People v. Tomawis*,¹² *People v. Lim*,¹³ *People v. Miranda*,¹⁴ *People v. Dayon*,¹⁵ *Tañamor v. People*,¹⁶ *People v. Arellaga*,¹⁷ and *People v. Casilang*,¹⁸ the Court acquitted the accused because the police officers failed to strictly comply with the mandatory procedure under Section 21. The Court

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⁴ Id.

⁵ *People v. Manabat*, G.R. No. 242947, July 17, 2019, p. 9.

⁶ The said section reads 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 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[.]

⁷ *People v. De Leon*, G.R. No. 214472, November 28, 2018, 887 SCRA 349, 363.

⁸ G.R. No. 192432, June 23, 2014, 727 SCRA 113.

⁹ G.R. No. 199271, October 19, 2016, 806 SCRA 513.

¹⁰ G.R. No. 208471, August 2, 2017, 834 SCRA 225.

¹¹ G.R. No. 233100, February 14, 2018, 855 SCRA 620.

¹² G.R. No. 228890, April 18, 2018, 862 SCRA 131.

¹³ G.R. No. 231989, September 4, 2018.

¹⁴ G.R. No. 218126, July 10, 2019, 908 SCRA 310.

¹⁵ G.R. No. 229669, November 27, 2019.

¹⁶ G.R. No. 228132, March 11, 2020.

¹⁷ G.R. No. 231796, August 24, 2020.

¹⁸ G.R. No. 242159, February 5, 2020.

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has consistently emphasized that the presence of the enumerated witnesses — namely, an elected official, as well as a representative from the DOJ and the media — during the seizure and inventory of the seized items is required by law to ensure the absence of any irregularities in the arrest of the accused and seizure of the dangerous drugs and to protect, at the same time, the apprehending officers from accusations of frame-ups.¹⁹ This two-fold function of the requirement on the presence of the three witnesses in a buy-bust operation was elaborated by the Court in *People v. Tomawis*,²⁰ to wit:

From the above testimonies, it can be gleaned that *barangay* councilors Burce and Gaffud were not present near to or at the place of arrest. They were merely called to witness the inventory at the Pinyahan *barangay* hall and then the drugs were shown to them by the PDEA agents. They did not even have prior knowledge of the buy-bust operation.

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

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¹⁹ See *People v. Tarusa*, G.R. No. 224921, February 10, 2020 (Unsigned Resolution).

²⁰ *Supra* note 12.

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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.”²¹ (Emphasis supplied; citations and emphasis in the original omitted)

In other words, the three required witnesses must already be physically near at the time of apprehension so that they can be present when the inventory is immediately done after the buy-bust — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Verily, a buy-bust team normally has enough time to gather and bring with it the said witnesses.²²

Here, while it can be said that the marking and inventory were done at the place of arrest, the insulating witnesses, however, were not present during the arrest of accused-appellant and even had no prior knowledge of the buy-bust operation. Instead, they were merely called in after the arrest and arrived when the seized items were already being inventoried. This was evident from the own testimony of *Barangay Kagawad Ramon Manon-og (Kagawad Manon-og)*:

Q On July 20, 2012 in the morning was there something unusual that happened?

A Members of the PDEA requested my presence because according to them there was a raid, ma'am.

Q Where?

A Somewhere in Sinsuat Extension, ma'am.

Q And did you go to the scene?

A Yes, ma'am.

Q **What happened when you arrived?**

A **When I arrived there were many people and the PDEA invited me to go inside the house and then showed me the evidences.**

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²¹ Id. at 149-150.

²² *People v. Manabat*, supra note 5, at 10-11.

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Q There is a person sitting during the time that the persons are marking the items, who is this person?

A I do not know him during that time but by and by I learned that he is the person who was arrested because he was handcuffed.²³ (Emphasis supplied)

On cross-examination, it was further revealed that when *Kagawad* Manon-og arrived at the crime scene upon the invitation of the Philippine Drug Enforcement Agency (PDEA) agents, the supposed pieces of evidence were already spread on the floor. Most importantly, he admitted to not having witnessed the search and seizure of said items so he did not know who seized them and from whom:

Q Kagawad, you said you were only called by someone allegedly to sign something, they invited you to come and sign?

A Yes, sir.

Q Now, you said in one of the questions of the Honorable Prosecutor that when you signed this inventory of evidence/property this is marked as "Exhibit B" by the prosecution, I gathered from your answer that you merely signed and you did not see individually or identified to you these alleged items enumerated here?

A Yes, sir.

Q So personally, you do not know what are these things enumerated herein which you signed?

A Yes, sir.

Q Also, since you were only invited to witness[,] we gathered from you that **when you arrived these alleged items enumerated in the inventory of evidence were already displayed on the floor?**

A Yes, sir.

Q So, do you know, you did not see how these things were produced by the persons who invited you whom you said you do not know personally?

A Yes, sir.

Q You do not know who took these items from whom because you did not see them?

A Yes, sir.

Q Then after that you signed you said you went home?

A Yes, sir.

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²³ TSN, May 25, 2015, pp. 3-4.

Q You do not know anymore where these persons you said you are not familiar with where they brought the alleged items, to what place you do not know that anymore?

A Yes, sir.

Q You do not know also who was that person who brought these items from the place where you saw the accused handcuffed already as appearing on the picture, squatting on the floor, you do not know who took these items from this place and brought it to where you do not know anymore?

A Yes, sir.

Q Because they did not invite you to come with them?

A Yes, sir.²⁴ (Emphasis supplied)

Considering that the witnesses were called in only after the buy-bust operation, they could not have known whether the drugs being inventoried in their presence were actually confiscated from accused-appellant. This was precisely what happened in this case, as testified to above by *Kagawad* Manon-og. Consequently, the belated appearance of the required witnesses did not erase the possibility that switching, planting, or contamination of the evidence could have transpired.

Furthermore, it is abundantly clear that the insulating witnesses who were belatedly called at the place of arrest were only a barangay official and a media representative. The DOJ representative was much more belatedly called when another inventory was conducted at the Kidapawan Police Station.²⁵ This was also positively testified to by PDEA Agent Alvin Ramos:

Q I am showing to you Exhibit "D"?

A This was the inventory that I made, ma'am.

Q You yourself made that?

A Yes, ma'am.

Q Did you sign that?

A Yes, ma'am.

x x x x

Q Whose signature is that next?

A The signature of the media representative, Mr. Romnick Cabaron. x x x

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²⁴ Id. at 6-8.

²⁵ Accused-Appellant's Brief, p. 8, *rollo*, p. 30, citing the Affidavit of Arrest of Agent Alvin M. Ramos in Criminal Case No. 1086-2012.

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Q Who else sign[ed] that?

A Ms. Arellano of the DOJ and Kagawad M[a]non-og.

x x x x

Q And where did Ms. Arellano affix her signature?

A Ms. Arellano affixed her signature at the police station, ma'am.

Q Why is that, that she affixed her signature in the police station and not at the scene?**A Because at that time, ma'am, she was not around so we just called her to go to the police station.**

Q Did you again conduct another inventory on her presence?

A Yes, ma'am.

Q Were there photographs taken during that time?

A Yes, ma'am.²⁶ (Emphasis supplied)

The above testimony also underscores the fact that the inventory was not signed by accused-appellant. The very exhibit²⁷ itself proves this.

The Court has cautioned in *People v. Manabat*²⁸ that Section 21, Article II of RA 9165 requires that the copies of the inventory should be signed by all the following persons: (a) accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ.²⁹

All told, there was a glaringly complete departure from the requirements under Section 21, Article II of RA 9165 insofar as the presence of the three insulating witnesses and the signature of accused-appellant in the inventory were concerned. Certainly, the law itself recognizes that strict compliance with the procedure may not always be possible. Section 21, Article II of RA 9165 contains a "saving clause" which provides that non-compliance with the requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved, shall not render void and invalid the seizure and custody over the confiscated

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²⁶ TSN, October 20, 2014, pp. 15-16.

²⁷ Exhibit "D", records (Crim. Case No. 1086-2012), p. 7.

²⁸ Supra note 5.

²⁹ Id. at 13.

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items. For the saving clause to apply, the prosecution must still satisfactorily prove that: (a) there was justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items were properly preserved.³⁰

In this case, however, the prosecution seemed oblivious of the PDEA agents' lapses and offered no explanation at all about the irregularities attending their buy-bust operation. With regard to the presence of the insulating witness in particular, the Court in *People v. Lim*³¹ held that earnest efforts to secure their attendance must be proven. Considering that a buy-bust operation is a planned activity, and police officers are given sufficient time to make necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the prescribed requirements of Section 21, police officers are compelled not only to state reasons for their non-compliance but must in fact, also convince the Court that they exerted genuine, sufficient, and earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.³² This same imperative for the prosecution to demonstrate earnest efforts to comply with the presence of the insulating witnesses under Section 21 and explain the actions taken should also hold true with respect to the requirement of securing the signature of the accused or his representative on the inventory. The absence thereof alongside the signatures of the three insulating witnesses, without justifiable reasons, renders the inventory irregular and casts doubt on the identity and integrity of the seized items.

Verily, the unjustified procedural lapses committed by the arresting officers in this case militate against a finding of guilt beyond reasonable doubt against accused-appellant, as there is no sufficient safeguard that the integrity and evidentiary value of the *corpus delicti* had not been compromised.³³ It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.³⁴ In this regard, accused-appellant's acquittal is perforce in order.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated August 2, 2018 of the Court of Appeals, Special Twenty-Third Division in CA-G.R. CR-HC. No.

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³⁰ See *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

³¹ *Supra* note 13.

³² *Id.* at 13; see also *People v. Umipang*, G.R. No. 190321, April 25, 2017, 671 SCRA 324, 354.

³³ See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 377.

³⁴ *Id.* at 377-378.

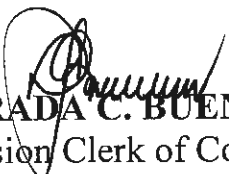
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01789-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Richard F. Rabino is **ACQUITTED** for the offenses that he is charged for failure of the prosecution to establish his guilt beyond reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he 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 Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *m.s.19*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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The Superintendent
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The Hon. Presiding Judge
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(Crim. Case Nos. 1086-2012 & 1087-2012)

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