



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 17, 2021 which reads as follows:

“G.R. No. 251753 (People of the Philippines, Plaintiff-Appellee, v. Ferdinand Gacias y Badajos, Accused-Appellant). – This appeal¹ seeks to reverse and set aside the Decision² promulgated on 04 July 2019 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 11088, which affirmed with modification the Decision³ dated 05 March 2018 of Branch 02, Regional Trial Court (RTC) of Tuguegarao City in Criminal Case Nos. 17337 and 17338, finding accused-appellant Ferdinand Gacias y Badajos (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165.⁴

Antecedents

Accused-appellant was charged with violation of Sections 5 and 11, Article II of RA 9165, in the Information, the accusatory portions of which reads:

Criminal Case No. 17337

That on July 31, 2015 in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused, FERDINAND GACIAS y Badajos a.k.a. “Dondie”, without authority of law and without any permit to sell, transport, deliver and distribute dangerous drugs, did then and there, willfully, unlawfully and feloniously, sell and distribute one (1) piece of heat sealed transparent plastic sachet, containing METHAMPHETAMINE HYDROCHLORIDE, commonly known

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¹ *Rollo*, pp. 29-30, *see* Notice of Appeal dated 29 July 2019.

² *Id.* at 03-28; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Danton Q. Bueser and Rafael Antonio M. Santos of the Court of Appeals, Manila.

³ *CA rollo*, pp.52-62; penned by Presiding Judge Vilma T. Pauig.

⁴ Comprehensive Dangerous Drugs Act of 2002.

as “shabu”, a dangerous drug weighing 0.077 gram, to PO2 ARNEL BASIUANG y Quilang, who acted as a poseur buyer; that when the accused handed to the poseur buyer the dangerous drugs, the poseur buyer in turn handed to the accused the agreed purchase price in the amount of Php1,000.00 consisting of one (1) piece genuine One Thousand (Php1,000.00) Peso Bill bearing Serial No. EZ945853 as buy-bust money; that this led to the immediate apprehension and arrest of the accused and the recovery of the buy bust money from his possession, control and custody at Baquiran St. Caritan Centro, this city, by members of the PNP assigned at the Police Regional Office 2, Camp Marcelo Adduru, Tuguegarao City, who acted in coordination with Philippine Drug Enforcement Agency (PDEA), Regional Office No. 2, Camp Marcelo Adduru, this city; that the buy-bust operation led to the confiscation of the dangerous drug.

CONTRARY TO LAW.⁵

Criminal Case No. 17338

That on July 31, 2015 in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused, FERDINAND GACIAS y Badajos a.k.a. “Dondie”, without authority of law and without the necessary documents or permit from lawful authorities to possess dangerous drugs, did then and there, willfully, unlawfully and feloniously, possess three (3) pieces of heat sealed transparent plastic sachets, containing METHAMPHETAMINE HYDROCHLORIDE, commonly known as “shabu”, a dangerous drug with a total weight of 0.239 gram; that the dangerous drug was confiscated from the possession, control and custody of the accused during a body search conducted on him in relation to the other charge of drug pushing against him; that this led to the immediate apprehension and arrest of the accused, by members of the PNP assigned at the Police Regional Office 2, Camp Marcelo Adduru, Tuguegarao City, as the buy bust team, who acted in coordination with Philippine Drug Enforcement Agency (PDEA), Regional Office No. 02, Camp Marcelo Adduru, this city.

CONTRARY TO LAW.⁶

Accused-appellant was likewise charged with violation of Section 28⁷ (a) of RA 10591.⁸ Upon arraignment, accused-appellant pleaded not guilty to the charges. After termination of pre-trial, trial on the merits ensued.⁹

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⁵ Records, Criminal Case No. 17337, p. 01.

⁶ Records, Criminal Case No. 17338, p. 01.

⁷ Unlawful Acquisition, or Possession of Firearms and Ammunition.

⁸ Comprehensive Firearms and Ammunition Regulation Act.

⁹ CA rollo, p. 53.

Version of the Prosecution

On 31 July 2015, the Regional Intelligence Division received an information from a confidential informant (CI) that one alias Dondie, later identified as the accused-appellant, was engaged in illegal drug-trade activities at his residence in Baquiran Street, Caritan Centro, Tuguegarao City. On the basis thereof, a team was formed to conduct a buy-bust operation against accused-appellant. PO3 Arnel Basiuang (PO3 Basiuang) was designated as poseur buyer with the rest of the team as back-up/arresting officers.¹⁰

The team proceeded to the area and the CI accompanied PO3 Basiuang to the house of accused-appellant. They had a brief conversation with accused-appellant, where the poseur buyer told him that he would purchase *shabu*. Accused-appellant handed one (1) heat-sealed plastic sachet with suspected *shabu* to PO3 Basiuang. In exchange, PO3 Basiuang handed him Php1,000.00. After the consummation of sale, PO3 Basiuang executed the pre-arranged signal and PO3 Froilan Gunnacao (PO3 Gunnacao)¹¹ arrested accused-appellant who attempted to escape.¹²

During the search, PO3 Gunnacao recovered the buy-bust money, three (3) heat-sealed sachets with suspected *shabu* and 1 caliber .38 revolver with six (6) live ammunitions from accused-appellant. PO3 Basiuang marked the sachet with suspected *shabu*, subject of sale,¹³ while PO3 Gunnacao marked the three (3) heat-sealed transparent plastic sachets with suspected *shabu*, together with the firearm and amunnitions.¹⁴ Thereafter, they conducted inventory and took photographs of the seized items in the presence of *Barangay Kagawads* Teofilo Calucag, Jr. and Alejo Baquiran and proceeded to the police station for documentation purposes.¹⁵

PO3 Basiuang and PO3 Gunnacao brought the seized items to the Regional Crime Laboratory Office. After receipt of the seized items, PO2 Isagani Aganon turned over the same to Forensic Chemist Police Chief Inspector Mayra Madria Tulauan (PCI Tulauan). Upon examination, the items were found positive for *shabu*.¹⁶

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¹⁰ *Id.*

¹¹ Also referred to as PO2 Gunnacao in the records.

¹² *CA rollo*, p. 54.

¹³ Records, Criminal Case No. 17388, pp. 06-07; TSN dated 23 October 2017, Witness PO3 Baguiran, p. 04.

¹⁴ TSN dated 22 April 2016, Witness PO3 Gunnacao, p. 08.

¹⁵ *CA rollo*, p. 54.

¹⁶ *Id.* at 54-55.

Version of the Defense

Accused-appellant denied the charges and maintained that no buy-bust operation took place and the items allegedly bought and recovered from him were planted. According to him, in the morning of 31 July 2015, while he was washing his face, several armed men arrived and pointed their guns at him. Out of fear, he ran away but stopped upon hearing gun shots. After his arrest, he was brought to the side of his house and was told to sit in front the items allegedly taken from him.¹⁷

Ruling of the RTC

On 05 March 2018, the RTC rendered its Decision, convicting accused-appellant of Violation of Sections 5 and 11, Article II of RA 9165 and acquitting him of the offense of violation of Section 28 (a) of RA 10591, thus:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 17337, the Court finds accused FERDINAND GACIAS y Badajos alias Dondie, GUILTY beyond reasonable doubt of the charge for violation of Sec. 5, Art II, of RA 9165, and sentences him to suffer LIFE imprisonment and to pay a fine of FIVE Hundred Thousand (P500,000.00) pesos;
2. In Criminal Case No. 17338, the Court finds accused FERDINAND GACIAS y Badajos alias Dondie, GUILTY beyond reasonable doubt of the charge of violation of Sec. 11, Art. II, RA 9165 and sentences him to suffer the penalty of imprisonment of Twelve (12) years and one (1) day as minimum to Twenty (20) years as maximum and to pay a fine of Three Hundred Thousand (P300,000.00) pesos; and
3. In Criminal Case No. 17339, the Court finds accused FERDINAND GACIAS y Badajos alias Dondie, NOT GUILTY of the charge for Violation of Section 28 (a) of R.A. 10591 otherwise known as AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF, IN RELATION TO Section 28 (e-1, in further relation to Section 3 (V) and Z (dd).

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¹⁷ *Id.* at 38

SO ORDERED.¹⁸

In convicting accused-appellant, the RTC found the elements of possession and the existence of a valid sale were duly established by the testimonies of the witnesses. It held that the prosecution witnesses fully complied with Section 21 of RA 9165 and their testimonies together with the documentary evidence leave no doubt on the culpability of the accused.¹⁹

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In its Decision dated 04 July 2019, the CA affirmed with modification the decision of the RTC. The dispositive portion of said decision reads:

WHEREFORE, premises considered, the Joint Decision dated March 5, 2018 of the Regional Trial Court of Tuguegarao City, Branch 02 in Criminal Case Nos. 17337 and 17338 is AFFIRMED with MODIFICATION to the effect that accused-appellant Ferdinand Gacias y Badajos is meted the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years in addition to the payment of Three Hundred Thousand Pesos (Php300,000.00) for his violation of Section 11 of RA No. 9165. The other aspects of the said Decision are affirmed.

SO ORDERED.²⁰

The CA held the prosecution has successfully proven not only the elements of the offenses charged against accused-appellant but every link in the chain of custody over the illegal drugs that were seized from the latter. The integrity and evidentiary value of the seized items were accordingly preserved based on the testimonies of the prosecution witnesses. It further held that the absence of representatives from the DOJ or the media was not fatal since the confiscation receipt was signed by two (2) *barangay* officials, and deemed it as substantial compliance with Section 21 of RA 9165.²¹

Hence, this appeal.

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¹⁸ CA rollo, pp. 61-62.

¹⁹ *Id.* at 60.

²⁰ Rollo, p. 27.

²¹ *Id.* at 24.

Issue

The sole issue in this case is whether or not the CA correctly affirmed accused-appellant's conviction for illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of RA 9165.

Ruling of the Court

The appeal is granted.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.²²

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of paramount importance, therefore, in these cases is that the identity of the dangerous drug be likewise established beyond reasonable doubt.²³

To preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence, Section 21 of RA 9165 as amended by RA 10640,²⁴ the applicable law at the time of the commission of the alleged offense,²⁵ outlines the procedure which the police officers must strictly follow, thus: (1) the seized items be inventoried and photographed at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; (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, and (c) a representative of the National Prosecution Service (NPS) or the media; and (3) the accused

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²² *People v. De Dios*, G.R. No. 243664, 22 January 2020 [Per J. Perlas-Bernabe].

²³ *People v. Nacua*, G.R. No. 200165, 30 January 2013, 702 Phil. 739 (2013) [Per J. Leonardo-De Castro].

²⁴ An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of RA 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002.

²⁵ The Information alleged that accused-appellant committed the offense on 31 July 2015.

or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof.²⁶

In the same manner, the prosecution must likewise establish the chain of custody of the dangerous drugs to ensure its integrity, *i.e.*, first, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.²⁷ Any break or disruption in the links would cast doubt in the identity and integrity of the seized item. Hence, it is essential for the prosecution to establish with moral certainty that the identity of the drug presented in court is the very same drug sold by the accused.²⁸

The police officers committed unjustified breaches of procedure in the seizure, custody and handling of the seized drug, thus:

The marking, inventory and taking of photographs of the seized items were not witnessed by either a representative from the NPS or media

PO3 Basiuang and PO3 Gunnacao marked, conducted inventory and took photographs of the seized items immediately after seizure, in the presence of two (2) *Barangay Kagawads* Calucag, Jr., and Baquiran.²⁹ According to PO3 Gunnacao, they did not secure the attendance of a representative from the NPS or the media.³⁰

We are not persuaded.

The case of *People v. Macud*³¹ stressed the importance of the presence of the required insulating witnesses –

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²⁶ *People v. Rasos, Jr.*, G.R. No. 243639, 18 September 2019 [Per J. Caguioa].

²⁷ *People v. Dahil*, G.R. No. 212196, 12 January 2015, 750 Phil. 212 (2015) [Per J. Mendoza].

²⁸ *People v. De Dios*, G.R. No. 243664, 22 January 2020 [Per J. Perlas-Bernabe].

²⁹ *CA rollo*, p. 54.

³⁰ TSN dated 22 April 2016, Witness PO3 Gunnacao, pp.30-31

³¹ G.R. No. 219175, 14 December 2017, 849 SCRA 294, 323 [Per J. Del Castillo].

The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody. We have noted in several cases that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed. In the present case, not only have the prescribed procedures not been followed, but also (and more importantly) the lapses not justifiably explained. X x x

While non-compliance of the law is allowed under certain circumstances, the same ought to be justified. Case law states that the prosecution must show that earnest efforts were exerted by the police officers to comply with the mandated procedure as to convince the Court that the attempt to comply was reasonable under the given circumstances.³² There was no explanation proffered by PO3 Gunnacao or PO3 Basiuang to justify their non-compliance, nor was there any showing that they have exerted earnest efforts to secure the attendance of either of the witnesses from the media or the NPS. This, considering that the City Prosecutor's office is just a kilometer away, while the nearest radio station is only 500 meters away from the place of the incident. Thus, the Court is impelled to conclude that the integrity and evidentiary value of the *corpus delicti* has been compromised with the foregoing unjustified breach of the procedure.

There was no turn over of the seized items to the investigating officer

After the marking and inventory, PO3 Basiuang and PO3 Gunnacao alleged to have proceeded to the police station for documentation purposes. The Court notes that there was no turn over of the seized items to the investigating officer, considering that the police officers were also the ones who brought the same to the crime laboratory.³³ In *People v. Bancola*,³⁴ it was held that the apprehending officer's act of keeping the seized evidence until its transfer to the forensic chemist and his failure to transfer the seized evidence to the investigating officer are considered breaks in the chain of custody.

Clearly, the unjustified non-compliance with Section 21 of RA 9165, as amended, created a substantial gap in the chain of custody and casts doubt on the integrity of the *corpus delicti*. Consequently, it

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³² *People v. Dela Victoria*, G.R. No. 233325, 16 April 2018 [Per J. Perlas-Bernabe].

³³ *CA rollo*, p. 54.

³⁴ G.R. No. 237802, 18 March 2019; Per J. Gesmundo].

created reasonable doubt as to the guilt of accused-appellant, warranting his acquittal for the crimes charged.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision promulgated on 04 July 2019 by the Court of Appeals, finding accused-appellant **FERDINAND GACIAS y BADAJOS** guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165, is **REVERSED** and **SET ASIDE**. He is hereby **ACQUITTED** on the ground of reasonable doubt and ordered immediately **RELEASED** from detention unless he is being confined for some other lawful cause.

The Director General of the Bureau of Corrections, Muntinlupa City 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

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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(CA-G.R. CR HC No. 11088)

The Hon. Presiding Judge
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(Crim. Case Nos. 17337 & 17338)

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