



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 230230  
PHILIPPINES, Plaintiff-Appellee,

- versus -

NIÑO CALIBOD y HENOBESO,  
Accused-Appellant.

Present:  
CARPIO, J., Chairperson,  
PERALTA,  
PERLAS-BERNABE,  
CAGUIOA, and  
REYES, JR., \* JJ.

Promulgated:

20 NOV 2017  
*M. Perlas-Bernabe*

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DECISION

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal<sup>1</sup> filed by accused-appellant Niño Calibod y Henobeso (Calibod) assailing the Decision<sup>2</sup> dated August 26, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07191, which affirmed the Judgment<sup>3</sup> dated October 10, 2014 of the Regional Trial Court of Calamba City, Branch 37 (RTC) in Criminal Case No. 9894-2002-C, finding him guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

\* On Official Leave.  
<sup>1</sup> See Notice of Appeal dated September 9, 2016; *rollo*, pp. 15-17.  
<sup>2</sup> Id. at 2-14. Penned by Associate Justice Stephen C. Cruz with Associate Justices Jose C. Reyes, Jr. and Maria Elisa Sempio Diy concurring.  
<sup>3</sup> CA *Rollo*, pp. 19-28. Penned by Presiding Judge Caesar C. Buenagua.  
<sup>4</sup> Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

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### The Facts

This case stemmed from an Information<sup>5</sup> filed before the RTC, charging Calibod of the crime of illegal sale of dangerous drugs, the accusatory portion of which states:

#### Criminal Case No. 9894-2002-C

“That at around 6:20 o’clock in the evening of August 18, 2002 at Brgy. Parian, City of Calamba, Province of Laguna and within the jurisdiction of the Honorable Court, the above-named accused, without any authority of law, did then and there, willfully, unlawfully[,] and feloniously sell and deliver to a poseur buyer one (1) plastic sachet containing methamphetamine hydrochloride otherwise known as “shabu”, (sic) a dangerous drug, weighing 0.01 gram, in violation of the aforementioned provision of law.

CONTRARY TO LAW.”<sup>6</sup>

The prosecution alleged that at around 4:00 o’clock in the afternoon of August 18, 2002, a tip was received from a confidential informant that a certain “Toto,” who was later identified as Calibod, was selling *shabu* along the railroad tracks in Barangay Parian, Calamba City, Laguna.<sup>7</sup> After verifying the said tip, the buy-bust team proceeded to the target area and arrived thereat at around 5:30 in the afternoon.<sup>8</sup> Upon seeing Calibod, Police Officer 2 Gregorio A. Oruga (PO2 Oruga), the designated poseur buyer, approached him and said, “*To, pakuha ako ng piso.*”<sup>9</sup> PO2 Oruga handed over the buy-bust money in the amount of ₱100.00 to Calibod, who, in turn, gave him one (1) plastic sachet of *shabu*. After receiving the sachet, PO2 Oruga introduced himself as a police officer, arrested Calibod, and retrieved the buy-bust money from him, prompting the buy-bust team to approach the scene.<sup>10</sup> PO2 Oruga then marked the seized sachet with his initials, “GAO.”<sup>11</sup> After the marking, PO2 Oruga immediately brought Calibod, the buy-bust money, and confiscated sachet, to the crime laboratory at Camp Vicente Lim in Canlubang, Laguna (crime laboratory) for examination.<sup>12</sup> After examination, Forensic Chemical Officer Donna Villa Huelgas (FCO Huelgas) confirmed that the confiscated sachet contained *methamphetamine hydrochloride*,<sup>13</sup> and that Calibod’s hands tested positive for ultra-violet powder.<sup>14</sup>

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<sup>5</sup> Records, p. 12.

<sup>6</sup> Id.

<sup>7</sup> See *CA rollo*, p. 20.

<sup>8</sup> Id.

<sup>9</sup> TSN, September 23, 2004, pp. 6-7.

<sup>10</sup> TSN, March 18, 2004, pp. 11-13.

<sup>11</sup> See *Sinumpaang salaysay* of PO2 Oruga; records, p. 4.

<sup>12</sup> TSN, March 18, 2004, pp. 14-15.

<sup>13</sup> See Laboratory Examination Report dated August 18, 2002; records, p. 10.

<sup>14</sup> TSN, March 18, 2004, p. 14.

For his part, Calibod interposed the defenses of denial and frame-up, claiming that at around 6:00 o'clock in the evening of August 18, 2002, he was at home with his common-law wife, Rhodora Ligpitan, and nephew, Jun Cris Cruzado, when five (5) unidentified armed men suddenly barged into his house and accused him of selling illegal drugs.<sup>15</sup> Calibod averred that the men ordered them to stay on one side of the house while they searched for illegal drugs. Calibod maintained that while the men did not find any illegal drugs, they nevertheless brought and detained him inside the municipal hall.<sup>16</sup> Thereafter, he was allegedly taken out of detention and was forced to hold a ₱100.00 bill on his hand. He was then brought to the crime laboratory for examination.<sup>17</sup>

### The RTC Ruling

In a Judgment<sup>18</sup> dated October 10, 2014, the RTC found Calibod guilty beyond reasonable doubt of the crime of illegal sale of dangerous drugs, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.<sup>19</sup> It ruled that the prosecution proved with moral certainty all the elements of the crime charged, considering that: (a) the identities of PO2 Oruga as the buyer and of Calibod as the seller were clearly established; (b) the object of the sale, which was the *shabu*, was successfully delivered to PO2 Oruga; and (c) the consideration of the sale, which was the ₱100.00 buy-bust money, was simultaneously given to Calibod.<sup>20</sup> On the contrary, Calibod's uncorroborated defenses of denial and frame-up failed to overcome the positive testimonies of the police officers, who, at the time of the incident, were found to be in the regular discharge of their duties and without any ill motive to testify falsely against him.<sup>21</sup>

Moreover, the RTC found that the identity of the *corpus delicti* was sufficiently established, as the integrity and evidentiary value thereof were shown to have been preserved from the time they were bought and seized from Calibod until they were delivered to the crime laboratory for examination, up to the time they were offered in evidence.<sup>22</sup>

Aggrieved, Calibod appealed<sup>23</sup> to the Court of Appeals (CA).

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<sup>15</sup> CA *rollo*, p. 61A.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 19-28.

<sup>19</sup> *Id.* at p. 28.

<sup>20</sup> See *id.* at 23-24.

<sup>21</sup> See *id.* at 21.

<sup>22</sup> See *id.* at 25-28.

<sup>23</sup> See Brief for Accused-Apellant dated December 7, 2015; *id.* at 59-69.

### The CA Ruling

In a Decision<sup>24</sup> dated August 26, 2016, the CA affirmed *in toto* the ruling of the RTC, holding that the totality of evidence adduced by the prosecution adequately established the essential elements of the crime charged.<sup>25</sup> It further held that the chain of custody of the seized dangerous drugs was unbroken and, thus, the integrity and evidentiary value of the seized drugs were adequately preserved.<sup>26</sup>

Hence, the instant appeal.<sup>27</sup>

### The Issue Before the Court

The issue for the Court's resolution is whether or not Calibod's conviction for the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165, should be upheld.

### The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.<sup>28</sup> "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."<sup>29</sup>

Calibod was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. In order to properly secure the conviction of an accused charged with the said crime, the prosecution must prove: (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.<sup>30</sup> Further, it is essential that the identity of the prohibited drug be proved with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to remove any unnecessary doubts on the identity of the dangerous drug, the

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<sup>24</sup> *Rollo*, pp. 2- 14.

<sup>25</sup> *Id.* at 13.

<sup>26</sup> *Id.*

<sup>27</sup> See Notice of Appeal dated September 9, 2016; *id.* at 15-17.

<sup>28</sup> *People v. Dahil*, 750 Phil. 212, 225 (2015).

<sup>29</sup> *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

<sup>30</sup> *People v. Sumili*, 753 Phil. 342, 348 (2015).

prosecution must show an unbroken chain of custody over the same, accounting for each link thereof from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.<sup>31</sup>

As held in the *Dela Riva v. People*,<sup>32</sup> the chain of custody is divided into four (4) links: *first*, the seizure and marking, if practicable, 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.<sup>33</sup>

In this relation, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.<sup>34</sup> Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory 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, a representative from the media and the Department of Justice, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.<sup>35</sup> In the case of *People v. Mendoza*,<sup>36</sup> the Court stressed that “**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, ‘planting’ or contamination of the evidence** that had tainted the buy-busts conducted under the regime of RA No. 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 [said drugs] that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody.”<sup>37</sup>

Notably, the Court declared that while the chain of custody rule demands utmost compliance from the police officers, strict adherence with the prescribed procedure may not always be possible under varied field

<sup>31</sup> See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

<sup>32</sup> 769 Phil. 872 (2015).

<sup>33</sup> Id. at 886-887.

<sup>34</sup> *People v. Sumili*, supra note 30 at 349-350.

<sup>35</sup> See Section 21 (1) and (2), Article II of RA 9165.

<sup>36</sup> 736 Phil. 749 (2014).

<sup>37</sup> Id. at 764.

conditions.<sup>38</sup> In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640<sup>39</sup> – provide that **the requisite inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**<sup>40</sup> Simply put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>41</sup> In *People v. Almorfe*,<sup>42</sup> **the Court explained that for 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.**<sup>43</sup> Moreover, in *People v. De Guzman*,<sup>44</sup> it was emphasized that **the justifiable ground**

<sup>38</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>39</sup> Entitled “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’” approved on July 15, 2014, Section 1 of which states:

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*, 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”

<sup>40</sup> See Section 21 (a), Article II of the IRR of RA 9165.

<sup>41</sup> See *People v. Goco*, G.R. No. 219584, October 17, 2016.

<sup>42</sup> 631 Phil. 51 (2010).

<sup>43</sup> See *id.* at 60.

<sup>44</sup> 630 Phil. 637 (2010).

**for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**<sup>45</sup>

After a judicious study of the case, the Court finds that there were unjustified gaps in the prescribed chain of custody of the dangerous drugs allegedly seized from Calibod, thereby putting into serious question the integrity and evidentiary value of the dangerous drugs allegedly seized from Calibod.

An examination of the records reveals that the police officers committed a procedural lapse in the *first link* of the chain. While the prosecution was able to show that PO2 Oruga was able to mark the seized *shabu* with his initials "GAO," it did not establish whether or not the requisite inventory and photography were properly conducted by the police officers. During the direct examination of PO2 Oruga, he claimed that he marked the seized *shabu* immediately after the conduct of buy-bust operation and subsequently brought the item, together with Calibod, to the crime laboratory, to wit:

PROS. DE LEON:

Q:

What happened to the plastic sachet, did you immediately bring that to crime laboratory for examination?

WITNESS (PO2 ORUGA):

A:

Yes, sir, before I brought it, I put an initial at the plastic sachet.

Q:

Immediately after the buy bust operation and after getting the plastic sachet, you [placed] markings with initials?

A:

Yes, sir.

x x x x<sup>46</sup> (Underscoring supplied)

Q:

What happened to the plastic sachet that you bought from @ "Toto"?

A:

I brought it to Crime Laboratory with Toto to check his hands, if it is positive for methamphetamine hydrochloride, sir.

x x x x<sup>47</sup> (Underscoring supplied)

<sup>45</sup> Id. at 649.

<sup>46</sup> TSN, March 18, 2004, pp. 15-16.

Based on the foregoing testimony, PO2 Oruga immediately proceeded to the crime laboratory after marking the seized *shabu*. He did not state if the marking was done within the view of Calibod, an elected public official, and a representative from the DOJ or media. He likewise did not mention whether the said witnesses were present during the buy-bust operation or immediately thereafter.

Moreover, it was not shown if PO2 Oruga actually conducted a physical inventory and photography of the seized *shabu* – either at the place of the arrest or at the nearest police station or office of the apprehending team – and in the presence of Calibod, an elected public official and a representative from the DOJ or the media. Despite the non-observance of these requirements, the prosecution did not even proffer a plausible explanation therefor. Perforce, the Court is constrained to rule that the police officers' unjustified non-compliance with the prescribed procedure under Section 21 of RA 9165 constitutes a fatal flaw which affects the integrity and evidentiary value of the *corpus delicti*.

Furthermore, it appears that there were also procedural lapses on the *second* and *third links* of the chain. Since PO2 Oruga immediately went to the crime laboratory without conducting the requisite inventory and photography after the buy-bust operation, there was no showing that the confiscated *shabu* was initially turned over to an investigating officer for further investigation. Additionally, the prosecution was silent as to how the specimen *shabu* was subsequently received at the crime laboratory, considering that PO2 Oruga did not state if he submitted the same directly to FCO Huelgas. No details were given as to the identity of the person who received the specimen *shabu* on behalf of the crime laboratory, as well as how it was handled, preserved, and managed before FCO Huelgas conducted an examination thereon. According to PO2 Oruga, he simply left the plastic sachet of *shabu* and the buy-bust money at the crime laboratory and brought Calibod to the police station, where he was charged of the crime of illegal sale of dangerous drugs, *viz.*:

x x x x

Q:

After that, where did you proceed?

A:

After he was examined, I left the money including the plastic sachet with methamphetamine hydrochloride and brought the accused to the police station, sir.

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<sup>47</sup> TSN, March 18, 2004, pp. 13-14.

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Q:  
What happened to (sic) the police station?

A:  
He was charge (sic) of a criminal complaint, sir.

x x x x<sup>48</sup> (Underscoring supplied)

By and large, the plurality of the breaches of procedure committed by the police officers, unacknowledged and unexplained by the State, militates against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.<sup>49</sup> It is well-settled that the procedure in Section 21 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.<sup>50</sup> As such, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as amended by RA 10640, as well as its IRR, Calibod's acquittal is perforce in order.

As a final note, it is fitting to mention that 'the Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions. Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. For indeed, order is too high a price for the loss of liberty.'<sup>51</sup>

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated August 26, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07191 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Niño Calibod y Henobeso is **ACQUITTED** of the crime charged. The Provincial Jail Warden of the Bureau of Jail Management and Penology of Calamba, Laguna is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

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<sup>48</sup> TSN, March 18, 2004, p. 14.

<sup>49</sup> See *People v. Sumili*, supra note 30 at 350.

<sup>50</sup> See *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

<sup>51</sup> See *Bulautan v. People*, G.R. No. 218891, September 19, 2016.

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**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**

Chief Justice

**SO ORDERED.**

*MP. Pearl*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

*Antonio Carpio*  
**ANTONIO T. CARPIO**  
Chairperson

*Diosdado M. Peralta*  
**DIOSDADO M. PERALTA**  
Associate Justice

*Alfredo Benjamin S. Caguioa*  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

On Official Leave  
**ANDRES B. REYES, JR.**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

*Antonio Carpio*  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson