



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 239331

- versus -

Present:
CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, JJ.

EDSON BARBAC RETADA
Accused-Appellant.

Promulgated:

10 JUL 2019

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Hil Cabalagto

DECISION

CAGUIOA, J.:

This is an Appeal¹ under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02101, which affirmed the Omnibus Decision³ dated July 23, 2015 rendered by the Regional Trial Court, Branch 62, Oslob, Cebu (RTC) in Criminal Case No. OS-12-743 and Criminal Case No. OS-12-744, finding accused-appellant Edson Barbac Retada (Retada) guilty beyond reasonable doubt of violating Sections 5 and 11(3), Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

The Facts

The two separate Informations⁵ filed against Retada for violation of Sections 5 and 11(3), Article II of RA 9165 pertinently read:

¹ See Notice of Appeal dated December 15, 2017, *rollo*, pp. 17-18.

² *Rollo*, pp. 4-16. Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Geraldine C. Fiel-Macaraig, concurring.

³ *CA rollo*, pp. 38-45. Penned by Presiding Judge James Stewart Ramon E. Himalalooan.

⁴ 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" (2002).

⁵ Records (Criminal Case No. OS-12-743 and Criminal Case No. OS-12-744), p. 1.

[Criminal Case No. OS-12-743 (Illegal Sale of Dangerous Drugs)]

That on April 7, 2012, at 8:00 o'clock in the evening, more or less, at Barangay Poblacion, Municipality of Ginatilan, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously deliver and sell to the poseur[-]buyer of Ginatilan Police Station, one (1) heat-sealed transparent plastic sachet with label "EBR-1" containing white crystalline substance weighing **0.05 gram** of white crystalline substance (*sic*) for **two (2) pieces of Two Hundred [P]eso bills bearing Serial Nos. JW970202 and EL143390**, when subjected to laboratory examination gave positive results for the presence of Methamphetamine Hydrochloride (shabu), a dangerous drug.

CONTRARY TO LAW.⁶

[Criminal Case No. OS-12-744 (Illegal Possession of Dangerous Drugs)]

That on April 7, 2012, at 8:00 o'clock in the evening, more or less, at Barangay Poblacion, Municipality of Ginatilan, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one **(1) heat-sealed transparent plastic sachet with label "EBR-2" containing white crystalline substance weighing 0.05 gram**, when subjected to laboratory examination gave **POSITIVE** results for the presence of **Methamphetamine [H]ydrochloride**, a dangerous drug.

CONTRARY TO LAW.⁷

Upon arraignment, Retada pleaded not guilty to both charges.⁸

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

On April 7, 2012, after confirming that one Edson Retada (accused) is engaged in illegal drug activities, Police Inspector Christopher Castro conducted a buy-bust briefing. It was agreed that PO2 Catubig would act as poseur-buyer while PO2 Dela Peña and PO1 Dialemas were the immediate back-up. PO1 Mansueto, PO2 Fernandez and PO1 Ferrater were also present during the briefing. PO1 Mansueto (who conducted the test buy), informed the team that accused was in Chicken Inasal in Poblacion. Thereafter, the buy-bust team proceeded to the target area. Upon arrival thereat, PO2 Catubig saw accused standing near the *Chicken Inasal* in front of MLhuillier. PO2 Catubig approached the accused and told the latter that he was going to buy shabu. PO2 Catubig gave two (2)

⁶ Records (Criminal Case No. OS-12-743), p. 1.

⁷ Records (Criminal Case No. OS-12-744), p. 1.

⁸ *Rollo*, p. 6.

pieces of Php200.00 marked money to the accused. In exchange thereof, accused gave one (1) plastic sachet of shabu to PO2 Catubig and got the money. PO2 Catubig raised his right hand as the pre-arranged signal to inform the other members of the team that the sale has been consummated. PO2 Dela Peña and PO1 Dialemas immediately approached them. PO2 Catubig arrested the accused and the latter was apprised of his constitutional rights. Upon arrival at the police station, PO2 Catubig made a thorough body search on the accused and recovered on the latter one (1) plastic sachet of suspected shabu, buy-bust money, coins in different denominations and a cellphone.⁹

Version of the Defense

On the other hand, the version of the defense, as summarized by the CA, is as follows:

On April 7, 2012 at around 9:00 o'clock in the evening accused was attending a procession together with his children. During the procession, he saw the police officers involved in this case at the check point at Brgy. San Roque near the Poblacion. After the procession, he stood in a store named W. Singco. Without knowing, the police suddenly arrived and invited him to the police station. He brought with him his 2-year old child. When they arrived, the police immediately placed him inside the Chief of Police Office and bodily searched him but he refused. The police then handcuffed him while his child was brought outside the office. The police officers continued searching him until they showed him two (2) sachets of shabu and money amounting to Php 44.75 allegedly from his pocket. Thereafter, he was placed inside the detention cell and the barangay officials arrived and signed the document.¹⁰

Ruling of the RTC

In the assailed Omnibus Decision dated July 23, 2015, the RTC ruled that the defense of alibi and frame-up of the accused must simply fail.¹¹ It further ruled that the prosecution was able to prove the arresting officers' compliance with the procedural safeguards under RA 9165.¹² The prosecution clearly established an unbroken chain of custody.¹³

The dispositive portion of the Omnibus Decision reads:

WHEREFORE, premises considered, the court finds accused Edson Barbac Retada GUILTY beyond reasonable doubt of the offenses of Illegal Sale of Dangerous Drug and Illegal Possession of Dangerous Drug in accordance with Sec. 5 and Sec. 11(3), respectively, both of Article II of RA 9165.

⁹ Id. at 6-7.

¹⁰ Id. at 7-8.

¹¹ CA rollo, p. 43.

¹² Id.

¹³ Id. at 44.

The court sentences him to a penalty of life imprisonment without eligibility of parole and a fine of Five Hundred Thousand Pesos (₱500,000.00) for Sec. 5; and an imprisonment of twelve (12) years and one (1) day to twelve (12) years and one (1) month and a fine of Three Hundred Thousand Pesos (₱300,000.00) for Sec. 11.

x x x x

SO ORDERED.¹⁴

Aggrieved, Retada appealed to the CA.

Ruling of the CA

In the assailed Decision dated November 29, 2017, the CA affirmed Retada's conviction. The dispositive portion of the Decision reads:

WHEREFORE, the Omnibus Decision dated July 23, 2015 rendered by the Regional Trial Court, Branch 62, Oslob, Cebu in Criminal Case No. OS-12-743 and Criminal Case No. OS-12-744 convicting accused-appellant Edson Barbac Retada of Violation of Section 5 and Section 11(3) respectively, of Article II of R.A 9165 as amended or the Dangerous Drugs Act is hereby **AFFIRMED** with **MODIFICATION** on the penalty in Criminal Case No. OS-12-744. Accused-appellant is sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

With costs against the accused-appellant.

SO ORDERED.¹⁵ (emphasis in the original)

The CA ruled that all the elements of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs were duly proven by the prosecution.¹⁶ It further ruled that the prosecution established an unbroken chain of custody, thus the integrity and evidentiary value of the seized drugs were properly preserved.¹⁷ Lastly, it ruled that since the police officers found one plastic sachet of *shabu* when they bodily searched the accused, the presumption of *animus possidendi* exists.

Hence, the instant appeal.

Issue

Whether Retada's guilt for violation of Sections 5 and 11(3) of RA 9165 was proven beyond reasonable doubt.

¹⁴ Id. at 45.

¹⁵ *Rollo*, pp. 15-16.

¹⁶ Id. at 10 and 13.

¹⁷ Id. at 12-13.



The Court's Ruling

The appeal is granted. Retada is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense¹⁸ and the fact of its existence is vital to sustain a judgment of conviction.¹⁹ It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.²⁰ Thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.²¹

In this connection, the Court has repeatedly held that Section 21,²² Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, **strictly requires** that (1) the seized items 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).²³

Verily, the three required witnesses **should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the**

¹⁸ *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

¹⁹ *Derilo v. People*, 784 Phil. 679, 686 (2016).

²⁰ *People v. Alvaro*, G.R. No. 225596, January 10, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63871>>.

²¹ *People v. Manansala*, G.R. No. 229092, February 21, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63936>>.

²² 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[.]

²³ See RA 9165, Art. II, Sec. 21 (1) and (2); *Ramos v. People*, G.R. No. 233572, July 30, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64716>>; *People v. Ilagan*, G.R. No. 227021, December 5, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64800>>; *People v. Mendoza*, G.R. No. 225061, October 10, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64646>>.

buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.²⁴

While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible²⁵ and that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void, this has ***always*** been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.²⁶

However, in the case at bar, the police officers utterly failed to comply with the requirements of Section 21.

First, although there were two elected officials present during the inventory at the police station, the two other mandatory witnesses were not present. To reiterate, the law requires that the following witnesses should be present during the physical inventory and photography of the seized drugs: (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 DOJ.²⁷ However, only two councilors were present. Thus, it is clear that they failed to comply with the mandatory requirement of the law. Also, the mere fact that they tried to contact a media representative and a DOJ representative when they arrived at the police station is not the earnest effort that is contemplated by the law. As testified by PO2 Ruben M. Catubig (PO2 Catubig):

Q Who were present during the inventory, Mr. Witness?

A Two councilors.

Q Who else?

A Only the two councilors.

Q What about you were you also present?

A Yes, ma'am and also our Chief of Police.

Q Aside from the Chief of Police who else were present?

A The back-up policemen.

Q Are there any representatives from the media, Mr. Witness?

A None.

Q The DOJ?

A None.

²⁴ *People v. Angeles*, G.R. No. 237355, November 21, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64869>>.

²⁵ *People v. Sanchez*, 590 Phil. 214, 234 (2008)

²⁶ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

²⁷ See RA 9165, Art. II, Sec. 21.

- Q Why there were none? (*sic*)
A Usually we got the witness from the Local Officials, ma'am.
- Q But you tried to contact the media and the DOJ?
A Yes, ma'am.
- Q Who conducted the inventory, Mr. Witness?
A Me.²⁸

Second, they did not conduct the marking, inventory, and photography of the seized items at the place of arrest. Instead, they delayed the proceedings and supposedly accomplished them only at the police station. When asked why they did so, they offered a flimsy excuse that there were several persons in the place where they conducted the buy-bust operation. As testified by PO2 Catubig:

- Q And after recovering those items what happened next?
A We conducted an inventory.
- Q Where was it done?
A At the police station.
- Q Why?
A Since there were several persons in the place where we conducted the buy bust operation inquiring about our operation and per instruction by our Chief of Police, we conducted the inventory at the police station.²⁹

It bears stressing that the prosecution has the burden of (1) proving the police officers' compliance with Section 21, RA 9165 and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,³⁰

It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

- (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting**

²⁸ TSN, November 28, 2013, pp. 9-10.

²⁹ Id. at 9.

³⁰ G.R. No. 231989, September 4, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.

officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.³¹ (Emphasis in the original and underscoring supplied)

Undeniably, none of the abovementioned circumstances was attendant in the case. Their excuse for non-compliance is unconvincing. The police officers' mere allegation that there were other people in the buy-bust area without any indication that these people posed a threat to them or that such occurrence would substantially affect the success of their operation is a frail justification.

In addition, the police officers admitted that they only tried to "call-in" the mandatory witnesses when they were already at the police station. Time and again, the Court has held that 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 not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.³²

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug, thus the integrity and evidentiary value of the seized drug have been compromised. Accordingly, Retada should be acquitted of the crime of Illegal Sale of Dangerous Drugs.

Also, the elements of illegal possession of drugs were not satisfactorily proven by the prosecution. The successful prosecution of illegal possession of drugs necessitates the following facts to be proved, namely: (a) the accused was in possession of the dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of the dangerous drugs.³³ For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drug in a way that the integrity thereof has been well-preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court.³⁴ In this case, the prosecution utterly failed to prove that the integrity and evidentiary value of the seized drug were preserved. The same breaches of procedure in the handling of the

³¹ Id., citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64255>>.

³² *People v. Tomawis*, G.R. No. 228890, April 18, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>>.

³³ *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

³⁴ Id.

illegal drug subject of the illegal sale charge equally apply to the illegal drug subject of the illegal possession charge. Corollary, the prosecution was not able to overcome the presumption of innocence of Retada.

Moreover, considering that the warrantless arrest of the accused was illegal, the subsequent warrantless search resulting in the recovery of one more plastic sachet of *shabu* from Retada's possession is invalid and the seized *shabu* is inadmissible in evidence being under the law, "fruit of the poisonous tree."³⁵ Even more telling is the fact that they only conducted the thorough body search of the accused at the police station when they could have immediately done it at the place of arrest. Thus, Retada must perforce also be acquitted of the charge of violating Section 11 of RA 9165.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its Implementing Rules and Regulations, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.³⁶

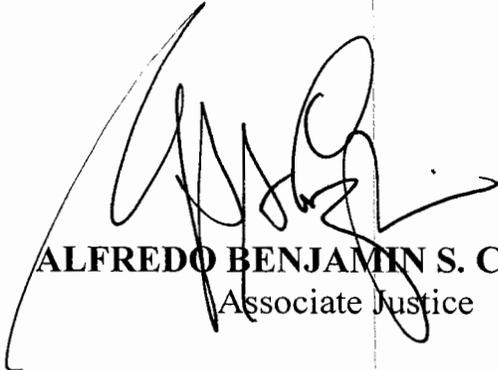
WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 02101, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **EDSON BARBAC RETADA** is **ACQUITTED** of the crimes charged on the ground of 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 Decision be furnished the Superintendent of the Leyte Regional Prison, Abuyog, Leyte, for immediate implementation. The said Superintendent is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

³⁵ *People v. Alicando*, 321 Phil 656, 712 (1995).

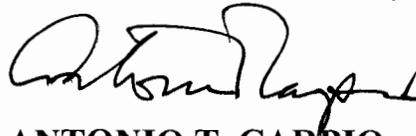
³⁶ See *People v. Jugo*, G.R. No. 231792, January 29, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63908>>.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

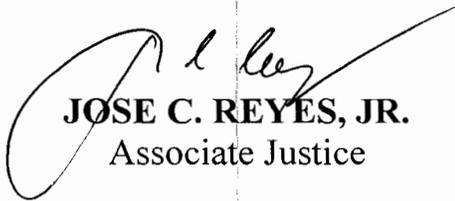
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



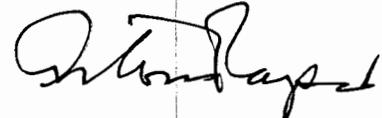
JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

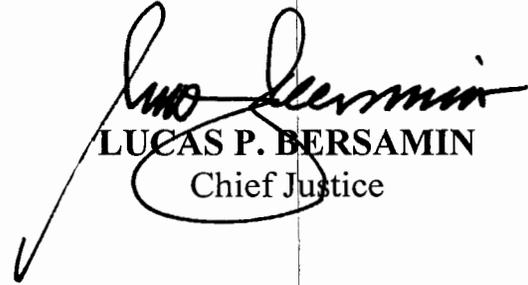
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.



LUCAS P. BERSAMIN
Chief Justice

