



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **24 August 2020** which reads as follows:*

**“G.R. No. 234960 (*Ricky Nicolas y Nucum v. People of the Philippines*)**. –This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court of the Decision<sup>2</sup> dated February 20, 2017 and Resolution<sup>3</sup> dated October 19, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07584. The CA denied the appeal of Ricky Nicolas y Nucum (petitioner) of the Joint Decision<sup>4</sup> dated January 20, 2015 of Branch 141, Regional Trial Court (RTC), City of San Fernando; and petitioner’s Motion for Reconsideration.

*The Antecedents*

Petitioner was charged in two Informations filed on May 22, 2012 with violation of Republic Act No. 9165 (RA 9165), committed as follows:

Criminal Case No. 18535  
(Violation of Section 5, Article II of RA 9165)

That on or about the 21st day of May, 2012, in the City of San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized, did then and there willfully, unlawfully and feloniously sell, distribute, deliver and transport a heat-sealed transparent plastic sachet with markings “ABL” in exchange one (1)

<sup>1</sup> *Rollo*, pp. 34-89.

<sup>2</sup> *Id.* at 12-28; penned by Associate Justice Renato C. Francisco with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser, concurring.

<sup>3</sup> *Id.* at 30-31; penned by Associate Justice Renato C. Francisco with Associate Justices Apolinario D. Bruselas, Jr., and Danton Q. Bueser, concurring.

<sup>4</sup> Records, pp. 184-202.

pc. of Five Hundred Peso Bill with serial no. XS711178 containing Methamphetamine hydrochloride with a weight of SIXTY SIX THOUSANDTHS (0.066) OF A GRAM, a dangerous drug.

Contrary to law.<sup>5</sup> (Emphasis omitted).

Criminal Case No. 18536  
(Violation of Section 11, Article II of RA 9165)

That on or about the 21<sup>st</sup> day of May, 2012, in the City of San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized, did then and there willfully, unlawfully and feloniously has in his possession, custody and control three (3) pcs. heat sealed transparent plastic sachets with markings "ACY-1" to ACY-3, containing Methamphetamine hydrochloride with a total weight of ONE HUNDRED FIFTY FIVE THOUSANDTHS (0.155g) of a GRAM, a dangerous drugs.

Contrary to law.<sup>6</sup> (Emphasis omitted).

Upon arraignment, petitioner pleaded not guilty to each of the charges filed against him.<sup>7</sup>

Pre-trial and trial ensued.<sup>8</sup>

#### *Version Of The Prosecution*

As culled from the CA Decision:

On 21 May 2012, at around 6:50 in the evening, PO1 Aldrian B. Lingat (PO1 Lingat) was at the City of San Fernando Police Station when one of the confidential assets of P/Sr. Insp. Efren David Jr. (P/Sr. Insp. David) reported that a certain "Rick-Rick" of San Juan, City of San Fernando, Pampanga was engaged in selling illegal drugs.

P/Sr. Insp. David instructed PO1 Lingat along with the confidential asset and PO3 Agustin Yco (PO3 Yco) to conduct a buy-bust operation. After the briefing, P/Sr. Insp. David assigned PO1 Lingat to be the *poseur-buyer*. P/Sr. Insp. David gave him the P500.00 bill to be used as the marked money wherein PO1 Lingat placed his initials "ABL."

<sup>5</sup> *Rollo*, p. 13.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 14.

PO1 Lingat proceeded to the Philippine Drug Enforcement Agency (PDEA) in Camp Olivas to coordinate their operation, as shown by Coordination Form with Control No. 0512-00091. Thereafter, PO1 Lingat together with the confidential asset and PO3 Yco went to the Barangay Hall of San Juan, City of San Fernando, to coordinate with the Barangay Kagawads.

Upon arriving at the target area, the team parked their service vehicle more or less eight (8) to ten (10) meters away from the house of appellant. PO1 Lingat and the confidential asset then walked towards appellant who was standing in front of his house. When they approached appellant, PO1 Lingat was introduced by the confidential asset as his friend and that he was in need of *shabu* for personal use. Afterwards, appellant gave to PO1 Lingat one small transparent plastic sachet containing suspected *shabu* from his pocket. PO1 Lingat, in return, gave him the marked money. Thereafter, PO1 Lingat removed his watch which is the pre-arranged signal that the transaction was consummated.

PO3 Yco, who was left at their vehicle, immediately ran to the crime scene and helped PO1 Lingat to effect the arrest of appellant. He also informed him of his constitutional rights. When PO3 Yco requested appellant to bring out the contents of his pocket, three (3) small transparent sachet containing suspected *shabu* were discovered.

Right after, the team brought appellant to the City of San Fernando Police Station for investigation. They turned him over to the Police Investigator. They likewise turned over the confiscated evidence as shown by the Turn Over Receipt. PO1 Lingat and PO3 Yco also prepared the Confiscation Receipt. The preparation was witnessed by Manuel Villanueva (DOJ representative), Jayvie Dizon (media representative) and Nilo Gregorio (Barangay Kagawad). As shown by photographs, appellant was present when the witnesses signed the Confiscation Receipt.

PO1 Lingat testified that the plastic sachets mentioned in the Confiscation Receipt are the very same plastic sachets obtained from the buy-bust operation because he put his initials "ABL" on the one he was able to buy and those which were confiscated were marked by PO3 Yco with "ACY-1", "ACY-2" and "ACY-3". PO1 Lingat testified that the marking on the plastic sachets were placed when they went back to the police station. They did not effect the markings at the operation site because it was already dark and there was a commotion because some kibitzers milled around them. Written requests for laboratory examination and drug test were also made. This narration with regard to marking was corroborated by the testimony of SPO1 Renato Castro (SPO1 Castro).

Based on Chemistry Report No. DT-075-2012RCLO3 by

Forensic Chemist PSI Roanalaine Baligod (PSI Baligod), qualitative examination conducted on the four (4) heat-sealed transparent plastic sachets containing white crystalline substance gave positive result for presence of methamphetamine hydrochloride.<sup>9</sup>

### *Version Of The Defense*

As gleaned from the CA Decision:

In the evening of 21 May 2012, appellant was repairing his tricycle at the gate of his house when two (2) male persons riding a motorcycle asked for ex-Barangay Captain Angel Bondoc. He told them that his house was located down the road. Suddenly, the persons alighted from the motorcycle and held him. They wanted to bring him with them. Appellant asked them why but they did not respond. He resisted, shouted and called for his wife. When his wife went out of the house, she asked them what they wanted. They then took out their guns and told them that they are police officers. Until the time of his testimony, appellant does not know who these persons are.

Appellant was brought to the police station of the municipal hall. Therein, they brought him to a room where he was punched and told to admit that he is a drug pusher.

On direct examination, appellant denied selling and having in possession any shabu on 21 May 2012. Appellant maintained that PO1 Lingat was lying when he testified in court.

On cross-examination, appellant testified that he never tried using shabu or any illegal drug before he was arrested.

Erlinda Enalpe (Enalpe), the common law wife of appellant, testified that on the night of 21 May 2012, she suddenly heard appellant shouting and calling her name. When she went out of their house, she saw appellant being forcibly pulled away by two (2) persons. She asked them where they will bring appellant but they did not say anything. Enalpe then looked for appellant until she saw the vehicle he boarded [park] in front of the municipal hall. She then went to the police station but she was prevented by a police officer from entering.

Enalpe averred that PO1 Lingat was lying when he mentioned that he was the one who arrested appellant considering he was not present during the time that he was taken away from (2) persons. Further, she stated that she had not seen appellant use drugs.<sup>10</sup>

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<sup>9</sup> *Id.* at 14-16.

<sup>10</sup> *Id.* at 16-17.

*Ruling of the Regional Trial Court*

On January 20, 2015, the RTC rendered its Joint Decision<sup>11</sup> finding petitioner guilty beyond reasonable doubt of the offenses charged. Its dispositive portion provides:

VIEWED IN THE LIGHT OF THE FOREGOING, this court finds the accused RICKY NICOLAS y NUCUM guilty beyond reasonable doubt of the crime of Violation of R.A. 9165 and is hereby sentenced, as follows:

1. in Criminal Case No. 18535 for Violation of Section 5, Article II, the accused is sentenced to suffer the penalty of life imprisonment and to pay the fine of Php 500,000.00; and
2. in Criminal Case No. 18536 for Violation of Section 11, Article II, the accused is sentenced to suffer the penalty of Seventeen (17) Years, Four (4) months and One (1) day, as minimum, to Twenty (20) years, as maximum, and to pay fine of Php300,000.00.

The OIC-Branch Clerk of Court is directed to immediately transmit the drug specimen to the appropriate agency within three (3) days from the promulgation of the decision.

SO ORDERED.<sup>12</sup>

The RTC ruled that the clear and positive testimony of PO1 Aldrian Lingat (PO1 Lingat) was more than sufficient to prove that an illegal transaction of sale of *shabu* took place. He gave a clear and consistent account of what transpired during the buy-bust operation especially the sale of one sachet of *shabu* from petitioner and the fact that three other sachets of *shabu* were found in the possession of petitioner after his arrest. The RTC further noted that: (1) the result of the laboratory examination confirmed the presence of *shabu* on the four plastic sachets; (2) the drug test conducted on petitioner likewise yielded a positive result; and (3) the marked money was presented in evidence.<sup>13</sup>

The RTC gave full faith and credence to the testimonies of the police officers and upheld the presumption of regularity in their performance of official duty.<sup>14</sup> It explained that petitioner failed to present clear and convincing evidence to overturn the presumption that

<sup>11</sup> Records, pp. 68-86; penned by Judge Divina Luz P. Aquino-Simbulan.

<sup>12</sup> *Rollo*, p. 18.

<sup>13</sup> *Id.* at 17.

<sup>14</sup> *Id.*

the police officers regularly performed their duties or that they were impelled by improper motives to testify against him.<sup>15</sup>

Petitioner filed a Motion for Reconsideration, but the RTC denied it in an Order<sup>16</sup> dated May 13, 2015. Aggrieved, petitioner filed an appeal before the Court of Appeals.<sup>17</sup>

### *Ruling of the Court of Appeals*

In the Decision<sup>18</sup> dated February 20, 2017, the CA denied the appeal. The CA ruled that the prosecution established beyond reasonable doubt petitioner's guilt for the offenses of illegal sale of *shabu* and illegal possession of *shabu*, in violation of Sections 5 and 11, Article II of RA 9165, respectively.<sup>19</sup> The CA also ruled that the integrity and evidentiary value of the seized *shabu* were not impaired.<sup>20</sup> It explained that the failure of the police officers to conduct the marking immediately after seizure did not work to the advantage of petitioner since the marking at the police station is permitted.<sup>21</sup> Further, the succession of events undeniably showed that the sachets of illegal drug seized from petitioner were the very same items tested, subsequently identified, and testified upon in court.<sup>22</sup>

The CA also ruled that the inconsistencies and lapses in the testimony of PO1 Lingat pointed out by petitioner were merely trivial and had no relevance to the elements of the offenses charged, such as the following: (1) the time during which he coordinated with PDEA regarding the buy-bust operation; (2) the time the buy-bust team reached the target area; and (3) the fact that he cannot recall the name of the *barangay* official they coordinated with before the buy-bust operation.<sup>23</sup> The CA explained that there was no evidence presented to show that PO1 Lingat, who was a member of the buy-bust operation team, was impelled by any ill-feeling or improper motive to testify against petitioner that would raise a doubt about his credibility.<sup>24</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> Records, pp. 247-253.

<sup>17</sup> *Id.* at 18.

<sup>18</sup> *Rollo*, pp. 12-28.

<sup>19</sup> *Id.* at 20-21.

<sup>20</sup> *Id.* at 21.

<sup>21</sup> *Id.* at 23.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 25.

<sup>24</sup> *Id.* at 26.

However, the CA modified the penalty imposed by the RTC.<sup>25</sup>

The dispositive portion of the CA Decision<sup>26</sup> provides:

WHEREFORE, premises considered, the appeal is DENIED. The Joint Decision dated 20 January 2015 and the Order of Branch 141, Regional Trial Court of the City of San Fernando in Criminal Case Nos. 18535 & 18536 are AFFRIMED with MODIFICATION, to wit:

1. In Criminal Case No. 18535, appellant Ricky Nicolas y Nucum is not eligible for parole; and
2. In Criminal Case No. 18536, appellant Ricky Nicolas y Nucum is sentenced to suffer the penalty of imprisonment of 12 years and 1 day as minimum to 14 years and 8 months as maximum.

SO ORDERED.<sup>27</sup>

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution<sup>28</sup> dated October 19, 2017.

Thus, the petition.

#### *Our Ruling*

The Court grants the petition.

At the outset, the Court notes that petitioner filed a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. As the Court explained in *Arambulo v. People*,<sup>29</sup> as a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court.<sup>30</sup> However, this rule is subject to an exception. Thus, when the penalty imposed by the CA is *reclusion perpetua* or life imprisonment, the appeal shall be made by a

<sup>25</sup> *Id.* at 26-28.

<sup>26</sup> *Id.* at 12-28.

<sup>27</sup> *Id.* at 28.

<sup>28</sup> *Id.* at 30-31.

<sup>29</sup> G.R. No. 241834, July 24, 2019.

<sup>30</sup> *Id.*, citing Section 3(e), Rule 122 of the Revised Rules of Criminal Procedure which provides:

Section 3. How appeal taken. –

x x x x.

(e) Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45. (3a)

mere notice of appeal filed before the CA.<sup>31</sup> Here, petitioner availed himself the wrong mode of appeal by filing a Petition for Review on *Certiorari* despite the fact that the CA affirmed the RTC's imposition of the penalty of life imprisonment against him. Nevertheless, in the interest of justice, the Court will treat his petition for review on *certiorari* as an ordinary appeal and resolve the substantive issues of this case with finality.<sup>32</sup>

Now, as to the merits of the case.

In *People v. Ismael*,<sup>33</sup> the Court ruled that “[i]n cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the very *corpus delicti* of the offense.”<sup>34</sup> For this reason, “it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved.”<sup>35</sup>

The chain of custody requirement in drugs cases ensures that doubts concerning the identity of the seized drug are removed.<sup>36</sup>

In *People v. Bangcola*,<sup>37</sup> the Court reiterated the Court's previous pronouncement in *Mallillin v. People*<sup>38</sup> as to how the chain of custody over the seized evidence should be maintained and the testimony needed to establish the chain of custody; thus:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. *It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where*

<sup>31</sup> *Arambulo v. People*, *supra* note 29, citing Section 13 (c), Rule 124 of the Revised Rules on Criminal Procedure which provides:

Section 13. *Certification or appeal of case to the Supreme Court.* —

x x x x.

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

<sup>32</sup> *Arambulo v. People*, *supra* note 29-, citing *Ramos v. People*, 803 Phil. 775, 782-783 (2017).

<sup>33</sup> *People v. Ismael*, 806 Phil. 21 (2017)

<sup>34</sup> *Id.* at 29.

<sup>35</sup> *Id.*

<sup>36</sup> *Mallillin v. People*, 576 Phil. 576, 587 (2008).

<sup>37</sup> G.R. No. 237802, March 18, 2019.

<sup>38</sup> *Mallillin v. People*, *supra*.

*it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.* These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.<sup>39</sup> (Emphasis supplied.)

While testimony about a perfect chain is not always possible to obtain,<sup>40</sup> jurisprudence specifically requires a more exacting standard before narcotic substances are accepted as evidence.<sup>41</sup> This is because “[n]arcotic substances are not readily identifiable as they are subject to scientific analysis to determine their composition and nature, and are prone to tampering, alteration or substitution either by accident or otherwise.”<sup>42</sup> Thus, the prosecution must establish an unbroken chain of custody in cases involving drugs.<sup>43</sup>

Thus, to establish the chain of custody of the seized drugs, the following links should be established: *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 from the forensic chemist to the court.<sup>44</sup>

Moreover, as part of the chain of custody procedure, Section 21 (1), Article II of RA 9165 provides the procedure relating to the seizure and custody of illegal drugs, as follows:

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:

<sup>39</sup> *People v. Bangcola, supra; Mallillin v. People, id.*

<sup>40</sup> *People v. Noah*, G.R. No. 228880, March 6, 2019, citing *Mallillin v. People, id.*

<sup>41</sup> *People v. Andrada*, G.R. No. 232299, June 20, 2018, 867 SCRA 484.

<sup>42</sup> *Id.*, citing *People v. Alcuizar*, 662 Phil. 794, 801 (2011).

<sup>43</sup> *People v. Andrada, supra.*

<sup>44</sup> *People v. Ubungen*, G.R. No. 225497, July 23, 2018, citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

(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.

The Court notes that RA 9165 was amended by RA 10640 that modified Section 21 (1), among others, to require the presence of "[a]n elected public official and a representative of the National Prosecution Service *or* the media" during the physical inventory and photographing of the seized drugs.<sup>45</sup>

However, Section 21 (1), Article II of RA 9165 prior to its amendment applies in this case since the incident occurred prior to August 7, 2014, the date of effectivity of RA 10640.<sup>46</sup>

However, the Court recognizes that strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible under varied field conditions.<sup>47</sup> Thus, Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA 9165 provides for a saving clause so that non-compliance with Section 21, Article II of RA 9165 will not automatically render void and invalid the seizure and custody over the seized items, to wit:

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.* - x x x

(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

<sup>45</sup> *Fuentes v. People*, G.R. No. 228718, January 7, 2019.

<sup>46</sup> See *People v. Santos*, G.R. No. 243627, November 27, 2019.

<sup>47</sup> *People v. Crispo*, 828 Phil. 416, 431 (2018), citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

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.)*

Applying the above stated rules, the Court finds that the prosecution failed to establish the first, third and fourth links in the chain of custody.

*As to the first link*, the Court finds that the testimonies of PO1 Lingat and the investigating officer, SPO1 Renato Castro (SPO1 Castro) are conflicting as to who marked the seized drugs. PO1 Lingat testified that it was him who marked the plastic sachet he bought from petitioner as “ABL”, while PO3 Yco was the one who marked the three plastic sachets confiscated from petitioner upon arrest as “ACY-1,” “ACY-2,” and “ACY-3.” On the other hand, SPO1 Castro testified that it was PO1 Lingat who marked all of the plastic sachets. Worse, SPO1 Castro flip-flopped in his testimony as to whether the four plastic sachets were still unmarked when he received them from PO1 Lingat. Considering the inconsistencies, the Court cannot rule out the possibility that the plastic sachet bought by PO1 Lingat was mixed up with the plastic sachets confiscated by PO3 Yco from petitioner. PO1 Lingat testified on direct examination as follows:

From the Court:

*Q Where were you when you placed the marking?*

*A In the office, your Honor.*

*Q The marking on the sachets were placed when you went back at the station already?*

*A Yes, your Honor. We immediately went back to the Police station that was the time we placed the markings.*

x x x x.

Pros. Gonzales:

*Q With respect to the plastic sachets that were confiscated and were not the subject of the buy-bust operation, how do you know that they are the very same three (3) plastic sachets confiscated from the accused?*

*A Same, sir. PO3 Yco also put his marking so that he would not*

confuse.

Q Can you point to the marking that he put?

A ACY-1, ACY-2 and ACY-3, sir.

OIC/Court Interpreter:

Witness is referring to plastic sachets marked as Exhibits "B-8," "B-11" and "B-14".

Pros. Gonzalez:

Q With respect to the marking 'ABL,' who in particular put the marking 'ABL'?

A I was the one who placed the marking, sir.

Q How about the markings 'ACY-1,' 'ACY-2' and 'ACY-3,' who in particular put the markings?

A PO3 Yco, sir.

x x x.<sup>48</sup>

On the other hand, SPO1 Castro testified on cross-examination as follows:

Q And then you said that you received a specimens of alleged shabu as reflected in the Turn-Over Receipt of Confiscated Evidence?

A Yes, sir.

Q Could you tell us who specifically gave you the one (1) small piece for the buy-bust operation?

A PO1 Aldrian Lingat, sir.

Q And the other three (3) specimens?

A PO1 Aldrian Lingat, sir.

Q All of these were given by one police officer?

A Yes, sir.

Q *Could you tell us how these were given to you?*

A *They gave me four (4) pack sachets, sir.*

Q *All the four (4) pack sachets were together. Is that what you are saying?*

<sup>48</sup> TSN, April 30, 2013, pp. 24-25.

*A Yes, sir, including the marked money.*

*Q Including the marked money?*

*A Yes, sir.*

From the Court:

*Q Were there markings on the sachets already?*

*A Yes, your Honor.*

Atty. Padua:

*Q In the Turn-Over Receipt of Confiscated Evidence, who prepared this? Were you the one?*

*A Yes, sir.*

*Q In the preparation that you made, your description of the specimen was that one (1) piece small heat-sealed transparent plastic sachet containing suspected methamphetamine hydrochloride for Violation of Section 5, letter (a). For letter (b), three (3) pieces small heat-sealed transparent plastic sachets containing suspected methamphetamine hydrochloride. You did not mention of any marking. Correct?*

*A Yes, sir.*

*Q Based on the Turn-Over Receipt of Confiscated Evidence, what you received are unmarked specimens based on the receipt which you signed?*

*A Yes, sir.*

*Q And which you said you received?*

*A Yes, sir.*

*Q And in the Request for Laboratory Examination of Seized Evidence, in Entry No. 2, the evidence submitted Letters A,B,C and D. For Letter A aside from the description of small transparent plastic pack containing suspected shabu, it already has with marking ABL for evidence A, for B marking ACY-1, marking ACY-1 for evidence C and marking ACY-3 for evidence D.*

*A Yes, sir.*

*Q So when you received the four (4) plastic sachets they were all unmarked and they were all together and they were all with the marked money.*

*A Yes, sir.*

Q But in the Turn-Over Receipt of Confiscated Evidence it states that it has no marking. Correct?

A I did not state, sir.

From the Court:

Q Why?

A Maybe I was not able to place on the receipt, your Honor.

*Q Do you know who placed the markings on the specimens?*

*A As far as I know, your Honor, it was PO1 Aldrian Lingat.*

*Q When you prepared the Turn-Over Receipt of Confiscated Evidence, are you saying now that there were already markings and you just forgot to place the markings on the Turn-Over Receipt of Confiscated Evidence?*

*A Yes, your Honor.*

Q By the way, do you know where the person who marked the specimens, where was he when he placed those marking. Do you know?

A Yes, your Honor.

*Q Where was he when he placed the markings on the specimen?*

*A In the office, your Honor.*

Q So the markings were placed already when he was already in the police office?

A Yes, your Honor.<sup>49</sup>

Further, what is clear from the records is that the media representative, the DOJ representative, and the *barangay kagawad* were merely called in after the marking of the seized drugs to sign the inventory.

PO1 Lingat testified on direct examination:

Q So after you brought the accused to the Police Station, what happened next?

A We turned over him to the Police Investigator, sir and we did the Confiscation Receipt.

Q Aside from the Confiscation Receipt, did you prepare any

<sup>49</sup> TSN, January 16, 2013, pp. 12-15.

other document?

A The request for laboratory examination, sir.

Q What else?

A We called for the media representative, barangay kagawad and the DOJ representative.<sup>50</sup>

PO1 Lingat further testified on cross-examination:

Q *At the police station, when you arrived, you immediately marked the specimen, correct?*

A *Yes, sir.*

Q *And at that time, there is still no media representative, no DOJ representative...*

A *None, sir.*

Q The only persons who were present at that time would be the two (2) arresting officers- you and Officer Yco- the investigator and the accused.

A Yes, sir.

Q So only the four (4) of you were present?

A Yes, sir.

Q And you did the marking prior to the inventory.

A Yes, sir.<sup>51</sup>

As to the photographs presented by the prosecution as evidence, an examination of the photographs, taken together with PO1 Lingat's testimony during his direct examination, shows that PO3 Yco merely took pictures of the media representative Jayvie Dizon (Dizon), the DOJ representative Manuel Villanueva, and the *barangay kagawad* Nilo Gregorio in the act of signing the Confiscation Receipt in the presence of petitioner.<sup>52</sup> While Dizon, the media representative, testified that the items beside the Confiscation Receipt were the evidence, such items appear to be indistinguishable in the photographs. Dizon also could not recall what the items were.<sup>53</sup> Regrettably, the prosecution failed to present any clear photograph of the seized drugs with their respective distinctive markings. This alone raises doubts as to whether the

<sup>50</sup> TSN, April 30, 2013, p. 14.

<sup>51</sup> TSN, July 17, 2013, pp. 8-9.

<sup>52</sup> TSN, April 30, 2013, pp. 16-20; RTC records, p. 15-a.; Exhibits "M"- "M-2"

<sup>53</sup> TSN, August 13, 2013, p. 9.

specimens which were submitted for laboratory examination were the same ones as those seized from petitioner.<sup>54</sup>

*As to the third link*, there is nothing in the records to show who delivered the seized items at the PNP Regional Crime Laboratory Office and who received them until they came into the custody of the forensic chemist. Neither SPO1 Castro nor PO1 Lingat testified as to what happened to the seized items prior to delivery to the crime laboratory, who delivered them, and to whom they were delivered. Further, PO1 Rowell Dolorfino, who was assigned at the crime laboratory, only testified that a written request for drug test upon the person of petitioner was submitted and received in his office; after which, PSI Roanalaine Baligod (PSI Baligod) directed him to accompany petitioner for the purpose of obtaining a urine sample. His testimony, however, was also devoid of details as to the delivery of the seized drugs to the crime laboratory.<sup>55</sup>

Further, PSI Baligod, the forensic chemist who conducted a laboratory examination of the seized drugs, did not testify in court. While the parties made stipulations of fact as to PSI Baligod and her testimony, the stipulations were limited to the following: (1) the expertise of PSI Baligod; and (2) the existence and due execution of: (a) the Chemistry Report No. D-075-2012, the findings indicated therein and the signature of PSI Baligod; and (b) the small brown-envelope together with the plastic sachets marked as “A-1,” “A-2,” “A-3,” and A-4” and the masking tapes.<sup>56</sup>

Regrettably, there is nothing in the stipulations made by the parties to indicate the following details which are necessary to establish the integrity and identity of the seized drugs: (a) the identity of the person from whom PSI Baligod received the seized drugs prior to the laboratory examination which she conducted; and (b) in what condition she received the seized drugs.

*As to the fourth link*, since PSI Baligod’s testimony was dispensed with by the prosecution, PSI Baligod failed to testify as to how she handled the seized drugs to preserve their identity and integrity until their

<sup>54</sup> *People v. Ternida*, G.R. No. 212626, June 3, 2019.

<sup>55</sup> TSN, November 19, 2012, pp. 3-6.

<sup>56</sup> Pre-Trial Order, RTC Records, pp. 37-38.

presentation to the court as evidence. Thus, the Court is in serious doubt as to whether the drugs seized from petitioner and the drugs which were the subject of laboratory examination are the same ones as those presented in court.

Consequently, in view of the gaps in the chain of custody and the resulting doubt as to the identity of the drugs allegedly seized from petitioner, the Court is constrained to acquit him of the offenses of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, respectively under Sections 5 and 11, Article II of RA 9165.

Thus, there is no longer any need to discuss the other defenses and arguments of petitioner.

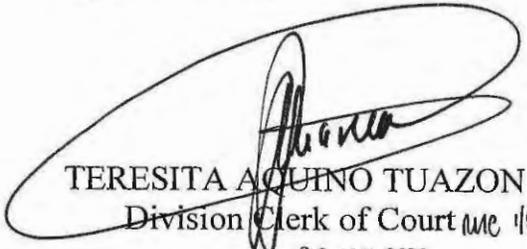
**WHEREFORE**, the petition is **GRANTED**. The Decision dated February 20, 2017 and Resolution dated October 19, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07584 is hereby **REVERSED** and **SET ASIDE**. Petitioner Ricky Nicolas y Nucum is hereby **ACQUITTED** of the offenses charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Ricky Nicolas y Nucum, unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

**SO ORDERED.**" (BALTAZAR-PADILLA, J., on official leave.)

By authority of the Court:



TERESITA AQUINO TUAZON  
Division Clerk of Court *me 1/8*  
08 JAN 2021

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Petitioner  
c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

THE DIRECTOR (x)  
Bureau of Corrections  
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 141  
San Fernando City, Pampanga  
(Crim. Case Nos. 18535 & 18536)

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