



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 2, 2020** which reads as follows:*

“G.R. No. 251010 (People of the Philippines, Plaintiff-Appellee, v. Abbeygail San Luis y Policarpio, Accused-Appellant). – On appeal is the Decision¹ dated 21 January 2019 of the Court of Appeals (CA) in CA G.R. CR-HC No. 09750, which affirmed the Judgment dated 29 August 2017 of Branch 23, Regional Trial Court (RTC) of Naga City in Criminal Case No. 2017-0088. The RTC found accused-appellant Abbeygail San Luis y Policarpio (San Luis) guilty of violating Section 5, Article II of Republic Act No. (RA) 9165, or the Comprehensive Dangerous Drugs Act of 2002, in Criminal Case No. 2017-0088 and acquitted her of violation of Section 12, Article II, RA 9165, on reasonable doubt in Criminal Case No. 2017-0089.

Antecedents

The two (2) Informations filed against San Luis read as follows:

Criminal Case No. 2017-0088

That on January 27, 2017 at 12:30 pm, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did, then and there, willfully, unlawfully and criminally sell, dispense and deliver to a poseur-buyer PDEA Agent Michael N. Consulta, one (1) piece tape-sealed transparent plastic bag, later marked as MNC1 1/27/27, containing 74.9765 grams of Methamphetamine Hydrochloride popularly known as “shabu,” a dangerous drug, in exchange for one piece genuine Php1,000.00 bill with serial no. DJ966409 and several pieces of paper cut boodle money bonded into three sets, in violation of the above-cited law.

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¹ *Rollo*, pp. 3-22; penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Myra V. Garcia-Fernandez of the Ninth Division, Court of Appeals, Manila.

ACTS CONTRARY TO LAW.

Criminal Case No. 2017-0089

That on or about January 27, 2017, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did, then and there, willfully, unlawfully and criminally have in her possession, custody and control the following drug paraphernalia: a) one (1) pc. improvised plastic tooter, later marked as "EKSA 1-27-17 T"; b) one (1) blue digital weighing scale, later marked as "EKSA 1-27-17 WS"; c) Four (4) pcs. Aluminum foil strips later marked as "EKSA 1-27-17 4F"; and d) one (1) pc. open plastic bag containing shabu residue, later marked as "EKSA 1-27-17 P" which are instruments or items intended for smoking, consuming, administering. Injecting, ingesting, or introducing Methamphetamine Hydrochloride (shabu), a dangerous drug, into the human body, in violation of the above-cited law.

ACTS CONTRARY TO LAW.²

San Luis, assisted by counsel, pleaded not guilty to both charges. After termination of pre-trial, trial ensued.³

Version of the Prosecution

The prosecution's narration of events began from the planning of the buy-bust operation. Philippine Drug Enforcement Agency (PDEA) Agent Michael Consulta (Consulta) and PDEA Agent Edward Kenn Ampongan (Ampongan) corroborated each other's testimonies related to the buy-bust and the custody of the items prior to the turn-over to the PDEA Crime Laboratory.

Around ten o'clock in the morning of 27 January 2017, PDEA team leader Noel Briguel (Briguel) briefed his agents about a buy-bust operation to be conducted along the riverside of *Barangay* Dinaga and near the jeepney station. The target of the operation was San Luis, who was also known as "Madam" or "Jho" The informant told the agents present that he arranged a drug deal worth Php300,000.00 with San Luis. Consulta was designated as poseur buyer, while Ampongan was designated as arresting officer. Briguel gave Consulta one genuine Php1,000.00 bill and three (3) sets of boodle money. Consulta marked the genuine bill with his initials MNC, then wrapped it with the rest of the boodle money with Christmas gift wrapper.

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² CA rollo, pp. 53-54.

³ Rollo, p. 5.

The buy-bust team separated into two (2) groups. Ampongan went ahead to the designated place of transaction, while Consulta rode the service vehicle with the informant headed to the same target area. The informant saw San Luis walking towards their vehicle and called her. After San Luis boarded their car, the informant introduced Consulta as a drug dealer from Albay. San Luis asked Consulta if he brought the money with him. After Consulta confirmed that he had the money, he asked San Luis to show him the *shabu*. San Luis took a box from her messenger bag and handed it to Consulta. Consulta saw a transparent plastic bag with white crystalline substance inside the box. He then handed to San Luis the paper bag with buy-bust money.

As San Luis was about to open the paper bag, Consulta activated the hazard lights to signal the completed transaction to Ampongan and the other agents. Ampongan arrived and announced the arrest. Consulta sealed the plastic bag with white crystalline substance with a masking tape and marked it with "MNC1-1-27-17" and his signature. The plastic bag ("MNC2 1-27-17"), gift wrapper ("MNC3 1-27-17"), and paper bag ("MNC4 1-27-17") were also marked.⁴

Ampongan advised San Luis of her rights before she was bodily searched. The search yielded the following items, which were also marked: (1) khaki messenger bag ("EKSA 1-27-17 B"); (2) improvised plastic tooter ("EKSA 1-27-17 T"); (3) blue digital weighing scale ("EKSA 1-27-17 WS"); (4) black Lenovo smart phone ("EKSA 1-27-17 CP"); (5) Titan-Asia Logistics identification card ("EKSA 1-27-17 ID"); (6) Hello Kitty tin box ("EKSA 1-27-17 C"); (7) four (4) pieces of aluminum foil strips ("EKSA 1-27-17 4F"); and (8) an open plastic bag with shabu residue ("EKSA 1-27-17 P").

The inventory of the items took place at the PDEA Camarines Sur Office at Civic Center, Naga City in the presence of San Luis, Amans Aquino (Aquino), as the Department of Justice representative, and Gemma Joy Rabano-Antonio, as the *barangay* representative. Separate inventories were made for the items seized during the buy-bust and the items recovered during the search. Consulta had custody of the plastic bag with white crystalline substance until it was sent to the PDEA Crime Laboratory. Ampongan, on the other hand, had custody of the items from the search until they were sent to the PDEA Crime Laboratory. San Luis was made to take a drug test.

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⁴ *Id.* at 56.

PDEA Chemist Meden Listanco (Listanco)⁵ testified that she received a request for laboratory examination from Consulta. She examined the contents of the plastic bag with white crystalline substance with a masking tape marked “MNC1-1-27-17,” the open plastic bag with residue marked “EKSA 1-27-17 P,” and San Luis’ urine sample. All the evidence submitted to the crime laboratory tested positive for methamphetamine hydrochloride. The chemistry reports for these pieces of evidence were presented and identified in the trial court.

The defense did not raise an issue with respect to the handling of the drug specimen after it was transmitted to the PDEA Crime Laboratory and brought to the RTC. The testimony of the PDEA Evidence Custodian was thus dispensed with. In similar manner, the testimony of Aquino was dispensed with because the defense admitted that the inventory was conducted at the PDEA Office in the presence of the mandatory witnesses who all affixed their signatures on the Certificates of Inventory.⁶

Version of the Defense⁷

San Luis alone testified in her defense and denied the accusations against her. She narrated that at 10:00 a.m. of 27 January 2017, she was at SM Naga City Food Court trying to convince her friend, Rodel, to accompany her to Buhi, Camarines Sur to get her son’s Form 137. Rodel agreed but told her to wait because he had to fetch his son first.

After thirty (30) minutes, Rodel called her to meet with him at the second level of the parking lot. San Luis was asked to board a brown Toyota Innova. Upon boarding, she saw a woman on the front passenger seat. Two (2) other men then entered the car and sat on either side of San Luis. Another man took the driver’s seat and drove the car out of the mall. Rodel was left behind. The men took her cellphone, bag, wallet with Php3,000.00, two (2) ATM cards, make-up kit, as well as a khaki bag.

While in transit, the men beside San Luis showed her a brown paper bag and told her that it contains Php150,000.00. They also showed her a box wrapped with brown packaging tape. They told her: “This is *shabu*, and this is the money, and there was a sale of *shabu*

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⁵ Also referred to as “Lisanco” or “Lisancio.”

⁶ *Rollo*, pp. 5-8.

⁷ *Id.* at 8-9.

that happened.” San Luis told them she did not know anything about what happened. The driver told her that Rodel gave them the money and *shabu* in exchange for his liberty. He then asked San Luis what she would give them. She replied that she does not have anything to give them because she does not know anything about the money and *shabu*.

The car stopped at *Barangay Dinaga*, Naga City. San Luis was asked to alight and board a white Toyota Innova. When she entered the car, she saw plastic sachets containing residue of *shabu*, aluminum foils, and a cellphone. These items were photographed in her presence. She only learned in the PDEA office that the men in the car were PDEA agents.⁸

Ruling of the RTC

The RTC found San Luis guilty of violating Section 5, Article II of RA 9165 in Crim. Case No. 2017-0088, but acquitted her of violating Section 12, Article II of RA 9165 in Crim. Case No. 2017-0089.

It held that the prosecution satisfactorily established all the elements constituting the crime of illegal sale of dangerous drugs in Crim. Case No. 2017-0088. San Luis was positively identified by Consulta as the person who sold him the white crystalline substance in the clear plastic sachet, the contents of which later tested positive for *shabu*. Consulta also testified in detail how the buy-bust plan was conceived and carried out. Listanco, who was the same chemist who examined the contents, identified the evidence and the laboratory reports in court.⁹

The RTC ruled that the integrity of the evidence was properly preserved and safeguarded. Consulta marked the clear plastic sachet with “MNC1-1-27-17” and affixed his signature in the presence of San Luis. He also personally conducted the inventory in the PDEA office in the presence of San Luis and the mandatory witnesses. There were photographs of the drug, of the other items seized, and of the inventory process. Consulta had custody of the drug until he turned it over to Listanco.¹⁰

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⁸ *Id.*

⁹ *CA rollo*, pp. 62-66.

¹⁰ *Id.* at 67-69.

San Luis' defenses of denial and frame-up were brushed aside by the RTC, for failing to overcome the presumption that law enforcement agents acted in the regular performance of their official duties. On the other hand, the RTC ruled the prosecution's evidence in Crim. Case No. 2017-0089, failed to prove that they can be used to inject, administer, or introduce into the body any dangerous drug as defined in Section 12 of RA 9165. The evidence consisted of a plastic sachet with traces of *shabu*, a weighing scale, an improvised tooter, and four (4) aluminum foil strips. The plastic sachet and the weighing scale could not be used to administer drugs. No explanation was given by prosecution witnesses why the improvised tooter and the aluminum foil strips are considered drug paraphernalia.

The dispositive portion of the RTC's Decision reads:

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

In Criminal Case No. 2017-0088 for violation of Section 5, Article II of R.A. 9165, accused ABBEYGAIL SAN LUIS Y POLICARPIO, is found GUILTY as charged and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a FINE worth P500,000.00.

In Criminal Case No. 2017-0089 for violation of Section 12, Article II of R.A. 9165, accused ABBEYGAIL SAN LUIS Y POLICARPIO, is hereby ACQUITTED on reasonable doubt.

In the service of her sentence, the said accused shall be credited with the period of [her] preventive detention pursuant to Article 29 of the Revised Penal Code, as amended.

The sachets of shabu subject of these cases are hereby confiscated in favor of the government and shall be dealt with as the law directs.

SO ORDERED.¹¹

Ruling of the CA

On appeal, the CA considered only one issue: whether the RTC erred in convicting San Luis for violation of Section 5, Article II of RA 9165.

The CA affirmed the RTC's ruling and denied San Luis' appeal.

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¹¹ *Id.* at 71.

WHEREFORE, the appeal is **DENIED**, and the assailed 29 August 2017 Judgment of the Regional Trial Court of Naga City, Branch 23, with respect to Criminal Case No. 2017-0088 is hereby **AFFIRMED**.

SO ORDERED.¹²

It found that the prosecution had sufficiently established the chain of custody in this case. The evidence on record also shows that the identity and integrity of the dangerous drug subject of the buy-bust operation has been duly preserved.¹³

Issue

San Luis opts not to file a Supplemental Brief before this Court. She repleads and adopts all the arguments raised in the Appellant's Brief, to wit:

1. The court *a quo* gravely erred in convicting the accused-appellant of violation of Section 5 of RA 9165 despite the prosecution's failure to prove the identity of the allegedly seized illegal drugs.
2. The court *a quo* gravely erred in convicting the accused-appellant of violation of Section 5 of RA 9165 despite the prosecution's failure to prove compliance with the provision of RA 9165 in the handling of the allegedly seized dangerous drugs.
3. The court *a quo* gravely erred in disregarding the accused-appellant's defense of denial.¹⁴

Ruling of the Court

The appeal is meritorious. We deviate from the ruling of the CA for failure of the prosecution to prove strict compliance with the chain of custody of the seized illegal drugs. Apart from establishing all the elements of the crime of illegal sale of dangerous drugs, the prosecution should show that the chain of custody has been preserved.

Section 5 of RA 9165, as amended by RA 10640, reads in pertinent part:

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¹² *Rollo*, p. 21.

¹³ *Id.* at 13-20.

¹⁴ *CA rollo*, p. 34.

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

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In prosecuting this charge, the State bears the burden of proving the following elements: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale took place as a matter of fact, coupled with the presentation in court of the dangerous drugs seized as evidence.¹⁵

Consulta positively identified San Luis as the person who sold him the plastic bag containing white crystalline substance, marked "MNC1-27-17," for the amount of Php300,000.00. The contents of "MNC1-1-27-17" later tested positive for methamphetamine hydrochloride. These pieces of evidence were presented and positively identified in the RTC.

Section 21(1) of RA 9165, as amended by RA 10640, reads:

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:

"(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

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¹⁵ *People v. Lopez*, G.R. No. 247974, 13 July 2020. Citation omitted [Per Justice Caguioa].

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.

The links that must be established in the chain of custody in a buy-bust situation are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.¹⁶

The prosecution was able to show compliance with the last three (3) links with regard to the tape-sealed transparent plastic sachet marked with MNC1-1-27-17 containing crystalline substance suspected to be *shabu*. The seizure and marking of the evidence were done by Catalan and Ampongan in the presence of San Luis, and the *barangay* and DOJ representatives. The Certificate of Inventory was also signed by the witnesses. Consulta prepared a request for laboratory examination and the item was received by Listanco. Listanco received the evidence, tested it, and recorded her finding that it tested positive for *shabu*. As shown in the transcript of stenographic notes, San Luis did not question the handling of the drug specimen after it was transmitted from the PDEA Crime Laboratory and brought to the RTC.

Section 21(1) also requires the apprehending team to conduct a physical inventory of the seized items and to photograph the same (1) in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) 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.¹⁷

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¹⁶ *People v. Enad*, G.R. No. 205764, 03 February 2016, 780 Phil. 346-371 (2016). Citations omitted [Per then Justice Peralta, now Chief Justice].

¹⁷ *Tumabini v. People*, G.R. No. 224495, 19 February 2020 [Per Justice Gesmundo].

The prosecution tried to show compliance with these requirements. Admittedly, the physical inventory of the seized evidence was conducted at the PDEA office with two of the mandatory witnesses present.

There was, however, no explanation for the absence of the mandatory witnesses at the time of the arrest. The presence of these witnesses safeguards the establishment of the chain of custody and removes any suspicion of switching, planting, or contamination of evidence.¹⁸ This lapse is glaring in light of the admission that the buy-bust team's conduct of the inventory was not done immediately after seizure and confiscation in the presence of the mandatory witnesses. The defense dispensed with the testimony of Aquino because they admitted, without any protest from the prosecution, that the inventory was conducted at the PDEA Office in the presence of the mandatory witnesses who all affixed their signatures on the Certificates of Inventory.

This Court's ruling in *People v. Tomawis*¹⁹ explains what "immediately after seizure and confiscation" means in buy-bust operations and why the presence of the mandatory witnesses at the time of apprehension is important:

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.²⁰

The prosecution's failure to explain why the mandatory witnesses were unable to accompany the buy-bust team puts San Luis' arrest in doubt. The seizure and marking of the evidence was done after San Luis' arrest. However, the inventory was done not at the place of arrest, but at the PDEA office. There was also no explanation proffered for the absence of the mandatory witnesses at the time of the

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¹⁸ *Plan, Jr. v. People*, G.R. No. 247589, 24 August 2020 [Per Justice Perlas-Bernabe].

¹⁹ G.R. No. 228890, 18 April 2018 [Per Justice Caguioa].

²⁰ *Id.* Boldfacing in the original removed.

arrest. *People v. Lim* provides for possible justifications for the absence of the mandatory witnesses, none of which were alleged by the prosecution in the present case:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, 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 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.²¹

Time and again, We have held that the burden of proving the guilt of an accused rests on the strength of evidence of the prosecution and not on the weakness of the defense. The prosecution's evidence failed to establish beyond reasonable doubt the unbroken chain of custody of the evidence seized from San Luis because of their non-compliance with Section 21 of RA 9165. As such, San Luis' acquittal has become a matter of right.

WHEREFORE, the appeal is **GRANTED**. The assailed Decision dated 21 January 2019 of the Court of Appeals in CA G.R. CR-HC No. 09750 is **REVERSED** and **SET ASIDE**. Accused-appellant **ABBEYGAIL SAN LUIS y POLICARPIO** is **ACQUITTED** on the ground of reasonable doubt. The Superintendent of the Correctional Institution for Women, Mandaluyong City is **ORDERED** to cause accused-appellant's **IMMEDIATE RELEASE** from detention, unless she is being lawfully held for another cause. The Superintendent is likewise ordered to **REPORT** to this Court the action taken within ten (10) days from receipt of Resolution. Let entry of final judgment be issued immediately.

The Department of Justice and the Philippine National Police are to be furnished copies of this Decision for their information and guidance.

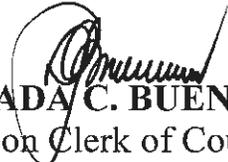
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²¹ *People v. Sipin*, G.R. No. 224290, 11 June 2018 [Per then Justice Peralta, now Chief Justice].

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *12/2/20*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
202-C

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