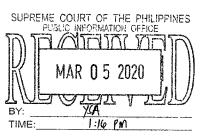


REPUBLIC OF THE PHILIPPINES SUPREME COURT

Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 22 January 2020 which reads as follows:

"G.R. No. 234770 (The People of the Philippines, Plaintiff-Appellee, v. Florentino Mata y Capendit @ "Tino", Romina Mae Teodoro y Pacheco @ "Mae-Mae, Accused-Appellants). — The Court NOTES the following: 1) letter¹ dated December 18, 2019 of J/SInsp. Angelina L. Bautista (ret), Acting Superintendent, Correctional Institution for Women, Mandaluyong City, confirming the present confinement therein of Romina Mae Teodoro y Pacheco @ "Mae-Mae"; 2) letter² dated December 21, 2019 of JInsp. Morrison D. Imingan, Superintendent/OIC-NBP East, New Bilibid Prison, Muntinlupa City manifesting that the Court's October 16, 2019 Resolution³ was duly served on Florentino Mata y Capendit @ "Tino" and that the contents thereof were clearly explained to him in a language that he fully understood; and 3) letter⁴ dated December 25, 2019 of JInsp. Morrison D. Imingan, confirming the present confinement of Florentino Mata y Capendit @ "Tino" in the New Bilibid Prison.

This resolves the appeal⁵ filed by Florentino Mata y Capendit @ "Tino" and Romina Mae Teodoro y Pacheco @ "Mae-Mae" (accused-appellants) assailing the July 18, 2017 Decision⁶ of the Court of Appeals (CA) in CA-G.R. CR HC No. 08525 which dismissed their appeal and affirmed the July 7, 2016 Decision⁷ of Branch 2, Regional Trial Court (RTC), Manila in Criminal Case Nos. 13-295722 and 13-295723. The

¹ Rollo, pp. 54.

² *Id.* at 52.

³ *Id.* at 51.

⁴ Id. at 50.

⁵ CA *rollo*, pp. 139-140.

⁶ Id. at 111-133; penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene C. Gonzales-Sison and Zenaida T. Galapate-Laguilles, concurring.

⁷ Id. at 49-55; penned by Presiding Judge Sarah Alma M. Lim.

dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered:

In Crim Case No. 13-295722, finding accused Florentino Mata y Capendit @ "Tino" and Romina Mae Teodoro y Pacheco @ "Mae-Mae" GUILTY beyond reasonable doubt of the crime charged and are hereby sentenced to life imprisonment and to pay a fine of P500,000.00, and

In Crim. Case No. 13-295723, finding accused Florentino Mata y Capendit @ "Tino" GUILTY beyond reasonable doubt of the crime charged and is hereby sentenced to suffer the indeterminate penalty of 12 years and 1 day as minimum to 17 years and 4 months as maximum, and to pay a fine of P300,000.00.

The specimens are forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimens to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

SO ORDERED.8

The Facts

In Criminal Case No. 13-295722, the accused-appellants were charged with violation of Section 5, in relation to Section 26, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended, in an Information⁹ dated March 20, 2013, the accusatory portion of which reads:

That on or about March 16, 2013, in the City of Manila, Philippines, the said accused, conspiring and confederating together, acting jointly and mutually helping each other, not having been authorized by law to sell, trade, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully, knowingly and jointly sell or offer for sale to a police officer/poseur buyer one (1) heat-sealed transparent plastic sachet with marking "DAID1" containing ZERO POINT ZERO TWO SEVEN (0.027) gram of white crystalline substance commonly known as Shabu, containing Methamphetamine Hydrochloride, a dangerous drug.

Contrary to law.¹⁰

⁸ Records, p. 142.

⁹ *Id.* at 2-3.

¹⁰ Id. at 2. Emphasis Omitted.

In Criminal Case No. 13-295723, accused-appellant Florentino Mata y Capendit @ "Tino" (Mata) was further charged with violation of Section 11(3) of Article II of RA 9165 in an Information, 11 likewise dated March 20, 2013, the accusatory portion of which reads:

That on or about March 16, 2013, in the City of Manila, Philippines, the said accused, not having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control two (2) heat-sealed transparent plastic sachets with markings "DAID2" containing ZERO POINT ZERO THREE SIX (0.036) gram and "DAID3" containing ZERO POINT ZERO TWO FIVE (0.025) gram, respectively, or with a total of ZERO POINT ZERO SIX ONE (0.061) gram of white crystalline substance commonly known as Shabu containing Methamphetamine Hydrochloride, a dangerous drug.

Contrary to law.12

On arraignment, the accused-appellants pleaded not guilty to the charges. 13 Pre-trial and trial ensued.

As summarized by the RTC, and adopted by the CA, the two versions of the facts are as follows:

The testimonies of the prosecution witnesses tends [sic] to prove that on March 16, 2013, a buy-bust operation was conducted by a team from the District Anti-Illegal Drugs of the Manila Police District. The team was composed of PO1 Acemond Villanueva, PO2 Reynold Reyes and SPO2 Mario Sanchez, SPO1 Jordan Villanueva, among others. Prior to the conduct of the buy-bust operation, a confidential informant personally appeared at the DAID office and relayed to the Chief of DAID, PSI Marlon Mallorca the information regarding the rampant selling of illegal drugs in Elias St., Sta. Cruz, Manila. Thus, the Chief of DAID formed a team and PO2 Reynold Reyes was designated as police poseur buyer, tasked to purchase shabu worth P200.00 for which purpose, two pieces of P100.00 bill were prepared and on which he put his initials RGR as marking thereon. Authority to Operate and Pre-Operation Report were also prepared. Thereafter, the team together with the confidential informant proceeded to the area. The confidential informant saw alias Tino at the alley at the dead-end portion of Elias St., Sta. Cruz, Manila and introduced him [sic] to alias Tino. Alias Tino asked how much he would buy and he replied "taryang dos lang," and PO2 Reynold Reyes handed to Alias Tino the two pieces of P100.00 bills. Alias Tino got three [pieces] of heatsealed transparent plastic sachets containing white crystalline

¹¹ *Id.* at 4-5.

¹² Id. at 4. Emphasis Omitted.

¹³ *Id.* at 27.

substance form [sic] his right pants pockets [sic] and asked PO2 Reyes to choose and PO2 Reyes got one piece. Tino who had a companion handed the money to the said (female) companion. He then made the pre-arranged signal to his colleagues. PO2 Reyes held the right hand of Tino and he was able to recover from him two pieces of plastic sachets. The female companion of Tino was apprehended by PO1 Acemond Villanueva from whom PO1 Villanueva was able to recover the buy-bust money. PO2 Reyes put the markings DAID-1, DAID-2 and DAID-3 on the three plastic sachets at the place of arrest in the presence of Mr. Rene Crisostomo, media practitioner of MPD. Proof thereof are the photographs taken by SPO2 Mario Sanchez. PO2 Reyes made the Inventory of the seized items/evidence, also at the place of arrest. Thereafter, they returned to DAID office. He turned over the evidence to the investigator PO3 Boy Nino Baladjay, as shown in the Chain of Custody form. PO3 Baladjay brought the evidence to the crime lab, which was received by the chemical officer, PCI Tecson who conducted a laboratory examination on the specimens/evidence, which tested positive for Methamphetamine Hydrochloride. Documents, including the affidavit of apprehension were prepared.

PO2 Reynold Reyes identified the buy-bust money $x \times x$, the Authority to Operate $x \times x$ and the Pre-Operation Report $x \times x$, the photograph $x \times x$, the Receipt of Proper [sic] /Evidence Seized $x \times x$, the Chain of Custody form $x \times x$, the Joint Affidavit of Apprehension $x \times x$, the person of accused Florentino Mata, and the three (3) pieces of plastic sachets with markings DAID-1 $x \times x$, as the one he bought, and the ones with markings DAID-2 and DAID-3 $x \times x$ as the ones he recovered.

PO1 Acemond Villanueva identified the person of accused Romina Mae Teodoro as the one from whose right hand he recovered the buy-bust money upon assisting PO2 Reynold Reyes in the interest of their subjects.

X X X X

The defense presented on the witness stand both of the accused.

Accused Romina Mae Teodoro testified that she is 23 years old, single, jobless with address at No. 2270 Elias St., Sta. Cruz, Manila; that the testimony of the arresting officers that she and a certain Florentino Mata were arrested for conspiring to sell illegal drugs [sic]; that before she was arrested, she was playing computer in a pisonet; that there were children also playing thereat; that three men who uttered "Pulis kami for verification only" entered [into] the pisonet and then she was handcuffed by the police; she asked the police why and she was told it was for verification only; that she and Tino were brought to the Headquarters; that a certain Acemond

Villanueva demanded 50,000 from both of them; that she does not know what was the purpose of that demand; that they told him that they have no money of such amount; that she was not able to give any amount; that prior to her arrest, she was not familiar with their arresting officers; that there was also no prior misunderstanding between her and her arresting officers; that she does not know of any reason why they just arrested her when she was not doing anything illegal at the time she was arrested. x x x

Accused Florentino Mata testified that he is 33 years old, single, a helper with address at No. 2248 Elias St., Sta. Cruz, Manila; that the allegation of the arresting officers that he together with Romina Mae Teodoro were arrested for selling illegal drugs and for having been caught in possession of illegal drugs, is not true; that he was playing a game at pisonet in a Computer Shop in Elias St., before he was arrested; that he was then with Romina who was also playing a game; that suddenly three men in civilian clothes entered the computer shop and uttered the words "Mga pulis kami. Huwag kayong kikilos. Sama kayo sa presinto for verification,"; that he thought that it meant that they will first bring them to the Barangay; that they brought them to the Headquarters at DAID, U.N. Ave.; that they were investigated by the investigator; that nothing else transpired at the Police Station; that before the incident he was not familiar with the arresting officers; that he does not have prior misunderstanding or altercation with these police officers; that he does not know of any reason why these police officers will arrest him and fabricate a story against him; that he does not know if any case was filed against his arresting officers in connection with the arrest that they did against them; that he was not able to file any complaint against his arresting officers because his parents were afraid; that he finished up to 3rd year high school.

 $x \times x \times x^{14}$

On July 7, 2016, the RTC rendered its Decision¹⁵ convicting the accused-appellants of the charges. It found that the prosecution was able to prove the guilt of both the accused-appellants beyond reasonable doubt.

The RTC held that the chain of custody of the seized prohibited drugs was shown to have been unbroken. It found that it was immediately upon the arrest of the accused-appellants that PO2 Reynold Reyes (PO2 Reyes) marked at the place of arrest the sachet of *shabu* subject of the sale as "DAID-1" and the two other sachets of *shabu* recovered from accused-appellant Mata as "DAID-2" and "DAID-3," respectively; that these plastic sachets containing white crystalline

¹⁴ CA *Rollo*, pp. 51-53.

¹⁵ *Id.* at 49-55.

substance were turned over to PO3 Boy Nino Baladjay (PO3 Baladjay), the investigator, who immediately forwarded the items to the crime laboratory for examination to determine the presence of dangerous drugs; and that per Chemistry Report No. D-197-13¹⁶ of Forensic Chemist Police Chief Inspector Abraham Verde Tecson (PCI Tecson), the white crystalline substance inside the three (3) heat-sealed plastic sachets were confirmed to be methamphetamine hydrochloride or *shabu*, a dangerous drug.¹⁷

According to the RTC, there can be no doubt that the drugs sold by and seized from the accused-appellants were the same ones examined in the crime laboratory. It thus held that the prosecution established the crucial link in the chain of custody of the seized sachets of *shabu* from the time they came into custody of the police *poseur*-buyer until they were brought for examination and then presented in court by PCI Tecson.¹⁸

Moreover, the RTC declared that the claim of the accused-appellants that they were just arrested and charged by the police even without committing any wrong remains unsubstantiated. It held that unless there is clear and convincing evidence that the members of the buy-bust team were inspired by an improper motive or were not performing their duty, their testimonies with respect to the buy-bust operation deserve full faith and credence.¹⁹

The RTC likewise ruled that the accused-appellants' mere testimonial evidence cannot overcome the documentary and physical evidence arrayed by the prosecution against them. Further, it held that the accused-appellants' positive identification by the prosecution witnesses should prevail over their denial of the commission of the crimes charged.²⁰

Aggrieved, the accused-appellants elevated the case to the CA. They assigned the following errors:

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THE TRIAL COURT GRAVELY ERRED IN GIVING UNDUE CREDENCE TO THE PROSECUTION WITNESSES' INCONSISTENT TESTIMONIES.

Records p. 11.

¹⁷ *Id.*

¹⁸ CA *Rollo*, p. 53.

¹⁹ *Id.* at 54.

²⁰ *Id*.

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUYBUST OPERATION.

Ш

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE **CRIMES CHARGED** DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND **INTEGRITY** OF THE **ALLEGEDLY** CONFISCATED DRUGS CONSTITUTING THE CORPUS DELICTI OF THE CRIME[S].

IV

THE TRIAL COURT GRAVELY ERRED IN FINDING THE [ACCUSED-APPELLANTS] GUILTY BEYOND REASONABLE DOUBT OF THE CRIME/S CHARGED.²¹

On July 18, 2017, the CA issued the herein assailed Decision,²² the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is DISMISSED. The assailed Decision dated July 7, 2016 of the Regional Trial Court (RTC) of Manila, Branch 2 Criminal Case Nos. 13-295722 and 13-295723 is AFFIRMED.

SO ORDERED.23

The CA found the testimonies of the prosecution witnesses to be direct, positive, and categorical; hence, deserving of full faith and credence. It held that the prosecution has satisfactorily proven the elements of both illegal sale and illegal possession of dangerous drugs. It likewise held that the chain of custody was preserved. To the CA, the alleged procedural infirmities pointed out by the accused-appellants regarding the non-observance of the procedure outlined in Section 21, Article II of RA 9165, particularly, the absence of a barangay official and a representative from the DOJ during the inventory of the seized

²¹ CA rollo, pp. 29-30.

²² *Id.* at 111-133.

²³ Id. at 129. Emphasis ommitted.

²⁴ *Id.* at 121-122.

²⁵ Id. at 122-126.

²⁶ Id. at 126.

items, did not render the confiscated items inadmissible as evidence.²⁷ It ruled that the integrity and evidentiary value of the items seized from the accused-appellants were never tainted and, therefore, deserved full evidentiary value.²⁸ Lastly, it found proper the penalties and fines imposed by the RTC.29

Hence, the present appeal. In the Resolution³⁰ dated February 28, 2018 and Resolution³¹ dated June 6, 2018, the Court noted the parties' respective manifestations that they are adopting their appellate briefs filed before the CA as their supplemental briefs before the Court.

The Court's Ruling

The appeal is meritorious.

The elements of the offense of illegal sale of shabu are as follows: (1) the identities of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.³² The elements of the offense of illegal possession of shabu, on the other hand, are as follows: (1) the accused is in possession of an item or an object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug. In both offenses, conviction cannot be sustained if there is a persistent doubt on the identity of the seized drug.33

Considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime, it is important that its identity be established with moral certainty.³⁴ Thus, in order that any unnecessary doubt as to the identity of the dangerous drug may be obviated, the prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment it is seized up to its presentation in court as evidence of the crime.³⁵

At the time of the commission of the crimes, the law applicable was RA 9165. Section 1 (b) of Dangerous Drugs Board Regulation No.

²⁷ *Id.* at 127-128.

²⁸ *Id.* at 128.

²⁹ *Id.* at 128-129.

³⁰ *Rollo*, p. 39.

³¹ *Id.* at 46.

³² People v. Gayoso, 808 Phil. 19, 29-30 (2017).

³⁴ People v. Cabrellos, G.R. No. 229826, July 30, 2018.

1, Series of 2002, which implements the law, defines "chain of custody" as follows:

Section 1. Definition of Terms – xxx

XXXX

"Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

Anent the handling of the seized drug, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow in order to preserve its integrity and evidentiary value.³⁶ The section partly provides that "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."37

In People v. Sagana, 38 the Court explained that the presence of the required third-party representatives in buy-bust operations and seizure of illicit articles in the place of operation would supposedly guarantee "against planting of evidence and frame up." These representatives are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."40

As emphasized by the Court in People v. Cabezudo:41

[W]hile it is laudable that police officers exert earnest effort in catching drug pushers, they must always be advised to do so within the bounds of the law. Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachet of shabu, the evils of switching, "planting" or contamination of the evidence again

Id.

Section 21 (1), Article II of RA 9165.

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

Id. at 246-247.

⁴⁰ Id. at 247,

⁴¹ G.R. No. 232357, November 28, 2018.

rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachet of shabu that is evidence herein of the corpus delicti. $x \times x$

Let it be stressed that the prosecution has the burden of (1) proving compliance with Section 21, Article II of RA 9165, and (2) providing a sufficient explanation in case of noncompliance.⁴² A review of the records of the case reveals that there was failure on the part of the prosecution to show compliance with the aforesaid provision and to provide sufficient explanation for such failure. As shown in the Receipt of Property/Evidence Seized,⁴³ PO2 Reyes signed as the seizing officer, while only Rene Crisostomo, a representative from the media, signed as a witness. Thus, neither a representative from the DOJ nor a *barangay* official witnessed the marking and inventory of the seized items.

Further, PO3 Baladjay testified in his cross-examination that no barangay official and representative from the DOJ were present during the investigation and execution of the chain of custody and other documents. The accused-appellants were not even assisted by counsel. Thus:

Now, Mr. Witness, when you were investigating and
making this chain of custody and other documents,
were the accused assisted by any counsel at that
time?

A No, ma'am.

Q Likewise, was there any presence of a Barangay Official?

A No, ma'am.

Q Was there any presence of D.O.J. Representative? No, ma'am.⁴⁴

It is well to note that noncompliance with the rule requiring the presence of the third-party representatives does not *per se* render the confiscated items inadmissible.⁴⁵ The failure to comply with the rule may be excused when a justifiable reason therefor or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21, Article II of RA 9165 is adduced.⁴⁶ However, the prosecution in this case did not present any justifiable explanation or a showing that efforts were exerted to obtain the presence of a DOJ representative and

⁴³ Records, pp. 14-17.

⁴⁴ TSN dated October 3, 2013, p. 12.

⁴⁵ People v. Cabrellos, supra note 34.

⁴⁶ Id.

an elected barangay official.

As summarized in *People v. Nandi*,⁴⁷ the chain of custody has four links, *viz.*:

[F]irst, 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.⁴⁸

In the present case, in view of noncompliance with Section 21, Article II of RA 9165, the first link in the chain of custody was not established at all, thereby causing the succeeding links to miserably fail. In People v. Arposeple, 49 the Court held that "[a]bsent x x x the certainty that the items that were marked, subjected to laboratory examination, and presented as evidence in court were exactly those that were allegedly seized x x x, there would be no need to proceed to evaluate the succeeding links or to determine the existence of the other elements of the charges against the appellants." Hence, the cases for the prosecution had been irreversibly lost due the weak first link irretrievably breaking away from the main chain. 50

Well settled is the rule that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law; it cannot be brushed aside as a simple procedural technicality, or worse, ignored as an impediment to the conviction of illegal drug suspects.⁵¹ Thus, "[w]hen the identity of *corpus delicti* is jeopardized by non-compliance with Section 21, critical elements of the offense[s] of illegal sale and illegal possession of dangerous drugs remain wanting. It follows then, that this noncompliance justifies an accused's acquittal."⁵²

Considering the foregoing, the Court finds no need to further discuss the other issues raised by the accused-appellants, particularly, the inconsistencies in the testimonies of the prosecution witnesses as to the composition of the buy-bust team and the irregularities in the conduct of the buy-bust operation. The prosecution's failure to comply with Section 21, Article II of RA 9165 and to provide justifiable grounds for such

⁴⁸ *Id.* at 144-145.

⁴⁹ G.R. No. 205787, November 22, 2017, 846 SCRA 150.

⁵⁰ *Id.* at 184. Emphasis supplied.

People v. Cabrellos, supra note 34.

⁵² People v. Que, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 506.

failure had jeopardized the identity of the *corpus delicti* and resulted in the failure to establish the critical elements of the offenses of illegal sale and illegal possession of dangerous drugs. Hence, the acquittal of the accused-appellants is in order.

WHEREFORE, the appeal is GRANTED. The July 18, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 08525 is hereby REVERSED and SET ASIDE. Accused-appellants Florentino Mata y Capendit @ "Tino" and Romina Mae Teodoro y Pacheco @ "Mae-Mae" are hereby ACQUITTED of the offenses charged for failure of the prosecution to prove their guilt beyond reasonable doubt.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of accused-appellants Florentino Mata y Capendit @ "Tino" and Romina Mae Teodoro y Pacheco @ "Mae-Mae" unless they are 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." (REYES, A., JR., J., on official leave and HERNANDO, J., on official leave).

Very truly yours,

TERESITA ADUINO TUAZON

Deputy Division Clerk of Court 4th, 2/27

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