



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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THIRD DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 238521 (People of the Philippines, Plaintiff-Appellee, v. Janet Roxas y Inal, Accused-Appellant). – This is an appeal¹ seeking to reverse and set aside the Decision² dated 27 March 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08208. The CA affirmed the Decision³ dated 12 February 2016 of Branch 74, Regional Trial Court (RTC) of Olongapo City, in Crim. Case Nos. 138-12 and 139-12, finding Janet Roxas y Inal⁴ (accused-appellant) guilty beyond reasonable doubt of violations of Sections 5⁵ and 11,⁶ Article II of Republic Act No. (RA) 9165.

Antecedents

Accused-appellant was indicted for the subject offenses in two (2) separate Informations, the accusatory portions of which state:

Criminal Case No. 138-2012 (Section 5, Article II of RA 9165)

That on or about the 1st day of March 2012, at about 7:00 in the evening, at Barangay Calapacuan, in the Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, without any lawful authority, give away, deliver and sell to a poseur-buyer, the following, to wit:

“One (1) heat-sealed transparent plastic sachet containing 0.300 gram of Methamphetamine Hydrochloride”

locally known as “shabu”, a dangerous drug, for Five Hundred Pesos, Philippine currency (Php500.00) marked money.

¹ *Rollo*, pp. 15-17.

² *Id.* at 02-14; penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a Member of this Court) of the Court of Appeals, Manila.

³ *CA rollo*, pp. 50-59; *Records*, pp. 262-271, penned by Presiding Judge Roline M. Ginez-Jabalde.

⁴ Spelled as “Iignal” in some parts of the Record.

⁵ Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*

⁶ Section 11. *Possession of Dangerous Drugs.*

CONTRARY TO LAW.⁷

Criminal Case No. 139-2012 (Sec. 11, Art. II of RA 9165)

That on or about the 1st day of March 2012, at about 7:00 in the evening, at Barangay Calapacuan, in the Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did[,] then and there willfully, unlawfully and feloniously, have in her possession, custody and control [of] the following, to wit:

“One (1) heat-sealed transparent plastic sachet containing 0.413 gram of Methamphetamine Hydrochloride”

locally known as “shabu”, a dangerous drug, without any lawful authority, permit nor prescription to possess the same from the appropriate agency.

CONTRARY TO LAW.⁸

Upon arraignment, accused-appellant entered a plea of “not guilty” to the charges.⁹ After pre-trial was terminated, trial on the merits ensued.¹⁰

Version of the Prosecution

On 01 March 2012, at around 6:00 p.m., the Subic Police Station (police station) received information that accused-appellant was engaged in illegal drug pushing in *Barangay* Calapacuan, Subic, Zambales. On the basis thereof, a buy-bust team was organized where PO2 Elmer Torres (PO2 Torres) was designated as poseur-buyer. A briefing was conducted for PO2 Torres, SPO1 Felipe Mata (SPO1 Mata), PO2 Dennis Bitangcol (PO2 Bitangcol), and PO1 Richard Luanzon (PO Luanzon). PO2 Torres marked the buy-bust money for the operation while PSInsp. Jelson M. Dayupay (PSI Dayupay) coordinated the operation of the buy-bust with the Philippine Drug Enforcement Agency (PDEA).¹¹

At around 6:40 p.m., the buy-bust team, with the informant, moved to the target area. PO2 Torres and SPO1 Mata proceeded to accused-appellant’s

⁷ Records, p. 1.

⁸ *Id.* at 21.

⁹ *Id.* at 45-46.

¹⁰ *Id.* at 48-49.

¹¹ *Id.* at 10, Coordination Form; *Id.* at 209-211, TSN dated 24 September 2012; *Id.* at 228, 223, TSN dated 15 July 2013.

house. Accused-appellant asked PO2 Torres, “*ano ang pakay mo dito?*” (what is your purpose here?) PO2 Torres replied that he was going to purchase ₱500.00 worth of *shabu* and handed her the marked money. Accused-appellant took out from her pouch a sachet of perceived *shabu*, and gave it to PO2 Torres who immediately arrested her. He apprised her of her constitutional rights, and searched her body. PO2 Torres recovered a sachet containing suspected *shabu*, four (4) pieces lighter, one (1) mobile phone, and ₱41.00 from accused-appellant's pouch.¹²

The buy-bust team brought accused-appellant and the seized specimens to the police station. SPO1 Jun Dela Cruz (SPO1 Dela Cruz), the investigating officer/evidence custodian, got in touch with representatives from the media and the Department of Justice (DOJ), and an elected public official. Upon the arrival of Assistant Provincial Prosecutor Joy Bayona, Ana Marie Arceo of Olongapo News, and *Barangay* Captain Orlando¹³ Timbol, the *punong barangay* of Calapacuan, Subic, Zambales, PO2 Torres proceeded to mark the seized items with his initials. PO2 Torres photographed and turned over the specimens to SPO1 Dela Cruz who in turn made an inventory of the said seized items.¹⁴

SPO1 Dela Cruz prepared a request for laboratory examination of the seized items,¹⁵ and drug test for accused-appellant.¹⁶ Subsequently, he took both the seized specimens and appellant, along with the requests to PO1 De Jesus who was on duty at the Olongapo City Crime Laboratory Office at that time.¹⁷ Forensic Chemist Police Senior Inspector Maria Cecilia G. Tang (P/Insp Tang) conducted the laboratory examination and prepared Chemistry Report No. D-030-2012¹⁸ showing her findings that the specimens tested positive for methamphetamine hydrochloride.¹⁹ The urine sample taken from the accused-appellant, however, yielded a negative result for the presence of methamphetamine and THC-metabolites.²⁰

¹² *Id.* at 8, *Sinumpaang Salaysay ng Reklamo at Pagkakahuli* executed by PO2 Torres; *Id.* at 212-215, TSN dated 24 September 2012; *Id.* at 231, 234, 236, TSN dated 15 July 2013.

¹³ Spelled as “Rolando” in some parts of the Record.

¹⁴ *Id.* at 17; *Id.* at 159, Receipt of Property Seized; *Id.* at 214-220, TSN dated 24 September 2012; *Id.* at 97-100, TSN dated 14 January 2013; *Id.* at 173-174, 176-182, TSN dated 12 August 2014.

¹⁵ *Id.* at 160.

¹⁶ *Id.* at 162.

¹⁷ *Id.* at 160; *Id.* at 181, 184, 191-192, TSN dated 12 August 2014.

¹⁸ *Id.* at 161.

¹⁹ *Id.* at 220-221, TSN dated 24 September 2012; *Id.* at 171-182, TSN dated 12 August 2014.

²⁰ *Id.* at 163.

Version of the Defense

At around 4:15 p.m. of 01 March 2012, accused-appellant was sweeping the yard when two (2) men appeared and dragged her inside her house. They conducted a search therein but found nothing. They asked her to empty her pocket which contained ₱700.00. The men placed it inside her pouch containing a mobile phone, cigarettes, lighter, and ₱41.00 in loose change. After two (2) hours, she was made to sit before a table with a lighter, cigarettes, mobile phone, and two sachets containing white crystalline substance. She was detained thereafter.²¹

Ruling of the RTC

On 12 February 2016, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in **Criminal Case No. 138-2012**, this court finds accused **JANET ROXAS y ILNAL GUILTY** beyond reasonable doubt of Violation of Section 5, Art. II, RA 9165 and sentences her to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (Php500,000.00). In **Criminal Case No. 139-2012**, this court also finds accused **JANET ROXAS y ILNAL GUILTY** beyond reasonable doubt of Violation of Section 11, Art. II, RA 9165 and sentences her to suffer the penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of Three Hundred Thousand Pesos (Php300,000.00).

SO ORDERED.²² (Emphasis in the original)

The RTC held that the prosecution was able to establish all the elements of the charged offenses, hinging, among others, the positive identification of the accused-appellant by the poseur-buyer as the person who sold him ₱500.00 worth of *shabu* and the open and willful possession of accused-appellant of the same. It further held that the integrity and evidentiary value of the seized items were properly preserved by the buy-bust team under the chain of custody rule. Hence, its disregard of accused-appellant's defense of denial.

Aggrieved, accused-appellant elevated her conviction to the CA.

²¹ *Id.* at 198-202, TSN dated 04 September 2015.

²² *Id.* at 271.

Ruling of the CA

In its Decision dated 27 March 2017, the CA affirmed accused-appellant's conviction. The CA ruled that the prosecution succeeded in establishing that there was illegal sale of prohibited drugs between PO2 Torres and accused-appellant, and the latter's possession of a sachet of *shabu*.

The CA did not give credence to accused-appellant's defense that the prosecution failed to follow the chain of custody rule in handling illegal drugs. It declared that the prosecution was able to demonstrate the chain of custody of the illegal drugs, and the preservation of their integrity, all throughout the process.

Hence, this appeal.

Issue

For purposes of this appeal, both the Public Attorney's Office (PAO)²³ and the Office of the Solicitor General (OSG)²⁴ manifested they were no longer filing their respective supplemental briefs.

The issue is whether or not the CA correctly found accused-appellant guilty beyond reasonable doubt for the offenses of illegal sale and illegal possession of prohibited drugs under RA 9165.

Ruling of the Court

The Court finds the appeal meritorious.

Accused-appellant was charged with illegal sale and illegal possession of dangerous drugs, defined and penalized under Sections 5 and 11, Article II of RA 9165. For the prosecution of the crime of illegal sale of prohibited drugs, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale, and its consideration; and (2) the

²³ *Rollo*, pp. 23-27.

²⁴ *Id.* at 28-34.

delivery of the thing sold and the payment therefor.²⁵ For illegal possession of dangerous drugs, the prosecution must prove that: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.²⁶

In both cases, it is essential that the identity of the prohibited drugs be established beyond reasonable doubt and the prohibited drugs offered in court as exhibit are the same as those recovered from the accused.²⁷ This requirement is known as the chain of custody rule under RA 9165, created to safeguard against doubts concerning the identity of the seized drugs.²⁸

Section 21, Article II of RA 9165 provides for the chain of custody rule, prescribing the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.²⁹

Parenthetically, said provision was amended by RA 10640,³⁰ which came into effect on 23 July 2014.³¹ But since the offenses charged in this case were alleged to have been committed on 01 March 2012, the earlier version of Section 21, and the corresponding Implementing Rules and Regulations (IRR), shall apply.

Section 21, (1) Article II of RA 9165 provides:

(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.

The relevant portion of the IRR of RA 9165 adds that:

²⁵ *People v. Pantallano*, G.R. No. 233800, 06 March 2019.

²⁶ *People v. Ismael*, 806 SCRA 21-38 (2017); G.R. No. 208093, 20 February 2017, 818 SCRA 122, 132.

²⁷ *People v. Macaumbang*, G.R. No. 208836, 01 April 2019.

²⁸ *People v. Bangcola*, G.R. No. 237802, 18 March 2019.

²⁹ *People v. Alvaro*, G.R. No. 225596, 10 January 2018, 850 SCRA 464, 474.

³⁰ An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

³¹ See OCA Circular No. 77-2015.

xxx [T]he physical inventory and photograph shall be conducted at the place where the 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, 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 xxxx.

The requirements of Section 21, Article II of RA 9165 were not complied with

It is well-settled that the following links should be established in the chain of custody of the confiscated item: (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 by the apprehending officer 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 marked illegal drug seized from the forensic chemist to the court.³²

Undeniably, PO2 Torres marked the seized items with his initials "EAT 1" and "EAT 2."³³ However, the date, time, and place of the seizure of evidence were not indicated on the sachets, a clear disregard of the PNP Manual³⁴ on Anti-Illegal Drugs Operation and Investigation.³⁵

Further, the marking, inventory, and photographing of the seized items were not done immediately at the place of the arrest because there were no representatives from the media and DOJ, and any elected public official, at the time of the arrest. SPO1 Dela Cruz coordinated with the required witnesses only after accused-appellant was brought to the station. The pertinent portions of the testimonies of PO2 Torres and SPO1 Dela Cruz are reproduced below:

[Pros. Suing]

Q: So, you brought her to the police station?

³² *People v. Ubungen*, G.R. No. 225497, 23 July 2018, 873 SCRA 172, 173.

³³ Records, p. 18; pp. 216 and 218, TSN dated 24 September 2012.

³⁴ Approved by the National Police Commission in its Resolution No. 2010-094 dated 26 February 2010.

³⁵ See *People v. Otico*, G.R. No. 231133, 06 June 2018, 865 SCRA 534.

[PO2 Torres]

A: Yes, ma'am.

Q: When you reached the police station what did you do with the item that you confiscated?

A: We coordinated with the Fiscal, media and [Barangay] representative. We made an inventory, ma'am.

Q: Did they arrive at the police station?

A: Yes, ma'am.

Q: What happened when the representative from different agencies arrived?

A: We made markings, ma'am.³⁶

[Pros. Joy Bayona]

Q: How did you know that this person was brought to the station for drug buy-bust?

[SPO1 Dela Cruz]

A: Because, according to Police Officer Torres she was arrested because of the buy-bust operation, ma'am.

Q: And, what happened now after you learned from Officer Torres that he was able to arrest this Roxas allegedly from a buy-bust operation?

A: It was placed on a blotter and it was put on record, ma'am.

Q: And what happened next after the incident was entered in the police blotter?

A: I coordinated with the representatives which is the media, [barangay] and DOJ for conducting of inventory, ma'am.³⁷

While the mandatory witnesses were all present during the marking, inventory, and taking of photographs, it would do well to remember that their presence is required not only during the inventory but more importantly during the accused's apprehension. It is at this point where the presence of those witnesses is most needed, as their presence at the time of the seizure and confiscation would belie any doubt as to the source, identity, and integrity of the seized drug. The presence of the insulating witnesses would controvert the usual defense of frame-up, as they would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence, in accordance with Section 21, Article II of RA 9165.³⁸

SPO1 Dela Cruz testified that he submitted the specimens to PO1 de

³⁶ Records, pp. 215-216, TSN dated 24 September 2012.

³⁷ *Id.* at 172-173, TSN dated 12 August 2012.

³⁸ *People v. Caranto*, G.R. No. 217668, 20 February 2019, citing *People v. Tomawis*, G.R. No. 228890, 18 April 2018, 862 SCRA 131, 150.

Jesus at the crime laboratory. However, the prosecution failed to put PO1 de Jesus on the witness stand to confirm his receipt of the specimens and his turn over of the same to P/Insp. Tang. Thus, there is reasonable doubt that the third link in the chain of custody – the transfer of the sachet from the investigating officer to the forensic chemist – was complied with.³⁹

Furthermore, there is another break in the chain of custody when the parties dispensed with the testimony of forensic chemist P/Insp. Tang, relative to the stipulation of the defense on her testimony as well as the existence of the Chemistry Report.⁴⁰ In *People v. Pajarin*,⁴¹ the Court ruled that in case the parties stipulate to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that he/she took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he/she resealed it after examination of the content; and (3) that he/she placed his/her own marking on the same to ensure that it could not be tampered with during trial. An examination of the Order dated 09 December 2013, wherein the testimony of P/Insp. Tang was dispensed with, does not show that the aforesaid matters were stipulated on.⁴²

The prosecution failed to give a justifiable ground for non-compliance with Section 21, Article II of RA 9165

The Court recognizes that strict compliance with the requirements of Section 21, Article II of RA 9165 may not be always possible given the varied field conditions. In fact, the IRR of RA 9165, now elevated to statutory level with the passage of RA 10640, provides that non-compliance with said requirements, under justifiable grounds, will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.

The prosecution, however, has a duty to satisfactorily prove to the Court that: (1) there is justifiable ground for non compliance; and (2) the

³⁹ *People v. Ubungen*, *supra* at note 32.

⁴⁰ Records, p. 117.

⁴¹ 654 Phil. 461-467 (2011); G.R. No. 190640, 12 January 2011, 639 SCRA 489, 494.

⁴² Records, p. 117.

integrity and evidentiary value of the seized items were properly preserved.⁴³ Thus, in *People v. Almorfe*⁴⁴ the Court explained that for the saving clause in Section 21 (a) of the IRR of RA 9165 to apply, the prosecution must explain the reason behind the procedural lapses, and prove that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. And in *People v. De Guzman*,⁴⁵ the Court emphasized that the justifiable ground for non-compliance must be proved as a fact because the Court cannot presume what these grounds are or that they even exist.⁴⁶

In this case, the prosecution proffered no explanation why the marking, inventory, and taking of photographs of the seized items were not done immediately, why it had to be conducted at the police station, or why the mandatory witnesses were not present during the apprehension, among other deviations committed by the police officers in this case.

Accused-appellant must perforce be acquitted for reasonable doubt

In cases of sale and possession of dangerous drugs, the dangerous drug itself seized from the accused constitutes the *corpus delicti*. Hence, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved from seizure/confiscation up to presentation as evidence in court. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.⁴⁷ The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect be the very same substance offered in court as evidentiary exhibit, and the identity of the said drug be established with the same unwavering exactitude as that required to make a finding of guilt.⁴⁸ When there are doubts on whether the seized substance was the same substance examined and established to be the prohibited drug, there can be no crime of illegal possession or illegal sale of a prohibited drug.⁴⁹

The prosecution's failure to give justifiable grounds for the police officers' deviation from the procedures laid down by law, as well as the

⁴³ *People v. Año*, G.R. No. 230070, 14 March 2018; See also last *proviso* of Section 21 (a), IRR of RA 9165.

⁴⁴ 631 Phil. 51-63 (2010); G.R. No. 181831, 29 March 2010, 617 SCRA 52, 60.

⁴⁵ 630 Phil. 537-655 (2010); G.R. No. 186498, 26 March 2010, 616 SCRA 652, 662.

⁴⁶ See *People v. Año*, *supra* at note 43.

⁴⁷ *People v. Hilario*, G.R. No. 210610, 11 January 2018, 851 SCRA 1, 18.

⁴⁸ *People v. Malana*, G.R. No. 233747, 05 December 2018.

⁴⁹ *People v. Hilario*, *supra* at note 47.

failure to properly account for the two (2) breaks in the links in the chain of custody, have compromised the integrity and evidentiary value of the *corpus delicti*, warranting accused-appellant's acquittal on the ground of reasonable doubt.

WHEREFORE, the instant appeal is hereby **GRANTED**. The Decision dated 27 March 2017 of the Court of Appeals in CA-G.R. CR -HC No. 08208 finding accused-appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of RA 9165 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **JANET ROXAS y ILNAL** is **ACQUITTED** on the ground of reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is detained for any other lawful cause.

The Court **DIRECTS** the Superintendent of the Correctional Institution for Women to **IMPLEMENT** this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.”

Very truly yours,

Mic PDC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *JB 12/2/20*

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(Crim. Case Nos. 138-12 & 139-12)

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