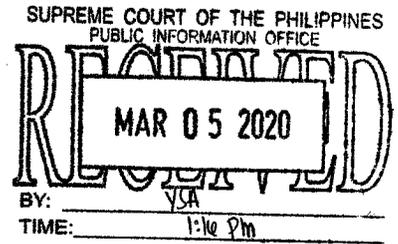




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 20 January 2020 which reads as follows:

“G.R. No. 240228 (*People of the Philippines v. Alex Bangon y Macatimbang*). – The Court resolves to **DISMISS** this appeal for failure of the accused-appellant to sufficiently show that the Court of Appeals (CA) committed reversible error in promulgating its Decision¹ on January 31, 2018 in CA-G.R. CR-HC No. 08277, whereby the CA affirmed the Judgment² rendered on October 28, 2015 by the Regional Trial Court (RTC) Branch 79, Quezon City, finding accused-appellant Alex Bangon y Macatimbang (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165.³

The accused-appellant argued that the elements of illegal sale of dangerous drugs are not present and that there was lack of identity of *corpus delicti* in this case. He claimed that the element of identity was lacking since it was the regular confidential informant who allegedly made an agreement of sale with the accused-appellant.⁴ Moreover, he alleged that no evidence was offered to prove all the essential requisites of chain of custody.⁵

The CA held that all the elements have been duly established by the prosecution; that the mandatory procedures for drug operations were sufficiently complied with by the authorities and that the identity of the seized drugs was duly preserved.

The Court agrees.

¹ *Rollo*, pp. 2-24; penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Remedios A. Salazar-Fernando and Ma. Luisa C. Quijano-Padilla, concurring.

² *CA rollo*, pp. 63-75; penned by Presiding Justice Nadine Jessica Corazon J. Fama.

³ Entitled, “An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes”.

⁴ *Rollo*, p. 36.

⁵ *CA rollo*, p. 56.

To begin with, settled is the rule that factual findings of the appellate court affirming those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error, which are not present in this instant case.⁶

In a successful prosecution for offenses involving the illegal sale of dangerous drugs under Section 5, Article II of RA No. 9165, the following elements must concur: (1) the identity of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*.⁷

In this case, the occurrence of a sale transaction of *shabu* between the accused-appellant and Police Officer 3 (PO3) Anthony Pamilar⁸ was duly established. The Court agrees with the CA that prosecution witness PO3 Pamilar thoroughly narrated the transaction from the time he was introduced by the informant to the accused-appellant up to the time that the sale was consummated, and that he positively identified the accused-appellant as the same person who sold *shabu* to him, worth ₱400,000.00.

In questioning the identity of the *corpus delicti*, accused-appellant claimed that the essential requisites of chain of custody were not followed. Particularly, he alleged that the seizing officers failed to strictly comply with the mandatory procedures provided in RA No. 9165.

We are not persuaded by these arguments. Section 21 (1), Article II of RA No. 9165, as amended by RA No. 10640,⁹ spells out the mandatory procedural safeguards in a buy-bust operation as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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 person/s from whom such items were confiscated and/or seized, or his/her

⁶ See *Asiatico v. People*, 673 Phil. 74, 80-81 (2011).

⁷ *People v. Gaspar*, 669 Phil. 122, 135 (2011).

⁸ Sometimes referred to as "PO3 Pamilar" in some parts of the records.

⁹ Entitled, "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".

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 Court agrees that the prosecution was able to establish an unbroken chain of custody of the seized drugs in compliance with Section 21, Article II of RA No. 9165, as amended by RA No. 10640. The integrity of the seized items was shown to have been preserved, as aptly summarized by the CA as follows:

PO3 Pamilar testified in a straightforward manner that the subject specimens were marked, inventoried and photographed at the place where the buy-bust operation was conducted. PO3 Joselito Dela Cruz, who acted as back-up in the buy bust operation, corroborated PO3 Pamilar's testimony. PO3 Dela Cruz testified that he saw PO3 Pamilar marked the confiscated drugs at the crime scene. The witness further stated that PO3 Pamilar was in possession of the seized drugs on their way back to the office and thereafter, turned it over to PO3 Garcia.

The prosecution also presented PO3 Joebert Garcia who acted as the investigator. He testified that he prepared the Chain of Custody after receiving the specimens from PO3 Pamilar. Thereafter, he turned it over to PO3 Pamilar.

The prosecution and the defense stipulated on the testimony of PCI Anamelisa S. Bacani to the effect that she received a Request for Laboratory Examination and the subject specimens from PO3 Pamilar on November 8, 2014. She conducted a qualitative examination and issued Initial Chemistry Report No. D-566-14 and Chemistry Report No. D-566-14. Her findings yielded positive of Methamphetamine Hydrochloride. Thereafter, she turned over the specimens to the evidence custodian of the QCPD Crime Laboratory, PO1 Junia Tuccad. Pursuant to the subpoena issued by the Court, she retrieved the drug evidence for its presentation.¹⁰

Anent the witness requirement, the law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of RA No. 9165 by RA No. 10640, a representative from the media and the DOJ, and any elected public official; or (b) if after the amendment of RA No. 9165 by RA No. 10640, an elected public official and a representative of the National Prosecution Service or the media. The law requires the

¹⁰ *Rollo*, pp. 18-19.

presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”¹¹

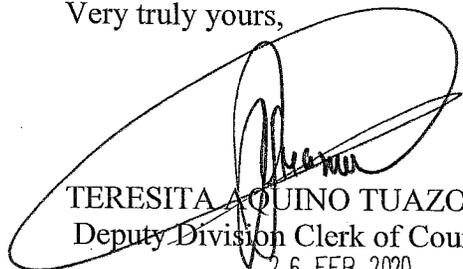
In this case, records show that the requisite inventory and photography that was conducted on November 8, 2014, which was after the amendment of RA No. 9165 by RA No. 10640, was in the presence of Brgy. Kagawad Maximo Valmocina of Brgy. Holy Spirit and Mr. Rey Argana of Police Files Tonite. Thus, the Court holds that there was sufficient compliance with the rules on required witnesses.

All told, the Court finds no reason to reverse accused-appellant’s conviction for the crime of Illegal Sale of Dangerous Drugs, as defined and penalized under Section 5, Article II of RA No. 9165, as amended by RA No. 10640.

WHEREFORE, the appeal is **DISMISSED**. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated January 31, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08277.

SO ORDERED. *Reyes, A., Jr., J., on official leave.*”

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
26 FEB 2020 p 2/26

¹¹ *People v. Tecson*, G.R. No. 243786, October 9, 2019.