



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 7, 2020 which reads as follows:

“G.R. No. 247902 (*People of the Philippines v. Donny Rey Baral y Cruz*). - This is an appeal of the Court of Appeals (CA) Decision¹ dated May 15, 2018 that dismissed appellant Donny Rey Baral’s appeal and affirmed the Decision² dated January 24, 2017 of the Regional Trial Court (RTC), Branch 23, Manila, in Criminal Case Nos. 15-314488-89, convicting appellant of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The facts follow.

On March 20, 2015, a confidential informant told the police authorities that a transaction for the sale of dangerous drugs was about to happen involving appellant. Thus, the police officers prepared their Authority to Operate and coordinated with the Philippine Drug Enforcement Agency. A briefing was then conducted and PO2 Rolando Cabalza was designated as the poseur-buyer. As such, PO2 Cabalza was handed a marked ₱200 bill that would be used for the purchase of the dangerous drugs.³

The following day, or on March 21, 2015, around noon, the police authorities proceeded to the target area where they found appellant. Appellant approached the confidential informant and PO2 Cabalza. The confidential informant introduced PO2 Cabalza to appellant and the latter asked, “*Kukuha ka ba? Meron ako dito*

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¹ CA rollo, pp. 101-112. Penned by Associate Justice Danton Q. Bueser, with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Henri Jean Paul B. Inting (now an Associate Justice of the Supreme Court).

² *Id.* at 40-47. Penned by Presiding Judge Caroline Rivera-Colasito.

³ Rollo, p. 4.

kadarating lang.” PO2 Cabalza answered in the affirmative. Appellant then asked for the payment and PO2 Cabalza handed over the marked money. Appellant reached into his pocket and took out a small plastic sachet and handed it to PO2 Cabalza. Immediately after taking the plastic sachet, PO2 Cabalza took off his bull cap as a signal to the other members of the team and introduced himself to appellant as a police officer.⁴

PO2 Cabalza proceeded to arrest and frisk appellant, and was able to retrieve from the latter another plastic sachet containing what appeared to be a white substance. PO2 Cabalza then placed the plastic sachet subject of the sale in his left pocket and the plastic sachet found during his search in his right pocket. Afterwards, they left the place and went to the police station where the police authorities did the marking and inventory of the items seized. The plastic sachet subject of the sale was marked as “DRCB-RC” and the other sachet was marked as “DRCB-RC1,” which were described in the inventory as, “two pieces heat sealed transparent plastic sachet each containing white crystalline substance suspected to be shabu later marked as DRCB-RC and DRCB-RC1.”⁵

A member of the press was present and he signed the inventory report as a witness.⁶

Thereafter, the seized items were turned over to PO3 Ponciano C. Barnedo who delivered them to the MPD Crime Laboratory where they were received by PCI Eliza Reyes Arturo, Forensic Chemical Officer of the said crime laboratory. On that same day, the results of the laboratory test showed that the contents of the plastic sachets were positive for methamphetamine hydrochloride, also known as “shabu.”⁷

Thus, two Informations were filed against appellant for violation of Sections 5 and 11, Article II of R.A. No. 9165 that read as follows:

Criminal Case No. 15-314488

That on or about March 21, 2015, in the City of Manila, Philippines, the said accused, not being then authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there wilfully, unlawfully and knowingly sell to one PO2

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⁴ *Id.* at 5.

⁵ *Id.* at 5-6.

⁶ *Id.* at 6.

⁷ *Id.*

Rolan[d]o Cabalza, a police poseur buyer, one (1) heat-sealed transparent plastic sachet with markings, "DRCB-RC" containing ZERO POINT ZERO TWO SIX (0.026) gram of white crystalline substance containing methamphetamine hydrochloride, commonly known as "SHABU", a dangerous drug.

Contrary to law.

Criminal Case No. 15-314489

That on or about March 21, 2015, in the City of Manila, Philippines, the said accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet with markings "DRCB-RC1" containing ZERO POINT ZERO ONE FIVE (0.015) gram of white crystalline substance containing Methamphetamine Hydrochloride, commonly known as "SHABU", a dangerous drug.

Contrary to law.⁸

During his arraignment on April 15, 2015, appellant entered a plea of "not guilty." Thereafter, trial on the merits ensued.⁹

The defense presented the testimony of appellant.

Appellant, during his testimony, denied the charges against him. According to him, on March 21, 2015, around 12:30 p.m., he was in front of his house repairing an electric fan when a Toyota Innova stopped and the driver, later identified as PO2 Cabalza, inquired about an electric fan blade. Appellant asked what particular electric fan blade he was looking for, after which, the driver alighted from the vehicle and asked him if he was Donny. Appellant answered in the affirmative and immediately thereafter, PO2 Cabalza grabbed him by the arm and brought out a firearm. Appellant shouted for help and called his sister. Appellant's son heard him and shouted, "*Ma, si Papa hinuhuli.*" PO2 Cabalza then tried to bring appellant inside the car and while he was being forced inside the car, appellant asked why and where he was being taken, and what crime did he commit. Appellant's sister arrived and also demanded to know why her brother was being taken and PO2 Cabalza answered, "*singko.*"¹⁰

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⁸ CA rollo, p. 40.

⁹ *Id.*

¹⁰ *Id.* at 44.

Appellant also claimed that he was not arrested on March 21, 2015 but on March 20, 2015, or a day before the stated day of arrest. He only learned that he was arrested for violation of R.A. No. 9165 when he was already at the police station. He further denied possessing and selling dangerous drugs at the time he was arrested.¹¹

The RTC, on January 24, 2017, found appellant guilty beyond reasonable doubt of the violations charged against him and was sentenced as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding Donny Rey Baral y Cruz, GUILTY beyond reasonable doubt:

1. In CRIMINAL CASE NO. 15-314488, of the crime of Violation of Section 5, Article II, Republic Act No. 9165, and is hereby sentenced to suffer Life Imprisonment and to pay fine in the amount of Five Hundred Thousand Pesos (Php500,000.00); and

2. In CRIMINAL CASE NO. 15-314489, of the crime of Violation of Section 11 (3), Article II, Republic Act No. 9165, and hereby sentenced to suffer the indeterminate penalty of imprisonment of Twelve (12) years and one (1) day, as minimum to Fourteen (14) years, as maximum, and to pay fine in the amount of Three Hundred Thousand Pesos (Php300,000.00).

The two (2) heat-sealed transparent plastic sachets of “shabu” with marking “DRCB-RC” and “DRCB-RC1”, subject of the instant case, are hereby forfeited in favor of the State and ordered destroyed immediately pursuant to existing Rules. Costs de oficio.

SO ORDERED.¹²

According to the RTC, the prosecution was able to prove beyond reasonable doubt the guilt of the appellant.

The CA affirmed the decision of the RTC *in toto*, thus:

WHEREFORE, premises considered, Decision rendered by Branch 23 of the Regional Trial Court of Manila dated January 24, 2017, in Criminal Case No. 15-314488-89 finding Donny Rey Baral y Cruz guilty of violating Sections 5 and 11, Article II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is hereby AFFIRMED in TOTO.

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¹¹ Rollo, p. 7.

¹² CA rollo, p. 47.

SO ORDERED.¹³

The CA ruled that the prosecution was able to establish the key elements for illegal possession and sale of dangerous drugs, and that the denial of the appellant cannot prevail over the positive testimony of the police officer. The CA further ruled that the police officers conducted a valid buy-bust operation, thus justifying the warrantless arrest and search conducted on the appellant. It also held that there was substantial compliance with the Chain of Custody Rule.

Hence, the present appeal.

Appellant assigned the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION OF THE INCIDENT LEADING TO THE ARREST OF THE ACCUSED-APPELLA[N]T AND IN THE COROLLARY ADMISSION OF THE ITEMS SEIZED AS EVIDENCE AGAINST HIM.

II

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE WARRANTLESS ARREST AND THE SUBSEQUENT SEARCH OF THE ACCUSED AS ILLEGAL.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE PROCEDURE FOR THE CUSTODY AND CONTROL OF THE SEIZED PROHIBITED DRUG WAS COMPLIED WITH.

IV

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR VIOLATION OF SECTIONS 5 AND 11 (3), ARTICLE II OF REPUBLIC ACT NO. 9165 DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH THE PROCEDURAL SAFEGUARDS PRESCRIBED BY REPUBLIC ACT NO. 9165, AS AMENDED BY REPUBLIC ACT NO. 10640.¹⁴

The appeal is meritorious.

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¹³ *Id.* at 111; citation omitted.

¹⁴ *Rollo*, p. 8.

Under Article II, Section 5 of R. A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

(1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.¹⁵

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused."¹⁶

Also, under Article II, Section 11 of R.A. No. 9165 or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted:

[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.¹⁷

It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses, especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.¹⁸ Additionally, in weighing the testimonies of the prosecution's witnesses *vis-a-vis* that of the defense, it is a well-settled rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.¹⁹

Also, in illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges. It is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that

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¹⁵ *People v. Ismael*, 806 Phil. 21, 29 (2017).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *People v. Steve, et al.*, 740 Phil. 727, 737 (2014).

¹⁹ *People v. Alacdis*, 811 Phil. 219, 232 (2017); citation omitted.

which was exhibited must be the very same substance recovered from the suspect.²⁰ Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."²¹

To ensure an unbroken chain of custody, Section 21 (1), Article II of R.A. No. 9165 specifies:

(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[.]²²

Supplementing the above-quoted provision, Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 provides:

(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 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[.]

Appellant raises the issue that the confiscated items were not marked immediately after confiscation and that the inventory of the subject items was done at the police station. However, as explained in PO2 Cabalza's testimony, the marking and inventory of the seized

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²⁰ *People v. Mirondo*, 771 Phil. 345, 356-357 (2015).

²¹ See *People v. Ismael*, 806 Phil. 21, 29 (2017).

²² Emphasis supplied.

items had to be done at the police station because a crowd had already gathered at the target area and they were trying to avoid any untoward incidents.²³

"Marking" is the placing by the apprehending officer of some distinguishing signs with his/her initials and signature on the items seized. It helps ensure that the dangerous drugs seized upon apprehension are the same dangerous drugs subjected to inventory and photography when these activities are undertaken at the police station or at some other practicable venue rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.²⁴

"Immediate confiscation" has no exact definition. Indeed, marking upon immediate confiscation has been interpreted as to even include marking at the nearest police station or office of the apprehending team.²⁵ In this case, there was a justifiable reason as to why the marking of the confiscated items was done at the police station.

Nevertheless, the absence of an elected public official during the inventory of the seized items was not justifiably explained by the prosecution.

Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the Department of Justice, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."²⁶ Now, the amendatory law²⁷ mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s

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²³ CA rollo, p. 103.

²⁴ *People v. Somoza*, 714 Phil. 368, 387-388 (2013).

²⁵ *Id.* at 388; citations omitted.

²⁶ *People v. Sagana*, 815 Phil. 356, 373 (2017).

²⁷ R.A. No. 10640.

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 sign the copies of the inventory and be given a copy thereof.

A review of the records does not yield any explanation from the arresting officers as to the reason why there was no elected public official during the inventory of the subject items. The only one present during the inventory and the marking was a representative from the media. No evidence was presented to show that any attempt was made to secure the presence of the required witnesses.

In *People v. Angelita Reyes, et al.*,²⁸ this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125²⁹ of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

The above ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro*,³⁰ thus:

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

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²⁸ G.R. No. 219953, April 23, 2018.

²⁹ **Article 125.** *Delay in the delivery of detained persons to the proper judicial authorities.* - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. No. 272 dated July 25, 1987.)

³⁰ G.R. No. 224290, June 11, 2018.

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.³¹

Certainly, the prosecution bears the burden of proof to show valid cause for noncompliance with the procedure laid down in Section 21, Article II of R.A. No. 9165, as amended.³² It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.³³ Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.³⁴ A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.³⁵

This Court, thus, must acquit the appellant as his guilt has not been established beyond reasonable doubt. The resolution of the other issues raised by appellant is no longer necessary.

WHEREFORE, premises considered, the Decision dated May 15, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09069, dismissing appellant Donny Rey Baral's appeal and affirming the

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³¹ Citation omitted.

³² See *People v. Macapundag*, 807 Phil. 234, 243 (2017).

³³ See *People v. Jovencito Miranda*, G.R. No. 229671, January 31, 2018; *People v. Ronaldo Paz*, G.R. No. 229512, January 31, 2018; *People v. Philip Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Alvin Jugo*, G.R. No. 231792, January 29, 2018.

³⁴ *People v. Abundio Saragena*, G.R. No. 210677, August 23, 2017.

³⁵ See *People v. Bobby Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Amroding Macud*, G.R. No. 219175, December 14, 2017; *People v. Pablo Arposeple*, G.R. No. 205787, November 22, 2017; *Jesus Aparente v. People*, G.R. No. 205695, September 27, 2017; *People v. Siegfried Cabellon Cabañero*, G.R. No. 207229, September 20, 2017; *People v. Abundio Saragena*, G.R. No. 210677, August 23, 2017; *People v. Delia Saunar*, G.R. No. 207396, August 9, 2017; *People v. Ernesto Sagana*, G.R. No. 208471, August 2, 2017; *People v. Segundo*, 814 Phil. 697, 729 (2017); and *People v. Jaafar*, 803 Phil. 582, 594-595 (2017).

Decision dated January 24, 2017 of the Regional Trial Court, Branch 23, Manila, is **REVERSED** and **SET ASIDE**. Appellant is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
grbt

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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(CA-G.R. CR HC No. 09069)

The Hon. Presiding Judge
Regional Trial Court, Branch 23
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(Crim. Case Nos. 15-314488 to 89)

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