



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **09 November 2020** which reads as follows:*

“G.R. No. 232476 (*Rogelio Buasan y Bendal v. People of the Philippines*). — The conviction of the accused for the offense of Illegal Possession of Dangerous Drugs is the subject of review in this petition assailing the Court of Appeals’ (CA) Decision¹ dated March 14, 2017 and Resolution dated June 2, 2017 in CA-G.R. CR No. 38165.

ANTECEDENTS

On February 28, 2003, SPO2 Mauro Flores Taytay and SPO2 Vicente Tan Royeras received a report that a certain Rogelio Buasan y Bendal (Rogelio), residing in Purok 2, Barangay (Brgy.) Cormidal, Tabaco City, was engaged in illegal drug-trade activities. Acting on the report, the police officers conducted a surveillance operation and verified that Rogelio was selling illegal drugs.² On March 5, 2003, SPO4 Junewel C. Ambion (SPO4 Ambion) applied for a search warrant on Rogelio’s residence before the Regional Trial Court (RTC). Finding probable cause, the RTC issued the warrant.³ On March 13, 2003, a search team composed of SPO4 Ambion, SPO4 Joel M. Caño (SPO4 Caño), P/S Insp. Elmer Ferrera, and P/Supt. Jose L. Capinpin, together with Brgy. Captain Celso Borjal (Brgy. Captain Borjal) and two of his men, proceeded to Rogelio’s house and enforced the search warrant.⁴

Thereat, SPO4 Caño recovered the following items: two heat sealed transparent plastic sachets containing suspected dried *marijuana* leaves with fruiting tops; one white plastic containing suspected dried *marijuana* leaves with fruiting tops; nine plastic sachets containing

¹ *Rollo*, pp. 52-63; penned by Associate Justice Manuel M. Barrios with the concurrence of Associate Justices Ramon M. Bato, Jr. and Renato C. Francisco.

² *Records*, p. 13.

³ *Id.* at 9.

⁴ *Rollo*, p. 54.

residue of suspected methamphetamine hydrochloride; one “Vicks” container with six plastic sachets of suspected residue; 10 disposable lighters; one aluminum foil and 11 crumpled aluminum foils; two plastic improvised tooter; one ballpen marked “girl power” with rolled aluminum foil; two jungle *bolos*; one dart and arrow with five darts; and, one damaged fan knife. Afterwards, SPO4 Caño handed the confiscated items to SPO4 Ambion who conducted the marking and inventory of the seized items. Brgy. Captain Borjal then signed the seizure receipt.⁵ Thereafter, SPO4 Ambion prepared a request for laboratory examination and submitted it together with the specimens to the PNP Crime Laboratory. After qualitative examination, the specimens tested positive for *marijuana* and methamphetamine hydrochloride.⁶ With these findings, Rogelio was charged with the crime of Illegal Possession of Dangerous Drugs before the RTC docketed as Criminal Case No. T-3951, thus:

That on or about 9:00 P.M. of March 13, 2003, at Bgy. Cormidal, Tabaco City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the law, did then and there willfully, unlawfully, knowingly and criminally possess and control dried “MARIJUANA LEAVES” with fruiting tops, contained in Two (2) heat-sealed plastic sachets and One (1) plastic bag with the total weight of 1.0707 gram, without the necessary government authority, to the detriment of the public welfare.

ACTS CONTRARY TO LAW.⁷

Rogelio denied the accusation and claimed that on March 13, 2003, he had just parked his *padyak* alongside the church ruins when Brgy. Captain Borjal, Brgy. Kagawad Eduardo Borilla, and a police officer approached him. The police officer brought him to the municipal hall where he was interrogated and detained. The next day, he was released. In 2011, he was arrested in relation to the criminal case.

On July 10, 2015, the RTC convicted Rogelio and held that the prosecution established the elements of Illegal Possession of Dangerous Drugs and an unbroken chain of custody.⁸ On March 14, 2017, the CA affirmed Rogelio’s guilt.⁹ Hence, this petition.

RULING

We acquit.

In Illegal Possession of Dangerous Drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its

⁵ Records, pp. 366-367.

⁶ *Id.* at 369.

⁷ *Id.* at 52.

⁸ *Rollo*, pp. 98-111.

⁹ *Id.* at 63.

existence is vital to a judgment of conviction.¹⁰ Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.¹¹ Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.¹² Here, the records reveal a broken chain of custody.

Notably, the alleged crime happened before Republic Act (RA) No. 10640¹³ amended RA No. 9165. Thus, the original provisions of Section 21 and its Implementing Rules and Regulations shall apply, to wit:

[Section 21, paragraph 1, Article II of RA No. 9165]

(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, **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 representative or counsel, with an elected public official and **a representative of the National Prosecution Service or 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[.] x x x. (Emphases supplied.)

[Section 21(a), Article II of the IRR of RA No. 9165]

(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**

¹⁰ *People v. Partoza*, 605 Phil. 883, 891 (2009). See also *People v. Cariño*, G.R. No. 233336, January 14, 2019; *People v. Crispo*, 828 Phil. 416, 436-437 (2018); See *People v. Sanchez*, 827 Phil. 457, 472-473 (2018); *People v. Magsano*, 826 Phil. 947, 964-965 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018); *People v. Miranda*, 824 Phil. 1042, 1055-1054 (2018); and *People v. Mamangon*, 824 Phil. 728, 741 (2018).

¹¹ *People v. Ismael*, 806 Phil. 21, 30-31 (2017), citing *Mallillin v. People*, 576 Phil. 576, 587 (2008).

¹² *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

¹³ Took effect on August 7, 2014. See OCA Circular No. 77-2015 dated April 23, 2015. As amended, it is now mandated 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 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.

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 dthe 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[.]* (Emphases supplied.)

In *Tumabini v. People*,¹⁴ the Court clarified that Section 21 of RA No. 9165 applies whether the drugs were seized either in a buy-bust operation or pursuant to a search warrant. A plain reading of the law shows that it applies as long as there has been a seizure and confiscation of drugs. There is nothing in the statutory provision which states that it is only applicable when there is a warrantless seizure in a buy-bust operation. Thus, it should be applied in every situation when an apprehending team seizes and confiscates drugs from an accused, whether through a buy-bust operation or through a search warrant. The only recognizable difference between seizure and confiscation of drugs pursuant to a search warrant and a buy-bust operation is the venue of the physical inventory and taking of photographs of the said drugs, thus:

When the drugs are seized pursuant to a search warrant, then the physical inventory and taking of photographs shall be conducted at the place where the said search warrant was served. In contrast, when the drugs are seized pursuant to a buy-bust operation or a warrantless seizure, then these can be conducted at the nearest police station or at the nearest office of the apprehending team. Other than that, there is no other difference between seizure and confiscation of drugs with a search warrant and without it (such as a buy-bust operation). Consistent with Sec. 21 of R.A. No. 9165, its IRR does not suspend the application of the chain of custody rule simply because the drugs were seized pursuant to a search warrant. **Thus, the witnesses under the law are required to be present. Again, the only difference is with respect to the venue of the inventory and taking of photographs.**¹⁵ (Emphasis and underscoring supplied.)

Moreover, jurisprudence has consistently applied Section 21 of RA No. 9165 in the implementation of a search warrant. In *Cunanan v. People*,¹⁶ the police operatives secured a warrant in searching the bedroom and vehicle of the accused. The authorities found several sachets of suspected *shabu* (methamphetamine hydrochloride). However, the Court acquitted the accused because there was no Department of Justice (DOJ) representative during the physical inventory and taking of photographs of the seized items. Similarly, in *Dizon v. People*,¹⁷ the Court acquitted the accused because the police operatives did not comply with Section 21 of RA No. 9165 in the implementation of a search warrant. In that case, the inventory and taking of photographs were only conducted in

¹⁴ G.R. No. 224495, February 19, 2020.

¹⁵ *Id.*

¹⁶ G.R. No. 237116, November 12, 2018.

¹⁷ G.R. No. 239399, March 25, 2019.

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the presence of the accused and two *barangay kagawads*. The authorities likewise failed to provide justifiable reason for their failure to secure the attendance of these witnesses. Also, in *People v. Baer*,¹⁸ the police officers swept aside the compulsory procedures mandated under Section 21 of RA No. 9165. The operatives served a search warrant at the accused's rented stall inside the public market and confiscated seven big plastic sachets and 142 sealed decks of suspected *shabu*. The Court acquitted the accused because the operatives did not photograph the seized evidence and there were no representatives from the media and the DOJ to witness the operation. Likewise, in *Asis v. People*,¹⁹ the police operatives enforced a search warrant at the house of the accused and confiscated a plastic sachet containing white crystalline substance suspected as *shabu*. The Court acquitted the accused due to the absence of a DOJ representative during the implementation of the search warrant and the consequent marking, inventory, and photography of the item.

In this case, the absence of the required insulating witnesses during the inventory and photograph of the seized items puts serious doubt as to the integrity of the chain of custody. Admittedly, only the *barangay* captain witnessed the inventory. There was no representative from the media and the DOJ. Worse, there was no attempt on the part of the search team to comply with the law and its implementing rules. The operatives likewise failed to provide any justification showing that the integrity of the evidence had all along been preserved. The police officers did not describe the precautions taken to ensure that there had been no change in the condition of the seized items and no opportunity for someone not in the chain to have possession of the same. Moreover, no photographs of the seized items were taken. Verily, the utter disregard of the required procedures created a huge gap in the chain of custody.

Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth.²⁰ Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.²¹

We reiterate that the provisions of Section 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Rogelio must be

¹⁸ G.R. No. 228958, August 14, 2019.

¹⁹ G.R. No. 241602, November 20, 2019.

²⁰ *People v. Cañete*, 433 Phil. 781, 794 (2002); and *Mallillin v. People*, 576, 593 (2008).

²¹ *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

acquitted of the charge against him given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the petition is **GRANTED**. The Court of Appeals' Decision dated March 14, 2017 and Resolution dated June 2, 2017 in CA-G.R. CR No. 38165 are hereby **REVERSED** and **SET ASIDE**. Rogelio Buasan y Bendal is **ACQUITTED** in Criminal Case No. T-3951 and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is likewise **ORDERED** to **REPORT** to the Court the action taken within five days from receipt of this Resolution.

SO ORDERED. (Rosario, J., designated additional Member per Special Order No. 2797 dated November 5, 2020.)"

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

10 MAY 2021

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THE JAIL WARDEN (reg)
Tabaco City District Jail
Tabaco City, Albay

THE DIRECTOR (x)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 17
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(Crim. Case No. T-3951)

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