



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 23 November 2020 which reads as follows:

“G.R. No. 252055 (People of the Philippines v. Richard Faller y Fortuna a.k.a. ‘Robert’ and Edwin Robles y Vasquez a.k.a. ‘Negro’). – The Court resolves to: (a) **NOTE** the manifestation (in lieu of supplemental brief) dated 16 October 2020 of the Public Attorney’s Office, in compliance with the Resolution dated 10 August 2020, adopting its brief filed before the Court of Appeals (CA) as the supplemental brief of the accused-appellants Richard Faller y Fortuna a.k.a. ‘Robert’ (Faller) and Edwin Robles y Vasquez a.k.a. ‘Negro’ (Robles; collectively, accused-appellants), since the same had adequately discussed all the matters pertinent to their defense; (b) **NOTE** the letter dated 17 October 2020 of CTCInsp. Albert C. Manalo, Officer-in-Charge, Inmate Documents and Processing Division, Bureau of Corrections, Muntinlupa City, confirming the confinement of accused-appellants at the said institution since 10 May 2018; and (c) **DISPENSE WITH** the supplemental brief of appellee required in the Resolution dated 3 February 2020.

Assailed in this ordinary appeal¹ is the Decision² dated August 23, 2019 of the CA in CA-G.R. CR-H.C. No. 11109, which affirmed *in toto* the Decision³ dated February 8, 2018 of the Regional Trial Court of Quezon City, Branch 82 (RTC) in Criminal Case No. R-QZN-13-01670-CR, finding accused-appellants guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the ‘Comprehensive Dangerous Drugs Act of 2002.’

¹ See Notice of Appeal dated September 18, 2019; *rollo*, p. 26.

² *Id.* at 3-25. Penned by Associate Justice Danton Q. Bueser with Associate Justices Fernanda Lampas Peralta and Ronaldo Roberto B. Martin, concurring.

³ CA *rollo*, pp. 46-63. Penned by Presiding Judge Lyn Eborá-Cacha.

⁴ 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,” approved on June 7, 2002.

The Facts

This case stemmed from an Information⁵ filed before the RTC, charging accused-appellants with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. The prosecution alleged that on July 5, 2013, acting upon a confidential information, members of the District Anti-Illegal Drugs – Special Operations Task Group of the Quezon City Police District successfully implemented a buy-bust operation at P. Tuazon corner N. Domingo Street, Barangay Kaunlaran, Quezon City against accused-appellants. During the operation, the police officers were able to confiscate a transparent plastic bag containing 47.97 grams of white crystalline substance from them. Thereafter, the accused-appellants were brought to the police station, where the inventory and photography of the seized items were conducted⁶ in the presence of media representative Felizer Santos (Santos).⁷ The seized items were then brought to the crime laboratory, which, after examination,⁸ yielded positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug.⁹

For their part, accused-appellants denied the charges against them. Faller claimed that he was speaking to Robles outside the apartment he was staying in when persons aboard a passing vehicle—later identified as police officers—alighted in front of them. Despite denying that he was ‘Robert’ when asked, the police officers handcuffed Faller and searched the house but found nothing. Thereafter, he and Robles were brought to Camp Karingal, where three (3) days had passed before they were brought for inquest proceedings in the police station. It was only then that he learned that they were being accused of violating the dangerous drugs law, as their photographs were taken and money and drugs were laid before them. Robles corroborated Faller’s testimony.¹⁰

In a Decision¹¹ dated February 8, 2018, the RTC found accused-appellants guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced them to suffer the penalty of life imprisonment and to each pay a fine in the amount of ₱500,000.00.¹² The RTC ruled that the prosecution successfully established all the elements of the crime of Illegal Sale of Dangerous Drugs, and that the chain of custody rule had been complied with. It found that while the buy-bust team did not strictly comply with the requirements of Section 21, Article II of RA 9165, as amended, it did not in any way affect the evidentiary weight of the drugs seized from the accused-appellants. Finally, it did not give credence to their defenses that they: (a) did not commit the crime charged and (b) had no knowledge of the evidence presented by the prosecution, the same being self-serving and unsupported by evidence.¹³

⁵ Dated July 8, 2013; records, pp. 1-2.

⁶ Id. at 5.

⁷ See Inventory Receipt dated July 5, 2013; records, p. 12.

⁸ See Chemistry Report No. D-280-13; records, p. 19.

⁹ *Rollo*, pp. 6-7.

¹⁰ Id. 9-13.

¹¹ CA *rollo*, pp. 46-63.

¹² Id. at 63.

¹³ Id. at 59-62.

Aggrieved, accused-appellants appealed¹⁴ to the CA.

In a Decision¹⁵ dated August 23, 2019, the CA affirmed *in toto* the RTC ruling. It found no reason to disturb the factual findings of the trial court, considering that all the essential elements of the illegal sale of *shabu* were proven, the integrity of the *corpus delicti* was duly preserved, and all links in the chain of custody were established. Anent the procedural lapse of the absence of both a Department of Justice (DOJ) representative and a public official, it held that the same should not adversely affect the admissibility of evidence as long as the identity and integrity of the specimen were duly preserved. It stated that their presence is only necessary to remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect the case. Thus, as the identity and integrity of the *corpus delicti* and chain of custody were duly preserved, and considering further that a media representative was present during the inventory, the police officers were deemed to have substantially complied with the rules.¹⁶

Hence, this appeal seeking that accused-appellants' conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale of Dangerous Drugs under RA 9165,¹⁷ it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.¹⁸ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.¹⁹

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the

¹⁴ See Notice of Appeal dated February 13, 2018; *id.* at 11.

¹⁵ *Rollo*, pp. 3-25.

¹⁶ See *id.* at 10-21.

¹⁷ The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015].)

¹⁸ See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

¹⁹ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

crime.²⁰ As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.²¹ The law further requires that 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 9165 by RA 10640,²² a representative from the media **and** the DOJ, and any elected public official;²³ or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service²⁴ **or** the media.²⁵ The law requires the 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.’²⁶

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.²⁷ This is because the law was crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.²⁸

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.²⁹ As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as

²⁰ See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380, 389; *People v. Crispo*, supra note 17; *People v. Sanchez*, supra note 17; *People v. Magsano*, supra note 17; *People v. Manansala*, supra note 17; *People v. Miranda*, supra note 17; and *People v. Mamangon*, supra note 17. See also *People v. Viterbo*, supra note 18.

²¹ In this regard, case law recognizes that “[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.” (*People v. Mamalumpon*, 767 Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]). See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*, 618 Phil. 520, 532 [2009]). Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumalak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015]).

²² 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.’” As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, *Philippine Star Metro Section*, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; *World News Section*, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

²³ Section 21 (1), Article II of RA 9165; emphasis and underscoring supplied.

²⁴ Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE AND THE OFFICES OF THE PROVINCIAL AND CITY FISCALS, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of RA 10071, entitled “AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE” otherwise known as the “PROSECUTION SERVICE ACT OF 2010” [lapsed into law on April 8, 2010].)

²⁵ Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

²⁶ See *People v. Miranda*, supra at 17. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²⁷ See *People v. Miranda*, supra note 17 at 60-61. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 19 at 1038.

²⁸ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

²⁹ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.³⁰ The foregoing is based on the saving clause found in Section 21 (a),³¹ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which has now been crystallized into the text of RA 10640.³² It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³³ and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.³⁴

As regards the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.³⁵ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.³⁶ These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.³⁷

Notably, the Court, in *People v. Miranda*,³⁸ issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, x x x the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”³⁹

³⁰ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³¹ Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**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.**” (Emphasis supplied)

³² Section 1 of RA 10640 pertinently states: “**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.**” (Emphasis supplied)

³³ *People v. Almorfe*, supra note 30.

³⁴ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁵ See *People v. Manansala*, supra note 17, at 375.

³⁶ See *People v. Gamboa*, supra note 19, citing *People v. Umipang*, supra note 19, at 1053.

³⁷ See *People v. Crispo*, supra note 17, at 376-377.

³⁸ Supra note 17.

³⁹ See *id.* at 61.

In this case, there was a deviation from the witness requirement rule, as the conduct of the inventory and photography of the seized items was witnessed neither by a duly elected public official nor a representative from the DOJ.⁴⁰ The procedural lapse may be easily gleaned from the Inventory Receipt⁴¹ which only bears the signature of a media representative, *i.e.*, Santos. This is further confirmed by the testimony of PO3 Anthony Pamilar (PO3 Pamilar), to wit:

Testimony of PO3 Pamilar

[Atty. Jonathan Magallanes]: You stated that you conducted an inventory in this case, correct?

[PO3 Pamilar]: Yes, sir.

X X X X

Q: You stated there was a witness in the person of Felizer Santos?

A: Yes, sir.

Q: Philippine Star?

A: Yes, sir.

X X X X

Q: During the inventory there was no representative from the DOJ and public official, correct?

A: None, sir.

X X X X⁴² (Emphases supplied)

Notably, while the failure of the apprehending team to strictly comply with the witness requirement rule would not *ipso facto* render the seizure and custody over the items as void, it is nevertheless incumbent upon the prosecution to account for such deviation by presenting a justifiable reason therefor or, at the very least, by showing that *genuine and sufficient efforts* were exerted by the apprehending officers to secure the presence of said witnesses. Here, records show that the prosecution failed to establish justifiable grounds for non-compliance, *viz*:

⁴⁰ The arrest in this case happened prior to the enactment of RA 10640, and as such, the required witnesses are: (a) an elected public official, (b) a DOJ representative; AND (c) a media representative.

⁴¹ See Inventory Receipt dated July 5, 2013; records, p. 12.

⁴² Transcript of Stenographic Notes (TSN), September 7, 2016, p. 5; emphases supplied.

Testimony of SPO1 John Gervacio

[Atty. Jonathan Magallanes]: Why is it that in the Inventory the item was turned over on July 6? I am showing to you the Inventory, the turned over was done on July 6?

[SPO1 John Gervacio]: I don't know sir I was not the one who prepared that.

Q: You were not present when this Inventory was prepared?

A: Yes sir.

Q: **So considering that you were not present during that time you do not know of the reason why there was no representative from the Barangay and the DOJ?**

A: **Yes sir.**

x x x x⁴³ (Emphases supplied)

As stated earlier, **mere statements of unavailability, absent actual serious attempts to contact the required witnesses**, are unacceptable as justified grounds for non-compliance.⁴⁴ Here, records show that the prosecution **did not acknowledge, much less justify**, the arresting officers' failure to procure the attendance of a duly elected public official or a representative from the DOJ. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellants were compromised, which consequently warrants their acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 23, 2019 of the Court of Appeals in CA-G.R. CR-H.C. No. 11109 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Richard Faller y Fortuna a.k.a. 'Robert' and Edwin Robles y Vasquez a.k.a. 'Negro' are **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to: (a) cause accused-appellants' immediate release, unless they are being lawfully held in custody for any other reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

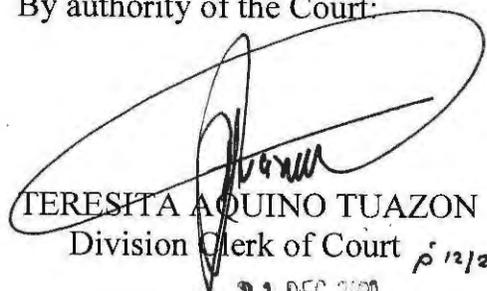
Let entry of judgment be issued immediately.

⁴³ TSN, March 27, 2017, pp. 17-18; emphases supplied.

⁴⁴ See *People v. Gamboa*, supra note 19, citing *People v. Umipang*, supra note 19, at 1053.

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 *p. 12/21*
21 DEC 2020

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Accused-Appellants
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THE DIRECTOR (x)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 82
Quezon City
(Crim. Case No. R-QZN-13-01670-CR)

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