



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 14, 2020** which reads as follows:*

“G.R. No. 211248 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus SONNY KU y GO, accused-appellant.

After a careful review of the records of the instant case, the Court **REVERSES AND SETS ASIDE** the Decision¹ dated July 31, 2013 (assailed Decision) of the Court of Appeals, Special Fourteenth Division (CA) in CA-G.R. CR-H.C. No. 04319, which affirmed the Decision dated September 14, 2009² rendered by the Regional Trial Court of Baguio City, Branch 60 (RTC), in Criminal Cases Nos. 28151-R and 28152-R, finding accused-appellant Sonny Ku y Go guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (RA) No. 9165, otherwise known as “The Comprehensive Dangerous Drugs Act of 2002,” as amended. The Court acquits accused-appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

The cornerstone of all criminal prosecution is the constitutional right of the accused to be presumed innocent until the contrary is proved.³ The Constitution places upon the prosecution the *onus* to prove the guilt of the accused beyond reasonable doubt, relying solely on the strength of its own evidence and never on the weakness of the defense. In this respect, the presumption of innocence is overturned if and only if the prosecution has discharged its duty to prove each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.⁴

- over – seven (7) pages ...

145-A

¹ *Rollo*, pp. 2-16. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Japar B. Dimaampao and Manuel M. Barrios concurring.

² *CA rollo*, pp. 57-70. Penned by Judge Edilberto T. Claravall

³ *People v. Luna*, 828 Phil. 671, 696 (2018).

⁴ *Id.*

In cases involving dangerous drugs, the burden of the prosecution weighs heavily on the proof of the identity and integrity of the seized drugs, for the same constitute the very *corpus delicti* of the offense.⁵ It is imperative therefore that the prosecution establish, with the same degree of certitude as that required to make a finding of guilt, that the prohibited drug confiscated or recovered from the accused at the place of arrest is the very same substance offered in court as evidence of the crime.⁶ This only means that each link to the chain of custody of the seized drug must be accounted for.⁷ Otherwise, the integrity and credibility of the *corpus delicti* are tarnished and the claim that a violation of RA 9165 was committed by the accused becomes questionable.⁸

*People v. Cardenas*⁹ enumerates the four links that the prosecution must establish to sustain a conviction in cases involving drugs: first, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.¹⁰

In this regard, as part of the chain of custody procedure, Section 21, Article II of Republic Act No. (RA) 9165,¹¹ the applicable law at

- over -

145-A

⁵ *People v. Labsan*, G.R. No. 227184, February 6, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65258>>.

⁶ *Id.*

⁷ *People v. Supat*, G.R. No. 217027, June 6, 2018, 865 SCRA 45,62, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

⁸ See *People v. Que*, 824 Phil. 882, 896 (2018).

⁹ G.R. No. 229046, September 11, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65761>>.

¹⁰ *Id.*

¹¹ The said section reads 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 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 time of the commission of the alleged crimes, imposes upon the member of the buy-bust team to strictly comply with the following requirements: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.¹²

The requirements of Section 21 as to the manner of handling the seized items as well as the time, place and witnesses of the inventory are all designed to make the first and second links in the chain of custody foolproof.¹³ Thus, existing jurisprudence clarifies that the phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs must be made immediately after seizure, exactly where the seizure was done, as it minimizes, if not eliminates, room for adulteration, switching or the planting of evidence.¹⁴ It is only when the same is not practicable, and upon due justification,¹⁵ that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.¹⁶

In the present case, records show that the police officers failed to comply with the foregoing mandate. *First*, no photographs of the seized items were taken at the place of arrest or even at the police station where the inventory was supposedly conducted. In *People v. Supat*,¹⁷ the Court held that “the taking of photographs of the seized drugs is not a menial requirement that can be easily dispensed with. Photographs provide credible proof of the state or condition of the illegal drugs and/or paraphernalia recovered from the place of apprehension to ensure that the identity and integrity of the recovered items are preserved.”¹⁸

- over -

145-A

¹² *People v. De Leon*, G.R. No. 214472, November 28, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64849>>.

¹³ *People v. Que*, supra note 8 at 909.

¹⁴ *Id.*

¹⁵ See *People v. Lim*, G.R. No. 231989, September 4, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.

¹⁶ Section 21(a), Article II, IRR of RA 9165.

¹⁷ *Supra* note 7.

¹⁸ *Id.* at 67.

Second, the police officers failed to physically inventory the seized items immediately after seizure and confiscation at the place of arrest. Worse, the inventory was not even made as soon as the police officers reached the PDEA Office. Rather, the police officers conducted an inventory the following day, after several hours had passed since the buy-bust operation.¹⁹ In the intervening time, the seized drugs remained in the custody of Investigation Agent Ferdinand Natividad (IA1 Natividad), the police officer who acted as the poseur-buyer in the buy-bust operation.²⁰ In this regard, his testimony is lacking in essential details on where the seized items were placed or how they were handled while in his custody and before the inventory was made the following day. Furthermore, the prosecution did not even bother to explain why the inventory was not conducted at the place of arrest or immediately upon reaching the police station. This unexplained delay in the conduct of the inventory, when the law mandates promptness and immediacy, negates any assurance against switching, planting or contamination of the *corpus delicti*.

Third, IA1 Natividad narrated that after the inventory was conducted, he turned over the seized items to SPO4 Romeo Abordo (SPO4 Abordo), who brought the same to the crime laboratory for examination.²¹ However, the Court does not see from the records the details on how the seized items were handled, managed and preserved from the time they were handed to SPO4 Abordo to the time they were delivered to the crime laboratory for examination. The testimony of SPO4 Abordo is sorely lacking on these details.

Verily, contrary to the findings of the lower courts, the prosecution failed to establish an unbroken chain of custody of the confiscated drugs. The police officers' unjustified deviation from the requirements of Section 21 and the unexplained links in the chain of custody make the *corpus delicti* in this case unreliable.

In the assailed Decision, however, the CA held that the court cannot look into the justifications or reasons of the police officers' non-compliance with the law, which were never raised by the accused during trial; because to do so would be violative of the tenets of fair play and equity.

The Court disagrees.

- over -

145-A

¹⁹ See RTC Records pp. 11-12; Transcript of Stenographic Notes (TSN) dated August 19, 2008, pp. 51-52.

²⁰ TSN dated August 19, 2008, pp. 51-52.

²¹ See TSN dated August 13, 2008, p. 12.

It is settled that an appeal in a criminal proceeding throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as might be found in the appealed judgment, whether they are assigned or not.²² Moreover, while the Court has recognized that deviation from the procedures may be excused because strict compliance with the requirements of Section 21 may not always be possible, given the varying field conditions, it remains incumbent upon the prosecution to provide a justifiable explanation for the same.²³ In *Valencia v. People*,²⁴ the Court held:

x x x Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.²⁵

In this case, it bears emphasis that the prosecution neither recognized, much less tried to justify or explain, the police officers' failure to take photographs of the seized items and to conduct an inventory thereof immediately upon seizure and confiscation. Breaches of the procedures outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, generate serious uncertainty on the integrity and evidentiary value of seized items presented by the prosecution as evidence of the crime.²⁶

At this juncture, the Court echoes its pronouncement in *People v. Adobar*.²⁷

As no less than the liberty of an accused is at stake, appellate courts, this Court included, must, in turn, sift the records to determine if, indeed, the apprehending team observed Section 21 and if not, if the same is justified under the circumstances. This, regardless if issues thereon were ever raised or threshed out in the lower court/s, consistent with the doctrine that appeal in criminal cases throws the whole case open for review and the appellate

- over -

145-A

²² *People v. Kamady Ambing*, 624 Phil. 289, 299 (2010).

²³ See Section 21 of the Implementing Rules and Regulations of R.A. 9165; See also *People v. Ordiz*, G.R. No. 206767, September 11, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65741>>.

²⁴ 725 Phil. 268 (2014).

²⁵ Id. at 286. Citations omitted.

²⁶ See *People v. Otico*, G.R. No. 231133, June 6, 2018, 865 SCRA 534.

²⁷ G.R. No. 222559, June 6, 2018, 865 SCRA 220.

court must correct errors in the appealed judgment whether they are assigned or not. If, from such full examination of the records, there appears unjustified failure to comply with Section 21, it becomes the appellate court's bounded duty to acquit the accused, and perforce, overturn a conviction.²⁸

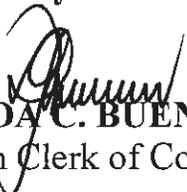
All told, the prosecution in this case failed to discharge its burden of proving the *corpus delicti* of the crimes charged due to the unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drugs. The presumption of accused-appellant's innocence must therefore be upheld. Accused-appellant must be acquitted on reasonable doubt.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision July 31, 2013 of the Court of Appeals, Special Fourteenth Division (CA) in CA-GR CR-HC No. 04319 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Sonny Ku y Go is **ACQUITTED** for failure of the prosecution to establish his guilt beyond reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Director of Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED.” *Rosario, J., designated Member per Special Order No. 2794 dated October 9, 2020.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
145-A

- over -

²⁸ Id. at 270-271.



The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 04319)

The Hon. Presiding Judge
Regional Trial Court, Branch 60
2600 Baguio City
(Crim. Case Nos. 28151-R & 28152-R)

PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Accused-Appellant
DOJ Agencies Building
Diliman, 1101 Quezon City

Mr. Sonny G. Ku (x)
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court

145-A

UR