



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 12 October 2020 which reads as follows:

“G.R. No. 248175 (People of the Philippines v. Joey Jose y Mallare). – The Court **NOTES** the manifestation (in lieu of supplemental brief) dated 18 September 2020 of the Office of the Solicitor General, adopting its brief filed before the Court of Appeals (CA) as supplemental brief, since the same had adequately discussed all the matters pertinent to plaintiff-appellee.

Assailed in this ordinary appeal is the Decision¹ dated February 18, 2019 of the CA in CA-G.R. CR-HC No. 10184, which affirmed *in toto* the November 17, 2017 Decision² of the Regional Trial Court of Gapan City, Branch 36 (RTC), finding accused-appellant Joey Jose y Mallare (accused-appellant) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165,³ otherwise known as the ‘Comprehensive Dangerous Drugs Act of 2002.’

The Facts

This case stemmed from an Information⁴ filed before the RTC charging accused-appellant with Illegal Sale of Dangerous Drugs. The prosecution alleged that in the morning of April 8, 2011, members of the Nueva Ecija Police Station

¹ *Rollo*, pp. 3-14. Penned by Associate Justice Rodil V. Zalameda (now a member of this Court) with Associate Justices Fernanda Lampas Peralta and Henri Jean Paul B. Inting (now a member of this Court), concurring.

² *CA rollo*, pp. 52-62. Penned by Acting Presiding Judge Celso O. Baguio.

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,” approved on June 7, 2002.

⁴ *CA rollo*, p. 52.

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successfully implemented a buy-bust operation against accused-appellant, during which, two (2) plastic sachets containing a total of 0.07 gram of white crystalline substance were recovered from him. At the place of arrest, they immediately conducted the marking, inventory, and photography of the seized items in the presence of accused-appellant, media representative Kris Yambot (media representative Yambot), Barangay Councilor Odelon (Brgy. Councilor Odelon), and Municipal Trial Court (MTC) employee Regie Farmer (Farmer).⁵ Thereafter, they proceeded to the police station, where the necessary documents were prepared. Subsequently, the seized items were brought to the crime laboratory, which, after examination, tested positive for *methamphetamine hydrochloride*, a dangerous drug.⁶

For his part, accused-appellant denied the charge against him, claiming instead, that in the morning of April 8, 2011, he was with his wife aboard a tricycle to buy food when a car suddenly blocked their way. Thereafter, two (2) policemen approached them, handcuffed him, and then brought him to the police station, where he was detained for no apparent reason.⁷

In a Decision⁸ dated November 17, 2016, the RTC found accused-appellant **guilty** beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00. It held that the prosecution was able to establish all the elements of the crime charged and that the integrity and evidentiary value of the seized items were preserved. Further, it found that the inconsistencies in the testimonies of the prosecution witnesses pertained to trivial matters and refused to give evidentiary weight to the sole and self-serving testimony of accused-appellant.⁹ Aggrieved, accused-appellant appealed to the CA.

In a Decision¹⁰ dated February 18, 2019, the CA affirmed *in toto* the RTC ruling upon finding that the prosecution witnesses sufficiently established all the elements of the crime charged as well as the integrity and evidentiary value of the seized items. Likewise, the CA held that the testimony of the civilian asset was not indispensable to the success of the prosecution of illegal drugs cases. Moreover, despite the absence of a Department of Justice (DOJ) representative, the presence of an MTC employee, together with the other mandatory witnesses, were considered as sufficient compliance with the witness requirement rule. Finally, it held that absent any proof of motive on the part of the prosecution witnesses to falsely charge accused-appellant of such grave offense, the presumption of regularity in the performance of the official duties of the apprehending officers and the findings of the trial court with respect to the credibility of the prosecution witnesses prevail.¹¹

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

⁵ TSN, February 13, 2013, pp. 11-12.

⁶ *Rollo*, pp. 5-6.

⁷ *Id.* at 7.

⁸ *CA rollo*, pp. 52-62.

⁹ *Id.* at 56-61.

¹⁰ *Rollo*, pp. 3-14.

¹¹ *Id.* at 7-13.

The Court's Ruling

The appeal is meritorious.

In cases of Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,¹² 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.¹³ 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.¹⁴

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 crime.¹⁵ 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. 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.'¹⁶ 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.¹⁷

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 9165 by RA 10640,¹⁸ 'a representative from the

¹² 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; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (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].)

¹³ 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).

¹⁴ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

¹⁵ See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 12; *People v. Sanchez*, *supra* note 12; *People v. Magsano*, *supra* note 12; *People v. Manansala*, *supra* note 12; *People v. Miranda*, *supra* note 12; and *People v. Mamangon*, *supra* note 12. See also *People v. Viterbo*, *supra* note 13.

¹⁶ *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).

¹⁷ See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

¹⁸ 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

media **and** the DOJ, and any elected public official;¹⁹ or (b) if **after** the amendment of RA 9165 by RA 10640, ‘an elected public official and a representative of the National Prosecution Service **or** the media.’²⁰ 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.”²¹

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.’²² This is because the law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.²³

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.²⁴ 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 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.²⁵ The foregoing is based on the saving clause found in Section 21 (a),²⁶ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.²⁷ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,²⁸ 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.²⁹

Anent 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

‘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.

¹⁹ Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

²⁰ Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

²¹ See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, supra note 17. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²² See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 14, at 1038.

²³ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

²⁴ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

²⁵ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

²⁶ 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)

²⁷ 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)

²⁸ *People v. Almorfe*, supra note 25.

²⁹ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

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.³⁰ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.³¹ 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.³²

Notably, the Court, in *People v. Miranda*,³³ 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, 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.'³⁴

In this case, there was a deviation from the required witnesses rule as the conduct of the marking, inventory, and photography of the seized items was not witnessed by a DOJ representative, as evinced from the Receipt of the Property Seized, which verifies the presence only of media representative Yambot, Brgy. Councilor Odelon, and Farmer, an MTC employee. Police Officer 3 Manuel Pangilinan,³⁵ one of the arresting officers, further confirmed that only the said witnesses were present thereat.

As earlier adverted to, it is incumbent upon the arresting officers to account for the absence of any of the required witnesses by presenting a justifiable reason therefor or, at the very least, by showing that they exerted genuine and sufficient efforts to secure the presence of said witnesses. Here, in view of the date of the buy-bust operation on April 8, 2011 and the applicable law at that time requiring the presence of 'a representative from the media *and* the DOJ, and any elected public official,' the failure to justifiably explain the absence of the DOJ representative militates against the cause of the prosecution. At this point, it bears stressing that an MTC employee appearing as witness in lieu of a DOJ representative cannot be countenanced, as a court employee is not employed with the DOJ, and therefore, cannot be considered as substantial compliance under the rules. Section 21 of RA 9165 is clear as regards the witnesses who must be present during the conduct of the marking, inventory, and photography of the seized items. Therefore, in view of the unjustified deviation from the chain of custody rule, the Court is constrained to conclude that the integrity and evidentiary value of the

³⁰ See *People v. Manansala*, supra note 12, at 375.

³¹ See *People v. Gamboa*, supra note 14, citing *People v. Umipang*, supra note 14, at 1053.

³² See *People v. Crispo*, supra note 12, at 376-377.

³³ Supra note 12.

³⁴ See *id.*

³⁵ TSN dated February 13, 2013, pp. 11-12.

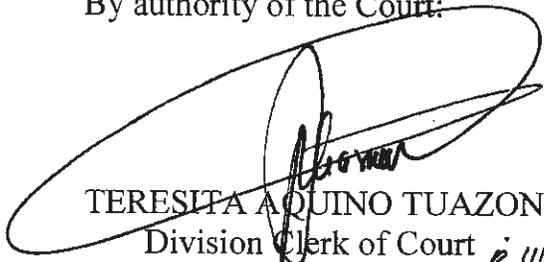
items purportedly seized from accused-appellant were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 18, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10184 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Joey Jose y Mallare is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to: (a) cause accused-appellant's immediate release, unless he is 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.

SO ORDERED. (Inting, J., no part due to prior action in the CA; Carandang, J., designated Additional Member per Raffle dated August 19, 2020. Baltazar-Padilla, J., on leave.)”

By authority of the Court:


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Division Clerk of Court
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 36
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(Crim. Case No. 14755-11)

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