



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **07 September 2020** which reads as follows:*

“**G.R. No. 235656** (*People of the Philippines v. Richard Buenaflor y Areval*). — Before the Court is an ordinary Appeal<sup>1</sup> assailing the Decision<sup>2</sup> dated 10 August 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08357, which affirmed the Decision<sup>3</sup> dated 5 May 2016 of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 37, in Crim. Case Nos. L-9647 and L-9648 convicting Richard Buenaflor y Areval (accused-appellant) guilty beyond reasonable doubt for violation of Sections 5 (Illegal Sale of Dangerous Drugs) and 11 (Illegal Possession of Dangerous Drugs), Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

**FACTS**

This case stemmed from two (2) Informations<sup>4</sup> filed before the RTC charging accused-appellant of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs.

The prosecution alleged that in the evening of 12 December 2012, members of Lingayen Philippine National Police (PNP) Station, Pangasinan, accompanied by a civilian asset and *Barangay Kagawads* Pablito Tigno and Eduard Cuesta (*barangay kagawads*), conducted a buy-bust operation against accused-appellant at dela Cruz Auditorium located in the town plaza of Lingayen, Pangasinan. At round 10 o'clock in the said evening, accused-appellant arrived at dela Cruz Auditorium and directly approached the civilian asset. The civilian asset then informed accused-appellant that Police

<sup>1</sup> See Notice of Appeal dated 31 August 2017; *rollo*, pp. 15-17.

<sup>2</sup> Penned by Associate Justice Danton Q. Bueser, with Associate Justices Normandie B. Pizarro and Marie Christine Azcarraga-Jacob, concurring; *id.* at 2-14.

<sup>3</sup> Penned by Acting Presiding Judge Jaime L. Dojillo, Jr.; *CA rollo*, pp. 71-81.

<sup>4</sup> See Information in Criminal Case No. L-9647 dated 21 January 2013, records, p. 1; see also Information in Criminal Case No. L-9648, *id.* at 1.

Officer 1 Jethiel F. Vidal (PO1 Vidal), the designated *poseur*-buyer, would buy *shabu*<sup>5</sup> to which PO1 Vidal told accused-appellant that he is buying ₱500.00 worth of *shabu*. Accused-appellant then handed PO1 Vidal a plastic sachet containing white crystalline substance and in exchange thereof, PO1 Vidal gave accused-appellant the ₱500.00 marked money. After the transaction was consummated, PO1 Vidal removed his cap, which was the pre-arranged signal, and Senior Police Officer 1 Marday delos Santos (SPO1 delos Santos) accompanied by the *barangay kagawads* arrived. PO1 Vidal and SPO1 delos Santos handcuffed accused-appellant, informed him of his Constitutional rights, and conducted a body search. Two (2) plastic sachets were recovered from the possession of accused-appellant. At the place of the arrest and in the presence of accused-appellant, the *barangay kagawads* and SPO1 delos Santos, PO1 Vidal placed markings on the items sized from accused-appellant.<sup>6</sup> At the same place of arrest, photographs of accused-appellant, the confiscated items and the marked money were also taken by SPO1 delos Santos. Thereafter, the police officers brought accused-appellant and the seized items to the police station. At the police station, PO1 Vidal prepared the Inventory Report which was signed by the *barangay kagawads*<sup>7</sup> while accused-appellant was investigated by the station police investigator.<sup>8</sup> Accused-appellant was then brought to Community Hospital for medical examination, after which, PO1 Vidal brought the confiscated items to the PNP Crime Laboratory for examination.<sup>9</sup> The laboratory examination revealed that all the seized items tested positive for methamphetamine hydrochloride commonly known as *shabu*.

For his part, accused-appellant claimed that in the evening of 12 December 2012, he went to Mercury Drugstore in the town of Lingayen, Pangasinan, to buy *Temptra* for his child who was suffering from a fever. However, his money was short of ₱40.00 so he went walking around the town plaza to look for someone he knows who could lend him money.<sup>10</sup> While he was walking around the town plaza, he was spotted by PO1 Vidal and SPO1 delos Santos who called him. As he approached the two police officers, SPO1 delos Santos handcuffed him and immediately brought him to the police station. He alleged that SPO1 delos Santos arrested him because he caught the ire of the said police officer. He recalled that on 10 December 2012, he was riding his bicycle at the Magic Plaza in the town of Lingayen and bumped into SPO1 delos Santos. The latter got angry and uttered the words, "*May araw ka rin.*"<sup>11</sup>

<sup>5</sup> TSN, 26 November 2013, pp. 8-9.

<sup>6</sup> Id. at 9-10.

<sup>7</sup> Id. at 11-12.

<sup>8</sup> Id. at 12.

<sup>9</sup> Id.

<sup>10</sup> TSN, 26 August 2014, p. 3.

<sup>11</sup> Id. at 4 and 7.

In a Decision dated 5 May 2016, the RTC found accused-appellant guilty beyond reasonable doubt of Illegal Sale and Illegal Possession of Dangerous Drugs, the dispositive portion of which reads:

**WHEREFORE**, finding the accused **RICHARD BUENAFLOR y AREVAL, GUILTY** beyond reasonable doubt of the crime of violations of Section 5 and 11, Article II of Republic Act 9165 as amended by Republic Act No. 9346, accused is hereby sentenced as follows:

1. In **Criminal Case No. L-9648** to suffer the penalty of life imprisonment without eligibility for parole and to pay a fine of Php 500,000.00;
2. In **Criminal Case No. L-9647** to suffer imprisonment for a period of twelve (12) years and one (1) day as **MINIMUM** to Fifteen (15) years as **MAXIMUM** and to pay a fine of Php 300,000.00; and
3. To pay the costs of these suits.

Accused's period of detention in jail shall be credited to him in the service of his sentence.

**SO ORDERED.**<sup>12</sup>

The RTC held that the prosecution was able to establish all the elements for Illegal Sale and Possession of Dangerous Drugs. It also ruled that the integrity of the items seized, marked, identified, examined, and presented in evidence was preserved and that the chain of custody was never severed, broken and compromised.

Aggrieved, accused-appellant appealed to the CA.

In a Decision dated 10 August 2017, the CA affirmed the RTC ruling. It rejected accused-appellant's defenses of denial and frame-up and found that the prosecution was able to establish all the elements of the crimes of Illegal Sale and Possession of Dangerous Drugs. The CA also ruled that the prosecution successfully established the unbroken chain of custody over the seized drugs. Anent the fact that there were no representatives from the media and the Department of Justice (DOJ) during the conduct of the inventory of the seized items, the CA opined that the failure to submit in evidence the required physical inventory of the seized drugs and the photograph, as well as the absence of a member of media or the DOJ representative pursuant to Section 21, Article II of RA 9165 is not fatal and will not render an accused's arrest illegal or the items seized from him inadmissible. According to the CA, what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

---

<sup>12</sup> CA rollo, pp. 80-81.

Dissatisfied with the CA Decision, accused-appellant filed the instant appeal.

### ISSUE

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellant's conviction for Illegal Sale and Illegal Possession of Dangerous Drugs.

### RULING

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, 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.<sup>13</sup> Therefore, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. This requirement necessarily arises from the unique characteristic of the illegal drugs that renders them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.<sup>14</sup> Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.<sup>15</sup>

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.<sup>16</sup> The aforesaid section provides, among others, that:

- (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; (Emphasis and underscoring supplied)

Meanwhile, Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA 9165 provides:

<sup>13</sup> *People v. Corral*, G.R. No. 233883, 7 January 2019.

<sup>14</sup> See *People v. Yagao*, G.R. No. 216725, 18 February 2019.

<sup>15</sup> *People v. Gamboa*, G.R. No. 233702, 20 June 2018.

<sup>16</sup> *People v. Sumili*, 753 Phil. 342, 348 (2015).

(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[.] (Emphasis and underscoring supplied)

Subsequently, RA 10640,<sup>17</sup> which became effective on August 7, 2014,<sup>18</sup> amended Section 21 of RA 9165 and incorporated the saving clause contained in the IRR, and requires that the conduct of the physical inventory and taking of photograph of the seized items be done 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) an elected official; and (3) a representative of the National Prosecution Service or the media.<sup>19</sup>

<sup>17</sup> 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," approved on 15 July 2014.

<sup>18</sup> As the Court noted in *People v. Gutierrez* (G.R. No. 236304, 5 November 2018), RA 10640 was approved on 15 July 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 23 July 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 7 August 2014.

<sup>19</sup> Section 21 of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is hereby amended to read as follows:

Section. 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:

(a) 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, conduct a 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 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, 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.

As it stands now, the law 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) *prior* to the amendment of RA 9165 by RA 10640, a representative from the media **and** the DOJ, **and** any elected public official; or (b) *after* the amendment of RA 9165 by RA 10640, an elected public official **and** a representative of the National Prosecution Service **or** the media.<sup>20</sup>

Since the alleged crimes charged against accused-appellant in the instant case were committed in 2012, the old provisions of Section 21 of RA 9165 and its IRR are applicable which provide that after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physical inventory and photograph the seized items 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, and **three witnesses**: (1) a representative from the media **and** (2) the DOJ, **and** (3) any elected public official.

After the examination of the records, the Court finds that the apprehending police officers failed to comply with the *three-witness rule*. While the apprehending team conducted the inventory and photography of the seized items in the presence of *barangay kagawads* (elected public officials), the same, however, was done in the absence of the other required witnesses, namely, the representatives from the media and the DOJ. This lapse is evident from the Receipt of Confiscated/Recovered Items<sup>21</sup> and print-out of photographs taken during the marking,<sup>22</sup> which show that only the *barangay kagawads* witnessed the inventory and photography of the seized items. This fact is confirmed by the testimony of PO1 Vidal, to wit:

[Prosecutor Raul Campos (PROS. CAMPOS)]

Q: So when did you make the marking, Mr. Witness?

[PO1 Vidal]

A: At the place of the incident, sir.

Q: And who were present when you made the markings, Mr. Witness?

A: **Police Officer [Marday] delos Santos and the two (2) kagawads, sir.**

Q: How about the accused, was he present at that time?

A: Yes, sir.

Q: Did you make any inventory or issue any confiscation receipt on the confiscated items?

A: Yes, sir.

<sup>20</sup> See *People v. Corral*, supra note 13; see also *People v. Maganon*, G.R. No. 234040, 26 June 2019, citing *People v. Gutierrez*, supra note 18.

<sup>21</sup> Exhibit "D," 12 December 2012; Records (Criminal Case No. L-9647), p. 12.

<sup>22</sup> Exhibit "I," id. at 16.

Q: Are you referring to this receipt of the confiscated or recovered items dated December 12, 2012 already marked as Exhibit "D"?

A: Yes, sir.<sup>23</sup>

x x x x

Q: **You mentioned that there are two (2) barangay kagawads who were present, namely Cuesta and Tigno, did you make them signed the document, Inventory of the Receipt of Confiscated/Recovered Itcms?**

A: **Yes, sir.**

Q: **Are you referring to these signatures of one Edward Cuesta and Pablito Tigno, below the word witnesses?**

A: **Yes, sir.**<sup>24</sup>

x x x x

Q: By the way, where did you prepare the Inventory Report?

A: In our police station, sir.<sup>25</sup>

x x x x

Q: Now, Mr. Witness, at the scene of the incident where you bought the items from the accused, which turned out to be dangerous drug or shabu and then the confiscated items which you seized from the accused which also turned out to be shabu, were there pictures taken on the accused as well as the seized items at the very place where the incident happen?

A: Yes, sir.

Q: Did you see those pictures?

A: Yes, sir.

Q: Who took those pictures?

A: Police Officer [Marday delos] Santos, sir.

Q: Showing to you Exhibits "I", "I-1" and "I-2", are you referring to these pictures?

A: Yes, sir.

Q: On Exhibit "I", who is depicted here?

A: Richard Buenaflor, sir.

Q: How about the person holding the accused?

A: Me, sir.

Q: **How about the two (2) persons at your back and at the back of the accused?**

A: **The two (2) barangay kagawads, sir.**

---

<sup>23</sup> TSN, 26 November 2013, pp. 10-11.

<sup>24</sup> Id. at 11.

<sup>25</sup> Id. at 11-12.

PROS. CAMPOS

These are depicted in Exhibit "A", your Honor.

COURT

Noted.

PROS. CAMPOS

Q: How about on Exhibit "I-1", what is being depicted here?

A: Me, sir.

Q: What are you doing here?

A: Marking the confiscated items, sir.<sup>26</sup> (Emphasis supplied)

While the failure of the apprehending team to strictly comply with the procedure laid down in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, it must be stressed that the prosecution must satisfactorily prove that (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are not properly preserved. There must be proof that these two (2) requirements were met before such non-compliance may be said to fall within the scope of the proviso.<sup>27</sup>

With regard to the justifiable ground for non-compliance, the same must be proven as a fact. The court cannot presume what these grounds are or that they even exist.<sup>28</sup> Accordingly, non-compliance of the witness requirement may be permitted only 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. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. 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*.<sup>29</sup>

In this case, the records are glaringly silent as to the presence of the required witnesses, namely, the representatives from the media and the DOJ. There is no showing that the apprehending officers tried to contact said witnesses nor did the prosecution offer any justifiable reason for the non-compliance with Section 21 of RA 9165. In view of this unjustified

<sup>26</sup> Id. at 14-15.

<sup>27</sup> See *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>28</sup> Id.

<sup>29</sup> See *People v. Corral*, supra note 13.

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 the accused-appellant were compromised.<sup>30</sup> Consequently, accused-appellant's acquittal of the crimes charged is in order.

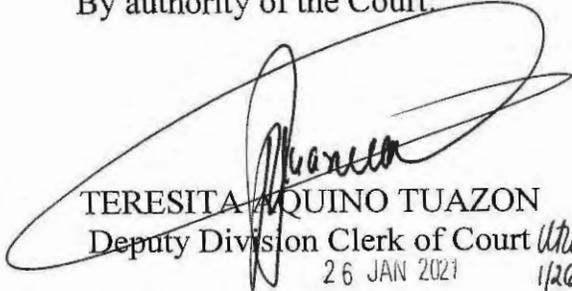
**WHEREFORE**, the appeal is **GRANTED**. The Decision dated 10 August 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08357 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Richard Buenaflor y Areval is **ACQUITTED** of the crimes charged.

The Director of the Bureau of Corrections, Muntinlupa City, is **ORDERED** to: (a) cause the immediate release of accused-appellant Richard Buenaflor y Areval, unless he is being held in custody for any other lawful reason; and (b) inform the Court the action hereon within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

**SO ORDERED.**" (*Inting, J., on official leave; Baltazar-Padilla, J., on leave.*)

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *UTS*  
26 JAN 2021 1/26

<sup>30</sup> Id; see *People v. Dela Victoria*, G.R. No. 233325, 16 April 2018, 861 SCRA 305, citing *People v. Miranda*, G.R. No. 229671, 31 January 2018, 854 SCRA 42.

PUBLIC ATTORNEY'S OFFICE (reg)  
Special & Appealed Cases Service  
Department of Justice  
5<sup>th</sup> Floor, PAO-DOJ Agencies Building  
NIA Road corner East Avenue  
Diliman, 1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

RICHARD A. BUENAFLORES (x)  
Accused-Appellant  
c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

THE DIRECTOR (x)  
Bureau of Corrections  
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 37  
Lingayen, Pangasinan  
(Crim. Case Nos. L-9647 & L-9648)

JUDGMENT DIVISION (x)  
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)  
LIBRARY SERVICES (x)  
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)  
OFFICE OF THE REPORTER (x)  
Supreme Court, Manila

COURT OF APPEALS (x)  
Ma. Orosa Street  
Ermita, 1000 Manila  
CA-G.R. CR-H.C. No. 08357

*Please notify the Court of any change in your address.*  
GR235656. 9/7/2020(135)URES(a) 