



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 248925 – *People of the Philippines v. Joey J. Melencion*

This is an appeal from the Decision¹ dated June 24, 2019 of the Court of Appeals of Cagayan de Oro City (CA) in CA-G.R. CR-HC No. 01659-MIN, which affirmed the Decision² dated January 17, 2017 of the Regional Trial Court (RTC) of Panabo City, Branch 34, in Criminal Case Nos. Crc 456-2013 and Crc 457-2013, convicting Joey J. Melencion (accused-appellant) for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

The Facts

Accused-appellant was charged with illegal sale and possession of *shabu* in two (2) separate Information³ dated November 10, 2013, which reads:

Criminal Case No. Crc 456-2013
For Violation of Sec. 5, Art. II of R.A. 9165

That on or about September 9, 2013, in the City of Panabo, within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, wilfully, unlawfully and knowingly traded, sold and delivered one (1) heat-sealed transparent cellophane containing *shabu* weighing 0.0900 grams, which is identified as dangerous drug to PO1 Edwin Malinao who was then acting as poseur-buyer in a legitimate buy-bust operation

- over – ten (10) pages ...

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¹ Penned by Associate Justice Evalyn M. Arellano-Morales with Associate Justices Loida S. Posadas-Kahulugan and Florencio M. Mamauag, Jr., concurring; CA *rollo*, pp. 94-108.

² Penned by Judge Dax Gonzaga Xenos, *rollo*, pp. 33-43.

³ Id. at 33-34.

after taking and receiving Five Hundred Peso Bill (Php 500) pre-marked with initials "EM" and identified with its Serial No. WM406614 from the latter.

CONTRARY TO LAW

Criminal Case No. Crc 457-2013
For Violation of Sec. 11, Art. II of R.A. 9165

That on or about September 9, 2013 in the City of Panabo, within the jurisdiction of this Honorable Court, the above named accused, without being authorized by law, wilfully, unlawfully and knowingly traded, sold and delivered one (1) heat-sealed transparent cellophane containing "shabu" weighing 0.0900 grams, which is identified as dangerous drugs to PO1 Edwin Malinao who was then acting as poseur buyer in a legitimate buy-bust operation after taking and receiving Five Hundred Peso Bill (Php 500) pre-marked with initials "EM" and identified with its Serial No. WM406614 from the latter.

CONTRARY TO LAW.

When arraigned, accused-appellant pleaded "not guilty" to the two crimes charged against him. Thus, trial ensued.

Version of the Prosecution

The prosecution presented PO1 Edwin Malinao (PO1 Malinao) as its lone witness. In his testimony, he averred that on September 9, 2013, at around 1:10 P.M., Police Inspector Martin Plaza (PINSP Plaza) informed him of a tip given by a confidential asset that a certain "*Orang*," later identified as accused-appellant, was selling dangerous drugs. PINSP Plaza then proceeded to organize a buy-bust team, wherein PO1 Malinao will act as the poseur-buyer.

PO1 Malinao called the confidential asset to verify the information and the latter replied that accused-appellant was already waiting for him at the kiosk of his friend in Purok 15, San Vicente, Panabo City. At around 1:25 p.m., the team left the police station to fetch the confidential asset. They met at Post 1, National Highway, Salvacion, Panabo City, where a briefing was conducted by the buy-bust team with the confidential informant. They then proceeded to the target area. Upon arriving, PO1 Malinao found the accused-appellant sitting alone inside a kiosk. The confidential asset approached accused-appellant and said, "*Rang, score mi bali 500*" (Rang, let me score for ₱500.00). Accused-appellant replied, "*wala na man ko ana*" (I'm not into it anymore). PO1 Malinao interrupted, "*paiskora*

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lang gud ko bisan Php500.00 lang”(let me score for even ₱500.00 only). The informant told the accused-appellant “*papalita*” (let him buy). Thereafter, PO1 Malinao handed the ₱500.00 marked-money to the accused-appellant who then took out a transparent sachet containing a white crystalline substance from the right pocket of his short pants and gave it to PO1 Malinao.

PO1 Malinao introduced himself as a police officer and informed the accused-appellant that he is under arrest. The accused-appellant attempted to escape. However, PO1 Malinao caught him with the help of his colleagues PINSP Plaza and SPO1 Reynante Sayre (SPO1 Sayre). When PO1 Malinao frisked the accused for security reasons, he retrieved two small sachets containing white crystalline substances from the right pocket of accused-appellant. When asked for his identity, the accused-appellant responded by saying that his name is Joey J. Melencion, unemployed and a resident of Purok 15, San Vicente, Panabo City. An inventory of the confiscated items was then conducted at the area where the buy-bust operation took place, in the presence of accused-appellant, media representative Jun Gumban, Department of Justice (DOJ) representative Ian Dionola, and Barangay Captain Roy Vicilla. After the inventory, PO1 Malinao placed the seized items into a sealed transparent cellophane, and brought them together with the accused-appellant to the police station for recording. He had custody of the items from the crime scene to the police station. Investigator SPO1 Johnny Calamba (SPO1 Calamba) prepared the Chain of Custody form, as well as the requests for urine test and laboratory examination. Thereafter, SPO1 Johnny Calamba delivered the seized items to PO1 Jeffrey Cambalon (PO1 Cambalon) at the crime laboratory – Tagum City at around 7:25 p.m. PO1 Cambalon weighed the items in the presence of accused-appellant, and wrote the results thereof in the Chain of Custody form along with his signature. As the items were found positive of methamphetamine hydrochloride, they filed a case against the accused for selling and possession of *shabu*.⁴

Version of the Defense

Accused-appellant denied the allegations against him and claimed that what actually transpired was a frame-up. He testified that on September 9, 2013 at around 1:40 p.m., he was watching a television at the house of his aunt Aida Marcos at Purok 15, San Vicente, Panabo City, when two police officers apprehended him and asked him where he kept his *shabu*, to which he answered that he did not have any. The police officers, one of them he came to know as

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⁴ CA rollo, pp. 96-98.

PO1 Malinao, frisked him but was not able to find any illegal item except for coins in his pocket. Accused-appellant was then taken to a hut, where he was frisked again but still to no avail. PO1 Malinao went outside of the gate and returned after five (5) minutes. Upon returning, PO1 Malinao inserted his hand into the pocket of accused-appellant and finally pulled out three (3) sachets of *shabu*. During cross-examination, accused-appellant claimed that the arresting officers were both armed and PO1 Malinao's companion was pointing a gun at him while he was being arrested.⁵

RTC Ruling

In a Decision dated January 17, 2017, the RTC found PO1 Malinao's testimony as credible and sufficient to establish accused-appellant's guilt beyond reasonable doubt for violating Sections 5 and 11, Article II of R.A. No. 9165. Moreover, the RTC ruled that there were sufficient evidence that the intent to sell the subject drugs originated from accused-appellant, contrary to his claim that he was framed-up. The dispositive portion of the Decision, reads:

WHEREFORE, judgment is hereby rendered as follows:

Finding accused *Joey J. Melencion* guilty beyond reasonable doubt of violating Section 5 of [R.A.] No. 9165 in Criminal Case No. Crc 456-2013. Accordingly, he is sentenced to suffer in this particular case the penalty of life imprisonment and fine in the amount of Php 500,000.00;

Finding accused *Joey J. Melencion* guilty beyond reasonable doubt of violating Section 11 of [R.A.] No. 9165 in Criminal Case No. Crc 457-2013. Accordingly, he is sentenced to suffer in this particular case the penalty of imprisonment of twelve years and one day as minimum period to thirteen (13) years as maximum period and fine in the amount of Php 300,000.00.

In the successive service of his two sentences, accused is entitled to the full time he has undergone preventive imprisonment, if any, pursuant to Article 29 of the Revised Penal Code. Accused shall serve his sentences at Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte.

The subject three (3) sachets of *shabu* referred to in the indictments are hereby confiscated and forfeited in favor of the government through the PDEA subject to destruction by the latter in accordance with existing laws and regulations. In

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⁵ Id. at 98-99.

connection thereto, PDEA Regional Office XI, Davao City is directed to assume custody of the subject drugs for its proper disposition within ten (10) days from notice.

SO ORDERED.⁶

CA- Cagayan de Oro Ruling

In its Decision dated June 24, 2019, the CA affirmed the decision of the RTC for the reason that: a) it is incumbent upon the accused-appellant to present clear and convincing reasons to persuade them to reverse the RTC's determination of his guilt since the prosecution was able to establish his guilt beyond reasonable doubt by proving all the elements of Illegal Sale and Illegal Possession of Dangerous Drugs;⁷ and b) what Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 merely requires is "substantial" and not "perfect adherence," as long as the integrity and evidentiary value of the seized items are preserved.⁸ The penalty imposed by the RTC was likewise affirmed by the CA. The CA disposed, thus:

WHEREFORE, for lack of merit, the instant Appeal is **DENIED**. Accordingly, the January 17, 2017 Decision of the Regional Trial Court (RTC), 11th Judicial Region, Branch 34, Panabo City, in Criminal Cases Nos. Crc 456-2013 and Crc 457-2013, is **AFFIRMED**.

SO ORDERED.⁹

The issue raised in the present appeal is whether the prosecution has satisfactorily proven the guilt of the accused-appellant beyond reasonable doubt despite the latter's defense of frame-up.

The Court's Ruling

The appeal is granted.

The very purpose of the Philippine Bill of Rights is to protect ordinary citizens against the abuses of the government, it is also for this very reason that the Bill of Rights cannot be easily amended or revised according to the whims of the legislative body. The right of the accused to be presumed innocent until proven guilty is one of the most important and basic constitutional rights given to an accused that

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⁶ Id. at 43.

⁷ Id. at 102.

⁸ Id. at 106.

⁹ Id. at 108.

needs to be protected so much that our constitution intended it as a non-waivable right. With this, it has always been the prosecution that has the burden of proof in establishing the accused's guilt beyond reasonable doubt by ascertaining that every element of the crime charged against the accused is present.¹⁰

Following the presumption of innocence, we do not agree with the decision of the CA when it ruled for the conviction of the accused-appellant on the ground that "*he failed to present clear and convincing reasons to convince them to reverse the ruling of the RTC since the prosecution has allegedly proven the guilt of the accused beyond reasonable doubt.*" Even on appeal, it is a basic principle in the Rules of Court that to secure conviction in a criminal case, it is the prosecution that has the burden of proof to establish guilt beyond reasonable doubt on the part of the accused for the crime charged; a guilty verdict must rely on the strength of the prosecution's evidence, not on the weakness of the defense.

To be convicted of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution bears the burden to prove the following elements: 1) proof that the transaction or sale took place; and 2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.¹¹

Although the lone testimony of PO1 Malinao may be sufficient to prove the first element, the case is different when proving the second element of the crime. Since the confiscated drug is the *corpus delicti* of the offense, the prosecution must be able to prove that the identity and integrity of the evidentiary value of the seized items are properly preserved. To establish the identity of the dangerous drug, the prosecution must be able to account for each link of the chain of custody from the time the drugs are seized up to the time they are presented in court as evidence in accordance with Section 21 of RA 9165.¹²

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

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¹⁰ See *People v. Malana*, G.R. No. 233747, December 5, 2018.

¹¹ *People v. Merando*, G.R. No. 232620, August 5, 2019.

¹² *People v. Cuevas*, G.R. No. 238906, November 5, 2018.

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 and 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 seizure of and custody over said items;**

x x x x (Emphasis supplied)

In essence, Section 21, Article II of R.A. No. 9165 requires that: 1) the seized items must be inventoried and photographed immediately after seizure or confiscation; 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, or a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination.

In *People vs. Tanes*, the Court explained that:

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of R.A. 9165 allow 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. In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as mentioned, must be immediately done at the place of seizure and confiscation – a

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requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.¹³

In this case, the accused-appellant correctly argued that there were several lapses in the buy-bust operation: 1) marking, inventory and photographing were not immediately conducted; 2) the required witnesses were not present during the apprehension of the accused and the seizure of the illegal drug but were present only during the inventory taking; and 3) there is no proof that custodial safeguards were undertaken in the crime laboratory proving that the integrity and evidentiary value of the drugs were preserved.

According to *People v. Tomawis*:

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.¹⁴

Based on the testimony of PO1 Malinao, he said that he waited for the arrival of the civilian witnesses before he conducted the marking and inventory taking. It was unclear from his testimony how long they waited and on how they preserved the integrity of the three (3) sachets of shabu of two (2) different cases.¹⁵ This should not have been made the basis for the CA to require the accused-appellant to produce 'clear and convincing reason' to reverse the RTC decision as it is the State, and no other party, which has the responsibility to explain the lapses in the procedures taken to preserve the chain of custody of the dangerous drugs.¹⁶

Also, in *People vs. Escaran*,¹⁷ it was emphasized that:

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¹³ G.R. No. 240596, April 3, 2019.

¹⁴ G.R. No. 228890, April 18, 2018.

¹⁵ *Rollo*, pp. 27-28.

¹⁶ *People v. Santos*, 708 Phil. 121, 132 (2013).

¹⁷ G.R. No. 212170, June 19, 2019

To establish an unbroken chain of custody, it is necessary that every person who touched the seized item describe how and from whom he or she received it; where and what happened to it while in the witness' possession; its condition when received and at the time it was delivered to the next line in the chain.

In the case at bench, aside from the lone testimony of PO1 Malinao, there is no other evidence proving the presence of the representatives from the media and the DOJ, and the elected public official during the inventory taking since their testimony were neither taken nor were they presented as witnesses in court. There was also no showing that said witnesses signed on the copies of the inventory nor were there photographs of the seized items attached. And while the confiscated drugs were in the crime laboratory, no one testified on how they were able to preserve the identity and integrity of the items seized since PO1 Cambalon of the PNP Crime Laboratory did not testify after receiving the items. Forensic chemist Officer Virginia Gucor was not also presented to testify from whom she received the specimens and to whom she turned over the said items after her examination.

Although there are some instances wherein departure from the aforesaid mandatory procedures is permissible, Section 21 of the Implementing Rules and Regulations of R.A. No. 9165 provides 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." However, for this provision to be effective, the prosecution must first recognize any lapse on the part of the police officers and justify the same. In the instant case, the prosecution did not only fail to justify on why the marking and inventory taking was not immediately conducted after seizure of the items but also failed to explain the absence of the mandatory witnesses during the seizure of the dangerous drugs and during the arrest.¹⁸ Thus the RTC and the CA erred in ruling that the integrity and the evidentiary value of the seized items were properly preserved by the apprehending officer. Accordingly, the seizure of the said items must be rendered void and invalid and can no longer be used as evidence against the accused-appellant.

Hence, the accused-appellant must be acquitted and the crimes charged against him must be dismissed on the ground of reasonable doubt.

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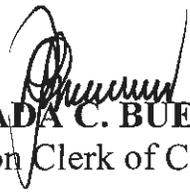
¹⁸ See *People v. Luna*, G.R. No. 219164, March 21, 2018.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated June 24, 2019 of the Court of Appeals of Cagayan de Oro City in CA-G.R. CR-HC No. 01659-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Joey J. Melencion is **ACQUITTED** of the crimes charged on the ground of 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 to the Director of the 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 Decision the action he has taken.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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