



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 19, 2021** which reads as follows:*

“G.R. No. 234941 (People of the Philippines, Plaintiff-Appellee, v. Roberto Tanong y Lagmay, Accused-Appellant). – On appeal is the Decision¹ promulgated on 18 August 2016 and the Resolution² promulgated on 13 March 2017 by the Court of Appeals (CA) in CA G.R. CR-HC No. 06965, which affirmed the Decision³ dated 29 April 2014 and the Order⁴ dated 24 June 2014 of Branch 33, Regional Trial Court (RTC) of Bauang, La Union in Criminal Case Nos. (Crim. Case) 4244-BG and 4245-BG.

The RTC found accused-appellant Roberto Tanong y Lagmay (appellant) guilty in Crim. Case 4244-BG for Violation of Section 5, Article II of Republic Act No. (RA) 9165 and in Crim. Case 4245-BG for Violation of Section 11, Article II of RA 9165. Appellant was sentenced to suffer the penalty of life imprisonment and to pay a fine of Php500,000 in Crim. Case 4244-BG. In Crim. Case 4245-BG, appellant was sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum and to pay the costs.

Antecedents

Two (2) Informations were filed against appellant as follows:

- over – ten (10) pages ...

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¹ *Rollo*, pp. 2-14; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizarro, and Samuel H. Gaerlan (now a Member of this Court) of the Thirteenth Division Court of Appeals, Manila.

² *CA rollo*, pp. 163-164; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a Member of this court), of the Former Thirteenth Division Court of Appeals, Manila.

³ *Id.* at 14-21; penned by RTC Judge Rose Mary R. Molina-Alim.

⁴ *Id.* at 67-69.

Criminal Case No. 4244-BG

That on the 17th day of May, 2012 or thereabout, in the municipality of Naguilian, province of La Union, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, for and in consideration of the amount of one thousand pesos (Php 1,000.00), willfully, unlawfully, sell, convey and deliver and give away to a PDEA agent one (1) sachet containing methamphetamine hydrochloride or "Shabu," a dangerous drug weighing .0201 gram.

CONTRARY TO LAW.⁵

Criminal Case No. 4245-BG

That on the 17th day of May, 2012 or thereabout, in the Municipality of Naguilian, province of La Union, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, has in his possession one (1) sachet containing methamphetamine hydrochloride or "shabu," a dangerous drug weighing .0025 gram.

CONTRARY TO LAW.⁶

Appellant entered a plea of "not guilty" to both charges during arraignment. After termination of pre-trial, trial on the merits ensued.

Version of the Prosecution

The witnesses for the prosecution were from the Philippine Drug Enforcement Agency (PDEA): Ben Camilo Jasmin, Jr. (Jasmin) and Ricky Ramos (Ramos), Intelligence Officers; Marlon Apolog (Apolog), Agent; and Lei Yen Valdez-Ganat (Valdez-Ganat), Forensic Chemist.

At around 3:15 p.m. of 17 May 2012, a confidential informant (CI) reported to the PDEA Regional Office 1 that appellant is a seller of illegal drugs in Naguilian. Apolog verified the report and found appellant's name in the list of drug personalities. He then told the CI to contact appellant and introduce him as an interested buyer. Ramos conducted a briefing for the buy-bust operation: Apolog was designated as poseur buyer while Jasmin was designated as arresting officer. Two (2) pieces of Php500-peso bills were marked to be used for the entrapment.

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⁵ *Id.* at 13.

⁶ *Id.* at 3.

The witnesses for the prosecution further established that at around 9:20 p.m. of 17 May 2012, the buy-bust operation proceeded as planned. Apolog and the CI went to appellant's house with Jasmin and Ramos discreetly following them. Appellant met Apolog and the CI at the gate, where the latter introduced Apolog as buyer. After appellant asked for payment, Apolog received a small elongated transparent heat-sealed plastic sachet containing white crystalline substance believed to be *shabu*. Appellant then invited Apolog and the CI to his house to taste the remaining illegal drugs under his possession. As appellant entered the house, Apolog performed the pre-arranged signal. Jasmin and Ramos then rushed to the house, introduced themselves as PDEA agents, informed appellant of his constitutional rights, and effected appellant's arrest.

Apolog frisked appellant which yielded the two (2) marked Php500 bills, another plastic sachet containing white crystalline substance also suspected to be *shabu*, a Samsung mobile phone, aluminum foil, and a lighter. Apolog put markings and conducted an inventory of the seized items at the place of arrest in the presence of appellant, two *barangay* officials, and appellant's son. They proceeded to the police station for blotter purposes. Upon their arrival at the PDEA regional office in San Fernando, La Union, Apolog prepared the request for the conduct of laboratory examination and personally submitted it along with the confiscated items. The tests on the sachets yielded positive results for methamphetamine hydrochloride while the tests on the two (2) elongated aluminum foils gave a negative result.

Version of the Defense

Appellant executed a judicial affidavit in connection with his defense. He declared that in the evening of 17 May 2012, he was eating alone in his house when his neighbor Joey Argueza (Argueza) invited him for a drinking spree. Appellant allowed Argueza to enter his house while he went inside his bedroom. He was surprised, however, when he heard the sound of his bamboo gate opening. Appellant went out of his bedroom to check what was happening and saw four (4) armed men in civilian clothes pointing their guns at him. Appellant was handcuffed and made to lie on the floor while the armed men searched through the drawers of his cabinet. He believed that the armed men were robbers looking for gold because he was a goldsmith.

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The armed men brought appellant to sit in the living room. Shortly thereafter, the armed men brought out a foil, a lighter, and two pieces of Php500 bills, and laid them on the table. The armed men also brought out two sachets and added them to the other items. It was only then that appellant realized he was being set up. The armed men then made appellant wear a hat, smoke a cigarette, and sit on a rocking chair with his left foot on top of the chair. They took appellant's picture in that pose. The *barangay* officials present at the inventory arrived at appellant's house only after the incident. Appellant was brought to the police station where the custodial investigation continued in the absence of a lawyer and without any appraisal of his constitutional rights.

Ruling of the RTC

The RTC found appellant guilty of violating both Sections 5 and 11, Article II of RA 9165 in Crim. Case Nos. 4244-BG and 4245-BG and held the buy-bust operation as valid. The testimonies of the PDEA agents were aptly supported by object and documentary evidence. The RTC also ruled that there was no broken chain in the custody of the seized items and viewed with disfavor appellant's defenses of denial and frame-up.

The dispositive portion of the RTC's Decision reads:

WHEREFORE, in view of the foregoing considerations, accused **ROBERTO TANONG y LAGMAY is found guilty** in Criminal Case No. 4244-BG of the crime of Illegal Sale of Dangerous Drugs and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

In Criminal Case No. 4245-BG, also, accused is found **GUILTY OF** the crime of Illegal Possession of Dangerous Drugs and he is hereby sentenced to suffer the indeterminate penalty of **six (6) months of arresto mayor, as minimum to four (4) years and two (2) months of prision correccional, as maximum, and to pay the costs.**

The shabu weighing a total of 0.0226 gram (.0201 + .0025), confiscated from the accused is forfeited in favor of the Government and after the finality of this decision shall be destroyed in accordance with law.

In the service of his sentence, accused shall be credited with his preventive imprisonment in accordance with the provisions of Article 29 of the Revised Penal Code, as amended.

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Let a copy of this decision be furnished the Director of the PDEA, La Union for his information and guidance.

SO ORDERED.⁷ (Emphasis and underscoring in the original)

Appellant asked for a reconsideration but the same was denied by the RTC.

Ruling of the CA

On appeal, the sole issue the CA considered was whether or not appellant's guilt for the crimes of illegal sale and illegal possession of *shabu* was proven beyond reasonable doubt.

The CA found no error in the RTC's assessment and appreciation of the credibility of witnesses and the evidence presented by both parties. Moreover, the CA upheld the buy-bust operation as a valid method of apprehending criminals. It did not find merit in appellant's claim that a warrant was necessary to validly arrest him. The prosecution was able to establish that the sale of drugs was consummated and the same was brought and identified in court. The chain of custody was followed. In contrast, appellant's defenses of denial and frame-up was found unavailing as he was caught *in flagrante delicto* in a legitimate buy-bust operation.

The dispositive portion of the CA's Decision read:

WHEREFORE, the assailed Decision and Order dated April 29, 2014 and June 24, 2014, respectively, of the RTC, Branch 33, Bauang, La Union in Criminal Case Nos. 4244-BG and 4245-BG finding accused Roberto Tanong y Lagmay guilty of violation of Sections 5 and 11 of R.A. 9165 are hereby **AFFIRMED** *in toto*.

SO ORDERED.⁸

The CA denied appellant's motion for reconsideration in its Resolution⁹ dated 13 March 2017. Appellant's Notice of Appeal,¹⁰ filed on 21 June 2017, was given due course in the CA's Resolution¹¹ dated 04 August 2017.

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⁷ *Id.* at 21.

⁸ *Rollo*, p. 14.

⁹ *CA rollo*, pp. 163-164.

¹⁰ *Rollo*, pp. 15-17.

¹¹ *Id.* at 18.

Issue

Appellant raises only one (1) issue before this Court: whether or not he is guilty of the offenses charged.¹² He raises arguments in his appellant's brief which go into the appreciation of facts¹³, which are quite understandable given that he adopted for this Court the brief filed before the CA. Appellant also argues against the ruling that the identity of the seized items was duly preserved and established by the prosecution.¹⁴

Ruling of the Court

The appeal is meritorious. We reverse the rulings of the RTC and of the CA. Both the Constitution¹⁵ and the Rules of Court¹⁶ provide that the accused enjoys the presumption of innocence until proven guilty. The prosecution bears the burden to overcome such presumption. The accused deserves an acquittal in case of the prosecution's failure to discharge this burden. On the other hand, the accused receives a guilty verdict if the prosecution establishes proof beyond reasonable doubt. The prosecution must rely on the strength of its own evidence and not on the weakness of the evidence of the defense.¹⁷

A buy-bust operation as a form of entrapment has been accepted as a valid means of arresting violators of the Dangerous Drugs Law. However, the courts have the duty to determine whether proper procedures were undertaken in effecting the buy-bust operation. The presumption of regularity in the performance of official duty by law enforcement agents should not prevail over the presumption of innocence and the constitutionally protected rights of the individual.¹⁸

A conviction for illegal sale of dangerous drugs as defined and penalized by Section 5, Article II of RA 9165 demands that the following elements be established: (1) identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery

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¹² CA rollo, p. 38.

¹³ *Id.* at 38-45. These include the finding that appellant was caught in *flagrante delicto* during a buy-bust operation and the absurdity of the PDEA version of the buy-bust operation.

¹⁴ *Id.* at 45-55.

¹⁵ Section 14(2), Article III, 1987 Constitution.

¹⁶ Section 2, Rule 133, Rules of Court.

¹⁷ *People v. Bagano*, G.R. No. 77777, 05 February 1990, 260 Phil. 797 (1990) [Per J. Bidin].

¹⁸ *People v. Ong*, G.R. No. 137348, 21 June 2004, 476 Phil. 553 (2004) [Per J. Puno].

of the thing sold and the payment therefor.¹⁹ On the other hand, for illegal possession of dangerous drugs as defined and penalized by Section 11, Article II of RA 9165, the prosecution must establish the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.²⁰

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. 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. 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, a representative from the media AND the DOJ, and any elected public official; 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. 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

The prosecution's narration of events shows there were defects in the chain of custody. The RTC narrated:

x x x [Jasmin] denied no buy-bust operation was conducted as claimed by the accused because what truly happened is detailed in their joint affidavit. There was no private witness to the operation except them and their confidential informant. He admitted that at the time of the inventory conducted in the house of the accused, **there was no DOJ representative nor a representative of the media. The representative of the media signed the certificate of inventory at the police at the station [sic] and the barangay officers were no longer present.**²² (Emphasis supplied)

The CA corroborated the RTC's account of the events:

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¹⁹ *People v. Dumlao*, G.R. No. 181599, 20 August 2008, 584 Phil. 732 (2008) [Per J. Ynares-Santiago].

²⁰ *People v. Tira*, G.R. No. 139615, 28 May 2004, 474 Phil. 152 (2004) [Per J. Callejo, Sr.].

²¹ *People v. Esguerra*, G.R. No. 243986, 22 January 2020 [Per J. Perlas-Bernabe].

²² CA rollo, p. 15.

Thereafter, Agent Apolog marked and inventoried the seized pieces of evidence at the place of arrest in the presence of the accused-appellant, two (2) barangay officials, and accused-appellant's son. After the taking of photographs, they proceeded to the police station for blotter purposes.²³ (Emphasis supplied)

Further, the RTC even noted that the prosecution admitted they conducted previous buy-bust operations against appellant that failed. The RTC's decision stated:

x x x They had conducted two previous buy-bust operations against the accused, but [Jasmin] could no longer remember the dates. They conducted the third buy-bust operation against accused on May 17, 2012, which turned out positive. x x x

Further he corrected his earlier testimony that there were two (2) failed buy-bust operations conducted against the accused, but there were actually three (3) failed operations. Only the buy-bust on May 17, 2012 turned out positive.²⁴

A buy-bust operation is a planned activity, where the buy-bust team has enough time to bring with them the mandatory witnesses. Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused.²⁵ Despite the expectation of a larger amount of seized drugs, and the narrative that appellant invited Apolog and the CI to have a "free taste," the PDEA was able to seize only a total of 0.0226 gram of *shabu* from appellant. Considering the previous failed operations, the PDEA is expected to have sufficient preparation in terms of the presence of mandatory witnesses.

While the marking and inventory with the immediacy required by law appears to have been complied with, the presence of all the three (3) required mandatory witnesses during the planned buy-bust operation and at the time of seizure and confiscation was sorely lacking. The *barangay* officials were present only during inventory while the media representative appeared only at the police station to sign the certificate of inventory. Moreover, the absence of a representative from the Department of Justice was glaring.

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²³ Rollo, p. 4.

²⁴ CA rollo, p. 15.

²⁵ *People v. Holgado*, G.R. No. 207992, 11 August 2014 [Per J. Leonen].

The prosecution also did not provide any justification for this shortcoming. We have previously provided acceptable justifications from deviations from such procedure:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf**; (3) **the elected official themselves were involved in the punishable acts sought to be apprehended**; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention**; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**²⁶

It must be emphasized that adherence to the chain of custody rule should be strictly enforced considering the quantity of the *shabu* involved in this case is merely 0.0226 gram. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.²⁷ Thus, for failure to comply with the requirements of the law, and there being no justifiable reason in this case for non-compliance with the chain of custody rule, We acquit appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

WHEREFORE, premises considered, the appeal is hereby **GRANTED**. The Decision dated 18 August 2016 and Resolution dated 13 March 2017 of the Court of Appeals in CA G.R. CR-HC No. 06965 are **REVERSED and SET ASIDE**. Appellant Roberto Tanong y Lagmay is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is confined for another lawful cause. Let entry of final judgment be issued immediately.

The Superintendent of the New Bilibid Prison in Muntinlupa City should be furnished copy of this Resolution for its immediate

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²⁶ *People v. Sipin*, G.R. No. 224290, 11 June 2018 [Per J. (now CJ) Peralta].

²⁷ *People v. Padua y Alvarez*, G.R. No. 239781 (Resolution), 05 February 2020 [Per CJ Peralta].

implementation. Said Superintendent is **ORDERED** to report to this Court within five (5) days from receipt of Resolution of the action that they have taken.

SO ORDERED.” Gaerlan, J., took no part; Delos Santos, J., designated Additional Member per Raffle dated December 14, 2020.

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *mst*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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The Solicitor General
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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 06965)

The Hon. Presiding Judge
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