



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **20 January 2021** which reads as follows:*

“G.R. No. 239905 (*People of the Philippines vs. Ardie Nocum y Manalo*). –We acquit.

In the prosecution of Illegal Sale of Dangerous Drugs, the following elements must be proved: (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. On the other hand, in Illegal Possession of Dangerous Drugs, it must be shown that: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. The evidence of the *corpus delicti* must be established beyond reasonable doubt.¹

The Informations here alleged that the crimes charged were committed on **November 15, 2014**. The governing law, therefore, is Republic Act No. 10640 (RA 10640),² amending Republic Act No. 9165 (RA 9165). Section 1 of RA 10640, amending Section 21, Article II of RA 9165 outlines the mandatory procedural safeguards in the preservation of the *corpus delicti*, viz.:

¹ See *People v. Dela Cruz*, G.R. No. 229053, July 17, 2019.

² 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." *Amendment to R.A. No. 9165 (Anti-Drug Campaign of the Government)*, Republic Act No. 10640, July 15, 2014).

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read 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 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.**

x x x x

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory; *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification. (Emphases supplied)

These provisions embody the chain of custody rule. They are the duly recorded authorized movements and custody of the seized drugs at each stage from the time of seizure or confiscation to receipt in the forensic laboratory, to safekeeping and their presentation in court for identification and destruction. This record includes the identity and signature of the person who held temporary custody of the seized items, the date and time when the

transfer of custody was made in the course of the items' safekeeping and use in court as evidence, and their final disposition.³

*People v. Lacdan*⁴ reiterated that for a successful prosecution of a case involving illegal drugs, the following four (4) links in the chain of custody must be proved: **first**, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer; **second**, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer; **third**, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and **fourth**, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

We focus on the **first** and **fourth** links.

The **first link** refers to the marking, inventory, and photograph of the seized items.

As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photograph of the seized items be conducted immediately after seizure and confiscation of the same. RA 9165 further requires that said inventory and photograph 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 Department of Justice (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."⁵

Here, the prosecution witnesses admitted that only appellant Ardie Nocum y Manalo (appellant) and media representative Jimmy Mendoza were present to witness the inventory and photograph of the seized items. **The prosecution did not offer any explanation for this omission.** It merely stated that no elected official and representative from the DOJ were available at that time. Both the trial court and the Court of Appeals even noted the absence of these insulating witnesses. The Court held in *People v. Umipang*,⁶ that the prosecution must have shown that earnest efforts were employed in contacting the representatives enumerated under the law; a sheer statement that said representatives were unavailable without so much as an explanation

³ *Largo v. People*, G.R. No. 201293, June 19, 2019.

⁴ G.R. No. 232161, August 14, 2019.

⁵ *People v. Gutierrez*, G.R. No. 236304, November 5, 2018 (citations omitted).

⁶ 686 Phil. 1024, 1053 (2012).

on whether serious attempts were made to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.

In *People v. Garcia*,⁷ accused Garcia was acquitted for Illegal Sale of Dangerous Drugs because there was no representative from the DOJ to witness the physical inventory and photograph of the seized items.

Similarly, in *People v. Macud*,⁸ the buy-bust team failed to secure the presence of the required witnesses to the conduct of inventory of the seized items. For this, the Court, too, rendered a verdict of acquittal.

Indeed, the presence of the insulating witnesses during inventory and photograph of the confiscated illegal drugs is vital. In the absence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items. Non-compliance with the requirement is, therefore, fatal to the prosecution's case.⁹ Thus, the *first link* was breached.

The *fourth link* refers to the turnover and submission of the dangerous drug from the forensic chemist to the court.¹⁰ In drug related cases, it is of paramount necessity that the forensic chemist testifies as to details pertinent to the handling and analysis of the dangerous drug submitted for examination *i.e.* when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in, as the case may be. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimens.¹¹

Here, both the prosecution and defense stipulated and dispensed with forensic chemist Police Senior Inspector Bernardo Roque's (PSI Roque) testimony during the pre-trial on April 22, 2015.¹² The stipulations, nonetheless, only focused on the expertise and qualifications of PSI Roque as forensic chemist, the police officers' delivery of the specimens to the Quezon City Police District Police Station 10 - Crime Laboratory, the crime laboratory's receipt of the request for laboratory examination and the specimens to be tested, the existence of Final Chemistry Report No. D-542-14, and that the specimens brought for examination were the same ones tested by PSI Roque.¹³ **Notably, none of these stipulations even mentioned the condition of the specimens when PSI Roque received them and how he**

⁷ G.R. No. 230983, September 4, 2019.

⁸ 822 Phil. 1016 (2017).

⁹ *People v. Caray*, G.R. No. 245391, September 11, 2019.

¹⁰ *People v. Hementiza*, 807 Phil. 1017, 1037 (2017).

¹¹ Board Regulation No. 1, Series of 2002: Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

¹² *CA rollo*, p. 40.

¹³ *Id.*

handled the same before, during, and after the chemical examination until the same reached the court.

In *People v. Dahil*,¹⁴ the Court acquitted the accused therein in view of the forensic chemist's failure to testify on how she handled the dangerous drug submitted to her for laboratory examination, viz.:

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general stipulation of her testimony. Although several subpoena were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.

As shown, the *fourth link* here had also been breached.

Surely, these lapses in the chain of custody cast serious doubts on the identity and the integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly deprived appellant of his right to liberty. *Mallillin v. People*¹⁵ ordained:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

Verily, the integrity and evidentiary value of the *corpus delicti* here had not been preserved. The inventory and photograph of the seized illegal drugs were not conducted in the presence of the required witnesses under RA 9165, as amended by RA 10640. Too, Forensic Chemist PSI Roque did not testify how he handled the drug specimens before, during, and after the chemical examination before they were presented in court. For these reasons, there is reasonable doubt on whether the illegal drugs allegedly seized from appellant

¹⁴ 750 Phil. 212, 237-238 (2015).

¹⁵ 576 Phil. 576, 587 (2008).

were the same drugs presented in court. Hence, appellant is entitled to a verdict of acquittal as a matter of right.¹⁶

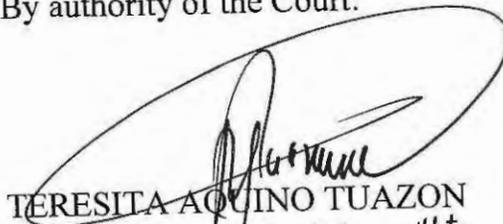
WHEREFORE, the appeal is **GRANTED**. The Decision dated December 19, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08719 is **REVERSED** and **SET ASIDE**.

Appellant **ARDIE NOCUM y MANALO** is **ACQUITTED** in Criminal Case Nos. R-QZN-14-11596-CR and R-QZN-14-11597-CR for illegal sale and possession of dangerous drugs under Sections 5 and 11, Article II of Republic Act No. 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to cause the immediate release of **Ardie Nocum y Manalo** from custody unless he is being held for some other lawful cause, and to submit his report on the action taken within five (5) days from notice.

Let an entry of final judgment be issued immediately.

SO ORDERED." (Rosario, *J.*, designated additional member per Special Order No. 2797 dated November 5, 2020; on official leave)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
05 FEB 2021 als

¹⁶ *People v. Año*, 828 Phil. 439 (2018).

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THE SUPERINTENDENT (x)
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HON. PRESIDING JUDGE (reg)
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(Crim. Cases No. R-QZN-14-11596-97-CR)

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