



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. 240752 (People of the Philippines, Plaintiff-Appellee, v. Apolonio Colabres y Diaz, Accused-Appellant). – This is an appeal seeking to reverse and set aside the Decision¹ dated 29 January 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 09022, affirming the Decision² dated 02 February 2017 of Branch 227, Regional Trial Court (RTC) of Quezon City, in Criminal Case No. Q-10-165270.

Antecedents

Apolonio Colabres (appellant) was indicted for violation of Section 5,³ Article II of Republic Act No. (RA) 9165 in an Information, the accusatory portion of which states —

That on or about the 24th day of July 2010, in Quezon City, Philippines, the above-named accused, without lawful authority, did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport or act as broker in the said transaction, one (1) heat-sealed transparent plastic sachet containing zero point zero three (0.03) gram of white crystalline substance, containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁴

- over – ten (10) pages ...

163-B

¹ *Rollo*, pp. 02-16; penned by CA Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Ma. Luisa C. Quijano-Padilla of the Sixth Division, Court of Appeals, Manila.

² *CA rollo*, pp. 51-58; penned by RTC Presiding Judge Elvira D.C. Panganiban.

³ Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

⁴ *Rollo*, p. 03.

Upon arraignment, appellant entered a plea of “not guilty” to the charge.⁵ After pre-trial was terminated, trial on the merits ensued.

Version of the Prosecution

On 23 July 2010, at about 10:00 o'clock p.m., a confidential informant (CI) informed the District Anti-Illegal Drugs–Special Operation Task Group (DAID-SOTG) of appellant's alleged involvement in illegal drug activities in *Barangay* University of the Philippines (UP) Bliss. As a result, a buy-bust team was organized, with PO2 Joel Almazan (PO2 Almazan) designated as poseur-buyer, PO3 P. Cuison Jr. and PO3 R. Valdez as back-ups, and PO3 Wilfredo Corona (PO3 Corona) as the arresting officer. At around 2:00 o'clock a.m. of 24 July 2010, the CI was able to get in touch with appellant and they agreed to meet at 8:00 o'clock a.m. of that day in the alley in front of appellant's house.⁶

At 6:30 o'clock a.m., the same day, the entire buy-bust team proceeded to the target area. Appellant came out of his house when the CI and PO2 Almazan knocked on his door. The CI then introduced PO2 Almazan as the person who wanted to buy Php300.00 worth of *shabu*. After being shown the payment, appellant went inside his house. When he came back, he handed one (1) plastic sachet containing white crystalline substance to PO2 Almazan, who, in turn, gave the marked money to appellant and made the pre-arranged signal. PO2 Almazan then grabbed hold of appellant and announced that he was a police officer. Meanwhile, PO3 Corona retrieved the marked money from the possession of appellant.⁷

PO2 Almazan marked the seized specimen at the place of arrest before taking appellant to the police station where an inventory of the seized items were made and photographs were taken of the same. An invitation letter was sent to the *Barangay* Captain of *Barangay* UP Bliss to witness the conduct of inventory. However, the *Barangay* Captain and his officials refused to accept the invitation letter.⁸

Thereafter, PO3 Corona took the seized specimen to the crime laboratory.⁹ Final Chemistry Report No. D-273-10 showed that the specimen was positive for methylamphetamine hydrochloride, commonly known as *shabu*.¹⁰

- over -

163-B

⁵ *Id.*

⁶ *Id.* at 3 and 10-11.

⁷ *Id.* at 4 and 11-12.

⁸ *Id.* at 4.

⁹ CA *rollo*, p. 52.

¹⁰ *Rollo*, p. 5.

Version of the Defense

Between 4:00 to 5:00 o'clock p.m. of 23 July 2010, appellant was betting at a *cara y cruz* game when he was apprehended. He was taken to Camp Karingal where one of the arresting police officers demanded money from him. As he had no money to give, he spent the night thereat. The following day, he was interviewed by PO3 Corona. Afterwards a picture of him was taken in front of a table where money and a small plastic sachet with white crystalline substance were placed. He was subsequently returned to the detention cell.¹¹

Ruling of the RTC

On 02 February 2017, the RTC rendered its Decision,¹² the dispositive portion of which reads:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered finding accused, APOLONIO COLABRES y DIAZ, GUILTY beyond reasonable doubt of the offense charged for violation of Section 5, Art. II, R.A. 9165 for having sold 0.03 gram of Methylamphetamine Hydrochloride and he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT AND TO PAY A FINE OF FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

In the service of his sentence, herein accused shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

X x x

SO ORDERED.¹³

The RTC found that the prosecution was able to establish an unbroken chain of custody.¹⁴ It justified the absence of the mandatory witnesses in this wise: (a) the barangay officials did not care to cooperate with the police officers, as shown by their refusal to sign the invitation letter to attend the inventory and (b) since 24 July 2010 fell on a Saturday, it was understandable that no representative from the Department of Justice (DOJ) would be available.¹⁵

Aggrieved, appellant appealed to the CA.

- over -

163-B

¹¹ *Id.*; CA rollo, p. 54.

¹² CA rollo, pp. 51-58.

¹³ *Id.* at 57.

¹⁴ *Id.* at 56.

¹⁵ *Id.* at 57.

Ruling of the CA

In its Decision,¹⁶ the CA affirmed appellant's conviction. It ruled that the prosecution satisfactorily established the elements of illegal sale of prohibited or regulated drugs.¹⁷ Furthermore, it lent no credence to appellant's defense that the police officers did not comply with the procedural safeguards prescribed by RA 9165, as the police officers substantially complied with the process of preserving the integrity of the seized plastic sachet containing *shabu*.¹⁸

Hence, this appeal.

Issue

The issue is whether or not the CA correctly found appellant guilty beyond reasonable doubt of the offense of illegal sale of prohibited drugs under RA 9165.

Ruling of the Court

The Court finds the appeal meritorious.

Appellant was charged with illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. For the prosecution of the crime of illegal sale of dangerous drugs, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.¹⁹

It is essential that the identity and integrity of the illegal drugs must be shown to have been preserved. To remove any doubt or uncertainty on the identity and integrity of the seized drugs, evidence must definitely show that the illegal drugs offered in court as exhibit are the same as those recovered from the accused.²⁰ This requirement is known as the chain of custody rule under RA 9165, created to safeguard doubts concerning the identity of the seized drugs.²¹

Section 21, Article II of RA 9165 provides the chain of custody rule and outlines the procedure police officers must follow in handling the seized drugs, so as to preserve their integrity and evidentiary

- over -

163-B

¹⁶ *Rollo*, pp. 2-16.

¹⁷ *Id.* at 12.

¹⁸ *Id.* at 14.

¹⁹ *People v. Pantallano*, G.R. No. 233800, 06 March 2019 [Per J. A.B. Reyes, Jr.].

²⁰ *People v. Macaumbang*, G.R. No. 208836, 01 April 2019 [Per J. Gesmundo].

²¹ *People v. Bangcola*, G.R. No. 237802, 18 March 2019 [Per J. Gesmundo].

value.²² The said provision, applicable at the time of the commission of the offense, provides –

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:

(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;

X x x

The IRR of RA 9165 further states:

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 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**

- over -

163-B

²² *People v. Alvaro*, G.R. No. 225596, 10 January 2018 [Per J. Perlas-Bernabe].

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)

The requirements of Section 21 of Article II of RA 9165 were not complied with

It is well-settled that the following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.²³

In the instant case, PO2 Almazan marked the confiscated item "AC 24-07-10"²⁴ using the initials of the appellant, not with his initials.²⁵ Neither were the time and place of the seizure of evidence indicated on the confiscated items, in clear disregard of Section 13 (c)²⁶ of the PNP Manual on Anti-Illegal Drugs Operation and Investigation (PNP Manual).²⁷

The prosecution also admitted that the inventory of the seized items were done at the police station, not at the place of arrest.²⁸ Further, the prosecution did not indicate whether or not it was the nearest police station from where the apprehension took place. More importantly, not one of the three (3) required witnesses was present during the buy-bust operation and during the inventory and photographing of the seized items which took place at the police station.²⁹ The presence of the mandatory witnesses at the time of seizure and confiscation would belie any doubt as to the source,

- over -

163-B

²³ *People v. Ubungen*, G.R. No. 225497, 23 July 2018 [Per J. Martires].

²⁴ *CA rollo*, p. 53.

²⁵ *Id.* at 52.

²⁶ Section 13. Handling, Custody and Disposition of Drug Evidence

x x x

c. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found and seized. The seizing officer shall secure and preserve the evidence in a suitable evidence bag or in an appropriate container for further laboratory examinations.

²⁷ Approved by the National Police Commission in its Resolution No. 2010-094 on 26 February 2010.

²⁸ *CA rollo*, p. 52.

²⁹ *CA rollo*, p. 52.

identity, and integrity of the seized drug. The presence of the insulating witnesses would controvert the usual defense of frame-up, as they 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, Article II of RA 9165, as amended.³⁰

The prosecution failed to give a justifiable ground for non-compliance with Section 21, Article II of RA 9165

The Court recognizes that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the IRR of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provides that non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.³¹

In *People v. Dela Torre y Arbillon*,³² however, the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. 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.

Clearly, the prosecution cannot simply invoke the saving clause found in Section 21 – that the integrity and evidentiary value of the seized item have been preserved – without justifying their failure to comply with the requirements stated therein.³³ After all, a stricter adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, as in the instant case where 0.03 gram of *shabu* was allegedly obtained from appellant, since **it is highly susceptible to planting, tampering or alteration of evidence.**³⁴

- over -

163-B

³⁰ *People v. Caranto*, G.R. No. 217668, 20 February 2019 [Per J. Caguioa], citing *People v. Tomawis*, G.R. No. 228890, 18 April 2018 [Per Justice Caguioa].

³¹ *People v. Año*, G.R. No. 230070, 14 March 2018 [Per J. Perlas-Bernabe].

³² G.R. No. 238519, 26 June 2019 [Per J. (now CJ) Peralta].

³³ *People v. Bahoyo*, G.R. No. 238589, 26 June 2019 [Per J.A.B. Reyes, Jr.].

³⁴ *People v. Bayang*, G.R. No. 234038, 13 March 2019 [Per J. (now CJ) Peralta].

In this case, the prosecution claimed several reasons for their deviation of the mandated procedures as to the inventory and presence of the required witnesses as an afterthought. The prosecution pointed out that the place where the transaction took place was a slum area,³⁵ necessitating the conduct of the inventory to be done at the police station instead. However, this is hardly an excuse for not conducting the inventory at the place of apprehension. There was likewise no showing by the prosecution that this was done due to extraordinary circumstances that would threaten the safety and security of the apprehending officers or of the items seized.³⁶

With regard to the absence of all the three required mandatory witnesses, the prosecution was only able to explain that *barangay* officials were actually invited to witness the inventory, only that they refused to accept the invitation letter.³⁷ Nothing was said, however, about any invitation being given to the representatives from the media and the DOJ. Mere statements of the required witnesses' unavailability, absent actual serious attempts to secure their attendance, are unacceptable and do not justify noncompliance.³⁸ And the lack of evidence of serious attempts to secure the presence of the three (3) required witnesses results in a substantial gap in the chain of custody of evidence that adversely affects the authenticity of the prohibited substance presented in court.³⁹

Appellant must perforce be acquitted for reasonable doubt

In cases of sale of dangerous drugs, the dangerous drug itself seized from the accused constitutes the *corpus delicti* of the offense. Hence, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function, as it erases unnecessary doubts concerning the identity of the evidence.⁴⁰ The rule is imperative, as it is essential that the prohibited drugs confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of the said drug is established with the same unwavering exactitude as that required to make a finding of guilt.⁴¹

- over -

163-B

³⁵ *CA rollo*, p. 82.

³⁶ *People v. Bacus*, G.R. No. 241317 (Notice), 11 March 2020.

³⁷ *CA rollo*, p. 85.

³⁸ *People v. Paran*, G.R. No. 220447, 25 November 2019 [Per J. Inting].

³⁹ *People v. Vistro*, G.R. No. 225744, 06 March 2019 [Per J. Del Castillo].

⁴⁰ *People v. Hilario*, G.R. No. 210610, 11 January 2018 [Per J. Leonardo-De Castro].

⁴¹ *People v. Malana*, G.R. No. 233747, 05 December 2018 [Per J. Caguioa].

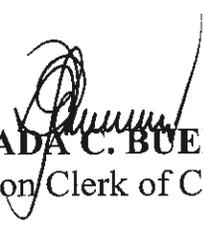
The police officers' failure to strictly comply with the requirements of the law, and to give justifiable grounds for their deviations had compromised the integrity and evidentiary value of the *corpus delicti*, warranting appellant's acquittal for reasonable doubt. Verily, when there are doubts on whether the seized substance was the same substance examined and established to be the prohibited drug, there can be no offense of illegal sale of a prohibited drug.⁴²

WHEREFORE, the instant appeal is hereby **GRANTED**. The Decision dated 29 January 2018 of the Court of Appeals, finding appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Appellant **APOLONIO COLABRES y DIAZ** is hereby **ACQUITTED** on the ground of reasonable doubt. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason. Let an entry of final judgment be issued immediately.

The Court **DIRECTS** the Director of the Bureau of Corrections to implement the immediate release of **APOLONIO COLABRES y DIAZ**, and to report on his compliance within five (5) days from receipt.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
163-B

- over -

⁴² *Supra* at note 40.



The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09022)

The Hon. Presiding Judge
Regional Trial Court, Branch 227
1100 Quezon City
(Crim. Case No. Q-10-165270)

PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Accused-Appellant
DOJ Agencies Building
Diliman, 1101 Quezon City

Mr. Apolonio D. Colabres (x)
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court

163-B

UR

MAF