



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 26, 2021** which reads as follows:*

**“G.R. No. 242638 (People of the Philippines, Plaintiff-Appellee, v. Rodante Vergara y Ollero @ “Balong” and Romeo Guerrero y Tivirio, Accused-Appellants).** – This appeal<sup>1</sup> seeks to reverse and set aside the Decision<sup>2</sup> dated 31 May 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09432, which affirmed the Decision<sup>3</sup> dated 26 October 2016 of Branch 259, Regional Trial Court (RTC) of Parañaque City in Criminal Case No. 12-0418. The RTC found accused-appellants Rodante Vergara y Ollero @ “Balong” (Vergara) and Romeo Guerrero y Tivirio (Guerrero)<sup>4</sup> (collectively, accused-appellants) guilty beyond reasonable doubt of violation of Section 5,<sup>5</sup> in relation to Section 26, paragraph (b),<sup>6</sup> Article II of Republic Act No. (RA) 9165.<sup>7</sup>

**Antecedents**

Accused-appellants were charged with violation of Section 5, in relation to Section 26 (b), Article II of RA 9165, in an Information, the accusatory portion of which reads:

- over – ten (10) pages ...

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<sup>1</sup> Rollo, pp. 16-17, *see* Notice of Appeal dated 03 July 2018.

<sup>2</sup> *Id.* at 2-15; penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion of the Court of Appeals, Manila.

<sup>3</sup> CA rollo, pp. 48-63; penned by Presiding Judge Danilo V. Suarez.

<sup>4</sup> (Collectively, accused-appellants).

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

<sup>6</sup> Sec. 26. Attempt or Conspiracy. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

a. x x x

b. Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drugs and/or controlled precursor and essential chemical.

<sup>7</sup> Comprehensive Dangerous Drugs Act of 2002.

That on or about the 11<sup>th</sup> day of April 2012, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, deliver, give away to another, distribute, dispatch in transit or transport, the following to wit:

- One (1) small torn brown envelope marked as Exh A-JBC-04-11-12 containing three (3) heat-sealed transparent plastic sachets containing white crystalline substance marked as “EXH A1-JBC-04-11-12, EXH A2-JBC-04-11-12 and EXH A3-JBC-04-11-12 weighing 4.6782 grams, 4.8585 grams, and 4.5833 grams, respectively
- One (1) small brown envelope marked as EXH B-JBC-04-11-12 containing two (2) heat-sealed transparent plastic sachets containing white crystalline substance marked as EXH B1-JBC-04-11-12 and EXH B2-JBC-04-11-12 weighing 4.7794 grams and 4.7892 grams, respectively

or a total of 23.6886 grams to Poseur Buyer IO1 John Bryan C. Castro, which contents when tested were found positive to be Methamphetamine Hydrochloride (*shabu*), a dangerous drug.<sup>8</sup>

Upon arraignment, accused-appellants pleaded not guilty to the charge. After termination of pre-trial, trial on the merits ensued.<sup>9</sup>

### Version of the Prosecution

On 11 April 2012, the Philippine Drug Enforcement Agency (PDEA) received information that one alias “Balong,” later identified as Vergara, was engaged in illegal drug trade activities. The confidential informant (CI) then called Vergara through phone and introduced Intelligence Officer 1 John Bryan Castro (IO1 Castro) as a prospective buyer of *shabu*. It was agreed that IO1 Castro will buy 25 grams of *shabu* from Vergara for Php115,000.00 and they would meet at Chowking in SM Bicutan. PDEA then formed a team to conduct a buy-bust operation. IO1 Castro was designated as poseur buyer, and the rest of the team as back-up/arresting officers.<sup>10</sup>

Upon arrival at the area, IO1 Castro and the CI went inside Chowking. After IO1 Castro informed Vergara that they were already at the meeting place, a man wearing a blue shirt and maong pants

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<sup>8</sup> CA rollo, p. 48.

<sup>9</sup> Id. at 48-49.

<sup>10</sup> Rollo, pp. 3-4.

approached them and introduced himself as “Balong.” IO1 Castro then asked if he brought the *shabu*. The latter replied that he only had ten (10) grams with him, but his friend would bring the remaining 15 grams. Later, a man wearing a pink shirt and maong pants approached the group. He introduced himself as Peng, later identified as Guerrero, and handed Vergara the remaining 15 grams of *shabu*. Accused-appellants insisted that they complete the transaction at the comfort room of Chowking. IO1 Castro agreed. Once inside, IO1 Castro demanded to check the items first. Vergara took out two (2) small brown envelopes from his pocket and handed it to IO1 Castro. When he opened the envelopes, IO1 Castro saw several heat-sealed transparent plastic sachets with suspected *shabu* inside. He then handed a white envelope containing the buy-bust money to Vergara. IO1 Castro went outside and executed the pre-arranged signal of removing his cap to signify consummation of the transaction. IO1 Enrico Lausin then arrested Vergara and recovered from the latter the boodle money consisting of two (2) Php500.00 bills. Meanwhile, IO1 Castro arrested Guerrero.<sup>11</sup>

Because of the growing number of bystanders in the area, the team immediately proceeded to their office. There, they marked the seized items and conducted physical inventory in the presence of *Barangay Kagawad* Jose Ruiz (*Kagawad* Ruiz). Next, they brought the seized items to the crime laboratory. Upon examination by Chemist Ronald Bobis (Chemist Bobis), the items were found positive for *shabu*.<sup>12</sup>

### Version of the Defense

Accused-appellants denied the charge. According to them, on 11 April 2012, Guerrero was looking for shoes around SM Bicutan when he met his childhood friend, Vergara. The latter invited him to eat and to meet a friend named Janeth Garcia (Janeth). They proceeded to Chowking where Janeth was already waiting with a male companion named John Bryan (John). When Vergara asked permission to go to the comfort room, John followed him and tried to hand him an envelope. Vergara ignored him and when he got outside, he saw several men ganging up on Guerrero. The men then handcuffed Vergara and brought them to the PDEA office in Quezon City. They were subsequently detained and was charged with illegal sale of dangerous drugs.<sup>13</sup>

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<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 4-5.

<sup>13</sup> *CA rollo*, p. 37.

### Ruling of the RTC

On 26 October 2016, the RTC rendered its Decision, convicting accused-appellants of the offense charged, thus:

**WHEREFORE**, premises considered, the Court finds accused **RODANTE OLLERO VERGARA @BALONG** and **ROMEO TIVIRIO GUERRERO** in Criminal Case No. 12-0418 for Violation of Sec. 5 in rel. to Sec. 26 par. b, Art II of RA 9165 (otherwise known as the Comprehensive Dangerous Drugs Act of 2002) for the unlawful selling of methamphetamine hydrochloride (shabu) contained in five (5) heat-sealed transparent plastic sachets marked as EXH A1-JBC-04-11-12 weighing 4.6782 grams, EXH A2-JBC-04-11-12 weighing 4.8585 grams, EXH A3-JBC-04-11-12, weighing 4.5833 grams, EXH B1-JBC-04-11-12 weighing 4.7794 grams and EXH B2-JBC-04-11-12 weighing 4.7892 grams **GUILTY beyond reasonable doubt** and are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay fine in the amount of **Php500,000.00 each**.

x x x

SO ORDERED.<sup>14</sup>

The RTC found that all the elements of the illegal sale of *shabu* were proven by the prosecution and the chain of custody did not appear to be broken.<sup>15</sup> It also held that conspiracy can be inferred from the conduct of accused-appellants, which showed a common understanding to sell illicit drugs.<sup>16</sup> It gave credence to the testimonies of the prosecution witnesses over accused-appellants' uncorroborated defense of denial and frame-up.<sup>17</sup>

Aggrieved, accused-appellants appealed to the CA.

### Ruling of the CA

In its Decision dated 31 May 2018, the CA affirmed accused-appellants' conviction. The dispositive portion of said decision reads:

**WHEREFORE**, premises considered, the instant *Appeal* is **DENIED**. The assailed *Decision* dated October 26, 2016 of the RTC, Branch 259 of Parañaque City in Criminal Case No. 12-0418 finding accused-appellants Rodante Vergara y Ollero @ "Balong"

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<sup>14</sup> *Id.* at 62.

<sup>15</sup> *Id.* at 61.

<sup>16</sup> *Id.* at 59.

<sup>17</sup> *Id.* at 57-58.

and Romeo Guerrero y Tivirio guilty beyond reasonable doubt of the offense of Violation of Section 5 in relation to Section 26, paragraph (b), Article II of R.A. No. 9165 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>18</sup>

The CA held that accused-appellants were caught in *flagrante delicto* selling *shabu* to IO1 Castro. Accused-appellants were identified in open court as the persons who sold the illicit drugs to IO1 Castro. There was likewise an exchange of the marked money and the illicit drugs between accused-appellants and IO1 Castro. The prosecution was able to establish the conspiracy between accused-appellants who acted in concert in selling the illicit drugs.<sup>19</sup> It also held that the prosecution clearly showed an unbroken link in the chain of custody, removing any doubt or suspicion that the *shabu* had been altered, substituted, or otherwise tampered with.<sup>20</sup> The CA also upheld the presumption of regularity in the performance of the PDEA officers' duties.<sup>21</sup> Hence, this appeal.

**Issue**

The sole issue in this case is whether or not the CA correctly affirmed accused-appellants' conviction for illegal sale of dangerous drugs under Section 5 in relation to Section 26 (b), Article II of RA 9165.

**Ruling of the Court**

The appeal is granted. In order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the following elements beyond reasonable doubt: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.<sup>22</sup> The delivery of the illicit drug to the poseur-buyer, and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.<sup>23</sup> It is necessary that the sale transaction actually happened and that the seized object is properly presented as evidence in court and is shown to be the same drugs seized from the accused.<sup>24</sup>

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<sup>18</sup> *Rollo*, p. 14.

<sup>19</sup> *Id.* at 10-12.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.* at 12.

<sup>22</sup> *People v. Flor*, G.R. No. 216017, 19 January 2018 [Per J. Del Castillo].

<sup>23</sup> *People v. Cabiles*, G.R. No. 220758, 07 June 2017, 810 Phil. 969 (2017) [Per J. Tijam].

<sup>24</sup> *People v. Sanico*, G.R. No. 240431, 07 July 2020 [Per CJ Peralta].

Guerrero assails his conviction on the ground that the prosecution failed to establish that he conspired with Vergara to sell illegal drugs to IO1 Castro.<sup>25</sup> He points to IO1 Castro's admission that the team did not recover any drugs from him. Moreover, IO1 Castro confirmed that he did not actually see the drugs being exchanged between accused-appellants.<sup>26</sup> IO1 Castro merely relied on Vergara's statement that Guerrero had the other 15 grams of *shabu* and assumed from their gestures that somebody is handing something to the other under the table.<sup>27</sup>

A conviction premised on a finding of conspiracy must be founded on facts, not on mere inferences and presumption. Conspiracy is a legal concept that imputes culpability under specific circumstances. As such, it must be established clearly as any element of the crime. The quantum of evidence to be satisfied is beyond reasonable doubt.<sup>28</sup>

In this case, Court finds that the prosecution failed to prove that there was conspiracy between accused-appellants. Other than Vergara's statement that he had the rest of the *shabu*, there were no other overt acts from Guerrero to demonstrate his participation in the illegal sale of drugs. To recap, IO1 Castro did not see Guerrero handing the additional 15 grams of *shabu* to Vergara. While allegedly both accused-appellants insisted that the transaction be executed in the comfort room, only Vergara went with IO1 Castro.<sup>29</sup> At any rate, the Court finds sufficient basis to acquit both accused-appellants for the prosecution's failure to establish the *corpus delicti* beyond reasonable doubt.

The sale or possession of dangerous drugs can never be proven without seizure and identification of the prohibited drug. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction.<sup>30</sup>

To preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence, Section 21 of RA 9165, the applicable

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<sup>25</sup> CA rollo, p. 43.

<sup>26</sup> *Id.* at 44.

<sup>27</sup> *Id.* at 51.

<sup>28</sup> *People v. Jesalva*, G.R. No. 227306, 19 June 2017, 811 Phil. 299 (2017) [Per J. Jardeleza].

<sup>29</sup> CA rollo, p. 50.

<sup>30</sup> *People v. Nacua*, G.R. No. 200165, 30 January 2013, 702 Phil. 739 (2013) [Per J. Leonardo-De Castro].

law at the time of the commission of the alleged offense,<sup>31</sup> outlines the procedure which the police officers must strictly follow, thus: (1) the seized items 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, and (d) 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 (3) the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.<sup>32</sup>

In the same manner, compliance with the chain of custody requirements ensures the integrity of the seized items. Thus, the prosecution must establish the chain of custody of the dangerous drugs as follows: first, the seizure and marking 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 by the forensic chemist to the court.<sup>33</sup>

Any break or disruption in the links would cast doubt in the identity and integrity of the seized item. Hence, it is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court.<sup>34</sup>

We find that the PDEA officers involved in the operations committed numerous deviations from the required procedures outlined in Section 21, leading to numerous breaks in the chain of custody and putting the integrity of the *corpus delicti* into question.

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<sup>31</sup> The Information alleged that accused-appellants committed the offense on 11 April 2012, thus, the earlier version of Sec 21 of RA 9165 and its Implementing Rules and Regulations shall apply, *i.e.*, prior to its amendment by RA 10640, (An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of RA 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002" which was approved on 15 July 2014 and became effective on 07 August 2014 or 15 days after its publication on 23 July 2014.

<sup>32</sup> *People v. Espejo*, G.R. No. 240914, 13 March 2019 [Per J. Caguioa].

<sup>33</sup> *People v. Dahil*, G.R. No. 212196, 12 January 2015, 750 Phil. 212 (2015) [Per J. Mendoza].

<sup>34</sup> *People v. Bartolini*, G.R. No. 215192, 27 July 2016 [Per J. Carpio].

The marking and inventory of the seized items were conducted at the PDEA office in Quezon City<sup>35</sup> and not at the nearest police station from SM Bicutan where the accused-appellants were apprehended. Even granting that a crowd was starting to buildup and with cars circling outside SM Bicutan, which the PDEA officers considered as possible threat to their operation,<sup>36</sup> they opted to proceed to Quezon City for the marking and inventory, instead of at the nearest police station as mandated. While their nearest office could be in Quezon City, still, there was no testimony as to how the integrity of the seized drugs was preserved while in transit.

Section 21 of RA 9165 also requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The phrase "immediately after seizure and confiscation" means exactly what it says: that the physical inventory and photographing of the drugs should be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows 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.<sup>37</sup>

Notably, only *Kagawad* Ruiz was present during the marking and inventory of the seized drugs. There were no representatives from the DOJ and the media. Moreover, the records are bereft of any showing that the PDEA officers exerted earnest efforts to secure the presence of the said witnesses. To be sure, the three (3) required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation – a 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.<sup>38</sup>

It cannot be overemphasized that the presence of the three witnesses required by Section 21 is intended to guard against the pernicious practice of planting evidence by law enforcement personnel.<sup>39</sup> As held by the Court in *People v. Mendoza*,<sup>40</sup> without the insulating presence of the representative from the media or the DOJ

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<sup>35</sup> *CA rollo*, pp. 50-52.

<sup>36</sup> *Id.* at 53.

<sup>37</sup> *People v. Moreno*, G.R. No. 234273, 18 September 2019 [Per J. Caguioa].

<sup>38</sup> *People v. Buniag*, G.R. No. 217661, 26 June 2019 [Per J. Caguioa].

<sup>39</sup> *People v. Advincula*, G.R. No. 201576, 22 July 2019 [Per J. Carandang].

<sup>40</sup> G.R. No. 192432, 23 June 2014, 736 Phil. 749 (2014) [Per J. Bersamin].

and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting", or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) may again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*.

We also note the gaps in the chain of custody. The testimonies of the prosecution witnesses were vague as to who actually marked the seized drugs and if there was a turn-over of the same to the investigating officer for documentation purposes. There was also no mention that photographs of seized drugs were taken. These obvious gaps raised doubt as to the authenticity of the seized drugs presented in court.

In addition, after examination of the seized drugs, Chemist Bobis turned over the same to their evidence custodian Majella Moñasque (Ms. Moñasque),<sup>41</sup> who was not presented in court. There was likewise no stipulation as to the handling and precautionary measures she had undertaken to secure the seized drug when it was delivered, and the precautions undertaken to ensure its integrity before they were presented in court. In the absence of testimony regarding the management, storage, and preservation of the illegal drugs seized after its qualitative examination, the fourth link in the chain of custody could not be reasonably established.<sup>42</sup>

Clearly, the foregoing deviations by the PDEA officers in the seizure, handling, and custody of the seized drugs greatly diminished its evidentiary value and cast doubt on its identity and integrity as well. For failure of the prosecution to prove the *corpus delicti* beyond reasonable doubt, the Court is therefore constrained to acquit accused-appellants.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated 31 May 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09432, finding accused-appellants **RODANTE VERGARA y OLLERO @ "Balong" and ROMEO GUERRERO y TIVIRIO** guilty beyond reasonable doubt of violating Section 5 in relation to Section 26 (b) Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. They are hereby **ACQUITTED** on the ground of reasonable doubt and **ORDERED** to be immediately **RELEASED**

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<sup>41</sup> *Id.*

<sup>42</sup> *See People v. Ubungen*, G.R. No. 225497, 23 July 2018.

from detention unless they are being confined for some other lawful cause.

The Superintendent of the New Bilibid Prison, Bureau of Corrections, is **DIRECTED** to **IMPLEMENT** this Resolution and to report to this Court the action taken hereon 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  
**217-B**

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(CA-G.R. CR HC No. 09432)

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(Crim. Case No. 12-0418)

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