



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated March 24, 2021 which reads as follows:

“G.R. No. 204019 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. VIRGINIA CONCEPCION y GONZALES, accused-appellant). – On appeal is the June 15, 2012 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04699, affirming the September 22, 2010 Decision² of the Regional Trial Court (RTC) of Marikina City, Branch 192, in Criminal Case No. 2009-3634-D-MK, which found accused-appellant Virginia Concepcion y Gonzales (Concepcion) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

An Information was filed charging Concepcion with violation of Section 5, Article II of R.A. No. 9165, as follows:

That on or about the 5th day of March 2009, City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously and knowingly sell to PO1 ERICXANDER D. GRAY a poseur buyer, one (1) heat-sealed transparent plastic sachet containing 0.02 gram of Methamphetamine Hydrochloride (shabu), a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.³

During her arraignment, Concepcion entered a plea of “not guilty.”

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¹ *Rollo*, pp. 2-14; penned by Associate Justice Isias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Eduardo B. Peralta, Jr. concurring.

² *CA rollo*, pp. 27-49; penned by Judge Geraldine C. Fiel-Macaraig.

³ *Id.* at 27.

Version of the Prosecution

On March 5, 2009, at about 1:00 p.m., an informant relayed to Police Officer 1 Ericxander Gray (PO1 Gray) and Police Officer (PO) 3 Edwin Daño (PO3 Daño) of the Station Anti-Illegal Drugs - Special Operation Task Force (SAID-SOTF) of the Marikina City Police Station that a certain Virgie was selling *shabu* along Bonanza Street. A buy-bust team was formed with PO3 Daño, as the team leader, and PO2 Apolos Labrador (PO2 Labrador), PO2 Dionise Salcedo (PO2 Salcedo) and PO1 Gray, as members. PO1 Gray was designated as the poseur-buyer. They also marked a ₱500.00 bill, with serial number US582247, to be used in the buy-bust operation. At around 6:00 p.m., the informant returned and told them that Virgie was already conducting the illegal trade.⁴

The team proceeded to an alley where the transaction was taking place. PO1 Gray and the informant knocked at a door. When a woman matching the informant's description opened it, the informant introduced PO1 Gray as a "scorer". Concepcion asked how much he wanted to buy, to which PO1 Gray answered, "*limandaan lang manang*". She then took a small plastic sachet from her right pocket and gave it to PO1 Gray. When she asked for the payment, PO1 Gray responded gave her the marked ₱500.00-bill. Thereafter, PO1 Gray lighted a cigarette, the signal that the sale has been consummated. Immediately, PO1 Gray grabbed Concepcion's hand and introduced himself as a police officer. He marked the plastic sachet that he recovered with the initials "VGC", with the use of a scotch tape. They also retrieved the marked money from Concepcion's right pocket. The inventory of the seized items was signed by authorized persons identified as a member of the media and a certain barangay captain Wilfredo Perez. A Request for Laboratory Examination was filed with the PNP Crime Laboratory. PO1 Gray personally forwarded the evidence to the crime lab. Police Chief Inspector Lourdeliza Gural Cejes prepared Report No. D-102-2009E, confirming that the substance was methamphetamine hydrochloride or *shabu*.⁵

Version of the Defense

In her defense, Concepcion denied the allegations against her. She narrated that at around 5:00 p.m. on March 5, 2009, she was sleeping upstairs together with her four-year-old child. Suddenly, four men, who were later identified as PO1 Gray, PO2 Salcedo, PO2

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⁴ Id. at 28-29.

⁵ Id. at 29-30.

Labrador and PO3 Daño, suddenly entered her house. She was told to stand up from her bed. One of them held her back pocket, with the other two held each of her arms. When the men did not find anything in her pockets, they searched the room. The four armed men brought her downstairs and told her that there was a complaint against her. Afterwards, they boarded a vehicle and brought her to the Marikina police station. At the police station, PO1 Gray took a small transparent heat-sealed plastic sachet from a drawer. He then ordered Concepcion to hold the sachet and took a photo of her with the small plastic in her hand.

RTC Ruling

In its September 22, 2010 Decision, the trial court found Concepcion guilty of violating Section 5, Article II of R.A. No. 9165, the *fallo* of which reads:

WHEREFORE, the Court finds the accused, VIRGINIA CONCEPCION y GONZALES, GUILTY BEYOND REASONABLE DOUBT of Violation of Section 5, Article II of Republic Act 9165. The accused is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and ORDERED TO PAY A FINE of FIVE HUNDRED THOUSAND (Php 500,000.00) PESOS.

The plastic sachet of shabu subject matter of this case is hereby confiscated in favor of the Government and to be turned over to the Dangerous Drugs Board for proper disposal, without delay.

SO ORDERED.⁶

On appeal before the CA, Concepcion argued that the trial court erred in convicting her of the charge, considering that the prosecution failed to establish the existence of the purported sale of *shabu* beyond reasonable doubt. She asserted that the *corpus delicti* in this case had not been sufficiently proven by the prosecution. She further contended that the police officers who effected the buy-bust operation in this case failed to comply with the requirements under Section 21 of R.A. No. 9165.⁷

CA Ruling

On June 15, 2012, the CA rendered a Decision,⁸ the *fallo* of which reads:

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⁶ Id. at 49.

⁷ *Rollo*, p. 10.

⁸ Id. at 2-14.

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby DENIED and, consequently, DISMISSED, and the appealed Decision rendered by Branch 192 of the Regional Trial Court of the National Capital Judicial Region in Marikina City dated September 22, 2010 in Criminal Case No. 2009-3634-D-MK is hereby AFFIRMED *in toto*.

SO ORDERED.⁹

The CA held that the prosecution was able to prove the existence of all the essential elements of the illegal sale of prohibited drugs. PO1 Gray positively identified Concepcion as the one who sold the *shabu* presented in court. He was also able to identify the marked money used in the buy-bust operation and the *shabu* seized from the Concepcion. Thus, the CA ruled that the *corpus delicti* of the crime had been established with moral certainty. Moreover, the CA found that the integrity of the drugs seized from Concepcion was preserved. It explained that the failure of the law enforcers to comply strictly with Section 21 of R.A. No. 9165 is not fatal and does not render Concepcion's arrest illegal or the evidence against her inadmissible.¹⁰

Hence, this appeal.

The sole issue in this case is whether the CA erred in convicting accused-appellant Concepcion of the crimes charged.

Our Ruling

We find merit in the appeal.

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.¹¹ While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,¹² the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

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⁹ Id. at 13.

¹⁰ Id. at 11-12.

¹¹ *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

¹² *People v. Mantalaba*, 669 Phil. 461,471 (2011).

The law requires that the 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 R.A. No. 9165 by R.A. No. 10640,¹³ a representative from the media AND the Department of Justice (DOJ), and any elected public official;¹⁴ or (b) if after the amendment of R.A. No. 9165 by R.A. No. 10640, an elected public official and a representative of the National Prosecution Service OR the media.¹⁵

Section 21, Article II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crime, provides that:

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 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.

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.¹⁶ However, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.¹⁷ As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the

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¹³ Entitled "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," approved on July 15, 2014.

¹⁴ REPUBLIC ACT NO. 9165, Article II, Section 21(1) and (2) and its Implementing Rules and Regulations.

¹⁵ REPUBLIC ACT NO. 9165, Article II, Section 21, as amended by REPUBLIC ACT NO. 10640.

¹⁶ See *People v. Tomawis*, 830 Phil. 385, 409 (2018).

¹⁷ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.¹⁸

The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which was later adopted into the text of R.A. No. 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,¹⁹ and that 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.²⁰

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.²¹ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.²²

Based from the foregoing, the Court holds that the buy-bust operation was not conducted in accordance with law. A perusal of the records reveals that PO1 Gray, who acted as the *poseur* buyer during the buy-bust operation, supposedly received the transparent plastic sachet containing *shabu* from Concepcion. The transparent heat-sealed plastic sachet was marked and inventoried, as witnessed and attested to by a media person and a barangay official before being brought to the Marikina Police Station. There appears to be an absence of a required witness, i.e., the representative from the Department of Justice (DOJ). The prosecution failed to establish that the arresting officers exerted genuine and sufficient efforts to secure the presence of the said witness. It must be stressed that Section 21 of R.A. No. 9165 requires that the copies of the inventory should be signed by all the following persons: (a) accused or his/her

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¹⁸ See *People v. Almorfe, et al.*, 631 Phil. 51, 60 (2010).

¹⁹ *Id.*

²⁰ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

²¹ See *People v. Manansala*, 826 Phil. 578, 588-589 (2018).

²² See *People v. Gamboa*, G.R. No. 233702, June 20, 2018.

representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ.²³

The prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of R.A. No. 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, accused-appellant Concepcion must be acquitted.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated June 15, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04699 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Virginia Concepcion y Gonzales is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong City for immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report the action he/she has taken to this Court within five (5) days from receipt of this Resolution.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
WGT

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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²³ *People v. Manabat*, G.R. No. 242947, July 17, 2019.



The Solicitor General
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1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 04699)

The Hon. Presiding Judge
Regional Trial Court, Branch 192
1800 Marikina City
(Crim. Case No. 2009-3634-D-MK)

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