



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **03 March 2021** which reads as follows:*

**“G.R. No. 222509 (*Denmark Izon v. People of the Philippines*).** – Considering that the Public Attorney’s Office, counsel for petitioner, failed to file a reply to the comment on the Petition for Review on *Certiorari* required in the Resolution dated July 2, 2018 within the period which expired on September 15, 2018 as per the registry return receipt, the Court resolves to **DISPENSE WITH** the aforesaid reply.

We acquit.

In the prosecution of Illegal Possession of Dangerous Drugs, the following elements must be proved: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession was 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 also be established beyond reasonable doubt.<sup>1</sup>

The Information here alleged that the crime charged was committed on **May 29, 2010**. The governing law, therefore, is Republic Act No. 9165 (RA 9165)<sup>2</sup> before its amendment on July 15, 2014.<sup>3</sup> Section 21 of RA 9165 provides the procedure to ensure the integrity of the *corpus delicti*, viz.:

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

<sup>2</sup> Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002.

<sup>3</sup> Amendment to RA 9165 (Comprehensive Dangerous Drugs Act of 2002), Republic Act No. 10640, July 15, 2014.

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**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 seized, 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the 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 on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

x x x x

Its Implementing Rules and Regulations further states:

**Section 21. (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 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.

(b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(c) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, that when the volume of the 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 on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.<sup>4</sup>

x x x x

In Illegal Drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally sold or possessed by the accused is the same substance presented in court.<sup>5</sup> This is the chain of custody rule. It is 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.

In *People v. Galisim*,<sup>6</sup> the Court reiterated that the prosecution must account for *each link* in the chain of custody to ensure the integrity of the seized items, *viz.*: ***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***, ***third***, and ***fourth*** links.

The ***first link*** refers to the marking, inventory, and photograph of the seized items.<sup>7</sup>

<sup>4</sup> Implementing Rules and Regulations of Republic Act No. 9165, IRR of RA 9165, August 30, 2002.

<sup>5</sup> *People v. Galisim*, G.R. No. 231305, September 11, 2019.

<sup>6</sup> *Id.*

<sup>7</sup> *Barayuga v. People*, G.R. No. 248382, July 28, 2020.

As part of the chain of custody procedure, RA 9165 requires that the physical inventory and photographing of the seized items 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 the required insulating witnesses, namely: (a) **a representative from the media AND the Department of Justice (DOJ), AND any elected public official;**<sup>8</sup> (b) 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.”<sup>9</sup>

Here, Police Officer 2 Freddie Ramos (PO2 Ramos) admitted that only petitioner Denmark Izon (petitioner), his co-accused Cesar Crisostomo, and media representative Nick Luares were present to witness the inventory and photographing of the seized item.<sup>10</sup> The prosecution did not offer any explanation why it failed to secure the presence of a DOJ representative and an elected public official to witness the procedure.

In *People v. Tulod*,<sup>11</sup> Tulod was acquitted of violation of Sections 5 and 11, Article II of RA 9165 because there was no evidence that the inventory and photographing of the seized dangerous drugs were done in the presence of a media representative. The prosecution though failed to explain this omission.

Indeed, the presence of the insulating witnesses during the inventory and photographing of the confiscated illegal drugs is vital. In the absence of these witnesses, 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,<sup>12</sup> as in this case.

The *third link* pertains to the turnover by the investigating officer to the forensic chemist of the illegal drug for laboratory examination.<sup>13</sup>

Here, the prosecution admitted that it was Police Officer 2 Sonny Xyrus de Leon (PO2 de Leon) and not PO2 Ramos who turned over the illegal drug allegedly seized from petitioner to the crime laboratory because PO2 Ramos was not wearing the police uniform. PO2 de Leon, thereafter, allegedly gave the seized drug to the receiving clerk of the crime laboratory.<sup>14</sup> PO2 de Leon and the receiving clerk who was never identified were both not presented in

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<sup>8</sup> See Section 21 (a) of RA 9165.

<sup>9</sup> *People v. Gutierrez*, G.R. No. 236304, November 5, 2018, 884 SCRA 276, 286 (emphases supplied, citations omitted).

<sup>10</sup> *Rollo*, p. 45.

<sup>11</sup> G.R. No. 227993, September 25, 2019.

<sup>12</sup> *People v. Caray*, G.R. No. 245391, September 11, 2019.

<sup>13</sup> *People v. Lacdan*, G.R. No. 232161, August 14, 2019.

<sup>14</sup> *Rollo*, p. 73.

court to testify. Hence, the utter lack of proof on how the seized drug was handled from the time the unnamed clerk supposedly received it until the same was handed to Police Senior Inspector Grace Plantilla Bombasi (PSI Bombasi) fostered the threat of tampering, alteration, or substitution of the *corpus delicti*. And so again, the integrity and evidentiary value of the seized item cannot be deemed to have been preserved.

In *People v. Lacdan*,<sup>15</sup> the Court acquitted appellant Lacdan because of the absence of proof on how the seized drug was handled during the *first* and *third* links. The Court ruled that considering these series of intervening gaps, it cannot reasonably be concluded that the confiscated item was the same one presented for laboratory examination and eventually in court.

The *fourth link* refers to the turnover and submission of the dangerous drug from the forensic chemist to the court.<sup>16</sup> 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; the description of the specimen; and the container bearing it. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen.<sup>17</sup>

Here, the prosecution and defense stipulated and dispensed with forensic chemist PSI Bombasi's testimony during the pre-trial.<sup>18</sup> The stipulations, nonetheless, only focused on the expertise and qualifications of PSI Bombasi as forensic chemist; the crime laboratory's receipt of the request for laboratory examination; the specimens to be tested; the existence of Chemistry Report No. 165-10; and PSI Bombasi's act of turning over the specimens to the evidence custodian for safekeeping.<sup>19</sup> **Notably, none of these stipulations even mentioned the condition of the specimen when PSI Bombasi received it and how she handled the same before, during, and after the chemical examination.**

Too, although PSI Bombasi claimed to have returned the item to the evidence custodian and later retrieved it from the latter for presentation in court, it was not shown how the evidence custodian handled and stored the seized item before the same was retrieved for presentation in court. The evidence custodian was also not named, let alone, presented in court. This indubitably is another breach of the chain of custody rule.

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<sup>15</sup> *Supra*.

<sup>16</sup> *People v. Hementiza*, 807 Phil. 1017, 1037 (2017).

<sup>17</sup> 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.

<sup>18</sup> *Rollo*, p. 72.

<sup>19</sup> *Id.* at 72-73.

In *People v. Dahil*,<sup>20</sup> the Court acquitted the accused in view of the forensic chemist's failure to testify on how she handled the dangerous drug submitted to her for laboratory examination. So must it be in the case at bar.

Surely, if the chain of custody procedure had not been complied with and no justifiable reason was adduced therefor, it thus becomes the Court's duty to overturn the verdict of conviction.<sup>21</sup> *Mallillin v. People*,<sup>22</sup> 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.** (Emphasis supplied)

Indeed, the multiple violations of the chain of custody rule here cast serious uncertainty on the integrity and evidentiary value of the *corpus delicti*. The metaphorical chain did not link at all, albeit, it unjustly restrained petitioner's right to liberty.<sup>23</sup> Verily, a verdict of acquittal is in order.

**ACCORDINGLY**, the petition is **GRANTED**. The Decision dated August 19, 2015 and Resolution dated January 15, 2016 of the Court of Appeals in CA-G.R. CR No. 35161 are **REVERSED** and **SET ASIDE**.

Petitioner **DENMARK IZON** is **ACQUITTED** in Criminal Case No. 10-7402-SPL of Illegal Possession of Dangerous Drugs defined under Section 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 **Denmark Izon** 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 judgment be issued immediately.

**SO ORDERED.**" (Rosario, J., on leave)

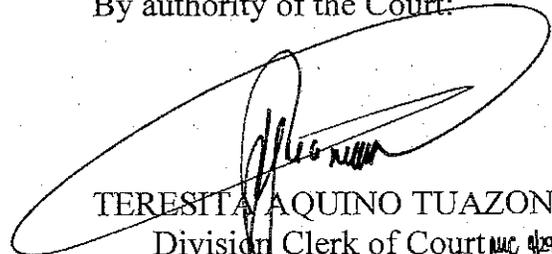
<sup>20</sup> 750 Phil. 212-239 (2015).

<sup>21</sup> *People v. Año*, 828 Phil. 439, 453 (2018).

<sup>22</sup> 576 Phil. 576, 587 (2008).

<sup>23</sup> *People v. Lacdan*, supra note 12.

By authority of the Court:

  
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Division Clerk of Court ~~MC 429~~  
29 APR 2021

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THE DIRECTOR (x)  
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HON. PRESIDING JUDGE (reg)  
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(Crim. Case No. 10-7402-SPL)

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