



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 3, 2021** which reads as follows:*

“G.R. No. 233746 (People of the Philippines, Plaintiff-Appellee, v. Froilan Boguen y Gapus, Accused-Appellant). – This is an appeal¹ seeking to set aside and reverse the Decision² dated 20 April 2017 of the Court of Appeals (CA) in CA G.R. CR-HC No. 07669. The CA affirmed with modification the Decision³ dated 28 April 2015 rendered by Branch 25, Regional Trial Court (RTC) of Tabuk City, in Crim. Case No. 75-2010, finding Froilan Boguen y Gapus (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Appellant was charged with illegal sale of dangerous drugs, defined and penalized under Section 5 of RA 9165. The accusatory portion in the Information⁴ dated 21 July 2010 states:

That on or about 6:00 o'clock in the afternoon of July 16, 2010 at Purok 3, Bulanao Norte, Tabuk City, Kalinga, and within the jurisdiction of the Honorable Court, the said accused did then and there willfully, unlawfully and knowingly have in his possession, control and custody eight (8) heat-sealed transparent plastic sachets of shabu weighing more or less .9 grams and sell or distribute it during a legitimate buy-bust operation without license, permit or authority from the appropriate government agency.

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¹ *Rollo*, pp. 23-24; *see* Notice of Appeal dated 07 May 2017.

² *Id.* at 2-22; penned by Associate Justice Normand B. Pizarro and concurred in by Associate Justices Samuel H. Gaerlan (now a Member of this Court) and Jhosep Y. Lopez (now a Member of this Court) of the Court of Appeals.

³ *CA rollo*, pp. 59-78; penned by Judge Marcelino K. Wacas.

⁴ Records, p. 1.

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CONTRARY TO LAW.⁵**Version of the Prosecution**

On 15 July 2010, a confidential informant arrived at the Kalinga Police Provincial Office (KPPO) in Camp Juan M. Duyan and reported the alleged illegal drug-selling activities of appellant. The informant told Agent Nickson Acosta (Agent Acosta) of the Philippine Drug Enforcement Agency (PDEA) that appellant is looking for buyers of *shabu*. After verifying the report, Agent Acosta instructed the informant to set up a sale with appellant for the following day between 5:30 to 6:00 p.m. near the Universal Grains Center. Thereafter, a buy-bust team (team) was formed composed of Agent Acosta as the poseur-buyer, PO2 Noel Tumbali (PO2 Tumbali) as the team leader, PO2 Lito Labbutan (PO2 Labbutan) as the arresting officer, and the other operatives of the KPPO-Police Anti-Illegal Drugs Special Operation Task Group (KPPO-PAIDSOTG) as back up arresting officers.

The following day, on 16 July 2010, the team proceeded to the meeting place at around 5:00 p.m. The informant and Agent Acosta stood in front of the Universal Grains Center, while the rest of the team positioned themselves nearby. When appellant arrived, the informant introduced Agent Acosta to him as the buyer. Appellant handed to Agent Acosta two (2) pieces of small heat-sealed transparent sachets containing crystalline substance believed to be *shabu*, while Agent Acosta handed to him four (4) pieces of marked Php500 bills. Agent Acosta made the pre-arranged signal and the team arrested appellant and PO2 Labbutan conducted a body search on him.

PO2 Labbutan recovered from appellant the marked Php500 bills, a cellular phone, and a belt bag containing ten (10) live ammunitions for a Cal. 22. and six (6) sachets of white crystalline substance. Agent Acosta marked the two (2) sachets given to him by appellant, while PO2 Labbutan marked the other items seized from appellant. The team then brought appellant to their office at Camp Duyan. Agent Acosta prepared the Affidavit of Poseur Buyer, the Booking and Arrest Report, the Inventory of Seized Items, the Request for the Physical Examination and the Request for Laboratory Examination.

On 17 July 2010, the inventory of the seized items was conducted at the barracks in the presence of the media representative Frederik Pangsiw, *Barangay* Chairman Rogelio Lacuesta, and

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⁵ *Id.*

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Provincial Prosecutor Bartolome Gammonac, who also signed the inventory. Agent Acosta was not present during the conduct of investigation because he was then on official business in Baguio City. Although the request for laboratory examination was dated 16 July 2010, the seized items were turned over to PDEA Agent Alvin Cay-an (Agent Cay-an) the following day, 17 July 2010. Agent Cay-an then went to Camp Adduru, where the sachets were received by the Forensic Chemist, Police Inspector Maria Pia Ovejas (Police Inspector Ovejas). Police Inspector Ovejas weighed the specimens submitted: Specimens A and B (with Agent Acosta's initials) weighed 0.08 gram and 0.07 gram, respectively, while Specimens C, D, E, F, G, and H (with PO2 Labbutan's initials) weighed 0.07 gram, 0.06 gram, 0.03 gram, 0.03 gram, 0.24 gram, and 0.32 gram, respectively. The total net weight of the specimens submitted was 0.9 gram. After conducting a chemical examination, the specimens submitted were found to contain methamphetamine hydrochloride or *shabu*.

Version of the Defense

Appellant testified that at 5:00 p.m. on 16 July 2010, he went to the office of a certain Daryl Estrañero at the Universal Grains Center to get the payment of his *palay*. When he was about to leave the parking lot, two (2) vehicles blocked his van. Someone alighted from the vehicle and pointed a gun at him. He was then removed from the driver seat and pushed at the back of the van. He later identified the persons who accosted him as Agent Acosta, PO2 Tumbali and PO2 Labbutan. He was brought to the Dagupan Police Station, where he was searched, and his money, wallet and two (2) cellphones were confiscated.

Further, appellant claimed that one of the policemen took his belt bag and when they opened the bag, they told him that it contained a sachet, which he denied owning. At around 7:00 or 8:00 p.m., Police Officer Ganipac brought him to the barracks, where he was detained.

Ruling of the RTC

In its Decision dated 28 April 2015, the RTC found appellant guilty of the crime charged, thus:

ACCORDINGLY, judgment is hereby rendered finding accused FROILAN BOGUEN Y GAPUS guilty beyond reasonable doubt of the crime of Violation of Sec. 5, Art. II of Republic Act No. 9165 and is hereby sentenced to suffer the penalty of Life Imprisonment and a fine of P500,000.00 to P10,000,000.00

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Cost against the accused.

SO ORDERED.⁶

The RTC found that the prosecution was able to establish all the elements of the offense charged. Further, the RTC held that there was an unbroken chain of custody of the confiscated sachets of *shabu*. The integrity and evidentiary value of the items seized were not shown to have been compromised despite the fact that the 8 sachets were submitted to the crime laboratory the day after the seizure of the items in the buy-bust operation.

Ruling of the CA

The CA affirmed appellant's conviction, but modified the fine imposed to Php500,000.00 only. The CA sustained the findings of the RTC that the prosecution successfully established all the elements of illegal sale of dangerous drugs.

According to the appellate court, the defense of denial and frame-up cannot prevail over the positive and steadfast testimony of Agent Acosta, corroborated by the testimonies of PO2 Labbutan, Agent Cay-an and Police Inspector Ovejas. Moreover, the prosecution established the unbroken chain of custody of the seized items, and that the integrity and the evidentiary value thereof have been duly preserved.

As regards the issue on the delayed inventory, which was not conducted on the day of appellant's arrest, the CA was satisfied with the prosecution's explanation the required representatives were no longer available since the arrest was effected at around 6:00 p.m. Consequently, the prosecution had to move the conduct of inventory the following morning so it can be done in presence of the required witnesses. Although the police officers did not strictly comply with the requirements of Section 21, Article II of RA 9165, the CA held that there was substantial compliance by the police and PDEA agents and that it was sufficiently shown that the evidence seized were the same evidence subsequently identified and testified to in court. Lastly, the CA upheld the presumption of regularity in the performance of official duties by the police officers and the PDEA agents in this case.

Issue

Whether or not the CA erred in affirming appellant's conviction of illegal sale of dangerous drugs.

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⁶ CA rollo, p. 78.

Ruling of the Court

We grant the petition and acquit appellant.

For a successful prosecution of an offense involving the illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.⁷ It is essential that the identity of the dangerous drugs, which constitute the *corpus delicti* of the offense, must be established beyond reasonable doubt to ensure that the dangerous drug presented in court against the accused is the exact same drug retrieved from him during the buy-bust operation.⁸ The importance of maintaining the integrity and identity of the confiscated dangerous drugs, or the *corpus delicti* of the offense charged, is necessary in order to establish that the crimes have actually been committed.⁹ Failure to prove the identity and integrity of the *corpus delicti* will render the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, which warrants the acquittal of the accused.¹⁰

The Information states that the crime was committed on 16 July 2010. Hence, the governing law is Section 21 of RA 9165, prior to its amendment in 2014 by RA 10640,¹¹ which modified the number of witnesses required during the conduct of inventory.¹² Section 21, paragraph 1 of RA 9165 reads:

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:

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⁷ *People v. Ambrosio*, G.R. No. 234051, 27 November 2019 [Per J. Zalameda].

⁸ *People v. Sali* (Resolution), G.R. No. 236596, 29 January 2020 [Per CJ. Peralta]; *Edangalino v. People*, G.R. No. 235110, 08 January 2020 [Per CJ. Peralta].

⁹ *People v. Suating*, G.R. No. 220142, 29 January 2020 [Per J. Leonen].

¹⁰ *People v. Esguerra*, G.R. No. 243986, 22 January 2020 [Per J. Perlas-Bernabe].

¹¹ 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". Effective 30 July 2014. Under RA 10640, the conduct of physical inventory and the photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

¹² *People v. Silayan*, G.R. No. 229362, 19 June 2019 [Per J. Carpio].

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(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; (Emphasis supplied)

This provision is expounded in Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165, which 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:

(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; (Emphasis supplied)

Clearly, under the original provision of Section 21 of RA 9165 and its IRR, the apprehending officer/team is required to immediately conduct a physical inventory and photograph the confiscated drugs in the presence of: (1) accused or his counsel or representative; (2) a representative from the media; (3) a representative from the DOJ; and (4) any elected public official, who shall all be required to sign the copies of the inventory and be given a copy thereof.

In this case, the apprehending team failed to show valid cause for the non-compliance of the procedure laid down in Section 21(1), Article II of RA 9165. Indeed, the case is replete with violations of the required procedure: (1) the inventory of the seized items in the presence of the representatives from the media, DOJ and elected public official was belatedly done the day after the buy-bust operation; (2) neither appellant nor his counsel or representative was present during the conduct of the inventory; and (3) the seized items were not photographed.

The apprehending team proffered the excuse that the required witnesses were no longer available when the buy-bust operation was conducted at 6:00 p.m. on 16 July 2010, such that they had to conduct the inventory the following day. Such statement of unavailability of the required witnesses during the buy-bust operation or immediately thereafter, absent actual serious efforts to secure their presence, does not justify non-compliance.¹³ Earnest and sufficient effort to coordinate with the required witnesses to secure their attendance must be proven.¹⁴ It bears emphasis that the buy-bust operation was already planned the day before it was conducted. Thus, the apprehending team had ample time to coordinate and secure the presence of the required witnesses on the day of the buy-bust operation.

Moreover, the seized items were not photographed at all and the prosecution never offered any explanation for such omission. Neither did the prosecution explain the absence of the accused or his counsel or representative during the conduct of the inventory. There was clearly no genuine and sufficient attempt to comply with the requirements of Section 21 of RA 9165.

The unjustified non-compliance of the required procedure under Section 21 of RA 9165 and the IRR, particularly the belated and improper conduct of the physical inventory without the presence of the accused or his representative, and the lack of photographing, cast doubt on the identity, integrity and evidentiary value of the illegal drugs allegedly seized from appellant. In effect, the prosecution failed to establish beyond reasonable doubt that the *shabu* presented as evidence in court were the exact same *shabu* allegedly seized during the buy-bust operation.

Contrary to the findings of the RTC and the CA, the Court finds that prosecution failed to establish every link in the chain of custody

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¹³ *People v. Rodriguez*, G.R. No. 238516, 27 February 2019 [Per J. Gesmundo].

¹⁴ *People v. Padua*, G.R. No. 239781, 05 February 2020 [Per CJ. Peralta].

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of the seized items. The following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of 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 from the forensic chemist to the court.¹⁵

In this case, there was a gap in the second and third links of the chain. The evidence for the prosecution showed that the seized illegal drugs were turned over to Agent Cay-an the following day after the buy-bust operation. However, it was not clear who turned over the seized items to Agent Cay-an. As Agent Cay-an testified, Agent Acosta, who had initial custody of the illegal drugs sold, was already in Baguio City on official business the day after the buy-bust operation, such that he was absent during the conduct of the inventory. Consequently, it is doubtful whether it was the apprehending officer, Agent Acosta, who handed over the seized illegal drugs to Agent Cay-an.

As to the third link, it was also not clear whether Agent Cay-an delivered the items directly to the forensic chemist for laboratory examination. Even the RTC and the CA had different accounts as regards this part of the link: the RTC stated that it was Agent Acosta who delivered the seized items to the crime laboratory, but the CA noted that it was Agent Cay-an who delivered the same to the forensic chemist for examination. To make matters worse, appellant also argued that the person who actually received the seized items upon its transmittal to the crime laboratory was not the forensic chemist. And that such person, from whom the forensic chemist received the seized sachets, was not presented as a witness.

The prosecution's failure to give justifiable grounds for the non-compliance of the procedure provided under Section 21(1), Article II of RA 9165, and the apparent gaps in the chain of custody, have compromised the integrity and evidentiary value of the *corpus delicti* in this case, thereby raising a cloud of reasonable doubt warranting appellant's acquittal.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated 20 April 2017 of the Court of Appeals (CA) in CA

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¹⁵ *Supra* at note 7.

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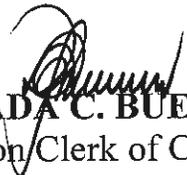
G.R. CR-HC No. 07669, which affirmed with modification the Decision dated 28 April 2015 rendered by Branch 25, Regional Trial Court of Tabuk City, in Crim. Case No. 75-2010, finding Froilan Boguen y Gapus guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 is **REVERSED and SET ASIDE**.

Accordingly, Froilan Boguen y Gapus is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he 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 Director General of the New Bilibid Prison, Bureau of Corrections for immediate implementation. The said Director General is **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Resolution the action he has taken.

SO ORDERED.” *Gaerlan, J., took no part; Rosario, J., designated Additional Member per Raffle dated 21 December 2020.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
RFF

by:

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

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(CA-G.R. CR HC No. 07669)

The Director General (x)
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The Hon. Presiding Judge
Regional Trial Court, Branch 25
Bulanao, 3800 Tabuk City
(Crim. Case No. 75-2010)

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