



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **01 March 2021** which reads as follows:*

**“G.R. No. 246980 (*People of the Philippines v. Christopher Gosim*).**  
– This Appeal<sup>1</sup> seeks to reverse and set aside the August 16, 2018 Decision<sup>2</sup> of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 09658. The *CA* affirmed the June 14, 2017 Decision<sup>3</sup> of the Regional Trial Court of Olongapo City, Branch 75 (*RTC*), in Criminal Case No. 2016-262, finding Christopher Gosim (*accused-appellant*) guilty of violating Section 5, Article II of Republic Act (*R.A.*) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

**The Antecedents**

In two separate Informations,<sup>4</sup> accused-appellant was charged with Illegal Sale and Illegal Possession of Dangerous Drugs under Secs. 5 and 11, Art. II of R.A. No. 9165, to wit:

**CRIMINAL CASE NO. 2016-262**

That on or about the sixth (6<sup>th</sup>) day of February, 2016, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully and knowingly sell and deliver to PO2 Benidick C. Sarmiento ₱200.00 (SN-XR724010 and AA032117) worth of

<sup>1</sup> *Rollo*, pp. 19-20.

<sup>2</sup> *Id.* at 3-18; penned by Associate Justice Jhosep Y. Lopez (now a Member of this Court) with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda (now also a Member of this Court), concurring.

<sup>3</sup> *CA rollo*, pp. 45-51; penned by Judge Raymond C. Viray.

<sup>4</sup> *Rollo*, p. 4.

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Methamphetamine Hydrochloride, otherwise known as “*Shabu*”, a dangerous drug, weighing Three Hundred Ninety-Three Thousandths (0.393) of a gram placed in one (1) heat-sealed transparent plastic sachet.

CONTRARY TO LAW.<sup>5</sup>

### CRIMINAL CASE NO. 2016-263

That on or about the sixth (6<sup>th</sup>) day of February, 2016, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his effective possession and control one (1) heat-sealed transparent plastic sachet of Methamphetamine Hydrochloride, otherwise known as “*Shabu*” weighing Fifty-Seven Thousandths (0.057) of a gram, which is a dangerous drug, said accused not having the corresponding license or prescription to possess said dangerous drug.

CONTRARY TO LAW.<sup>6</sup>

During his arraignment, accused-appellant pleaded “not guilty” to the charges. Thereafter, trial on the merits ensued.<sup>7</sup>

#### *Evidence for the Prosecution*

The prosecution presented as witnesses Police Officer II Benidick Sarmiento (*PO2 Sarmiento*),<sup>8</sup> Police Officer III Rolan A. Lonsame (*PO3 Lonsame*), and Police Inspector Cecilia Tang (*P/Insp. Tang*).

On February 5, 2016, the City Anti-Illegal Drugs Special Operation Team of the Olongapo City Police Office received a tip from a confidential informant (*CI*) and some barangay officials about the drug-related activities of accused-appellant along CBMU Upper Kalaklan, Olongapo City. PO2 Sarmiento and Police Officer III Eric L. Jaromay (*PO3 Jaromay*), together with the CI, conducted a surveillance. Upon verification of the report, a buy-bust team was formed consisting of PO2 Sarmiento as the poseur-buyer, while PO3 Jaromay, Police Senior Inspector Mar Joseph B. Ravelo, Police Officer II Omega, and Police Officer I Manansala, were all assigned as back-up security. PO3 Lonsame, on the other hand, was designated as the duty

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id. at 5.

<sup>8</sup> Also referred to as “Police Officer II Benedict Sarmiento” in some parts of the CA *rollo*.

investigator of the case. PO2 Sarmiento was given two (2) ₱100-bills as buy-bust money.<sup>9</sup>

The buy-bust team went to the target area on February 6, 2016 at around 3:30 in the morning. PO2 Sarmiento and the CI waited for around five minutes before accused-appellant arrived. Accused-appellant approached the CI and the latter introduced PO2 Sarmiento as the one who uses *shabu*. Accused-appellant asked PO2 Sarmiento if he wants to buy *shabu* from him. PO2 Sarmiento then asked if he could purchase ₱200.00 worth of *shabu*. Accused-appellant took out a heat-sealed transparent plastic sachet from his pocket and gave it to PO2 Sarmiento and the latter gave accused-appellant the ₱200.00 marked money. Thereafter, PO2 Sarmiento introduced himself as a police officer and the other members of the buy-bust team rushed to the scene. PO3 Jaromay frisked accused-appellant and recovered the marked money and another heat-sealed transparent plastic sachet. Immediately thereafter, accused-appellant was arrested and brought to the nearest police station.<sup>10</sup>

At the police station, the apprehending team waited for about four (4) hours for the arrival of the mandatory witnesses. Upon the arrival of *Kagawad* Anthony Alba (*Kagawad Alba*) and Department of Justice (*DOJ*) representative Emelita Reyes, PO3 Lonsame conducted the inventory. Thereafter, PO2 Sarmiento marked the heat-sealed transparent plastic sachet he bought from accused-appellant with his initials. PO3 Jaromay also marked the plastic sachet recovered from accused-appellant with his own initials. After turning over the sachets to PO3 Lonsame, the latter also marked said sachets with his own initials and prepared a request for laboratory examination. Thereafter, the seized items were turned over to P/Insp. Tang for qualitative examination. In her Chemistry Report No. D-056-2016, P/Insp. Tang confirmed that the contents of the heat-sealed plastic sachet were positive for *shabu*.<sup>11</sup>

#### *Evidence for the Defense*

The defense presented accused-appellant as its witness. He denied the charges and testified that, as he was walking home at around 2:30 in the morning of February 6, 2016, a car passed him by and stopped at the corner of CBMU Upper Kalaklan. Suddenly, the car reversed to where he was and a man named Raymond Manalang (*Manalang*), who was accused-appellant's enemy, alighted from the car. Manalang approached accused-appellant, poked a gun at him, and said "*natyempuhan din kita.*" Accused-appellant then saw

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<sup>9</sup> *Rollo*, p. 5.

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> *Id.* at 6.

PO2 Sarmiento and another police officer alight from the car and instructed him to lie down on the ground. Accused-appellant was later brought to the police station where he learned that he was being arrested for illegally possessing *shabu*. PO3 Jaromay showed him the *shabu* he was accused of possessing. He was then brought to the hospital for examination.<sup>12</sup>

### The RTC Ruling

In its June 14, 2017 Decision, the RTC found accused-appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs but acquitted him of the charge of illegal possession of dangerous drugs. The dispositive portion of the decision reads:

**WHEREFORE**, judgment is rendered as follows:

1. In **Criminal Case No. 2016-262**, the Court finds **Christopher Gosim GUILTY** beyond reasonable doubt of **Violation of Sec. 5, R.A. [No.] 9165** and sentences him to suffer the penalty of **life imprisonment** and to **pay a fine of ₱500,000.00 plus cost**, without subsidiary imprisonment in case of insolvency; and

2. In **Criminal Case No. 2016-263**, **Christopher Gosim is ACQUITTED** of the charge with *cost de officio*.

The accused shall also suffer the accessory penalties under Section 35, R.A. [No.] 9165 and shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code as amended.

The *shabu* sachets marked Exhs. "F" to "F-1" are ordered confiscated in favor of the government and to be disposed of in accordance with law.

**SO DECIDED.**<sup>13</sup>

The RTC acquitted accused-appellant of the illegal possession charge due to insufficient evidence given that PO3 Jaromay, the police officer who recovered the other sachet from accused-appellant's pocket, failed to testify. The RTC held that PO2 Sarmiento could not testify on the circumstances surrounding the sachet recovered by PO3 Jaromay because he admitted that he only learned of the existence of the other sachet during the inventory of the seized items.

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<sup>12</sup> Id. at 6-7.

<sup>13</sup> CA *rollo*, pp. 50-51.

On the other hand, the RTC convicted accused-appellant for the crime of illegal sale of dangerous drugs. The RTC held that the testimony of PO2 Sarmiento regarding the buy-bust operation, where he successfully bought from accused-appellant a plastic sachet containing *shabu* for a consideration of ₱200.00, was properly corroborated by documentary and object evidence.

Accused-appellant thereafter appealed to the CA.

### The CA Ruling

In its August 16, 2018 Decision, the CA affirmed the conviction of accused-appellant for the crime of illegal sale of dangerous drugs. The dispositive portion of the decision reads:

**WHEREFORE**, premises considered, the appeal is **DISMISSED**. The Decision dated June 14, 2017 of the Regional Trial Court (RTC) of Olongapo City, Branch 75 in Criminal Case Nos. 2016-262 and 2016-263 is **AFFIRMED**.

**SO ORDERED.**<sup>14</sup>

The CA upheld the finding of the RTC that all the elements of illegal sale of dangerous drugs were established by the prosecution. It held that the CI's testimony was not fatal to the prosecution's case since it was PO2 Sarmiento who transacted with accused-appellant. The CA also ruled that there was no break in the chain of custody and that the prosecution successfully proved compliance with Sec. 21, Art. II of R.A. No. 9165.

Hence, this appeal.

### Issues

Accused-appellant submits the following errors for consideration of the Court:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL;

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<sup>14</sup> *Rollo*, p. 17.

## II.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY IN CRIMINAL CASE NO. 2016-262 DESPITE THE ARRESTING OFFICERS' NONCOMPLIANCE WITH SECTION 21, ARTICLE II OF REPUBLIC ACT NO. 9165, AS AMENDED BY R.A. [NO.] 10640;

## III.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY IN CRIMINAL CASE NO. 2016-262 DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED *SHABU*.<sup>15</sup>

Accused-appellant reiterates the arguments in his brief submitted before the CA, where he asserted that his arrest was illegal because it did not fall under the permissible warrantless arrests under Sec. 5, Rule 113 of the Revised Rules of Criminal Procedure. Hence, the seized evidence are inadmissible and his conviction has no basis. Accused-appellant also contends that the integrity and evidentiary value of the seized evidence are doubtful considering that the marking and inventory were done four (4) hours after his arrest. Moreover, PO3 Lonsame did not testify on how he handled the seized items which caused a gap in the chain of custody and P/Insp. Tang and the evidence custodian likewise failed to testify on their handling of the seized items.

Appellee, through the Office of the Solicitor General, posits that there was a valid warrantless arrest since accused-appellant was caught in the act of selling *shabu* to PO2 Sarmiento. Appellee also argues that the apprehending team complied with Sec. 21, Art. II of R.A. No. 9165 by conducting the inventory at the police station in the presence of accused-appellant, *Kagawad* Alba, and Reyes. There was also an unbroken chain of custody since the seized evidence were marked, inventoried, and photographed at the police station after accused-appellant's arrest. Lastly, PO3 Lonsame and P/Insp. Tang need not be presented in court since their testimonies were stipulated upon by the parties.

Did the prosecution establish the guilt of accused-appellant beyond reasonable doubt for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165?

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<sup>15</sup> CA rollo, p. 30.

### The Court's Ruling

The appeal is meritorious.

Time and again, this Court has consistently ruled in drug-related cases that proving the *corpus delicti* is as important as establishing the elements of the offense.<sup>16</sup> The prosecution has the burden of establishing that the identity and integrity of the dangerous drugs were duly preserved, owing to the unique characteristic of illegal drugs that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.<sup>17</sup> This is crucial since it must be proven that the dangerous drug confiscated or recovered from the accused is the very same substance offered in court as evidence.<sup>18</sup>

In *People v. Hementiza*,<sup>19</sup> this Court reiterated the four (4) links in the chain of custody which must be strictly and duly proved by the prosecution in order to establish the integrity and evidentiary value of the dangerous drug: (1) the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer; (2) the turnover of the dangerous drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.<sup>20</sup>

In this case, it is glaringly apparent that the apprehending team failed to comply with the first link, *i.e.*, marking of the seized evidence immediately after the arrest of accused-appellant, which raises doubts as to the identity and integrity of the seized sachet of *shabu*.

In *People v. Coreche*,<sup>21</sup> this Court emphasized the importance of marking the seized contraband immediately after arrest of the suspect:

Crucial in proving chain of custody is the marking of the seized drugs or other related items *immediately after* they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference.

<sup>16</sup> *People v. Deliña*, G.R. No. 243578, June 30, 2020.

<sup>17</sup> *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

<sup>18</sup> See *People v. Guzon*, 719 Phil. 441, 451 (2013).

<sup>19</sup> *Supra* note 17.

<sup>20</sup> *Id.* at 1030.

<sup>21</sup> 612 Phil. 1238 (2009).

The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.<sup>22</sup>

Here, the marking of the seized sachets of *shabu* was not done immediately after accused-appellant's arrest. PO2 Sarmiento testified that after they arrested accused-appellant, they proceeded to the nearest police station and waited for the witnesses for four (4) hours before they conducted the marking of the seized sachet of *shabu*:

Q What happened next after the frisking?

A We arrested him and brought him to our office[,] ma'am.

Q Where was your office located?

A At Police Station 1 in front of Triangle.

Q Is that the nearest police station in Upper Kalaklan?

A Yes[,] ma'am.

Q What did you do with the sachets sold to you by the accused when you were at the police station?

A It was just in my pocket while we [were] waiting for the witnesses for the inventory.

x x x x

Q How long did you keep that sachet of *shabu*?

A Around four hours[,] ma'am.

x x x x<sup>23</sup>

CROSS-EXAMINATION  
by FISCAL (to witness)

x x x x

Q You are saying before the witnesses arrived, the *shabu* were only in your pocket, you have not presented them to Lonsame and Lonsame had not accomplished any document yet before the arrival of the witnesses?

A None yet.

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<sup>22</sup> Id. at 1245.

<sup>23</sup> TSN, September 27, 2016, pp. 10-12.

- Q So what you did when the witnesses arrived you brought out the sachets of *shabu*, put your markings, presented them to Lonsame and Lonsame marked the items, [Lonsame] now accomplish the inventory receipt, correct?
- A Yes[,] [ma'm].

x x x x<sup>24</sup>

It is evident from PO2 Sarmiento's testimony that the seized sachets of *shabu* were only marked after about four hours from the time of accused-appellant's arrest, which made the seized contraband susceptible to contamination, switching, or planting of evidence. As it is indispensable that the marking be done immediately upon confiscation of the seized dangerous drugs, the failure thereof by the apprehending team rendered the integrity and evidentiary value of the seized contraband doubtful.

Significantly, there was no explanation by the prosecution as to why the marking was not immediately done at the place of arrest or at the police station immediately upon the apprehending team's arrival, if only to remove any uncertainty that the sachet marked by PO2 Sarmiento and PO3 Lonsame, which later on tested positive for *shabu*, was the same one sold by accused-appellant to PO2 Sarmiento. Even PO2 Sarmiento's claim, that the sachet of *shabu* was in his possession while they waited for the witnesses to arrive, cannot assuage doubts that the integrity and evidentiary value of the seized sachets of *shabu* were preserved.<sup>25</sup> Verily, there was a considerable lapse of time that the seized sachets of *shabu* were unaccounted for, which casts doubt on its identity and integrity.

Thus, it cannot be ascertained whether the dangerous drug turned over to PO3 Lonsame and to P/Insp. Tang was the same one confiscated by PO2 Sarmiento during the buy-bust operation. The inherent weakness of the first link in the chain of custody thus caused the other links to fail.<sup>26</sup>

In our constitutional system, basic and elementary is the presupposition that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. The rule is invariable whatever may be the reputation of the accused, for the law presumes his innocence unless and until the contrary is shown.<sup>27</sup>

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<sup>24</sup> Id. at 22.

<sup>25</sup> See *People v. Dela Cruz*, 744 Phil. 816, 835 (2014).

<sup>26</sup> *People v. Guanzon*, G.R. No. 233653, September 5, 2018.

<sup>27</sup> *Mallillin v. People*, 576 Phil. 576, 593 (2008).

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated August 16, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09658 is **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of Christopher Gosim. He is hereby **ACQUITTED** of the charge filed against him and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this Resolution and to **INFORM** this Court of the date of the actual release from confinement of Christopher Gosim within five (5) days from receipt hereof.

Let entry of judgment be issued immediately.

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

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court *mc 4/21*

27 APR 2021

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THE DIRECTOR (x)  
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HON. PRESIDING JUDGE (reg)  
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Olongapo City  
(Criminal Case No. 2016-262)

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