



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 08 February 2021 which reads as follows:

“G.R. No. 228949 (*People of the Philippines v. Abdulah Macarimbang*) — The Court resolves to:

- 1) **NOTE** the Manifestation dated October 3, 2019 by the Public Attorney’s Office;
- 2) **NOTE** and **GRANT** the Compliance with Motion dated December 6, 2019 by the Public Attorney’s Office (Mindanao Station), withdrawing the Motion to Withdraw Appeal dated December 10, 2018; and
- 3) **NOTE WITHOUT ACTION** appellant’s Motion to Withdraw Appeal dated December 10, 2018 in view of 2).

Acting on the present appeal, We acquit.

Accused-Appellant Abdulah Macarimbang is charged with Illegal Sale of Dangerous Drugs allegedly committed on October 24, 2011. The applicable law therefore is Republic Act No. 9165¹ (RA 9165) before its amendment in 2014.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution, therefore, is tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.²

¹ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

² *People v. Barte*, 806 Phil. 533, 542 (2017).

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:³ **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.⁴

We focus on the **first link**.

The **first link** includes the physical inventory and photograph of the seized dangerous drug. The requirement is embodied in Section 21, Article II of RA 9165, *viz.*:

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:

(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 added)

The Implementing Rules and Regulations (IRR) of RA 9165 further commands:

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

³ As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

x x x x

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

x x x x

⁴ *People v. Dahil*, 750 Phil. 212, 231 (2015).

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 added)

Verily, Section 21 of RA 9165 and its IRR require that the suspected drugs should be physically inventoried and photographed in the presence of the following witnesses: (a) the accused or person/s from whom the items were seized and confiscated, or his representative or counsel; (b) a representative from the media AND the Department of Justice (DOJ); and (c) any elected public official.⁵

Here, only barangay chairperson Sheila Marie Paña, kagawad Sherwin Mejes, and media representative Elmer Laroza witnessed the inventory.⁶ No representative from the DOJ was present. The prosecution offered no explanation for this omission. Though the absence of a required witness does not *per se* render the confiscated items inadmissible, justifiable reason for such absence, or a showing of any genuine and sufficient effort to secure the presence of the required witnesses, must nevertheless be adduced.

In *People v. Laroga*,⁷ the Court acquitted accused-appellant therein for the arresting officers' failure to secure the presence of a DOJ representative during the inventory of seized items as required under Section 21 of RA 9165. The prosecution's failure to provide justification for the omission created doubt as to the identity and evidentiary value of the seized items.

Non-compliance with the three (3)-witness requirement, by itself, is already sufficient to sustain a verdict of acquittal. As it was, however, the prosecution likewise failed to establish compliance with the photograph requirement.

Notably, there was no mention in the rulings below or even in the pleadings of the accused-appellant and plaintiff-appellee that the seized items were photographed. The Court observed a similar situation in *People v. Arposeple*,⁸ where the records and the testimonies of the prosecution witnesses were silent on whether photographs were actually taken as required by law. Consequently, the Court held the arresting officers' failure to photograph the drug item weakened the chain of custody and resulted in Arposeple's acquittal.

In fine, the prosecution failed to establish with moral certainty the identity and the unbroken chain of custody of the dangerous drug seized from appellant. As heretofore shown, the chain of custody here had been irreparably broken from its inception. Consequently, the integrity and evidentiary value

⁵ *People v. Laroga*, G.R. No. 238999 (Notice), January 29, 2020.

⁶ *Rollo*, p. 8.

⁷ *Supra* note 5.

⁸ 821 Phil. 340, 367-368 (2017).

of the seized drug item were not deemed to have been preserved. Perforce, accused-appellant must be acquitted and released from restraint.⁹

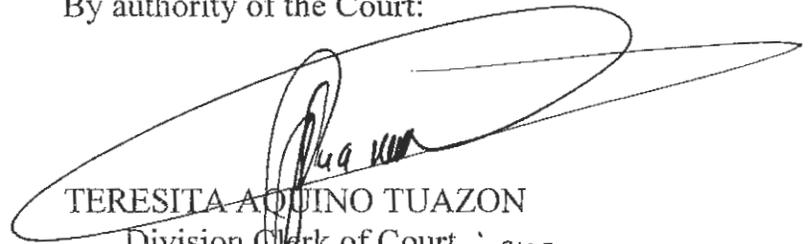
WHEREFORE, the appeal is **GRANTED**. The Decision dated August 22, 2016 of the Court of Appeals in CA-G.R. CR No. 01356-MIN is **REVERSED** and **SET ASIDE**.

Accused-appellant **ABDULAH P. MACARIMBANG** is **ACQUITTED of Illegal Sale of Dangerous Drugs**. The Director of the Bureau of Corrections is ordered to a) immediately release accused-appellant from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice.

Let entry of judgment be immediately issued.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court p 2/22
 23 FEB 2021

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THE DIRECTOR (x)
 Bureau of Corrections
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
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 Midsayap, Cotabato
 (Crim. Case No. 2011-206)

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Please notify the Court of any change in your address.
 GR228949. 02/08/2021(43)URES(a)

⁹ *Jacson v. People*, G.R. No. 199644, June 19, 2019.