



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 February 2021** which reads as follows:*

“G.R. No. 250186 (*People of the Philippines v. Rodrigo Castor y Raquino*). – The Court resolves to **NOTE** the separate manifestations (in lieu of supplemental briefs) of counsel for accused-appellant dated September 24, 2020, and of the Office of the Solicitor General dated October 9, 2020.

We affirm, but modify the penalties to conform with the Indeterminate Sentence Law (ISL).

In drug related cases, the State bears the burden not only of proving the elements of the offense, but also the *corpus delicti* itself. The dangerous drugs and paraphernalia seized from accused-appellant Rodrigo Castor y Raquino (accused-appellant), *i.e.*, those sold to PO1 Mario Agustin (PO1 Agustin), seized by PO1 Remar Pasaraba (PO1 Pasaraba), and the paraphernalia collected from his house, all constitute such *corpus delicti*. To sustain a verdict of conviction, it is, thus, imperative for the prosecution to establish that the identity and integrity of these dangerous drugs and paraphernalia were duly preserved.¹

Here, accused-appellant was charged with Illegal Sale and Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia allegedly committed on September 9, 2014. Hence, the applicable law is Republic Act

¹ *People v. Valdez*, G.R. No. 233321, December 5, 2019.

No. 9165 (RA 9165), as amended by Republic Act No. 10640 (RA 10640).² Section 21 thereof prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally*, That noncompliance of 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 and custody over said items.

x x x x

To ensure the integrity of the seized drug items, the prosecution must account for each link in its chain of custody:³ (1) the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover

² 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.

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

and submission of the marked illegal drug seized by the forensic chemist to the court.⁴

This chain of custody rule came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.⁵ This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition.⁶

Here, accused-appellant asserts that the charges were a set-up, and the buy-bust was marred with technical deficiencies. The prosecution failed to observe the "objective test." The "objective test" mandates that in buy-bust operations, the prosecution must present a complete picture detailing the transaction – starting from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, and up until the consummation of the sale by the delivery of the illegal drug subject of the sale.⁷ The prosecution, however, did not disclose here specific details of the sale. Too, the prosecution failed to comply with the demands of Section 21, RA 9165, as amended by RA 10640, as there was no mention whether Department of Justice (DOJ) representative Arlene M. Altares (DOJ representative Altares) was actually a representative of the National Prosecution Service (NPS).

The Court is not persuaded.

Prosecution witness PO1 Agustin testified:

Q Then after the civilian informant knocked at the gate of Rodrigo Castor, what transpired next, if any?

A Rodrigo Castor went out and asked us to enter his house.

Q And what happened next, if any?

A **And I asked him that I will be going to buy One Thousand Pesos (P1,000) worth of shabu, ma'am.**

Q When you asked him to buy One Thousand Pesos worth of shabu, were you already inside the house of Rodrigo Castor?

A Yes, ma'am.

Q And what particular part of the house of Rodrigo Castor?

A At the sala, ma'am.

Q And the confidential informant was also there?

⁴ *Jacson v. People*, G.R. No. 199644, June 19, 2019.

⁵ *Id.*

⁶ *People v. Diputado*, 813 Phil. 160, 171 (2017).

⁷ *CA rollo*, p. 36.

A Yes, ma'am.

Q Then after that what was the reply of Rodrigo Castor?

A After telling that I am going to buy, Rodrigo Castor handed me two (2) heat sealed transparent plastic sachet, ma'am.

Q Then after that Rodrigo Castor handed to you two (2) heat sealed transparent plastic sachets containing white crystalline substance, what did you do next, if any?

A I gave the One Thousand Peso bill as payment of the shabu, ma'am.

Q Then what happened next, if any?

A I asked Rodrigo Castor if the shabu is authentic if we can try it in his house, ma'am.

Q And what was his reply?

A In his own word, '*We umay kayo dadtoy uneg adda dyay gamit ko*', which is translated, **Come inside because my drug paraphernalias are inside my room.**

Q And after that Mister witness, did you enter the room of Rodrigo Castor?

A Yes, ma'am, as we enter the room I secretly dialed the cellphone number of our team leader as a pre-arranged signal as the drug buy bust is already consummated, ma'am. (Emphases supplied)

x x x x

PO1 Agustin thus narrated that accused-appellant handed him the two (2) plastic sachets of *shabu* and, he, in turn, gave the latter the marked ₱1,000.00 as payment. Clearly, therefore, the sale transaction of drugs was consummated.

Accused-appellant, nonetheless, denies the charges and insists that there had been lapses in the conduct of the buy-bust operation. Specifically, the prosecution allegedly failed to conduct prior surveillance, disclose specific details of the alleged unlawful sale, and clearly show its details in sequence.

The argument must fail. Prior surveillance is not necessary in buy-bust operations, especially where the police operatives are accompanied by their informant during the entrapment,⁸ as in here. More, the prosecution's witnesses clearly and completely established the sequence of events that transpired on September 9, 2014 – from the time the confidential informant arrived at the police station, to the planning of the buy-bust operation and the actual buy-bust operation, and up to the moment the forensic chemist performed a qualitative test on the seized items and their subsequent storage.

Verily, both the trial court and the Court of Appeals (CA) found the testimonies of the witnesses to be consistent and credible. It is settled that the

⁸ *People v. Ocampo*, G.R. 232300, August 1, 2018.

trial court's determination of witnesses' credibility, especially when affirmed by the appellate court, is accorded full weight and credit, if not conclusive effect.⁹ To be sure, the prosecution witnesses here were able to consistently recount who took custody of the dangerous drugs from seizure up to the time the same were presented as evidence in court, *viz.*:

First. PO1 Agustin, PO1 Pasaraba, and the rest of the team confiscated and collected the plastic sachets of *shabu* and the paraphernalia, respectively, which they marked, inventoried, and photographed in the presence of local elected officials, a DOJ representative, and a media representative;

Second. PO1 Agustin and apprehending officer PO1 Pasaraba presented the seized items to investigating officer SPO1 Emmanuel Padul (SPO1 Padul) for processing;

Third. After SPO1 Padul prepared the request for laboratory examination, PO1 Agustin and PO1 Pasaraba turned over the items to Forensic Chemist Police Chief Inspector Glen Ly Tuazon (PCI Tuazon), who received the same and performed a qualitative test thereon; and

Fourth. PCI Tuazon properly stored the seized items and submitted the same to the court.

In sum, the prosecution established all the links in the chain of custody and accounted for its proper handling and preservation at every stage.

Notably, accused-appellant assails the personality of DOJ representative Altares as a witness because the prosecution purportedly failed to specify whether she was a representative of the NPS.

This argument fails to persuade. To be sure, the presumption of regularity trumps accused-appellant's bare assertion that DOJ representative Altares was not member of the NPS. For why else would the buy-bust team have secured her presence if not to comply with the requirement of Section 21? This conforms with the presumption of regularity in the performance of official functions. More, the defense itself admits that DOJ representative Altares was an employee of the DOJ, working for the Office of the Prosecutor – the very agency of the NPS. Basic is the rule that he who alleges bears the burden of proof.¹⁰ The burden was, thus, on accused-appellant to prove that DOJ representative Altares was not deputized by the DOJ to be present as representative of the NPS, which he miserably failed to establish.

⁹ *People v. Moner*, 827 Phil. 42, 54 (2018), citing *People v. Castro*, 711 Phil. 662, 673 (2013).

¹⁰ *Aricheta v. People*, 560 Phil. 170, 182 (2007).

Notably though, even if we removed DOJ representative Altares from the equation, the presence of barangay officials Genaro de Rivera and Tom Qutoriano and media representative Jerc Cinco would have already sufficed per Section 21, RA 9165, as amended by RA 10640.

All told, the CA did not err when it affirmed the verdict of conviction for violations of Sections 5, 11, and 12, Article II of RA 9165.

We now come to the penalties.

In Criminal Case No. II-12334, Section 5, Article II of RA 9165¹¹ states that the penalty for Illegal Sale of Dangerous Drugs is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. Accordingly, the trial court, as affirmed by the CA, correctly imposed life imprisonment and a fine of ₱500,000.00 on accused-appellant.

We must modify, however, the penalties imposed by the trial court in Criminal Case No. II-12335, for Illegal Possession of Dangerous Drugs, and Criminal Case No. II-12336, for Illegal Possession of Drug Paraphernalia to conform with the ISL.

In Criminal Case No. II-12335, for Illegal Possession of Dangerous Drugs, the trial court imposed the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from ₱300,000.00 to ₱400,000.00. On the other hand, in Criminal Case No. II-12336, for Illegal Possession of Drug Paraphernalia, the trial court imposed the penalty of imprisonment and six (6) months and one (1) day, as minimum, to four (4) years, as maximum, and a fine of ₱10,000.00.¹² Under Section 1 of the ISL,¹³ however, the imposable penalty here should be the maximum term of which shall not exceed the maximum fixed by law, and the minimum term which shall not be less than the minimum prescribed by the same.

¹¹ **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug x x x

¹² *CA rollo*, p. 55.

¹³ **Section 1.** Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225.)

In the recent case of *People v. Dadang*,¹⁴ the Court similarly found Dadang guilty beyond reasonable doubt of Illegal Possession of 0.5449 gram of *Shabu* and Illegal Possession of Drug Paraphernalia consisting of a weighing scale, disposable lighter, improvised aluminum foil and improvised glass pipe. The Court, however, found it necessary to modify the penalties imposed by the trial court, as affirmed by the CA, to conform with Section 1 of the ISL.¹⁵ Thus, for Illegal Possession of Dangerous Drugs, the Court imposed an indeterminate sentence of twelve (12) years and one (1) day of imprisonment, as minimum, to fourteen (14) years, as maximum, and to pay a fine of ₱300,000.00. On the other hand, for Illegal Possession of Drug Paraphernalia, the Court imposed an indeterminate sentence of six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and to pay a fine of ₱10,000.00.¹⁶

So must it be in the present case.

ACCORDINGLY, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 08477 dated March 23, 2018 is **AFFIRMED WITH MODIFICATION**.

Accused-appellant **Rodrigo Castor y Raquino** is found **GUILTY** of:

- a) Illegal Sale of Dangerous Drugs in Criminal Case No. II-12334 under Section 5 of Article II of Republic Act No. 9165 and sentenced to life imprisonment and a fine of ₱500,000.00;
- b) Illegal Possession of Dangerous Drugs in Criminal Case No. II-12335 under Section 11, Article II of Republic Act No. 9165 and sentenced to an indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of ₱300,000.00; and
- c) Illegal Possession of Drug Paraphernalia in Criminal Case No. II-12336 under Section 12, Article II of Republic Act No. 9165 and sentenced to an indeterminate penalty of six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and a fine of ₱10,000.00.

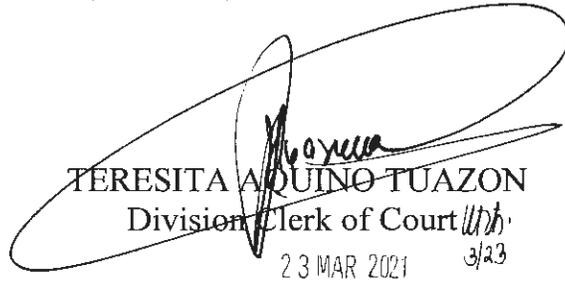
SO ORDERED.

¹⁴ G.R. No. 242880, January 22, 2020.

¹⁵ **Section 1.** Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendment, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; **and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.** (Emphasis supplied)

¹⁶ See also *Felomino v. People*, G.R. No. 245332, October 16, 2019.

By authority of the Court:



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*with copy of CA Decision dated 23 March 2018
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