



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 February 2021** which reads as follows:*

**“G.R. No. 251020 (*People of the Philippines v. Elena Tolentino y Perez*).** – The Court resolves to **NOTE** the following:

- (1) Manifestation (In lieu of Supplemental Brief) dated November 11, 2020 filed by accused-appellant;
- (2) Manifestation dated November 20, 2020 filed by the Office of the Solicitor General; and
- (3) Undated handwritten letter of the accused-appellant.

**The Case**

This appeal assails the Decision<sup>1</sup> dated February 13, 2019 of the Court of Appeals in CA-G.R. CR HC No. 09760 affirming appellant Elena Tolentino y Perez’s conviction for violation of Section 5 and Section 11, Article II of Republic Act No. 9165 (RA 9165).<sup>2</sup>

**Proceedings Before the Trial Court**

***The Charge and Plea***

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<sup>1</sup> *Rollo*, pp. 3-16.

<sup>2</sup> The Comprehensive Dangerous Drugs Act of 2002.

By Information dated January 16, 2017, appellant and her co-accused Henry Alfonso y Dela Paz (Alfonso) were charged with violation of Section 5 (illegal sale of dangerous drugs), Article II of RA 9165, *viz.*:

**Criminal Case No. 2017-5573-D-MK**

That on or about the 12<sup>th</sup> day of January 2017, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other, without being authorized by law, did then and there willfully, unlawfully and knowingly sell to PO1 Jomar Acula, poseur[-]buyer, 0.05 grams of white crystalline substance subsequently marked as “ETP-BB 1/12/17” tested positive for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

**CONTRARY TO LAW.<sup>3</sup>**

Under a separate Information of even date, appellant was also charged with Section 11 (illegal possession of dangerous drugs), Article II of RA 9165, *viz.*:

**Criminal Case No. 2017-5574-D-MK**

That on or about the 12<sup>th</sup> day of January 2017, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs willfully, unlawfully and knowingly have in his possession direct custody and control Five (5) plastic sachets containing of [sic] Methamphetamine Hydrochloride in sum weighing a total of 42.30 grams which [were] marked as “ETP-1 1/12/17”, “ETP-2 1/12/17”, “ETP-3 1/12/17”, “ETP-4 1/12/17”, and “ETP-5 1/12/17”, and tested positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

**CONTRARY TO LAW.<sup>4</sup>**

On arraignment, appellant and accused Alfonso pleaded not guilty.<sup>5</sup>

***Prosecution's Version***

Police Officer Jomar Acula (PO Acula), member of Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG), Marikina City Police, testified that on January 12, 2017, at 12 noon, the confidential

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<sup>3</sup> CA rollo, pp. 48-49.

<sup>4</sup> *Id.* at 49.

<sup>5</sup> Rollo, p. 4.

informant arrived at their office and reported to Police Inspector Jerry Flores (P/Insp. Flores) that a certain Elena and Mel, later identified as appellant and Alfonso, respectively, were selling drugs at Bayan-Bayanan Avenue corner Shoe Avenue, Concepcion Uno, Marikina City. On the basis of this information, P/Insp. Flores formed a buy-bust operation composed of police officers Acula, Joseph Capones (Capones), Mark Joseph Cruz, Edwin Lovendino, Lyra Fornal and Christopher Balagoza as members. P/Insp. Flores gave PO Acula three (3) pieces of ₱100.00 bills as buy-bust money.<sup>6</sup>

After coordinating with the Philippine Drug Enforcement Agency (PDEA), the buy-bust team proceeded to the target area. There, PO Acula and the confidential agent approached a parked van where Alfonso and appellant were seated inside. The confidential informant introduced PO Acula to appellant as someone interested to buy *shabu*. Appellant asked PO Acula how much drugs he wanted to buy, to which the latter said “tatlong daan lang madam.” PO Acula gave appellant the buy-bust money which she placed inside a yellow pouch. Appellant then retrieved a plastic sachet containing white crystalline substance from the same pouch and gave it to PO Acula. The latter then lit a cigarette to signal the other team members that the transaction was consummated.<sup>7</sup>

When the rest of the team arrived, PO Acula arrested appellant and confiscated the yellow pouch from her. Meantime, PO Capones arrested Alfonso. PO Acula inspected the yellow pouch and recovered the following:

- Five (5) pieces of heat-sealed transparent plastic sachets
- One (1) piece of digital weighing scale
- One (1) empty transparent plastic sachet
- Three (3) pieces of P100.00 bills, and
- One (1) cellular phone<sup>8</sup>

The buy-bust team proceeded to the Police Community Precinct (PCP) 6 being the nearest police station. There, the seized items were marked and inventoried in the presence of a barangay official and media representative. Pictures were taken during the marking and inventory. Thereafter, the team returned to their police station where the chain of custody form and request for laboratory examination were prepared.<sup>9</sup>

PO Acula brought the specimens and request for examination to the Philippine National Police (PNP) Eastern Police District Crime Laboratory. The same were received by Forensic Chemist Margarita Libres (Forensic Chemist Libres).<sup>10</sup>

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

<sup>7</sup> *Id.* at 5-6.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 6-7.

<sup>10</sup> *Id.* at 7.

Both the defense and the prosecution stipulated on the qualifications of Forensic Chemist Libres and the fact that she received subject specimens which she tested and found positive for methamphetamine hydrochloride, a dangerous drug. They also stipulated that she reduced her findings in Physical Science Report No. D-066-17E.<sup>11</sup>

✓ *Defense's Version*

Appellant, on the other hand, testified that on January 12, 2017, she went to Sta. Lucia East Grand Mall to buy some things. Since she was carrying several bags, she looked for a van to hire. She approached a parked van and talked to Alfonso if he could bring her to Concepcion Uno, Marikina City. Alfonso agreed for a fee of One Thousand Five Hundred (₱1,500.00). Upon reaching Concepcion, Marikina City, a white Tamaraw FX suddenly cut their lane and blocked the van. Armed men disembarked from the Tamaraw FX, pointed a gun at them, and ordered them to open the door. She and Alfonso were dragged out of the van and frisked. The men brought them inside the Tamaraw FX and drove them to different places until they arrived at the police station where they were charged with selling illegal drugs.<sup>12</sup>

Alfonso testified and corroborated appellant's testimony.

### The Ruling of the RTC

By Consolidated Decision<sup>13</sup> dated July 28, 2017, the trial court found appellant guilty as charged while Alfonso was found innocent and ordered to be released, *viz.*:

**WHEREFORE**, premises considered, judgment is hereby rendered as follows:

**In Criminal Case No. 2017-5573-D-MK**, accused **ELENA TOLENTINO y PEREZ** is hereby found **GUILTY** for Violation of Section 5, Article II of RA 9165. She is sentenced to suffer the penalty of life imprisonment and the payment of a fine in the amount of five hundred thousand (Php500,000.00) pesos.

For failure of the prosecution to prove his guilt beyond reasonable doubt, accused Henry Alfonso y Dela Paz is hereby **ACQUITTED** of the offense of Violation of Section 5, Article II of RA 9165.

**In Criminal Case No. 2017-5574-D-MK**, accused **ELENA TOLENTINO y PEREZ** is hereby found **GUILTY** for Violation of Section 11, Article II of RA 9165. She is sentenced to suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine of Three Hundred Fifty Thousand (Php350,000.00) Pesos.

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

<sup>12</sup> *Id.* at 8.

<sup>13</sup> Penned by Judge Alice C. Gutierrez, *CA rollo*, pp. 48-64.

x x x x

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

The trial court gave full credence to the testimony of the prosecution witness who was a police officer performing official functions. It found the chain of custody to have been duly established and, thus, rejected appellant's denial and theory of frame up.

The trial court, however, acquitted Alfonso because the prosecution failed to prove his participation in the illegal drug transaction.

### **The Proceedings Before the Court of Appeals**

On appeal, appellant faulted the trial court for rendering the verdict of conviction allegedly despite the buy-bust team's failure to prove that the drugs were the same one seized from her. She argued that the chain of custody was not complied with because: 1) the seized plastic sachets containing white crystalline substance were not weighed during inventory, and 2) there was no evidence how the seized items were handled or kept.

For its part, the People, through the Office of the Solicitor General (OSG), countered, in the main: 1) the elements of illegal sale of drugs and illegal possession of dangerous drugs were all proven; 2) there was substantial compliance with the chain of custody rule; and, 3) the presumption of regularity in the performance of the police officers' official functions prevails over appellant's bare denial and theory of frame up.

### **The Ruling of the Court of Appeals**

In its assailed Decision dated February 13, 2019, the Court of Appeals affirmed with modification, thus:

**WHEREFORE**, in light of the foregoing premises, the instant **APPEAL** is hereby **DENIED**. Hence, We **AFFIRM** the Consolidated Decision dated July 28, 2017 of the RTC, Marikina City, Branch 193 in Criminal Case No. 2017-5573-D-MK and Criminal Case No. 2017-5574-D-MK with **MODIFICATION** as to the penalty in Criminal Case No. 2017-5574-D-MK which should be life imprisonment and a fine of Four Hundred Fifty Thousand Pesos (P450,000.00).

**SO ORDERED.**<sup>15</sup>

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<sup>14</sup> *Id.* at 64.

<sup>15</sup> *Rollo*, p. 16.

## The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for her acquittal. For the purpose of this appeal, the OSG<sup>16</sup> and appellant<sup>17</sup> both manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

### Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction against appellant for violation of both Section 5 and Section 11, Article II of RA 9165?

### Ruling

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 possessed by the accused is the same substance presented in court.<sup>18</sup> The chain of evidence is constructed by proper exhibit handling, storage, labelling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence.<sup>19</sup>

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *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.<sup>20</sup>

*People v. Holgado*<sup>21</sup> further ordained:

Compliance with the chain of custody requirement ... ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, **the quantity (e.g., weight) of the substances or items seized**; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or

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<sup>16</sup> *Id.* at 31-32.

<sup>17</sup> *Id.* at 25-27.

<sup>18</sup> *People v. Barte*, G.R. No. 179749, March 1, 2017.

<sup>19</sup> *People v. Balibay*, G.R. No. 202701, September 10, 2014.

<sup>20</sup> *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

<sup>21</sup> 741 Phil. 78, 93 (2014).

items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. (Emphasis supplied)

Here, the prosecution failed to establish an unbroken chain of custody. Consider:

**First.** Neither the certificate of inventory nor the request for laboratory examination indicate the weight of the seized drugs supposedly confiscated from appellant. Records show that the certificate of inventory and request for laboratory examination only described the pieces of evidence, as follows:

One (1) pc Heat sealed transparent plastic sachet containing white crystalline substance suspected as shabu marked as “ETP-BB 1/12/17”; and Five (5) pcs Heat sealed transparent plastic sachet containing white crystalline substance suspected as shabu marked as “ETP-1 1/12/17” to “ETP-5 1/12/17”, respectively.<sup>22</sup>

On the other hand, Physical Science Report No. D-066-17E bore the following:

SPECIMEN SUBMITTED:

Six (6) heat-sealed transparent plastic sachets each containing white crystalline substance with the following markings and recorded net weights:

A – (“ETP-BB 1/12/17”) – 0.05 gram  
B – (“ETP-1 1/12/17”) – 0.10 gram  
C – (“ETP-2 1/12/17”) – 0.03 gram  
D – (“ETP-3 1/12/17”) – 0.05 gram  
E – (“ETP-4 1/12/17”) – 18.32 grams  
F – (“ETP-5 1/12/17”) – 23.80 grams<sup>23</sup>

In *People v. De Vera*,<sup>24</sup> the Court acquitted De Vera because of a stark difference between the weight of the confiscated drugs. In that case, the request for examination and the inventory show an aggregate weight of **1.32 grams** of illegal drugs allegedly confiscated from De Vera, while the Initial Laboratory Report and Chemistry Report both show that the total weight of drugs submitted for examination was only **0.81 gram**. The Court held that the weight discrepancy was significant and the prosecution offered no acceptable explanation therefor.

<sup>22</sup> Record, p. 21 and 41.

<sup>23</sup> Record, p. 16.

<sup>24</sup> See G.R. No. 218914, July 30, 2018.

Here, it was not a mere discrepancy but a total lack of evidence regarding the weight of the drugs allegedly seized from appellant. The prosecution did not acknowledge, much less, offer any explanation for this omission. Thus, it was highly possible that the seized drugs were switched during their handling. There was, therefore, no certainty that the drugs submitted in court were the same ones seized from appellant.

In *People v. Pornillos*,<sup>25</sup> the Court held that speculations cannot overcome the concrete evidence that what was seized was not what was forensically tested. This implies tampering with the prosecution evidence. The Court, thus, cannot affirm the conviction of *Pornillos* based on compromised evidence. So must it be.

**Second.** There was no evidence who did the marking on the confiscated drugs. PO Acula testified:

Q: After you arrested the accused, what happened next?

A: We brought them to the precinct and conducted the markings of the evidence at the precinct, sir.

x x x x<sup>26</sup>

On this score, *People v. Burdeos*<sup>27</sup> held that every person who takes possession of seized drugs must show how they were handled and preserved while the same were in his or her custody to prevent any switching or replacement. The prosecution failed to identify who the police officer who marked the seized items which creates more doubt on the identity of the *corpus delicti*.

**Finally**, there was nothing in the records how the seized drugs were handled from the time they were turned over to the laboratory up to their presentation in court.

In *People v. Baltazar*,<sup>28</sup> the accused was acquitted of illegal sale of dangerous drugs because the records were bereft of any evidence on how the illegal drugs were brought to court. There was no showing how the alleged seized items were stored after they got examined by the forensic chemist, who handled the specimens following their examination, and where the same were kept until they were retrieved and presented in court.

Notably, the parties agreed to dispense with the testimony of Forensic Chemist Libres and instead stipulated that she was a qualified forensic chemist and that she had no personal knowledge about the source

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<sup>25</sup> 718 Phil. 675, 679 (2013).

<sup>26</sup> TSN dated June 20, 2017, p. 18.

<sup>27</sup> G.R. No. 218434, July 17, 2019 citing *People v. Ismael*, 806 Phil. 21, 35 (2017).

<sup>28</sup> G.R. No. 229037, July 29, 2019.

of the drug items but only conducted laboratory examination thereon. *People v. Miranda* citing *People v. Cabuhay* ordained that the parties' stipulation to dispense with the testimony of the forensic chemist should include:

x x x (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial.<sup>29</sup>

Here, the parties' stipulation to dispense with the testimony of the Forensic Chemist Libres did not contain the required vital pieces of information, *i.e.*, she received the seized drugs as marked, properly sealed, and intact; she resealed the drug items after examination of the content; and, she placed his own marking on the drug items. Absent any testimony regarding the management, storage, and preservation of the illegal drugs allegedly seized herein after their qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be reasonably established.<sup>30</sup>

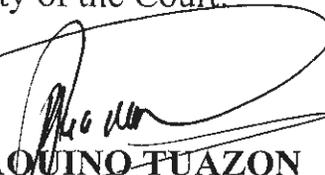
In light of the prosecution's failure to establish with moral certainty the identity and the unbroken chain of custody of the dangerous drugs seized from appellant, a verdict of acquittal here is in order.<sup>31</sup>

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated February 13, 2019 of the Court of Appeals in CA-G.R. CR HC No. 09760 is **REVERSED** and **SET ASIDE**.

Appellant Elena Tolentino y Perez is **ACQUITTED** in Criminal Case Nos. 2017-5573-D-MK and 2017-5574-D-MK. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release her from custody unless she is being held for some other lawful cause; and b) submit her report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.

**SO ORDERED."**

By authority of the Court:

  
**TERESITA AQUINO TUAZON**  
Division Clerk of Court  
23 MAR 2021 P 3/23

<sup>29</sup> G.R. No. 218126, July 10, 2019.  
<sup>30</sup> *People v. Miranda*, G.R. No. 218126, July 10, 2019.  
<sup>31</sup> *People v. Villojan, Jr.*, G.R. No. 239635, July 22, 2019.

PUBLIC ATTORNEY'S OFFICE (reg)  
Special & Appealed Cases Service  
Department of Justice  
5<sup>th</sup> Floor, PAO-DOJ Agencies Building  
NIA Road corner East Avenue  
Diliman, 1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

ELENA P. TOLENTINO (x)  
Accused-Appellant  
c/o The Superintendent  
Correctional Institution for Women  
1550 Mandaluyong City

THE SUPERINTENDENT (x)  
Correctional Institution for Women  
1550 Mandaluyong City

THE DIRECTOR (x)  
Bureau of Corrections  
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 193  
1800 Marikina City  
(Crim. Case Nos. 2017-5573-D-MK &  
2017-5574-D-MK)

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Supreme Court, Manila

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Supreme Court, Manila

COURT OF APPEALS (x)  
Ma. Orosa Street  
Ermita, 1000 Manila  
CA-G.R. CR-HC No. 09760

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