



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 10, 2021 which reads as follows:

“G.R. No. 251049 (*People of the Philippines v. Gerry Bautista y Navarro also known as “Anak”*). – Gerry Bautista y Navarro (accused-appellant) assails the Decision¹ dated January 30, 2019 issued by the Court of Appeals (CA), which affirmed the Decision² dated November 9, 2017 of Branch 69, Regional Trial Court (RTC) Lingayen, Pangasinan, finding accused-appellant guilty beyond reasonable doubt of violating Republic Act No. 9165 (RA 9165), Article II, Section 5 which punishes the Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

Facts of the Case

Prosecution’s Version

In the afternoon of May 25, 2017, a briefing was conducted at the Binmaley Police Station for an entrapment operation against accused-appellant in connection with his illegal drug trade activities. PO1 Stevens Joe M. Soriano (PO1 Soriano) was designated as *poseur-buyer* and was tasked to hand over buy-bust money to accused-appellant amounting to ₱500.00. The rest of the team was assigned as arresting officers.³

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¹ Penned by Associate Justice Rodil V. Zalameda (now a Member of this Court), with the concurrence of Justices Fernanda Lampas Peralta and Henri Jean Paul B. Inting (now a Member of this Court); *rollo*, pp. 3-12.

² Records, pp. 71-78.

³ *Rollo*, p.5

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After the briefing, the team went to the target area in Barangay Poblacion, Binmaley, Pangasinan and waited for accused-appellant. Upon the latter's arrival, PO1 Soriano approached accused-appellant to buy methamphetamine hydrochloride (commonly known as *shabu*) worth ₱500.00.⁴ Accused-appellant handed over one heat-sealed transparent plastic sachet to PO1 Soriano. In turn, PO1 Soriano handed over the buy-bust money to accused-appellant as payment.⁵ PO1 Soriano then performed the pre-arranged signal which led to the arrest of accused-appellant.⁶

PO1 Soriano recovered several items from accused-appellant, namely: (a) the ₱500.00 bill buy-bust money; (b) two ₱50.00 and five ₱20.00 bills; and (c) a black wallet.⁷ Accused-appellant's tricycle was likewise confiscated. At the place of arrest, PO1 Soriano marked the plastic sachet subject of the sale as "SJMS1" and conducted the inventory of the seized items in the presence of two barangay kagawad, a representative from the media, and the accused-appellant.⁸ Photographs of the aforementioned persons were taken at the target area.⁹

Accused-appellant was then brought to the Binmaley Police Station along with the seized items. PO1 Soriano prepared the Chain of Custody Form and a request for laboratory examination. Then, PO1 Soriano brought the Chain of Custody form, the request for laboratory examination, and the seized items to the Pangasinan Provincial Crime Laboratory where the seized items were received by Police Chief Inspector Myrna C. Malojo-Todeño (PCI Todeño).¹⁰ PCI Todeño examined the specimen given by PO1 Soriano and concluded that the specimen weighing 0.03 gram¹¹ was methamphetamine hydrochloride as stated in Chemistry Report No. D-427-2017L.¹²

Accordingly, the State filed an Information¹³ charging accused-appellant with a violation of Republic Act No. (R.A.) 9165, Article II, Section 5:

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4 Id.
5 Id.
6 Id.
7 Id.
8 Id. at 5-6.
9 Id. at 6.
10 Id.
11 Records, p. 43.
12 *Rollo*, p. 6.
13 Records, p. 1.

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That on May 25, 2017 around 4:50 o'clock in the afternoon at Brgy. Poblacion, Binmaley, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously sell for Php500.00 (marked money) one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride or shabu, a dangerous drug, marked as SJMS1 to PO1 Stevens Joe M. Soriano, acting as poseur-buyer, without lawful authority to do so.¹⁴

Accused-appellant's Version

Accused-appellant, a tricycle driver and a drug surrenderee,¹⁵ claims that on the morning of May 25, 2017, he was arrested by Police Officer Gilbert de Guzman (PO de Guzman) at Binmaley Park.¹⁶ PO de Guzman suspected that accused-appellant was informing authorities about alleged extortion activities or *kotong* committed by police officers against tricycle drivers.¹⁷ After denying PO de Guzman's allegations, accused-appellant claims that PO de Guzman became angry and threatened him. Nevertheless, accused-appellant was allowed to leave after being issued a ticket.¹⁸

Later on the same day, accused-appellant claims that four police officers arrived at Binmaley Park and blocked his way. Believing that the police officers were there to fulfill PO de Guzman's earlier threats, accused-appellant ran towards the barangay hall. However, the police officers were able to apprehend him. Afterwards, he was brought to his tricycle, and his wallet was taken by PO1 Soriano. Eventually, he was brought to the police station.¹⁹

Ruling of the Regional Trial Court

The trial court found accused-appellant guilty beyond reasonable doubt of the offense charged,²⁰ finding his defense of denial and frame-up to be weak,²¹ and upholding: (1) the presumption of regularity in the police's performance of their official functions²²

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¹⁴ Id.

¹⁵ Id. at 73.

¹⁶ *Rollo*, p. 6.

¹⁷ TSN dated October 26, 2017, p. 3.

¹⁸ *Rollo*, p. 6; See TSN dated October 26, 2017, p. 4.

¹⁹ Id. at 6-7.

²⁰ Records, p. 78.

²¹ Id. at 75-76.

²² Id.

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and (2) the integrity of the chain of custody in the State's handling of the seized *shabu*.²³

Ruling of the Court of Appeals

The CA affirmed the trial court's decision, finding that the State was able to clearly establish all the elements of illegal sale of dangerous drugs.²⁴ The CA also held that the integrity and evidentiary value of the seized items was duly preserved and that the chain of custody was not broken²⁵ and that in the absence of bad faith, ill will, or proof that evidence has been tampered, the integrity of evidence is presumed to have been preserved and that the presumption of regularity of official acts of government officials must prevail.²⁶

Proceedings before the Court

In an Entry of Appearance with Notice of Appeal²⁷ dated August 16, 2019, the Public Attorney's Office (PAO) notified the CA of its intention to appeal the latter's Decision dated January 30, 2019 to this Court on the ground that the Decision was "contrary to the facts, law and applicable jurisprudence."²⁸

On March 2, 2020, the Court issued a Resolution²⁹ directing the parties to file their respective supplemental briefs, within 30 days from notice. The PAO filed a Supplemental Brief³⁰ for the Accused-Appellant dated August 20, 2020. On the other hand, the Office of the Solicitor General, in its Manifestation In Lieu of Supplemental Brief³¹ dated September 17, 2020, stated that it will no longer file a Supplemental Brief "considering that all relevant factual and legal issues and arguments have been adequately adduced in [its] Appellee's Brief," filed with the CA.³²

Ruling of the Court

We grant the appeal.

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²³ Id. at 77.
²⁴ *Rollo*, p. 8.
²⁵ Id. at 9.
²⁶ Id. at 9-10
²⁷ *CA rollo*, pp. 117-118.
²⁸ Id. at 117.
²⁹ *Rollo*, pp. 19-20.
³⁰ Id. at 23-42.
³¹ Id. at 46-48.
³² Id. at 46.

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Considering that the instant case took place on May 25, 2017, the provisions of R.A. 10640³³ are applicable. Section 21 of R.A. 9165, as amended by R.A. 10640, the Implementing Rules and Regulations of RA 9165 and the Guidelines on the Implementing Rules and Regulations of Section 21 of R.A. 9165, as amended by R.A. 10640 (the 2015 Guidelines),³⁴ among others, prescribe the procedures to be observed in the custody and disposition of confiscated or seized dangerous drugs – otherwise known as the chain of custody.

The chain of custody consists of four links, namely:³⁵

The following links that must be established in the chain of custody in a buy-bust situation: first, the seizure and marking, if practicable, 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 from the forensic chemist to the court.³⁶

Non-compliance with the rules giving details on each link of the chain of custody tarnishes the credibility of the *corpus delicti*.³⁷ Consequently, non-compliance raises doubts as to whether the punishable act under R.A. 9165, as amended, was actually committed by the accused.³⁸

In this case, accused-appellant alleges that irregularities attended the State's handling of the suspected *shabu* used as evidence against him, and that some links in the chain of custody were entirely non-existent.

Particularly, accused-appellant claims that the State failed to observe the proper procedure relative to the first link in the chain of custody which involves the seizure, marking, inventory and

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³³ 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."

³⁴ Guidelines on the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640.

³⁵ *People v. Kamad*, 624 Phil. 289 (2010).

³⁶ *Id.* at 304.

³⁷ *People v. Que*, 824 Phil. 882, 896 (2018).

³⁸ *Id.*

photographing of the suspected *shabu* that he allegedly sold. In this regard, Section 21 of R.A. 9165, as amended by R.A. 10640 provides:

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 persons 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.

Based on the records, We find that the State failed to comply with the requirement of photographing the seized items at the place of arrest. In *People v. Lim*,³⁹ We held that:

Immediate physical inventory and photograph of the confiscated items at the place of arrest may [only] be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault.⁴⁰

Although photographs presented in evidence as Exhibits M, M-1, M-2, M-3 and M-4⁴¹ that depict accused-appellant in the presence of PO1 Soriano and the required witnesses [*i.e.*, an elected public official, and a representative of the National Prosecution Service or

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³⁹ G.R. No. 231989, September 4, 2018.

⁴⁰ *Id.*

⁴¹ Records, pp. 24-25.

the media]⁴² were taken at the place of arrest,⁴³ the *shabu* allegedly confiscated from the accused does not appear in the photographs. Moreover, PO1 Soriano confirms that the photograph of the seized items was not taken at the place of arrest.

Cross-examination of PO1 Soriano conducted by
Atty. Emmanuel Joseph Cera:

Q: Now this inscription says that [PO1 Soriano] poseur/buyer confiscating officer marked all his confiscated pieces of evidence from the possession, control and custody of Gerry Bautista during the buy bust operation on him at Brgy. Poblacion, Binmaley, Pangasinan, was the *shabu* that was allegedly confiscated from him on this [concrete] slab [that could be used as a bench]?

A: It's too small, he handed it over me at my right hand, sir.

Q: Now Mr. Witness, this is a concrete slab with small pebbles that was used as a bench in the park of Binmaley, correct?

A: Yes, sir.

Q: Should there be another picture where you would asked or allowed the photographer to actually zoom in on the buy bust money on the drug that was confiscated on the wallet?

A: Yes, sir.

Q: Is this the picture marked as [Exhibit] "M-5"?

A: Yes, sir.

Q: I notice that the background of the picture changed, because there no longer is a concrete slab, but there were tiles completely different from Exhibit "M". Do you agree with me?

A: That is plastic mat, sir.

Q: When you say plastic mat[t]ing, this is no longer in the place where you originally marked the items that you have seized from the accused, correct?

A: Yes, sir.

Q: Was this actually where, inside the Police Station?

A: In the kitchen, sir.

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⁴² G.R. No. 242692, July 13, 2020, citing *Aranas v. People*, 633 Phil. 393 (2010).

⁴³ Records, pp. 24-26.

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Q: Kitchen inside the [Binmaley] Police Station?

A: At the back of the Police Station, sir.

Q: Why would this be very important to you that you would have to take pictures of these shabu, marked money and this wallet in the kitchen and not in the plaza?

A: At the place of the incident markings as well as the making of the confiscation receipt were done, however in order ensure that the items confiscated from the accused were actually there, we took picture on the items, sir.⁴⁴

Apart from the foregoing exchange, the record is bereft of any justification why the seized items were photographed at the police station and not the place of arrest.

The Court also notes that accused-appellant and the required witnesses were not present during the photographing of the seized items. In *People v. Pis-an*,⁴⁵ We reiterated the requirement that “[the] inventory and photography [of the seized items] be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as [the] required witnesses.”

The records do not disclose who were present while the photograph of the seized items⁴⁶ was being taken. In fact, Barangay Kagawad Rogelio Bautista (Kagawad Bautista) stated that although he was present during the marking of the seized items at Binmaley Park,⁴⁷ he was not present while the seized items were being photographed.⁴⁸ On the other hand, the presence of Barangay Kagawad Leopoldo Zarate (Kagawad Zarate), and Mr. Emil Toledo (Toledo), the representative from the media, cannot be ascertained. The Joint Affidavit⁴⁹ which Kagawad Zarate and Mr. Toledo executed together with Kagawad Bautista is silent on this matter. Neither were Kagawad Zarate nor Toledo presented as witnesses to attest to their presence at the kitchen of the police station while the seized items were being photographed.

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⁴⁴ TSN dated September 14, 2017, pp. 23-25.

⁴⁵ Id.

⁴⁶ Records, p. 26.

⁴⁷ TSN dated August 17, 2017, p. 5.

⁴⁸ Id. at 6.

⁴⁹ Records, p. 15.

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The State also failed to demonstrate the existence of the second link in the chain of custody (*i.e.*, the turnover from the arresting officer to the investigating officer), and the safeguards taken by the investigating officer to ensure the integrity of the seized items. PO1 Soriano alleged that the specimen remained in his possession prior to its delivery to the Pangasinan Provincial Crime Laboratory.⁵⁰

In this case, two persons may be considered as the investigator-on-case, namely: (a) PO3 Jonathan D. Manuel (PO3 Manuel) who is designated as “Encoder/Investigator-on-Case” in the Confiscation Receipt dated May 25, 2017;⁵¹ or (b) Police Superintendent Jackie Castro Candelario (PSupt Candelario), designated as “officer-in-charge” in the Request for Laboratory Examination dated May 25, 2017.⁵² These two police officers prepared documents necessary for the development of the criminal case against accused-appellant which meant that they had to have possession of the seized items.⁵³ However, the records are devoid of any indication as to how PO3 Manuel or PSupt Candelario ensured the integrity of the seized items while these were in their respective possessions.⁵⁴ In *Mallilin v. People*,⁵⁵ We ruled that:

[The chain of custody] would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was, received, where it was and what happened to it while in the witness possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. [W]itnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.⁵⁶

Because of the lapses in the chain of custody – a vital component in establishing the accused’s guilt beyond reasonable doubt⁵⁷ – We find that the State failed to overthrow the constitutional presumption of innocence enjoyed by the accused.

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⁵⁰ TSN dated September 14, 2017, p. 10; records, p. 13.

⁵¹ Records, p. 20.

⁵² Id. at 45.

⁵³ See *People v. Dahil*, 750 Phil. 212 (2015).

⁵⁴ See *People v. Hementiza*, 807 Phil. 1017, citing *Malillin v. People*, 576 Phil. 576 (2008)

⁵⁵ 576 Phil. 576 (2008)

⁵⁶ Id. at 587.

⁵⁷ G.R. No. 229046, September 11, 2019.

As to the State's invocation of the presumption of regularity in the performance of official duty, We reiterate that:

It may be true that where no ill motive can be attributed to the police officers, the presumption of regularity in the performance of official duty should prevail. However, such presumption obtains only where there is no deviation from the regular performance of duty. A presumption of regularity in the performance of official duty applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law. Conversely, where the official act is irregular on its face, the presumption cannot arise. Hence, given the obvious evidentiary gaps in the chain of custody, the presumption of regularity in the performance of duties cannot be applied in this case. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.⁵⁸

WHEREFORE, the appeal is **GRANTED**. The Decision dated January 30, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10615 is **REVERSED** and **SET ASIDE**. Accused-appellant Gerry Bautista y Navarro also known as "Anak" is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

Accordingly, the Court **ORDERS** the Director General of the Bureau of Corrections to **IMMEDIATELY RELEASE** the appellant, unless the latter is being held for some other lawful cause. The Director General of the Bureau of Corrections is likewise **ORDERED** to inform the Court of the date of the appellant's release, or the reason for his continued confinement, within ten (10) days from receipt of notice. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

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⁵⁸ *People v. Siaton*, 789 Phil. 87, 107-108 (2016).

SO ORDERED.” *Peralta, C.J., and Zalameda, J., took no part; Gesmundo and Delos Santos, JJ., designated as Additional Members per Raffle dated January 20, 2021.*

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court ^{8/17}

by:

mtk/sibulo

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