



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 15, 2022** which reads as follows:*

“G.R. No. 223549 (*People of the Philippines v. Benny Migore y Espartero*). — The conviction of appellant Benny Migore y Espartero (Benny) for Illegal Sale of Dangerous Drugs is the subject of review in this appeal assailing the Court of Appeals’ (CA) Decision dated May 29, 2015 in CA-G.R. CEB CR-HC No. 01827,¹ which affirmed the findings of the Regional Trial Court (RTC).²

ANTECEDENTS

Around 11:00 a.m. of February 2, 2006, Police Inspector Gilbert Gorero of San Jose Police Station organized an entrapment operation against Benny who was reportedly engaged in illegal drug activities at Purok Pigado, Barangay No. 8, San Jose, Antique. The buy-bust team was composed of Police Officer (PO) 1 James Jamandron, PO1 Jess dela Pena, PO1 Celle Castro, PO3 Stephen Siblag (PO3 Siblag), Senior Police Officer (SPO) 1 Mario Marfil (SPO1 Marfil), SPO3 Salvador Emmanuel (SPO3 Emmanuel), and PO1 Marvin Copias (PO1 Copias) as the poseur-buyer. After a briefing, the team, accompanied by a civilian asset, proceeded to Purok Pigado to conduct the buy-bust.³

There, PO1 Copias and the asset headed to Benny’s house, while the rest of the buy-bust team stayed nearby. The asset called Benny, who went out from the house and invited them inside for a

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¹ *Rollo*, pp. 4-14. Penned by Associate Justice Renato C. Francisco, with concurrence of Associate Justices Pamela Ann Abella Maxino and Germano Francisco D. Legaspi.

² *CA rollo*, pp. 52-61. Penned by Judge-Designate Adriano S. Savillo. Docketed as Criminal Case No. 06-02-7338.

³ *Id.* at 54-56.

drink. Upon entering the house, PO1 Copias saw that Benny, his wife, and his brother were in the midst of a drinking session. As PO1 Copias positioned himself where the team could see him, the asset introduced him to Benny as a drug user and asked if he has available items. When Benny answered "*Dahon lang ja.*" PO1 Copias inquired how much, and Benny replied ₱100.00. PO1 Copias then gave two (2) pieces of pre-marked 50-peso bills to Benny who, in turn, handed him one (1) teabag containing suspected dried marijuana leaves. PO1 Copias turned his cap to signal the completion of the transaction, and the buy-bust team arrived. PO1 Copias introduced himself as a police officer and arrested Benny. After frisking, PO1 Copias recovered from Benny's pocket one (1) piece of marijuana leaves in a rolled paper, two (2) rolled papers, the marked money, and ₱1,000.00 in various bills.⁴

At the place of arrest, PO1 Copias turned over to SPO1 Marfil the teabag containing suspected marijuana, and the recovered marijuana leaves in the rolled paper. SPO1 Marfil marked both items with "MLM", representing his initials, and placed them inside a plastic envelope. The team then brought Benny to the San Jose Police Station where the items were inventoried in the presence of Kagawad Oribe of Barangay No. 8, Prosecutor Alecando, and mediaman Hector Udani. After the inventory, SPO1 Marfil delivered the items, along with a request for chemistry examination, to the Philippine National Police (PNP) Crime Laboratory at Camp Martin Delgado in Iloilo City. At the crime laboratory, PO3 Magbanua received the items and the letter request for examination. A certain PO3 Rizaldy transmitted the items to Police Superintendent (P/Supt.) Angela Lechoncito Baldevieso (P/Supt. Baldevieso) for forensic examination. P/Supt. Baldevieso issued Chemistry Report No. D-032-2006, which confirmed that the specimens marked with "MLM" yielded positive results for marijuana, a dangerous drug. After examination, P/Supt. Baldevieso turned over the specimens to evidence custodian SPO2 Mariano Salcedo for safekeeping.⁵

Accordingly, Benny was charged with violation of Section 5,⁶ Article II of Republic Act (RA) No. 9165⁷ under the following Information:

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⁴ Id.

⁵ Id. at 53-56.

⁶ Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

⁷ Entitled "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," approved on June 7, 2002.

That on or about the 2nd day of February 2006, in the Municipality of San Jose, Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully[,] and feloniously sell and deliver one (1) teabag dried Marijuana leaves and seeds to PO1 Marvin C. Copias during a buy-bust operation, which specimen was examined and evaluated by the PNP Regional Crime Laboratory, Region VI, Iloilo City, and found the specimen as Marijuana, a dangerous drug.

Contrary to the provisions of Article II, Section 5 of Republic Act [No.] 9165.

San Jose, Antique, February 3, 2006.”⁸

Benny denied the accusation against him and claimed that no buy-bust operation was conducted. He testified that he was preparing food with his brother and daughter when PO1 Copias, PO3 Siblag, SPO1 Marfil, and SPO3 Emmanuel forcibly entered his house and asked him if he was Benny Migore. After confirming his identity, the police officers frisked him but recovered nothing then invited him to the police station where he was detained.⁹

On March 4, 2014, the RTC found Benny guilty of selling dangerous drugs, and sentenced him as follows:

WHEREFORE, premises considered[,] [the] Court finds the accused GUILTY BEYOND REASONABLE DOUBT of the crime charged. As a consequence thereof[,] he is meted a penalty of life imprisonment and a fine of [P]500,000.00 pursuant to Section 5 of Republic Act No. 9165.

SO ORDERED.¹⁰

Aggrieved, Benny elevated the case before the Court of Appeals (CA) contending that the prosecution failed to prove strict compliance with the rule on the chain of custody. It was unclear from the prosecution evidence who had possession of the seized item during the buy-bust team's transit from the place of arrest to the police station. No photograph of the drug was also presented in evidence. Lastly, there was no showing that the specimen received by PO3

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⁸ CA rollo, p. 52.

⁹ Id. at 57-58.

¹⁰ Id. at 61.

Magbanua at the crime laboratory was the item handed by PO3 Rizaldy to P/Supt. Baldevieso for forensic examination.¹¹ On May 29, 2015, the CA affirmed the conviction.¹²

Hence, this appeal. In their Manifestations, the appellant and the Office of the Solicitor General dispensed with the filing of Supplemental Briefs considering that the facts, issues, and arguments were succinctly discussed in their respective Appellant's and Appellee's Briefs filed before the CA.¹³

RULING

We acquit.

A successful prosecution for the Sale of Illegal Drugs requires more than the perfunctory presentation of evidence establishing each element of the crime. It is imperative to prove with moral certainty that the intrinsic worth of the pieces of evidence, especially the identity of the *corpus delicti*, has been preserved. Evidence must show beyond reasonable doubt that the illegal drug presented in the court is the same illegal drug actually seized from the accused. The rationale behind this stringent requirement is the unique characteristic of the illegal drug that renders it indistinct, not readily identifiable, and usually open to tampering, alteration, or substitution, either by accident or by deliberate act, especially when seized in small quantity.¹⁴

In this regard, the law provides procedural safeguards to remove any doubt on the identity and integrity of the seized drug under the Chain of Custody rule. Chain of custody is the duly recorded authorized movements and custody of seized drugs, controlled chemicals, 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 in court for identification and destruction.¹⁵

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¹¹ Id. At 39-49. The appellant alleged "that the court *a quo* erred in convicting Benny Migore despite failure of the prosecution to prove his guilt beyond reasonable doubt." Id. at. 70-79.

¹² *Rollo*, pp. 4-14.

¹³ Id. at 23-24, 28-29.

¹⁴ *People v. Nuarin*, 764 Phil. 550, 557 (2015).

¹⁵ Dangerous Drugs Board Regulation No. 1, Series of 2002; *People v. Omamos*, G.R. No. 223036, July 10, 2019.

Specifically, Section 21, Article II of RA No. 9165 outlines the post-seizure procedure to be observed by the apprehending officers for the custody and disposition of the seized drug. The alleged crime, in this case, happened on February 2, 2006, or before the enactment of the amendatory law.¹⁶ Hence, the original provision of RA No. 9165 applies, to wit:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered 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, 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;

xxxx

This is implemented by Section 21(a) Article II of the Implementing Rules and Regulations of RA No. 9165 which states:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered 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[,] 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:

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¹⁶ See RA No. 10640 entitled "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. RA No. 10640 states that it shall "take effect fifteen days after its complete publication in at least two (2) newspapers of general circulation." Verily, a copy of the law was published on July 23, 2014 in the respective issues of "The Philippine Star" (Vol. XXVIII, No. 359, *Philippine Star Metro* section, p. 21) and the "Manila Bulletin" (Vol. 499, No. 23, *World News* section, p. 6). Hence, RA No. 10640 became effective on August 7, 2014, or before the commission of the crime on February 2, 2006.

(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 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 evidentiary value of the seized items are properly preserved by the apprehending team, shall not render void and invalid such seizures of and custody over said items;

The prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: *first*, the confiscation and marking of the specimen seized from the accused by the apprehending officer; *second*, the turnover of the seized item by the apprehending officer to the investigating officer; *third*, the investigating officer's turnover of the specimen to the forensic chemist for examination; and *fourth*, the submission of the item by the forensic chemist to the court.¹⁷ Here, records reveal several gaps in the chain of custody.

Serious irregularities abound in the handling of the confiscated items by the apprehending team. PO1 Copias testified that after the sale transaction, he handed the teabag containing marijuana he bought from Benny, together with the rolled paper with marijuana he confiscated, to SPO1 Marfil, who marked both items with his initials, "MLM" and placed them inside a plastic envelope. The apprehending team then proceeded to the San Jose Police Station.¹⁸ En route, it is unclear as to who had custody of the plastic envelope containing the drugs. Notably, SPO1 Marfil did not testify to confirm his receipt of the teabag and rolled paper with marijuana. The records then are bereft of details pertaining to the handling of the seized items and whether the buy-bust team undertook precautionary measures to ensure the integrity and identity of the drugs seized. Even the testimonies of PO1 Copias¹⁹ and SPO3 Emmanuel²⁰ were silent on these material details.

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¹⁷ *People v. Bugtong*, 806 Phil. 628, 638-639 (2018); *People v. Enad*, 780 Phil. 346, 358 (2016).

¹⁸ *CA rollo*, p. 55.

¹⁹ *Id.* at 54-55.

²⁰ *Id.* at p 56.

In *People v. Que*,²¹ the police officers marked the confiscated items and proceeded to the police station where the drugs were turned over to the investigator. However, the prosecution failed to identify the measures taken to ensure the integrity of the sachets of *shabu* obtained from the accused, and negate the possibility of adulteration or substitution during the transfer from the target area to the police station. The apprehending team's compliance with the chain of custody became suspicious. As in this case, the prosecution neither addressed, much less recognized, their oversight, constraining us to speculate on the integrity of the drug seized from Benny.

At the police station, there was no turnover of the seized drugs to an investigating officer in compliance with the second link in the chain of custody. Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then dispatch it to the police crime laboratory for testing. In exceptional cases, the turnover to an investigating officer was discharged after proof that the integrity and identity of the seized drug and that a member of the apprehending team remained the sole custodian of the confiscated item from the moment of arrest until turnover to the crime laboratory.²² Still, the turnover to the investigating officer is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper examination and prepare the necessary documents for the developing criminal case. It is highly improbable for an investigator in a drug-related case to effectively perform his work without having custody of the seized item. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.²³ Here, the failure of the buy-bust team to observe the second link in the chain of custody is apparent when the prosecution witnesses made no mention of an investigating officer to whom the items were handed over and who was tasked to prepare the needed documents like the request to laboratory examination of the seized drugs. Indeed, the failure of the prosecution to establish how the seized items were handled adversely affected the trustworthiness of the incrimination against the appellant.²⁴

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²¹ 824 Phil. 882, 909-910 (2018).

²² *People v. Maralit*, 838 Phil. 191, 210 (2018). See also *Anion v. People*, G.R. No. 240455 (Notice), June 30, 2021; *People v. Garais y Geocado*, G.R. No. 246163 (Notice), June 23, 2021.

²³ *People v. Dahil*, 750 Phil. 212, 235 (2015).

²⁴ See *People v. Subangan*, G.R. No. 243660 (Notice), July 15, 2020.

Likewise, the buy-bust team made no effort to photograph the seized item throughout the custodial procedure. There were no photographs of the seized item with the accused or the conduct of the inventory in the presence of the necessary insulating witnesses. It is established that the absence of photography and justifiable grounds to excuse any procedural lapse puts into question the evidentiary value of the seized drug.²⁵ Here, the prosecution neither testified that the seized marijuana leaves were photographed nor explained the apprehending team's non-observance with the requisite photography.²⁶ This utter disregard of the required procedure created a further gap in an already broken chain of custody.

Another misstep was apparent in the transport of the confiscated items from the police station to the crime laboratory. P/Supt. Baldevieso simply declared that SPO1 Marfil delivered the drugs to the PNP Crime Laboratory at Camp Martin Delgado, where it was received by PO3 Magbanua. As earlier noted, SPO1 Marfil did not testify. Thus, the records are barren of proof that the seized drugs were properly handled during its transfer from the apprehending and investigating officers to the crime laboratory. Thereafter, at the crime laboratory, the drugs were passed on from PO3 Magbanua to PO3 Rizaldy before reaching P/Supt. Baldevieso for qualitative examination.²⁷ These transfers were not explained and justified by the prosecution. Dangerous Drugs Board Regulation No. 2-03²⁸ requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until the specimen is disposed of. It also requires the identification of the individuals who participated in the chain,²⁹ to wit:

SECTION 6. *Technical Requirements for Accreditation.* –
The laboratory to be able to secure a DOH certificate of accreditation must comply with the following technical requirements:

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8. Chain of Custody

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²⁵ *People v. Policarpio*, G.R. No. 227868, January 21, 2021; *Barayuga v. People*, G.R. No. 248382, June 28, 2020; *People v. Del Rosario*, G.R. No. 235658, June 22, 2020; *Tumabini v. People*, G.R. No. 224495, February 19, 2020; *Ramos v. People*, 826 Phil. 663, 672 (2018); *People v. Ameril*, 799 Phil. 484, 490 (2016); *People v. Enad*, 780 Phil. 346, 354 (2016); *People v. Ancheta*, 687 Phil. 569, 576 (2012); *People v. Umipang*, 686 Phil. 1024, 1037 (2012); *People v. Sanchez*, 590 Phil. 214, 231 (2008).

²⁶ See *People v. Dela Torre*, G.R. No. 238519, June 26, 2019.

²⁷ CA rollo, pp. 53-54.

²⁸ Entitled "IMPLEMENTING RULES AND REGULATIONS GOVERNING ACCREDITATION OF DRUG TESTING LABORATORIES IN THE PHILIPPINES," approved on June 27, 2003.

²⁹ See *People v. Prudencio*, 800 Phil. 128, 142 (2016).

A laboratory shall use documented chain of custody procedures to maintain control and accountability of specimens. **The date and purpose shall be recorded on an appropriate Custody and Control Form each time a specimen is handled or transferred and every individual in the chain shall be identified.** Accordingly, authorized collection staff shall be responsible for each specimen in their possession and shall sign and complete the Custody and Control Forms.

The minimum information on the Custody and Control Form are the following:

1. Information identifying the specimen
2. Date and time of collection
3. Name of testing laboratory
4. **Name and signatures of all individuals who had custody of the sample during the collection process**
(Emphases supplied.)

Finally, as to the fourth link pertaining to the submission of the item by the forensic chemist to the court, the Court, in *People v. Pajarin*,³⁰ identified the following matters which are ordinarily covered by the testimony of the forensic chemist who examines the seized items: (1) that he 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 have tampered pending trial.³¹ In this case, the forensic chemist, P/Supt. Baldevieso, failed to testify as to the circumstances of her receipt of the confiscated items, the safekeeping of the drugs while it was in her custody, and the precautionary steps she took to preserve the integrity and evidentiary value of the seized item. The prosecution failed to establish the custody of the seized drug from the time it was turned over to the laboratory up to its presentation in court.

In all, the prosecution miserably failed to demonstrate the continuous custody over the dangerous drugs after its seizure until it was presented in evidence before the trial court. Without these material details, it cannot be ascertained that the drug presented during the trial is the same drug recovered from the appellant when he was arrested. If at all, the circumstances of the case raise suspicion

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³⁰ 654 Phil. 461, 466 (2011).

³¹ Id. at 466.

whether the marijuana obtained from Benny was the very same object tested and offered in court as evidence.³² In effect, there can be no crime of Illegal Sale of Dangerous Drugs considering that there are doubts on whether the seized substance was the same substance examined and found to be the prohibited.

On a final note, we emphasize that in all criminal prosecutions, the accused is presumed innocent of the charges, unless the contrary is proven beyond reasonable doubt. The burden of proof lies with the prosecution to establish the identity of the confiscated item.³³ The accused's conviction depends on the integrity of the illicit drug, which is the very *corpus delicti* of the offense. Indeed, a unique characteristic of narcotic substances is that they are not readily identifiable as they are subjected to scientific analysis to determine their composition and nature. The risk of tampering, loss, or mistake is greatest, and the prosecution is duty-bound to negate the risks involved with moral certainty.³⁴ The failure of the prosecution to discharge this duty could inevitably result in the acquittal of the accused. The dictates of Section 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Accordingly, appellant Benny Migore y Espartero must be acquitted of the charge against him due to the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the appeal is **GRANTED**. The Decision of the Court of Appeals dated May 29, 2015 in CA-G.R. CEB CR-HC No. 01827 is **REVERSED**. Appellant Benny Migore y Espartero is **ACQUITTED** and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director General is directed to report to this Court the action taken within five (5) days from receipt of this Resolution.

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³² See *Mallillin v. People*, 576 Phil. 576, 589 (2008).

³³ *People v. Sagana*, 815 Phil. 356, 376 (2017).

³⁴ *Carino v. People*, 600 Phil. 433, 447 (2009); *Mallillin v. People*, 576 Phil. 576, 588 (2008).

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *4/15*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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