



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated August 15, 2022, which reads as follows:

G.R. No. 231301 - VLADIMIR P. JOVELLANOS and EVERETT P. JOVELLANOS, Petitioners, v. PEOPLE OF THE PHILIPPINES, Respondent.

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RESOLUTION

The Court **NOTES** the Transmittal Letter dated June 10, 2022 of the Court of Appeals (CA), Manila, in compliance with the Resolution dated March 14, 2022, elevating to this Court the CA *rollo* and original records of this case.

After a careful review of the case, the Court resolves to **GRANT** the present Petition for Review on *Certiorari* for failure of the prosecution to prove beyond reasonable doubt the guilt of the petitioners and their co-accused.

In every successful prosecution of illegal sale of dangerous drugs under Republic Act (R.A.) No. 9165, the following elements must be proven: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. For illegal possession of dangerous drugs, the following must be established: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.¹

Equally important to the prosecution of these crimes is the presentation of the seized drugs as evidence in court because the drugs so seized is the *corpus delicti* of the crime. A heavy burden is placed upon the State to

¹ *People v. Cabriole*, G.R. No. 248418, May 5, 2022.

establish beyond reasonable doubt the identity of the dangerous drugs by showing that the drugs offered in court as evidence were the same illegal substance bought or obtained from the accused. This burden is discharged by ensuring that the police officers having custody of the seized drugs followed to the letter what we now know as the chain of custody rule under Section 21 of R.A. No. 9165. The objective of this rule is to remove unnecessary doubts concerning the identity, authenticity, and integrity of the seized drugs.²

At this juncture, it is worth noting that R.A. No. 9165 was amended by R.A. No. 10640³ that came into effect on August 7, 2014. Here, the crimes were allegedly committed on January 8, 2013. Thus, Section 21 of R.A. No. 9165, prior to its amendment, applies here. This version of Section 21 reads:

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; x x x

Meanwhile, the Implementing Rules and Regulations (IRR) of R.A. No. 9165 supplemented the rules on the chain of custody with much needed details. It provided the place where the physical inventory and photographing of the seized drugs were to be conducted. Also, a “saving clause” was included that could salvage the prosecution of the crime even if the apprehending police failed to comply with the requirements found in Section 21 of R.A. No. 9165. The IRR states:

SECTION 21. x x x. —

(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

² *People v. Angngao y Makay*, G.R. No. 189296, March 11, 2015, 752 SCRA 531, 541. See also *People v. Ruiz*, G.R. No. 243635, November 27, 2019.

³ 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.

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 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; x x x (emphasis supplied)**

In brief, the prevailing law and its IRR at the time petitioners allegedly committed the crimes charged imposed the following requirements regarding the handling and custody of dangerous drugs seized during a buy bust operation:

1. The physical inventory and photographing must be done immediately after seizure or confiscation, at the place where the search warrant is served, or in case of warrantless seizures, at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.
2. The physical inventory and photographing must be done in the presence of:
 - a. The accused or his representative or counsel;
 - b. The required witnesses:
 - i. a representative from the media **and** the Department of Justice (DOJ) **and**;
 - ii. any elected public official.
3. The accused or his representatives, as well as the required witnesses, shall sign and be given copies of the certificate of inventory.

As mentioned, a departure from the foregoing rules, albeit mandatory, may be excused so long as the following requisites are present: (1) the existence of "justifiable grounds" allowing departure from the rule on chain of custody; **and** (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

It is the prosecution that has the burden of proving valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165. The prosecution's failure to follow the required procedure must be sufficiently explained and proven as a fact, in accordance with the rules on evidence. The apprehending officers must not only mention a justified ground, but they must also clearly state such ground in their sworn affidavit, coupled with a statement regarding the steps they took to preserve the integrity of the seized items. A stricter adherence to the requirements laid down by Section 21 of R.A. 9165 is necessary where the quantity of the dangerous drug seized is miniscule, considering it is highly susceptible to planting, tampering, or alteration.⁴

The apprehending officers failed to strictly observe the mandatory requirements under Section 21 of R.A. No. 9165

The prosecution's version of facts glaringly exposed the police officers' disregard of the chain of custody rule. These infractions effectively created doubt as to the identity of the *corpus delicti* of the crime, which could warrant the petitioners' acquittal.

To begin with, while the physical inventory and photographing were conducted at the place of seizure or arrest, not all the so-called "insulating witnesses" were present. Only an elected official was present during the inventory and photographing. There was no representative from the DOJ. Meanwhile, the representative from the media arrived after the conduct of the inventory and merely signed the Certificates of Inventory. The testimony of Agent Cuanso points to this fact:

"Q: Now, Madam Witness, after that briefing and the preparation of that One Hundred Peso bill and the instructions given to your arresting officer, what happened next?

A: We also informed the Barangay Captain of the possible buy-bust operation and also the media, sir.⁵

x x x

Q: Who were present when you made the markings on the items that was sold to you and the six (6) pieces of blastic (sic) sachets containing white crystalline granules, the item that was recovered from Everett Jovellanos and the drug paraphernalias (sic)?

⁴ *People v. Rosales*, G.R. No. 233656, October 2, 2019.

⁵ *Rollo*, p. 333.

A: The persons who were present at that time I was marking the evidence, all the accused, I, my arresting officer and other members of the PNP and other members of PDEA, sir.

Q: No barangay official was present at that time?

A: None yet, sir.⁶

x x x

Q: After making the respective markings on the items, which you seized, what did you do next?

A: Barangay Captain Bustos came to the scene and witness the inventory while I was making the inventory of the confiscated items, sir.

Q: You were the one who prepared the inventory receipt?

A: Yes, sir.

Q: You also mentioned about the Media. How did you inform the Media?

A: Yes sir, we informed the Media but the Media was [not] able to come right away to the scene and during that time, the Team Leader and the Chief of Police told us to withdraw from the area and we proceeded to the Rosales Police Station wherein GMA correspondent Alfie Tulagan came to witness, sign and see the inventory, sir.⁷

Q: Did the accused sign?

A: The accused refused to sign, sir.”⁸

The absence of the representative from the DOJ during physical inventory is also apparent in Agent Tabuyo’s testimony:

“Q: After apprising them their constitutional rights, what happened next, what did you do next?

A: We called for a barangay captain to serves as a witness and then Agent Cuanso prepared the inventory, sir.

Q: Where did she prepare the inventory?

A: Inside the room of the house, sir?

⁶ Id. at 347-348.

⁷ Id. at 350-351.

⁸ Id. at 352.

Q: Where?

A: Inside the house, sir.

Q: What else happened, Mr. Witness, aside from calling for the barangay captain and for Agent Cuanso (sic) prepared the inventory?

A: We photographed the area, sir.

Q: How about the items that you saw on top of the table, were there photographs taken?

A: Yes, sir.”⁹

As already discussed, R.A. No. 9165, prior to its amendment, requires **all** the insulating witnesses to be present during the physical inventory. The importance of these requirement could not be overemphasized. It is the presence of these insulating witnesses during marking, seizure, and physical inventory of the seized drugs that prevents the evils of switching, "planting" or contamination of the evidence obtained during buy-bust operations.

Another departure from the prescribed rules is the absence of the petitioners' signatures in the Certificates of Inventory. In *People v. Banding*,¹⁰ the Court explained that the failure to obtain the accused's signature also raises doubt as to the identity of drugs allegedly obtained from him. If left unexplained, this noncompliance might also prove fatal for the prosecution. Regrettably, in this case, the prosecution did not offer any justification why the petitioners did not sign the Certificates of Inventory.

The apprehending officers failed to provide justification for their non-compliance

Nevertheless, to warrant a reversal of the petitioners' conviction, a mere enumeration of the police officers' departure from the prescribed procedure is not enough. It must also be determined whether the apprehending officers could utilize the "saving clause" by providing a justification for their non-compliance. Unfortunately, the police officers also failed in this regard.

For this saving mechanism to apply, the apprehending officers must first acknowledge their omissions and then explain why the prescribed

⁹ Transcript of Stenographic Notes dated November 5, 2013, Testimony of Agent Raymund Tabuyo, *Rollo*, pp. 375-376.

¹⁰ G.R. No. 233470, August 14, 2019.

procedures was not followed.¹¹ Empty allegations and statement would also not suffice. The rules are so exacting that it requires the apprehending officer to state their explanation in their sworn affidavit with a detailed statement on the steps they took to preserve the integrity of the seized item.¹² Their supposed justification must also be proven in accordance with the rules on evidence.¹³

Here, while the absence of petitioners' signature on the Certificate of Inventory may be justified by their refusal, the prosecution still failed to justify why there was no representative from the DOJ and the media during the buy-bust operation, and the inventory and photographing. When asked why, Agent Cuanso gave the following answers:

“Q: But this time, you did not comply with the requirements of the law, is it not?

A: (No Answer)

Q: What requirements?

A: The presence of the media representative, the accused, the barangay officials and the DOJ representative, your Honor.

Q: So you will agree with me that you did not comply with that (sic) of RA 9165?

A: We did comply, sir. In my understanding, at least three (3) from out of the media, barangay representative and the DOJ, at least to be present aside from the arresting officers and the accused, sir.

Q: Is that your understanding, madam Witness of RA 9165?

A: Yes, sir.

Q: So you mean to say, the DOJ representative is not required to be present when the inventory is being conducted?

A: They are required but during the conduct of the briefing, I was not the one who called for the DOJ. But it was during the briefing that these people would be called to witness the inventory but I honestly don't know who informed the DOJ, sir.”¹⁴

No explanation was ever offered at all by the police officers. The above-quoted testimony even shows the police's erroneous understanding of

¹¹ *People v. Alagarme y Citoy*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 329.

¹² *People v. Sanico*, G.R. No. 240431, July 1, 2020.

¹³ *Id.*

¹⁴ *Rollo*, pp. 245-246.

Section 21 of R.A. No. 9165. As regards the failure of the media representative to witness the physical inventory, the police did not even acknowledge this as an error on their part. Clearly, the police officers' noncompliance is not justified.

Consequently, considering that the first of the two requisites of the saving clause were not satisfied, there is no more reason to discuss whether the evidence of the prosecution showed the preservation of the integrity and evidentiary value of the seized items. In *People v. Luna y Torsilino*,¹⁵ the Court explained:

In this regard, considering that the first prong of the saving clause was not complied with, any and all evidence tending to establish the chain of custody of the seized drugs become immaterial. Given the fact that patent irregularities were already present at the point of seizure — the supposed “first link” in the chain — there is no more practical value to establishing an unbroken chain of custody to show that the integrity and the evidentiary value of the seized items were properly preserved.

The foregoing disquisition leads to the inevitable conclusion that the petitioners' conviction should be reversed because of the prosecution's failure to prove their guilt beyond reasonable doubt. Indeed, the Court will entertain doubt as to the identity of the *corpus delicti* due to the apprehending officers' unexplained deviation from the mandatory rules on chain of custody. If the chain of custody procedure had not been complied with, or no justifiable reason exists for its non-compliance, then it is the Court's duty to overturn the verdict of conviction.¹⁶

Further, since the reversal of the petitioners is warranted, the Court no longer deems it necessary to pass upon the other issues raised by the petitioners with respect to the sufficiency of the evidence of the prosecution.

Petitioners' acquittal should also extend to their co-accused, Batua.

The Court is aware that the present petition does not include the petitioners' co-accused Batua. Section 11(a), Rule 122 of the Revised Rules of Criminal Procedure is applicable. Thus:

SECTION 11. *Effect of Appeal by Any of Several Accused.* —

¹⁵ G.R. No. 219164, March 21, 2018.

¹⁶ *People v. Año*, G.R. No. 230070, March 14, 2018.

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

By operation of the above-quoted rule, the Court's favorable judgment of acquittal here should likewise benefit Batua. Considering that Batua was also arrested together with the petitioners during the same buy-bust operation, the discussions about the lapses committed by the apprehending officers also apply to him. Thus, Batua's acquittal must follow despite his failure to join in the present petition.

WHEREFORE, the Petition is **GRANTED**. The Decision dated October 12, 2016 and the Resolution dated March 28, 2017 of the Court of Appeals in CA-G.R. CR. HC No. 07446 are **REVERSED** and **SET ASIDE**. Petitioners Vladimir P. Jovellanos and Everett P. Jovellanos, and their co-accused, Abdullah D. Batua, are **ACQUITTED** of the crimes charged on the ground of reasonable doubt. The Director General of the Bureau of Corrections is ordered to cause their immediate release unless they are being lawfully held in custody for any other reason. Let an entry of final judgment be issued immediately.

The Director General of the Bureau of Corrections is **DIRECTED** to implement the immediate release of petitioners Vladimir P. Jovellanos and Everett P. Jovellanos, and accused Abdullah D. Batua, and to report compliance within five (5) days from receipt.

SO ORDERED.

By authority of the Court:

MisaDCBatt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
8/15/22

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(Crim. Case. Nos. 5927-R; 5928-R; 5929-R and 5930-R)

The Director General
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The Superintendent
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Mssrs. Vladimir P. Jovellanos, Everett P. Jovellanos
and Abdullah D. Batua
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