



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated June 15, 2022 which reads as follows:*

**“G.R. No. 234275 (*The People of the Philippines v. Norma Decampong y Maruhom and Nova Cabogatan y Babangol*). – Assailed in this ordinary appeal<sup>1</sup> is the Decision<sup>2</sup> dated June 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06892, which affirmed the Decision<sup>3</sup> dated April 28, 2014 of the Regional Trial Court (RTC) of Parañaque City, Branch 259 finding accused-appellants Norma Decampong y Maruhom (Decampong) and Nova Cabogatan y Babangol (Cabogatan) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, under Section 5, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”**

The present case stemmed from an Information<sup>5</sup> filed before the RTC charging Decampong and Cabogatan with Illegal Sale of Dangerous Drugs, defined and penalized under Section 5 of RA 9165, the accusatory portion of which reads:

That on or about the 7<sup>th</sup> day of October 2010, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another not lawfully

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<sup>1</sup> *Rollo*, p. 14.

<sup>2</sup> *Id.* at 2-13. Penned by Associate Justice Jose C. Reyes, Jr. (a retired Member of the Court), with Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela, concurring.

<sup>3</sup> *CA rollo*, pp. 15-32. Penned by Presiding Judge Danilo V. Suarez.

<sup>4</sup> Entitled “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.

<sup>5</sup> *Rollo*, p. 2.

authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport one (1) small heat-sealed transparent plastic sachet containing white crystalline substance weighing 26.111 grams to NBI poseur-buyer SI ALLAN GLENN A. ACAL, which content of said plastic sachet when tested were found positive x x x for Methamphetamine Hydrochloride (*shabu*), a dangerous drug.<sup>6</sup>

The prosecution alleged that on June 11, 2010, Senior Inspector Rolan Fernandez of the Anti-Illegal Drugs Task Force of the National Bureau of Investigation (AIDTF-NBI) received a tip from a confidential informant about the illegal drug activity of a certain JR Bongcawaran. The AIDTF-NBI, with Senior Inspector Allen Glen Acal (SI Acal) as poseur-buyer, successfully implemented a buy-bust operation at SBM Condotel against accused-appellants, during which 26.1111 grams of white crystalline substance were recovered from them. The seized items remained in the possession of SI Acal and were only marked the next day at the NBI office. Thereafter, the seized items were inventoried and photographed in the presence of accused-appellants and media representative Norman Araga of Police Files Tonite. Subsequently, the seized items were brought to NBI Forensic Chemistry Division for chemical analysis. After a qualitative examination, the seized white crystalline substance tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>7</sup>

Accused-appellants denied the accusations against them. They alleged that on October 7, 2010, they went to Baclaran to buy clothes and sandals to be sold in their store in La Union when several individuals, who later turned out to be NBI officers, approached them and asked them if they knew a certain Bongcawaran. They answered in the negative. Despite accused-appellants' denial and protestations, the police officers apprehended them. They were brought to the NBI office where the NBI officers demanded ₱100,000.00 from them in exchange for their release. Having failed to produce the money, accused-appellants were detained.<sup>8</sup>

In a Decision<sup>9</sup> dated April 28, 2014, the RTC found accused-appellants guilty beyond reasonable doubt of the crime charged and, accordingly, sentenced them to suffer life imprisonment and to pay a fine in the amount of ₱500,000.00 each. The RTC did not give

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<sup>6</sup> Id. at 2-3.

<sup>7</sup> *Rollo*, pp. 3-4.

<sup>8</sup> Id. at 4-5.

<sup>9</sup> *CA rollo*, pp. 15-32.

credence to the denial and alibi presented by accused-appellants. The trial court ruled that all the elements necessary for the conviction of accused-appellants for the Illegal Sale of Dangerous Drugs were present and that the failure of the arresting officers to ensure the presence of all the required witnesses under Section 21 of RA 9165 did not affect the integrity and evidentiary value of the seized items which remained intact.

On appeal to the CA, accused-appellants' conviction was affirmed in a Decision<sup>10</sup> dated June 28, 2017 upon a finding that all the elements for Illegal Sale of Dangerous Drugs under Section 5 of RA 9165 were present. The CA also found that the chain of custody rule had been complied with, and that it remained intact despite the absence of a representative from the Department of Justice (DOJ) and an elected official to witness the inventory and photography of the seized items due to security issues in the location of the buy-bust operation. The CA further reasoned that the chain of custody remained unbroken even though procedural requirements under Section 21 of RA 9165 were not faithfully observed since persons who handled the seized items properly monitored the movement of the seized items from the time they were seized until they were presented in court.

Hence, this appeal,<sup>11</sup> seeking that accused-appellants' convictions be overturned.

The essential issue for the Court's resolution is whether or not accused-appellants are guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5 of RA 9165.

The appeal is meritorious.

For the prosecution of cases for Illegal Sale of Dangerous Drugs under RA 9165,<sup>12</sup> the identity of the dangerous drug must be established with moral certainty. To do so, the prosecution has the

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<sup>10</sup> *Rollo*, pp. 2-13.

<sup>11</sup> *Id.* at 14.

<sup>12</sup> The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (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. (See *People v. Crispo*, 828 Phil. 416, 429 [2018]; *People v. Sanchez*, 827 Phil. 457, 465 [2018]; *People v. Magsano*, 826 Phil. 947, 958 [2018]; *People v. Manansala*, 826 Phil. 578, 586 [2018]; *People v. Miranda*, 824 Phil. 1042, 1050 [2018]; and *People v. Mamangon*, 824 Phil. 728, 735-736 [2018]; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015]; and *People v. Bio*, 753 Phil. 730 [2015].)

positive duty to demonstrate observance with the chain of custody rule under Section 21 of RA 9165, as amended, in such a way that it must acknowledge and justify any perceived deviations therefrom.<sup>13</sup>

In this regard, the Court enumerated the four (4) links in the chain of custody of the confiscated item/s which shall be established, the first of which is the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer.<sup>14</sup> The marking must be done immediately after the seizure of the illegal drugs and the failure of the authorities to immediately mark the seized drugs is regarded to cast reasonable doubt on the authenticity of the *corpus delicti*.<sup>15</sup> In this connection, the Court had recognized that the lapse of significant intervening time from the time of the seizure of the items until the marking taints the integrity of the *corpus delicti* and warrants the acquittal of the accused.<sup>16</sup> The Court considered that there was a lapse of significant intervening time in a case where the seized items were only marked at the police station and not at the place of arrest.<sup>17</sup>

In addition, the chain of custody rule under RA 9165, prior to its amendment by RA 10640,<sup>18</sup> as applicable in the instant case, also requires that the inventory and photography of the seized items be done in the presence of the accused or the persons from whom the items were seized, or his or her representative, or counsel, a representative from the media **and** the DOJ, and any elected public official. The absence of any of the required witnesses may result to a finding of a lapse in the chain of custody thereby opening up “the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”<sup>19</sup> The witness requirement, however, is not absolute. Non-compliance thereto may be permitted if the prosecution proves that the arresting officers had exerted earnest

<sup>13</sup> *People v. Lim*, 879 Phil. 31, 61 (2018), citing *People v. Sipin*, 833 Phil. 67, 92 (2018).

<sup>14</sup> *People vs. Castillo*, 912 Phil. 493, 514 (2019).

<sup>15</sup> *People vs. Dahil*, 750 Phil. 212, 215 (2015), citing *People vs. Sabdula*, 733 Phil. 85, 87 (2014). See *People vs. Fatallo*, 842 Phil. 1060, 1063-1064 (2018).

<sup>16</sup> See *People vs. Suating*, G.R. No. 220142, January 29, 2020; *People vs. Mamuyac, Jr.*, 914 Phil. 579, 604 (2019); and *People vs. Garcia*, 599 Phil. 416, 418 (2009).

<sup>17</sup> See *People vs. Garcia*, *supra*.

<sup>18</sup> 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 July 15, 2014.

<sup>19</sup> *People v. Miranda*, *supra* at 1059.

efforts to secure the attendance of the witnesses,<sup>20</sup> and that the integrity and evidentiary value of the seized items were properly preserved.<sup>21</sup> The prosecution must allege and prove that the presence of the witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (a) their attendance was impossible because the place of arrest was a remote area; (b) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (c) the elected official themselves were involved in the punishable acts sought to be apprehended; (d) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (e) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.<sup>22</sup>

Sheer statements that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances are to be regarded as a flimsy excuse.<sup>23</sup> These considerations ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence<sup>24</sup> and arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>25</sup>

In this case, records reveal that the apprehending team only marked the seized items a day after seizure at the NBI office. Mere statements on the purported large crowd and the presence of Muslims in the place of seizure are not satisfactory to justify the belated marking of the illegal drugs. It is unknown to the Court what transpired from the place and time of apprehension until the illegal

<sup>20</sup> *People v. Lim*, supra at 62, citing *People v. Ramos*, 826 Phil. 981, 996 (2018).

<sup>21</sup> *People v. Gamboa*, 833 Phil. 1055, 1057 (2018).

<sup>22</sup> *People v. Lim*, supra, citing *People v. Sipin*, supra at 93.

<sup>23</sup> *People v. Lim*, supra at 62.

<sup>24</sup> *People v. Bangalan*, 878 Phil. 533, 540-541 (2018); See also *People v. Miranda*, supra at 1050; and *People v. Mendoza*, 736 Phil. 749, 761 (2014).

<sup>25</sup> *People v. Crispo*, supra at 436.

drugs were marked at the NBI office only the morning after seizure. There can be no other plausible finding other than that significant intervening time had lapsed from the seizure of the drugs until its marking by the authorities. This alone raises reasonable doubt on integrity and evidentiary value of the items purportedly seized from accused-appellants. Even if the rule on the immediate marking is to be relaxed, We still cannot sustain the conviction of accused-appellants due to the non-compliance with the witness requirement. Verily, the inventory and photography of the seized items were only conducted in the presence of the arresting officers, accused-appellants and media representative Norman Araga, without any representative from the DOJ and an elected barangay official. Contrary to the findings of the CA, We are not persuaded that there was a reason to justify the deviation from the witness requirement. Thus, absent any of the practicable reasons to justify the belated marking of the seized items, the absence of all the required witnesses, or the immediate conduct of the inventory and photography of the seized items without all of the required witnesses, as alleged and proved by the prosecution, the Court finds that there was an unjustified deviation from the chain of custody rule. The Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellants were compromised. Hence, the acquittal of accused-appellants for the crime of Illegal Sale of Dangerous Drugs is warranted.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated June 28, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 06892 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Norma Decampong y Maruhom and Nova Cabogatan y Babangol are **ACQUITTED** of the crime charged. The Director General of the Bureau of Corrections, Muntinlupa City, is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

Let entry of judgment be issued immediately.

**SO ORDERED.”**

**By authority of the Court:**

**LIBRADA C. BUENA**

Division Clerk of Court

by:



**MARIA TERESA B. SIBULO**

Deputy Division Clerk of Court

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**JUL 14 2022**

The Solicitor General  
Amorsolo St., Legaspi Village  
1229 Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. CR-HC No. 06892)

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Atty. Gil A. Valera, CPA-LCB  
Counsel for Accused-Appellants  
57 Highland Drive, Blue Ridge A  
Katipunan, 1109 Quezon City

Philippine Judicial Academy (x)  
Supreme Court

The Presiding Judge  
Regional Trial Court, Branch 259  
1700 Parañaque City  
(Crim. Case No. 10-1123)

Judgment Division (x)  
Supreme Court

The Director General (x)  
Bureau of Corrections  
1770 Muntinlupa City

Ms. Norma Decampong y Maruhom and  
Nova Cabogatan y Babangol (x)  
Accused-Appellants  
c/o The Superintendent  
Correctional Institution for Women  
1550 Mandaluyong City

The Superintendent (x)  
Correctional Institution for Women  
1550 Mandaluyong City

UR

JLP