



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 March 2022** which reads as follows:*

**G.R. No. 235663 – (People of the Philippines v. Eugene Osit y Diaz a.k.a. “Gene”)** - This is an appeal<sup>1</sup> assailing the Decision<sup>2</sup> dated 14 October 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07554. The CA affirmed the Decision<sup>3</sup> dated 04 June 2015 of Branch 227, Regional Trial Court (RTC) of Quezon City in Criminal Case No. Q-11-171785, convicting Eugene Osit y Diaz a.k.a “Gene” (accused-appellant) of violation of Sections 5 Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

**Antecedents**

Accused-appellant was indicted for violation of Section 11, Article II of RA 9165, allegedly committed as follows:

“That on or about the 13th day of August 2011, in Quezon City, Philippines, the above-named accused, without authority of law, did then and there, willfully, unlawfully and knowingly sell, trade, deliver, give away to another, distribute, dispatch in transit or transport one (1) heat-sealed transparent plastic sachet containing zero point zero four (0.04) grams with markings “MCA 8-13-11” of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

Contrary to law.”

When arraigned, petitioner pleaded not guilty to the charge.<sup>4</sup> During the pre-trial conference, the prosecution, and the defense stipulated on two facts: first, that the accused was the person charged in the Information and second, that the trial court had jurisdiction to try and hear the case. After the pre-trial was terminated, the trial on the merits ensued.<sup>5</sup>

<sup>1</sup> *Rollo*, pp. 20-21.

<sup>2</sup> *Id.* at 2-19; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Florito S. Macalino and Eduardo B. Peralta, Jr., concurring.

<sup>3</sup> *CA rollo*, pp. 50-55; penned by Presiding Judge Elvira D.C. Panganiban.

<sup>4</sup> *Rollo*, p. 3.

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

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### Version of the Prosecution

At about 6:15 in the evening of 13 August 2011, a confidential informant appeared at the office of the District Anti-Illegal Drugs-Special Operation Task Group (DAID-SOTG), and informed them of the illegal drug activities of one "Gene" who was allegedly a notorious drug pusher and dealer in Project 4, Quezon City.<sup>6</sup>

A buy-bust operation was planned. PO1 Melgar Aben (PO1 Aben) was designated as poseur-buyer, and was given a Php500.00 bill with initials "MCA." A pre-operation report and coordination form was submitted to the Philippine Drug Enforcement Agency (PDEA).<sup>7</sup>

Under the pretense of buying shabu, the confidential informant contacted "Gene" who agreed to meet him at J. Ponce St., Project 4, Quezon City. The buy-bust team arrived at the area at 8:45 in the evening. PO1 Aben and the confidential informant proceeded towards the meeting area, while the rest of the team positioned themselves nearby. At around 9:30 in the evening, PO1 Aben and the confidential informant met accused-appellant. The informant told him, "*Napalaban ka ata Tol may gasgas ka sa kamay.*" Gene answered, "*Nadapa lang ako.*" Then, the informant introduced PO1 Aben saying, "*Tol ito yung tropa ko kukuha lang kami panggamit yung panalo para sayo nalang kami kukuha sa susunod.*" Gene replied, "*Isang plastik nalang natira halagang lima.*" The informant said, "*Ok na yan tol try muna namin kung good item ba.*"<sup>8</sup>

Accused-appellant took a plastic sachet from the compartment of his motorcycle. He handed PO1 Aben a small heat-sealed transparent plastic sachet containing undetermined quantity of white crystalline substance. PO1 Aben gave accused-appellant the marked buy-bust money.<sup>9</sup>

This prompted PO1 Aben to apprehend immediately accused-appellant after introducing himself as a police officer. He retrieved the marked money, informed him of his offense and his constitutional rights. He brought accused-appellant and the seized item to the police station for inventory and marking of evidence. PO1 Aben conducted the inventory only in the presence of the police officers and accused-appellant.<sup>10</sup> PO1 Aben testified that he conducted the inventory and marking of the sachet at the

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

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

<sup>8</sup> *Id.* at 5-6.

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

<sup>10</sup> *CA rollo*, p. 52.

police station and not at the place of arrest to avoid confrontation with accused-appellant's family.<sup>11</sup> He also explained that there were no other witnesses to the inventory because they were not able to contact representatives from the DOJ, media, and any elected barangay official.<sup>12</sup>

Accused-appellant was subjected to a drug test, while the seized specimen was brought to the Crime Laboratory for examination. The crystalline substance was later on confirmed to be menthamphetamine hydrochloride. Accused-appellant's urine test likewise tested positive for methamphetamine hydrochloride as well as marijuana.<sup>13</sup>

### **Version of the Defense**

The defense offered the lone testimony of accused-appellant. He denied the charge and claimed that in the evening of 13 August 2011, he was at his house waiting for his brother who borrowed his motorcycle. When his brother arrived at 1:00 in the morning of 14 August 2011, he went out to fetch his girlfriend. While he was outside, someone hit him at the nape and headlocked him. Another man allegedly tied his hands and dragged him to a vehicle.<sup>14</sup> Afterwards, he was brought to Camp Karingal where he was forced to admit that he was selling drugs. He claimed that he was detained in the barracks for a day. Thereafter, his siblings arrived and told him that the police officers were asking for Php300,000.00 in exchange for dropping the charge. Since they were not able to produce the amount, the police proceeded to file a case against him. He denied that he was subjected to a drug testing and physical examination.<sup>15</sup>

### **Ruling of the RTC**

In a Decision<sup>16</sup> dated 04 June 2015, the RTC found accused-appellant guilty beyond reasonable doubt of the charge of illegal sale of dangerous drugs, and sentenced him to suffer the penalty of life imprisonment and to pay a fine of Php500,000.00.<sup>17</sup>

The RTC found that the prosecution was able to establish an unbroken

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<sup>11</sup> *Rollo*, p. 6.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> *Id.*

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

<sup>15</sup> *Id.* at 8.

<sup>16</sup> *CA rollo*, pp. 50-55, penned by Presiding Judge Elvira D.C. Panganiban.

<sup>17</sup> *Rollo*, p. 66

chain of custody. It ruled that the absence of the required witnesses was justified considering the time of the buy-bust operation, which was conducted at 9:30 in the evening.<sup>18</sup>

### **Ruling of the CA**

The CA affirmed the RTC Decision. It agreed that the prosecution was able to prove the occurrence of the illegal sale of drugs and the participation of accused in the illegal sale. It did not find irregular that the marking and inventory of the seized item was done at the police station and not at place of arrest without the presence of any representative from the media, the DOJ, and any elected public official.<sup>19</sup>

Hence, this appeal.

### **Issue**

This Court is tasked to determine whether the CA correctly affirmed accused-appellant's conviction for the offense of illegal sale of dangerous drugs.

### **Ruling of the Court**

The appeal is meritorious.

Section 5 of Article II of RA 9165 states:

*SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy, regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.*

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<sup>18</sup> *CA rollo*, pp. 53-54.

<sup>19</sup> *Rollo*, p. 17.

To secure a conviction for illegal sale of dangerous drugs, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>20</sup>

Aside from establishing the foregoing elements, the State is also burdened with the responsibility of identifying, proving, and adducing in court the *corpus delicti*, or the drug subject of the offense.<sup>21</sup> The prosecution must also prove beyond reasonable doubt the integrity and preservation of the confiscated prohibited or illegal drug.<sup>22</sup>

In this case, the Court finds that, contrary to the findings of the RTC and the CA, the prosecution failed to establish the identity of the prohibited drug that constituted the *corpus delicti*.

*The seized items were not marked at the place of apprehension*

Proper procedure requires that the apprehending officer must affix his initials or signature or any identifying mark on the dangerous drugs, in the presence of accused, immediately upon arrest in order to set apart the dangerous drug from other materials from the moment of seizure until they are disposed of at the close of criminal proceedings.<sup>23</sup> Such prompt marking is important because the subsequent handlers of the seized items will use the marking as reference. The marking also sets apart the seized item from other materials from the moment it was confiscated until its disposal after the proceedings.<sup>24</sup>

In this case, PO1 Aben testified that the marking and inventory was conducted at the police station and not at the place of arrest because they were trying to avoid confrontation with accused-appellant's family. However, it does not appear that his family members were actually present at or near the place of arrest and posed as an actual impediment to the buy-bust operation. Based on PO1 Aben's testimony, he merely relied on the confidential informant's statement that the accused-appellant's house is near the place where they arrested him. Even if true, it was not shown that there was danger or chaos as to prevent them from conducting the buy-bust

<sup>20</sup> *People v. Villarta*, G.R. No. 217887, 14 March 2018 [Per J. Del Castillo].

<sup>21</sup> *People v. Angeles*, G.R. No. 229099, 27 February 2019 [Per J. Del Castillo]; *People v. Omamos*, G.R. No. 223036, 10 July 2019 [Per J. Lazaro-Javier].

<sup>22</sup> *People v. Advincula*, G.R. No. 201576, 22 July 2019 [Per J. Carandang].

<sup>23</sup> *People v. Cupcupin*, G.R. No. 236454, 05 December 2019.

<sup>24</sup> *People v. Gajo*, G.R. No. 217026, 22 January 2018 [Per J. Del Castillo].

operation properly. This Court notes that PO1 Aben was accompanied by other police operatives at the time of the buy-bust who were presumed to be trained to manage such a situation.<sup>25</sup> Absent a testimony on the circumstances of the arrest and the supposed behavior of the bystanders, this Court finds the police's failure to immediately mark the seized item a fatal error.

Further, this Court notes that PO1 Aben merely placed the seized sachet in a plastic bag until they reached the police station.<sup>26</sup> Evidently, without the proper marking, this Court doubts whether the supposed illegal drugs may have been switched, tampered with, altered, or substituted.<sup>27</sup>

*The required witnesses were not present at the time of seizure and apprehension*

As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photography of the seized items be conducted immediately after the seizure and confiscation of the same. The law further requires that the inventory and photography 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 certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,<sup>28</sup> a representative from the media AND the Department of Justice (DOJ), and any elected public official; or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service OR the media. The law requires the presence of these witnesses primarily to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.<sup>29</sup>

The Information charges accused-appellant of committing the offense charged on 13 August 2011, prior to the effectivity of the amendatory RA 10640.<sup>30</sup> Hence, the old law applies.

<sup>25</sup> *Rollo*, p. 5.

<sup>26</sup> See RTC Decision, *CA rollo*, p. 52.

<sup>27</sup> See *People v. Cupcupin*, G.R. No. 236454, 05 December 2019.

<sup>28</sup> *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 15 July 2014.

<sup>29</sup> See *People v. Bangalan*, G.R. No. 232249, 03 September 2018 [Per J. Perlas-Bernabe].

<sup>30</sup> In *People v. Gutierrez* (G.R. No. 236304, 05 November 2018) [Per J. Perlas-Bernabe], this Court noted that RA 10640 was approved on 15 July 2014, and published on 23 July 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Metro Section, p. 21) and the *Manila Bulletin* (Vol. 499, No. 23, World News Section, p. 6). Thus, it became effective 15 days thereafter, or on 07 August 2014, pursuant to Section 5 of the law. See also *People v. Bangalan*, *id.*

In this case, it remains undisputed that there were no representatives from the DOJ, media, and an elected public official at the time of the inventory, marking and photographing of the evidence. To justify this deviation, PO1 Arben testified that they were not able to contact anyone.

Unlike the RTC and CA, this Court finds this explanation untenable.

Recent jurisprudence has been consistent in holding that while the absence of these required witnesses does not *per se* render the confiscated items inadmissible, a justifiable reason for such absence or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced.<sup>31</sup> And while the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>32</sup>

The absence of the required witnesses was found justified in the following cases: (1) their attendance was impossible because the place of arrest was a remote area; (2) 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; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ and media representatives 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 (5) 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>33</sup>

In the instant case, however, PO1 Arben's sweeping statement that they were not able to contact anyone from the aforesaid institutions/organizations, without proof that they actually exerted efforts to contact them, would not suffice. Certainly, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.<sup>34</sup>

Verily, the legal requirement of third-party witnesses is a safeguard meant to establish the nexus between the accused-appellant and the drug

<sup>31</sup> See *People v. Patacsil*, G.R. No. 234052, 06 August 2018 [Per J. Perlas-Bernabe].

<sup>32</sup> See *People v. Aure, et al.*, G.R. No. 237809, 14 January 2019 [Per J. Perlas-Bernabe].

<sup>33</sup> See *Limbo v. People*, G.R. No. 238299, 01 July 2019 [Per J. Perlas-Bernabe] citing *People v. Lim*, G.R. No. 231989, 04 September 2018 [Per CJ Peralta].

<sup>34</sup> See *People v. Patacsil*, G.R. No. 234052, 06 August 2018 [Per J. Perlas-Bernabe].

offense/s. The absence of witnesses during seizure and marking casts reasonable doubt on the actual origin and identity of the drugs introduced in evidence as those allegedly seized from accused-appellant.<sup>35</sup>

It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.<sup>36</sup> Thus, contrary to the common conclusions of the RTC and the CA, the Court finds and so holds that the actions by the police officers in this case cannot be considered as substantial compliance with the procedures under Section 21. The aforementioned lapses on the part of the police officers are serious enough to compromise the identity and integrity of the drugs allegedly recovered from accused-appellant which, in effect, creates a reasonable doubt on his criminal liability.<sup>37</sup> Hence, he must be acquitted.

**WHEREFORE**, the appeal is hereby **GRANTED**. The Decision dated 14 October 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07554 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **EUGENE OSIT y DIAZ** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any other lawful cause.

The Director General of the Bureau of Corrections, Muntinlupa City is **DIRECTED** to **IMPLEMENT** this Resolution, and to report to this Court the action taken hereon within five (5) days from receipt of this Resolution.

**SO ORDERED.**"

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court

20 JUN 2022

<sup>35</sup> *People v. Castillo*, G.R. No. 238339, 07 August 2019 [Per J. Leonen].

<sup>36</sup> *People v. Patacsil*, G.R. No. 234052, 06 August 2018 [Per J. Perlas-Bernabe].

<sup>37</sup> *See People v. Dahil, et al.*, 750 Phil. 212 (2015), G.R. No. 212196, 02 January 2015 [Per J. Mendoza].

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Accused-Appellant  
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Bureau of Corrections  
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THE DIRECTOR (x)  
Bureau of Corrections  
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THE SUPERINTENDENT(x)  
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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 227  
Quezon City  
(Crim. Case No. Q-11-171785)

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*P/M*