



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 7, 2022, which reads as follows:

“G.R. No. 236734 (Rolito Fabiana y Urita v. People of the Philippines). — This is a Petition for Review on *Certiorari*¹ assailing the June 30, 2017 Decision² and the January 4, 2018 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 38664, which affirmed the April 22, 2016 Decision⁴ of the Regional Trial Court (RTC) of Las Piñas City, Branch 200 in Criminal Case No. 07-0560, finding accused-appellant Rolito Fabiana y Urita guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,⁵ and which denied accused-appellant’s Motion for Reconsideration,⁶ respectively.

Antecedents

In an Information,⁷ accused-appellant was charged with Illegal Possession of Dangerous Drugs as follows:

That on or about the 21st day of July 2007, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody, without lawful authority, Two (2) heat-

¹ *Rollo*, pp. 11-28.

² *Id.* at 70-81. Penned by Associate Justice Jhosep Y. Lopez (now a Member of this Court) and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a Member of this Court).

³ *Id.* at 98-99. Penned by Associate Justice Jhosep Y. Lopez (now a Member of this Court) and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a Member of this Court).

⁴ *Id.* at 43-54. Penned by Presiding Judge Leopoldo E. Baraquia.

⁵ 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: June 7, 2002.

⁶ *Rollo*, pp. 82-89.

⁷ Records, p. 2.

sealed transparent plastic sachet each containing zero point zero one (0.01) gram of Methylamphetamine Hydrochloride, with a total weight of zero point zero two (0.02) gram, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.⁸

Accused-appellant pleaded not guilty and pre-trial and trial ensued thereafter.⁹ Accused-appellant, who was in detention, was released on bail after posting a personal bail bond.¹⁰

Version of the Prosecution

Sometime in July 2007, Police Officer 3 Wilson Paule (PO3 Paule), who was stationed at the Station Anti-Illegal Drug Special Operation Task Force of the Las Piñas City Police Station, received a phone call from a concerned citizen informing him of rampant selling of illegal drugs at Bohol Street, CAA Road, Las Piñas City. Upon instructions of his superior, he and another officer, Police Officer 2 Joachim Panopio (PO2 Panopio), proceeded to Bohol Street.¹¹

When they arrived, the two officers saw accused-appellant who appeared to be suspiciously examining something in his hand. They approached him and saw what looked like two plastic sachets of shabu in his right hand. PO3 Paule then introduced himself and arrested accused-appellant. He also confiscated the two sachets and informed accused-appellant of his constitutional rights. Thereafter, he brought accused-appellant to their car.¹²

At the precinct, PO3 Paule turned over the seized items to Police Officer 2 Gil Anos (PO2 Anos), the investigator of the case. PO2 Anos marked the sachets in front of the two officers and the accused-appellant, and prepared the request for laboratory examination. PO2 Anos then asked another officer to bring the items to the crime laboratory, where they were examined by Police Inspector Richard Allan Mangalip. The test yielded a positive result for methylamphetamine hydrochloride, a dangerous drug.¹³

Version of the Defense

During direct examination, accused-appellant stated that he has nothing to say about the case and that nothing was ever recovered from him.¹⁴

⁸ Id.

⁹ *Rollo*, p. 71.

¹⁰ *Records*, p. 66.

¹¹ *Rollo*, pp. 71-72.

¹² Id. at 72.

¹³ Id.

¹⁴ Id. at 72-73.

Ruling of the Regional Trial Court

The trial court found accused-appellant guilty of the offense charged, *viz.*:

WHEREFORE, premises considered, this Court finds the accused Rolito Fabiana y Urita @ “Bong” **GUILTY** beyond reasonable doubt for possession of two (2) heat-sealed transparent plastic sachets each containing zero point zero one (0.01) gram with a total weight of zero point zero two (0.02) gram of Methylamphetamine Hydrochloride, a dangerous drug[,] in violation of Section 11, Article II, R.A. 9165, and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the imprisonment of **TWELVE (12) YEARS AND ONE (1) DAY** as the minimum term to **FOURTEEN (14) YEARS AND EIGHT (8) MONTHS** as the maximum term and to pay the **FINE** of **Three Hundred Thousand Pesos (P300,000.00)**.

The confiscated sachets of shabu subject of this case (Exhibits “C-2” and “C-3”) are hereby declared forfeited in favor of the government and shall be disposed in accordance with the law.

SO ORDERED.¹⁵

The trial court held that all the elements of Illegal Possession of Dangerous Drugs are present; that accused-appellant’s denial and self-serving testimony deserve scant consideration; that the presumption of regularity in the performance of duties by the police officers must be upheld; and that the testimonies of the principal witnesses are worthy of full faith and credit in the absence of any improper motive attributed to them.¹⁶

Thus, accused-appellants’ appeal before the CA.¹⁷

Ruling of the Court of Appeals

The appellate court affirmed accused-appellant’s conviction, *viz.*:

WHEREFORE, the instant appeal is hereby **DENIED**. The Decision of the Regional Trial Court dated 22 April 2016 is hereby affirmed.

SO ORDERED.¹⁸

The CA held that the prosecution was able to establish all the elements of the offense; that noncompliance with the procedure under Section 21, Article II of RA 9165 is not fatal for as long as a justifiable ground exists and the integrity and evidentiary value of the seized items are properly preserved; that

¹⁵ Id. at 54.

¹⁶ Id. at 51-54.

¹⁷ Records, p. 284.

¹⁸ *Rollo*, p 80.

since the place where accused-appellant was apprehended was a busy street, the police officers could not be reasonably expected to mark, inventory, and photograph the seized items then and there; that the testimonies of the prosecution witnesses deserve credit; and that it is already too late to question the alleged non-compliance with the chain of custody rule.¹⁹

Accused-appellant filed a Motion for Reconsideration²⁰ but this was denied by the appellate court in the assailed Resolution.²¹

Thus, this Petition.²²

Issue

Did the appellate court err in sustaining the conviction of accused-appellant?

Our Ruling

The appeal is meritorious.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense.²³ The prosecution is thus tasked to establish through an unbroken chain of custody that the substance illegally possessed by the accused is the same substance presented in court.²⁴

As part of the chain of custody procedure, Section 21, Article II of RA 9165 expressly requires the immediate conduct of an inventory and the taking of photographs by the apprehending team, in the presence of the accused or his or her representative or counsel, as well as certain witnesses. If the offense was committed prior to August 7, 2014 (when RA 10640,²⁵ which amended RA 9165, took effect²⁶) the insulating witnesses who should be present are the media and the Department of Justice representatives, and any elected public official.²⁷ On or after August 7, 2014, only the media or the National

¹⁹ Id. at 73-79.

²⁰ Id. at 82-89.

²¹ Id. at 98-99.

²² Id. at 11-28.

²³ *Izon v. People*, G.R. No. 222509, March 3, 2021, citing *People v. Galisim*, G.R. No. 231305, September 11, 2019.

²⁴ Id.

²⁵ 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.

²⁶ *People v. Madlang-Awa*, G.R. No. 248014, September 28, 2020, citing *People v. Gutierrez*, 842 Phil. 681, 690 (2018).

²⁷ REPUBLIC ACT NO. 9165, SEC. 21 (A).

Prosecution Service representative, and any elected public official, are required.²⁸

Here, there was absolute noncompliance with the foregoing requirements. The apprehending team failed to conduct the required inventory nor took any photograph at all. No insulating witness ever saw the sachets supposedly confiscated from accused-appellant.

In *People v. Del Rosario*,²⁹ where the apprehending team also did not conduct an inventory nor took any photograph, the Court held that conviction cannot lie because there is no assurance that the drugs presented in court are exactly what the prosecution purports them to be, and that the transaction pertaining to the seized items truly proceeded. The Court further stressed the importance of securing the presence of the required witnesses. Indeed, without the insulating presence of the witnesses, the possibility of switching, planting, or contamination of evidence arises, thus:

The Court has held that the presence of these witnesses is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted buy-bust operations [again reared their ugly heads], negating the integrity and credibility of the seizure and confiscation of the subject sachets that were evidence of the *corpus delicti*, and thus adversely affecting the trustworthiness of the incrimination of the accused.³⁰ (Citations omitted)

For sure, there are instances when deviation from Section 21 may be excused.³¹ Yet in these instances, it must first be established that there is a justifiable ground for noncompliance, and that the integrity and evidentiary value of the seized items had been properly preserved.³² Otherwise, breaches of the procedure will militate against a finding of guilt beyond reasonable doubt.³³

Here, although the CA found the integrity and evidentiary value of the seized items to have been properly preserved, there was still no showing of any justifiable ground for noncompliance. The prosecution failed to allege even the slightest attempt by the officers to secure the presence of the required witnesses. While the appellate court found justification in PO2 Panopio’s

²⁸ REPUBLIC ACT NO. 10640, SEC. 1.

²⁹ G.R. No. 235658, June 22, 2020, citing *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019.

³⁰ *People v. Cabagbag*, G.R. No. 238832, July 7, 2020.

³¹ See the IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9165, SEC. 21 (A).

³² *People v. Dumanjug*, G.R. No. 235468, July 1, 2019, citing *People v. Musor*, 842 Phil. 1159, 1173 (2018).

³³ *People v. Adobar*, 832 Phil. 731, 761 (2018), citing *People v. Barte*, 806 Phil. 533, 544 (2017) and *People v. Sumili*, 753 Phil. 342, 352 (2015).

statement that Bohol Street was a busy street, there was no explanation as to how such circumstance could have warranted the total dispensation of the inventory and the taking of photographs, especially after the items were already brought to the precinct. These omissions clearly engender doubt on the identity of the *corpus delicti*.

In addition, it was not established how the confiscated items were brought and turned over first to the crime laboratory, and later to the trial court. The officer who supposedly brought the items to the laboratory was never presented and thus there was no testimony on how the sachets were handled when they were transmitted to the laboratory.³⁴ The forensic chemist likewise did not testify as to how the illegal drug was handled, stored, and safeguarded before submission to the trial court.³⁵ As there were clearly unexplained gaps in the chain of custody, it cannot be reasonably concluded that the confiscated items were the same ones presented for laboratory examination and eventually in court.³⁶

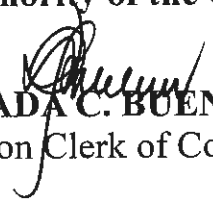
In view of the foregoing, the Court finds reasonable doubt on the guilt of accused-appellant warranting his acquittal.

WHEREFORE, the appeal is **GRANTED**. The June 30, 2017 Decision and the January 4, 2018 Resolution of the Court of Appeals in CA-G.R. CR No. 38664 are **REVERSED** and **SET ASIDE**. Accused-appellant **ROLITO FABIANA y URITA** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The bail bond posted for his provisional liberty is **ORDERED CANCELLED**.

Let entry of judgment be issued immediately.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court msa/19

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

124-I

SEP 07 2022

³⁴ See *Izon v. People*, supra note 23. Citations omitted.

³⁵ See *People v. Nocum*, G.R. No. 239905, January 20, 2021. Citations omitted.

³⁶ See *Izon v. People*, supra note 23, citing *People v. Lacdan*, G.R. No. 232161, August 14, 2019.

PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Petitioner
5/F, DOJ Agencies Building
NIA Road cor. East Avenue, Diliman
1101 Quezon City

Court of Appeals (x)
1000 Manila
(CA-G.R. CR No. 38664)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 200
1740 Las Piñas City
(Crim. Case No. 07-0560)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Philippine Judicial Academy (x)
Supreme Court

Judgment Division (x)
Supreme Court



124-I

UR

