



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **14 February 2022** which reads as follows:*

“G.R. No. 239332 (*People of the Philippines v. Ritchie Bulang Roble alias “Ang-ging”*). — On appeal¹ is the February 19, 2018 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01539-MIN affirming the November 6, 2015 Decision³ of Branch 13 of the Regional Trial Court (RTC) of Davao City, finding accused-appellant Ritchie Bulang Roble alias “Ang-ging” (accused-appellant) guilty beyond reasonable doubt of violation of Section 5 (Illegal Sale), Article II of Republic Act No. (RA) 9165⁴ or the “Comprehensive Dangerous Drugs Act of 2002.”

Version of the Prosecution:

On July 2, 2009, at around 4:00 p.m., the Regional Office XI of the Philippine Drug Enforcement Agency (PDEA) in Davao City received information from a confidential informant (CI), that a certain “Ang-ging” (accused-appellant) was actively selling *shabu* in Barangay 31-B, Davao City.⁵ The CI claimed that he had transacted with accused-appellant on prior occasions.⁶ After verifying the information, the team leader of the Special Enforcement Group, Intelligence Officer (IO) 3 Naravy D. Duquiatan (IO3 Duquiatan), organized a buy-bust team including, among others, Senior Officer (SO) 2 Neil C. Pabilona (SO2 Pabilona), who was designated as the poseur buyer, and IO1 Strass S. Villasis (IO1 Villasis) who was designated as the

¹ *Rollo*, pp. 19-20.

² *Id.* at 3-18. Penned by Associate Justice Walter S. Ong, and concurred by Associate Justice Edgardo A. Camello and Associate Justice Perpetua T. Atal-Paño.

³ *Records*, pp. 162-173. Penned by Judge Rowena Apao-Adlawan.

⁴ 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.

⁵ *Records*, pp. 4 and 6; TSN, August 7, 2012, pp. 3-4.

⁶ *Records*, pp. 4 and 6.

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arresting officer.⁷ During the briefing, the team agreed that the SO2 Pabilona will scratch his head to signal the consummation of the transaction.⁸

Thereafter, IO3 Duquiatan gave SO2 Pabilona a ₱1,000-bill with serial number PL289301 to be used as buy-bust money.⁹ SO2 Pabilona placed his initials “NCP” above the number “1000” on the lower right-hand corner of the face of the buy-bust money.¹⁰ The team then prepared an Authority to Operate and recorded the operation in the PDEA Blotter.¹¹

At around 5:30 p.m., the buy-bust team and the CI left the PDEA Office aboard a service vehicle and proceeded to the target area.¹² Upon arrival at the target area, SO2 Pabilona and the CI alighted the vehicle and walked towards the alley while the rest of the team strategically positioned themselves around the subject area.¹³ When SO2 Pabilona and the CI arrived at a small *sari-sari* store, accused-appellant approached them and said to the CI, “*Kumusta?*” (How are you?) to which the CI replied, “*Okay lang.*”¹⁴ Accused-appellant asked the CI, “*Pila man?*” (How much?) and the CI answered, “*Bali One Taw lang*” / “*Bale One Thousand Lang*” (One Thousand only).¹⁵ Accused-appellant then got a small transparent plastic sachet containing a white crystalline substance from his right pocket and gave it to the CI, who then handed the same to SO2 Pabilona.¹⁶ After examining the item retrieved from accused-appellant, and believing the same to be *shabu*, SO2 Pabilona gave the marked ₱1,000.00 buy-bust money to accused-appellant and, thereafter, scratched his head, thereby executing the pre-arranged signal indicating the consummation of the transaction.¹⁷

Upon seeing the pre-arranged signal, IO1 Villasis and the other members of the buy-bust team immediately rushed to the scene and assisted in the arrest of accused-appellant.¹⁸ IO1 Villasis informed accused-appellant of his constitutional rights and the reason for his arrest in a dialect known and understood by him.¹⁹ IO1 Villasis then conducted a body search upon accused-appellant and recovered the marked buy-bust money, in accused-appellant’s left pocket.²⁰ IO1 Villasis then placed a masking tape on the buy-bust money upon which he affixed his signature and other markings.²¹ IO1 Villasis placed the

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id., TSN, August 7, 2012, p. 25.

¹¹ Id. at 13.

¹² Id. at 4.

¹³ Id.

¹⁴ Id.

¹⁵ Id., TSN, August 7, 2012, p. 28.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 6.

¹⁹ Id.

²⁰ Id., TSN, June 13, 2013, p. 45.

²¹ TSN, June 13, 2013, p. 46.

marked ₱1,000.00-bill inside a transparent plastic evidence pouch and sealed it.²²

After the arrest of the accused-appellant, SO2 Pabilona marked the transparent plastic sachet containing the white crystalline substance with his initials and his signature, as well as the date, time, and place of arrest, and then put the same in a separate plastic evidence pouch.²³ The buy-bust team then brought accused-appellant and the seized item to the PDEA office.²⁴ Upon their arrival, IO2 Mildred P. Romero (IO2 Romero) recorded in the PDEA blotter the incidents before and after the arrest of accused-appellant.²⁵ Since the required witnesses were not available at the time, the physical inventory of the seized items was conducted the following day, July 3, 2009, at 10:30 a.m., in the presence of Noel M. Polito, a representative from the Department of Justice, *Kagawad* Robert T. Cepe, an elected public official, and John Louie Deloso of Radio Ukay as representative from the media.²⁶ All the witnesses signed the Inventory of Evidence/Property Seized.²⁷ SO2 Pabilona, during his testimony, claimed that since they were unable to conduct inventory at the time of the arrest due to the unavailability of the required witnesses, the seized item was kept in his personal locker, to which only he had access, until the conduct of the physical inventory the next day.²⁸ In the meantime, the recovered buy-bust money remained in the custody of IO1 Villasis while the case against accused-appellant was being prepared.²⁹

After the inventory, the seized drug was submitted to the Philippine National Police (PNP) Regional Crime Laboratory Office XI, Ecoland, Davao City, for qualitative and quantitative examination.³⁰ Accused-appellant was also subjected to a urine test in order to determine the presence of dangerous drugs in his system.³¹ The request for laboratory examination of the seized item and the item itself were submitted to the PNP crime laboratory by SO2 Pabilona and received by Senior Police Officer (SPO) 1 Arnel Betita (SPO1 Betita).³² SPO1 Betita weighed the substance and indicated the weight of 0.0486 gram on the Request for Laboratory Examination.³³ Thereafter, SPO1 Betita turned over the marked plastic sachet to Police Superintendent (P/Supt.) Liny T. Corpuz (P/Supt. Corpuz), the Forensic Chemical Officer of the PNP Regional Crime Laboratory, who conducted a chemical examination of the specimen.³⁴ SPO1

²² Records, p. 6; TSN, June 13, 2013, p. 46.

²³ Id. at 4; TSN, August 7, 2012, p. 29.

²⁴ Records, pp. 5 and 6.

²⁵ Id. at 8 and 14.

²⁶ Id. at 5 and 7; TSN, August 7, 2012, p. 30.

²⁷ Id.; id.

²⁸ TSN, August 7, 2012, p. 30.

²⁹ Records, pp. 5 and 7.

³⁰ Id.

³¹ Id.

³² TSN, May 21, 2012, p. 19; TSN, August 7, 2012, p. 31.

³³ Id.; id.

³⁴ TSN, May 17, 2010, pp. 4-5; TSN, May 21, 2012, p. 20.

Betita also obtained a urine sample from accused-appellant which he then submitted to P/Supt. Corpuz for examination.³⁵

P/Supt. Corpuz prepared Chemistry Report No. D-088-09 which indicated that the specimen tested positive for the presence of methamphetamine hydrochloride, a dangerous drug more commonly known as *shabu*. Thereafter, P/Supt. Corpuz marked the plastic sachet as specimen "A" and wrote her initials "LTC" on the same.³⁶ She then placed the marked sachet inside the plastic evidence pouch which she marked with Control Number D-088-09 and turned it over to SPO2 Antonio Alcozar, the evidence custodian.³⁷ P/Supt. Corpuz also prepared Chemistry Report No. DT-082-09 indicating that the urine sample obtained from accused-appellant yielded a negative result to the test for THC metabolites and methamphetamine.

On July 3, 2009, accused-appellant was charged with violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs in an Information³⁸ that reads:

That on or about July 2, 2009, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and consciously sold, transferred and delivered to another person who acted as poseur buyer one (1) small sachet containing methamphetamine hydrochloride otherwise known as *shabu* which is a dangerous drug weighing 0.0486 gram.

CONTRARY TO LAW.³⁹

During his arraignment, accused-appellant entered a plea of "not guilty". After the pre-trial conference held on March 9, 2010, trial on the merits ensued. The prosecution presented the following witnesses: SO2 Pabilona, IO1 Villasis, IO2 Romero, SPO2 Betita, and P/Supt. Corpuz. Accused-appellant was the sole witness for the defense.

Version of the Defense:

On the part of the accused-appellant, he testified that at around 3:30 p.m. of July 2, 2009, he was waiting for his son to return from school at the house of his childhood friend, Julie Berol (Berol), in Barangay 31D, Purok 8, Davao City.⁴⁰ Accused-appellant's son was fetched by Berol since the children of accused-appellant and Berol were classmates in Sta. Ana Elementary School. Sometime after Berol and accused-appellant's son arrived at Berol's house, two gray vehicles arrived and 12 armed individuals wearing civilian clothes alighted

³⁵ TSN, May 17, 2010, p. 10.

³⁶ Id. at 6.

³⁷ Id. at 5-7.

³⁸ Records, p. 1.

³⁹ Id.

⁴⁰ TSN, September 23, 2014, pp. 59 – 72.

therefrom and pointed their guns at accused-appellant. The armed individuals ordered accused-appellant to lie down on the ground and handcuffed him.⁴¹

At around 4:00 p.m., accused-appellant's live-in partner, Juveln Baylosis (Baylosis), arrived at Berol's house.⁴² Accused-appellant, Baylosis, and his son were made to board one of the gray vans. Inside the van, he came to know through the identification cards of the armed individuals that they were PDEA agents. Accused-appellant was then brought to the PDEA Office at San Pedro Street, Davao City. Accused-appellant further confirmed, in his testimony, that when he was arrested, he was not informed of the reason for his arrest and his constitutional rights. At the PDEA Office, a pack of alleged drugs and the marked money were presented to accused-appellant. He denied that the contraband were taken from him and confirmed that no inventory was conducted. At the PDEA Office, accused-appellant was brought to a detention cell while his son and Baylosis were sent home. Accused-appellant was then subjected to a urine test and then returned to a detention cell.⁴³

Ruling of the Regional Trial Court:

In its November 6, 2015 Decision,⁴⁴ the RTC convicted accused-appellant of violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs. The RTC found that the prosecution, through testimonial and documentary evidence, was able to sufficiently prove the existence of all the essential elements of the crime charged, establish the *corpus delicti*, and prove, without doubt, substantial compliance with Section 21 of RA 9165. The dispositive portion of the RTC judgment reads:

WHEREFORE, based on the foregoing discussion, as the accused' (sic) guilt has been proven beyond reasonable doubt, this Court finds the accused GUILTY of the charge. He is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P500,000.00.

The accused is entitled to be credited in his favor the preventive imprisonment that he has undergone pursuant to Article 29 of the Revised Penal Code as amended by Republic Act No. 10592

Pursuant to section 21 (7) of RA 9165, the prosecution is hereby given a period of five (5) days from receipt of the copy of the decision to manifest before this Court whether or not its office will be needing the shabu subject matter of this case. Otherwise, the Branch Clerk of Court is hereby directed to forward the same to the PDEA, upon proper receipt, for disposition and destruction in accordance with the law.

SO ORDERED.⁴⁵

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Records, pp. 162-173.

⁴⁵ Id. at 172.

Accused-appellant appealed his conviction to the CA on November 25, 2015. In his brief,⁴⁶ accused-appellant assailed the credibility of the testimonies of the witnesses of the prosecution and averred that the prosecution failed to establish an unbroken chain of custody of the seized dangerous drugs.

Ruling of the Court of Appeals:

In its February 19, 2018 Decision,⁴⁷ the CA affirmed the RTC's judgment of conviction. The CA found that all the essential elements of Illegal Sale of Dangerous Drugs were competently and convincingly established by the prosecution. Although the CA acquiesced that Section 21, Article II of RA 9165 was not strictly complied with by the PDEA officers, particularly with regard to the place and time of the inventory, the CA nonetheless ruled that there was substantial compliance with the requirements under RA 9165, and that the crucial links in the chain of custody were sufficiently established. The CA further held that the non-compliance with Section 21, Article II of RA 9165 cannot be belatedly raised on appeal.

The *fallo* of the CA's February 19, 2018 Decision reads:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed decision dated 06 November 2015 of the Regional Trial Court, 11th Judicial Region, Branch 13, Davao City, finding appellant Ritchie Bulang Roble guilty beyond reasonable doubt of violation of Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165 in Criminal Case No. 66,037-09, is **AFFIRMED**.

SO ORDERED.⁴⁸

In view of the CA's adverse Decision, accused-appellant filed a Notice of Appeal on March 13, 2018.⁴⁹

Issue

Whether or not accused-appellant is guilty of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165.

Our Ruling

The appeal is meritorious.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are the following: "(a) the identity of the buyer and the seller, the

⁴⁶ CA rollo, pp. 21-34.

⁴⁷ Id. at 89-104.

⁴⁸ Rollo, p. 17

⁴⁹ Id. at 19-20.

object, and the consideration; and (b) the delivery of the thing sold and the payment.”⁵⁰

In cases of Illegal Sale of Dangerous Drugs, the identity of the object or the seized dangerous drug is the *corpus delicti* of the crime and thus must be established with moral certainty.⁵¹ In *Fuentes v. People*,⁵² the Court held that “failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal,” to wit:

Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.⁵³

“Chain of Custody” pertains to the “duly recorded, authorized movements, and custody of the seized drugs at each state, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.”⁵⁴ The Court has consistently recognized the following links that must be established in the chain of custody in a buy-bust situation: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁵⁵

Section 21, Article II of RA 9165 and Section 21 of the Implementing Rules and Regulations (IRR) of RA 9165 outline the procedure that must be followed by the law enforcement to ensure compliance with the chain of custody rule.

Although the Court has recognized that strict compliance with the chain of custody rule is not always possible, deviations from the procedure may be allowed only when the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.⁵⁶ The Court, once again in

⁵⁰ *People v. Cuevas*, G.R. No. 238906, November 5, 2018.

⁵¹ *Fuentes v. People*, G.R. No. 228718, January 7, 2019.

⁵² Id. Citations omitted.

⁵³ Id.

⁵⁴ *People v. Bangcola*, G.R. No. 237802, March 18, 2019

⁵⁵ *People v. Kamad*, 624 Phil. 289, 304 (2010); *People v. Villalon*, G.R. No. 249412, March 15, 2021.

⁵⁶ *Fuentes v. People*, supra.

Fuentes v. People,⁵⁷ clarified that the chain of custody rule is not a mere technical rule of procedure that courts may, in their discretion, opt to relax but is an administrative protocol, embodied in law, that law enforcement officers and operatives are enjoined to implement as part of their police functions:

At this juncture, the Court takes this opportunity to clarify that compliance with the chain of custody rule is not a mere technical rule of procedure that courts may, in their discretion, opt to relax. In the first place, the chain of custody procedure is embodied in statutory provisions which were ‘crafted by Congress as safety precautions to address potential police abuses [in drugs cases], especially considering that the penalty imposed may be life imprisonment.’ It is not a Supreme Court-issued rule of procedure created under its constitutional authority to ‘[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts.’ Rather, it is an administrative protocol that law enforcement officers and operatives are enjoined to implement as part of their police functions. Indeed, while the chain of custody rule is ‘procedural’ in the sense that it sets a step-by-step process that must be followed, it is *by no means remedial in nature* since it is not, properly speaking, a requirement or process that pertains to court litigation.

At most, insofar as an actual court proceeding is concerned, it is the compliance with the chain of custody procedure, or the presence of justifiable reasons for non-compliance, which must be proved; in this relation, it is the *procedure of proving the same* which is prescribed in the ordinary rules of evidence, which is, on the other hand, what our courts have discretion over. Thus, when a court finds that non-compliance with the chain of custody rule is allowable, it does not exercise its discretion to relax a Court-issued rule; rather, it determines that the prosecution was able to prove that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In so doing, the court only applies the saving-clause found in the law.⁵⁸

After a careful review of the records of the case, We find that the prosecution failed to clearly establish sufficient compliance with the chain of custody procedure outlined in Section 21, Article II, of RA 9165, particularly regarding the place, time, and manner of physical inventory.

Section 21, Article II of RA 9165 pertinently states that 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 and three specific witnesses:

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

⁵⁷ Id.

⁵⁸ Id.

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.

Section 21 of the IRR of RA 9165 further provides 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:

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:

(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 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.

In the present case, despite conducting a team briefing regarding the buy-bust operation as early as 4:00 p.m. of July 2, 2009,⁵⁹ the buy-bust team still failed to gather all of the required witnesses and conduct the inventory of the seized item immediately after seizure and confiscation of the same. The buy-bust team conducted the physical inventory of the seized items only at 10:30 a.m. of the following day, July 3, 2009.⁶⁰

⁵⁹ Records, pp. 4 and 6; TSN, August 7, 2012, pp. 3-4.

⁶⁰ Id. at 5 and 7; id. at 30.

In the meantime, the seized item remained in the possession of SO2 Pabilona and the recovered buy-bust money remained in the custody of IO1 Villasis, while the case against accused-appellant was being prepared.⁶¹ As SO2 Pabilona testified, he kept the drug specimen in his personal locker until the inventory of the seized item was conducted the next day, July 3, 2009, at 10:30 a.m.:

[PROS. SENCIO]: The printed name (sic) consist of Mr. John Deloso, Noel Polito, and Kagawad Robert T. Cepe. Now, from that time that you arrive at your Office to the Inventory the next day, who kept the drug specimen?

[SO2 PABILONA]: I was the one who kept the drug specimen, Sir.

Q: Where did you keep the drug specimen?

A: It was secured in my locker, Sir.

Q: Who else has access to your locker?

A: I was the only one, Sir.

Q: And after the Inventory, what happened next?

A: We prepared the Request for Laboratory Examination for the items and the Urine test.⁶²

During cross-examination, SO2 Pabilona further confirmed that he kept other personal belongings in his locker and he cannot provide any document or any other evidence showing that the seized item was safely stored in his locker until the inventory was conducted the following day:

[ATTY. SOLDE]: You made mentioned (sic) that you kept the item in yiour (sic) personal locker?

[SO2 PABILONA]: Yes, Ma'am.

Q: You also kept your personal belongings on that locker is that correct?

A: Yes, Ma'am.

Q: So, you do not have any document showing that you kept the item in your personal locker and if you remove that item from your personal lockder (sic) during the Inventory?

A: No, Ma'am.⁶³

Moreover, although the Inventory of Evidence/Property Seized Form was signed by all the required witnesses, the same was not signed by accused-appellant or accused-appellant's representative. IO1 Villasis, in his testimony, explained that the signature of accused-appellant or his representative does not appear on the Inventory of Evidence/Property Seized because accused-appellant refused to sign the same.

PROS. SENCIO]: And then after the inventory.... By the way, the suspect representative is blank. Why?

⁶¹ Records, pp. 5 and 7.

⁶² TSN, August 7, 2012, p. 31.

⁶³ Id. at 38.

[IO1 VILLASIS]: He refused to sign, sir.

Q: Who refused to sign?

A: The accused, sir.

Q: There is no representative?

A: None, sir.⁶⁴

IO1 Villasis further claimed that they took pictures during the inventory.⁶⁵ However, the copies of the photographs of the inventory were not presented by the prosecution as evidence.

In view of the foregoing, it is apparent that the prosecution failed to sufficiently prove that proper inventory was conducted pursuant to Section 21, Article II of RA 9165. The prosecution also failed to present justifiable ground for non-compliance with the same other than claiming that (1) the required witnesses were not available at the time of seizure and confiscation of the alleged dangerous drug from accused-appellant, (2) the seized item was allegedly secured in SO2 Pabilona's personal locker, and (3) accused-appellant simply refused to sign the Inventory of Evidence/Property Seized Form without indicating the same in the Inventory of Evidence/Property Seized Form and without presenting photographs of the inventory.

First, with regard to the unavailability of the required witnesses, as held in the case of *People v. Ramos*,⁶⁶ the Court stated that "a justifiable reason for such failure or showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced," to wit:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, **a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for 'a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.' Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations 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 full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to

⁶⁴ TSN, June 13, 2013, p. 51

⁶⁵ Id. at 49.

⁶⁶ *People v. Ramos*, 826 Phil. 981 (2018).

comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.⁶⁷ (Citation omitted)

In the present case, the prosecution merely claimed that the required witnesses were not available and did not provide any further explanation or evidence showing that there was any genuine and sufficient effort to secure their presence.

Second, the integrity and evidentiary value of the seized item are further put into question considering that the seized item was merely placed in the personal locker of SO2 Pabilona along with his other personal effects. SO2 Pabilona did not provide any documentation, testimony, or any other evidence to show how he secured his personal locker and that the integrity of the seized item was properly preserved in his personal locker between the time of seizure of the suspected *shabu* up to the time that the physical inventory was conducted.

Third, the lack of signature of the accused-appellant on the Inventory of Evidence/Property Seized Form coupled with the fact that photographs of the inventory were not presented by prosecution as evidence are clearly in violation of the requirement that the apprehending officer must “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” under Section 21 (1) of RA 9165 and Section 21 (a) of the IRR of RA 9165.

Finally, it is also worth noting that the prosecution did not provide a clear testimony or documentary evidence regarding the second and fourth links of the chain of custody.

The apprehending officer, SO2 Pabilona, did not testify regarding the turnover of the item to an investigating officer and merely testified that he prepared the written request for laboratory examination of the item seized after the inventory. The request for laboratory examination and the seized item were submitted to the PNP crime Laboratory by SO2 Pabilona and received by SPO1 Betita, the receiving officer of the PNP Regional Crime Laboratory.⁶⁸ SPO1 Betita handed the illegal drug seized over to forensic chemist P/Supt. Corpuz. After examination of the seized item, P/Supt. Corpuz marked the sachet inside the plastic evidence pouch and turned over the same to SPO2 Antonio Alcozar, the evidence custodian.⁶⁹

The prosecution did not provide any details as to how evidence custodian SPO2 Antonio Alcozar handled the seized item before the same was presented before the RTC. P/Supt. Corpuz simply testified that she requested the specimen from SPO2 Alcozar after she received the subpoena.⁷⁰

⁶⁷ Id. at 996-997.

⁶⁸ TSN, May 21, 2012, p. 19; TSN, August 7, 2012, p. 31.

⁶⁹ TSN, May 17, 2010, pp. 5-7.

⁷⁰ Id. at 7.

In view of such glaring lapses in the chain of custody of the seized item, the prosecution thus failed to prove accused-appellant's guilt beyond reasonable doubt. The presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence in favor of the accused.⁷¹

Hence, the Court is constrained to acquit the accused-appellant.

With regard to the CA's pronouncement that non-compliance with Section 21, Article II of RA 9165 cannot be belatedly raised on appeal, the Court disagrees. In the case of *People v. Magat*,⁷² citing *People v. Miranda*,⁷³ the Court has held that the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*:

As the requirements are clearly set forth in the law, then the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks 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.⁷⁴

WHEREFORE, the appeal is hereby **GRANTED**. The February 19, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01539-MIN is **REVERSED and SET ASIDE**. Accused-appellant Ritchie Bulang Roble is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Superintendent of Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, for immediate implementation. Furthermore, the Superintendent is **DIRECTED** to report to this Court the action he has taken within five days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED."

⁷¹ *People v. Catalan*, 699 Phil. 603, 621 (2012).

⁷² *People v. Magat*, G.R. No. 245541 (Notice), August 4, 2021.

⁷³ *People v. Miranda*, 824 Phil. 1042, 1059 (2018).

⁷⁴ *People v. Magat*, supra.

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *by 4/19*
19 APR 2022

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Accused-Appellant
c/o The Superintendent
Davao Prison and Penal Farm
B.E. Dujali, Davao del Norte

THE SUPERINTENDENT (reg)
Davao Prison and Penal Farm
B.E. Dujali, Davao del Norte

THE DIRECTOR (x)
Bureau of Corrections
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 13
8000 Davao City
(Crim. Case No. 66,0387-09)

COURT OF APPEALS (reg)
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CA-G.R. CR-HC No. 01539-MIN

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Please notify the Court of any change in your address.
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