



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated October 19, 2022, which reads as follows:*

“G.R. No. 242529 (*People of the Philippines v. Ernesto Lopez y Macayanas*). — This appeal<sup>1</sup> seeks the reversal of the March 15, 2018 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 09208 which dismissed the appeal of accused-appellant Ernesto Lopez y Macayanas (Lopez) and affirmed *in toto* the December 16, 2016 Joint Decision<sup>3</sup> of the Regional Trial Court (RTC), First Judicial Region, Branch 41 of Dagupan City in Criminal Case Nos. 2013-0058-D and 2013-0059-D. The RTC Joint Decision found Lopez guilty beyond reasonable doubt for selling and delivering, and possessing methamphetamine hydrochloride (shabu) without authority to do so in violation of Sections 5 and 11, respectively, Article II of Republic Act No. (RA) 9165<sup>4</sup> or the “Comprehensive Dangerous Drugs Act of 2002.”

Lopez was criminally charged under two Informations which read as follows:

**Criminal Case No. 2013-0058-D**  
**Illegal Sale of Dangerous Drugs**

That on or about the 18<sup>th</sup> day of January 2013, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ERNESTO LOPEZ y MACAYANAS, did then and there, willfully, unlawfully and criminally, sell and deliver to poseur-buyer

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<sup>1</sup> *Rollo*, pp. 16-18.

<sup>2</sup> *Id.* at 2-15. Penned by Associate Justice Priscilla J. Baltazar-Padilla (now a retired Member of this Court) and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Carmelita Salandanan-Manahan.

<sup>3</sup> *CA rollo*, pp. 38-49. Penned by Presiding Judge Emma M. Torio.

<sup>4</sup> 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.

Methamphetamine Hydrochloride (Shabu) contained in one (1) heat sealed plastic sachet, weighing more or less 0.192 gram, in exchange for P500.00, without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.

**Criminal Case No. 2013-0059-D**  
**Illegal Possession of Dangerous Drugs**

That on or about the 18<sup>th</sup> day [of] January 2013, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ERNESTO LOPEZ y MACAYANAS, did then and there, willfully, unlawfully and criminally, have in his possession, custody and control Methamphetamine Hydrochloride (Shabu) contained in two (2) heat sealed plastic sachets, weighing more or less 0.236 gram, without authority to possess the same.

Contrary to Article II, Section 11, R.A. 9165.<sup>5</sup>

Lopez was arraigned and pleaded not guilty.<sup>6</sup> Trial on the merits soon followed. The prosecution offered the testimonies of Police Senior Inspector Myrna Malojo Todeño, Polic Officer 3 Lucas Salonga (PO3 Salonga), Senior Police Officer 1 Crisante Mendones, Senior Police Officer 4 Conrado Fransisco, Police Officer 3 Elmer Manuel, and Police Officer 3 Bryan Benavidez. The defense presented Lopez and his wife, Rosalia Lopez (Rosalia).

### **Version of the Prosecution**

The factual account of the prosecution is summarized by the Office of the Solicitor General in its Brief for the Plaintiff-Appellee,<sup>7</sup> to wit:

8. On January 18, 2013, around 1:00 p.m., PO3 Lucas Salonga reported to the Dagupan City Police Station where he was assigned. The Dagupan City Police Station received a report that a certain Ernesto Lopez is engaged in illegal activities. He was later identified as herein appellant, a known drug peddler in his area. PO3 Salonga was informed that a buy-bust operation against appellant, who was residing along AB Fernandez Avenue, West, will be conducted. The confidential asset contacted appellant about the sale. As soon as appellant agreed to meet, the buy-bust money of five (5) one hundred peso bills (Php100.00) was prepared. The serial number of each bill was recorded in the police blotter. Then, PO3 Salonga marked the buy-bust money with his initials, LCS. SPO1 Crisante Mendones prepared the coordination form and recorded the dispatch of the intelligence operatives before the conduct of the buy-bust operation.

9. The buy-bust team composed of PO3 Salonga, SPO1 Marion Decano, PO1 Aldrin Guarin, SPO1 Christian Carvajal and PO1 Arnold Bautista

<sup>5</sup> Records (Crim. Case No. 2013-0058-D), p. 1; Records (Crim. Case No. 2013-0059-D), p. 1.

<sup>6</sup> Records (Crim. Case No. 2013-0058-D), p. 17.

<sup>7</sup> CA rollo, pp. 54-74.

proceeded to the target area. The buy-bust team walked towards appellant's house which was the agreed meeting place because it was located about two hundred (200) meters away from the police station. PO3 Salonga and the confidential informant proceeded to appellant's house particularly in front of Kulit's carwash. The rest of the buy-bust team strategically positioned themselves. Upon meeting appellant, the confidential informant introduced PO3 Salonga as the buyer. Thereafter, PO3 Salonga immediately handed appellant the buy-bust money and in exchange[,] appellant handed a small plastic sachet containing substance believed to be shabu. After PO3 Salonga received the plastic sachet[,] he introduced himself as a police [officer] and frisked appellant. The search made on appellant's body yielded the buy-bust money and two (2) plastic sachets also believed to be containing shabu from his pocket. After PO3 Salonga seized the buy-bust money and two (2) plastic sachets, he waved his hand to the other members of the buy-bust team. The team leader SPO1 Decano and the rest of the members approached PO3 Salonga to assist him. The plastic sachets were immediately marked by PO3 Salonga, the plastic sachet given by appellant during the sale was marked with LCS while the seized plastic sachets were marked with LCS-1 and LCS-2. PO3 Salonga also prepared the confiscation receipt. These procedures were done in the presence of appellant and representatives from the Department of Justice (DOJ) and media. After the marking of evidence and preparation of the confiscation receipt, the team brought appellant to the police station.

10. PO3 Salonga was in possession of the marked plastic sachets from the time the same were seized until they reached the police station. As soon as they arrived in the police station, the incident was recorded in the police blotter, PO3 Salonga submitted the marked plastic sachets to the desk officer for recording. Appellant was then brought to Region 1 Medical Center. Meanwhile, SPO1 Mendones prepared the letter request for laboratory examination. He took photos of the seized items and buy-bust money. After the pieces of the marked evidence were recorded, the plastic sachets were returned to PO3 Salonga. He personally brought the letter request and marked plastic sachets to the Pangasinan Crime Laboratory. PO3 Salonga waited for the result of the laboratory examination. The specimens submitted yielded positive for methamphetamine hydrochloride. After he received the result, PO3 Salonga went back to the Dagupan Police Station and executed an affidavit of arrest. SPO1 Mendones prepared the affidavit of arrest.

11. PSI Myrna Malojo Todeño, Forensic Chemical Officer, personally received the letter request and specimens from PO3 Salonga. She conducted a qualitative examination, and the contents of the three (3) plastic sachets were found positive for methamphetamine hydrochloride. PSI Todeño reduced her findings into writing, she prepared the Initial Laboratory Report No. 014-2013-L and Final Chemistry Report No. D-013-2013L.

12. Based on the foregoing facts, the City Prosecutor's Office of Dagupan City found probable cause for illegal sale and possession of dangerous drugs which are defined and penalized under Sections 5 and 11, Article II of R.A. No. 9165, respectively. Thereafter, separate Informations were filed against appellant.<sup>8</sup>

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<sup>8</sup> Id. at 59-61.

### **Version of the Defense**

Lopez denied the charges against him. He claimed that on January 18, 2013, he was at his house with his wife Rosalia, and daughter, Joanna. While fixing the flooring of his house, two individuals in civilian clothes entered and told him they were looking for certain items. Despite Lopez's protestations, the duo continued their search, tore their pillows, and broke some of their belongings. When they failed to find what they were looking for, they punched Lopez in his stomach and removed his lower garments. Nothing still was recovered from him.

Subsequently, PO3 Salonga arrived, handcuffed Lopez and brought him to the police station where he was forced to sign a document which he did not understand as it was written in English. After signing the document, he was incarcerated at the Dagupan Police Station for five days and was later transferred to the Bureau of Jail Management and Penology (BJMP). Lopez stated that he does not know why PO3 Salonga would fabricate these grave charges against him.

Lopez's wife, Rosalia, testified that on January 18, 2013, she was in their house with her husband and child, Joanna. She was cleaning while Lopez was repairing the house posts when four individuals in civilian clothes entered their house. They conducted a thorough search of their house, opened their coffee and sugar containers, destroyed their pillows, even poked guns at her and Lopez. Afterwards, they mauled, boxed and kicked Lopez. One of them frisked Lopez, stripped him off of his clothes, and took the money from his pocket. After her husband was handcuffed and brought out of the house, she no longer knew what happened. Later on, she learned that a case was filed against her husband when she visited him in jail. She, on the other hand, did not file a case against the four armed individuals because she knew that her husband was faultless.

### **Ruling of the Regional Trial Court**

In its Joint Decision<sup>9</sup> dated December 16, 2016, the RTC found that the prosecution duly proved the essential elements of the crimes charged. The RTC held that Lopez's denial of the crimes charged against him cannot prevail over the positive testimony of the prosecution witnesses. Thus:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused Ernesto Lopez y Macayanas GUILTY beyond reasonable doubt in Criminal Case No. 2013-0058-D for selling and delivering methamphetamine hydrochloride (shabu), a dangerous drug, contained in one (1) plastic sachet weighing 0.192 gram, more or less, without authority to do so, in violation of Section 5, Article II of Republic Act 9165, and pursuant to law,

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<sup>9</sup> Id. at 38-49.

he is sentenced to suffer the penalty of life imprisonment and fine of P500,000.00.

In Criminal Case No. 2013-0059-D, the court likewise finds the accused Ernesto Lopez y Macayanas GUILTY beyond reasonable doubt for possession of [methamphetamine] hydrochloride (shabu), a dangerous drug, contained in two (2) plastic sachets weighing more or less 0.236 [gram], in violation of Section 11, Article II of Republic Act 9165, and pursuant thereto, he is sentenced to suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and fine in the amount of Three Hundred Thousand (P300,000.00).

The three (3) plastic sachets of shabu are hereby forfeited in favor of the government and to be disposed in accordance with the law.

The period during which the accused has undergone preventive imprisonment shall be credited to him in full in the service of his sentence if he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted persons.

SO ORDERED.<sup>10</sup>

### **Ruling of the Court of Appeals**

The CA affirmed the RTC Joint Decision in its Decision<sup>11</sup> promulgated on March 15, 2018. The dispositive portion of the Decision reads:

WHEREFORE, the present appeal is DISMISSED. The Joint Decision dated December 16, 2016 of the Branch 41 of Dagupan City Regional Trial Court in Criminal Cases Nos. 2013-0058-D and 2013-0059-D is hereby AFFIRMED *in toto*.

SO ORDERED.<sup>12</sup>

### **Issue**

For resolution is whether Lopez is guilty beyond reasonable doubt for violating Secs. 5 and 11, Art. II of RA 9165.

### **Our Ruling**

The appeal is meritorious.

The alleged crime happened sometime in 2013 hence the original provision of Sec. 21(a) in the Implementing Rules and Regulations (IRR) of RA 9165 still applies. The provision states:

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<sup>10</sup> Id. at 48-49.

<sup>11</sup> *Rollo*, pp. 2-15.

<sup>12</sup> Id. at 15.

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;** (Emphasis supplied)

The provision is clear regarding two things: (1) the three-witness rule applies in conducting physical inventory and photography at the place where the search warrant is served or at the nearest police station or nearest office of the apprehending team; and (2) noncompliance with the first requirement is only justified when there is a justifiable ground, and the integrity and evidentiary value of the seized items are properly preserved and proven to be properly preserved.

In this case, the prosecution failed to meet the three-witness requirement. There was no elected public official present during the physical inventory and photography of the seized drugs, as could be gleaned from the transcript of the court hearings, to wit:

PROS. [JULIE SONSON] NAMORO:

Q In this confiscation receipt, there is also a signature [on] top of the printed name Lemuel Briones, whose signature is this?

A Representative from the DOJ, madam.

Q Why do you say that is his signature?

A I was present when he put his signature, madam.

Q There is also a signature [on top] of the printed name, Jasmin Joy Gabriel, whose signature is that?

A The media, madam.

Q Why do say that that is her signature?

A I was present when she put [her] signature, madam.

PROS. NAMORO:

May I pray, your Honor, that the printed name and signature of Lemuel Briones, representative of the DOJ, be marked as Exhibit "E-2" and the printed name and signature of the Media representative be marked as Exhibit "E-3."<sup>13</sup>

Additionally, the prosecution, in the absence of the third required witness, failed to state in sworn statements or affidavits justifiable grounds for the noncompliance and the steps taken to preserve the integrity and evidentiary value of the seized drugs. Recent jurisprudence has clarified that failure to follow the mandated procedure under Section 21 must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.<sup>14</sup> The CA's finding that "PO3 Salonga was in custody of the illicit items from the time that they were confiscated until he handed the same to the case investigator at the police station"<sup>15</sup> is not enough.

Strict adherence to Sec. 21, Art. II of RA 9165 is especially required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering or alteration.<sup>16</sup> Here, only 0.192 and 0.246 gram for the Illegal Sale and Illegal Possession of Dangerous Drugs, respectively, were seized from Lopez. The exacting standards of the law become important all the more. Compliance with the law is a guarantee against planting of evidence and frame up, and is "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."<sup>17</sup>

Lastly, given the obvious evidentiary gap in the chain of custody, the presumption of regularity in the performance of duties cannot be applied in this case. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.<sup>18</sup> Since the integrity and evidentiary value of the seized drugs were put to doubt, there is consequently a failure to establish an element of the crimes of Illegal Possession and Illegal Sale of Dangerous Drugs. Therefore, Lopez must be acquitted for the prosecution's failure to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized,

<sup>13</sup> TSN, November 27, 2013, p. 9.

<sup>14</sup> *People v. Battung*, 833 Phil. 959, 972 (2018), citing *People v. Saragena*, 817 Phil. 117, 144 (2017).

<sup>15</sup> *Rollo*, p. 11.

<sup>16</sup> *People v. Battung*, supra, citing *People v. Saragena*, supra at 121.

<sup>17</sup> *People v. Sagana*, 815 Phil. 356, 373 (2017).

<sup>18</sup> *People v. Hernandez*, G.R. No. 258077, June 15, 2022, citing *People v. Siaton*, 789 Phil. 87, 107-108 (2016).

and to prove as a fact any justifiable reason for noncompliance with Sec. 21, Art. II of RA 9165 and its implementing rules.

**WHEREFORE**, the appeal is **GRANTED**. The March 15, 2018 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 09208 is **REVERSED** and **SET ASIDE**. Accused-appellant Ernesto Lopez y Macayanas is **ACQUITTED** of the crimes charged against him for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director General, Bureau of Corrections, Muntinlupa City, for immediate implementation. Furthermore, the Director General is **DIRECTED** to report to this Court the action taken hereon within five days from receipt of this Resolution.

Let an entry of judgment be issued immediately.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *11/3*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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Court of Appeals (x)  
Manila  
(CA-G.R. CR-HC No. 09208)

The Hon. Presiding Judge  
Regional Trial Court, Branch 41  
Dagupan City, 2400 Pangasinan  
(Crim. Case Nos. 2013-0058 to 0059-D)

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