



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 247267 (*Rogelio Maalat, Jr. y Vinco v. People of the Philippines*). — Before the Court is a Petition for Review on *Certiorari*¹ assailing the Decision² dated August 29, 2018 and Resolution³ dated March 13, 2019 of the Court of Appeals (CA) in CA G.R. CEB HC No. 02407, which affirmed the Joint Decision⁴ dated September 1, 2016 of the Regional Trial Court of Bacolod City (RTC), Branch 52, in Criminal Case Nos. 14-38865,14-38866,14-38867 and 14-38868 finding Rogelio Maalat, Jr. y Vinco guilty beyond reasonable doubt of Violation of Sections 5 and 12, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Dangerous Drugs Act of 2002, as amended.

On March 18, 2014, at 10:00 o'clock in the morning, the Philippine National Police Special Operations Group (PNP-SOG) received a confidential information that Rogelio V. Maalat, Jr. (*Maalat*) has been dealing *shabu* at Purok Tisa, Lopez Jaena St. Bacolod City. Acting thereon, Police Superintendent Descallar (*P/Supt. Descallar*) coordinated with the Bacolod City Anti-Illegal Drugs Special Operations Task Group (*CAID-SOTG*) and Police Station 4 for the conduct of an entrapment operation. He also coordinated the police operation with the Philippine Drug Enforcement Agency (*PDEA*) Region VI.⁵

- over – twelve (12) pages ...

226-A

¹ *Rollo*, p. 45-65.

² Penned by Associate Justice Edgardo L. Delos Santos (a retired member of this Court) and concurred in by Associate Justices Edward B. Contreras and Dorothy P. Montejo-Gonzaga; *id.* at 65-83.

³ *Id.* at 84-85.

⁴ Penned by RTC Presiding Judge Raymond Joseph G. Javier; *id.* at 117-139.

⁵ *Id.* at 122.

The following day, P/Supt. Descallar formed a buy-bust team and designated Police Officer I Dennis Finch (*PO1 Finch*) as Team Leader and Police Officer I Billones (*PO1 Billones*) as poseur-buyer, while the rest of the members served as back-up operatives. Police Officer I Joleen Dela Cruz Lagundino (*PO1 Lagundino*) prepared the buy-bust money consisting of three pieces of One Hundred Peso bills bearing serial numbers DK944650, EH201233, and RV597441, and marked them with her initials "JDL." For the pre-arranged signal, it was agreed upon that the informant will make a missed call to the back-up team as soon as the sale is consummated. Not long after, the buy-bust team proceeded to the reported location.⁶

Upon arrival, the team and the confidential informant saw Maalat standing in front of the house of Erwin Cabugwason (*Cabugwason*). Together, PO1 Billones and the informant approached Maalat while the back-up members strategically positioned themselves. After introducing themselves, PO1 Billones asked Maalat "*Pre, pa score Php300.00*". In response, Maalat asked for and received the ₱300.00 buy-bust money from PO1 Billones. Subsequently, Maalat told PO1 Billones to wait for him before going inside the house of Cabugwason. When Maalat came out, he handed a plastic sachet containing white crystalline substance to PO1 Billones. Immediately thereafter, PO1 Billones identified himself as police officer and placed Maalat under arrest. At once, the confidential informant made the call to the back-up team.⁷

When the back-up team received the call, they rushed to the house of Cabugwason. As soon as they arrived, the team arrested a certain Police Officer III Leri A. Lumauag (*PO3 Lumauag*) whom they caught at the scene of the crime, but the other targets namely Cabugwason and a certain Max Jose Mercurio (*Mercurio*), were able to escape. After the arrest, PO1 Billones apprised Maalat and PO3 Lumauag of their rights. When PO1 Billones conducted a body search upon the person of Maalat and PO3 Lumauag, he recovered the buy-bust money, a glass tube, a glass test tube, two disposable lighters, an empty pack of transparent plastic sachet, an improvised tooter, and a pair of scissors.⁸

Afterwards, PO1 Finch ordered the group to proceed to the barangay hall of Barangay 20 because the residents surrounding the area have started swarming around Cabugwason's house. Meanwhile, PO1 Billones carried the seized drug and paraphernalia.⁹

- over -

226-A

⁶ *Id.* at 122-123.

⁷ *Id.* at 123.

⁸ *Id.*

⁹ *Id.*

When the team arrived at the barangay hall, PO1 Billones marked the seized items with the initials “RVM” representing Maalat’s name as witnessed by him, PO3 Lumauag, barangay officials Miguel Caballero and Essex Agsam, and Ms. Malou Flejoles, as media representative. Thereafter, the team took photographs of the confiscated items and placed them inside an evidence box. PO1 Billones and the rest of the team then brought Maalat and the evidence to Police Station 4 to record the arrest and seizure. Thereafter, PO1 Billones brought the evidence box to the SOG office and kept them in his locker for safekeeping.¹⁰

On March 20, 2014, P/Supt Descallar prepared a memorandum requesting the Negros Occidental Provincial Crime Laboratory Office (*NOPLO*) in Bacolod City to examine the contents of the plastic sachet subject of the buy-bust operation. After that, PO1 Billones brought the memorandum and the specimen to *NOPLO* for examination.¹¹ The document and the specimen were received by Police Officer II Jed Allan Vallega who turned them over to Police Chief Inspector Paul Jerome S. Puentespina (*PCI Puentespina*).¹²

After conducting qualitative and quantitative examination on the specimen submitted, *PCI Puentespina* found the contents of the plastic sachet positive for the presence of methamphetamine hydrochloride or *shabu*. He reduced his findings in Chemistry Report No. D-093-2014. He then re-sealed the seized plastic sachet and made his own markings thereon. Subsequently, he submitted the same to the property custodian for safekeeping until this was brought to the RTC for presentation and identification.¹³

Maalat was accordingly indicted in separate Criminal Informations for violation of Sections 5, 12 and 15,¹⁴ Article II of R.A. No. 9165, together with accused PO3 Lumauag who was charged only for violation of Section 15, Article II of R.A. No. 9165¹⁵ as follows:

- over -
226-A

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 123

¹³ *Id.*

¹⁴ Criminal Information for Violation of Section 15 of R.A. 9165 was not transmitted by the RTC Clerk of Court of Branch 52, Bacolod City per Transmittal dated November 4, 2016.

¹⁵ *Id.* at 117-119.

INFORMATION

The undersigned Associate City Prosecutor accused ROGELIO MAALAT y VINCO, JR. of the crime of VIOLATION of SEC. 5, ART II of RA 9165 (Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs) committed as follows:

That on or about the 19th day of March, 2014, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, administer, deliver, give away to another, distribute, dispatch in transit, or transport any dangerous drug did, then and there willfully, unlawfully and feloniously sell, trade, dispense, deliver, and give away to a police poseur-buyer in a buy bust operation one (1) small heat-sealed transparent plastic sachet containing 0.012 grams of Methamphetamine Hydrochloride (shabu), a dangerous drug, in exchange for a price of Three (3) One Hundred Peso bills in marked money with Serial Nos. DK944650, EH201233, and RV597441, in violation of the aforementioned law.

Acts contrary to law.¹⁶

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INFORMATION

The undersigned Associate City Prosecutor accused ROGELIO MAALAT y VINCO, JR. of the crime of VIOLATION of SEC. 12, ART II of RA 9165 (Possession of equipment, instrument, apparatus and other paraphernalia for dangerous drug) committed as follows:

That on or about the 19th day of March, 2014, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess equipment, instrument, apparatus and other paraphernalia for dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control, the following equipment and paraphernalia:

one (1) glass tube
one (1) glass test tube
two (2) disposable lighters
one (1) pack transparent empty plastic sachet
one (1) improvised tooter w/ traces of white crystalline substance, and
one (1) scissor

- over -

226-A

¹⁶ Records, p.1 (H.C. No. 14-38868)

fit or intended for smoking, consuming, ingesting or introducing Methamphetamine Hydrochloride or shabu, a dangerous drug into the body.

Acts contrary to law.¹⁷

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Maalat and PO3 Lumauag denied the accusations against them. According to Maalat, he went to Bacolod City to get his health card from the City Health Office so that he could submit the same to the management of Pavillion Hotel where he applied as a utility worker. Upon submission of the health card, he was told to report to work the following morning but he must wear a formal black pants. Instead of going back to his hometown to retrieve his formal wear, he messaged Mercurio if he could borrow a pair of black trousers, to which the latter answered affirmatively.

At 4:00 o'clock in the afternoon, Maalat arrived at Mercurio's place. After exchanging pleasantries, Mercurio told him to stay in the house while he will look for a pair of black pants in his closet or buy one at a nearby thrift store. Maalat acceded.

While waiting for Mercurio's return, Maalat heard a commotion outside. Somebody then forced open the door and two men in civilian clothes barged in and identified themselves as police officers. When Maalat explained his presence in the house, one of the police officers proceeded to search the house. While the search is going on, Mercurio arrived and complained why the police operatives were conducting search without a warrant. At that moment, the policemen stopped searching the house and brought Maalat in a parked vehicle outside where he met another person who turned out to be PO3 Lumauag. The two were brought to the police headquarters.

Upon arrival at the police station, Maalat and PO3 Lumauag were merely made to sit down. By 9:30 in the evening, Maalat and PO3 Lumauag were brought to the barangay hall where they saw barangay officials present and some drug items displayed on the table. The police officer who was conducting an inventory wrote Maalat's name on a piece of paper and asked him to sign the same. When Maalat refused, the police officer asked the barangay officials instead to sign the inventory sheet.

- over -

226-A

¹⁷ Records, p.1 (H.C. No. 14-38866)

After trial, the RTC issued its Joint Decision¹⁸ dated September 1, 2016 finding only Maalat guilty beyond reasonable doubt of illegal sale of *shabu* and illegal possession of drug paraphernalia, and sentenced him as follows:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

- (a) In Criminal Case No. 14-38868 (Sale of Dangerous Drugs), finding Accused-Defendant ROGELIO MAALAT, JR. y VINCO **GUILTY**, beyond reasonable doubt, of the violation of Section 5, Article II, Comprehensive Dangerous Drugs Act of 2002. He is therefore convicted of the crime charged in the Information dated April 7, 2014. Accused-Defendant ROGELIO MAALAT, JR. y VINCO is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00);
- (b) In Criminal Case No. 14-38866 (Possession of Drug Paraphernalia), finding Accused-Defendant ROGELIO MAALAT, JR. y VINCO **GUILTY**, beyond reasonable doubt of the violation of Section 12, Article II, Comprehensive Dangerous Drugs Act of 2002. He is therefore convicted of the crime charged in the Information dated April 7, 2014. Accused-Defendant ROGELIO MAALAT, JR. y VINCO is hereby sentenced to suffer an indeterminate penalty of six (6) months and one (1) day, as minimum, to two (2) years and seven (7) months, as maximum. He is also ordered to pay a fine of ten thousand pesos (₱10,000.00);
- (c) In Criminal Case No. 14-38867 (Use of Dangerous Drugs), finding Accused-Defendant ROGELIO MAALAT, JR. y VINCO **NOT GUILTY** of the violation of Section 15, Article II, Comprehensive Dangerous Drugs Act of 2002. He is therefore acquitted of the crime charged in the Information dated April 7, 2014;
- (d) In Criminal Case No. 14-38865 (Use of Dangerous Drugs), finding Accused- Defendant PO3 LERI LUMAUAG y ATESORA **NOT GUILTY** of the violation of Section 15 Article II, Comprehensive Dangerous Drug Act of 2002. He is therefore acquitted of the crime charged in the Information dated April 7, 2014;
- (e) The dangerous drug/paraphernalia subject matter of these cases are hereby confiscated in favor of the government pursuant to Section 20, R.A. No. 9165 and ordered to be turned-over to the Philippine Drug Enforcement Agency (PDEA), Negros Island Regional Office for destruction;

- over -
226-A

¹⁸ *Id.* at 117-139.

- (f) The Jail Warden of the Bureau of Jail Management and Penology, Metro Bacolod District Jail with SICA, Barangay Singcang-Airport, Bacolod City, is hereby **ORDERED** to **IMMEDIATELY TRANSFER** Accused-Defendant ROGELIO MAALAT, JR. y VINCO to the National Bilibid Prison, Bureau of Corrections, Muntinlupa City, Metro Manila, for the service of his sentence pursuant to OCA Circular No. 40-2013; and
- (g) No Cost.

SO ORDERED. (Emphasis and underscoring in the original)

Subsequently, Maalat appealed to the CA. He argued that there was a gap in the chain of custody over the seized sachet of *shabu* and drug paraphernalia, which casts serious doubt as to the integrity and evidentiary value of the alleged seized items. He claimed that the seized items were not marked and inventoried at the place of arrest (house of Jose Max Mercurio). Instead, they were marked at the barangay hall. In addition, it was not established that the seized items were the same items brought to the SOG Office and to the crime laboratory, which was made a day after the arrest and seizure of illegal items, as there was no information as who carried the items, how they were carried, and what measures were made to preserve the same. The prosecution also failed to present during trial, PO2 Jed Allan Vallega, the personnel working at the crime laboratory, to testify on what he did to the specimen before turning them over to PCI Puentespina.¹⁹

To counter the said arguments, the Office of the Solicitor General stood firm in its position that the prosecution was able to prove the elements of the crimes to which Maalat was charged and that the police operatives were able to preserve the integrity and evidentiary value of the seized items when they were able to follow the procedural safeguards required by law.²⁰

In its assailed Decision²¹ dated August 29, 2018, the CA affirmed Maalat's conviction, thus:

WHEREFORE premises considered, the instant appeal is DENIED. The Decision dated 1 September 2016 rendered by the Regional Trial Court (RTC), Branch 52, Bacolod City, in Crim. Case Nos. 14-38865/66/67/68, finding accused-appellant Rogelio

- over -
226-A

¹⁹ CA Decision, *rollo*, at 74-75.

²⁰ *Id.* at 76.

²¹ *Id.* at 65-83.

V. Maalat, Jr. guilty beyond reasonable doubt for violating Sections 5 and 12, Article II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002), is hereby AFFIRMED.

SO ORDERED.

Hence, this petition.

We find the petition meritorious.

In order to secure the conviction of an accused charged with illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must prove with moral certainty; (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.²² What is material is proof that the transaction actually occurred, coupled with the presentation before the court of the *corpus delicti*.²³

On the other hand, the elements of illegal possession of equipment, instrument apparatus and other paraphernalia for dangerous drugs under Section 12 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.²⁴

In both cases, the substance and paraphernalia seized during the arrest should be the same objects offered as evidence in court.²⁵ This is where the chain of custody requirement in drugs cases come into play to ensure that doubts concerning the identity of the seized drugs are removed.²⁶ The procedural safeguards to be followed by police operatives was aptly summarized in *Fuentes v. People*,²⁷ viz.:

As part of the chain of custody procedure, the law requires that the apprehending team, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items 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

- over -

226-A

²² *People v. Divinagracia, Jr.*, G.R. No. 240230, November 28, 2019.

²³ *People v. Cadiente*, G.R. No. 228255, June 10, 2019, citing *People v. Caiz*, 790 Phil. 183, 196 (2016).

²⁴ *People v. Obias, Jr.*, G.R. No. 222187, March 25, 2019.

²⁵ See *People v. Alagarme*, 754 Phil. 449, 457 (2015).

²⁶ *People v. Baculio*, G.R. No. 233802, November 20, 2019, citing *Mallilin v. People*, 576 Phil. 576, 587 (2008).

²⁷ G.R. No. 228718, January 7, 2019.

amendment of RA 9165 by RA 10640, “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, “[a]n elected public official and a representative of the National Prosecution Service *OR* the media.”²⁸

Notably, the crimes committed by petitioner occurred in April 2014 or prior to the effectivity of R.A. No. 10640, which became effective only on August 7, 2014. As such, it is the provisions of R.A. No. 9165 that must apply.

Section 21 of R.A. No. 9165 requires, among others, the presence of three mandatory witnesses, namely: elected public official, representative from the Department of Justice, and representative from the media, to guarantee against unlawful planting of evidence and of frame-up. The presence of these insulating witnesses is necessary to remove any taint of irregularity or illegitimacy in the conduct of the apprehension of the accused in a buy-bust operation. Thus, in a long line of cases,²⁹ it has been ruled that the absence of any or all of the required witnesses under Section 21 without justifiable reason is tantamount to failure to establish the chain of custody.

Here, we find that there was an unjustified deviation from the chain of custody procedure thereby casting doubt on the integrity and evidentiary value of the dangerous drug and paraphernalia allegedly seized from petitioner.

Records bear out that the police operatives failed to ensure that the marking and inventory of items seized were observed by the witnesses required by law. In fact, as testified to by PO1 Billones, the marking and inventory of the item seized was witnessed only by officials from the barangay and a representative from the media. This was corroborated by the receipt of inventory³⁰ which showed that it was signed only by barangay officials Miguel Caballero and Essex Aksam, and media reporter Malou Flejoles.

- over -
226-A

²⁸ *Id.* (Italics and emphasis in the original).

²⁹ See *People v. Balvarez*, G.R. No. 246999, July 28, 2020; *People v. Burdeos*, G.R. No. 218434, July 17, 2019; *People v. Frias*, G.R. No. 234686, June 10, 2019; *People v. Laway*, G.R. No. 227741, March 27, 2019; *People v. Malazo*, G.R. No. 223713, January 7, 2019; *People v. Torio*, G.R. No. 225780, December 3, 2018; *People v. Mendoza*, G.R. No. 225061, October 10, 2018.

³⁰ Records, p. 38.

The prevailing rule is that in cases where their presence was not obtained, the prosecution must establish not only the reasons for their absence but also that earnest efforts have been exerted to secure their presence.³¹ Here, the prosecution's failure to secure the attendance of a DOJ representative to witness the conduct of the marking of the evidence and the inventory thereof, remained unexplained. There was likewise no showing that actual serious attempt to contact a representative from the DOJ was undertaken by the prosecution.

Indeed, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. 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 their earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.³² This, the police officers failed to do. Clearly then, the absence of the representative from the DOJ raises doubt as to the identity and integrity of the seized evidence. To restate, the law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter the common practice of planting evidence.³³ Requiring the presence of these persons during the inventory serves to prevent switching, planting, or contaminating the seized evidence, which taints the integrity and evidentiary value of the confiscated dangerous drugs.³⁴ Verily, the absence of the required witness constituted a huge and significant gap in the chain of custody which substantially affects the identity of the *corpus delicti*.³⁵

Considering the doubt engendered by the paucity of the prosecution's evidence, the Court has no recourse but to give petitioner the benefit thereof. Law enforcers should not only be mindful of the procedures required in the seizure, handling and safekeeping of confiscated drugs, but the prosecution should also prove every material detail in court. Observance of these is necessary to avoid wasting the efforts and the resources in the apprehension and prosecution of violators of our drug laws.³⁶

- over -

226-A

³¹ *Tolentino v. People*, G.R. No. 227217, February 12, 2020.

³² *People v. Lim*, G.R. No. 231989, September 4, 2018.

³³ *People v. Tumangong*, G. R. No. 227015, 26 November 2018.

³⁴ *People v. Ahmad*, 828 Phil. 396, 409 (2018).

³⁵ *People v. Lazaro*, G.R. No. 229219, November 21, 2018.

³⁶ *People v. Hementiza*, 807 Phil. 1017, 1039 (2017).

Thus, when the courts are given reason to entertain reservations about the identity of the illegal drug item allegedly seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt. Unexplained non-compliance with the procedures for preserving the chain of custody of the dangerous drugs has frequently caused the Court to absolve those found guilty by the lower courts.³⁷ The procedural lapses, taint the performance undertaken by the police and effectively negate the presumption of regularity in the performance of their duties that they are given the privilege to enjoy.³⁸

Withal, the procedural lapses committed by the police officers, which were unfortunately unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the petitioner, as the integrity and evidentiary value of the *corpus delicti* has been compromised. The procedure in Section 21, Article II of R.A. No. 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 drugs suspects. Considering that the prosecution failed to provide justifiable grounds for non-compliance with Section 21, Article II of R.A. No. 9165, the acquittal of petitioner is perforce in order.³⁹

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated August 29 2018, and Resolution dated March 13, 2019 rendered by the Court of Appeals are **REVERSED** and **SET ASIDE**. Petitioner Rogelio Maalat, Jr. y Vinco is hereby **ORDERED ACQUITTED** on reasonable doubt.

The Director General of the Bureau of Corrections is hereby **ORDERED** to: a) immediately release petitioner Rogelio Maalat, Jr. y Vinco from custody unless he is being held for some other lawful cause; and b) submit his or her report on the action taken within five (5) days from notice. Copies of this Resolution shall also be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let an entry of judgment be issued.

- over -
226-A


³⁷ *People v. Villarta*, 828 Phil. 259, 290 (2018).

³⁸ *People v. Reniedo*, 790 Phil. 142, 152 (2016).

³⁹ *People v. Delociembre*, 832 Phil. 832, 848 (2018).

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *m/21*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
226-A

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