



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

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

**“G.R. No. 247757 (People of the Philippines, vs. Jessie San Pedro y Picadiso.)** - This Court resolves this appeal<sup>1</sup> which seeks to reverse and set aside the Decision<sup>2</sup> promulgated on 22 November 2018 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 10021. The CA affirmed the Decision<sup>3</sup> dated 21 September 2017 of Branch 67, Regional Trial Court (RTC) of Binangonan, Rizal, in Criminal Case Nos. 15-292 and 15-293, finding accused-appellant Jessie San Pedro y Picadiso (accused-appellant), guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (RA) No. 9165.<sup>4</sup>

**Antecedents**

Accused-appellant was charged with violation of Sections 5 and 11, Article II of RA No. 9165, in two separate Informations, the accusatory portions of which read:

Criminal Case No. 15-292

That, on or about the 11<sup>th</sup> day of June, 2015 in the Municipality of Angono, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to PO1 Daril Piamonte, a police poseur buyer, in consideration of the amount of Php200.00, one (1) heat-sealed transparent plastic sachet containing 0.05 gram of white crystalline substance, which, after the corresponding examination by the Eastern Police District Crime Laboratory Office Mandaluyong, was found positive to the test for Methamphetamine Hydrochloride, also known as shabu, a dangerous drug, in violation of the above-cite law.

<sup>1</sup> *Rollo*, pp. 16-18. See Notice of Appeal dated 20 December 2018.

<sup>2</sup> *Id.* at 3-15; penned by Associate Justice Rosmari D. Carandang (retired Member of this Court) and concurred in by Associate Justices Amy C. Lazaro-Javier and Jhosep Y. Lopez (both Members of this Court) of the Third Division, Court of Appeals.

<sup>3</sup> *CA rollo*, pp.45-47; penned by Presiding Judge Dennis Patrick Z. Perez.

<sup>4</sup> Comprehensive Dangerous Act of 2002.

Contrary to law.<sup>5</sup>

Criminal Case No. 15-293

That, on or about the 11<sup>th</sup> day of June, 2015, in the Municipality of Angono, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess any dangerous drugs, did, then and there willfully, unlawfully, and knowingly have in his possession, direct custody and control 0.05 gram of white crystalline substance, contained in one (1) heat-sealed transparent plastic sachet which substance, after examination conducted by the Eastern Police District Crime Laboratory Office Mandaluyong, was found positive to the test for Methamphetamine Hydrochloride, also known as shabu, a dangerous drug, in violation of the above-cited law.

Contrary to law.<sup>6</sup>

Upon arraignment, accused-appellant pleaded not guilty to the charges. Joint trial on the merits ensued.<sup>7</sup>

### Version of the Prosecution

In the afternoon of 11 June 2015, the Angono Police office received a call from one of their confidential informants (informant), that an *alias* Bambi, wearing a gray sando and blue shorts, was engaged in illegal drug trade activities at Captain Rufino Street, Brgy. San Isidro, Angono, Rizal. On the basis of the said information, a team was formed to conduct a buy bust operation against *alias* Bambi. Police Officer (PO) 2 Daryl Piamonte (PO2 Piamonte)<sup>8</sup> was designated as poseur buyer, while PO1 Tarrayo and PO3 Rosana will serve as back-up/arresting officers.<sup>9</sup>

PO2 Piamonte and his team proceeded to the area and positioned themselves in a nearby store. Upon seeing a man walking who matched the description of *alias* Bambi, who was later identified as accused-appellant, PO2 Piamonte approached him and told him that he would buy ₱200.00 worth of *shabu*. Accused-appellant took the buy bust money from PO2 Piamonte and in exchange, handed to the former a sachet with suspected *shabu*. After the sale was consummated, PO2 Piamonte introduced himself as a police officer and handcuffed accused-appellant while apprising him of his constitutional rights. PO2 Piamonte likewise frisked accused-appellant

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<sup>5</sup> *Rollo*, p. 4.

<sup>6</sup> *Id.* at 4-5.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> Also referred to as PO1 Daril Piamonte in the records.

<sup>9</sup> *Rollo*, p. 5.

and recovered another sachet with suspected *shabu* from his possession.<sup>10</sup>

The team, together with accused-appellant, proceeded to the police station after they noticed an impending commotion in the area, caused by the latter's arrest. Thereat, PO2 Piamonte marked, conducted inventory, and took photographs of the seized items in the presence of accused-appellant. PO2 Piamonte then delivered the seized items to the crime laboratory and upon examination, were found positive for Methamphetamine Hydrochloride.<sup>11</sup>

### Version of the Defense

Accused-appellant denied the charges and claimed that on 11 June 2015, he was buying food at the market. As he was about to go home, a police officer suddenly blocked him and invited him to the police station. He identified PO2 Piamonte as the one who frisked him and confiscated his cellphone before he was sent to jail. He was forced to point to a small plastic sachet with suspected *shabu* after a police officer known as Bodjie slapped him. He was brought back inside the jail afterwards.<sup>12</sup>

### Ruling of the RTC

On 21 September 2017, the RTC rendered its Decision, convicting accused-appellant of the offenses charged, thus:

In light of this, we find accused Jessie San Pedro GUILTY beyond reasonable doubt of violating Section 5, Article II, R.A. No. 9165 and sentence him to suffer a penalty of life imprisonment and to pay a fine of P500,000.00. We also find accused Jessie San Pedro GUILTY beyond reasonable doubt of violating Section 11, Article II, R.A. No. 9165 and illegally possessing 0.05 grams of Methamphetamine Hydrochloride or *shabu* and accordingly sentence him to suffer an indeterminate penalty of 12 years and 1 day as minimum to 13 years as maximum and to pay a fine P300,000.00.

X X X .

SO ORDERED.<sup>13</sup>

The RTC gave full faith and credence to the testimony of PO2 Piamonte and upheld the presumption of regularity in the performance of official duties by the police officers. The RTC held that from the testimony of PO2 Piamonte, the prosecution was able to establish that there was a

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<sup>10</sup> Id. at 5-6.

<sup>11</sup> Id. at 6.

<sup>12</sup> Id.

<sup>13</sup> CA rollo, pp. 46-47.

consummated sale of *shabu* by accused-appellant to the former. Thereafter, as a result of the lawful arrest, a sachet with *shabu* was found in accused-appellant's possession, which he has no authority to possess. The RTC likewise held that the chain of custody of the seized drugs has been properly established, considering that they were preserved by PO2 Piamonte who brought the same to the crime laboratory on the same day of arrest.<sup>14</sup>

Aggrieved, accused-appellant appealed to the CA.

### Ruling of the CA

In its Decision dated 22 November 2018, the CA affirmed accused-appellant's conviction. The dispositive portion of the said decision reads:

**WHEREFORE**, premises considered, the instant appeal is **DISMISSED**. The assailed Decision dated September 21, 2017 of the Regional Trial Court, Branch 67, Binangonan, Rizal, is hereby **AFFIRMED**.

**SO ORDERED.**<sup>15</sup>

In affirming accused-appellant's conviction, the CA held that the prosecution was able to establish the *corpus-delicti* beyond reasonable doubt. The prosecution's evidence duly proved the chain of custody of the *shabu* subject of sale and the *shabu* seized from accused-appellant, beginning from the buy bust operation, to the markings made by PO2 Piamonte, to the receipt by the forensic chemist, up to the moment it was offered in evidence.<sup>16</sup> It also held that notwithstanding the prosecution's noncompliance with Section 21, Article II of RA No. 9165 and its IRR, as to the absence of the mandatory witnesses, the prosecution was able to justify noncompliance thereof. The CA stressed that what is important is that the integrity and evidentiary value of the seized items were properly preserved.<sup>17</sup> The CA also upheld the presumption of regularity in the performance of the police officers, in the absence of any intent on their part to falsely impute such offenses against accused-appellant.<sup>18</sup>

Hence, this appeal.

### Issue

The sole issue in this case is whether the CA correctly affirmed

<sup>14</sup> Id. at 46.

<sup>15</sup> Id. at 14.

<sup>16</sup> Id. at 9.

<sup>17</sup> Id. at 10,13.

<sup>18</sup> Id. at 13-14.

accused-appellant's conviction for illegal sale and possession of dangerous drugs under Sections 5, and 11, Article II, RA No. 9165.

### **Ruling of the Court**

The appeal is granted.

In order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (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.<sup>19</sup> In the same vein, to convict an accused for illegal possession of dangerous drugs, the prosecution must prove: (a) that the accused was in possession of an item or an object identified as a dangerous drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>20</sup> Material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.<sup>21</sup>

The sale or possession of dangerous drugs can never be proven without the seizure and identification of the prohibited drug. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction.<sup>22</sup> It is therefore essential that the identity and integrity of the seized drug be established with moral certainty.<sup>23</sup>

As an integral part of the chain of custody rule, RA No. 9165 requires that the marking, physical inventory, and photography of the seized items be conducted immediately after the seizure and confiscation of the same. It was made compulsory that the physical inventory and photograph-taking be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well these required witnesses: (a) if **prior** to the amendment of RA 9165 by RA 10640<sup>24</sup> on 07 August 2014,<sup>25</sup> “a representative from the media AND the Department of Justice (DOJ), and any elected public official”; or (b) if **after** said amendment, “[an] elected public official and a representative of the National Prosecution Service OR

<sup>19</sup> *People vs. Flor*, G.R. No. 216017, 19 January 2018 [Per J. Del Castillo].

<sup>20</sup> *People vs. Ching*, 819 Phil. 565 (2017) [Per J. Perlas-Bernabe].

<sup>21</sup> *People vs. Villojan, Jr.*, G.R. No. 239635, 22 July 2019 [Per J. Lazaro-Javier].

<sup>22</sup> *People vs. Nacua*, 702 Phil. 739 (2013) [Per J. Leonardo-De Castro].

<sup>23</sup> *People vs. Yagao*, G.R. No. 216725, 18 February 2019 [Per J. Bersamin].

<sup>24</sup> *An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002*, approved on 15 July 2014.

<sup>25</sup> See *People vs. Gutierrez*, G.R. No. 236304, 05 November 2018 [Per J. Perlas-Bernabe].

the media.”<sup>26</sup>

Moreover, to ensure the integrity of the seized drugs, the prosecution must likewise establish the chain of custody of the dangerous drugs, *i.e.*, first, the seizure and marking 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 by the forensic chemist to the court.<sup>27</sup>

The police officers failed to comply with the requirements of Section 21 of RA No. 9165 as amended by RA No. 10640, the applicable law at the time of the commission of the offense on 11 June 2015, as well as the chain of custody requirement.

*There were no representatives from the media or the National Prosecution Service and any elected public official*

According to PO2 Piamonte, the impending commotion brought about by accused-appellant's arrest, prompted them to conduct the marking and inventory of the seized drugs at the police station.<sup>28</sup> The prosecution however failed to explain the absence of any representative from the media or the National Prosecution Service. As for the elected public official, PO2 Piamonte explained that there were no *barangay* officers at *Barangay Isidro* at the time of accused-appellant's arrest.<sup>29</sup> Notably, records are bereft of any showing that the police officers exerted earnest efforts to secure the attendance of the said mandatory witnesses.

It bears stressing that the presence of the witnesses required by law and the immediate marking and conduct of physical inventory after seizure and confiscation in full view of the accused and the required witnesses cannot be brushed aside as a simple procedural technicality. While noncompliance is allowed, the same ought to be justified. Case law states that the prosecution must show that earnest efforts were exerted by the police officers to comply with the mandated procedure as to convince the Court that the attempt to comply was reasonable under the given circumstances.<sup>30</sup>

<sup>26</sup> *People vs. Bangalan*, G.R. No. 232249, 03 September 2018 [Per J. Perlas-Bernabe].

<sup>27</sup> *People vs. Dahil*, 750 Phil. 212 (2015) [Per J. Mendoza].

<sup>28</sup> *Rollo*, pp. 11-12

<sup>29</sup> *Id.* at 12-13.

<sup>30</sup> See *People vs. Dela Victoria*, G.R. No. 233325, 16 April 2018 [Per J. Perlas-Bernabe].

PO2 Piamonte however failed to acknowledge much less proffer any explanation or justification as to the non-compliance with the law.

*There was no turn over of the seized drugs to the investigating officer*

After seizure, marking, inventory, booking and proper documentation, PO2 Piamonte preserved the drug samples and brought the same on the same day to the crime laboratory for forensic examination.<sup>31</sup> Clearly, it was only PO2 Piamonte who held the specimen from its seizure until its delivery to the crime laboratory. This constitutes a gap in the 2nd link of the chain. In *People vs. Bangcola*<sup>32</sup> it was held that the apprehending officer's act of keeping the seized evidence until its transfer to the forensic chemist and his failure to transfer the seized evidence to the investigating officer are considered breaks in the chain of custody.

*There was no testimony as to how the seized item was preserved from the time it was received by the receiving personnel at the crime laboratory until it was presented in court*

Based on the records, it was PO1 Rabago who recorded and received the seized items from PO2 Piamonte.<sup>33</sup> However, there was no testimony from PO1 Rabago as to how he handled the seized items upon his receipt of the same until it was turned-over to Police Senior Inspector Anghelisa Vicente (PSI Vicente), the forensic chemist. This contravenes the mandate that every link in the chain must testify, describing the condition of the seized item when it was delivered and the precautions taken to ensure its integrity.<sup>34</sup>

PSI Vicente also failed to state as to how she handled the seized items and the precautions taken to safeguard the same before they were presented in court. In the absence of testimony regarding the management, storage and preservation of the illegal drugs seized after its qualitative examination, the 4<sup>th</sup> link in the chain of custody could not be reasonably established.<sup>35</sup>

While the saving mechanism as contained in the Implementing Rules

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<sup>31</sup> CA rollo, p. 46.

<sup>32</sup> GR No. 237802, 18 March 2019 [Per J. Gesmundo].

<sup>33</sup> Rollo, p. 9

<sup>34</sup> *People vs. Havana*, 776 Phil. 462 (2016) [Per J. Del Castillo].

<sup>35</sup> See *People vs. Ubungen*, G.R. No. 225497, 23 July 2018 [Per J. Martires].

and Regulations of RA No. 9165 was incorporated in RA No. 10640 for any deviation of the provision prescribed therein,<sup>36</sup> the same cannot be applied because the police officers in this case failed to recognize their lapses, as well as justify or explain the same. Moreover, the seized items involved a miniscule amount of *shabu*, *i.e.*, .05 gram and .05 gram, respectively, which underscores the need for more exacting compliance under the law.<sup>37</sup> The police officers' unjustified breach of procedure effectively invalidates their seizure of and custody over the seized drug, compromising the identity and integrity of the same. Consequently, for failure of the prosecution to prove the *corpus delicti* beyond reasonable doubt, the Court is therefore constrained to acquit accused-appellant.

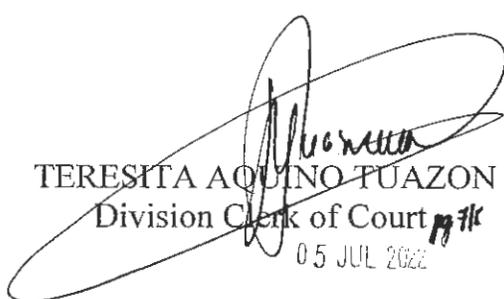
**WHEREFORE**, the appeal is **GRANTED**. The Decision promulgated on 22 November 2018 by the Court of Appeals in CA-G.R. CR-HC No. 10021, finding accused-appellant **JESSIE SAN PEDRO y PICADISO** guilty beyond reasonable doubt of violating Sections 5 and 11, Article II, Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. He is hereby **ACQUITTED** on the ground of reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is being confined for some other lawful cause.

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

Let entry of judgement be issued immediately.

**SO ORDERED.”**

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court *mgjk*

05 JUL 2022

<sup>36</sup> See *People vs. Oliva*, G.R. No. 234156, 07 January 2019 [Per J. Peralta].

<sup>37</sup> See *People vs. Que*, G.R. No. 212994, 31 January 2018 [Per J. Leonen], citing *People v. Malinlin*, 576 Phil. 576 (2008).

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THE DIRECTOR (x)  
Bureau of Corrections  
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THE SUPERINTENDENT (x)  
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HON. PRESIDING JUDGE (reg)  
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Binangonan, Rizal  
(Crim. Case Nos. 15-292 & 15-293)

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