



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **July 27, 2022** which reads as follows:*

“**G.R. No. 251443** (*People of the Philippines v. Rico Hernandez y Ilagan*). — This is an appeal¹ from the August 22, 2019 Decision² of the Court of Appeals (CA) in CA-G.R. CR HC No. 10862 affirming the March 20, 2018 Decision³ of the Regional Trial Court (RTC) of Batangas City, Branch 4, in Criminal Case Nos. 19165 and 19164, finding Rico Hernandez y Ilagan (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165⁴ of the “Dangerous Drugs Act of 2002.”

On October 3, 2014, accused-appellant was charged with violation of Sections 5 and 11, Article II of RA 9165 docketed as Criminal Case Nos. 19165 and 19164, respectively. The accusatory portions of the Informations⁵ state:

Criminal Case No. 19165

That on or about the 2nd day of October, 2014, at about 2:30 o'clock in the afternoon, at Barangay Taysan, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and

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¹ CA *rollo*, pp. 136-137.

² *Rollo* at 3-22. Penned by Associate Justice Eduardo B. Peralta and concurred in by Associate Justices Ramon M. Bato, Jr. and Walter S. Ong.

³ CA *rollo*, pp. 65-69. Penned by Presiding Judge Albert A. Kalalo.

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: June 7, 2002.

⁵ Records (Criminal Case No. 19164), p. 1; records (Criminal Case No. 19165), p. 1.

unlawfully sell, deliver and give away one (1) heat-sealed transparent plastic sachet referred to as Specimen A-1 (“JBD-1”) in Chemistry Report No. BD-628-2014 containing methamphetamine hydrochloride commonly known as shabu, weighing 0.40 gram, a dangerous drug.

Contrary to law.⁶

Criminal Case No. 19164

That on or about the 2nd day of October, 2014 at about 2:30 o’clock in the afternoon, at Barangay Taysan, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully and unlawfully have in his possession, custody and control one (1) heat-sealed transparent plastic sachet referred to as Specimen A-2 (“JBD-2”) in Chemistry Report No. BD-628-2014 containing methamphetamine hydrochloride commonly known as “shabu[,]” weighing 0.03 gram, a dangerous drug.

Contrary to law.⁷

Accused-appellant pleaded not guilty to the charges during the arraignment.⁸

Version of the Prosecution

The prosecution presented Police Officer 1 Jonell C. De Guia (PO1 De Guia) as witness, and stipulated upon the testimonies of Police Senior Inspector Herminia Llacuna (PSI Llacuna), Senior Police Officer 3 Jesus T. Agustin, and Norilyn M. Manalo (Manalo). Their testimonies tended to prove the following:

On October 2, 2014, PO1 De Guia and PO3 Barry B. Vargas (PO3 Vargas) received a tip from a civilian informant (CI) about the illegal drug activities in *Barangay* Taysan, San Jose, Batangas involving accused-appellant.⁹

Once the information was relayed, Police Chief Inspector Oliver Eborra (PCI Eborra) assembled a buy-bust team led by Deputy Chief of Police, Police Inspector Glenda Cleofe. PO1 De Guia was

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⁶ Records (Criminal Case No. 19165), p. 1.

⁷ Records (Criminal Case No. 19164), p. 1.

⁸ Records (Criminal Case No. 19165), p. 31.

⁹ Exhibit “A,” *Magkasanib na Sinumpaang Salaysay*, Folder of Exhibits for the Prosecution, pp. 7-9.

the designated poseur-buyer, while PO3 Vargas, PO3 Darwin L. Rumal, PO3 Raffy O. Mitra, and PO2 Edwin G. Vivas, were designated as back-ups. The operation was coordinated with the Philippine Drug Enforcement Agency (PDEA) Region-4A.¹⁰

The CI contacted accused-appellant and arranged a meeting with him in *Barangay* Taysan, San Jose, Batangas at around 2:30 p.m. of the same day. Thereafter, the buy-bust team proceeded to the target area. En route thereto, the CI made another call to accused-appellant to inform him that the buyer would be wearing a blue shirt and light blue shorts. PO1 De Guia, together with PO3 Vargas, proceeded to the meeting place while the back-up team stayed at the car parked within the vicinity. At 2:30 p.m., accused-appellant arrived on his red tricycle with plate number 1077 DY. Upon alighting, accused-appellant approached PO1 De Guia and PO3 Vargas and informed them that he had the “items” with him. Accused-appellant handed one heat-sealed transparent plastic sachet containing a white crystalline substance to PO1 De Guia, who, in turn, handed to accused-appellant the ₱500.00 marked money.¹¹

When accused-appellant was about to board his tricycle, PO3 Vargas grabbed him and introduced himself and PO1 De Guia as police officers. At the same time, PO1 De Guia scratched his nape, which was the pre-arranged signal that the sale had already been consummated. The back-up operatives then proceeded to the scene while PO1 De Guia asked accused-appellant to produce his driver’s license and the registration documents of his tricycle. Accused-appellant only presented his driver’s license, thus, PO1 De Guia issued a traffic citation ticket and impounded the tricycle. PO1 De Guia then frisked accused-appellant and recovered the ₱500.00 marked money, an improvised lighter, and one heat-sealed transparent plastic sachet containing a white crystalline substance. PO1 De Guia marked the sachet he purchased from accused-appellant with the initials JBD-1, the one recovered from accused-appellant during the search with JBD-2, the improvised lighter with JBD-3, and the marked money with JBD-4.¹²

The team then proceeded to the *barangay* hall of *Barangay* Taysan, San Jose, Batangas, where PO1 De Guia prepared the Inventory of Property/Items Seized,¹³ and had the same signed by

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¹⁰ Exhibit “B,” Coordination Form, id. at 10.

¹¹ *Rollo*, pp. 5-6.

¹² Exhibit “A,” *Magkasanib na Sinumpaang Salaysay*, Folder of Exhibits for the Prosecution, pp. 7-9.

¹³ Exhibit “C,” Folder Exhibits for the Prosecution, p. 11.

media representative Lito Rendora (Rendora), and Department of Justice (DOJ) representative, Arnel Espino (Espino).¹⁴

From the *barangay* hall, the team proceeded to San Jose Municipal Police Station. Once at the station, PO2 Michael Darwin Coliat (PO2 Coliat) prepared the Philippine National Police Arrest and Booking Sheet of accused-appellant,¹⁵ while PCI Eborra prepared the request for laboratory examination of the confiscated sachets suspected to be shabu.¹⁶

PO1 De Guia brought the confiscated items and the request for laboratory examination to the Batangas Crime Laboratory Office, and handed them over to Senior Police Officer 3 Jesus T. Agustin (SPO3 Agustin), who turned over the specimens to PSI Llacuna for examination.¹⁷

PSI Llacuna conducted the test and reduced the findings in writing in Chemistry Report No. BD-628-2014,¹⁸ showing that the substance contained in the seized plastic sachets were positive for methamphetamine hydrochloride, a dangerous drug.¹⁹

After the test, PSI Llacuna turned over the items to evidence custodian SPO3 Agustin.²⁰ On February 2, 2015, SPO3 (now SPO4) Agustin withdrew the pieces of evidence and turned them over to Manalo, a stenographer/staff of Prosecutor Ma. Isabel Tibayan-Mella (Prosecutor Tibayan-Mella), the prosecutor in-charge of the case. Thereafter, Manalo gave the pieces of evidence to Prosecutor Tibayan-Mella,²¹ who presented them to court during trial.²²

Version of the Defense

The defense presented the testimonies of accused-appellant and his common-law wife, Mylene Punzalan (Punzalan). The defense's version of the events are as follows:

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¹⁴ Exhibit "A," *Magkasanib na Sinumpaang Salaysay*, Folder of Exhibits for the Prosecution, pp. 7-9.

¹⁵ Exhibit "F," Folder of Exhibits for the Prosecution, p. 14.

¹⁶ Exhibit "D," Folder of Exhibits for the Prosecution, p. 12.

¹⁷ Records (Criminal Case No. 19165), pp. 91-94.

¹⁸ Exhibit "G," Folder of Exhibits for the Prosecution, p. 15.

¹⁹ Id.

²⁰ Records (Criminal Case No. 19165), pp. 88-90.

²¹ Records (Criminal Case No. 19165), pp. 86-87.

²² TSN, PO1 Jonell C. De Guia, August 13, 2015, pp.9-10.

On October 2, 2014, accused-appellant was in front of the house of Punzalan's employer waiting for the food that he will deliver to Father Imon Luna Memorial Elementary School for the grandchildren of Punzalan's employer.²³ Suddenly, four police officers in civilian clothes arrived, poked their guns at accused-appellant, and searched his tricycle. Accused-appellant asked what they were searching for but did not get a response. He was then frisked by the police, handcuffed, and taken to the municipal hall where he was detained. Two hours after, accused-appellant was brought to the *barangay* hall of *Barangay* Taysan and the police officers took pictures of him, as well as the two small plastic sachets and money brought out by the officers.²⁴

Ruling of the Regional Trial Court

On March 20, 2018, the RTC found accused-appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of RA 9165. The RTC ruled that the prosecution sufficiently established that accused-appellant was in possession of methamphetamine hydrochloride at the time of his arrest, and that he also sold methamphetamine hydrochloride to PO1 De Guia. The dispositive portion of the RTC Decision states:

WHEREFORE, premises considered, this court hereby renders judgment as follows:

1. In Criminal Case No. 19165 for violation of Sec. 5, Article II of RA 9165, the court finds accused RICO HERNANDEZ *y* Ilagan GUILTY, and in the absence of any aggravating circumstance, hereby sentences him to LIFE IMPRISONMENT, and to pay a fine of five hundred thousand pesos (P500,000.00), without subsidiary imprisonment in case of insolvency.

2. In Criminal Case No. 19164 for violation of Sec. 11, Article II of RA 9165, the court finds accused RICO HERNANDEZ *y* Ilagan GUILTY, and hereby sentences him with imprisonment of twelve years (12) and one (1) day to seventeen (17) years, and to pay a fine of three hundred thousand pesos (P300,000.00), without subsidiary imprisonment in case of insolvency.

The preventive suspension of the accused shall be credited in the service of his sentence.

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²³ TSN, Mylene Punzalan, November 16, 2017, pp. 4-5.

²⁴ TSN, Rico Hernandez, January 31, 2018, pp. 3-6.

Let a Commitment Order issue for the accused's transfer from the Batangas Provincial Jail to the National Penitentiary at Muntinlupa, Metro Manila for the service of his sentence.

The plastic sachets (Exhibits "H-2" and H-3") containing an aggregate of 0.43 gram of shabu, being illegal *per se*, are hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction. Let a copy of the Certificate of Inventory (Exhibit "C") be furnished to the same Agency.

SO ORDERED.²⁵

Aggrieved by the RTC's Decision, accused-appellant appealed to the CA.²⁶

Ruling of the Court of Appeals

On August 22, 2019, the CA sustained accused-appellant's conviction. The prosecution sufficiently proved that the integrity and evidentiary value of the seized items were properly preserved. The alleged absence of an elective official during the inventory was sufficiently supplemented by the *barangay* blotter regarding the buy-bust operation which bore the signatures of *Barangay Kagawads* Joseph Mitra, Joselito Vergara, and Rolando Vilela of *Barangay Taysan*.²⁷ Accused-appellant could no longer question for the first time on appeal the qualifications Espino and Rendora as witnesses as it is violative of the State's right to due process.²⁸

Dissatisfied with the CA's Decision, accused-appellant filed this appeal.

Issue

The issue before Us is whether accused-appellant's guilt for Illegal Sale and Illegal Possession of Dangerous Drugs has been proven beyond reasonable doubt.

Our Ruling

The appeal is meritorious.

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²⁵ CA *rollo*, pp. 68-69.

²⁶ Records (Criminal Case No. 19165), p. 161.

²⁷ Exhibit "J," Folder of Exhibits for the Prosecution, p. 21

²⁸ *Rollo*, pp. 9-22.

To successfully prosecute Illegal Sale of Dangerous Drugs, the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold, and the payment therefor. Simply stated, the prosecution must prove that the transaction or sale actually took place, coupled with the presentation of the seized dangerous drugs as evidence in court.²⁹

As to Illegal Possession of Dangerous Drugs, the following elements must be established to secure a conviction, to wit: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.³⁰

In addition, the prosecution must likewise establish with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution must show an unbroken chain of custody over the dangerous drug and account for each link, from the moment the drug is seized up to its presentation in court as evidence of the crime.³¹

The general rule is that the trial court's findings of fact, especially when affirmed by the appellate court, are entitled to great weight and will not be disturbed on appeal. The rule does not apply where facts of weight and substance have been overlooked, misapprehended, or misapplied in the case under review. Besides, an appeal in a criminal case opens the whole case for review on all questions including those not raised by the parties.³²

A buy-bust operation is a form of entrapment in which the violator is caught in *flagrante delicto*, and the police officers conducting the operation are not only authorized, but duty-bound to apprehend the violator, and to search him for anything that may have been part of, or used in the commission of the crime.³³ In recent years, a buy-bust operation has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to

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²⁹ *People v. Dayag*, G.R. No. 251648 (Notice), February 17, 2021.

³⁰ *People v. De Chavez*, G.R. No. 239779 (Notice), May 14, 2021.

³¹ *Amago v. People*, G.R. No. 205531 (Notice), June 10, 2020.

³² *Remo v. People*, G.R. No. 239249 (Notice), September 28, 2020.

³³ *People v. Mirafior*, G.R. No. 233532 (Notice), March 15, 2021.

commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.³⁴

To determine the validity of a buy-bust operation, the Court has consistently applied the “objective test.” The “objective test” mandates that in buy-bust operations, the prosecution must present a complete picture detailing the transaction — starting from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, and up until the consummation of the sale by the delivery of the illegal drug subject of the sale.³⁵ The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the “buy-bust” money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.³⁶ It is not enough to show that there was an exchange of money and illegal drugs. The details that led to such exchange must be clearly and adequately accounted for. Failing in which will certainly cast a doubt on the veracity of the whole buy-bust operation.³⁷

In the extant case, the *Magkasanib na Sinumpaang Salaysay*³⁸ of PO1 De Guia and PO3 Vargas relayed the transaction as follows:

Na, tinawagan ng aming civilian asset sa kanyang cellphone ang aming subject na si RICO HERNANDEZ at napagkasunduan nila na doon magtatagpo sa Brgy. Taysan, San Jose[,] Batangas sa oras na alas 02:30 PM parehong petsa;

x x x x

Na, habang kami ay papunta sa lugar ng Brgy. Taysan, San Jose[,] Batangas ay tinawagan ng aming civilian informant itong si Rico Hernandez at sinabi na ang bibili sa kanya ng items ang isang lalake na nakasuot na asul na T-SHIRT at nakashort na kulay light blue;

x x x x

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³⁴ *Tan v. People*, G.R. No. 232611 (Resolution), April 26, 2021.

³⁵ *People v. Castor*, G.R. No. 250186 (Notice), February 1, 2021.

³⁶ *People v. Balderama, Jr.*, G.R. No. 229044 (Notice), November 9, 2020.

³⁷ *Tan v. People*, supra.

³⁸ Exhibit “A,” Folder of Exhibits for the Prosecution, pp. 7-9.

Na, lumapit sa akin (PO1 De Guia) itong aming subject at sinabi na dala na niya ang items na bibilhin namin na nagkakahalaga ng limang daan[g] p[i]so (P500.00). Dumukot siya sa kanyang [kanang] bulsa at inilabas at iniabot sa akin (PO1 De Guia) ang isang heat sealed transparent plastic sachet na may laman na white crystalline substance na pinaghinalaan ko (PO1 De Guia) na shabu at sabay kuha ko sa kanan[g] bulsa ko ang P500.00 at ibinigay ko sa kanya at agad inilagay sa kanyang bulsa ang pera x x x.³⁹

During his cross examination, PO1 De Guia testified in this wise:

q And the first call you were able to hear the conversation transpiring between your asset and the accused? (sic)
a I only hear what the asset was saying, ma'am. (sic)

q If the first conversation or call that you heard that they have this agreement that they will be meeting at around 2:30 p.m. in Brgy. Taysan, San Jose, Batangas? (sic)
a Yes, ma'am.

q The second call was already at the time when you have left the police station?
a Yes, ma'am.

q And you were actually on your way to Brgy. Taysan, San Jose, Batangas?
a Yes, ma'am.

q And in that second call you heard again what your asset was telling to the person at the other end or on the other line?
a Yes, ma'am.

q And the asset informed the accused that the person who is going to buy the items from him is one male person wearing [a] blue t-shirt and light blue short?
a Yes, ma'am.

x x x x

q In 3 minutes the accused arrived, when he arrived were you able to have [a] conversation with him?
a No, ma'am.

q So, the accused did not even ask who's with you?
a No, ma'am.

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³⁹ Id. See also records (Criminal Case No. 19164), pp. 14-15.

q What he merely did was to hand with you a plastic sachet of shabu? (sic)

a As I can remember, ma'am the accused said that he bring (sic) with him the items, ma'am.

q So, you have a conversation?

a The accused just told me that he brought the items worth 500 pesos, ma'am.

q He did not even ask you whether he was the person referred to by your asset?

a Yes, ma'am.

x x x x

q After handing to you readily that shabu that was the time you handed to him the 500 peso bill? (sic)

a Yes, ma'am.⁴⁰

As can be gleaned from the *Magkasanib na Sinumpaang Salaysay* and the testimony of PO1 De Guia, it is clear that it was the CI who made the initial contact with accused-appellant and negotiated on the quantity of shabu to be purchased and its price. The venue and time of the meeting when the sale would take place were also set by the CI. This is more evident when PO1 De Guia testified that when he met with accused-appellant, they did not engage in a conversation but immediately proceeded with the exchange.

The factual milieu of this case is similar to the case of *People v. Ong*,⁴¹ wherein the CI was the one who had knowledge of how the alleged illegal sale of shabu was initiated, how the agreed price was arrived at, and how and where the exchange will take place. The CI was not presented as a witness; it was the poseur-buyer who testified as to how the buy-bust operation was conducted. In ruling that the prosecution failed to pass the "objective test," the Court ruled that the poseur-buyer was merely relegated to a delivery person, and that his testimony as to the material points of the buy-bust operation can only be regarded as hearsay and cannot be given weight. The ruling states:

[W]e find that the prosecution evidence failed to prove that appellants willfully and unlawfully sold or offered to sell shabu.

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⁴⁰ TSN, PO1 Jonell De Guia, August 13, 2015, pp. 21-22 and 24-25.

⁴¹ 476 Phil. 553, 573 (2004).

Appellants' conviction is based on the lone testimony of SPO1 Gonzales. He was the designated poseur-buyer in the team formed for the buy-bust operation. But a careful reading of his testimony will reveal that he was not privy to the sale transaction that transpired between the CI and appellant William Ong, the alleged pusher. x x x.

x x x x

It is abundantly clear that it was the CI who made the initial contact, albeit only through the telephone, with the pusher. The CI was likewise the one who closed the deal with appellant Ong as to the quantity of shabu to be purchased and its price. He also set the venue and time of the meeting when the sale would take place. x x x.

x x x x

It is therefore understandable that in his account of his meeting with appellant William Ong, SPO1 Gonzales made no reference to any further discussion of the price and the quantity of the shabu. When they met, they just proceeded with the exchange of money and shabu, x x x.

x x x x

Since only the CI had personal knowledge of the offer to purchase shabu, the acceptance of the offer and the consideration for the offer, [W]e hold that SPO1 Gonzales is, in effect, not the "poseur-buyer" but merely the delivery [person]. His testimony therefore on material points of the sale of shabu is hearsay and standing alone cannot be the basis of the conviction of the appellants.⁴²

As in this case, the lone testimony of PO1 De Guia did not present a complete picture of the whole buy-bust operation; it failed to satisfy the requirements needed to be established to pass the "objective test." PO1 De Guia only heard the side of the CI during the two phone conversations, both initiated by the CI. In the said conversations, PO1 De Guia can only attest that the CI and accused-appellant agreed to meet at *Barangay Taysan, San Jose, Batangas* at 2:30 p.m., and that the buyer would be wearing a blue shirt and light blue shorts. PO1 De Guia could not testify as to the CI's offer to purchase, accused-appellant's acceptance of such offer or willingness to sell, and the negotiation as to the amount of the merchandise and the consideration therefor.

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⁴² Id. at 565-571.

There being no valid buy-bust operation, the arrest of accused-appellant cannot be considered as lawful. Consequently, any search incident to the arrest becomes invalid thus rendering the evidence acquired as constitutionally inadmissible.⁴³

While the appellate court correctly ruled that accused-appellant may no longer question the legality of his arrest as he is estopped from doing so when he failed to file a motion to quash before he entered his plea, the same does not preclude him from questioning the admissibility of the evidence seized during the arrest. The inadmissibility of the evidence is not affected when an accused fails to question the court's jurisdiction over his or her person in a timely manner. Jurisdiction over the person of an accused and the constitutional inadmissibility of evidence are separate and mutually exclusive consequences of an illegal arrest.⁴⁴

Here, there was a failure to carry out a legitimate buy-bust operation, thereby rendering the warrantless arrest constitutionally infirm. Consequently, the alleged seized items from accused-appellant, in violation of his right against unreasonable searches and seizures, are considered as fruits of a poisonous tree, and are inadmissible in evidence. With the inadmissibility of the evidence, conviction of accused-appellant cannot be had for the alleged illegal drugs are the very *corpus delicti* of the crime charged.

Even assuming that the arrest was legal and valid and the seized items were admissible in evidence, the failure of the police operatives to comply with the requirements of Section 21, Article II of RA 9165 makes the identity and integrity of the items questionable.

In cases involving illegal trading and possession of dangerous drugs, the seized dangerous drug from the accused constitutes the *corpus delicti* of the offense. Proof beyond reasonable doubt must be adduced in establishing the *corpus delicti* — the body of the crime whose core is the confiscated illicit drug. It is important that the State establish with moral certainty the integrity and identity of the illicit drugs as the same as those examined in the laboratory, and subsequently presented in court as evidence. This rigorous requirement, known under RA 9165 as the chain of custody, performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.⁴⁵

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⁴³ *Remo v. People*, supra note 32.

⁴⁴ *Id.*

⁴⁵ *People v. Abadilla*, 841 Phil. 612, 621 (2018).

The prosecution must establish the following links in the chain of custody of the confiscated item: (a) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (b) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (c) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (d) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁴⁶ Stated differently, the prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it is presented in court as proof of *corpus delicti*.⁴⁷

It is, therefore, necessary to observe the chain of custody requirement under Section 21, Article II of RA 9165, as amended by RA 10640,⁴⁸ and its Implementing Rules and Regulations (IRR).

The first link in the chain of custody speaks of seizure and marking, including the physical inventory and photography of the seized items.

Section 21,⁴⁹ Article II of RA 9165, as amended by RA 10640, requires:

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⁴⁶ *Panti v. People*, G.R. No. 251332 (Notice), July 6, 2020.

⁴⁷ *People v. Ali*, G.R. No. 224207 (Notice), January 29, 2020.

⁴⁸ Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" Approved: July 15, 2014.

⁴⁹ 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:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That noncompliance of 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 and custody over said items.

(1) the seized items be inventoried and photographed immediately after confiscation at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable;

(2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, and (c) a representative of the National Prosecution Service or the media; and

(3) the accused or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof.⁵⁰

The procedure enshrined in Section 21, Article II of RA 9165, as amended, 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 drug suspects.⁵¹

After a careful review of the records of the case, this Court finds that the buy-bust team failed to comply with the requirements set forth in Section 21, Article II of RA 9165, as amended. This produces a reasonable doubt as to the identity and integrity of the drugs and, consequently, reasonable doubt as to the guilt of accused-appellant.

First, the physical inventory of the confiscated items was not done in the presence of accused-appellant or his representative or counsel. The *Magkasanib na Sinumpaang Salaysay* of PO1 De Guia and PO3 Vargas states:⁵²

Na, matapos maipahayag kay RICO HERNANDEZ, ang lahat ng kanyang karapatan sa ilalim ng RA 7438 o ang Miranda Doctrine ay dinala na namin siya sa barangay hall ng Brgy. Taysan, San Jose, Batangas kung saan isinagawa namin ang imbentaryo ng mga nakuhang shabu at marked money sa harap nina Brgy. Councilor Joseph Mitra, Brgy. Councilor Joselito Vergara, Brgy. [Councilor] Rolando Velila, media representative Lito Rendora at DOJ representative Arnel Espino[.]⁵³

It is mandated by Section 21 of RA 9165 that the physical inventory and photography must be done in the presence of the accused or their representative or counsel, and that a copy of the inventory be signed by the accused or their representative, and they be given a copy thereof.

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⁵⁰ *People v. Ordinario*, G.R. No. 251436 (Notice), March 1, 2021.

⁵¹ *People v. Del Rosario*, G.R. No. 235658, June 22, 2020.

⁵² Exhibit "A," Folder of Exhibits for the Prosecution, p. 8.

⁵³ Records (Criminal Case No. 19164), p. 15.

In instances where the accused refused to sign the certificate of inventory, the IRR guidelines provided that “it shall be stated ‘refused to sign’ above their names in the certificate of inventory of the apprehending or seizing officer.”⁵⁴

In this case, aside from the failure to establish that the inventory was done in the presence of accused-appellant or his representative, the certificate of inventory did not bear the signature of accused-appellant nor was there an indication that he refused to sign the same.

As held in the case of *People v. Vilas*,⁵⁵ “the signing of the inventory by the accused is not a trivial requirement. The purpose of requiring (1) the physical inventory and photographing of the seized items be conducted in the presence of the accused/his or her representative and the mandatory witnesses and (2) the inventory be signed by all those present ‘is to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence which could considerably affect a case.’”

Second, no evidence was presented that the seized plastic sachets suspected to contain shabu were photographed.

To stress, Section 21 of RA 9165 requires that the photography of the seized drug specimens shall be done during the conduct of the physical inventory of the seized items, which shall be undertaken immediately after seizure and confiscation.⁵⁶

In this case, the prosecution only submitted photographs of the marked money,⁵⁷ driver’s license of accused-appellant,⁵⁸ the impounded tricycle,⁵⁹ and Espino and Rendora signing the Inventory of Property/Items Seized.⁶⁰

The aforementioned lapses in the handling of the confiscated items were never acknowledged or explained by the prosecution. Section 21 of the IRR provides that failure to strictly comply with the chain of custody procedure does not *ipso facto* invalidate or render void the seizure and custody over the items, as long as the prosecution

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⁵⁴ *People v. Rasos, Jr.*, G.R. No. 243639, September 18, 2019.

⁵⁵ G.R. No. 224881 (Notice), June 17, 2020.

⁵⁶ *People v. Rasos, Jr.*, supra note 54.

⁵⁷ Exhibit “O,” Folder of Exhibits for the Prosecution, p. 26.

⁵⁸ Exhibit “H-5,” Folder of Exhibits for the Prosecution, p. 18.

⁵⁹ Exhibits “H-6,” “H-7,” and “H-8,” Folder of Exhibits for the Prosecution, p. 19.

⁶⁰ Exhibits “H,” “H-1,” and “H-2,” Folder of Exhibits for the Prosecution, p. 17.

is able to show that “(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.”⁶¹ For this saving clause to apply, however, the prosecution must satisfactorily explain the reasons behind the procedural lapses, and prove the justifiable ground for non-compliance as a fact.⁶² None was attendant in this case.

Neither can the presumption of regularity in the performance of duties save the prosecution’s case. While the police officers are presumed to have regularly performed their duty, the presumption only applies when there is nothing to suggest that the police officers deviated from the standard conduct of official duty required by law.⁶³ Where there was non-compliance with the requirements set forth in Section 21 of RA 9165, as in this case, there can be no presumption that the official duties have been regularly performed by the police officers. The presumption of regularity cannot preponderate over the presumption of innocence in favor of the accused.⁶⁴

Thus, even if We rule that there was valid buy-bust operation, the failure of the apprehending team to comply with the chain of custody of the *corpus delicti* already compromised the integrity and evidentiary value of the seized items.

The Court reiterates that in a prosecution for Illegal Possession of Dangerous Drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti*, failing in which renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt.⁶⁵

As no less than the liberty of an accused is at stake, appellate courts, this Court included, must, in turn, sift the records to determine if, indeed, the apprehending team observed Section 21 and if not, if the same is justified under the circumstances. If, from such full examination of the records, there appears an unjustified failure to comply with Section 21, it becomes the appellate court’s bounden duty to acquit the accused, and perforce, overturn a conviction.⁶⁶

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⁶¹ *People v. Ortega, Jr.*, G.R. No. 247524 (Notice), March 1, 2021. Citation omitted.

⁶² *People v. Ancheta*, G.R. No. 238404 (Notice), May 3, 2021, citing *People v. Suarez*, G.R. 249990, July 8, 2020.

⁶³ *People v. Manansala*, G.R. No. 228825, July 28, 2020, citing *People v. Dela Cruz*, 744 Phil. 816, 832 (2014), citing *People v. Wandt*, 639 Phil. 134, 146 (2010).

⁶⁴ *People v. Guinoo*, (Resolution) G.R. No. 238114, September 16, 2020, citing *Largo v. People*, G.R. No. 201293, June 19, 2019.

⁶⁵ *Amago v. People*, supra note 31.

⁶⁶ *Remo v. People*, supra note 32.

In light of the foregoing considerations, a verdict of acquittal is in order.

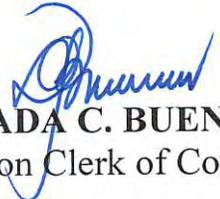
WHEREFORE, the appeal is **GRANTED**. The assailed August 22, 2019 Decision of the Court of Appeals in CA-G.R. CR HC No. 10862 is **REVERSED** and **SET ASIDE**.

Accused-appellant Rico Hernandez y Ilagan is **ACQUITTED** in Criminal Case Nos. 19165 and 19164 for Illegal Sale and Illegal Possession of Dangerous Drugs defined under Sections 5 and 11, Article II of Republic Act No. 9165, respectively, for failure of the prosecution to prove his guilt beyond reasonable doubt. The Court **DIRECTS** the Director General of the Bureau of Corrections, Muntinlupa City to cause the immediate release of Rico Hernandez y Ilagan from custody unless he is being held for some other lawful cause, and to submit a report on the action taken within five days from notice.

Let an entry of judgment be issued immediately.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *L/mc slw*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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AUG 16 2022

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

Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 10862)

The Hon. Presiding Judge
Regional Trial Court, Branch 4
4200 Batangas City
(Crim. Case Nos. 19164 to 65)

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