



Republic of the Philippines  
Supreme Court  
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated April 26, 2022 which reads as follows:*

**“G.R. No. 252231 – (People of the Philippines v. Abdullah Magarang y Dangcal).**

Repugned in the instant Appeal is the *Decision*<sup>1</sup> dated 5 July 2019 of the Court of Appeals, which affirmed the conviction of appellant Abdullah Magarang y Dangcal (Magarang) for violation of Sections 5 and 11, Article II of Republic Act No. 9165,<sup>2</sup> as amended.

The precursor facts are synthesized as follows:

Around noontime of 26 July 2016,<sup>3</sup> the Station Anti-Illegal Drugs-Special Operation Task Group (SAID-SOTG) of San Juan City received information from its regular confidential informant (CI) about the illegal drug activities of one alias “Chairman” (later identified as Magarang) in Barangay San Perfecto, San Juan City. Ensuingly, San Juan City SAID-SOTG Chief PCI Hoover Pascual formed a team of operatives for the conduct of a possible buy-bust operation.

During the coordination meeting, PO3 Jonald Alonzo Tungcul (PO3 Tungcul) was designated as the poseur-buyer. The team likewise prepared six pieces of marked five hundred peso bills as buy-bust money and agreed on the pre-arranged signal, *i.e.*, the poseur-buyer

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<sup>1</sup> In CA-G.R. CR-HC No. 10906; *Rollo*, pp. 3-32; Court of Appeals (CA) *Rollo*, pp. 130-156, penned by Justice Rafael Antonio M. Santos and concurred in by Justices Mariflor P. Punzalan-Castillo and Danton Q. Bueser (now retired).

<sup>2</sup> Otherwise known as 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, which took effect on 22 June 2002.

<sup>3</sup> Transcript of Stenographic Notes (TSN), 6 September 2016, p. 7.

will grab the hand of the seller. Thereupon, a pre-operation and coordination report was sent to the Philippine Drug Enforcement Agency (PDEA) and the Quezon City Police District-District Tactical Operation Center (QCPD-DTOC). On the same day, the CI made arrangements with Magarang for a possible drug transaction. The buy-bust team proceeded to Mezza Residences, as initially agreed upon between the CI and Magarang, but they were later instructed to proceed to Korner Apartelle along Kamuning Road corner Tomas Morato Avenue, Quezon City.

The team arrived at the target site at 2 A.M. of 27 July 2016 and settled at their designated positions. Magarang and his companion, Teejay, emerged from Korner Apartelle<sup>4</sup> to meet PO3 Tungcul and the CI outside. Thereafter, PO3 Tungcul and the CI approached Magarang and Teejay, who then asked PO3 Tungcul and the CI how much drugs they would purchase. They handed Magarang the six (6) marked five-hundred-peso bills. In turn, Magarang pulled out from his pocket a plastic sachet containing a white crystalline substance suspected to be methamphetamine hydrochloride, or *shabu*, and handed the same to PO3 Tungcul. The sale transaction having been consummated, PO3 Tungcul executed the pre-arranged signal. *Tout de suite*, the team moved in to arrest Magarang and his companion. They recovered from Magarang the marked money as well as three (3) other plastic sachets containing *shabu* from his right front pocket. Within three to five minutes from Magarang's apprehension,<sup>5</sup> the seized items were marked right outside Korner Apartelle.<sup>6</sup> PO3 Tungcul marked the first plastic sachet with "JAT BUY BUST"<sup>7</sup> while the remaining three (3) plastic sachets were marked with "JAT-1;"<sup>8</sup> "JAT-2;"<sup>9</sup> and "JAT-3."<sup>10</sup>

Teejay tried to escape, but the police were able to capture him. Magarang likewise attempted to resist the police officers, so the authorities were impelled to immediately bring him to the police station at N. Domingo St., San Juan City.<sup>11</sup> *En route* to the police station, PO3 Tungcul was in possession of the seized items, which he

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<sup>4</sup> TSN, 6 September 2016, p. 36.

<sup>5</sup> *Id.* at 51.

<sup>6</sup> *Id.* at 52.

<sup>7</sup> *Id.* at 41. Direct Examination of PO3 Tungcul.

<sup>8</sup> *Id.* at 46.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at p. 49.

<sup>11</sup> *Id.* at 51; TSN, 24 October 2016, p. 18.

placed inside the left pocket<sup>12</sup> of his pants. Thereafter, the inventory and photography of the seized items were conducted in the presence of Magarang,<sup>13</sup> the *Barangay* Chairman of Balong Bato, San Juan, Gerardo Goreyam,<sup>14</sup> and National Prosecution Services representative Richard Bukid.<sup>15</sup> Thence, PO3 Tungcul turned over the items to police investigator SPO1 Gener Antazo,<sup>16</sup> who delivered the confiscated items to forensic chemist PCI Margarita M. Libres at the Eastern Police District Crime Laboratory, Mauway, Mandaluyong City. PCI Libres signed each of the four (4) plastic sachets, and labelled them with "A," "B," "C," and "D."<sup>17</sup>

Thenceforth, PCI Libres conducted the qualitative laboratory examination on the confiscated white crystalline substance, which yielded a positive result for the presence of methamphetamine hydrochloride (*shabu*). Thereafter, she turned over the contraband to PO2 Bienvenido Lacarte, the evidence custodian of Eastern Police District Crime Laboratory, Mauway, Mandaluyong City, for safekeeping. PCI Libres then retrieved the seized items from the evidence custodian for presentation before the RTC.<sup>18</sup>

The prosecution proffered documentary and object evidence<sup>19</sup> to prove Magarang's culpability.

Expostulating against the prosecution's version of the facts, the defense wove a divergent narrative.<sup>20</sup>

Magarang was a seller of blank DVDs and cosmetic soaps and was also engaged in the buy-and-sell business of secondhand vehicles. He and his wife were staying in Quiapo when their common friend, Teejay, called Magarang to ask whether a certain Emerson Flores (Flores) already contacted him regarding Flores' debt worth P50,000.00. On 26 July 2016, Magarang and his wife checked themselves in at Korner Apartelle. Teejay called to inform Magarang that he and Flores would visit him. During the visit, Flores promised

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<sup>12</sup> *Id.* at 50.

<sup>13</sup> Records, pp. 13-14.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 17. Chain of Custody Form; TSN, 27 September 2016, p. 10. Direct Examination of SPO1 Antazo.

<sup>17</sup> TSN, 5 September 2016, p. 22. Direct Examination of PCI Libres.

<sup>18</sup> *Id.* at 39.

<sup>19</sup> Records, pp. 12-16.

<sup>20</sup> CA *Rollo*, pp. 63-65.

to pay Magarang half of his debt and pay the balance on installment. Afterwards, Magarang checked out of Korner Apartelle. Upon boarding his vehicle, however, several unknown men stepped inside his car. They introduced themselves as PDEA operatives, instructed Magarang to go with them to their headquarters, and threatened that resistance will result in his death.

Inside the vehicle, Magarang was blindfolded and frisked. The PDEA operatives took from his pocket what was allegedly *shabu*. Thereafter, Magarang was brought to the SAID San Juan, where he suffered brutality during interrogation. The police also went to Magarang's condominium unit in Mezza Residences, where they rummaged through his personal belongings.

In the *Judgment*<sup>21</sup> dated 12 March 2018, the Regional Trial Court, National Capital Judicial Region, Quezon City, Branch 96 (RTC) found Magarang guilty of violation of Sections 5 and 11, Article II of Republic Act (RA) No. 9165, as amended. The prosecution discharged its duty of proving the existence of the elements of Section 5 (illegal sale) and Section 11 (illegal possession). Moreover, the unbroken chain of custody of the *corpus delicti* was sufficiently established. Magarang's tenuous defense of denial and frame-up did not prevail over the positive allegations of the police and the overwhelming evidence of the prosecution.

Aggrieved, Magarang interposed an appeal with the Court of Appeals (CA), asserting that the RTC erred in finding that the elements of illegal sale and illegal possession of dangerous drugs were established by the prosecution, and that the rule on chain of custody was complied with.

In the *Decision*<sup>22</sup> dated 5 July 2019, the CA affirmed the conviction of Magarang. The police conducted a valid buy-bust operation in coordination with the PDEA, as substantiated by documentary and testimonial evidence of the prosecution. The prosecution further demonstrated an unbroken chain of custody of the seized contraband, as all of its links were properly accounted for. The totality of testimonial, documentary, and object evidence established Magarang's guilt beyond reasonable doubt, and the presumption of his innocence was overturned by the prosecution.

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<sup>21</sup> In Criminal Case Nos. R-QZN-16-08531 and R-QZN-16-08532; *Id.* at 59-67.

<sup>22</sup> *Rollo*, pp. 3-32; *CA Rollo*, pp. 130-156.

Magarang now seeks<sup>23</sup> refuge with this Court, asseverating that the prosecution was not able to establish the elements of illegal sale and illegal possession of dangerous drugs, as it failed to prove that the packet of *shabu* was originally in Magarang's possession before the same was delivered to and received by PO3 Tungcul. He also asserts that the rule on the chain of custody was not complied with, as the marking was not immediately done upon apprehension and in the presence of the requisite witnesses. In the same vein, Magarang maintains that the turnover from the arresting officer to investigating officer, and from the laboratory examination to the trial court, were unaccounted for.

***Magarang's asseverations carry weight and conviction.***

To secure a conviction for Illegal Sale of Dangerous Drugs under Section 5, Article II of RA No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.<sup>24</sup> Upon the other hand, in Illegal Possession of Dangerous Drugs under Section 11, Article II of RA No. 9165, the following elements must be proved: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>25</sup>

Appositely, the prosecution is duty-bound to demonstrate an unbroken chain of custody, which is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court. The four (4) links that the prosecution must establish in the chain of custody are as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic

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<sup>23</sup> *Id.* at 50-81.

<sup>24</sup> *People v. Hilario*, 823 Phil. 580-606, 594 (2018) citing *People v. Ismael*, 806 Phil. 21-38, 29 (2017).

<sup>25</sup> *People v. Cuevas*, 884 Phil. 308, 317 (2018).

chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>26</sup>

In order to preserve the chain of custody of evidence in drugs cases, Section 21, Article II of RA No. 9165, as amended,<sup>27</sup> ordains the mandatory procedural safeguards in a buy-bust operation:

SEC. 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.

Evidently, the law requires "substantial" and not necessarily "perfect adherence" as long as it can be proven that the integrity and the evidentiary value of the seized items were preserved as the same would be utilized in the determination of the guilt or innocence of the accused.<sup>28</sup>

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<sup>26</sup> See *People v. Kamad*, 624 Phil. 289-312 (2010).

<sup>27</sup> Republic Act No. 10640, 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, Effective on 7 August 2014.

<sup>28</sup> *People v. Piad*, 779 Phil. 136-150 (2016). See also *People v. Dadang*, G.R. No. 242880, 22 January 2020.

In the case at bench, the prosecution clearly demonstrated the existence of the elements of the offenses charged against Magarang. PO3 Tungcul testified that he handed the buy-bust money to Magarang in exchange for the *shabu*<sup>29</sup> and that Magarang was found to be in possession of three other packets of *shabu*. Such positive testimony was sufficient to establish that the illicit sale transaction occurred and that Magarang possessed illegal drugs at the time he was apprehended.

Regrettably, however, the chain of custody of the *corpus delicti* was blown to smithereens owing to the several gaffes committed by the buy-bust team in handling the seized contraband, specifically during the seizure, marking, and inventory thereof.

This Court emphasized in no ambiguous language the necessity of having the witnesses present **not only during the inventory, but moreso at the time of apprehension and seizure**. It is during arrest and confiscation when the insulating presence of the witnesses is needed, as it is their presence at such stage that would foreclose the pernicious practice of planting of evidence or compromising the integrity of the same.<sup>30</sup> In the same vein, the Court made the following edifying discourse—

In *People v. Tomawis*,<sup>31</sup> this Court declared that the third-party witnesses required by Section 21 must be present as early as the time of apprehension:

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. In addition, the inventory must be done in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could

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<sup>29</sup> *Rollo*, p. 17.

<sup>30</sup> See *People v. Globa*, G.R. No. 241251, 10 December 2019; and *People v. Castillo*, G.R. No. 238339, 7 August 2019.

<sup>31</sup> G.R. No. 228890, 18 April 2018.

be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. *By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension* — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

....

*The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.*

*The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.*

*To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."<sup>32</sup>*

Here, it is telling that the mandatory witnesses under Section 21, RA No. 9165 were not present **at the very inception of the buy-bust operation.** No less than PO3 Tungcul testified that although he

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<sup>32</sup> See *People v. Castillo*, G.R. No. 238339, 7 August 2019. Emphasis in the original.

immediately marked the seized contraband after arresting Magarang, the witnesses namely, *Barangay* Chairperson Gerardo Goreyam and National Prosecution Services representative Richard Bukid<sup>33</sup> were conspicuously absent thereat. The attendance of the insulating witnesses *after* apprehension is without rhyme or reason, seeing as the law itself enjoins their presence at the time of arrest and seizure of the prohibited drugs.

Even more incriminating is the fact that the inventory was conducted at the police station **and not immediately after arrest of Magarang**. Although there was an attempt to explain such deviation from the chain of custody rule by stating that Magarang resisted arrest, such explication falls short of the requirement of the law to prove as fact any justifiable ground for non-compliance.

Withal, the prosecution miserably failed to discharge its duty to justify the obvious departure from the procedure under Section 21 of RA No. 9165, as amended. Discussion of whether the buy-bust team complied with the other links in the chain of custody is therefore inconsequential. **Without the first link in the metaphorical chain of custody, there is nothing to which the remaining links may attach.** *Non momentum est.*

While it is desirable that the chain of custody be perfect and unbroken, this rarely becomes the reality in most cases.<sup>34</sup> Although the saving clause in Section 21, Article II of the IRR of RA No. 9165 allows leniency under justifiable grounds, two conditions must first be present in order for the same to be applied, *i.e.*, (a) the prosecution must explain the reasons behind the procedural lapses and; (b) the integrity and value of seized evidence had been preserved. A justifiable ground for non-compliance must be proven as a fact.<sup>35</sup>

From the foregoing discourse, the manifest gaps in the first link anent the custody of the seized drugs whittled down the credibility of the prosecution's narrative of a supposed unbroken chain of custody. In view thereof, the Court cannot conclude with moral certainty that the illegal drugs retrieved from Magarang were the same items that underwent laboratory examination, found to be prohibited drugs, and later presented before the RTC. Given the cobwebs of doubt as to the identity and evidentiary integrity of the very *corpus delicti* of the offenses charged, the acquittal of Magarang is perforce in order.

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<sup>33</sup> Records, pp. 13-14.

<sup>34</sup> *People v. Lat*, G.R. No. 234010, 28 November 2019 (Notice).

<sup>35</sup> *People v. Jugo*, G.R. No. 231792, 29 January 2018.

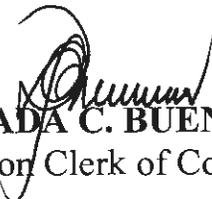
**WHEREFORE**, the Appeal is hereby **GRANTED**. The *Decision* dated 5 July 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10906 is **REVERSED** and **SET ASIDE**. Accused-appellant Abdullah Magarang y Dangcal is **ACQUITTED** on the ground of reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention unless he is confined for some other lawful cause.

The Director General of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City is **DIRECTED** to **IMPLEMENT** this Resolution immediately and to **REPORT** to this Court the action taken hereon within five (5) days from receipt of this Resolution. Copies 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 entry of judgment be **ISSUED** immediately.

**SO ORDERED.**” *Gaerlan, J., on official leave.*

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *16-0131*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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(CA-G.R. CR-HC No. 10906)

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(Crim. Case Nos. R-QZN-16-08531  
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