



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **03 January 2022** which reads as follows:*

**“G.R. No. 252332 (*People of the Philippines v. Salvador Escalicas<sup>1</sup> y Baguna, Ariel Rosales y Baldosa, and Gilbert Gilbuena y Esdana*). – Before the Court is an appeal<sup>2</sup> from the Decision<sup>3</sup> dated October 1, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 11975 which affirmed the Decision<sup>4</sup> dated July 30, 2018 of Branch 286, Regional Trial Court (RTC), Navotas City in Criminal Case No. 13-0574-MN that found Salvador Escalicas y Baguna (Escalicas), Ariel Rosales y Baldosa (Rosales), and Gilbert Gilbuena y Esdana (Gilbuena) (collectively, accused-appellants) guilty of violation of Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.**

*The Antecedents*

Accused-appellants were charged before the RTC with violation of Section 5, Article II of RA 9165 in an Information that reads:

That on or about the 09<sup>th</sup> day of April 2013, in the City of Navotas, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, being a private person [*sic*] and without authority of law, did then and there, willfully, unlawfully and feloniously in consideration of the sum of Php500.00 Philippine Currency, sells [*sic*] and distributes [*sic*] to IO1 JOANNA MARIE M. BETORIN, who posed as a buyer [*sic*] one (1) heat sealed transparent plastic sachet with

<sup>1</sup> Also spelled as “Escalicas” in some parts of the *rollo*.

<sup>2</sup> *Rollo*, pp. 16-17.

<sup>3</sup> *Id.* at 3-15; penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Samuel H. Gaerlan (now a Member of the Court) and Geraldine C. Fiel-Macaraig, concurring.

<sup>4</sup> *CA rollo*, pp. 48-56; penned by Presiding Judge Pedro T. Dabu, Jr.

marking JMB 4-9-13 and with signature containing white crystalline substance with a net weight of 2.5121 grams, which when subjected to chemistry examination gave positive result for Methamphetamine Hydrochloride otherwise known as 'Shabu', a dangerous drug.

CONTRARY TO LAW.<sup>5</sup>

During arraignment, accused-appellants pleaded not guilty to the charge.<sup>6</sup>

Trial ensued.

*Version of the Prosecution*

Records show that on April 9, 2013, SO3 Beltran Lacap, Jr. (SO3 Lacap) of the Philippine Drug Enforcement Agency (PDEA), Quezon City, received a report from a confidential informant that three persons with aliases "Barok," "Kambal," and "Ebet," later identified as herein accused-appellants Escalicas, Rosales, and Gilbuena, respectively, were engaged in illegal drug activities at the Navotas Gas Turbine Power Plant (NGTPP). After hatching a buy-bust plan and coordinating with the police officers having jurisdiction over the target area of operation, the PDEA operatives proceeded to NGTPP Fish Port Complex, Navotas City.<sup>7</sup>

Upon their arrival at the target area, IO1 Donnie Cordero (IO1 Cordero) and SO2 Sotero Ibarra (SO2 Ibarra) positioned themselves near a vehicle. Inside the vehicle were IO1 Wilbert Baccay (IO1 Baccay) as the driver, IO1 Joanna Marie Betorin (IO1 Betorin) as the *poseur*-buyer, and the confidential informant. The confidential informant called accused-appellant Escalicas and told him that they were already in the area.<sup>8</sup> After a few minutes, accused-appellants arrived and boarded the vehicle. Escalicas told IO1 Betorin that he and his companions had the item and asked if she had the money. IO1 Betorin showed the money to Escalicas and asked for the item. Gilbuena took from his right pocket a plastic sachet and handed it to IO1 Betorin who, in turn, put the plastic sachet inside her bag and handed the buy-bust money to Rosales.<sup>9</sup>

After the consummation of the transaction, IO1 Betorin introduced

<sup>5</sup> As culled from the CA Decision; *rollo*, p. 4.

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

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

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

<sup>9</sup> *Id.* at 6.

herself as a PDEA agent. At that point, Escalicas drew a knife from his waist and lunged at the back of IO1 Betorin; however, IO1 Baccay was able to grab Escalicas' hand and wrestle the knife away. Still Escalicas grabbed the gun of IO1 Baccay and attempted to shoot the latter. Fortunately, the gun malfunctioned and IO1 Baccay was able to grab it from Escalicas.<sup>10</sup>

Gilbuena and Rosales ran away. IO1 Cordero chased Rosales, who pulled out an ice pick from his waist and tried to stab IO1 Cordero. However, IO1 Cordero overpowered Rosales and pinned him to the ground. SO2 Ibarra meanwhile chased Gilbuena, but the latter tried to shoot SO2 Ibarra with a gun; the gun malfunctioned and SO2 Ibarra was able to restrain Gilbuena.<sup>11</sup>

The PDEA officers subsequently arrested accused-appellants. At the crime scene, IO1 Betorin immediately marked the seized plastic sachet containing suspected *shabu*. As a crowd started to gather in the area, the PDEA officers decided to conduct the inventory and photography of the seized item at the PDEA headquarters in Quezon City. The inventory and photography of the seized item were witnessed by *Kagawad* Jose Y. Ruiz, Jr. and media representative Alex Ching.<sup>12</sup> Thereafter, IO1 Betorin brought the seized item to the PDEA laboratory for qualitative examination. The examination yielded a positive result for methamphetamine hydrochloride, or *shabu*.<sup>13</sup>

#### *Version of the Defense*

Accused-appellants denied the charge against them. Gilbuena asserted that he was apprehended on April 9, 2013 while he was going to work at the fish port. He was brought to the PDEA office where he saw Rosales and Escalicas for the first time.<sup>14</sup>

Rosales and Escalicas offered similar versions of the events. Rosales averred that three persons arrested him while he was working as *kargador batilyo* at the fish port. Prior to the arrest, he never knew his co-accused-appellants; he only saw them for the first time at the PDEA office.<sup>15</sup> Likewise, Escalicas alleged that he worked as a *batilyo*. On

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Id.* at 8.

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

April 9, 2013, at around 12:00 p.m., he was walking home when he was arrested by three persons. He also asserted that he saw Gilbuena and Rosales only for the first time at the PDEA office.<sup>16</sup>

### *The RTC Ruling*

On July 30, 2018, the RTC rendered a Decision<sup>17</sup> finding accused-appellants guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165. It ruled that the prosecution had established all the elements of Illegal Sale of Dangerous Drugs<sup>18</sup> and that the evidentiary value of the seized plastic sachet of *shabu* was preserved: the inventory of the seized drugs was witnessed by accused-appellants, a media representative, and an elected public official.<sup>19</sup>

### *The CA Ruling*

In the assailed Decision<sup>20</sup> dated October 1, 2019, the CA affirmed the RTC Decision. It observed that there was no showing that the seized plastic sachet of *shabu* was tampered with.<sup>21</sup> Further, it ruled that the prosecution was able to establish an unbroken chain of custody – that is from the time the item was seized from accused-appellants, to its turn-over to the laboratory for examination, and finally, until its presentation to the court.<sup>22</sup>

### *The Issue*

The issue is whether accused-appellants' guilt for violation of Section 5, Article II of RA 9165 has been proven beyond reasonable doubt.

### *The Court's Ruling*

The appeal is meritorious.

In the prosecution of the offense of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: (a) the identity of the buyer

<sup>16</sup> *Id.*

<sup>17</sup> *CA rollo*, pp. 48-56.

<sup>18</sup> *Id.* at 53.

<sup>19</sup> *Id.* at 55-54.

<sup>20</sup> *Rollo*, pp. 3-15.

<sup>21</sup> *Id.* at 13.

<sup>22</sup> *Id.*

and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.<sup>23</sup>

In addition, the prosecution must also establish the evidence of the *corpus delicti* beyond reasonable doubt.<sup>24</sup> In illegal drug cases, the drug itself constitutes the *corpus delicti* of the offense.<sup>25</sup> Hence, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>26</sup>

As part of the chain of custody procedure, the law requires, among others, that the marking, physical inventory, and photographing of the seized items be conducted immediately after seizure and confiscation.<sup>27</sup> The law further requires that the inventory and photography be done 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 amendment of RA 9165 by RA 10640,<sup>28</sup> a representative each 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, an elected public official and a representative of the National Prosecution Service or the media.<sup>29</sup> The purpose of these witnesses is to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.<sup>30</sup>

As a general rule, there must be strict compliance with the chain of custody procedure.<sup>31</sup> However, in cases where strict compliance with the mandatory procedure is not possible, the seizure and custody of the confiscated items will not be rendered void *if* the prosecution satisfactorily proves that there is justifiable ground for the deviation, *and* the integrity and the evidentiary value of the seized items are properly preserved.<sup>32</sup> The identity of the seized drugs is preserved when it can be

<sup>23</sup> *People v. Crispo*, 828 Phil. 416, 429 (2018).

<sup>24</sup> *Izon v. People*, G.R. No. 222509, March 3, 2021.

<sup>25</sup> *Id.*

<sup>26</sup> See *People v. Año*, 828 Phil. 439, 448 (2018). See also *People v. Alagarme*, 754 Phil. 449, 459-460 (2015) and *People v. Viterbo*, 739 Phil. 593, 601 (2014).

<sup>27</sup> *People v. Gabunada*, G.R. No. 242827, September 9, 2019.

<sup>28</sup> 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 on July 15, 2014.

<sup>29</sup> *People v. Gabunada*, *supra*.

<sup>30</sup> *People v. Halili*, G.R. No. 239898 (Notice), May 14, 2021.

<sup>31</sup> *People v. Sendad*, G.R. No. 242025, November 20, 2019.

<sup>32</sup> *People v. Almorfe*, 631 Phil. 51, 60 (2010).

proved that the drug presented and offered as evidence in court is the exact same item seized or confiscated from the accused at the time of his arrest.<sup>33</sup> On the other hand, the preservation of the drug's integrity means that its evidentiary value is intact as it was not subject to planting, switching, tampering or any other circumstance that casts doubt as to its existence.<sup>34</sup>

With respect to the witness requirement, noncompliance therewith will not be fatal to the case *if* the prosecution proves that the apprehending officers actually exerted genuine and sufficient efforts to secure the presence of the required witnesses, albeit the latter failed to appear.<sup>35</sup>

Here, the three-witness rule under RA 9165 applies as the offense was allegedly committed in 2013, or before the law was amended in 2014.

In the case, there was a deviation from the three-witness rule. Records show that only an elected public official and a media representative were present to witness the inventory and photography of the allegedly seized drugs. The other required witness under RA 9165, *i.e.*, a representative from the DOJ, was not present. Notably, this absence was left unjustified by the prosecution. There was also no statement that the apprehending officers exerted genuine and sufficient efforts to secure the presence of a representative from the DOJ in order to comply with the three-witness rule. "The presence of the insulating witnesses during this step is vital. Without the insulating presence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items."<sup>36</sup>

The Court has often stressed that the presence of the required insulating witnesses at the time of the inventory is mandatory.<sup>37</sup> "Under the law, the presence of the insulating witnesses is a high prerogative requirement, the non-fulfillment of which casts serious doubts upon the integrity of the *corpus delicti* itself — the very prohibited substance itself — and for that reason imperils the prosecution's case."<sup>38</sup>

<sup>33</sup> *People v. Bintaib*, 829 Phil. 13, 21 (2018).

<sup>34</sup> *Id.* at 21-22.

<sup>35</sup> *People v. Gabunada*, *supra* note 27.

<sup>36</sup> *People v. Bintaib*, *supra* at 24.

<sup>37</sup> *People v. Crisostomo*, G.R. No. 252488 (Notice), May 12, 2021.

<sup>38</sup> *Id.*

Considering the foregoing, the Court finds that the buy-bust team's unjustified non-compliance with the three-witness rule under RA 9165 broke the chain of custody and tainted the integrity and the evidentiary value of the allegedly seized *shabu*. Given the prosecution's failure to prove the indispensable element of *corpus delicti*, the Court is constrained to overturn accused-appellants' conviction on the ground of reasonable doubt.<sup>39</sup>

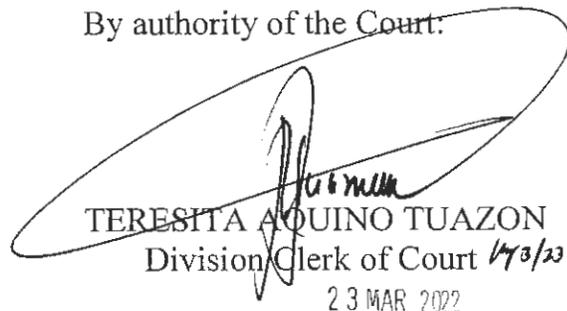
**WHEREFORE**, the appeal is **GRANTED**. The Decision dated October 1, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11975 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Salvador Escalicas y Baguna, Ariel Rosales y Baldosa, and Gilbert Gilbuena y Esdana are **ACQUITTED** of the offense charged.

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to (a) cause the immediate release of accused-appellants Salvador Escalicas y Baguna, Ariel Rosales y Baldosa, and Gilbert Gilbuena y Esdana, unless they are being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

**SO ORDERED.**" (ROSARIO, *J.*, designated as additional member vice GAERLAN, *J.*, per Raffle dated December 20, 2021.)

By authority of the Court:



TERESITA AQUINO TUAZON  
Division Clerk of Court 1/3/22  
23 MAR 2022

<sup>39</sup> *People v. Echeveria*, G.R. No. 247322 (Notice), June 17, 2020.

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THE SUPERINTENDENT (x)  
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