



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 2, 2022** which reads as follows:*

“**G.R. No. 253566** (*People of the Philippines v. Michael Gravino y Cabrera*). – Before the Court is an appeal¹ from the Decision² dated January 20, 2020 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03039 which affirmed the Judgment³ dated April 10, 2018 of Branch 30, Regional Trial Court (RTC), Dumaguete City in Criminal Case No. 2016-23537. The RTC found Michael Gravino y Cabrera (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.⁴

The Antecedents

The case stemmed from an Information charging accused-appellant with the offense of Illegal Sale and Delivery of Dangerous Drugs committed as follows:

That on or about February 29, 2016 at around 11:45 o'clock [*sic*] in the morning, in *Barangay* Maslog, Sibulan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously, sell, trade, deliver, distribute, to a police *poseur*-buyer, one heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride (*shabu*) having a net weight of

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¹ *Rollo*, pp. 15-16.

² *Id.* at 5-14; penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Alfredo D. Ampuan and Carlito B. Calpatura, concurring.

³ *CA rollo*, pp. 6-17; penned by Presiding Judge Rafael Crescencio C. Tan, Jr.

⁴ *Id.* at 16.

0.04 gram, a dangerous drug, in consideration of the amount of Three Hundred (Php300.00) Pesos, in violation of the above-cited law.

CONTRARY TO LAW.⁵

Upon arraignment, accused-appellant pleaded not guilty to the charge.⁶

Trial ensued.⁷

Version of the Prosecution

The prosecution established that on February 29, 2016, at the Sibulan Police Station, a confidential informant (CI) approached Police Officer 2 Cromwell Sevilla (PO2 Sevilla) and told him about the illegal drug activities of accused-appellant in Angara Maslog, Sibulan. PO2 Sevilla immediately relayed the information to Senior Police Officer 4 Cruel Piñero who conducted a briefing to plan a buy-bust operation against accused-appellant. During the briefing, PO2 Sevilla was designated as *poseur*-buyer and PO2 Michael Piñero (PO2 Piñero) as the back-up officer and photographer.⁸

Soon after, PO2 Sevilla, the CI, and PO2 Piñero proceeded to the target area. When they found accused-appellant, the CI asked him if he had *shabu*. When accused-appellant asked how much they were going to buy, the CI replied that they will buy ₱500.00 worth of *shabu* and immediately handed the money to accused-appellant. In exchange, accused-appellant gave one heat-sealed transparent plastic sachet containing white crystalline substance to PO2 Sevilla. After which, PO2 Sevilla placed the sachet of suspected *shabu* in his pocket and grabbed the hand of accused-appellant. The police officers informed accused-appellant that he was being arrested for illegal sale and delivery of *shabu*. Meanwhile, PO2 Piñero conducted a body search on accused-appellant and recovered from him the buy-bust money.⁹

At the crime scene, PO2 Sevilla signed and marked the heat-sealed transparent plastic sachet containing white crystalline substance, which he bought from accused-appellant and with the

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⁵ *Rollo*, pp. 5-6.

⁶ *Id.* at 6.

⁷ *CA rollo*, p. 6.

⁸ *Rollo*, p. 6.

⁹ *Id.* at 6-7.

initials “MCG-BB-2-29-16.” Thereafter, the buy-bust team proceeded to Sibulan Police Office for the conduct of the inventory. The inventory receipt was signed by Department of Justice (DOJ) representative Andres Mangubat, media representative Jufill Mira, and *Barangay* Councilor Felipe Remollo.¹⁰ PO2 Tristan Joseph Chua also signed the inventory receipt in his capacity as the team leader, while PO2 Piñero signed therein as the photographer during the conduct of the inventory.¹¹

PO2 Sevilla then placed the plastic sachet inside a brown envelope which he tape-sealed and signed. He delivered the evidence to Police Officer 3 Michelle Cañete (PO3 Cañete), the duty officer. In turn, PO3 Cañete submitted the brown envelope with all its contents to the forensic chemist, Police Chief Inspector Josephine Llana (PCI Llana). Upon receipt thereof, PCI Llana affixed her markings on the items as follows: Specimen “A” D-141-16 JSL for the brown envelope and Specimen “A-1” D-141-16 JSL for the one heat-sealed transparent plastic sachet containing white crystalline substance. The confiscated plastic sachet underwent qualitative examination and tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. PCI Llana kept the evidence inside a vault for safekeeping prior to its presentation in the RTC.¹²

Version of the Defense

In his defense, accused-appellant averred that on that fateful day, he was watering the plants of his employer in *Purok* 6, Maslog, Sibulan. While resting in a waiting shed, PO2 Sevilla and PO2 Piñero arrived and asked him if his name was “Adaw.” When he replied in the affirmative, they invited him to go with them to the police station. At the second floor of the police station, he saw *shabu* and ₱200.00 on top of a table. Thereafter, they took photographs of him and the *shabu*.¹³

Ruling of the RTC

In the Judgment¹⁴ dated April 10, 2018, the RTC found accused-appellant guilty beyond reasonable doubt of Illegal Sale and Delivery of Dangerous Drugs. It decreed as follows:

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¹⁰ *Id.* at 7.

¹¹ *CA rollo*, p. 8.

¹² *Id.* at 7-8. See also *CA rollo*, p. 9.

¹³ *Id.* at 8.

¹⁴ *CA rollo*, pp. 6-17.

WHEREFORE, in the light of the foregoing, the Court hereby finds the accused Michael Cabrera Gravino GUILTY beyond reasonable doubt of the offense of illegal sale and delivery of 0.04 gram of *shabu* in violation of Section 5, Article II of R.A. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The one (1) heat-sealed transparent plastic sachet with markings “MCG-BB-1-29-16” with signature containing a net weight of 0.04 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused MICHAEL CABRERA GRAVINO shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.¹⁵

The RTC held that the prosecution was able to establish with certainty that accused-appellant sold and delivered a plastic sachet containing a net weight of 0.04 gram of *shabu* for ₱300.00 to PO2 Sevilla, the *poseur*-buyer.¹⁶ As to the disposition and preservation of the seized item, it held that there was compliance with the rule on the chain of custody of seized evidence and that the integrity and evidentiary value of the seized drug were properly preserved.¹⁷

Dissatisfied, petitioner appealed to the CA.¹⁸

Ruling of the CA

In the assailed Decision,¹⁹ the CA affirmed accused-appellant's conviction. It noted that accused-appellant was caught *in flagrante delicto* selling *shabu* and that PO2 Sevilla positively identified accused-appellant as the person from whom he bought the plastic sachet of *shabu* for ₱300.00.²⁰ Moreover, it ruled that the prosecution was able to account for all the necessary stages to complete the chain of custody of the seized item – from the time of its seizure, to its receipt at the crime laboratory for examination and safekeeping, and to its presentation in court for identification.²¹ The CA held:

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¹⁵ *Id.* at 16.

¹⁶ *Id.* at 11-13.

¹⁷ *Id.* at 14.

¹⁸ *Rollo*, p. 9.

¹⁹ *Id.* at 5-14.

²⁰ *Id.* at 10.

²¹ *Id.* at 11-12.

WHEREFORE, the Judgment dated April 10, 2018 rendered by the Regional Trial Court (RTC), Branch 30, Dumaguete City in Criminal Case No. 2016-23537 convicting accused-appellant Michael Gravino y Cabrera of [v]iolation of Section 5, Article II of R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002 is AFFIRMED.

With costs against the accused-appellant.

SO ORDERED.²²

Hence, the instant appeal.

In the Resolution²³ dated November 18, 2020, the Court noted the records of the case forwarded by the CA and ordered the parties to file their respective supplement briefs, should they so desire, within 30 days from notice. In its Manifestation (In Lieu of Supplemental Brief),²⁴ the Office of the Solicitor General, representing the People of the Philippines, stated that it would no longer file a supplemental brief because all of its arguments have been sufficiently propounded in the Brief for the Appellee²⁵ submitted to the CA. Accused-appellant filed a similar Manifestation (In Lieu of Supplemental Brief)²⁶ stating that he had adequately presented and discussed all the issues in the Appellant's Brief²⁷ filed before the CA.

The Issue

The core issue for the Court's consideration is whether accused-appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165, as amended.

The Court's Ruling

The Court grants the appeal.

Settled is the rule that the drug itself constitutes the *corpus delicti* in illegal drug cases. As such, the prosecution "must establish that the substance illegally sold and possessed by the accused is the same substance presented in court. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*."²⁸ The chain of custody rule "ensures that unnecessary doubts concerning the identity of the evidence are removed."²⁹

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²² *Id.* at 13.

²³ *Id.* at 23-24.

²⁴ *Id.* at 29-30.

²⁵ *CA rollo*, pp. 65-91.

²⁶ *Rollo*, pp. 34-36.

²⁷ *CA rollo*, pp. 30-52.

²⁸ *People v. Ordinario*, G.R. No. 251436 (Notice), March 1, 2021.

²⁹ *Id.*

Accused-appellant was charged with violation of Section 5, Article II of RA 9165 for an offense which occurred on February 29, 2016. The applicable law is RA 9165, as amended by RA 10640.³⁰ Section 21(1) thereof provides:

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 persons 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.

In *People v. Leaño*,³¹ the Court emphasized that “[t]o ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody.”³² The chain of custody includes: “*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

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³⁰ 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, and which took effect on August 7, 2014.

³¹ G.R. No. 246461, July 18, 2020.

³² *Id.*

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.”³³

In *Mallillin v. People*,³⁴ the Court explained the importance of the chain of custody, *viz.*:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.³⁵

The law requires that the marking, physical inventory, and photographing of the confiscated drugs must be conducted *immediately* after seizure. Moreover, the law directs that the inventory and photography be done in the presence of the accused from whom the items were seized, or his [or her] representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640, a representative from the media and the DOJ, *and* any elected public official;³⁶ 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.³⁷ The presence of these witnesses is intended to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.³⁸ In *People v. Tomawis*,³⁹ the Court emphasized that the insulating witnesses required under Section 21, Article II of RA 9165 ought to be present as early as the time of arrest. Thus:

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³³ *Id.*

³⁴ 576 Phil. 576 (2008).

³⁵ *Id.* at 587.

³⁶ Section 21(1), Article II of RA 9165.

³⁷ Section 21(1), Article II of RA 9165, as amended by RA 10640.

³⁸ *People v. Alconde*, G.R. No. 238117, February 04, 2019.

³⁹ 830 Phil. 385 (2018).

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. x x x.

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 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.

x x x x

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.* (Italics supplied; citations omitted.)⁴⁰

Records show that the police officers breached the chain of custody rule at the onset. The required witnesses only arrived *after* accused-appellant was arrested and the evidence already seized. They became involved only during the inventory, which was done at the

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⁴⁰ *Id.* at 404-405, 409.

police station, not at the place of arrest.⁴¹ Under the circumstances, the absence of witnesses during seizure and marking casts reasonable doubt on the actual origin and identity of the drugs introduced in evidence as those allegedly seized from accused-appellant. Ultimately, this omission casts reasonable doubt on accused-appellant's guilt for the charge.⁴² Furthermore, "calling-in" the required witnesses at the place of inventory for the purpose of signing the inventory receipt is not sufficient compliance with the mandatory requirements of the law.⁴³

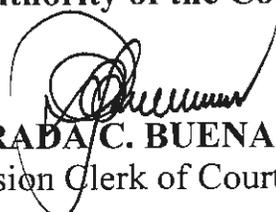
WHEREFORE, the appeal is **GRANTED**. The Decision dated January 20, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 03039 is **REVERSED** and **SET ASIDE**. Accused-appellant Michael Gravino y Cabrera is **ACQUITTED** of violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended, for failure of the prosecution to prove his guilt beyond reasonable doubt, and is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished the Director General, Bureau of Corrections, Muntinlupa City, for immediate implementation. Furthermore, the Director General of the Bureau of Corrections is **DIRECTED** to report to this Court the action he/she has taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁴¹ *Rollo*, p. 7.

⁴² *People v. Garque* (Notice), G.R. No. 247004, September 8, 2020, citing *People v. Castillo*, G.R. No. 238339, August 7, 2019.

⁴³ *People v. Garque* (Notice), G.R. No. 247004, September 8, 2020, citing *People v. Galuken*, G.R. No. 216754, July 17, 2019.



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