



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 14, 2022 which reads as follows:

“G.R. No. 254748 (*People of the Philippines v. Kenneth Delos Reyes y Bulaong alias “Kenneth” and Jinky Excija y Gofredo alias “Jing”*). – This appeal¹ seeks the reversal of the Decision² dated 25 June 2020 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 12627. The CA affirmed the Consolidated Decision³ dated 10 December 2018 of Branch 82, Regional Trial Court (RTC) of Quezon City in Criminal Case Nos. R-QZN-18-10898-CR, R-QZN-18-10899-CR and R-QZN-18-10900-CR, finding accused-appellants Kenneth Delos Reyes y Bulaong alias “Kenneth” (Delos Reyes) and Jinky Excija y Gofredo alias “Jing” (Excija) (collectively, accused-appellants) guilty beyond reasonable doubt of Illegal Sale and Illegal Possession of Dangerous Drugs.⁴

Antecedents

Accused-appellants were charged with violation of Section 5, Article II of Republic Act (RA) No. 9165, in an Information, the accusatory portion of which reads:

Criminal Case No. R-QZN-18-10898-CR

That on or about the 31st day of August 2018, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, without lawful authority, did then and there, willfully, and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport or act as

¹ *Rollo*, pp. 18-20; see Notice of Appeal/Compliance dated 20 July 2020.

² Id. at 4-17; penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Ramon M. Bato, Jr. and Florencio Mallanao Mamauag, Jr.

³ CA *rollo*, pp. 50-66; penned by Presiding Judge Lyn Ebora-Cacha.

⁴ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.” Approved: 07 June 2002.

broker, in the said transaction, one (1) heat-sealed transparent plastic sachet with markings IAB-KD3-08/31/18, containing FIVE POINT TWENTY SEVEN (5.27) grams of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁵

In addition, accused-appellants were each charged with violation of Section 11, Article II of RA No. 9165, in two separate Informations, the accusatory portion of which reads:

Criminal Case No. R-QZN-18-10899-CR

That on or about the 31st day of August 2018, in Quezon City, Philippines, the said accused, not having been authorized by law to possess or use any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and control one (1) heat-sealed transparent plastic sachet with markings MO-JGE1-08/31/18, containing THIRTEEN POINT FIFTY TWO (13.52) grams of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁶

Criminal Case No. R-QZN-18-10900-CR

That on or about the 31st day of August 2018, in Quezon City, Philippines, the said accused, not having been authorized by law to possess or use any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and control one (1) heat-sealed transparent plastic sachet with markings IAB-KD4-08/31/18, containing FOUR POINT NINETY ONE (4.91) grams of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁷

Upon arraignment, accused-appellants pleaded not guilty to their respective charges. After termination of pre-trial, trial on the merits ensued.⁸

Version of the Prosecution

In the morning of 31 August 2018, while Police Officer (PO) 2 Immanuel Baloyo (PO2 Baloyo) and his colleagues were inside their office, a confidential informant (CI) came in to report the illegal drug trade activities of one alias Kenneth, later identified as Delos Reyes, in Barangay Bagbag and nearby barangays of Novaliches. Based on this information, a team was formed to conduct a buy-bust operation. PO2 Baloyo was designated as the poseur buyer with the rest of the team as back-up/ arresting

⁵ CA *rollo*, p. 51

⁶ *Id.*

⁷ *Id.* at 51-52.

⁸ *Rollo*, pp. 6-7



officers.⁹

Later, at around 7:00 p.m., the team instructed their CI to call Delos Reyes. The CI put the phone on loudspeaker mode to enable the team to hear the conversation. The CI told Delos Reyes that they were going to buy *shabu* worth ₱13,000.00. Delos Reyes agreed to meet them at Jollibee at Kingspoint Avenue corner Quirino Hi-way, *Barangay* Bagbag, Novaliches, Quezon City.¹⁰

The team then proceeded to the area. PO2 Baloyo instructed the CI to lead him. Upon arrival at Jollibee, they noticed a person by the door who appeared to be waiting for someone. The CI positively identified said person as Delos Reyes and they approached him. After the CI introduced PO2 Baloyo as the buyer, Delos Reyes led them to the second floor of Jollibee, saying the *shabu* was with his boss and that they should hand the payment to the latter.¹¹

At the second floor of Jollibee, they saw a woman, who was later identified as Excija. Delos Reyes introduced PO2 Baloyo to Excija. The latter asked for the payment and PO2 Baloyo handed her the money, consisting of one piece of genuine ₱1,000.00 bill together with 12 pieces of boodle money. Upon receipt of the money, Excija reached into her bag and pulled two small brown envelopes. She handed them to Delos Reyes and the latter handed one of the envelopes to PO2 Baloyo. In turn, PO2 Baloyo looked inside and saw one heat-sealed transparent plastic sachet containing white crystalline substance suspected to be *shabu*. After the consummation of sale, PO2 Baloyo executed the pre-arranged signal of scratching his head with his left hand and subsequently arrested Delos Reyes.¹²

The members of the backup team, who were seated nearby rushed to the scene. PO2 Maru Olofernes (PO2 Olofernes) arrested Excija and ordered her to empty all her pockets. He recovered a small brown envelope, which contained the suspected illegal drugs and the buy-bust money. PO2 Baloyo on the other hand, recovered one envelope from Delos Reyes, which contained one heat-sealed plastic sachet containing white crystalline substance suspected to be *shabu*. They then went outside the restaurant to mark the seized items to avoid disturbing the other customers. The marking, physical inventory, and taking of photographs of the seized items were conducted in the presence of accused-appellants, media representative Cesar Apolinario (Apolinario) of GMA-7, and elected *barangay* official, *Kagawad* Jess Villamor (*Kagawad* Villamor). The team made efforts to secure the presence of a representative from the Department of Justice (DOJ), but no one appeared.¹³

⁹ Id. at 7.

¹⁰ Id.

¹¹ Id. at 8.

¹² Id.

¹³ Id. at 8-9.

The team then brought accused-appellants and the seized items to their office at the Station Drug Enforcement Unit (SDEU). They turned over the seized items to the duty investigator, PO2 Darwin Cruz, who prepared the requests for physical examination, drug test, and laboratory examination.¹⁴

The seized items were later brought to the crime laboratory for qualitative examination where it was received by Forensic Chemist Police Chief Inspector Bernardo Rivera Roque (PCI Roque). After conducting the examination, PCI Roque declared that the seized items tested positive for methamphetamine hydrochloride, otherwise known as *shabu*, a dangerous drug. Thereafter, PCI Roque sealed the subject specimens and turned them over to the evidence custodian, PO2 Junia Tuccad (PO2 Tuccad), prior to their submission in court.¹⁵

Version of the Defense

Accused-appellants denied the charges. Delos Reyes narrated that on the evening of 31 August 2018, while he was walking along Tandang Sora Avenue, a vehicle stopped in front of him. A group of individuals then came out and arrested him. He was told by his assailants, whom he would later learn were police officers, that he was the person they were looking for. He was brought to the police station where he was detained and saw Excija for the first time.¹⁶

Excija, on the other hand, claimed that at around 6:30 p.m. of 31 August 2018, she went to visit Leticia Gaylican (Gaylican) in the latter's home where she stayed for 30 minutes. As she was walking home, she was approached by a man, later identified as PO2 Olofernes, who gave the name of the person he was looking for. She told PO2 Olofernes that she did not know said person. PO2 Olofernes then asked her to go with him to the police station because she was wanted for questioning. At the police station, PO2 Olofernes took out a document containing details and information extracted from her and then ordered her to sign. Thereafter, she and Delos Reyes were photographed wearing orange shirts. They were then brought to the second floor of Jollibee Kingspoint. The police officers ordered them to sit at a table and took photographs of them. Subsequently, they were transferred to the parking lot of the restaurant and again, their photographs were taken, this time with several items laid down including a brown envelope. The witnesses to the operation only arrived after the police officers took the photographs.¹⁷

Ruling of the RTC

On 10 December 2018, the RTC rendered its Consolidated Decision convicting accused-appellants of their respective offenses:

¹⁴ Id. at 9.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 9-10.



WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. R-QZN-18-10898-CR, the Court finds accused **Kenneth Delos Reyes y Bulaong alias “Kenneth”** and **Jinky Excija y Gofredo alias “Jing”** **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165.

Accordingly, this Court sentences accused **Kenneth Delos Reyes y Bulaong alias “Kenneth”** and **Jinky Excija y Gofredo alias “Jing”** to suffer the penalty of ***Life Imprisonment*** and to each pay a Fine in the amount of Five Hundred Thousand (P500,000.00) Pesos.

2. In Criminal Case No. R-QZN-18-10899-CR, the Court finds accused **Jinky Excija y Gofredo alias “Jing”** **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of R.A. 9165.

Accordingly, this Court sentences accused **Jinky Excija y Gofredo alias “Jing”** to suffer the penalty of ***Life Imprisonment*** and to pay a Fine in the amount of Four Hundred Thousand (P400,000.00) Pesos.

3. In Criminal Case No. R-QZN-18-10900-CR, the Court finds accused **Kenneth Delos Reyes y Bulaong alias “Kenneth”** **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of R.A. 9165.

Accordingly, this Court sentences accused **Kenneth Delos Reyes y Bulaong alias “Kenneth”** to suffer the indeterminate penalty of imprisonment of **Twelve Years and One (1) Day as minimum** to **Fourteen (14) Years** as maximum and to pay a Fine in the amount of Three Hundred Thousand Pesos (P300,000.00).

x x x x

SO ORDERED.¹⁸

The RTC found that the prosecution established beyond reasonable doubt the illegal sale and possession of dangerous drugs by accused-appellants. It also held that the chain of custody of the seized prohibited drugs was not broken, and the integrity and evidentiary value of the seized items had been preserved. The RTC gave credence to the testimonies of the police officers absent any showing that they were motivated by reasons other than their duty as operatives against the proliferation of illegal drugs.¹⁹

Aggrieved, accused-appellants appealed to the CA.

Ruling of the CA

In its Decision dated 25 June 2020, the CA affirmed accused-appellants' conviction. The dispositive portion of said decision reads:

WHEREFORE, premises considered, the instant *Appeal* is

¹⁸ CA *rollo*, pp. 65-66

¹⁹ Id. at 63-64.

DENIED. The assailed Consolidated Decision dated December 10, 2018 of the RTC, Branch 82 of Quezon City in Criminal Cases Nos. R-QZN-18-10898-CR, R-QZN-18-10899-CR and R-QZN-18-10900-CR finding accused-appellants **Kenneth Delos Reyes y Bulaong alias "Kenneth" and Jinky Excija y Gofredo alias "Jing"** guilty beyond reasonable doubt of Violation of Sections 5 and 11 of Article II of R.A. No. 9165 is hereby **AFFIRMED.**

SO ORDERED.²⁰

The CA held that the prosecution duly established all the elements of Illegal Sale and Illegal Possession of illegal drugs by accused-appellants, warranting their conviction. It likewise held that the prosecution effectively established an unbroken link in the chain of custody, thus removing any doubt or suspicion that the seized items had been altered, substituted, or otherwise tampered with.²¹ The CA also accorded the police officers the presumption of regularity in the performance of their duties absent showing of any ill motive or odious intent on their part to impute such a serious crime against accused-appellants. On the other hand, the CA also disregarded accused-appellants' defense of denial, which was unsubstantiated by any clear and convincing evidence.²²

Hence, this appeal.

Issue

The sole issue in this case is whether the CA correctly affirmed accused-appellants' conviction for illegal sale and illegal possession of dangerous drugs punishable under Sections 5 and 11, Article II of RA No. 9165.

Ruling of the Court

The appeal is dismissed.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Art II of RA No. 9165 are: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment.²³ The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the illegal sale transaction. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.²⁴

On the other hand, the elements of Illegal Possession of Dangerous

²⁰ Id. at 16.

²¹ Id. at 13.

²² Id. at 15.

²³ *People v Cuevas*, 842 Phil. 709, 715 (2018).

²⁴ *People v. Amaro*, 786 Phil 139, 147 (2016).

Drugs under Section 11, Article II of RA No. 9165 are: (1) the accused was in possession of an item or object identified as a prohibited drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the said drug.²⁵

The RTC, as affirmed by the CA, found that the prosecution established all the foregoing elements of illegal sale and illegal possession of *shabu*. The Court sees no reason to disturb their common findings. Factual findings of the appellate court, affirming those of the trial court, are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness, or palpable error, which accused-appellants failed to establish in this case.²⁶

In Criminal Case No. R-QZN-18-10898-CR, the prosecution proved the guilt of accused-appellants for Illegal Sale of *shabu*. Delos Reyes, in conspiracy with Excija, were caught *in flagrante* selling *shabu* to PO2 Baloyo during a legitimate buy-bust operation. PO2 Baloyo positively identified accused-appellants as the ones who sold the *shabu* to him for ₱13,000.00.²⁷ The sale was consummated after the exchange of the buy-bust money and *shabu* between PO2 Baloyo and accused-appellants. PO2 Baloyo also identified the sachet subject of the sale, marked as "IAB-KD3-08/31/18," as well as the buy-bust money used for the transaction.²⁸

Meanwhile, in Criminal Case Nos. R-QZN-18-10899-CR and R-QZN-18-10900-CR, the prosecution duly established the elements of Illegal Possession. The testimonies of PO2 Baloyo and PO2 Olofernes, with the presentation of the *corpus delicti* in court, sufficiently proved accused-appellants' guilt. Apart from the sachet of *shabu* sold by accused-appellants, PO2 Baloyo recovered from Delos Reyes an envelope containing one heat-sealed plastic sachet with suspected *shabu*, which was marked "IAB-KD4-08/31/18."²⁹ PO2 Olofernes on the other hand, recovered from Excija an envelope with a plastic sachet containing suspected *shabu* marked as "MO-JGE1-08-31-18," as well as the buy-bust money.³⁰ Accused-appellants freely and consciously possessed said prohibited drug, without any authority or license to possess the same.³¹

Accused-appellants, however, claim that the chain of custody was not duly proven since the evidence custodian or desk duty officer was not presented in court. There was, therefore, no basis for the trial court to determine whatever precautions they took in safeguarding of the seized drugs.³²

²⁵ *People v Cuevas*, supra.

²⁶ *People v. Bontuyan*, 742 Phil. 788, 798 (2014).

²⁷ CA *rollo*, p. 55

²⁸ *Rollo*, p. 8.

²⁹ *Id.* at 8-9.

³⁰ CA *rollo*, p. 58.

³¹ *Id.* at 63.

³² *Id.* at 42.

Section 21, Article II of RA No. 9165, as amended by RA No. 10640,³³ the applicable law at the time of the commission of the offenses,³⁴ requires, among others, that the marking, physical inventory, and photograph-taking of the seized items be conducted immediately after the seizure and confiscation of the same. It is mandatory to conduct the physical inventory and photograph-taking in the presence of the accused or the person from whom the items were seized, or his or her representative or counsel, as well these required witnesses: (a) if **prior** to the amendment of RA No. 9165 by RA 10640 on 07 August 2014, “a representative from the media AND the Department of Justice (DOJ), and any elected public official”; or (b) if **after** said amendment, “[an] elected public official and a representative of the National Prosecution Service OR the media.”³⁵

The Court upholds the common findings of the RTC and CA that there was compliance with Section 21, Article II of RA No. 9165, as amended by RA No. 10640, and upholding the preservation and disposition of the seized *shabu*, as well as the chain of custody requirements. The seized items were marked, inventoried, and photographed, upon seizure and in the presence of accused-appellants, *Kagawad* Villamor, and media representative Apolinario. The seized items were all brought to the SDEU, where the investigator prepared the necessary documents. Later, the seized items were brought by PO2 Baloyo and PO2 Olofernes to the crime laboratory for examination. After examination, PCI Roque sealed the same and turned it over to the evidence custodian, PO2 Tuccad for safe keeping.³⁶ While the desk officer and evidence custodian were not presented in court, their non-presentation does not constitute a gap in the chain of custody. In *People v. Padua*,³⁷ the Court held that not all who came in contact with the seized item are required to testify in court. After all, there is nothing in RA No. 9165, or its implementing rules, that imposes such requirement.

All the foregoing considered, the Court affirms the respective conviction of accused-appellants for violation of Sections 5 and 11, Article II and of RA No. 9165. The Court likewise affirms the penalties imposed by the CA for being in accordance with the law.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated 25 June 2020 of the Court of Appeals in CA-G.R. CR-HC NO. 12627, finding accused-appellants Kenneth Delos Reyes *y* Bulaong alias “Kenneth” and Jinky Excija *y* Gofredo alias “Jing” **GUILTY** beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165, is **AFFIRMED**.

³³ 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: 15 July 2014.

³⁴ The Information alleged that the offenses were committed on 31 August 2018.

³⁵ *People v. Bangalan*, 839 Phil 455, 461 (2018).

³⁶ *Rollo*, pp. 8-9.

³⁷ 639 Phil. 235, 251 (2010).



SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
bom

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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OCT 13 2022

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