



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 6, 2022, which reads as follows:

“G.R. No. 254868 (*People of the Philippines v. Ricky Felizardo y Cayabyab*). — On appeal¹ is the May 24, 2019 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09353, which affirmed *in toto* the March 30, 2017 Decision³ of the Regional Trial Court (RTC), Branch 44, Dagupan City in Criminal Case No. 2013-0678-D, finding accused-appellant Ricky Felizardo y Cayabyab (Ricky) guilty of violation of Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Antecedents

In an Information⁵ dated October 31, 2013, Ricky was charged with a violation of Section 5, Article II of RA 9165. The accusatory portion thereof reads:

That in the afternoon of October 17, 2013 in Brgy. Bued, Calasiao, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused did, then and there, willfully, unlawfully and criminally sell, trade and delivered one (1) heat-sealed transparent plastic sachet of methamphetamine hydrochloride, also known as shabu, weighing 0.010 gram to an undercover PDEA agent during a buy-bust operation, without any valid permit or legal

¹ *Rollo*, pp. 21-23.

² *Id.* at 4-20. Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Ma. Luisa Quijano-Padilla and Gabriel T. Robeniol.

³ *Records*, pp. 164-173; penned by Judge Genoveva Coching-Maramba.

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 *Id.* at 1.

authority to do so.

CONTRARY to Section 5, Art. II of RA 9165.⁶

Version of the Prosecution

At around 2:30 p.m. on October 11, 2013, Investigating Officer I Christopher Ramos (IO1 Ramos) of the Philippine Drug Enforcement Agency (PDEA) in Dagupan City, received a tip from a confidential informant that a certain Bong was selling illegal drugs at his residence in *Brgy. Bued, Calasiao, Pangasinan*. Upon verification, they found out that Bong, whose real name was Samson Parayno, was included in the watch list of the Calasiao Police Station. They relayed the information to their Regional Office, which instructed them to conduct a buy-bust operation.⁷

At about 3:00 p.m. on October 17, 2013, the confidential informant returned to the PDEA office⁸ and was instructed by IO1 Ramos to arrange a drug deal between him and Bong. Thereafter, their team leader formed a buy-bust team with IO1 Ramos as the designated poseur-buyer, Police Officer 2 Jojo Vallo (PO2 Vallo) as immediate backup, Police Officer 1 Glen Almonte (PO1 Almonte) as perimeter backup, and the other PDEA operatives as backup officers.⁹ Agent Richard Tinong also prepared the Authority to Operate¹⁰ and Pre-Operation Report.¹¹ Meanwhile, IO1 Ramos prepared the buy-bust money consisting of one genuine ₱500.00 bill with his initials "CFR," and placed on top of the boodle money to make it appear as ₱5,000.00.¹²

At around 6:00 p.m., the team, along with the confidential informant, proceeded to *Brgy. Bued, Calasiao, Pangasinan*. Upon arrival at the area, IO1 Ramos and the confidential informant walked towards Bong's house. When they got there, they saw two persons leaving who appeared to be under the influence of drugs. A person was also standing in front of the house, who the informant identified as Bong. Upon seeing them, Bong invited them inside his house.¹³

⁶ Id.

⁷ TSN, April 28, 2015, pp. 3-4.

⁸ Id. at 4.

⁹ TSN, September 17, 2015, pp. 4-5.

¹⁰ Records, p. 24.

¹¹ Id. at 25.

¹² TSN, April 28, 2015, pp. 4-5.

¹³ Id. at 5-7.

The confidential informant introduced IO1 Ramos to Bong as the buyer of shabu. Bong mentioned that his customers bought his stocks earlier that day so he might not have enough left to sell to IO1 Ramos. Then Bong introduced IO1 Ramos to his *kumpare*, alias Rick, later identified as accused-appellant Ricky, who was sitting at the table by the main door. Ricky stood up and went outside briefly. Upon returning, Ricky gave IO1 Ramos one heat-sealed transparent plastic sachet containing white crystalline substance. Bong demanded payment for the item so IO1 Ramos handed over the marked ₱500.00 bill without the boodle money to Ricky. Thereafter, IO1 Ramos performed the pre-arranged signal of calling PO2 Vallo's cellular phone. Upon the arrival of the rest of the team, IO1 Ramos grabbed the hand of Ricky while PO2 Vallo grabbed Bong. They introduced themselves as police officers, informed them of their rights, and arrested Ricky and Bong.¹⁴

IO1 Ramos immediately marked the sachet containing white crystalline substance with "A CFR 10/17/13," and signed the same. He also marked the other drug paraphernalia seized from Bong's house. Thereafter, they went to the police station to have the incident recorded in the police blotter. They proceeded to the PDEA office afterwards where IO1 Ramos conducted the inventory¹⁵ of the seized items in the presence of Melanie Heng of ABS-CBN, *barangay* official Arnold Lagatao, and accused-appellant Ricky. IO1 Ramos also prepared the booking sheet¹⁶ and request for laboratory examination¹⁷ of the seized drugs. He delivered the letter request together with the seized items to the crime laboratory which were received by Forensic Chemist Police Chief Inspector Myrna Malojo-Todeño (PCI Malojo-Todeño).¹⁸

After a qualitative examination, PCI Malojo-Todeño found the seized items to be positive for methamphetamine hydrochloride, a dangerous drug.¹⁹ Afterwards, she placed her own markings on the seized items, stored them in a sealed paper envelope, and turned them over to the evidence custodian, Police Officer 3 Elmer Manuel (PO3 Manuel).²⁰ Later on, she also personally retrieved the seized drugs for presentation before the trial court.²¹

¹⁴ Id. at 7-11; TSN, September 17, 2015, pp. 7-9.

¹⁵ Records, p. 22-23.

¹⁶ Id. at 15.

¹⁷ Id. at 19.

¹⁸ Id. at 10-16.

¹⁹ Id. at 20.

²⁰ TSN, August 14, 2014, pp. 6-8; TSN, October 21, 2014, p. 4.

²¹ TSN, August 14, 2014, p. 10; TSN, October 21, 2014, p. 6.

Version of the Defense

On the other hand, Ricky denied the charge against him. On October 17, 2013 at about 10:00 a.m., Ricky was in Ambonao, Calasio, Pangasinan having his electric fan repaired. Afterwards, he went to the muffler shop of a certain Mr. Maravilla who requested him to adjust the gate of his house which was affected by the road widening in their area. He stayed there until 6:40 p.m. and headed to Bong's house after the latter texted and invited him over.²²

Upon arrival at Bong's house, the latter offered Ricky a drink. Thereafter, someone knocked on the door. When Bong opened the door, several individuals, later identified as PDEA agents, handcuffed Bong and Ricky and ordered them to lie down on the floor. Ricky denied doing anything wrong but he was told not to resist. The PDEA agents searched his pocket for marked money but they did not retrieve anything. Then, they went to Bong's room and took several items and placed them on top of a table. Thereafter, they took Bong and Ricky to the police station for blotter. They headed to the PDEA office afterwards where the PDEA agents made some markings on the seized items they allegedly seized from Bong and Ricky. Ricky alleged that he was made to sign a document the contents of which he had no knowledge of. After refusing to sign, he was threatened by a PDEA agent who showed him a plastic bottle full of sachets of white crystalline substance which they would use as evidence against him. The PDEA agents also tried to take a picture of Ricky with the said bottle. Out of fear, Ricky signed the document.²³

Ruling of the Regional Trial Court

In its March 30, 2017 Decision,²⁴ the RTC found Ricky guilty beyond reasonable doubt of the crime charged. The dispositive portion thereof reads:

WHEREFORE, judgment is hereby rendered finding accused **Ricky Felizardo y Cayabyab @ Rick** guilty beyond reasonable doubt of the crime of Violation of Art. II, Sec. 5 of R.A. 9165 otherwise known as the Dangerous Drugs Act of 2002 and is hereby sentenced to suffer life imprisonment and to pay a fine in the amount of Five Hundred Thousand (Php500,000.00) pesos.

²² Records, p. 154; See Judicial Affidavit of Accused Ricky Felizardo.

²³ Id. at 155-156.

²⁴ Id. at 164-173.

The subject one (1) plastic sachet of Shabu as well as the buy-bust money is hereby ordered disposed of in accordance with law.

With costs against said accused.

SO ORDERED.²⁵ (Emphasis in the original)

Aggrieved, Ricky filed an appeal.²⁶ He pointed out that the buy-bust operation was conducted against Bong, and argued that the sale transaction was consummated between IO1 Ramos and Bong, and not himself. He also claimed that the conduct of the buy-bust operation was irregular considering the police officers' failure to secure the presence of the media and Department of Justice (DOJ) representatives, or any elected public official during the seizure and confiscation of the alleged *shabu*. Consequently, the prosecution failed to prove an unbroken chain of custody.²⁷

He also pointed out more irregularities in the conduct of the buy-bust operation: (1) that it was irregular for the marked money to be not initialed by all the members of the buy-bust team; and (2) that the seized items were marked in the PDEA office instead of the place of seizure and/or arrest. Moreover, he pointed out that PO2 Vallo did not witness Ricky hand over the illegal drug to IO1 Ramos thereby discrediting the latter's testimony. Due to such irregularities, the presumption of regularity in the performance of official duty on the part of the PDEA agents cannot stand.²⁸ Thus, the prosecution failed to discharge the burden of proving his guilt.²⁹

The People, through the Office of Solicitor General (OSG), countered that all the elements of illegal sale of drugs were duly established by the prosecution. It contended that there was no showing of any ill motive on the part of the police officers to testify against Ricky to raise doubt on their credibility. Moreover, it maintained that the chain of custody was duly proven. Nevertheless, non-compliance with Section 21 of RA 9165 is not necessarily fatal to the prosecution's case.³⁰

Ruling of the Court of Appeals

²⁵ Id. at 173.

²⁶ Id. at 175.

²⁷ CA *rollo*, pp. 14-22.

²⁸ Id. at 22-28.

²⁹ Id. at 28-32.

³⁰ Id. at 53-67.

In its assailed May 24, 2019 Decision,³¹ the CA affirmed *in toto* the RTC Decision. The *fallo* of the Decision reads:

FOR THESE REASONS, the instant appeal is hereby ordered **DISMISSED**, and the appealed Decision dated 30 March 2017 rendered by Branch 44 of the First Judicial Region of Dagupan City in Criminal Case No. 2013-0678-D is **AFFIRMED *in toto***.

SO ORDERED.³² (Emphasis and italics in the original)

Ricky filed a Motion for Reconsideration³³ but it was later denied in the CA's Resolution dated November 7, 2019.³⁴

Discontented, Ricky elevated the matter before Us.³⁵ Both parties manifested to adopt their briefs filed before the CA.³⁶

Issue

The issue before Us is whether Ricky is guilty beyond reasonable doubt of violation of Sec. 5, Article II of RA 9165.

Our Ruling

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and the reviewing tribunal bears the duty to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.³⁷ The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.³⁸

To secure a conviction for Illegal Sale of Dangerous Drugs under Sec. 5, Art. II of RA 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.³⁹ What is important is that the

³¹ *Rollo*, pp. 4-20.

³² *Id.* at 19.

³³ *CA rollo*, pp. 111-123.

³⁴ *Id.* at 159-160.

³⁵ *Id.* at 167-168.

³⁶ *Rollo*, pp. 29-31, 35-37.

³⁷ *People v. Dahil*, 750 Phil. 212, 225 (2015), citing *People v. Balagat*, 604 Phil. 529, 534 (2009).

³⁸ *People v. Comboy*, 782 Phil. 187, 196 (2015). Citations omitted.

³⁹ *People v. Ismael*, 806 Phil. 21, 29 (2017), citing *People v. Alberto*, 625 Phil. 545, 554 (2010), citing *People v. Dumlao*, 584 Phil. 732, 739 (2009).

sale transaction of illegal drugs actually took place, and that the object of the transaction is properly presented as evidence in court, and is shown to be the very same drugs seized from the accused.⁴⁰ In other words, the integrity and identity of the dangerous drug seized from the accused must be preserved since it constitutes the *corpus delicti* of the offense.⁴¹ Thus, in order to obviate any unnecessary doubts on such identity of the seized drug, the chain of custody must be proven. In other words, they must establish the authorized movements and custody of seized drugs from the time of seizure and confiscation, to receipt in the forensic laboratory, to safekeeping, and to presentation in court for destruction.⁴²

As part of the chain of custody procedure, the apprehending team is mandated, immediately after seizure and confiscation, to conduct a physical inventory and to photograph the seized items 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 10640⁴³ in 2014: (1) a representative from the media; (2) representative from the DOJ; and (3) any elected public official. The presence of these insulating witnesses removes any suspicion of switching, planting, or contamination of evidence.⁴⁴

In this case, the testimonies of the prosecution witnesses and the pieces of documentary and object evidence presented during trial established the consummation of the sale of illegal drugs. IO1 Ramos positively identified Ricky as the person who sold shabu to him in exchange for the marked ₱500.00 bill. IO1 Ramos kept the seized drugs in his possession until he turned it over to PCI Malojo-Todeño,⁴⁵ who in turn delivered to PO3 Manuel for safekeeping, and later on retrieved it from the latter for presentation in court.

However, We note that the police officers failed to comply with the witness requirement as there was no representative from the DOJ who witnessed the inventory. IO1 Ramos testified as follows:

⁴⁰ *People v. Ismael*, 806 Phil. 21, 29 (2017).

⁴¹ *People v. Jaafar*, 803 Phil. 582, 591 (2017), citing *People v. Simbahon*, 449 Phil. 74, 81 (2003).

⁴² *People v. Guzon*, 719 Phil. 441, 451 (2013), citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

⁴³ 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.

⁴⁴ *People v. Mendoza*, 736 Phil. 749, 764 (2014). Citation omitted.

⁴⁵ TSN, April 28, 2015, pp. 16-17.

Q: And what did you do in your office?

A: Inventory was done, sir.

Q: When you said inventory, what in particular did you do?

A: We called the attention of media personnel to witness the inventory and an elected official, sir.

x x x x

Q: And who were present when you conducted the inventory in your office?

A: The media correspondence from ABS-CBN Melanie Heng and an elected official Arnold Lagatao.⁴⁶

Nevertheless, non-compliance with the witness requirement may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure their presence.⁴⁷ In doing so, the arresting officers must clearly state this ground in their sworn affidavit, coupled with an explanation of the steps they took to preserve the integrity of the seized items.⁴⁸ In *People v. Sipin*,⁴⁹ the Court held that the absence of one or more of the required witnesses must be justified due to reasons such as:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.⁵⁰

⁴⁶ Id. at 14.

⁴⁷ *People v. Manansala*, 826 Phil. 578, 591 (2018).

⁴⁸ *People v. Saragena*, 817 Phil. 117, 144 (2017).

⁴⁹ 833 Phil. 67 (2018).

⁵⁰ Id. at 93.

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In the instant case, the prosecution failed to justify the absence of the representative from the DOJ during the inventory of the seized items. The testimonies of IO1 Ramos and PO2 Vallo and their sworn affidavits are bereft of any explanation as to why they were not able to secure the presence of a DOJ representative. In fact, it does not even appear that they exerted any effort at all to secure its presence. Their failure to comply with the three-witness rule necessarily creates a gap in the chain of custody. Consequently, this casts doubt as to the integrity and identity of the seized items, and is fatal to the prosecution's case.

In view of the unjustified non-compliance with the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Ricky were compromised. Accordingly, an acquittal is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated May 24, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 09353 is hereby **REVERSED** and **SET ASIDE**. Accordingly, **RICKY FELIZARDO y CAYABYAB** is **ACQUITTED** of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

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

Let entry of judgment be issued immediately.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court ^{7/12}

by:

mtfubulo
MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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