



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **27 April 2022** which reads as follows:*

“G.R. No. 255056 (*People of the Philippines v. Allem Jason Bagul y Osmena)**. — Assailed in this appeal¹ is the December 5, 2019 Decision² of the Court of Appeals (CA) in CA-G.R. CR HC No. 09988, which affirmed the September 25, 2017 Decision³ of the Regional Trial Court (RTC), Branch 44, Dagupan City, in Criminal Case No. 2013-0339-D finding accused-appellant Allem Jason Bagul y Osmena (Allem) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165⁴ for Illegal Sale of Dangerous Drugs.

The Antecedents

In an Information⁵ dated May 22, 2013, Allem was charged with violation of Section 5, Article II of RA 9165 allegedly committed as follows:

That at around 4:45 o'clock in the afternoon of May 21, 2013 inside Jollibee Calasiao Branch, Calasiao, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully, and criminally possess, sell and deliver to a poseur-buyer PDEA Agent a tea bag size transparent plastic sachet containing methamphetamine hydrochloride or shabu weighing 4.730 grams in exchange for Eighteen Thousand Pesos (PhP18,000.00) consisting of One Thousand Peso Bill and boodle money, without authority to do so.

* Also referred to as Osmeña in some parts of the records.

¹ *Rollo*, pp. 21-23.

² *Id.* at 2-20. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Japar B. Dimaampao (now a Member of the Court) and Edwin D. Sorongon.

³ *CA rollo*, pp. 49-55. 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 ACTS OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.” Approved: June 7, 2002.

⁵ Records, pp. 1-2.

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Contrary to Section 5, Article II, R.A. 9165.⁶

Allem pleaded not guilty to the charge on arraignment.⁷

Version of the Prosecution

The prosecution presented the following witnesses: the poseur-buyer, Intelligence Officer (IO) 1 Jerio George Inocencio (IO1 Inocencio); the forensic chemist Police Chief Inspector Emelda Bessara Roderos (PCI Roderos); *Barangay Kagawad* Roger Paragas (*Kagawad* Paragas); and media representatives Nica Tomines (Nica) and Sheila Finuliar (Shiela).⁸

During trial, however, the parties agreed to dispense with the testimonies of PCI Roderos, *Kagawad* Paragas and media representatives Nica and Shiela, and in lieu thereof, entered into stipulations as to their supposed contents.⁹

With respect to forensic chemist PCI Roderos, it was stipulated that she received a properly marked and sealed tea bag size transparent plastic sachet from IO1 Inocencio for laboratory examination. In her Chemistry Report No. D-057-2013-U,¹⁰ PCI Roderos confirmed that the contents of the plastic sachet tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. Thereafter, PCI Roderos marked and sealed the same plastic sachet to ensure its integrity, and gave it to the evidence custodian for safekeeping.¹¹

The parties likewise stipulated that *Kagawad* Paragas, an elected public official, and media representatives Nica and Shiela, witnessed the inventory of the seized plastic sachet, and signed the Certificate of Inventory of Drug Evidence.¹²

Thus, IO1 Inocencio testified on the circumstances leading to Allem's arrest.

IO1 Inocencio of the Philippine Drug Enforcement Agency (PDEA) Tapuac District, Dagupan City, recounted that in the morning of May 21, 2013, an informant reported that a certain "Jason," later identified as Allem, was involved in illegal drug activities in Urdaneta City. The informant allegedly ordered five grams of *shabu* from Allem who agreed to meet him at Jollibee Calasiao, Pangasinan. Acting on this report, a buy-bust operation was organized, with IO1 Inocencio as poseur-buyer. IO1 Inocencio prepared the buy-bust money consisting of one genuine ₱1,000.00-bill, and 17 newspaper cutouts as boodle money.¹³

The buy-bust team members, together with the informant, then proceeded to Jollibee Calasiao. There, the informant introduced IO1 Inocencio to Allem as the

⁶ Id. at 1.

⁷ Id. at 33. RTC Order dated November 28, 2013.

⁸ Rollo, pp. 5-6.

⁹ Id.

¹⁰ Records, p. 70.

¹¹ Rollo, p. 5.

¹² Id. at 5-6.

¹³ Id. at 6.

person interested to buy five grams of *shabu*. Allem led the two to the male rest room where he demanded for the payment. IO1 Inocencio, however, asked Allem to show the item first, but Allem insisted to see the money. When IO1 Inocencio showed Allem the money, he handed IO1 Inocencio a tea bag-size transparent plastic sachet containing white crystalline substance suspected to be *shabu*. In turn, IO1 Inocencio handed Allem the buy-bust money, and immediately grabbed Allem's hand and introduced himself as a PDEA Agent.¹⁴

IO1 Inocencio then brought Allem out of the comfort room, and marked the plastic sachet with his initials "JJCI," and the date, May 21, 2013. Allem, however, allegedly experienced seizure. This prompted the rest of the buy-bust team to come to IO1 Inocencio's aid. Since the arrest was causing a commotion, the team decided to leave Jollibee Calasiao and proceed to the PDEA Office. IO1 Inocencio remained in possession of the plastic sachet, and upon arrival at their office, he conducted an inventory of the seized items in the presence of *Kagawad* Paragas and media representatives Nica and Shiela, who all signed the Certificate of Inventory of Drug Evidence.¹⁵ Allem also witnessed the inventory but he refused to sign.¹⁶ Photos of Allem and the evidence recovered from him, together with the witnesses, were taken at the PDEA Office.¹⁷ IO1 Inocencio also prepared the letter request for laboratory examination of the contents of the plastic sachet, which he submitted to the Philippine National Police Urdaneta City Crime Laboratory Office.¹⁸ Upon qualitative examination, the seized item tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.¹⁹

Version of the Defense

Allem was the sole witness for the defense. He recalled that in the morning of May 21, 2013, he was seated inside Jollibee Calasiao while waiting for his companion who ordered food for them. Suddenly, a stranger approached him and asked Allem to go with him. When Allem declined, the stranger held him, and two more individuals forced Allem to come with them. Allem resisted but he was boxed in his stomach causing him to faint. The group of individuals then brought Allem outside and boarded him in their vehicle going to Astrodome PDEA Office. Allem claimed that he was shown with a list of names and told that he would be released if he admitted to knowing anyone in the said list. When he answered in the negative, the group threatened to kill him, which caused Allem to faint again. The next day, Allem was brought in for inquest. He claimed that the charge against him was fabricated, and the plastic sachet allegedly recovered from him was planted by the PDEA officers.²⁰

¹⁴ Id. at 6-7.

¹⁵ Records, p. 16.

¹⁶ Id.

¹⁷ Id. at 19-21.

¹⁸ TSN, November 3, 2014, p. 13.

¹⁹ Records, p. 14.

²⁰ TSN, September 11, 2017, pp. 2-5.

Ruling of the Regional Trial Court

In its September 25, 2017 Decision,²¹ the RTC found Allem guilty as charged. It gave credence to the positive testimonies of the prosecution witnesses over Allem's defense of denial. The prosecution has duly preserved the integrity and evidentiary value of the seized *shabu* from the moment of confiscation, until its presentation in court.²² The decretal portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered finding accused, **Allem Jason Bagul y Osmena a.k.a. "Jason"** 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.

The subject one (1) plastic sachet of Shabu is hereby ordered disposed of in accordance with law.

With costs against said accused.

SO ORDERED.²³

Ruling of the Court of Appeals

In its assailed December 5, 2019 Decision, the CA affirmed the RTC's ruling. Hence, this appeal.

The parties opted not to file supplemental briefs with this Court, and instead adopted their discussions in their briefs filed with the CA.²⁴

Issue

For this Court's resolution is the issue of whether or not Allem's guilt for violating Section 5, Article II of RA 9165 was proven beyond reasonable doubt.

Our Ruling

We rule in the negative.

In cases of Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.²⁵

²¹ CA rollo, pp. 49-55.

²² Id. at 53-55.

²³ Id. at 55.

²⁴ Rollo, pp. 31-40.

²⁵ *People v. Acabo*, G.R. No. 241081, February 11, 2019.

In his Brief, Allem mainly argues that the chain of custody has been broken due to the absence of a Department of Justice (DOJ) representative during the inventory of the seized items. There was likewise no testimony as to how IO1 Inocencio handled the subject plastic sachet.²⁶

We agree with Allem that the prosecution's evidence failed to show that the procedure mandated to preserve the integrity of the drug evidence was properly observed.

Section 21, Article II of RA 9165, which is in force at the time of the subject incident, lays down the procedure to be followed by the apprehending team in the confiscation and seizure of illegal drugs as follows:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

This refers to the Chain of Custody Rule, which was further expounded under the Implementing Rules and Regulations (IRR) of RA 9165, viz.:

(a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official 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, further that non-compliance with 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 of and custody over said items;

The foregoing provisions require that the marking, photographing, and inventory of the seized items must be done immediately after seizure and confiscation of the items in the presence of three witnesses - a representative from the media, the DOJ, and any elected official. The purpose of this rule is to preserve the integrity and evidentiary value of the seized dangerous drugs in order to fully remove doubts as to its identity.²⁷

²⁶ CA rollo, pp. 41-43.

²⁷ See *People v. Caramat*, G.R. No. 231366, December 11, 2019, citing *People v. Alboka*, 826 Phil. 487, 502 (2018).

Here, the records show that the plastic sachet containing *shabu* was marked by IO1 Inocencio immediately after confiscation at the place of arrest. Thereafter, the buy-bust team brought Allem and the seized evidence to their office where IO1 Inocencio conducted a physical inventory and took photographs of the drug in the presence of Allem, *Kagawad* Paragas and media representatives Nica and Shiela. Evident, however, is the absence of a representative from the DOJ to witness the said inventory. We note that the PDEA agents were informed of Allem's alleged illegal activities in the morning of May 21, 2013 at around 9:00 a.m. Promptly, a buy-bust operation was planned, but the same was conducted only in the late afternoon of the same day. Thus, the PDEA officers had sufficient time to procure a DOJ representative, yet, they have failed to do so.

In a plethora of cases, the Court has emphasized the importance of the presence of the three required witnesses during the inventory and photographing of the seized items, as the same protects against the possibility of planting, switching, contamination or loss of the illegal drugs.²⁸ This requirement seeks to avoid frame ups or wrongful arrests of persons suspected to be violators of the law. The presence of the three witnesses assures that the officers conducting the operation do not plant evidence on the person or effects of the accused.²⁹ Significantly, the nature of buy-bust operations being planned makes this requirement easy to observe for the buy-bust team, considering that they have enough time to secure their attendance during the inventory and photograph taking of the seized contraband, from the moment they receive the information regarding the drug activities of the accused, until the conduct of the actual buy-bust operation.

Concededly, however, there are instances wherein a departure from the aforesaid mandatory procedures is permissible. Section 21 of the IRR of RA 9165 provides that "non-compliance with 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. However, for this provision to be effective, the prosecution must (i) recognize any lapse on the part of the apprehending officers; and (ii) be able to justify the same."³⁰

On the first requisite, the prosecution must first recognize the lapses on the part of the apprehending team and thereafter explain the same with justifiable reasons, which must, by themselves, be credible. In addition, they must be able to show genuine and sufficient efforts to secure the required witnesses.³¹ In this case, IO1 Inocencio testified that only two of the required witnesses were present during the inventory and photograph taking of the seized evidence, an elected public official in the person of *Kagawad* Paragas and members of the media, Nica and

²⁸ See *People v. Arellaga*, G.R. No. 231796, August 24, 2020; *Tañamor v. People*, G.R. No. 228132, March 11, 2020; *Hedreyda v. People*, G.R. No. 243313, November 27, 2019; and *People v. Tomas*, G.R. No. 241631, March 11, 2019.

²⁹ *People v. Bahuyot*, G.R. No. 243390, October 5, 2020.

³⁰ *People v. Ortiz*, G.R. No. 238620, February 12, 2020.

³¹ See *People v. Patacsil*, 838 Phil. 320, 332 (2018).

Shiela. There was no representative from the DOJ. However, an examination of the records reveals that the prosecution failed to even acknowledge this procedural deviation, much less to advance justifiable reasons therefor. In fact, IO1 Inocencio was not even asked about the absence of a DOJ representative during the proceedings before the trial court. There was no testimony at all to this effect.³²

On this note, the Court finds it suitable to echo the following pronouncement on the subject matter:

In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21[Article II] of RA 9165, as amended. As such, they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.³³

In the case of *People v. Baluyot*,³⁴ the Court exonerated the accused-appellant for failure of the apprehending team to procure a DOJ representative to witness the inventory of the seized contraband, and the concomitant failure of the prosecution to explain or justify such absence.

Jurisprudence dictates that breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* would have been compromised.³⁵

Likewise, it cannot escape Our attention that while the parties dispensed with the presentation of PO1 DC Quilang (PO1 Quilang), and resorted to a stipulation of his supposed testimony, such stipulation was limited only to the fact that it was him who received the specimen at the crime laboratory.³⁶ There was no mention of the precautions he took to ensure the integrity of the seized drug. This is in clear disregard of the mandate that every link in the chain must testify, describing how and from whom the seized evidence was received, its condition in which it was delivered to the next link in the chain, and the precautions taken to ensure its integrity.³⁷

³² TSN, November 3, 2014, pp.12-13.

³³ See *People v. Miranda*, 824 Phil. 1042, 1060 (2018).

³⁴ G.R. No. 243390, October 5, 2020.

³⁵ *People v. Ortiz*, supra note 30.

³⁶ Records, p. 111. RTC Order dated September 1, 2015.

³⁷ *People v. Alon-Alon*, G.R. No. 237803, November 27, 2019.

In *People v. Sultan*,³⁸ this Court acquitted the accused-appellant when it found that the prosecution did not proffer the testimonies of persons who handled the seized items without ample explanation. This Court explained:

The prosecution has the “burden of establishing the identity of the seized items.” Considering the sequence of the people who have dealt with the confiscated articles, the prosecution failed to justify why three (3) other significant persons were not presented as witnesses. **These persons were the desk officer who supposedly recorded the incident in the police blotter, the investigator who prepared the request for examination, and the police officer who received the articles in the laboratory.** “In effect, there is no reasonable guaranty as to the integrity of the exhibits inasmuch as it failed to rule out the possibility of substitution of the exhibits, which cannot but inure to its own detriment.” (Emphasis supplied)

Absent the testimony of PO1 Quilang, the third link in the chain of custody, which refers to the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination, could not be reasonably established.

In sum, the foregoing lapses in the chain of custody of the illegal drug purportedly seized from Allem fatally compromised its integrity and evidentiary value. Hence, his acquittal is in order.

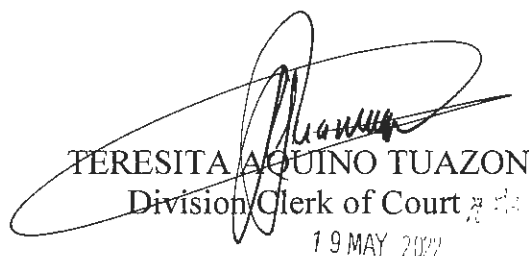
WHEREFORE, the appeal is hereby **GRANTED**. The assailed December 05, 2019 Decision rendered by the Court of Appeals in CA-G.R. CR HC No. 09988 is **REVERSED** and **SET ASIDE**. Accused-appellant Allem Jason Bagul y Osmena is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

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 taken hereon within five days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.” (*Perlas-Bernabe, S.A.J., on official leave; Hernando, J., Acting Chairperson per Special Order No. 2887 dated April 8, 2022.*)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
19 MAY 2022

³⁸ G.R. No. 225210, August 7, 2019, citing *People v. Sagana*, 815 Phil. 356, (2017).

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