



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 9, 2022** which reads as follows:*

**“G.R. No. 249232 (*Reynaldo Gamayo y Conte v. People of the Philippines*).** – Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated May 22, 2019 and the Resolution<sup>3</sup> dated September 4, 2019 of the Court of Appeals (CA), in CA-G.R. CR No. 40883. The CA denied the appeal filed by Reynaldo Gamayo y Conte (petitioner) and affirmed the Decision<sup>4</sup> dated October 26, 2017 of Branch 57, Regional Trial Court (RTC), San Carlos City, Pangasinan in Criminal Case No. SCC-8435 which found him guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs under Section 11, Article II of Republic Act No. (RA) 9165,<sup>5</sup> otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

*The Antecedents*

The instant case stemmed from an Information dated November 23, 2015 charging petitioner with violation of Section 11, Article II of RA 9165.<sup>6</sup> The accusatory portion of which states:

“That on or about 05 October 2015 in San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of the law, did then and

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<sup>1</sup> *Rollo*, pp. 11-30.

<sup>2</sup> *Id.* at 37-50; penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court) with Associate Justices Maria Elisa Sempio Diy and Ronaldo Roberto B. Martin, concurring.

<sup>3</sup> *Id.* at 52-53.

<sup>4</sup> *Id.* at 82-85; penned by Acting Presiding Judge Jaime L. Dojillo, Jr.

<sup>5</sup> 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 on June 7, 2002.

<sup>6</sup> *Rollo*, p. 37.

there, willfully, unlawfully and feloniously have in his possession control and custody, four (4) heat sealed plastic sachet[s] containing Methamphetamine Hydrochloride commonly known as shabu, a prohibited drug weighing 0.048 gram, 1.55 gram, 0.60 gram, and 1.62 gram or a total of 3.818 grams.

Contrary to Sec. 11, Article II of R.A. 9165.”<sup>7</sup>

When arraigned on September 28, 2016, petitioner pleaded not guilty to the offense charged.<sup>8</sup>

Trial ensued.

### *Version of the Prosecution*

The prosecution established that on October 5, 2015 at around 2:20 a.m., a team of police officers from the Philippine National Police, San Carlos City, Pangasinan was dispatched to implement the Search Warrant No. 2015-33 issued by Executive Judge Hermogenes C. Fernandez against petitioner. The warrant was for the seizure of *shabu* and drug paraphernalia allegedly kept in petitioner’s house.<sup>9</sup> The designated searching officers were Police Officer 2 Amor Olieca and PO1 Wherber A. Poquiz (PO1 Poquiz). *Barangay Kagawad* Allen Joel Posadas (*Kagawad* Posadas), *Barangay Kagawad* Marites B. Revoldila (*Kagawad* Revoldila), Department of Justice (DOJ) representative Jonathan Ferrer (Ferrer), and media representative Lorna C. Hermogeno (Hermogeno) were invited to witness the search.<sup>10</sup>

When the police officers arrived at the target area, they only found thereat petitioner’s common-law wife, Marlyn Castro (Marlyn). After Police Officer 3 Alexander Austria (PO3 Austria) showed her the search warrant, the team searched petitioner’s house in the presence of *Kagawad* Posadas, *Kagawad* Revoldila, DOJ representative Ferrer, media representative Hermogeno, and Marlyn.<sup>11</sup> Then, the searching officers went inside petitioner’s room and found a pack of Mighty cigarettes placed on top of a cabinet. When they opened the cigarette pack, the police officers discovered inside four plastic sachets of suspected *shabu*.<sup>12</sup> PO1 Poquiz marked the sachets with “OP-1” to “OP-4” and turned them over to PO3 Austria.

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<sup>7</sup> As culled from the CA Decision; *id.* at 37-38.

<sup>8</sup> *Id.* at 38.

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

<sup>10</sup> *Id.*; see also records, vol. I, p. 13.

<sup>11</sup> *Rollo*, p. 38.

<sup>12</sup> *Id.*

Thereafter, PO3 Austria conducted the inventory in the presence of *Kagawad* Posadas, *Kagawad* Revoldila, DOJ representative Ferrer, and media representative Hermogeno. After which, PO3 Austria prepared the Certification of Orderly Search and Request for Laboratory Examination.<sup>13</sup> The police officers also took photographs of the seized items during the marking and inventory.<sup>14</sup> The police officers then brought the seized items to the forensic chemist for examination and upon qualitative laboratory examination, the seized items tested positive for the presence of methamphetamine hydrochloride, also known as *shabu*, a dangerous drug.<sup>15</sup>

#### *Version of the Defense*

In defense, petitioner denied the allegations hurled against him. He insisted that he did not own the dangerous drugs and did not know who owned them.<sup>16</sup> He asserted that he was not present at his residence when the search happened because his mother asked him to watch over their ancestral house in *Barangay* Poblacion, San Carlos City. He was only informed by his neighbors of the incident.<sup>17</sup>

#### *The RTC Ruling*

In the Decision<sup>18</sup> dated October 26, 2017, the RTC convicted petitioner for Illegal Possession of Dangerous Drugs. It sentenced him to suffer the indeterminate penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to sixteen (16) years, as maximum, and to pay a fine of ₱300,000.00.<sup>19</sup>

The RTC ruled that the prosecution proved beyond reasonable doubt all the elements of Illegal Possession of Dangerous Drugs.<sup>20</sup> Moreover, it held that even though the seized sachets of *shabu* were not offered in evidence, they could still be considered as evidence against petitioner because the seized items were identified during an examination of prosecution witnesses and were made part of the records of the case.<sup>21</sup>

Aggrieved, petitioner appealed to the CA.<sup>22</sup>

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

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

<sup>15</sup> *Id.* at 39.

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

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 82-85.

<sup>19</sup> *Id.* at 85.

<sup>20</sup> *Id.* at 84.

<sup>21</sup> *Id.* at 85.

<sup>22</sup> See Brief for the Accused-Appellant dated July 3, 2018, *id.* at 64-81.

*The CA Ruling*

In the assailed Decision<sup>23</sup> dated May 22, 2019, the CA affirmed the RTC Decision convicting petitioner for Illegal Possession of Dangerous Drugs.<sup>24</sup>

The CA upheld the RTC's findings that: (1) the prosecution ably established all the elements of Illegal Possession of Dangerous Drugs;<sup>25</sup> (2) the presence of two *barangay* officials during the search was sufficient compliance with Section 8, Rule 126 of the Rules of Court;<sup>26</sup> (3) the search was legally conducted;<sup>27</sup> (4) the rule on formal offer of evidence provided under Section 34, Rule 132 of the Rules of Court can be relaxed if the evidence has been duly identified during trial;<sup>28</sup> and (5) the evidence was incorporated in the records of the case.<sup>29</sup>

Additionally, the CA held that even though the seized items were not formally offered in evidence, they may still be considered as evidence against petitioner because the sachets were duly identified during the trial and incorporated into the records of the case.<sup>30</sup>

Hence, the instant petition.<sup>31</sup>

*The Issue*

Whether the CA erred in affirming the conviction of petitioner.

*Our Ruling*

The petition is meritorious.

At the outset, it must be emphasized that Section 21, Article II of RA 9165, as amended by RA 10640,<sup>32</sup> applies whether the drugs were seized in a buy-bust operation or pursuant to a search warrant.<sup>33</sup>

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<sup>23</sup> *Id.* at 37-50.

<sup>24</sup> *Id.* at 49.

<sup>25</sup> *Id.* at 40-41.

<sup>26</sup> *Id.* at 41-45.

<sup>27</sup> *Id.* at 41-43.

<sup>28</sup> *Id.* at 46.

<sup>29</sup> *Id.* at 46-48.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 11-34.

<sup>32</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>33</sup> *Tumabini v. People*, G.R. No. 224495, February 19, 2020.

In fact, in several cases, the Court applied Section 21, Article II of RA 9165, as amended, even when the illegal drugs were seized and confiscated by virtue of a search warrant.<sup>34</sup>

In drug-related cases, the seized narcotic substance constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.<sup>35</sup> Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drug, the prosecution has to show an unbroken chain of its custody and account for each link in the chain of custody from the moment the drugs is seized up to its presentation in court as evidence of the offense.<sup>36</sup>

*Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, defines "chain of custody" as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition."*

In *Derilo v. People*,<sup>37</sup> the Court stated that:

To show an unbroken link in the chain of custody, the prosecution's evidence must include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the evidence would acknowledge 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. The same witness 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 its possession."<sup>38</sup>

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<sup>34</sup> *Id.* See also *Dizon v. People*, G.R. No. 239399, March 25, 2019; *Cunanan v. People*, G.R. No. 237116, November 12, 2018; *People v. Gayoso*, 808 Phil 19 (2017); and *Derilo v. People*, 784 Phil 679 (2016).

<sup>35</sup> *People v. Malabanan*, G.R. No. 241950, April 10, 2019, citing *People v. Suan*, 627 Phil. 174, 188 (2010).

<sup>36</sup> *People v. Gamboa*, 833 Phil. 1055, 1066 (2018), citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

<sup>37</sup> 784 Phil. 679 (2016).

<sup>38</sup> *Id.* at 687; underscoring in the original omitted.

In order to secure a conviction in drug cases, the following links must be established in the chain of custody: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officers; (2) the turnover of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.<sup>39</sup>

RA 10640, which amended RA 9165, became effective on August 7, 2014. It directs the conduct of the inventory and photographing of the confiscated items “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;<sup>40</sup> or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of either the National Prosecution Service or the media.”<sup>41</sup>

It has already been settled that “the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality, or worse, ignored as an impediment to the conviction of illegal drug suspects.”<sup>42</sup>

In the instant case, the complained act was allegedly committed on October 5, 2015; thus, the two witnesses required under RA 10640 must be present during the inventory and taking of photographs of the seized items. Here, the inventory of the seized items was witnessed by *Kagawad* Posadas, *Kagawad* Revoldila, DOJ representative Ferrer, and media representative Hermogeno.<sup>43</sup>

However, while the searching team complied with the witness requirement under Section 21, Article II of RA 9165, as amended, it failed to comply with the chain of custody rule. After a judicious review of the records of the case and the pieces of evidence presented, the Court finds certain irregularities with regard to the preservation of

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<sup>39</sup> *People v. Gayoso*, 808 Phil. 19, 31 (2017); citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

<sup>40</sup> Section 21, Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>41</sup> Section 21, Article II of RA 9165, as amended by RA 10640. See *People v. Alconde*, G.R. No. 238117, February 4, 2019.

<sup>42</sup> *Gamboa v. People*, 799 Phil. 584, (2016), citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

<sup>43</sup> *Rollo*, p. 38; see also Receipt/Inventory of Seized/Confiscated Items, records, vol. I, p. 32.

the integrity and probative value of the *corpus delicti*. The searching team committed several procedural lapses in the handling of the seized items and observing the links in the chain of custody. The lapses created reasonable doubt as to the identity and integrity of the seized items, and thus, the guilt of petitioner is likewise doubtful.<sup>44</sup>

Here, the Chain of Custody Form<sup>45</sup> presented in the RTC was not signed by any of the members of the searching team.<sup>46</sup> It only enumerated PO1 Poquiz and Police Chief Inspector Myrna C. Malojo-Tadeño (PCI Tadeño) as the arresting officer and forensic chemist respectively, without their corresponding signatures therein.<sup>47</sup> The lapse was not explained by the prosecution.

It must be stressed that chain of custody means the duly “recorded” movements and custody of the seized item from the time of confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.<sup>48</sup> Such recorded movements shall include the “*identity and signature*” of the person who held temporary custody of the seized item.<sup>49</sup>

The missing signatures of PO1 Poquiz and PCI Tadeño tainted the “record of movements and custody” of the seized items. This procedural error creates a cloud of doubt whether PO1 Poquiz seized and marked the alleged sachets of drugs. The prosecution failed to explain or offer a justification for the blunder committed by the police officers.

Likewise, there is no evidence that the seized items were turned over from the seizing officer to an investigating officer and eventually to the forensic chemist for laboratory examination. Thus, there is no record of who exercised custody and possession of the seized sachets of *shabu* from the time they were confiscated from petitioner, after they were examined by PCI Tadeño, and before they were presented in court. Evidently, there are gaps in the links of the chain of custody of the seized illegal drugs. There is no record of the second (turnover of the seized item from seizing officer to the investigator) and third (turnover of the seized item from the investigator to the forensic chemist) links in the chain of custody. The prosecution neither

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<sup>44</sup> See *Matabilas v. People*, G.R. No. 243615, November 11, 2019.

<sup>45</sup> Records, Vol. I, p. 23.

<sup>46</sup> *Id.*

<sup>47</sup> *Rollo*, p. 27.

<sup>48</sup> *People v. Quijano*, G.R. No. 247558, February 19, 2020, citing Section 1(b) of the Dangerous Drugs Board Regulation No. 1, series of 2002.

<sup>49</sup> *Id.*

explained the blunders nor provided contrary evidence that the seized items were properly turned over to the authorized officers who were part of the chain to avoid any substitution and contamination.

“To stress, the prosecution bears the burden to justify the police officers’ non-compliance based on meritorious grounds, provided that the integrity and evidentiary value of the seized items have been properly preserved.”<sup>50</sup> “[W]hile as a rule, strict compliance with the foregoing requirements is mandatory, a deviation may be allowed only if the following requisites concur: (1) the existence of ‘justifiable grounds’ allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.”<sup>51</sup>

In *Ramos v. People*,<sup>52</sup> the Court emphasized that police officers are required not only to state reasons for their non-compliance, but must also convince the Court that they exerted earnest efforts to comply with the mandated procedure and that under the given circumstance, their actions were reasonable.

In the case, all of the procedural lapses committed by the law enforcers remain unexplained and undisputed.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated May 22, 2019 and the Resolution dated September 4, 2019 of the Court of Appeals in CA-G.R. CR No. 40883 are **REVERSED** and **SET ASIDE**. Petitioner Reynaldo Gamayo y Conte is hereby **ACQUITTED** of violation of Section 11, Article II of Republic Act No. 9165, 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 has taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

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<sup>50</sup> *People v. Addin*, G.R. No. 223682, October 9, 2019.

<sup>51</sup> *Dizon v. People*, G.R. No. 239399, March 25, 2019.

<sup>52</sup> G.R. No. 233572, July 30, 2018.

The letter dated November 9, 2021 of Ms. Jane G. Sabido, Chief, Archives Section, Judicial Records Division, Court of Appeals, Manila, in compliance with the Resolution dated January 13, 2021, transmitting the rollo of CA-G.R. CR No. 40883 with 161 pages, one (1) folder of original records, and one (1) folder of transcript of stenographic notes, is **NOTED**.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court <sup>4th</sup>

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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