



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **March 30, 2022**, which reads as follows:*

**“G.R. No. 250000 (People of the Philippines, plaintiff-appellee v. Orly Anacleto y Santiago, accused-appellant).** — Whether there was compliance with the requirements of Section 21 of Republic Act (RA) No. 9165, as amended, is the main issue in this appeal assailing the Decision<sup>1</sup> dated March 18, 2019 of the Court of Appeals in CA-G.R. CR HC No. 09938.

The facts follow.

Orly Anacleto y Santiago (Orly) was charged with violation of Sections 5<sup>2</sup> and 15,<sup>3</sup> Article II<sup>4</sup> of Republic Act (RA) No. 9165<sup>5</sup> under the following Information:

*Crim. Case No. 15-167 – for illegal sale of dangerous drugs*

That on or about September 21, 2015 at around 2:55 x x x in the afternoon at Brgy. Bobon 2<sup>nd</sup>, Municipality of Camiling, Province of Tarlac, Philippines and within the jurisdiction of [the] Honorable Court, the above-named, did, then and there willfully, unlawfully and feloniously sell one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride commonly known as “shabu” a dangerous drug without being authorized by law, weighing .850 gram more or less to poseur buyer PO3 Nestor A. Agustin, Jr.

Contrary to law.<sup>6</sup>

*Crim. Case No. 15-168 – for illegal use of dangerous drugs*

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<sup>1</sup> *Rollo*, pp. 3-14. Decision dated September 14, 2017, penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court), with the concurrence of Presiding Justice Romeo F. Barza, and Associate Justice Franchito N. Diamante.

<sup>2</sup> Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

<sup>3</sup> Use of Dangerous Drugs.

<sup>4</sup> Unlawful Acts and Penalties.

<sup>5</sup> Comprehensive Dangerous Drugs Act of 2002.

<sup>6</sup> *Rollo*, p. 4.

That on or about September 21, 2015 at around 2:55 x x x in the afternoon [at] Brgy. Bobon 2<sup>nd</sup>, Municipality of Camiling, Province of Tarlac, Philippines, and within the jurisdiction of [the] Honorable Court, above-named accused, did then and there willfully, unlawfully[,] and feloniously without being authorized by law, use Methamphetamine Hydrochloride, known as shabu, a dangerous drug and was found positive for methamphetamine after screening and confirmatory tests.

Contrary to law.<sup>7</sup>

When arraigned, Orly pleaded not guilty. Trial then ensued.

Police Officer 3 Nestor Agustin, Jr. (PO3 Agustin) of the Camiling Police Station testified that, on September 21, 2015, their team leader, Senior Police Officer 1 Librado Calma (SPO1 Calma) received information from a confidential agent that Orly was engaged in illegal trade of dangerous drugs at Brgy. Bobon 2<sup>nd</sup>, Camiling, Tarlac. A briefing for the conduct of a buy-bust operation was then led by Police Officer 3 Edgar Esteban (PO3 Esteban). PO3 Agustin was tasked to be the *poseur buyer*, while Police Officer 3 Tirso Navero, Police Officer 3 Alexander Juan, Police Officer 1 Abel Corpuz (PO1 Corpuz), and PO3 Esteban were designated as a backup team. SPO1 Calma coordinated the operation with the Philippine Drug Enforcement Agency, barangay officials, and media representatives, and gave Police Officer 3 Agustin a ₱500.00 bill, marked with 'OA,' to be used for the transaction with Orly.<sup>8</sup>

The team, together with the informant, proceeded to the target area. PO3 Agustin and the informant waited for 10 minutes before Orly arrived on board a tricycle. The informant introduced PO3 Agustin to Orly as a buyer of shabu. PO3 Agustin gave the marked money to Orly, who, in turn handed a plastic sachet of shabu to PO3 Agustin. PO3 Agustin then raised his hand to signal that the sale had been consummated, and thereafter, introduced himself as a police officer to Orly. Upon the arrival of the backup team at the scene, PO3 Esteban assisted PO3 Agustin in effecting Orly's arrest, while PO1 Corpuz recovered the marked money from Orly.<sup>9</sup>

As bystanders started to converge at the crime scene, the buy-bust team decided to bring Orly to the barangay hall, where the sachet of shabu was marked by PO3 Agustin with 'NAA' while the investigator made the inventory and took the pictures of the item with the accused.<sup>10</sup> The marking and inventory were done in the presence of Barangay Chairman Federico Luzano, Barangay Kagawad Graciano Manglicmot, and media representative,

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<sup>7</sup> Id. at 4-5.

<sup>8</sup> CA *rollo*, p. 64.

<sup>9</sup> Id. at 64-65.

<sup>10</sup> Id. at 65.

Billy Nuqui.<sup>11</sup> Subsequently, the team brought Orly and the seized drugs to the Camiling Police Station for the preparation of a request for laboratory examination of the seized item and drug test for Orly. PO3 Agustin delivered and personally submitted the plastic sachet of shabu to the crime laboratory.<sup>12</sup> Police Senior Inspector (PSI) Angelito Angel (PSI Angel) conducted an examination of the specimen and issued Chemistry Report No. D-351-15 Tarlac, which found the heat-sealed transparent plastic sachet with marking 'NAA' positive for shabu, a dangerous drug.<sup>13</sup> Orly's drug test likewise yielded a positive result for methamphetamine.<sup>14</sup>

On the other hand, Orly denied the charges and claimed that on September 21, 2015, he was plying his route as a tricycle driver in Camiling, Tarlac, when he was hired by two persons to transport them to Mangatarem, Pangasinan. On their way back to Camiling, Tarlac, Orly's tricycle was suddenly blocked by a motorcycle while traversing the highway in Brgy. Bobon 2<sup>nd</sup>, Camiling, and he was arrested.<sup>15</sup> Orly identified the driver of the motorcycle as PO1 Corpuz, who searched him and his pouch bag but only found ₱85.00. Nonetheless, he was brought to the barangay hall. His pouch bag was photographed there, and to his surprise, it already contained a plastic sachet and a ₱500.00 bill.<sup>16</sup>

In a Decision dated September 14, 2017,<sup>17</sup> the Regional Trial Court (RTC) acquitted Orly of the charge of illegal use of dangerous drugs, but found him guilty of illegal sale of dangerous drugs and sentenced him as follows:

WHEREFORE, judgment is hereby rendered finding accused Orly Anacleto [y] Santiago guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 (Criminal Case No. 15-167-illegal sale of dangerous drugs) and sentences him to a Life Imprisonment and to pay a Fine of [₱] 500,000.00.

x x x x

SO ORDERED.<sup>18</sup>

The RTC ruled that all the elements of illegal sale of dangerous drugs were proved through the testimony of PO3 Agustin, who, as *poseur buyer*, was able to narrate in detail the transaction with Orly.<sup>19</sup> On the other hand,

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<sup>11</sup> *Rollo*, p. 6.

<sup>12</sup> *CA rollo*, p. 65.

<sup>13</sup> *Rollo*, p. 6.

<sup>14</sup> *CA rollo*, p. 65.

<sup>15</sup> *Rollo*, pp. 6-7.

<sup>16</sup> *CA rollo*, p. 65.

<sup>17</sup> *Id.* at 63-70.

<sup>18</sup> *Id.* at 70.

<sup>19</sup> *Id.* at 66.

Orly failed to rebut the presumption of regularity in the performance of the police officers' duties.<sup>20</sup> Absent ill-motive on the part of the police officers, the RTC rejected Orly's defense of denial and gave weight and credence to the testimony of PO3 Agustin.<sup>21</sup> Finally, the RTC held that the buy-bust team substantially complied with the requirements of the chain of custody rule in handling the confiscated item from Orly. PO3 Agustin sufficiently explained why the marking and inventory were done at the barangay hall, rather than at the place of arrest.<sup>22</sup>

On appeal, the Court of Appeals (CA) affirmed Orly's conviction.<sup>23</sup> The CA echoed the RTC's finding that a sale transaction happened between PO3 Agustin and Orly.<sup>24</sup> After the buy-bust operation, the apprehending team carried out the requirements of the chain of custody rule when they marked the seized drug, made an inventory, and photographed the item in the presence of the barangay chairman, a barangay councilor, and media representative.<sup>25</sup> The marking and inventory done at the barangay hall were justified as people were congregating in the area of operation.<sup>26</sup> The other links in the chain of custody were also duly observed by the police officers.<sup>27</sup>

Aggrieved, Orly filed the present appeal, contending that the buy-bust operation did not take place. He alleges that he was framed up by the police and that there was no compliance with the requirement of Section 21 of RA No. 9165. On the other hand, the People of the Philippines, through the Office of the Solicitor General, argues that the prosecution established Orly's guilt beyond reasonable doubt. The police officers, through PO3 Agustin, detailed their compliance with the chain of custody rule and explained why the marking was not done at the crime scene.

The appeal is meritorious.

We acquit on the ground of the prosecution's failure to prove that the apprehending team complied with the mandatory chain of custody requirements under Section 21 of RA No. 9165 resulting in serious doubts as to the identity of the *corpus delicti*.

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<sup>20</sup> Id. at 67.

<sup>21</sup> Id. at 67-68.

<sup>22</sup> Id. at 68-69.

<sup>23</sup> *Rollo*, pp. 3-14. Decision dated September 14, 2017, penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court), with the concurrence of Presiding Justice Romeo F. Barza, and Associate Justice Franchito N. Diamante. The dispositive portion of the Decision reads:

**WHEREFORE**, the instant appeal is denied. The Decision dated 14 September 2017 rendered by the Regional Trial Court, Branch 68, of Camiling Tarlac in Criminal Case Nos. 15-167 & 168 is affirmed.

**SO ORDERED.**

<sup>24</sup> Id. at 8-9.

<sup>25</sup> Id. at 10-11.

<sup>26</sup> Id. at 11-12.

<sup>27</sup> Id. at 13-14.

For prosecutions involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti* of the offense, and its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Like the elements of the offense charged, the identity of the dangerous drug must be established with moral certainty.<sup>28</sup> The prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>29</sup> Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court.<sup>30</sup> Here, the records reveal a broken chain of custody.

Notably, the alleged crime happened after RA No. 9165<sup>31</sup> was amended by RA No. 10640.<sup>32</sup> Section 21, Article II of RA No. 9165, as amended, outlines the post-seizure procedure for the custody and disposition of seized drugs, thus:

(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 person/s 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

<sup>28</sup> *People v. De Guzman*, 825 Phil. 43, 53 (2018).

<sup>29</sup> *People v. De Dios*, G.R. No. 243664, January 22, 2020.

<sup>30</sup> *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

<sup>31</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>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, states that it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." Verily, a copy of the law was published on July 23, 2013 in the respective issues of "*The Philippine Star*" (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and the "*Manila Bulletin*" (Vol. 499, No. 23; *World News* section, p. 6); hence, RA No. 10640 became effective on August 7, 2014. See OCA Circular No. 77-2015 dated April 23, 2015.

preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

Foremost, there was a failure to immediately mark the drugs. The marking was instead done at the barangay hall. Thus, during the apprehending team's transit to the barangay hall, the sachet of shabu remained unmarked causing a significant gap in the chain of custody that may have compromised the evidence. The first stage in the chain of custody is the marking of dangerous drugs, which is indispensable in the preservation of their integrity and evidentiary value. The marking operates to set apart as evidence the dangerous drugs from other materials and forestalls switching, planting, or contamination of evidence. The succeeding handlers of dangerous drugs will also use the marking as a reference.<sup>33</sup>

The prosecution bears the positive duty to initiate acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence.<sup>34</sup> Although the prosecution explained – that Orly was resisting arrest and that people started to converge at the scene – to justify the belated marking conducted at the barangay hall, the apprehending team's observance of the requirements of the law still could not suffice. Recent jurisprudence is abound with cases where the failure to mark the confiscated drug immediately after its confiscation, absent any explanation or reasonable justification, was deemed as a serious breach in the chain of custody.<sup>35</sup> Verily, keeping the drug unmarked, without any other safeguard, rendered it extremely vulnerable to switching or planting.

Moreover, the second link in the chain of custody requires the prosecution to establish the movement and custody of the confiscated item, particularly, its turnover by the apprehending officer to the investigating officer, who shall conduct the proper investigation and prepare the necessary documents for the transfer of the evidence to the crime laboratory for testing.<sup>36</sup> Further, the third link in the chain of custody requires that the movement from the investigating officer to the forensic chemist be established. Here, there are marked irregularities in the second and third links in the chain of custody. PO3 Agustin failed to show how he handled the seized drugs during its transport from the place of arrest to the barangay hall, from the barangay hall to the Camiling police station, and subsequently, from the police station to the crime laboratory. The operatives failed to provide any justification showing that the integrity of the evidence had all along been preserved. The police officers did

<sup>33</sup> *People v. Mazo*, G.R. No. 242273 (Resolution), November 23, 2020.

<sup>34</sup> *People v. Padua*, G.R. No. 239781 (Resolution), February 5, 2020; citing *People v. Sipin*, 833 Phil. 67, 92 (2018).

<sup>35</sup> *People v. Magayon*, G.R. No. 238873, September 16, 2020; *People v. Delina*, G.R. No. 243578, June 30, 2020; *People v. Claudel*, G.R. No. 219852, April 3, 2019; *People v. Cadungog*, G.R. No. 229926, April 3, 2019.

<sup>36</sup> *People v. Dahil*, 750 Phil. 212, 235 (2015).

not describe the precautions taken to ensure that there had been no change in the condition of the seized item and no opportunity for someone not in the chain to gain possession.

Finally, the prosecution was not able to establish the fourth link in the chain of custody or that relating to the turnover and submission of the seized drug from the forensic chemist to the court. PSI Angel failed to recount in detail how he received the seized drug, conducted his examination, and thereafter, kept the tested specimen until it was turned over to the trial court as evidence. The records do not mention the stipulations made pertaining to the testimony of the PSI Angel. The lack of this vital information deprived the trial court of the means to ascertain that the evidence presented was not compromised.

We stress that the provisions of Section 21, Article II of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent person. The Court cannot tolerate the lax approach of law enforcers in handling the *very corpus delicti* of the crime. While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth.<sup>37</sup> Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.<sup>38</sup> All told, Corazon must be acquitted of the charge against her given the prosecution's failure to prove an unbroken chain of custody.

**FOR THE STATED REASONS**, the appeal is **GRANTED**. The Decision dated March 18, 2019 of the Court of Appeals in CA-G.R. CR HC No. 09938 is **REVERSED**. Accordingly, accused-appellant Orly Anacleto y Santiago is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

<sup>37</sup> *Malillin v. People*, 576 Phil. 576, 593 (2008); and *People v. Cañete*, 433 Phil. 781, 794 (2002).

<sup>38</sup> *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

**SO ORDERED.”** (Gaerlan, J., designated additional Member *vice Lopez, J., J.*, per Raffle dated March 23, 2022.)

By authority of the Court:

*Mis D C Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
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