



Republic of the Philippines
Supreme Court
Bacolod City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 29, 2022, which reads as follows:

“G.R. No. 252224 (People of the Philippines v. Noel Abellera y Anastacio and Vernon Espartero y Umengan, accused; Noel Abellera y Anastacio, accused-appellant).—This is an appeal¹ from the September 26, 2019 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09967. The CA affirmed the October 11, 2017 Joint Decision³ of the Regional Trial Court (RTC) of Quezon City, Branch 103 finding accused-appellant Noel Abellera y Anastacio guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs in Criminal Case No. Q-12-175311 and of Illegal Possession of Dangerous Drugs in Criminal Case No. Q-12-175310.

The Informations both dated March 23, 2012 that led to accused-appellant’s convictions are as follows:

Criminal Case No. Q-12-175310:

That on or about the 21st day of March, 2012, in Quezon City, Philippines, the above-named accused not having authority by law to possess any dangerous drug, did then and there, willfully, unlawfully and knowingly have in his possession and control One (1) heat sealed transparent plastic sachet containing zero point zero five (0.05) gram of Methamphetamine Hydrochloride, known as “Shabu”, a dangerous drug.

CONTRARY TO LAW.⁴

¹ *Rollo*, pp. 19-22. Captioned as Compliance and Notice of Appeal.

² *Id.* at 3-18. Penned by Associate Justice Japar B. Dimaampao (now a Member of the Court) and concurred in by Associate Justices Edwin D. Sorongon and Gerladine C. Fiel-Macaraig.

³ *CA rollo*, pp. 59-72. Penned by Presiding Judge Felino Z. Elefante.

⁴ Records, p. 2.

Criminal Case No. Q-12-175311:

That on or about the 21st day of March, 2012, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, without any lawfully [sic] authority of law, did then and there, willfully, unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit: One (1) heat sealed transparent plastic sachet containing zero point zero five (0.05) gram of Methamphetamine Hydrochloride known as “Shabu”, a dangerous drug.

CONTRARY TO LAW.⁵

During arraignment, accused-appellant and his co-accused, Vernon Espartero y Umengan pleaded “not guilty” to the charges.⁶ Thereafter, joint trial ensued.

Version of the Prosecution

The prosecution presented two witnesses: Police Officer 2 Noel Villas (PO2 Villas) and Police Officer 3 Butch Raguindin (PO3 Raguindin). Their testimonies are summarized as follows:

On March 21, 2012, at around 6:00 p.m., PO2 Villas and PO3 Raguindin received a tip from a regular confidential informant that two persons who were later identified as accused-appellant Abellera and accused Espartero, were selling *shabu*. Acting thereon, a buy-bust operation was planned where PO2 Villas was designated as the poseur-buyer. When the informant together with PO2 Villas spotted both accused at the target area, they casually approached them. The informant told Abellera that PO2 Villas wanted to buy ₱500.00-worth of *shabu*. PO2 Villas handed to Abellera the ₱500.00-bill marked with “S1,” who in turn gave it to Espartero. Upon receipt thereof, Espartero handed to Abellera a small heat-sealed transparent plastic sachet containing white crystalline substance, which was eventually given to PO2 Villas. Thereupon, PO2 Villas executed the pre-arranged signal for their arrest.⁷

After the arrest, the marked bill was recovered from Espartero while another plastic sachet containing suspected *shabu* was confiscated from Abellera. At the place of seizure and in the presence of the accused, PO2 Villas marked the sachet he bought with “NV/VEU,” while the other sachet found in Abellera’s possession was marked with “NV/NAA.” PO2 Villas then took photos of the crime scene and the evidence recovered from the accused.⁸ Thereafter, both accused were brought to the Cubao Police Station where the seized items were turned over to the investigator assigned on the case, Harold

⁵ Id. at 4.

⁶ Id. at 30.

⁷ *Rollo*, pp. 4-5.

⁸ Id. at 5.

Polistico (Investigator Polistico), who conducted an inventory of the seized items⁹ which was witnessed by two media representatives, Clyde Ocampo and Beverly Gomez.¹⁰ Investigator Polistico also prepared the requests for laboratory examination and drug tests.¹¹ Thereafter, the said requests, together with the specimens, were delivered by PO2 Villas and PO3 Raguindin to the Quezon City Police District Crime Laboratory.

The RTC dispensed with the testimony of Forensic Chemist Police Chief Inspector Rendielyn Sahagun (PCI Sahagun) in an Order¹² dated February 26, 2013 in view of the defense's admission of the following stipulations:

That Chemist [PCI Sahagun] received a request for laboratory examination of this case;

That after receiving the same specimen, chemist PCI Rendielyn Sahagun examined the specimen and prepared the initial laboratory report with the finding that after the qualitative examination gave positive result for methylamphetamine hydrochloride;

That the forensic chemist prepared the confirmatory report with the same finding on the initial laboratory report;

That this chemistry certification was subscribed and swore [sic] to before an administering officer;

That the chemist has no personal knowledge on how the specimen examined got into the possession of the police officers and she merely examined the said specimen.¹³

The RTC likewise dispensed with the testimony of Police Officer 1 Junia Tuccad (PO1 Tuccad) after the parties stipulated that she is the evidence custodian at the crime laboratory who kept the specimens and from whom the same were retrieved by the forensic chemist for submission to the court.¹⁴

Version of the Defense

The defense presented the testimonies of the accused and Abellera's niece, Princess Marie Abellera (Princess).

The accused claimed that they were framed by the police officers. They averred that on the day in question, they were at the house of Abellera drinking coffee when a group of eight individuals in civilian clothing barged in and told them that they will be held for questioning. Both accused were handcuffed and

⁹ Id. at 14.

¹⁰ Id. at 16.

¹¹ TSN, September 25, 2012, pp. 47-48.

¹² Records, pp. 57-58.

¹³ Id. at 57.

¹⁴ Id. at 152-153. RTC Order dated June 14, 2016.

made to board a tricycle *en route* to the police station. Abellera was able to recognize PO2 Villas and PO3 Raguindin from the group as he had a prior encounter with them in connection with his job as a lineperson.¹⁵ Accused further claimed that PO3 Raguindin asked for money from Abellera in exchange for their freedom.¹⁶

On the other hand, Princess testified that between 5:00 p.m. to 6:00 p.m. of March 21, 2012, she was inside the bathroom located beside the house of his uncle, accused-appellant Abellera, when she saw several individuals destroying the door of Abellera's house. Moments later, accused were arrested by the individuals who turned out to be police officers.¹⁷

Ruling of the Regional Trial Court

After trial on the merits, the RTC found Abellera and Espartero guilty beyond reasonable doubt of violating Sec. 5, Art. II of RA 9165 in Criminal Case No. Q-12-175311. In addition, the RTC handed a guilty verdict against Abellera for violation of Sec. 11, Art. II of RA 9165. The dispositive portion reads:

ACCORDINGLY, premises considered, the prosecution having proven the guilt of both accused beyond reasonable doubt, judgment is hereby rendered as follows:

1. For Criminal Case No. Q-12-175310, accused Noel Abellera y Anastacio alias "Bunso" is hereby sentenced to suffer imprisonment of twelve (12) years and one (1) day as minimum to thirteen (13) years and five (5) days as maximum and to pay a fine of Three Hundred (P300,000.00) Thousand Pesos; and

2. For Criminal Case No. Q-12-175311, accused Noel Abellera y Anastacio alias "Bunso" and accused Vernon Espartero y Umengan are hereby sentenced to suffer life imprisonment and to pay each a fine of Five Hundred (P500,000.00) Thousand Pesos.

Both with subsidiary imprisonment in case of non-payment of the imposed fines.

The OIC Branch Clerk of Court is ordered to turn over the subject specimens covered by Chemistry Report No. D-110-12 to the PDEA Crime Laboratory in order that the same be included in its next scheduled date of burning and destruction.

So Ordered.¹⁸

¹⁵ *Rollo*, p. 7.

¹⁶ TSN, May 23, 2017, pp. 6-8.

¹⁷ TSN, September 27, 2017, pp. 3-7.

¹⁸ CA *rollo*, pp. 71-72.

Not satisfied, both Abellera and Espartero appealed before the CA arguing that the RTC erred in convicting them despite the illegality of their arrest and the lapses in the chain of custody of the seized dangerous drugs. The CA, in a Resolution¹⁹ dated May 25, 2018 gave due course to Abellera's appeal but dismissed outright the appeal of Espartero on account of his being a fugitive from justice.²⁰

Ruling of the Court of Appeals

In its assailed Decision, the CA affirmed the RTC Decision and held that all the elements of the crimes of Illegal Sale and Possession of Dangerous drugs were present. The CA found that there was an unbroken chain of custody of the seized drugs. Even if the requirements of Sec. 21, Art. II of RA 9165 were not strictly complied with, the integrity and evidentiary value of the seized items were properly preserved. The *fallo* of the Decision reads:

WHEREFORE, the *Appeal* is hereby **DENIED**. The *Joint Decision* dated 11 October 2017 of the RTC of Quezon City, Branch 103, in Criminal Case No. Q-12-175310-11, is **AFFIRMED**.

SO ORDERED.²¹

Unsatisfied, Abellera appealed before this Court.²²

Abellera opted not to file a supplemental brief with this Court and instead adopted the discussions in the brief filed with the CA.²³ The People also did not file a supplemental brief.

Issue

The sole issue for this Court's resolution is whether the CA correctly upheld the conviction of accused-appellant for violating Secs. 5 and 11, Art. II of RA 9165.

Our Ruling

The appeal is meritorious.

To successfully prosecute the offense of Sale of Illegal Drugs under Sec. 5, Art. II of RA 9165, the following elements must be present: (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 the payment therefor. In a buy-bust operation,

¹⁹ Id. at 78-80.

²⁰ Id. at 79-80.

²¹ *Rollo*, p. 18.

²² Id. at 19-22.

²³ Id. at 32.

the receipt by the poseur-buyer of the dangerous drug and the corresponding receipt by the seller of the marked money consummate the Illegal Sale of Dangerous Drugs. What matters is the proof that the sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.²⁴

With regard to the charge for Illegal Possession of Dangerous Drugs, the following elements must be established: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.²⁵

To establish the identity of the dangerous drugs with moral certainty, 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 offense.²⁶ The links that the prosecution must establish in the chain of custody in a buy-bust operation are: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.²⁷

In the instant case, We find that the prosecution failed to clearly establish that that the requirements of Sec. 21, Art. II of RA 9165 have been complied with, particularly the *first* and *fourth* links in the chain of custody.

Sec. 21, Art. II of RA 9165, which was the pertinent provision in force at the time of the commission of the crimes on March 12, 2012, requires that the inventory of the seized drugs be made in the presence of the accused or the person from whom the items were seized, or his representative or counsel as well as 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. Evidently, three witnesses are required to be present during inventory and photography of the seized items.

In this case, the Court observes that only two media personalities were present during the conduct of the inventory. No DOJ representative and elected public official witnessed the inventory. Hence, the three-witness rule was not satisfied. Neither was it shown that there were justifiable grounds for their absence.

²⁴ *People v. Baluyot*, G.R. No. 243390, October 5, 2020.

²⁵ *People v. Arellaga*, G.R. No. 231796, August 24, 2020.

²⁶ *People v. Dejos*, G.R. No. 237423, October 12, 2020.

²⁷ *Tumabini v. People*, G.R. No. 224495, February 19, 2020.

While the *barangay* captain is almost always the elected public official requested by police operatives to witness an inventory in drug operations, We know for a fact that there are other local elected public officials that may be invited to be a witness as well. We note that the law clearly says “any elected public official”²⁸ and not just the *barangay* captain. Thus, when it became apparent to the members of the buy-bust team that their preferred public official was unavailable, they should have explored other possibilities or alternatives. This, they failed to do.

Although the apprehending officers exerted efforts to proceed to the *barangay* hall to personally invite the *barangay* captain, the Court finds the reasoning that he was not available not a justifiable ground to ignore statutory requirements. As mentioned, there are local elected public officials other than the *barangay* captain who could have been procured as a witness.

Apparent also is the lack of a representative from the DOJ to witness the conduct of the inventory in this case. This is evident from the testimony of PO2 Villas during cross-examination, *viz.*:

FIS ARAULA:

Q: How come that there’s no representative from the DOJ, and elected barangay official?

WITNESS:

A: During the process of investigation, we made the call to the City Hall Office and to the hotline of the DOJ but no one is answering, only the answering machine, and we made the letter request to the barangay and it so happened that [sic] barangay chairman was out of town.²⁹

The prosecution bears the burden of proving a valid cause for noncompliance with the procedure laid down in Sec. 21, Art. II of RA 9165.³⁰ It must demonstrate that genuine and earnest efforts were employed in contacting and securing the presence of the required witnesses. In case of deviation from or noncompliance with the said requirements, the prosecution must provide a sufficient explanation why Sec. 21 was not complied with.³¹ In this case, We find that the mere act of calling the DOJ Office, without more, could not be considered a serious attempt on the part of the police operatives to comply with the three-witness rule.

²⁸ (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;

²⁹ TSN, March 12, 2013, p. 44.

³⁰ *People v. Rodriguez*, G.R. No. 238516, February 27, 2019.

³¹ *People v. Arellaga*, *supra*.

We stress that the witness requirement is in place for the protection of the rights of the accused by ensuring that there will be no planting or contamination of evidence. Also, strict adherence to Sec. 21 is required where the quantity of illegal drugs seized is miniscule, as in this case, since it is highly susceptible to planting, tampering or alteration of evidence.³² The procedure in Sec. 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.³³ Further, the Court has repeatedly held that mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are not acceptable as justified grounds for noncompliance.³⁴

Finally, the *fourth link* was also broken because there was no testimonial or documentary evidence on how the forensic chemist handled the specimens, how they were kept while they were in her custody, and in what condition the items were in until they were presented in court. The parties simply stipulated that PCI Sahagun was a qualified forensic chemist; that she conducted a laboratory examination on the specimens she received, and thereafter prepared the initial and confirmatory reports that the qualitative examination gave positive result for methamphetamine hydrochloride. By reason of this stipulation, the parties agreed to dispense with her testimony.

In *People v. Ubungen*,³⁵ the Court ruled that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial.

Here, a reading of the stipulated testimony of PCI Sahagun shows that it was limited only to her conduct of examination of the specimens and the execution of the chemistry report. It failed to show what happened to the allegedly seized narcotics between the turnover to the chemist and its presentation in court.

Similarly, the stipulated testimony of the evidence custodian, PO1 Tuccad, was inadequate as there was no showing that precautions were taken to ensure that there was no change in the condition of the drugs seized and no opportunity for someone not in the chain to have possession thereof. Notably, PO1 Tuccad stipulated that she has no personal knowledge as to the identity of the forensic chemist at the time the subject specimens were submitted to the assigned evidence custodian. Neither does she have personal knowledge of the

³² See *People v. Haya*, G.R. No. 230718, September 16, 2020.

³³ *People v. Ramos*, G.R. No. 236455, February 19, 2020.

³⁴ *People v. Ramos*, 826 Phil. 981, 996 (2018).

³⁵ 836 Phil. 888, 901 (2018), citing *People v. Pajarin*, 654 Phil. 461, 466 (2011).

identity of the previous evidence custodian who received the specimens from the forensic chemist, and how the specimens were handled when the same were in his/her custody.³⁶ Evidently, it was not PO1 Tuccad who received the seized drugs from the forensic chemist after the examination. Hence, somebody not in the chain of custody apparently took possession of the evidence. The foregoing lapses certainly created a gap in the *fourth link*.

All told, the prosecution patently failed to comply with the requirements of Sec. 21, Art. II of RA 9165. The breaks in the chain of custody committed by the prosecution seriously compromised the integrity of the seized items and ultimately casted reasonable doubt on accused-appellant's guilt. Likewise, the saving clause of the said provision could not help the prosecution's cause as they failed to give a justifiable reason for its noncompliance. Accordingly, this Court finds it necessary to acquit accused-appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

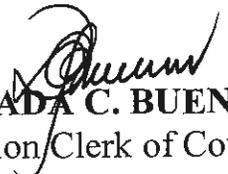
WHEREFORE, the appeal is **GRANTED**. The assailed September 26, 2019 Decision rendered by the Court of Appeals in CA-G.R. CR-HC No. 09967 is **REVERSED** and **SET ASIDE**. Accused-appellant Noel Abellera y Anastacio is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable 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 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." *Marquez, J., on official business.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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³⁶ Records, p. 153. RTC Order dated June 14, 2016.

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