



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated September 19, 2022, which reads as follows:

“G.R. No. 256240 (People of the Philippines, *Plaintiff-Appellee* vs. Ronald Allan Go y Cruz, *Accused-Appellant*). – This is an appeal¹ from the Decision² dated November 26, 2020 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 12138. The CA affirmed the Joint Judgment³ dated September 25, 2018 of Branch 20, Regional Trial Court (RTC), Malolos City in Criminal Case Nos. 5718-M-2016 and 5719-M-2016 that found Ronald Allan Go y Cruz (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5 and 15, Article II of Republic Act No. (RA) 9165, or the “Comprehensive Dangerous Drugs Act of 2002.”

The Antecedents

Accused-appellant was charged with Illegal Sale and Illegal Use of Dangerous Drugs under Sections 5 and 15, Article II of RA 9165, respectively, in two separate Informations:

Criminal Case No. 5718-M-2016
(for violation of Section 5, Article II of RA 9165)

That on or about the 11th day of August 2016, in the municipality of Paombong, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there, willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride (*shabu*) with markings ‘BB-RKE’ weighing 0.0522 gram.

Contrary to law.⁴

¹ *Rollo*, pp. 22-24.

² *CA rollo*, pp. 120-138. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Danton Q. Bueser and Tita Marilyn B. Payoyo-Villordon.

³ *Id.* at 65-83. Penned by Presiding Judge Mirasol O. Dychingco.

⁴ *Id.* at 121-122.

Criminal Case No. 5719-M-2016
(for violation of Section 15, Article II of RA 9165)

That on or about the 11th day of August 2016, in the municipality of Paombong, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there, willfully, unlawfully and feloniously use methamphetamine which is a dangerous drug as confirmed by the result of the drug test.

Contrary to law.⁵

Upon arraignment, accused-appellant pleaded “not guilty” to the charges. The cases were consolidated.⁶

After the pre-trial, trial ensued.⁷

Version of the Prosecution

On August 11, 2016, Police Chief Inspector (PCI) Leopoldo Estorque, Jr. (PCI Estorque), Chief of Police of Paombong Police Station, received a text message from a concerned citizen about the illegal drug activities of accused-appellant. PCI Estorque directed a confidential asset to verify the information. According to the confidential asset, he and accused-appellant agreed to meet at about 5:30 p.m. at the tricycle terminal in *Barangay Poblacion*. PCI Estorque organized a buy-bust team with the following members: Police Officer (PO) 3 Rhasdy Eritis (PO3 Eritis) as the *poseur-buyer*; PO3 Marcelo Magaling, Jr. (PO3 Magaling) as the back-up operative; and PO3 Jeffren Carrasco, PO2 Hilbert Ulnagan, PO1 Edwin Ignacio, PO1 Asraphe Dawili, and PO1 Abdulmoin Amil, Jr. as the perimeter security officers.⁸

When the buy-bust team arrived at the target area, PO3 Eritis and the confidential informant waited for accused-appellant. Upon the latter’s arrival, the confidential informant introduced PO3 Eritis as “Mac-Mac,” who was willing to buy ₱200.00 worth of *shabu*. At that point, PO3 Eritis gave the marked money to accused-appellant who, in turn, handed over one heat-sealed transparent plastic sachet of *shabu*. PO3 Eritis then placed his right hand on top of his head to alert the buy-bust team that the transaction was consummated. PO3 Magaling approached accused-appellant and introduced themselves as police officers. PO3 Magaling arrested accused-appellant. On the other hand, PO3 Eritis took custody of the transparent plastic sachet sold to him and recovered the marked two ₱100.00 bills. When people began to gather around the area, the buy-bust team decided to mark the seized item and conduct the inventory at the police station.⁹

⁵ Id. at 122.

⁶ Id.

⁷ Id.

⁸ Id. at 96.

⁹ Id. at 97.

At the police station, PO3 Erilis marked the plastic sachet of *shabu* with “BB-RKE” and conducted the inventory in the presence of accused-appellant, *Barangay* Captain Priscilla Pineda (*Brgy.* Captain Pineda), and media representative Thony Arcenal (Arcenal). Later, he turned over the seized plastic sachet to PO2 Esmar Augis (PO2 Augis), the investigator. Soon after, PO3 Erilis brought it to the PNP Crime Laboratory for qualitative examination. The qualitative examination conducted by PCI Gina Camposano-Ledesma (PCI Camposano-Ledesma) confirmed that the seized plastic sachet with a total weight of 0.0522 gram yielded a positive result for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.¹⁰

Version of the Defense

Accused-appellant denied the charges against him. He averred that on August 11, 2016, he was waiting for passengers at the Malolos Public Market when two men alighted from a motorcycle and boarded his tricycle. On their way to the Paombong Municipal Hall, the passengers instructed him to alight at the police station and enter the station with them. Thereat, he was frisked and subjected to drug testing. The police officers also coerced him to sign a document.¹¹

The Ruling of the RTC

In the Joint Judgment¹² dated September 25, 2018, the RTC found accused-appellant guilty beyond reasonable doubt of violation of Sections 5 and 15, Article II of RA No. 9165. It held that the prosecution had sufficiently established all the elements of the offenses charged. It further held that the arresting officers observed and substantially complied with the links in the chain of custody of the evidence.¹³ The dispositive portion of the RTC Joint Judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 5718-M-2016, this court finds the accused, Ronald Allan Go y Cruz, GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act No. 9165, as amended by Republic Act No. 9346. He is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and
2. In Criminal Case No. 5719-M-2016, this court finds the accused, Ronald Allan Go y Cruz, GUILTY beyond reasonable doubt of the crime of violation of Section 15, Article II of Republic Act No. 9165. He is sentenced to undergo rehabilitation for at least one (1) year at the Mega Drug Rehabilitation Center in Fort Magsaysay, Nueva

¹⁰ Id. at 98.

¹¹ *Rollo*, p. 11.

¹² *CA rollo*, pp. 65-83.

¹³ Id. at 76.

Ecija.

The dangerous drugs, subject matter of Criminal Case No. 5718-M-2016, which was submitted as evidence in said case, is hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposal.

SO ORDERED.¹⁴

Aggrieved, accused-appellant appealed to CA.¹⁵

The Ruling of the CA

In the assailed Decision,¹⁶ the CA affirmed accused-appellant's conviction of the offenses charged. The CA disposed of the case in this wise:

WHEREFORE, the appeal is DENIED. The 25 September 2018 *Joint Judgment* of the Regional Trial Court of Malolos City, Bulacan, Branch 20 in Criminal Case Nos. 5718-M-2016 and 5719-M-2016, is hereby AFFIRMED.

SO ORDERED.¹⁷

According to the CA, the prosecution had established all the elements required in the prosecution of Illegal Sale of Dangerous Drugs. It declared that a buy-bust operation was conducted against accused-appellant with PO3 Erilis as the *poseur*-buyer; that in the target area, an exchange took place wherein PO3 Erilis handed the marked money to accused-appellant while the latter handed to the former one-heat sealed transparent plastic sachet containing *shabu*; and that the laboratory examination on the contents of the plastic sachet yielded a positive result for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.¹⁸

The CA ruled that Section 21 of RA 9165, as amended by RA 10640, was complied with in the case. PO3 Erilis marked and conducted an inventory of the seized item at the police station in the presence of accused-appellant, *Brgy.* Captain Pineda, and media representative Arcenal.¹⁹ Under the circumstances, the failure of PO3 Erilis to immediately mark the seized plastic sachet at the place of arrest did not render the evidence inadmissible.²⁰

Lastly, the CA found that all the elements of Illegal Use of Dangerous Drugs were present. Accused-appellant was arrested for engaging in the sale of

¹⁴ Id. at 82-83.

¹⁵ See Notice of Appeal dated October 3, 2018, id. at 11.

¹⁶ Id. at 120-138.

¹⁷ Id. at 137-138.

¹⁸ *Rollo*, p. 16.

¹⁹ Id. at 18-19.

²⁰ Id. at 19.

shabu. When he was subjected to a drug test, the urine sample taken from him tested positive for the presence of methamphetamine hydrochloride or *shabu*.²¹

Unrelenting, accused-appellant appealed to the Court.

In compliance with the Court's Resolution²² dated July 5, 2021, both parties filed their respective manifestations; the Office of the Solicitor General's Manifestation (In Lieu of Supplemental Brief)²³ dated November 3, 2021 stating that it sees no cogent reason to file supplemental brief as it believes that it has already extensively discussed the relevant issues in the appellee's brief filed before the CA; and the accused-appellant's Manifestation (In Lieu of Supplemental Brief)²⁴ dated November 4, 2021, adopting the appellant's brief as the same has adequately discussed all the matters pertinent to his case.

The Issue

The core issue in this case is whether the CA correctly affirmed accused-appellant's conviction of Illegal Sale and Illegal Use of Dangerous Drugs defined and punished under Sections 5 and 15, Article II of RA 9165, respectively.

The Court's Ruling

The appeal has merit.

Well settled is the rule that appeals in criminal cases open the entire case for review.²⁵ "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."²⁶

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: "(a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment."²⁷ For a successful prosecution of the offense of Illegal Sale of Dangerous Drugs, the prosecution must establish with moral certainty not only the elements mentioned above, but also the *identity* of the dangerous drug, which in itself constitutes an integral part of the *corpus delicti* of the offense.²⁸ Hence, the prosecution must be able to account for each link in the chain of custody from the moment the dangerous drugs are seized up to their presentation in court as evidence of the

²¹ Id. at 21.

²² Id. at 28-29.

²³ Id. at 35-37.

²⁴ Id. at 41-43.

²⁵ *Fernandez v. People*, G.R. No. 254320, July 5, 2021.

²⁶ Id.

²⁷ *People v. Crispo*, 828 Phil. 416, 429 (2018).

²⁸ See *People v. Santos*, G.R. No. 243627, November 27, 2019.

offense.²⁹

In *Mallillin v. People*,³⁰ the Court explained how the chain of custody of seized items should be established:

[T]he chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe 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. These witnesses 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 possession of the same.³¹

In the chain of custody of the confiscated item, the links that should be established are the following: (1) the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer 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.³²

Here, the police officers breached the chain of custody at the outset as the inventory and marking of the evidence allegedly retrieved were not done *immediately* after its seizure at the area where the buy-bust operation was conducted.

Marking is considered as the starting point in the chain of custody. It is therefore imperative that the seized contraband be *immediately* marked because succeeding handlers of the specimens will use the markings as reference. Significantly, marking is a devised used to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting, or contamination of evidence. For such reason, the law enjoins that it be done in the presence of the apprehended violator *immediately* upon confiscation to truly ensure that they are the same items which enter the chain of custody.³³

²⁹ See *People v. Año*, 828 Phil. 439, 448 (2018). See also *People v. Viterbo*, 739 Phil. 593, 601 (2014) and *People v. Alagarme*, 754 Phil. 449, 459-460 (2015).

³⁰ 576 Phil. 576 (2008).

³¹ *Id.* at 587.

³² *People v. Ordiz*, G.R. No. 206767, September 11, 2019.

³³ *People v. Balaso-Lopez* (Notice), G.R. No. 251050, June 28, 2021.

In *People v. Mola*,³⁴ the Court found the prosecution's non-compliance with the first link, that is, the marking by the apprehending officer of the dangerous drug seized from the accused, unjustified. It found that the reason advanced by the prosecution witness – that there were many persons in the place of arrest – was unconvincing and hollow. It also found that “[t]he insinuation that the safety and security of his person or of the items seized was under immediate or extreme danger was self-serving as it was not substantiated or corroborated by evidence.”³⁵

In the same way, in *People v. Sood*³⁶ and *People v. Cornel*,³⁷ (*Cornel*) the Court held that the buy-bust team's excuse of the existence of a commotion was not a justifiable reason for failing to conduct the inventory at the place of seizure. In *Cornel*, especially, the Court pointed out that seven armed members of the buy-bust team could have easily contained any commotion; hence, they should have been able to conduct the marking and inventory at the place of seizure.³⁸ Thus:

We have noted with alarm that the apprehending officers did not follow the procedural safeguards of the law. For one, they did not do the marking and the inventory of the evidence seized immediately at the place of arrest despite the law itself directing such acts to be done then and there. To excuse their lapse, PO2 Reas openly declared that “...*the area is critical and we have to leave the place immediately and we do not have time to make the inventory there.*” Such declaration was hardly plausible, however, because outside of the officer's self-serving claim, the Prosecution adduced no evidence that would have substantiated the “critical” conditions then obtaining that had prevented compliance with the statutory safeguards. The lawmen ought not to trifle so easily with such safeguards that were erected by our lawmakers precisely for the protection of the rights and freedoms of our citizens from unreasonable intrusions by our law enforcers.³⁹ (Italics in the original)

Under Section 21 of RA 9165, as amended, the apprehending team must conduct a physical inventory of the seized items and the photographing of the same *immediately* after seizure and confiscation at the place of apprehension. While the implementing rules allow the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team, in the case, there was nevertheless no clear showing that the police station where the authorities conducted the inventory and marking was the nearest police station or the nearest office of the apprehending team from the place of the apprehension.⁴⁰ As testified to by PO3 Erisis, after the apprehension of accused-appellant, the buy-bust team proceeded to the police station for the

³⁴ 830 Phil. 364 (2018).

³⁵ Id. at 378.

³⁶ 832 Phil. 850 (2018).

³⁷ 829 Phil. 645 (2018).

³⁸ Id. at 657.

³⁹ *People v. Placiente*, G.R. No. 213389, August 14, 2019.

⁴⁰ *Luna v. People*, G.R. No. 231902, June 30, 2021.

marking and conduct of the inventory as people began to gather in the area. Accordingly, PO3 Erilis was in possession of the unmarked plastic sachet subject of the sale from the place of arrest until they reached the police station.⁴¹ To the Court's mind, however, the cited reason of PO3 Erilis is devoid of merit. The alleged crowding in the area is an unsubstantiated allegation and cannot be sanctioned to excuse improper deviation from the prescribed *situs* of the marking in this case. Notably, the law enforcement officers did not even state that their safety would be threatened by the alleged influx of people in the area such that the immediate marking of the seized item in the place of apprehension is made impossible. Even the team's vehicle could have served as a shelter for them to be able to perform the simple act of inscribing a couple of letters and numbers on one sachet before leaving the place of arrest and seizure.

That the seized items were subsequently inventoried and photographed at the police station in the presence of *Brgy.* Captain Pineda and media representative, Arcenal, still, did not serve to cure the incipient breach which attended the marking of the seized item. As the sachet presented in evidence against accused-appellant remained unmarked from the time it was allegedly confiscated up to the team's arrival at the police station, doubts linger as to the item's identity, integrity, and whereabouts, during the period of transport. This obviously created a critical gap on the chain of custody warranting accused-appellant's acquittal for Illegal Sale of Dangerous Drugs.

Considering that at the point of seizure, which is the first link in the custody, irregularities were already attendant, it becomes futile to prove the rest of the links in the chain.

As the prosecution failed to prove the legitimacy of the buy-bust operation, it necessarily follows that accused-appellant's warrantless arrest was illegal. With his acquittal of violation of Section 5, Article II of RA 9165, it then follows that he should also be acquitted of violation of Section 15, Article II of the same law.

The case for Illegal Use of Dangerous Drugs was filed because accused-appellant was found positive for use of methamphetamine hydrochloride after he was subjected to a drug test following his arrest. Section 38 of RA 9165 provides:

Section 38. *Laboratory Examination or Test on Apprehended/Arrested Offenders.* – Subject to Section 15 of this Act, any person apprehended or arrested for violating the provisions of this Act shall be subjected to screening laboratory examination or test within twenty-four (24) hours, if the apprehending or arresting officer has reasonable ground to believe that the person apprehended or arrested, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs. If found to be

⁴¹ *Rollo*, p. 9.

positive, the results of the screening laboratory examination or test shall be challenged within fifteen (15) days after receipt of the result through a confirmatory test conducted in any accredited analytical laboratory equipment with a gas chromatograph/mass spectrometry equipment or some such modern and accepted method, if confirmed the same shall be *prima facie* evidence that such person has used dangerous drugs, which is without prejudice for the prosecution for other violations of the provisions of this Act: *Provided*, That a positive screening laboratory test must be confirmed for it to be valid in a court of law.

The result of accused-appellant's drug test cannot be used as evidence against him as it is an indirect result of his illegal apprehension due to the arresting officers' non-compliance with the procedure provided in Section 21.⁴² It must be noted that Section 21 of RA 9165 is a statutory exclusionary rule of evidence. Under the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or the rules. In the case, the results of accused-appellant's drug test cannot be used against him for it is considered as a "fruit of the poisonous tree."⁴³ The Court explained:

According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained.⁴⁴

Here, if accused-appellant was not arrested in the first place, he would not have been subjected to a drug test because Section 38 of RA 9165 refers to "any person apprehended or arrested for violating the provisions of this Act." As accused-appellant was not proved to have violated any of the provisions of RA 9165, then the drug test conducted on him has no leg to stand on. Perforce, accused-appellant must be acquitted of the charge of violation of Section 15, Article II of RA 9165.⁴⁵

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 26, 2020 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 12138 is **REVERSED** and **SET ASIDE**. Accused-appellant Ronald Allan Go y Cruz is hereby **ACQUITTED** of the charges of Illegal Sale and Use of Dangerous Drugs in Criminal Case Nos. 5718-M-2016 and 5719-M-2016, respectively, on the ground of reasonable doubt. He is ordered immediately released from detention unless he is being confined for some other lawful cause.

⁴² *People v. Collado* (Notice), G.R. No. 242208, February 15, 2022.

⁴³ *People v. Angeles*, G.R. No. 237355, November 21, 2018.

⁴⁴ *People v. Alicando*, 321 Phil. 656, 690 (1995).

⁴⁵ *People v. Angeles*, supra note 43.

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

SO ORDERED.”

By authority of the Court:

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

Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
East Avenue cor. NIA Road
Diliman, 1104 Quezon City

COURT OF APPEALS
CA G.R. CR HC No. 12138
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 20, Malolos City
(Crim. Case Nos. 5718-M-2016 and 5719-M-2016)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Ronald Allan Go y Cruz
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

PGEN. Rodolfo S. Azurin Jr.
CHIEF, PHILIPPINE NATIONAL POLICE
National Headquarters
Camp Crame, Quezon City

The Director General
PHILIPPINE DRUG ENFORCEMENT AGENCY
PDEA Bldg., NIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

The Chairman
DANGEROUS DRUGS BOARD
3rd Floor DDB-PDEA Bldg.,
NIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

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Supreme Court, Manila
[research_philja@yahoo.com]

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