



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 17, 2023**, which reads as follows:*

“G.R. No. 245968 (*People of the Philippines v. Carlos Hinotan*).—Carlos Hinotan appeals the October 19, 2018 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01745-MIN, which affirmed the July 3, 2017 Decision² of the Regional Trial Court (RTC), Branch 8, Dipolog City, in Criminal Cases No. 17337-38, finding him guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165,³ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

In two separate Informations,⁴ Hinotan was charged with violation of Secs. 5 and 11 of Art. II of Republic Act No. 9165, which respectively alleged:

Criminal Case No. 17337

That in the evening, on or about the 1st day of December 2011, in the Municipality of Katipunan, Zamboanga del Norte and within the jurisdiction of this Honorable Court, the said accused, without authority from law, did then and there willfully, unlawfully and feloniously sell and deliver one (1) heat sealed transparent plastic sachet containing methamphetamine hydrochloride (*shabu*) weighing 0.0175 gram to BEAU FAITH E. ORTEZUELA, a PDEA agent who acted as a poseur buyer, after

¹ *Rollo*, pp. 5-22. Penned by Associate Justice Walter S. Ong and concurred in by Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño.

² *Records*, pp. 190-205. Penned by Presiding Judge Ric S. Bastasa.

³ 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: June 7, 2002.

⁴ *Records*, Criminal Case No. 17337, pp. 1-2; Criminal Case No. 17338, pp. 20-21.

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receiving from the latter a marked money in the amount of [PHP]500.00, with his full knowledge that the same is a dangerous drug in Violation of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drug Act of 2002.

CONTRARY TO LAW x x x.⁵

Criminal Case No. 17338

That in the evening, on or about the 1st day of December, 2011, in the Municipality of Katipunan, Zamboanga del Norte and within the jurisdiction of this Honorable Court, the said accused, not being authorized by law, did then and there willfully, unlawfully and feloniously possess and have in his control and custody one (1) heat-sealed transparent plastic sachet containing white crystalline granules known as methamphetamine hydrochloride (*shabu*) weighing 0.0130 gram, with his full knowledge that the same is a dangerous drug in violation of Sec. 11, Art. II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drug Act of 2002.

CONTRARY TO LAW x x x.⁶

Hinotan pleaded not guilty to both charges.⁷ Trial on the merits thereafter ensued.

Version of the Prosecution

Philippine Drug Enforcement Agency (PDEA) Agent Beau Faith Ortezuela (Ortezuela) narrated that on December 1, 2011, Provincial Drug Enforcement Officer Jurie Rocamora (Rocamora) informed him that Police Inspector Jarvin de la Cruz of Katipunan, Zamboanga Del Norte (De la Cruz) coordinated with him regarding accused-appellant's drug trade in the municipality.⁸ Rocamora also informed Ortezuela that De la Cruz would provide the confidential informant (CI) who was then acquainted with the accused-appellant.⁹ Rocamora evaluated the report and coordinated with the Philippine National Police – Zamboanga del Norte (PNP-ZN) Office.¹⁰ Thereafter, Rocamora ordered the conduct of a buy-bust operation.

⁵ Records, Criminal Case No. 17337, p. 1.

⁶ Records, Criminal Case No. 17338, p. 20.

⁷ Records, Criminal Case No. 17337, p. 19; Criminal Case No. 17338, p. 40.

⁸ TSN, May 3, 2013, p. 3.

⁹ Id. at 4.

¹⁰ Id.

Subsequently, the buy-bust team proceeded to Katipunan Municipal Police Station, where De la Cruz conducted a briefing.¹¹ During the briefing, Ortezueta was designated as the poseur-buyer and was given a ₱500-peso bill as buy-bust money.¹² On the other hand, Police Officer 3 Julito Asentista (Asentista) was designated as the back-up arresting officer.¹³

On board a single motorcycle, Ortezueta together with the CI proceeded to the target area.¹⁴ Upon arrival thereat, they went to the corner along the highway of Barangay II Katipunan fronting Jose Rizal Memorial State University (JRMSU) Katipunan Campus and waited for the accused-appellant to arrive.¹⁵ After waiting for almost 20 minutes, they noticed a one male person approaching their location.¹⁶ The CI informed Ortezueta that the person approaching them was the suspect.¹⁷

Thereafter, the CI introduced Ortezueta as the buyer.¹⁸ Accused-appellant then asked for the payment.¹⁹ In turn, Ortezueta gave to accused-appellant the PHP 500-peso buy-bust money.²⁰ Upon receipt of the buy-bust money, accused-appellant told them to wait, as he will buy a mosquito killer (“*kato*l”) at a nearby store, which is about 30 meters away.²¹ After waiting for almost 30 minutes, accused-appellant returned to the location, extended a handshake, and discretely handed over to Ortezueta the one plastic sachet of shabu.²² Upon receiving the transparent plastic sachet, Ortezueta verified the same if it was indeed shabu.²³ Ortezueta then immediately put the contraband inside his pocket.²⁴ Subsequently, Ortezueta executed the pre-arranged signal by removing his cap in order to notify the rest of the buy-bust team that the transaction has already transpired.²⁵

¹¹ Id. at 4-5.

¹² Id. at 5.

¹³ Id.

¹⁴ Id. at 6-7.

¹⁵ Id. at 7.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 8.

¹⁹ Id.

²⁰ Id. at 9.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id. at 10.

Ortezuela then introduced himself as a police officer to the accused-appellant, apprised him of his constitutional rights, and arrested him.²⁶ Thereafter, Ortezuela bodily searched the accused-appellant.²⁷ As a result, he recovered from the accused-appellant the following: 1) one sachet of shabu; 2) improvised tissue paper torch; 3) Marlboro cigarette pack; 4) black leather wallet with identification cards and documents; 5) PHP 3,000.00 money including the PHP 500.00 buy-bust money; 6) a coin purse containing two disposable lighters; 7) a purse containing PHP 20.00, PHP 50.00, and coins amounting to PHP 12.00; and 8) a Nokia cellphone.²⁸

At the place of arrest, Ortezuela marked all the seized items with his initial and date.²⁹ Thereafter, Ortezuela conducted the inventory in the presence of the accused-appellant, a media representative and barangay official Jose Marie Cruz.³⁰ Photographs during the marking and inventory were taken by Rocamora.³¹

The operatives subsequently brought the accused-appellant to Police Camp Hamac for his temporary detention.³² Ortezuela kept all the marked sachets in the self-sealing envelope for laboratory examination.³³ On the following day, December 2, 2011, Ortezuela personally handed the specimen drugs together with the letter-requests for laboratory examination to the Provincial Crime Laboratory Office.³⁴

Police Chief Inspector Anne Aimee Pilayre conducted a qualitative examination on the seized items.³⁵ Chemistry Report No. D-093-2011³⁶ found that the seized items tested positive for the presence of methamphetamine hydrochloride, a dangerous drug.

Version of the Defense

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id. at 10-16.

³⁰ Id at 16-17.

³¹ Id. at 19.

³² Id. at 20.

³³ Id.

³⁴ Id.

³⁵ TSN, April 19, 2012, p. 4.

³⁶ Records, p. 10.

Accused-appellant, on the other hand, proffered a different account of the incident and raised denial as his defense. He asserted that he was a high school teacher at Villaramos National High School.³⁷ Accused-appellant narrated that on December 1, 2011, he attended the Department of Education presentation of teachers inside a church, which was 5-10 minutes away from his residence.³⁸ Upon arrival thereat, he noticed that the program was already finished so he decided to go home.³⁹

On his way home, some uniformed armed individuals stopped⁴⁰ and arrested him.⁴¹ Thereafter, a certain Juan Damuag asked him for a stick of cigarette, which he immediately obliged.⁴² Asentista and his companions handcuffed accused-appellant.⁴³ Thereafter, Ortuzuela opened his bag. Accused-appellant was surprised when sachets of shabu were found inside the bag.⁴⁴ Subsequently, Asentista frisked him and took his wallet, cellphone, cigarette case and coin purse, which were laid out on a bench found in the area.⁴⁵ Immediately, accused-appellant shouted that the two sachets of shabu came from Ortuzuela.⁴⁶ A commotion thereafter ensued but the police officers rebuked them.⁴⁷

Thereafter, accused-appellant was brought to the police station.⁴⁸ Certain witnesses then arrived and signed a document.⁴⁹ Pictures of the accused-appellant were likewise taken during the inventory.⁵⁰ On the following day, he was brought to the crime laboratory for medical examination.⁵¹

Ruling of the Regional Trial Court

³⁷ TSN, January 30, 2017, p. 3.

³⁸ Id. at 4-5.

³⁹ Id. at 5.

⁴⁰ Id.

⁴¹ Id. at 7.

⁴² Id. at 5.

⁴³ Id. at 8-9.

⁴⁴ Id. at 9.

⁴⁵ Id. at 10.

⁴⁶ Id. at 10.

⁴⁷ Id.

⁴⁸ Id. at 11.

⁴⁹ Id. at 12-13.

⁵⁰ Id. at 12.

⁵¹ Id. at 15.

The RTC, in its Decision⁵² dated July 3, 2017, found accused-appellant guilty beyond reasonable doubt of the offenses charged. The dispositive portion of the RTC Decision reads:

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

(1) In Criminal Case No. 17338, in finding the accused CARLOS HINOTAN guilty of illegally possessing shabu weighing 0.0130 grams [sic] which is violative of Section 11, Article II of R.A. 9165 he is hereby meted the imprisonment ranging from twelve (12) years and one (1) day to 14 years and eight (8) months and a fine of [PHP]300,000.00.

(2) In Criminal Case No. 17337, finding the accused guilty of selling shabu which is violative of Section 5, Art. II of R.A. 9165, the accused is hereby sentenced to Life Imprisonment and to pay a fine of [PHP]500,000.00

Furthermore the accused is not eligible for parole pursuant to Section 2 of the Indeterminate Sentence Law.

Finally all the sachets of shabu, the cash money and other paraphernalia used in the commission of the offense are hereby forfeited in favor of the state to be disposed in accordance with the rules.

SO ORDERED.⁵³

The RTC ruled that the prosecution was able to establish all the elements of both crimes. Relevantly, the RTC upheld the presumption of regularity in the performance of official duties by the police officers involved in this case.

Aggrieved, accused-appellant appealed his conviction before the CA.

Ruling of the Court of Appeals

In its assailed October 19, 2018 Decision,⁵⁴ the CA affirmed the trial court's Decision. It sustained the trial court's finding that the prosecution cogently established each link in the chain of custody

⁵² Records, pp. 190-205.

⁵³ Id.

⁵⁴ *Rollo*, pp. 5-22.

over the shabu, from the time it was seized from the accused-appellant up to the time it was presented during the trial as proof of the *corpus delicti*. In addition, noncompliance with Sec. 21 of Republic Act No. 9165 will not necessarily be fatal to the prosecution's case as long as the integrity and the evidentiary value of the seized items are duly preserved.

The appellate court likewise rejected the defense of denial proffered by the accused-appellant, holding that this defense cannot be given greater evidentiary weight absent any showing that the police officers were inspired with ill motive or that they were not properly performing their duties.

Thus, the dispositive portion of the CA Decision reads:

WHEREFORE, the appeal is DENIED. The Decision dated [July 3, 2017] rendered by the Regional Trial Court, 9th Judicial Region, Branch 8, Dipolog City in Crim. Cases No. 17337-38 is AFFIRMED.

SO ORDERED.⁵⁵

Hence, the instant appeal.

Issue

Whether the CA correctly found accused-appellant guilty beyond reasonable doubt of violation of Secs. 5 and 11, Art. II of Republic Act No. 9165.

Our Ruling

The appeal is meritorious.

In the prosecution of drug cases, it is the dangerous drug itself that forms part of the *corpus delicti* of the offense. Thus, the integrity of the *corpus delicti* must be established with moral certainty through an unbroken chain of custody.

Accused-appellant contends that the procedures laid down in Sec. 21 of Republic Act No. 9165 were not strictly complied with,

⁵⁵ Id.

which consequently compromised the integrity of the evidence presented against him.

Here, the act subject of this case was allegedly committed on December 1, 2011, or prior to the amendment of Sec. 21, Art. II of Republic Act No. 9165 by Republic Act No. 10640.⁵⁶ Thus, the three witnesses are required, to wit: (1) a representative from the media; (2) a representative from the Department of Justice (DOJ); and (3) any elected public official. The pertinent portion of Sec. 21 reads:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (a) 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; (Emphasis supplied)**

In addition, Sec. 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 further specifies the insulating presence of the three required witnesses during the physical inventory and photographing of the seized drugs, viz.:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The

⁵⁶ 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.

PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (b) The apprehending officer/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;** (Emphasis supplied)

The prosecution failed to establish that the apprehending team complied with the rule on chain of custody. Based on the established facts, it was shown that the dangerous drugs were not inventoried and photographed at the site of arrest upon seizure in the presence of a representative of the DOJ. The records show that the inventory was conducted at the police station only in the presence of the accused-appellant, a media representative, and a barangay official. Clearly, the apprehending team failed to comply with the three-witness rule.

Sec. 21(a) of the IRR of Republic Act No. 9165 expressly provides that noncompliance with the requirements, under justifiable grounds, shall not render void and invalid the seizures of and custody over the items seized, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

However, it is apparent that the buy-bust team utterly failed to comply with the aforesaid procedure. At the very least, the prosecution should have proffered that the apprehending officers exerted genuine and sufficient efforts to secure the presence of the insulating witnesses. At most, the explanation given by the police officers pertained only to the unavailability of a representative of the DOJ in the area. Clearly, the prosecution failed to provide a credible explanation justifying the non-compliance of the three-witness rule, a mandatory requirement set under Sec. 21, Art. II of Republic Act No. 9165. It is well-settled that the procedure in Sec. 21, Art. II of Republic Act No. 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.⁵⁷

Although strict compliance with the requirements of the law may not always be possible, the Court has elucidated that:

[I]t is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, **a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced.** In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for a “sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse”. Verily, **mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.** These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. **As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that the exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable.**⁵⁸ (Emphasis supplied)

⁵⁷ *People v. Jugo*, 824 Phil. 743, 756 (2018).

⁵⁸ *Ramos v. People*, 837 Phil. 473, 486-487 (2018). Citations omitted.

In view of such unwarranted departure from the procedure set forth in Sec. 21, Art. II of Republic Act No. 9165, as well as its IRR, the Court is therefore constrained to conclude that the integrity and evidentiary value of the *corpus delicti* have been compromised, which consequently warrants accused-appellant's acquittal.

WHEREFORE, the appeal is **GRANTED**. The assailed October 19, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01745-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant Carlos Hinotan 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.”

By authority of the Court:


ATTY. LIBRADA C. BUENA
Division Clerk of Court
HTB

The Solicitor General
Amorsolo Street
1229 Makati City

Court of Appeals **JAN 26 2023**
9000 Cagayan de Oro City
(CA-G.R. CR-HC No. 01745-MIN)

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The Presiding Judge
Regional Trial Court, Br. 8
8100 Dipolog City
(Crim. Case Nos. 17337 & 17338)

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Accused-Appellant
c/o The Superintendent
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