



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated July 4, 2022 which reads as follows:*

“G.R. No. 247905 (People of the Philippines, *plaintiff-appellee*, v. Jojo De Vera y Quiroz, *accused-appellant*). — The Court resolves to **GRANT** the motion to admit supplemental brief dated March 17, 2021 of Atty. January E. Ragudo of Ragudo Law Office, counsel for accused-appellant, informing the Court that their office inadvertently filed accused-appellant’s supplemental brief to the lower court, and praying for the admission of the attached supplemental brief, and to **NOTE** aforesaid supplemental brief dated January 10, 2020.

Assailed in this ordinary appeal<sup>1</sup> is the Decision<sup>2</sup> dated February 11, 2019 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 09774, which affirmed the Joint Decision<sup>3</sup> dated June 29, 2017 of the Regional Trial Court of Dagupan City, Branch 42 (RTC) in Crim. Case Nos. 2011-0634-D and 2011-0635-D finding accused-appellant Jojo De Vera y Quiroz (De Vera) guilty beyond reasonable doubt of the crimes of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the ‘Comprehensive Dangerous Drugs Act of 2002.’

**The Facts**

This case stemmed from two (2) separate Informations filed before the RTC charging De Vera with violations of Sections 5 and 11, Article II of RA 9165, the accusatory portions of which read:

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<sup>1</sup> See Notice of Appeal dated March 7, 2018; *rollo*, p. 22.

<sup>2</sup> *Id.* at 3-20. Penned by Associate Justice Danton Q. Bueser with Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos, concurring.

<sup>3</sup> *CA Rollo*, pp. 41-46. Penned by Presiding Judge Junius F. Dalaten.

<sup>4</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.

*prtd*

Criminal Case No. 2011-0634-D  
(Violation of Section 11, Article II of RA 9165)

That on or about the 20<sup>th</sup> day of December, 2011, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused JOJO DE VERA Y QUIROZ, did then and there, willfully, unlawfully and criminally have in his possession, custody and control Methamphetamine Hydrochloride (Shabu) contained in three (3) heat sealed plastic sachets weighing more or less 0.132 grams, without authority to possess the same.

Contrary to Article II, Section 11, [RA] 9165.<sup>5</sup>

Criminal Case No. 2011-0635-D  
(Violation of Section 5, Article II of RA 9165)

That on or about the 20<sup>th</sup> day of December, 2011, in the City of Dagupan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused JOJO DE VERA Y QUIROZ, did then and there, willfully, unlawfully and criminally sell and deliver to a customer Methamphetamine Hydrochloride (Shabu) contained in one (1) heat sealed plastic sachet weighing more or less 0.052 grams, in exchange for [P]500.00, without authority to do so.

Contrary to Article II, Section 5, [RA] 9165.<sup>6</sup>

The prosecution alleged that on December 20, 2011, a confidential informant (CI) arrived at the office of the Philippine National Police Dagupan City (PNP-Dagupan) to report De Vera's alleged illegal drug activities. Acting on such information, PNP-Dagupan formed a buy-bust team consisting of Police Officer 3 Manuel Piapacruz (PO3 Piapacruz) as poseur buyer, among others. After the briefing, the buy-bust team proceeded to De Vera's house. Upon arrival thereat, PO3 Piapacruz and the CI negotiated with De Vera for the purchase of one (1) sachet of *shabu*. After the transaction had been consummated, PO3 Piapacruz and the rest of the buy-bust team arrested De Vera, after which, three (3) more plastic sachets of suspected *shabu* were recovered from the latter. Thereafter, the police officers marked the seized sachets, and allegedly called barangay officials but no one came. The police officers then took De Vera and the seized sachets to the police station, and thereat, PO3 Piapacruz turned over the sachets to Police Officer 3 Michael de Vera (PO3 de Vera) where the inventory and photography of the seized sachets were conducted in the presence of a representative from the Department of Justice (DOJ), Rebecca Cabading (DOJ representative Cabading). According to the police officers, the barangay officials also witnessed the said inventory and photography, but they refused to sign the confiscation receipt for fear of retribution. After preparing the required documentation, PO3 de Vera turned over the sachets as well as the request for laboratory examination to PO3 Piapacruz, who in turn, delivered the same to

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<sup>5</sup> *Rollo*, p. 5.

<sup>6</sup> *Id.* at 4.

*part*

the crime laboratory and turned them over to Police Chief Inspector Myrna Malojo-Todeño (PCI Todeño). PCI Todeño then conducted a qualitative examination on the sachets and confirmed that their contents are indeed *shabu*. Afterwards, PCI Todeño turned over the sachets to the evidence custodian for safekeeping until their actual presentation during trial.<sup>7</sup>

In defense, De Vera denied the allegations against him. He averred that at around 11:00 a.m. of December 20, 2011, he was just inside his house when suddenly, four (4) armed men barged into his house, mauled him, and forced him to lie down. The armed men then searched his house but he was not sure if they found anything as he was already brought outside. Thereafter, he was taken to the police station. He further claimed that no barangay officials nor representatives from the DOJ and the media were present at that time.<sup>8</sup>

### The RTC Ruling

In a Joint Decision<sup>9</sup> dated June 29, 2017, the RTC convicted De Vera of the crimes of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs. Accordingly, he was sentenced as follows: (a) for Illegal Sale of Dangerous Drugs, De Vera was sentenced to suffer the penalty of life imprisonment, and to pay a fine in the amount of ₱500,000.00; and (b) for Illegal Possession of Dangerous Drugs, De Vera was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and to pay a fine in the amount of ₱300,000.00.<sup>10</sup>

In convicting De Vera of the aforesaid crimes, the RTC found that the prosecution had established beyond reasonable doubt that De Vera was caught *in flagrante delicto* to be selling *shabu* through the buy-bust operation, and that thereafter, three (3) more sachets of *shabu* were recovered from him. The RTC also found that the integrity and evidentiary value of the seized items were preserved as there was substantial compliance with the chain of custody rule.<sup>11</sup>

Aggrieved, De Vera appealed<sup>12</sup> to the CA.

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<sup>7</sup> See *id.* at 5-7.

<sup>8</sup> See *id.* at 7.

<sup>9</sup> *CA Rollo*, pp. 41-46.

<sup>10</sup> *Id.* at 45-46.

<sup>11</sup> See *id.* at 44-45.

<sup>12</sup> See Formal Entry of Appearance with Notice of Appeal dated July 11, 2017; *id.* at 18-19.

### **The CA Ruling**

In a Decision<sup>13</sup> dated February 11, 2019, the CA affirmed the RTC ruling *in toto*.<sup>14</sup> Mainly affirming the RTC's findings, the CA held that all the elements of the aforesaid crimes were duly established by the prosecution. In addition, the CA concluded that the arresting officers substantially complied with the rules on chain of custody, thereby preserving the integrity and evidentiary value of the *shabu* seized from De Vera. In this regard, the CA opined that strict noncompliance with the chain of custody rule under justifiable grounds, shall not render void and invalid such seizures and custody over the seized items as long as the integrity and evidentiary value thereof are preserved.<sup>15</sup>

Hence, this appeal.

### **The Issue Before the Court**

The issue before the Court is whether De Vera is guilty beyond reasonable doubt of the crimes of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, as defined and penalized under Sections 5 and 11, Article II of RA 9165, respectively.

### **The Court's Ruling**

The appeal is meritorious.

'At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. 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.'<sup>16</sup>

Guided by the foregoing consideration, the Court is constrained to acquit De Vera of the crimes charged, as will be explained below.

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<sup>13</sup> *Rollo*, pp. 3-20.

<sup>14</sup> *Id.* at 20.

<sup>15</sup> *See id.* at 10-19.

<sup>16</sup> *Sindac v. People*, 794 Phil. 421, 427 (2016).

In cases for Illegal Sale of Dangerous Drugs<sup>17</sup> and Illegal Possession of Dangerous Drugs under RA 9165,<sup>18</sup> 'it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.'<sup>19</sup>

'To establish the identity of the dangerous drug 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 crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.'<sup>20</sup>

'The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or their representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,<sup>21</sup> a representative from the media **and** the Department of Justice (DOJ), and any elected public official;<sup>22</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service **or** the media.<sup>23</sup> The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."<sup>24</sup>

'As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.'<sup>25</sup> Thus, in the case of *People*

<sup>17</sup> "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." (See *People v. Villalon, Jr.*, G.R. No. 249412, March 15, 2021.)

<sup>18</sup> "[T]he elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug." (See *id.*)

<sup>19</sup> See *Saban v. People*, G.R. No. 253812, June 28, 2021; citations omitted.

<sup>20</sup> See *id.*; citations omitted.

<sup>21</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.'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall 'take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.' RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

<sup>22</sup> Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>23</sup> Section 21, Article II of RA 9165, as amended by RA 10640.

<sup>24</sup> See *Saban v. People*, *supra*, citing *People v. Mendoza*, 736 Phil. 749, 764 (2014).

<sup>25</sup> See *id.*

*v. Lim*<sup>26</sup> (*Lim*), the Court *En Banc* definitively held that the prosecution has the positive duty to demonstrate observance of the chain of custody rule under Section 21 of RA 9165, as amended, in such a way that it must acknowledge and justify any perceived deviations therefrom.<sup>27</sup>

In cases of noncompliance with the witnesses requirement, *Lim* further instructs that it must be alleged and proved that the presence of the required witnesses to the physical inventory and photography of the seized drugs was not obtained due to reason/s, such as: '(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.'<sup>28</sup> Finally, *Lim* further mandates that the **prosecution must prove that the arresting officers had exerted earnest efforts to secure the attendance of the witnesses**, as sheer statements that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, are to be regarded as a flimsy excuse.<sup>29</sup>

In this case, the buy-bust operation against De Vera occurred on December 20, 2011, or before RA 9165 was amended by RA 10640 on August 7, 2014,<sup>30</sup> which means that the conduct of inventory and photography must be done in the presence of three (3) witnesses, namely, (a) a public elected official; (b) a DOJ representative; **AND** (c) a media representative.<sup>31</sup> However, records clearly show that the arresting officers failed to comply with this requirement, considering that only DOJ representative Cabading was present during the conduct of inventory and photography of the items seized from De Vera. While the arresting officers claimed that elected barangay officials were present thereat and that they only refused to sign the confiscation receipt for fear of retribution, there is no way for the Court to verify such claim. This is especially considering PO3 Piapacruz' statement that they called barangay officials to serve as witnesses but no one came.<sup>32</sup> In any event, even assuming *arguendo* that there were indeed elected barangay

<sup>26</sup> G.R. No. 231989, September 4, 2018, 879 SCRA 31.

<sup>27</sup> See *id.* at 61, citing *People v. Sipin*, 833 Phil. 67, 92 (2018).

<sup>28</sup> *Id.* at 61-62.

<sup>29</sup> See *id.* at 62-63, citing *People v. Ramos*, 826 Phil. 981, 96-97 (2018).

<sup>30</sup> See note 21.

<sup>31</sup> See *Saban v. People*, *supra* note 19, citing Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations

<sup>32</sup> See *rollo*, p. 6. See also *CA Rollo*, pp. 42-43.

officials during the conduct of inventory and photography, the fact remains that no media representative was present thereat. It bears stressing that **the prosecution has the positive duty to prove compliance with the chain of custody procedure set forth in Section 21 of RA 9165. 'As such, [i]t must have the initiative to not only acknowledge, but also justify, any perceived deviations from the said procedure during the proceedings before the trial court.'**<sup>33</sup> Here, the prosecution did not even bother to acknowledge, much more justify, such glaring noncompliance from the witnesses requirement of the chain of custody rule.

In view of the unjustified noncompliance with the chain of custody rule as delineated above, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from De Vera were compromised, which thereby warrants his acquittal.

**FOR THESE REASONS**, the appeal is **GRANTED**. The Decision dated February 11, 2019 of the Court of Appeals in CA-G.R. CR-H.C. No. 09774 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jojo De Vera y Quiroz is **ACQUITTED** of the crimes of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of Republic Act No. 9165.

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of accused-appellant Jojo De Vera y Quiroz, unless he is being lawfully held in custody for any other reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution. Let copies of this Resolution be furnished to the Chief of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of judgment be issued immediately.

**SO ORDERED."**

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court <sup>mm</sup><sub>21</sub><sub>2</sub>

08 FEB 2023

<sup>33</sup> See *People v. Año*, 828 Phil. 439, 452 (2018).

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(Crim. Case Nos. 2011-0634-D & 2011-0635-D)

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