



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 18, 2022** which reads as follows:*

“G.R. No. 254411 (People of the Philippines, plaintiff-appellee v. Elmer Gonzales y Valienta @ “Hapon,” accused-appellant). – This appeal seeks to set aside the Decision¹ dated June 26, 2019 of the Court of Appeals in CA-G.R. CR HC No. 10930, affirming appellant Elmer Gonzales y Valienta’s conviction for violation of Section 5, Article II of Republic Act No. 9165.

The Proceedings Before the Trial Court

Charge and Plea

By Information dated December 13, 2016, appellant was charged as follows:

That on or about **December 8, 2016**, in the City of Manila, Philippines, the said accused, not being then authorized by the law to sell, trade, deliver, or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell one (1) heat-sealed transparent small plastic sachet weighing **ZERO POINT ZERO FOUR NINE (0.049) gram** with subsequent marking “EGV” of white crystalline substance containing **METHAMPHETAMINE HYDROCHLORIDE**, a dangerous drug.

Contrary to law.²

On arraignment, appellant pleaded not guilty.³

¹ Penned by Associate Justice Rafael Antonio M. Santos, concurred in by Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser, *rollo*, pp. 4–27.

² CA Decision, *id.* at 5.

³ *Id.*

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Prosecution's Version

Police Senior Inspector (PSI) Jeffrey A. Reyes (Reyes), Police Officer (PO) 1 Jefferson Bersonda, and PO1 Louie Jake Benzon (Benzon) testified for the prosecution. Their testimonies may be summarized, in this wise:

On December 8, 2016, around 6 o'clock in the evening, a confidential informant reported to the members of the Special Anti-Illegal Drugs (SAID) Unit Moriones-Tondo Police that a certain "Hapon," later identified as appellant, was engaged in selling shabu at Bambang Street, Tondo, Manila. Based on this information, Chief of the SAID Unit PSI Rommel Salazar organized a buy-bust operation against appellant. PO1 Benzon was assigned as poseur buyer, while the rest of the team as back-up members. PO1 Benzon was handed the buy-bust money consisting of three (3) ₱100 bills dusted with ultraviolet fluorescence powder.⁴

Later that evening, the buy-bust team and the confidential informant proceeded to Bambang Street, Tondo, Manila. There, the confidential informant introduced PO1 Benzon to appellant as his cousin who wanted to buy shabu. Appellant demanded payment first, thus, PO1 Benzon gave appellant the buy-bust money. Appellant, in turn, took out five (5) plastic sachets containing white crystalline substance from his pocket, picked one (1) plastic sachet therefrom, and gave it to PO1 Benzon. Appellant then pocketed the buy-bust money and the remaining plastic sachets. PO1 Benzon removed the towel from his shoulder to signal the other team members that the sale had been consummated.⁵

Once the rest of the team had closed-in, PO1 Benzon arrested appellant. He recovered from appellant four (4) other plastic sachets containing white crystalline substance. Appellant's relatives tried to remove him from the scene, thus, the team had to leave immediately.⁶

The team brought appellant and the seized items to the nearest barangay hall. There, PO1 Benzon marked the plastic sachet that he purchased from appellant with "EGV," while the four (4) other plastics recovered from appellant with "EGV-1" to "EGV-4." PO1 Benzon also prepared an inventory of the seized items. The marking and inventory were witnessed by Barangay Kagawad Timoteo Aldovino (Aldovino). Pictures were taken during the marking and inventory.⁷

⁴ Id. at 6.

⁵ Id. at 7.

⁶ Id.

⁷ Id. at 8.

Thereafter, PO1 Benzon brought the seized items to the crime laboratory for examination. Forensic Chemist PSI Reyes received the specimens and conducted a qualitative test thereon.⁸

Per Chemistry Report No. D-2383-16, PSI Reyes found the specimens positive for methamphetamine hydrochloride, a dangerous drug. After his examination, PSI Reyes sealed the specimens with a masking tape and placed his own markings.⁹ He then placed the specimens in an evidence bag, sealed it with a masking tape, placed additional markings,¹⁰ and turned over the same to the evidence custodian.

PSI Reyes later retrieved the evidence bag from the evidence custodian and presented them to the trial court.¹¹

Defense's Version

Appellant countered that on December 7, 2016, around 7 o'clock in the evening, he was walking along Dimasalang Street when a police on board a motorcycle suddenly approached and asked him where he was going. The police officer also did a body search on him. But despite not finding anything illegal, he was handcuffed, boarded on the motorcycle, and brought to the police station. The next day, money bills were rubbed on his hands, which the police officers told him was for evidence of marked money. Thereafter, he was brought to the barangay hall. The police officers asked him ₱50,000.00 in exchange for his release but when he failed to produce the said amount, he was charged with illegal sale of dangerous drugs.¹²

The Ruling of the Trial Court

By Decision¹³ dated April 2, 2018, the trial court rendered a verdict of conviction, viz.:

WHEREFORE, premises considered, judgment is hereby rendered finding accused **ELMER GONZALES y VALIENTE @ HAPON GUILTY** beyond reasonable doubt for the crime charged against him of violation of Section 5, Article II of Republic Act 9165, as amended. Consequently, said accused is hereby ordered to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

⁸ Id.

⁹ "A" D-2383-16/ 9 DEC 2016/ JAR, "B" D-2383-16/ 9 DEC 2016/ JAR, "C" D-2383-16/ 9 DEC 2016/ JAR, "D" D-2383-16/ 9 DEC 2016/ JAR, and "E" D-2383-16/ 9 DEC 2016/ JAR.

¹⁰ "D-2383-16," 9 DEC 2016, JAR, and his signature, id.

¹¹ Id. at 8-9.

¹² Id. at 9.

¹³ CA rollo, pp. 42-54.

x x x x

SO ORDERED.¹⁴

The Proceedings Before the Court of Appeals

On appeal, appellant argued that the trial court erred in finding him guilty of illegal sale of dangerous drugs despite the prosecution's alleged failure to comply with the chain of custody rule; and for giving credence to the version of the prosecution despite his defenses of frame-up and denial.¹⁵

The People, through the Office of the Solicitor General (OSG), riposted that appellant's guilt was proven beyond reasonable doubt. It maintained that all the elements of illegal sale of dangerous drugs were duly established by the prosecution. Too, the prosecution showed an unbroken chain of custody and compliance with the requirements of Section 21, Article II of Republic Act No. 9165.¹⁶

The Ruling of the Court of Appeals

In its assailed Decision¹⁷ dated June 26, 2019, the Court of Appeals affirmed. It gave full credence to the testimony of the prosecution witnesses, who are police officers performing their official functions. It also found the chain of custody to have been duly established, thus, rejected appellant's denial and theory of frame-up and extortion.

The Present Appeal

Appellant now seeks a verdict of acquittal anew. For the purpose of this appeal, appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.¹⁸

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction against appellant for violation of Section 5, Article II of Republic Act No. 9165?

¹⁴ Id. at 53–54.

¹⁵ Id. at 22–39.

¹⁶ Id. at 66–94.

¹⁷ *Rollo*, pp. 4–27.

¹⁸ Id. at 36–38; 41–43.

Ruling

We acquit.

In drug cases, the State bears not only the burden of proving the elements, but also of proving the *corpus delicti* or the body of the crime. The drug itself constitutes the *corpus delicti* of the offense.¹⁹

Appellant was charged with illegal sale of dangerous drugs, which he allegedly committed on December 8, 2016. The applicable law, therefore, is Republic Act No. 9165 as amended by Republic Act No. 10640 which was approved on August 7, 2014.²⁰

Section 21 of Republic Act No. 9165, as amended, prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz.*:

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:

- (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 preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. x x x (Emphasis supplied)

¹⁹ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019, 911 SCRA 128, 138 [Per *J. Lazaro-Javier*, Second Division].

²⁰ See *Jacson v. People*, G.R. No. 199644, June 19, 2019, 904 SCRA 537, 548 [Per *J. Lazaro-Javier*, Second Division].

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To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure and marking 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 by the forensic chemist to the court.²¹

We focus on the *first link*, which speaks of seizure and marking including the physical inventory and taking of photographs of the seized or confiscated items.

Here, the marking was done not at the place of seizure but in the barangay hall. The prosecution recognized this deviation and offered a valid explanation, *i.e.*, appellant's relatives tried to wrest him from the police officers. But as for the inventory and photographing, the fact that only one insulating witness, namely Barangay Kagawad Aldovino was present *sans* a representative from the National Prosecution Service representative or from media was not at all explained. Verily, there was already a breach of the chain of custody early on during the first link.

The Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of Republic Act No. 9165, as amended, may not always be possible; and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of Republic Act No. 9165, as amended, does not *ipso facto* render the seizure and custody over the items void and invalid. This is with the caveat, however, that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.²²

On this score, *Mallillin v. People*²³ explained that every person who touched the exhibit should 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.²⁴ In addition, these

²¹ *People v. Dela Torre*, supra, at 139.

²² See *People v. Claudel*, G.R. No. 219852, April 3, 2019, 900 SCRA 1, 17 [Per *J. Caguioa*, Second Division].

²³ 576 Phil. 576 (2008) [Per *J. Tinga*, Second Division].

²⁴ *Id.* at 587.

witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and that there had been no opportunity for someone not in the chain to have possession of the same.²⁵

Mallillin also emphasized that stricter compliance with the rules should be observed when the items in question are of minute quantity that come in small containers, *viz.* :

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential **when the item of real evidence is not distinctive and is not readily identifiable**, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is **susceptible to alteration, tampering, contamination and even substitution and exchange**. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and **is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.**²⁶ (Emphases and underscoring supplied; citations omitted)

Verily, given the minute quantity of the drug involved, *i.e.*, one (1) plastic sachet containing 0.049 gram, it becomes imperative for the arresting team to strictly comply with the safeguards to guarantee the identity and integrity of the seized items.

As it was, however, the operation had already been botched right from its very inception. For the arresting team not only failed to secure the presence of all the insulating witnesses, they did not even bother to offer any explanation for their absence.

Following *Mallillin*, it becomes evident that the first link of the chain of custody had been breached early on. Consequently, the identity and integrity of the seized drug items are deemed to have been compromised. Hence, appellant must be acquitted and released from restraint.

²⁵ Id.

²⁶ Id. at 578–588.

FOR THESE REASONS, the appeal is **GRANTED**. The Decision dated June 26, 2019 of the Court of Appeals in CA-G.R. CR HC No. 10930 is **REVERSED** and **SET ASIDE**. Appellant Elmer Gonzales y Valienta @ "Hapon" is **ACQUITTED** of violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 17-331990.

The Director General of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release him from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice of this Resolution.

Copies shall also be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final 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

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