REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **August 3, 2022** *which reads as follows*:

"**G.R. No. 247752 (*People of the Philippines, plaintiff-appellee vs. Ramon Crisostomo y Bargamento, accused-appellant*).** — This Court resolves an appeal[1] assailing the Decision[2] dated September 28, 2018 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 02440, which affirmed the Decision[3] dated December 8, 2016 of the Regional Trial Court (*RTC*), Branch 47 of Bacolod City, in Criminal (*Crim.*) Case No. 12-36362, which found Ramon Crisostomo *y* Bargamento (*Crisostomo*), guilty for violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165.[4]

Antecedents

The instant case arose from an Information, which reads:

> That on or about the 5th day of June, 2012, in the City of Bacolod, Philippines[,] and within the jurisdiction of this Honorable Court[,] the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there willfully, unlawfully and feloniously sell, deliver, give away to a police poseur-buyer PO1 Tony D. Hechanova, and a police asset in a buy-bust operation one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as [*shabu*] weighing 0.04 gram in exchange of two (2) pieces one (1) hundred Peso Bills bearing Serial Nos. HT668049 and AR852085 respectively, as marked money, in violation of the aforementioned law.
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> Act contrary to law.[5]

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1 *Rollo*, pp. 16-18.
2 Penned by Justice Marilyn Lagura-Yap with Associate Justices Gabriel T. Ingles and Edward B. Contreras, concurring; id. at 5-15.
3 CA *rollo*, pp. 12-21
4 Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.
5 Records p. 10.

Upon arraignment on June 19, 2012,[6] Crisostomo, assisted by counsel, entered a plea of "not guilty"[7] to the charge imputed against him. Following pre-trial, trial on the merits ensued.

The version of the prosecution, as summarized by the CA, established that on June 5, 2012, at around 4:10 p.m., Police Superintendent Santiago Rapiz (*P/Supt. Rapiz*) received information from an asset that Crisostomo was engaged in the selling of illegal drugs.[8] He then called for a briefing to conduct a buy-bust operation. During the briefing, around 10 members of the City Anti-Illegal Drugs Special Operations Task Group (*CAIDSOTG*) and Special Operations Group of Bacolod City Police Station were present. Police Officer 1 Tony D. Hechanova[9] (*PO1 Hechanova*) was tasked to be the poseur-buyer, while the rest of the team served as perimeter security.[10] PO1 Hechanova was furnished with two ₱100.00 bills bearing Serial Nos. HT668049 and AR852085 marked with "SYR" for the sale. Prior to conducting their operations, a Pre-Operation Report and Coordination Form were made and submitted to the Philippine Drug Enforcement Agency (*PDEA*).[11]

At around 5:00 p.m., after locating their target, the buy-bust team and their asset went to the target area at Purok Maabi-abihon, Barangay (*Brgy.*) 35, Bacolod City. They proceeded to the house of Liberty Diocson (*Diocson*), the owner of the house where Crisostomo was residing. When they arrived, PO1 Hechanova was introduced by the asset to Crisostomo as an old friend who wanted to buy *shabu*. After introductions, Crisostomo told PO1 Hechanova to enter the house. Inside, he asked for the payment, prompting PO1 Hechanova to hand over the two pieces of ₱100.00 marked money.[12] PO1 Hechanova alleged that Diocson was also present at the scene and took part in the transaction. After receipt of the money, Crisostomo retrieved one transparent plastic sachet containing white crystalline substance from his right front pocket and gave it to PO1 Hechanova, who examined the substance and ascertained it to be *shabu*. After the sale, PO1 Hechanova informed the asset to execute a pre-arranged signal by making a missed call to the buy-bust team.[13]

Subsequently, Crisostomo and Diocson were informed by PO1 Hechanova that it was a buy-bust operation and that he was a police officer. The two were arrested and apprised of their constitutional rights and of the nature of their arrest. When the barangay officials arrived, the buy-bust team

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6 Id. at 30.
7 Id. at 42-44.
8 TSN, February 3, 2015, pp. 3-18.
9 Also identified as PO2 Hechanova in some parts of the Records and the TSN (see Records, p. 92 and TSN, September 29, 2015, p. 4.)
10 TSN, February 3, 2015, pp. 3-4.
11 Id. at 3-6.
12 Id. at 7.
13 Id.

marked, inventoried, and photographed the seized items in the presence of Crisostomo, Brgy. Captain Marianito S. Yelo, and Brgy. Kagawad Enrique Sevilla.[14] The buy-bust team was also able to retrieve from the possession of Diocson, 17 sachets of suspected *shabu*, and other drug paraphernalia. Thereafter, Crisostomo and Diocson were brought to the office of the CAIDSOTG, Bacolod City Police Office.[15] Crisostomo was thereafter charged for the sale of illegal drugs under Section 5, Article II of R.A. No. 9165, while Diocson was charged for possession of illegal drugs under Section 11, Article II of R.A. No. 9165. Three other persons present at the scene were also arrested and they were separately charged for Sections 12 and 15 under Article II of R.A. No. 9165. [16]

At the time, POI Hechanova had custody of all the seized items. He also entered the incident in a police blotter, and prepared the request for laboratory examination.[17] Later, he brought the seized items to the Negros Occidental Provincial Crime Laboratory Office, and these were received by the evidence custodian, PO2 Ariel Magbanua (*PO2 Magbanua*).[18] Per Chemistry Report No. D-127-2012 issued by Police Chief Inspector Paul Jerome Puentespina (*PC/Insp. Puentespina*), the specimen with the marking "RBC-A," which stood for "Ramon Bargamento Crisostomo," weighed 0.04 gram and was found positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[19]

On the part of the defense, Crisostomo alleged that what took place against him was a frame-up. However, he was unable to present other evidence or witnesses to corroborate his claims.[20] He alleged that he lived near the house of Diocson, which was located at Purok Alunan, Brgy. 35.[21] On June 5, 2012, he was at the house of Diocson to sell stolen items, specifically ham and Toblerone. On that same day, five armed men suddenly barged in and instructed him not to run.[22] They introduced themselves as police officers. Of the five police officers, two of them approached and searched him. The police officers were then able to recover the stolen items from Crisostomo's bag. Subsequently, he was arrested and made to sit down at the table and to sign a piece of paper. Minutes later, Crisostomo claimed that three other persons were arrested at the back of Diocson's house, but among them, he only recognized Buboy Diocson.[23] Notably, in Crisostomo's testimony, he also denied knowing Liberty Diocson until that same day.[24]

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14 Id. at 13.
15 Id. at 14.
16 Id.
17 CA *rollo*, p. 71.
18 TSN, March 25, 2014 , p. 6.
19 Id.
20 TSN, November 10, 2016, pp. 1-13.
21 Id.
22 Records, p. 97.
23 Id. at 96-97.
24 TSN, November 10, 2016, p. 7.

The RTC rendered a Decision[25] dated December 8, 2016, finding Crisostomo guilty of violating Section 5, Article II of R.A. No. 9165 or the Comprehensive Dangerous Drugs Act. The *fallo* of the decision reads:

> WHEREFORE, finding accused Ramon Crisostomo [*y*] Bargamento GUILTY beyond reasonable doubt of Violation of Section 5, Article II of Republic Act 9165 (Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs) in Criminal Case 12-36362, judgment is hereby rendered sentencing him to suffer: Life Imprisonment, and to pay a fine of [₱]500,000.00 in Criminal Case 12-36362. He is also to bear the accessory penalty provided by law. Costs against the accused.
>
> The subject (1) plastic sachet containing *shabu* with markings "RBC-A" (Exhibit "J-1" – 0.04 gram), being a dangerous drug, is hereby ordered confiscated and/or forfeited in favor of the government and to be forthwith delivered or turned over to the Philippine Drug Enforcement Agency (PDEA) provincial office for immediate destruction or disposition in accordance with law.
>
> The prompt commitment of accused Ramon Crisostomo [*y*] Bargamento to the national penitentiary for service of sentence is hereby furthermore ordered.
>
> SO ORDERED.[26]

The RTC sustained the version of the prosecution that the latter was able to establish that Crisostomo was guilty of the illegal sale of dangerous drugs. Such fact was established through the testimony of PO1 Hechanova, the poseur-buyer, who identified the subject specimen in court. During trial, PO1 Hechanova also positively identified Crisostomo as the person who sold him the one plastic sachet of *shabu*.[27] The RTC was convinced that the prosecution proved *via* testimonial and object evidence that the sale of the illegal drug took place, namely, in demonstrating the object of the sale, consisting of the one plastic sachet containing the dangerous drug and the exchange of marked money of two ₱100.00 bills, as consideration thereof. The RTC rejected the position of Crisostomo that the chain of custody rule was not complied with in accordance with Section 21 of R.A. No. 9165. It gave credence to the candid and consistent manner PO1 Hechanova testified during the proceedings. Upon its seizure, PO1 Hechanova personally marked the recovered specimen with the initials of Crisostomo: "RBC-A." Furthermore, the RTC found that he was able to clearly demonstrate from the time the specimen was marked, delivered to the evidence custodian of the CAIDSOTG, PO2 Magbanua, in the crime laboratory, and until it was presented in court as proof of the *corpus delicti*, that the integrity and

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25 CA *rollo*, pp.12-21.
26 Id. at 20-21.
27 TSN, February 3, 2015, p. 9.

evidentiary value of the illegal drug was preserved.[28] Therefore, the prosecution established the links in the chain of custody.

In addition to this, the prosecution presented PC/Insp. Puentespina, who was assigned as the Forensic Chemical Officer of the Negros Occidental Crime Laboratory Office.[29] He testified that he received the specimen marked by PO1 Hechanova from PO2 Magbanua of the CAIDSOTG, the evidence custodian. PC/Insp. Puentespina testified that it was placed in a staple sealed transparent plastic sachet with the marking "RBC-A." He personally conducted the qualitative examination in Chemistry Report No. D-127-2012 which found the subject specimen positive for methamphetamine hydrochloride or *shabu*, a dangerous drug and that it consisted of 0.04 gram.[30] After examination, he sealed the specimen with a masking tape and placed his personal markings on it, before turning the same over to PO2 Magbanua for safekeeping.[31]

Lastly, Senior Police Officer 1 Sherwin Rojas, a Philippine National Police member, who was tasked to help the operations of the CAIDSOTG, was also presented to testify that the buy-bust operation took place. [32] He claimed that on June 5, 2012, at around 5:00 p.m., he joined a CAIDSOTG team under the direction of P/Supt. Rapiz that conducted the buy-bust operation and that he was tasked to assist in the arrest of the suspect. He was present when the missed call was received by P/Supt. Rapiz to signal that the sale of the illegal drug between PO1 Hechanova and Crisostomo was completed.[33]

Aggrieved by the ruling, Crisostomo filed a Notice of Appeal.[34]

In the appeal, Crisostomo contended that the prosecution failed to duly establish that strict compliance of the chain of custody rule was observed.[35] He contends that PO1 Hechanova failed to mark the plastic sachet of *shabu* and preserve the integrity and evidentiary value of the illegal drug. This was because 17 packets of heat-sealed *shabu* were also retrieved from Diocson at the same time.[36] Moreover, PO2 Magbanua, the evidence custodian, who received the specimen from PO1 Hechanova was not presented in court. Crisostomo further opined that the prosecution failed to offer any justification as to why no Department of Justice (*DOJ*) representative and media

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28 Id.
29 TSN, March 25, 2014, p. 4.
30 Id. at 5.
31 Id. at 6.
32 TSN, September 29, 2015, pp. 2-5.
33 Id.
34 CA *rollo*, p. 103.
35 Id. at 9.
36 Id. at 37-42.

representative were present during the inventory.[37] As a result, Crisostomo vehemently claimed that the integrity and evidentiary value of the retrieved drug is doubtful and that the RTC erred in ruling that he was proven guilty beyond reasonable doubt of the offense charged.[38]

In its Decision[39] dated September 28, 2018, the CA sustained the conviction of Crisostomo, the dispositive portion of which reads:

> **WHEREFORE**, the Decision dated December 8, 2016 rendered by the Regional Trial Court (RTC), Branch 47, Bacolod City in Criminal Case No. 12-36362 convicting accused-appellant Ramon Crisostomo y Bargamento of Violation of Section 5, Article II or R.A. 9165 or the Comprehensive Dangerous Drugs Act is **AFFIRMED**.
>
> With costs against the accused-appellant.
>
> **SO ORDERED**.[40] (Emphasis in the original)

In upholding the Decision of the RTC, the CA found no substantial error in the judgment of conviction of Crisostomo. The CA ruled that the defense failed to refute the testimonial and object evidence presented by the prosecution and that they were able to prove all of the elements that comprise the illegal sale of dangerous drugs.[41] The CA stated that what is material in the prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation of the *corpus delicti* or the illicit drug in evidence in court, which the prosecution was able to prove. Indubitably, PO1 Hechanova testified in a forthright and straightforward manner as to the identity of Crisostomo, the seller, and the sequence of events up to the consummation of the sale of the illegal drugs. Moreover, Crisostomo was caught *in flagrante delicto* for selling *shabu* to the police poseur-buyer.[42] The CA also found it highly improbable for him to deny that he was acquainted with Diocson, for he could not have entered the house of a stranger to sell stolen goods.[43]

Hence, this appeal.

Both parties filed their Manifestations (in lieu of their Supplemental Briefs) and adopted all the arguments raised in their appellant's and appellee's briefs previously filed before the CA.[44]

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37 Id.
38 Id.
39 *Rollo*, pp. 5-15.
40 Id. at 15.
41 Id. at 5-15.
42 Id.
43 Id. at 14.
44 Id. at 31-39.

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Issue

The question for this Court's resolution is whether the CA erred in finding Crisostomo guilty beyond reasonable doubt for violation of Section 5 of Article II of R.A. No. 9165 or the Comprehensive Dangerous Drugs Act.

Our Ruling

The appeal is meritorious.

In the case at bar, accused-appellant is charged with violation of Section 5, Article II of R.A. No. 9165 or the Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. In *People of the Philippines v. Nhor Isra y Uy Alias*,[45] this Court pronounced:

> Conviction is proper in prosecutions involving the illegal sale of dangerous drugs if the following elements are established, namely: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereof. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. In this regard, the meaning of the term *corpus delicti* is the actual commission by the accused of the particular crime charged.[46]

The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court and that the chain of custody rule was complied with.

Section 21 (1) of R.A. No. 9165, prescribes the procedure to be observed in preserving the corpus delicti in illegal drug cases:

> **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 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 drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s**

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45 G.R. No. 194628, September 8, 2014 (Notice.)

46 Id.

> **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 added)

Section 21(a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165, further states:

> **Section 21.** (a) 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.

On August 7, 2014, R.A. No. 10640 took effect, which requires two (2) witnesses to be present during the physical inventory and photographing of the seized items: (1) an elected public official; and (2) either a representative from the National Prosecution Service or the media.[47]

It has been held that minor deviations from the procedures under R.A. No. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were "recognized and explained in terms of justifiable grounds." There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason."[48]

In *People v. Almorfe*,[49] this Court explained that for the saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.[50]

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47 See *People v. Maganon*, G.R. No. 234040, June 26, 2019, 906 SCRA 406.
48 *Jessie Tolentino y Samia v. People of the Philippines*, G.R. No. 227217, February 12, 2020.
49 631 Phil. 51 (2010).
50 Id. at 60.

In this case, the transaction took place on June 5, 2012. Thus, Section 21(1) of R.A. No. 9165, prior to its amendment, is the applicable law. Under the same law, it is provided that the conduct of the physical inventory and photograph of the seized items must be done in the presence of a representative from the media and the DOJ, **and** any elected public official.

The records reveal that when accused-appellant was arrested, only two elected officials were present to witness the physical inventory. Those are the Barangay Captain and the Barangay Kagawad.[51] Notably, during trial PO1 Hechanova testified, to wit:

PROSECUTOR:

Q Who was present during this particular incident?
A Barangay officials, sir.

Q Why were the 2 other not present?
Q Maybe lack of time, and for the DOJ representative, I think it is impossible to avail their services because of their schedule.[52]

Blatantly, it is a matter of record that no further explanation was offered for the absence of a DOJ representative and a media representative. During trial, the absence of these representatives was loosely attributed to the assumption of lack of time and unavailability by reason of their respective schedules and yet no efforts were made to contact them. The presence of the two barangay officials can hardly be considered as substantial compliance with the law. However, the presence of officials from different agencies are required by law, and not the addition of persons pertaining to the same office. Verily, the absence of the required witnesses cannot be sanctioned.

Further, in a long line of recent jurisprudence,[53] this Court has propounded the importance of the presence of the insulating witnesses.

In *People v. Abelarde*,[54] the accused was acquitted of violation of Section 5, R.A. No. 9165 because there was no evidence that the inventory of the seized dangerous drugs was done in the presence of an elected official, a media representative and a representative from the DOJ.

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51 TSN, February 3, 2015, pp. 14-15.
52 Id.
53 *People v. Niña Caray y Emmanuel*, G.R. No. 245391, September 11, 2019, 919 SCRA 389.
54 824 Phil. 122 (2018).

Similarly, in *People v. Macud*,[55] the buy-bust team failed to secure the presence of the required witnesses on the conduct of inventory of the seized drug items. For this, the Court, too, rendered a verdict of acquittal.

Indeed, the presence of the insulating witnesses during inventory is vital. In the absence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items. Non-compliance with the requirement is, therefore, fatal to the prosecution's case.[56]

In this case, the apprehending officers failed to recognize their lapses and to explain their failure to follow the mandated procedure in drugs cases. Thus, the lower courts misapplied the saving clause under Section 21 (a), Article II of the IRR of R.A. No. 9165, in complete disregard of the operative phrase "justifiable grounds" as essential requirement to excuse non-compliance therewith. Suffice it to state, the breach committed by the police officers of Section 21 of R.A. No. 9165—left unacknowledged and unexplained by the State—is fatal to the prosecution's cause.[57]

By way of final note, it may not be amiss to state that since compliance with the procedure laid down in Section 21 of R.A. No. 9165 is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.[58]

FOR THESE REASONS, the appeal is hereby **GRANTED**. The Decision dated September 28, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02440 upholding the Decision dated December 8, 2016 of the Regional Trial Court, Branch 47 of Bacolod City in Criminal Case No. 12-36362 is hereby **REVERSED** and **SET ASIDE.** Accordingly, Ramon Crisostomo *y* Bargamento is **ACQUITTED** of the crime charged on the ground of reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause.

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55 822 Phil. 1016 (2017).
56 Id.
57 *People v. Jarque y Duka*, G.R. No. 199870, November 10, 2020.
58 Id.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General is **DIRECTED** to **REPORT** the action he has taken to this Court within five (5) days from receipt of this Resolution. Copies shall also be furnished to the Chief of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information

Let an entry of final judgment be issued immediately.

SO ORDERED." (**Kho, Jr.,** *J.* on leave)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
14 MAR 2023

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