



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **December 7, 2022**, which reads as follows:*

**“G.R. No. 250921 – HULMA KALAYAKAN SALI, petitioner, v. PEOPLE OF THE PHILIPPINES, respondent.**

This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court, filed by Hulma Kalayakan Sali (**Sali**) assailing the Decision<sup>2</sup> of the Court of Appeals (CA), in CA-G.R. CR HC No. 01771-MIN, dated November 22, 2018, and its Resolution,<sup>3</sup> dated November 6, 2019, which affirmed the Decision dated April 3, 2017 of the Regional Trial Court of Davao City, Branch 13 (RTC), finding Sali guilty beyond reasonable doubt of violations of Sections 5 and 11, Article II, of Republic Act No. 9165 (**RA 9165**).<sup>4</sup>

*The Facts*

In two separate Informations,<sup>5</sup> Sali was charged with violations of Sections 5 and 11 under RA 9165, which read as follows:

CRIMINAL CASE NO. 66,959-09  
(Illegal Sale of Dangerous Drugs, Section 5)

That on or about November 29, 2009 in the city of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused without being authorized by law, willfully, unlawfully and consciously sold, transferred and delivered one (1) piece transparent plastic sachet of Methamphetamine Hydrochloride, weighing 0.0706 gram (sic), otherwise known as shabu which is a dangerous drug.

CONTRARY TO LAW.

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<sup>1</sup> *Rollo*, pp. 10-31.

<sup>2</sup> *Id.* at 33-44. Penned by Associate Justice Ruben Reynaldo G. Roxas, with the concurrence of Associate Justices Edgardo A. Camello and Evalyn M. Arellano-Morales.

<sup>3</sup> *Id.* at 46-47.

<sup>4</sup> Dangerous Drugs Act of 2002. Approved on January 23, 2002.

<sup>5</sup> *Rollo*, p. 35.

CRIMINAL CASE NO. 66,960-09  
(Illegal Possession of Dangerous Drugs, Section 11)

That on or about November 29, 2009, in the city of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused without being authorized by law, willfully, unlawfully, and consciously had in her possession two (2) pieces of transparent sachets, containing Methamphetamine Hydrochloride, otherwise known as shabu weighing 0.5634 gram, which is a dangerous drug.

CONTRARY TO LAW.

*The Version of the Prosecution*

On November 29, 2009, at around 11:30 a.m., a Confidential Informant (**Informant**) tipped off the officers of the Philippine Drug Enforcement Agency (**PDEA**) Regional Office XI in Camp Domingo Leonor, San Pedro Street, Davao City, and informed them that a certain “Hulma” was engaged in illegal drug activities.<sup>6</sup> The Informant reported that Sali was selling illegal drugs in her apartment located in the Cruz Compound, Rambutan Street, Aquino Subdivision, Bajada, Davao City.<sup>7</sup>

After confirming the reliability of such report, Director Emerson Rosales (**Director Rosales**) issued an Authority to Operate and organized a buy-bust team and Agent Rommel Arian Dela Peña (**Agent Dela Peña**) was designated as the poseur-buyer, with Director Rosales as back-up.<sup>8</sup> With two PHP500.00-peso bills as marked money, the buy-bust team then proceeded to the apartment of Sali to consummate the operation.<sup>9</sup>

Director Rosales stayed by the compound gate, while Agent Dela Peña and the Informant proceeded to Sali’s apartment and knocked on the door. Sali opened the door and had a short conversation with the Informant. The Informant then introduced Agent Dela Peña as the buyer of *shabu*. Sali asked Agent Dela Peña how much he would buy, to which he answered, “*isang libo lang, bale isang libo lang.*” After the marked money was received by Sali, the latter placed the same inside her black pouch. Sali then opened her black pouch and gave Agent Dela Peña a transparent sachet containing white crystalline substance. After receiving the same, Agent Dela Peña executed the pre-arranged signal of stroking his hair upwards.<sup>10</sup>

Director Rosales then rushed to the scene to arrest Sali and informed her of her constitutional rights. Director Rosales proceeded to search Sali’s

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<sup>6</sup> *Id.* at 35.

<sup>7</sup> *Id.* at 36.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

black pouch, where he found two more transparent sachets containing a white crystalline substance.<sup>11</sup> Subsequently, Agent Dela Peña marked the sachet subject of the buy-bust operation with his initials “RAQDP,” while Director Rosales marked the two sachets obtained from Sali’s black pouch with his initials “ERR.”<sup>12</sup>

Thereafter, the buy-bust team brought Sali to the PDEA Office. The seized drug and marked money were then presented to Agent Felix Mejorado (**Agent Mejorado**), the desk officer on duty at that time. Agent Mejorado recorded the incident in the blotter, and an inventory was conducted in the presence of Sali, Neph Locson, a reporter from the *Mindanao Times*, and *Kagawad* Nila Arabis.<sup>13</sup>

Agent Dela Peña then prepared the Request for Laboratory Examination and brought the three sachets confiscated from Sali to the Philippine National Police (**PNP**) Crime Laboratory for testing. The specimens were received by SPO1 Sherwin Valmores (**SPO1 Valmores**). After testing, the three specimens tested positive for Methamphetamine Hydrochloride, which was indicated in Chemistry Report No. 66,959-09.<sup>14</sup>

#### *The Version of the Defense*

For her part, Sali interposed the defense of denial and claimed that no buy-bust operation took place, and that she only saw the alleged *shabu* when she was arrested. Sali averred that on the day the alleged operation transpired, she was cooking in her kitchen when suddenly someone kicked her door open and looked for a certain Ulah Dammang.<sup>15</sup>

#### *The Ruling of the RTC*

In its Decision, dated April 3, 2017, the RTC found Sali guilty beyond reasonable doubt for violation of Sections 5 and 11 of RA 9165. The dispositive portion of the Decision reads:

WHEREFORE, as the prosecution was able to prove the guilt of the accused beyond reasonable doubt, judgment is hereby rendered **CONVICTING** accused HULMA KALAYAKAN SALI for violations of Section 5 and 11, Article II of R.A. 9165.

In Criminal Case No. 66,959-09 for the crime of violation of Section 5, Article II of R.A. 9165, she is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 36-37.

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

<sup>15</sup> *Id.*

In Criminal Case No. 66,960-09 for the crime of violation of Section 11, Article II of R.A. 9165, she is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day to fourteen (14) years and to pay a fine of P400,000.00.

The accused is entitled to be credited in her favor the preventive imprisonment that she has undergone pursuant to Article 29 of the Revised Penal Code as amended by Republic Act No. 10592.

Pursuant to Section 21 (7) of R.A. 9165, the prosecution is hereby given a period of five (5) days from receipt of the copy of the decision to manifest before this Court whether or not its office will be needing the shabu subject matter of these cases. Otherwise, the Branch Clerk of Court is hereby directed to forward the same to the PDEA, upon proper receipt, for disposition and destruction in accordance with the law.

SO ORDERED.<sup>16</sup>

The RTC held that the prosecution was able to establish that there was indeed a buy-bust operation, as Agent Dela Peña himself declared that there was an actual exchange of the marked money and the dangerous drug.<sup>17</sup>

Aggrieved, Sali appealed to the CA, claiming that the RTC erred in ruling that the prosecution has proven her guilt beyond reasonable doubt.

### *The Ruling of the CA*

In its Decision,<sup>18</sup> dated November 22, 2018, the CA affirmed the conviction of Sali. The CA held that the elements of illegal sale and possession of *shabu* was duly proven, through the “straightforward and convincing” testimonies of Agent Dela Peña and Director Rosales.<sup>19</sup>

The CA likewise found that the police agents dutifully complied with the chain of custody, from the marking of the seized *shabu* at the crime scene, and its inventory by Agent Dela Peña and Director Rosales, which were witnessed by Sali herself, a media representative, and a *barangay* official.

Sali now seeks the reversal of the CA decision.

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<sup>16</sup> *Id.* at 34-35.

<sup>17</sup> *Id.* at 38.

<sup>18</sup> *Id.* at 33-44.

<sup>19</sup> *Id.* at 40.

### *The Issue*

Was the guilt of Sali for the offenses charged proven beyond reasonable doubt?

### *The Ruling of the Court*

The Petition is meritorious.

It must be emphasized that the Court is not a trier of facts. In a Rule 45 petition, the Court is limited to reviewing questions of law. A question of law exists when the doubt arises as to what the law is on a certain state of facts,<sup>20</sup> while a question of fact exists when the doubt arises as to the truth or falsehood of the alleged facts.<sup>21</sup> Questions of fact are typically outside the ambit of a Rule 45 petition.

The rule, however, admits of certain exceptions. The Court, in a Rule 45 petition, may entertain questions of facts when any of the following is present:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.<sup>22</sup>

In this case, Sali calls upon the Court to review questions of fact, which are ordinarily outside the province of a Rule 45 petition. However, this Court deems it proper to resolve the Petition as the factual findings of the lower courts do not conform to the evidence on record, an exception to the rule.

In the prosecution of illegal possession of dangerous drugs, the dangerous drugs itself constitute the very *corpus delicti* of the crime. Thus, to sustain a conviction for the same, the identity and the integrity of the seized

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<sup>20</sup> *Alburo v. People*, 792 Phil. 876, 889 (2016).

<sup>21</sup> *Miro v. Vda. De Erederos*, 721 Phil. 772, 785 (2013).

<sup>22</sup> *Miano v. Manila Electric Co.*, 800 Phil. 118, 123 (2016), citing *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225 (1990).

drugs must be preserved. This requirement stems from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution, either accidentally or otherwise. To remove any doubt surrounding the integrity and evidentiary value of the seized drugs, the prosecution must readily show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, a conviction under RA 9165 is a nullity.<sup>23</sup>

To secure a conviction for illegal sale of dangerous drugs under Section 5 of RA 9165, the prosecution must establish the following: (1) the identity of the buyer and seller; (2) the object of the sale and its consideration; and (3) the delivery of the thing sold and the payment therefor.<sup>24</sup>

In this case, there were several lapses in the buy-bust team's handling of the seized illegal drugs from Sali. The miniscule amount of illegal drugs seized underscores the need for a more exacting compliance with the requirements set forth under Section 21 of RA 9165, which was not done in this case.

Chain of custody is defined as the duly recorded movements, and custody of the seized drugs in each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination until its presentation in court.<sup>25</sup> The chain of custody is necessary to establish that the seized drug is the very same substance offered in court.

Thus, four links should be established in the chain of custody of the confiscated item: (1) the seizure and marking, if practicable, 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; and (4) the turnover and submission of the marked illegal seized drug by the forensic chemist to the court.<sup>26</sup>

Moreover, the chain of custody requires the testimony about every link in the chain, from the moment the item was picked up to the time it was offered in evidence, in such a way that every person who touched the seized item 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.<sup>27</sup>

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<sup>23</sup> *Valencia v. People*, 725 Phil. 268, 277 (2014).

<sup>24</sup> *People v. Ismael*, 806 Phil. 21, 29 (2017).

<sup>25</sup> RA 9165, Section 1(b).

<sup>26</sup> *Dela Riva v. People*, 769 Phil. 872, 886 (2015).

<sup>27</sup> *People v. Havana*, 776 Phil. 462, 471-472 (2016).

On this score, Section 21, Article II of RA 9165, as amended by Republic Act No. 10640,<sup>28</sup> provides for the stringent requirements that must be complied with in order to account for all the links in the chain of custody. The provision requires that: (1) the apprehending team having initial custody of the seized items shall immediately conduct a physical inventory and photograph the same at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team; (2) the physical inventory and photographing must be conducted in the presence of the: (a) accused or his or her representative or counsel, (b) an elected public official, and (c) a representative of the National Prosecution Service or the media; and (3) the accused or his or her representative and all of the witnesses shall sign the inventory.

However, prior to the amendment of Section 21, after seizure and the confiscation of the illegal drugs, the apprehending team is required to immediately conduct a physical inventory and photograph the same in the presence of the: (1) accused or his or her representative or counsel; (2) the representative from the media **and** the Department of Justice (**DOJ**); and (3) any elected public official who shall be required to sign the copy of the inventory.

In the present case, the old provisions of Section 21 of RA 9165 and its Internal Rules and Regulations shall apply since the alleged crime was committed in 2009, before the amendment which took effect on July 15, 2014.

Based on the records, there were unjustified deviations committed by the arresting officers in the handling of the seized items, in breach of the chain of custody.

### *The First Link*

The first link in the chain of custody is the marking of the seized drugs immediately after seizure, and the rule requires that the marking be done in the presence of the accused and the three insulating witnesses.

Mere marking of the seized drugs, without the conduct of a proper inventory and taking of photographs, and in the absence of the presence of the three insulating witnesses, is tantamount to a non-compliance with the mandatory procedure outlined in Section 21 of RA 9165.

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<sup>28</sup> 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.



In this case, Agent Dela Peña testified that the buy-bust operation was executed at 1:00 p.m., while the inventory was conducted at 4:00 p.m., thus:

Pros. Sencio: After you prepared the Authority to Operate, what happened next?

A: We were ready for dispatch. Before we left the office, we recorded our departure with the duty desk officer and we also coordinated with the Davao City Police Office, sir.

Q: Who was the duty desk officer that time?

A: It was Agent Felix Mejorado, sir.

Q: And who coordinated with the Davao City Police Office?

A: It was Agent Ponferrada, sir.

Q: And after you have that incident recorded, and then coordinated with the Davao City Police, what happened next?

A: We left our office and proceeded to our target area, sir.

Q: What time did you leave your office?

A: About 12:30, sir. Noontime. xxx

Q: And the area you were supposed to go to was?

A: Rambutan St., Cruz Compound, Aquino Subd., Bajada, Davao City.

**Q: What time did you arrive there?**

**A: More or less 1:00 o'clock in the afternoon, sir.<sup>29</sup>**

x x x

Q: And what did you do after you showed the accused and the items to him [the investigator]? (*sic*)

A: We recorded it in our blotter, sir.

Q: After you recorded it in the blotter, what else happened?

A: We prepared the inventory as to conduct inventory proper on the said evidence that were recovered from the accused.

**Q: Why? When did you conduct the inventory?**

**A: On or about 4:00 o'clock in the afternoon, sir.**

**Q: 4:00 pm of?**

**A: November 29, 2009, sir.<sup>30</sup>**

From the foregoing, there appears to be a three-hour gap from the time the buy-bust operation was executed, to the conduct of the physical inventory. During this three-hour period, the custody and manner of handling of the seized drugs were unaccounted for. Although a saving clause is provided in Section 21 such that non-compliance with the requirements is allowed under justifiable grounds, none was offered by the arresting officers in this case, as the lapses in the conduct of the physical inventory were merely left unexplained. No explanation was proffered by the prosecution as to why the physical inventory was only conducted three hours after the seizure of the drugs.

<sup>29</sup> TSN, August 30, 2012, p. 7.

<sup>30</sup> *Id.* at 12.



As to the taking of photographs, the testimonies of Agent Dela Peña<sup>31</sup> and Director Rosales<sup>32</sup> disclosed that although they took photographs during the buy-bust operation, the same could no longer be retrieved as the files were allegedly corrupted. The justification that the file was “corrupted” is barren of any factual support or even an attempt to prove the same. The absence of the photographs, in a way, creates a vacuum in the evidence of the prosecution because without such photographs, there is nothing upon which a comparison with the original items seized could be made.

Lastly, the requirement of the presence of the three insulating witnesses was not complied with. It appears that although the physical inventory was conducted in the presence of Sali, no representative from the DOJ was present.

The absence of the DOJ representative was not adequately justified by the prosecution. In *People v. Mendoza*,<sup>33</sup> the Court explained:

Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, ‘planting’ or contamination of the evidence that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody.

Mere statements of unavailability, absent earnest efforts to secure the presence of the required witnesses, are unacceptable as justifications for non-compliance. This requirement is more imperative in case of a buy-bust operation, considering that the same, by its nature, is a planned activity. In this case, Director Rosales did not even offer any explanation as to why a DOJ representative was not present.<sup>34</sup>

### *The Third Link*

The third link in the chain of custody details who brought the seized drugs to the crime laboratory, who received the drugs, and who exercised custody and possession of the same after it was examined and before it was presented in court.<sup>35</sup>

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<sup>31</sup> *Id.* at 32.

<sup>32</sup> TSN, September 13, 2013, p. 13.

<sup>33</sup> 736 Phil. 749, 764 (2014).

<sup>34</sup> TSN, August 30, 2012, p. 12.

<sup>35</sup> *People v. Fajardo*, 691 Phil. 752, 768 (2012).

In this case, the manner of turnover of the seized drugs to the crime laboratory was not clearly established by the prosecution. Agent Dela Peña testified:

Q: After you conducted the inventory, what happened next?

A: We prepared request for laboratory examination of the drugs seized and proceeded to the crime lab, sir.

Q: When you say proceeded to the crime lab, who went with you?

A: Dir. Rosales went with me sir bringing the evidence, subject of the buy-bust.

Q: And what happened at the Philippine National Police Crime Lab?

A: The seized drugs was delivered to the duty officer of the crime lab, sir.<sup>36</sup>

On the other hand, Director Rosales testified as follows:

Atty. Melendez: You also stated in your direct testimony that the two sachets found inside the black pouch were in your possession from the time the inventory was taken up to the time that you brought them to the crime laboratory, correct?

A: From the time I confiscated them from Hulma, I delivered them to the PNP Crime Lab.

Q: So, you did not turn them over to anybody?

A: No, sir.

Q: And where did you place the same in your possession?

A: Inside my locker in my office, sir.

Q: So, from the time they were inside your office... and when did you bring these sachets to the crime laboratory?

A: After we prepared the letter for the crime laboratory, we brought along these items, sir.

x x x x

Q: So, from your locker, you brought the specimens to be examined immediately right after? They did not stay there overnight in your locker?

A: No, sir.<sup>37</sup>

Clearly, there seems to be no details as to how the seized items were handled when it was transferred to the crime laboratory for testing. Director Rosales merely claimed that he brought the items with him to the PNP Crime Laboratory. Moreover, SPO1 Valmores, who conducted the test, did not specify how and when he received the specimens.

#### *The Fourth Link*

The fourth link involves the submission of the seized drugs to the forensic chemist and then to the court when presented as evidence. The forensic chemist must testify as to how the seized drugs were kept while it

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<sup>36</sup> TSN, August 30, 2012, p. 13.

<sup>37</sup> *Rollo*, pp. 114-115.

was in the latter's custody, and in what condition the items were in until it was presented in court.

In the present case, the prosecution's evidence is bereft of any details as to how the seized items were handled and kept after the forensic chemist examined the same. Without the testimony regarding the management, storage, and preservation of the illegal drug allegedly seized after its qualitative examination, the fourth link in the chain of custody of the said illegal drug cannot be established.<sup>38</sup>

The Court finds the prosecution's explanation with regard to the repeated departure from the strict requirements of Section 21 unpersuasive, reflective of a lackadaisical regard for a bounden duty to be meticulous in the gathering of evidence. This demonstrates a cavalier treatment of an individual's right to liberty, a constitutionally enshrined freedom which should not be trifled with.

In sum, the chain of custody has been seriously breached. Consequently, the identity and integrity of the seized illegal drugs were not preserved. Sali must be acquitted.

**WHEREFORE**, the Petition for Review on *Certiorari* is **GRANTED**. The Decision, dated November 22, 2018, of the Court of Appeals in CA-G.R. CR HC No. 01771-MIN, is **REVERSED**. Hulma Kalayakan Sali is **ACQUITTED** of the crimes charged in Criminal Case Nos. 66,959-09 and 66,960-09 of the Branch 13, Regional Trial Court, Davao City on the ground of reasonable doubt and she is **ORDERED RELEASED** immediately from detention, unless she is being held in custody for other lawful cause.

Let a copy of this Resolution be furnished to the Superintendent of the Correctional Institution for Women, Davao Prison and Penal Farm, Dujali, Davao del Norte, for immediate implementation. The Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action taken in compliance with this order.

Let an entry of final judgment be issued.

**SO ORDERED.** (Dimaampao, *J.*, on wellness leave.)

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III  
*Division Clerk of Court*  
SEA 126/123

<sup>38</sup> *People v. Ubungen*, 836 Phil. 888 (2018).

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JVV

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