



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 22, 2023** which reads as follows:*

“G.R. No. 256241 (*People of the Philippines v. Yhonz Oliva y Basco alias “Noy”*). — This appeal¹ seeks to reverse and set aside the Decision² promulgated on 09 October 2020 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 12532. The CA affirmed the Joint Judgment³ dated 28 September 2018 of Branch 03, Regional Trial Court (RTC) of Tuguegarao City, in Criminal Case Nos. 18721 and 18722, finding accused-appellant Yhonz Oliva y Basco alias “Noy” (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (RA) No. 9165.⁴

Antecedents

Accused-appellant was charged with Illegal Sale and Illegal Possession of Dangerous Drugs in two separate Informations, the accusatory portions of which read:

Criminal Case No. 18721

That on January 05, 2017, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused YHONZ OLIVA y BASCO alias “NOY”, without any authority of law and without any permit to sell, transport, deliver, and distribute dangerous drugs, did then and there willfully, unlawfully and feloniously sell and distribute one (1) piece heat-sealed transparent plastic sachet containing METHAMPHETAMINE

¹ *Rollo*, p. 24-26.

² *Id.* at 4-23; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Tita Marilyn B. Payoyo-Villordon.

³ *CA rollo*, pp. 50-61; penned by Judge Marivic A. Cacatian-Beltran.

⁴ 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 THEREFORE AND FOR OTHER PURPOSES.” Approved: 07 June 2002.

HYDROCHLORIDE, commonly known as “shabu”, a dangerous drug weighing 0.03 gram, to PO2 BRYAN B. ESCOBAR, who is a member of the PNP assigned at the Tuguegarao City Police Station, and who acted as a poseur buyer, that when the accused handed to the poseur buyer the heat-sealed transparent plastic sachet containing the dangerous drug, the poseur buyer in turn gave to the accused the agreed purchase price of the dangerous drug in the amount of P1,000.00 consisting of one (1) piece genuine P1,000.00 peso-bill bearing Serial No. TK660090 which was previously marked and used as buy-bust money; that this led to the immediate arrest of the accused and the recovery of the buy-bust money from his possession, control, and custody outside his boarding house located along Siniguelas Street, Tanza, this City, by members of the PNP assigned at the Tuguegarao City Police Station, who formed the buy-bust team, and who acted in coordination with the PDEA, Regional Office No. 02, Camp Marcelo Adduru, Tuguegarao City; that the buy-bust operation also led to the confiscation of the dangerous drug.

CONTRARY TO LAW.

Criminal Case No. 18722

That on January 05, 2017, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused YHONZ OLIVA y BASCO alias “NOY”, without any authority of law and without the necessary documents or permit from unlawful authorities, did then and there, willfully, unlawfully, and feloniously have in his possession, control, and custody one (1) piece heat-sealed transparent plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE, commonly known as “Shabu”, a dangerous drug weighing 0.03 gram; that the dangerous drug was found and taken from possession, control, and custody of the accused after he was lawfully arrested outside his boarding house located along Siniguelas Street, Tanza, this City, by members of the PNP assigned at the Tuguegarao City Police Station, during the conduct of a drug buy-bust operation which was done in coordination with the PDEA, Regional Office No. 02, Camp Marcelo Adduru, Tuguegarao City; that the incident led to the confiscation of the dangerous drug.

CONTRARY TO LAW.⁵

Upon arraignment, accused-appellant pleaded not guilty to the charges. After termination of pre-trial, trial on the merits ensued.⁶

⁵ *Rollo*, pp. 5-7.

⁶ *Id.* at 7.

Version of the Prosecution

At around 8:00 a.m. on 05 January 2017, Police Senior Inspector Monchito Langcay (PSI Langcay) received a report from a confidential informant (CI) that one *alias* “Noy,” later identified as accused-appellant, was engaged in illegal sale of drugs in the area of Tanza, Tuguegarao City. Upon instruction from PSI Langcay, the CI called accused-appellant on the phone and told the latter that he had a buyer for ₱1,000.00 worth of *shabu*. They agreed to meet at accused-appellant’s house at Siniguelas Street, Tanza. PSI Langcay then formed a team to conduct a buy bust operation against accused-appellant. Police Officer 2 Bryan Escobar (PO2 Escobar) was designated as the poseur buyer, with the rest of the team as back up/arresting officers.⁷

Later, at 2:55 p.m., PO2 Escobar, the CI, and the buy bust team proceeded to the target area. Once there, the CI and PO2 Escobar approached accused-appellant. The CI introduced PO2 Escobar to accused-appellant as the buyer of *shabu*. Accused-appellant handed one heat-sealed transparent plastic sachet with suspected *shabu* to PO2 Escobar. In exchange, the latter gave accused-appellant the buy bust money. Thereafter, PO2 Escobar made the missed call to PO3 Vincent Tumaneng (PO3 Tumaneng) to signify consummation of the transaction. The rest of the team then rushed to the target site. PO3 Tumaneng arrested accused-appellant and he apprised the latter of his constitutional rights. PO3 Vicente Lacambra (PO3 Lacambra) frisked accused-appellant and found in the latter’s right pocket, one heat-sealed transparent sachet containing suspected *shabu*, the marked money and one cellphone.

Still at the target site, PO3 Bong Bong Tumaliuan (PO3 Tumaliuan), in the presence of accused-appellant, *Barangay Kagawad* Manuel Siubal (*Kagawad* Siubal), *Barangay Kagawad* Michael Santiago (*Kagawad* Santiago), and Department of Justice (DOJ) representative Ferdinand Gangan (Gangan), conducted the inventory. PO2 Escobar marked the sachet he purchased from accused-appellant, while PO3 Lacambra marked the plastic sachet he recovered from accused-appellant’s possession. The police officers took photographs of the seized items with the accused-appellant. After the inventory, PO2 Escobar and PO3 Lacambra turned over the plastic sachets subject of sale and possession to PO3 Tumaliuan.⁸

The police officers then brought accused-appellant and the contraband to the police station for documentation. After PO3 Tumaliuan prepared the request for laboratory examination, he brought the same together with the seized items to the crime laboratory. PO2 Tranquilino Mora (PO2 Mora) received the same and turned it over to Police Chief Inspector Mayra Madria-

⁷ Id. at 8.

⁸ Id. at 8-10

Tulauan (PCI Tulauan) for examination. Upon examination, the seized items tested positive for *shabu*. PCI Tulauan then turned over the contraband to the evidence custodian PO3 George Carag (PO3 Carag), before the same was presented in court.⁹

Version of the Defense

Accused-appellant narrated that he was a vendor, and was renting a room in Siniguelas Street, Tanza, Tuguegarao City. He became acquainted with PO2 Sergio Sibal (PO2 Sibal), who was then living in the same area. Sometime in December 2016, he asked PO2 Sibal if he could work for him (PO2 Sibal) as house boy to which the latter agreed and offered him a monthly salary of ₱2,000.00.¹⁰

At around noon of 05 January 2017, accused-appellant was alone at PO2 Sibal's house. PO2 Jacinto Cusipag (PO2 Cusipag) arrived and asked for PO2 Sibal's whereabouts. Accused-appellant answered that PO2 Sibal was in the hospital attending to his sick son. Upon the invitation of PO2 Cusipag, he and his board mate, Peejay, joined the latter to drink alcohol. While they were drinking, PO2 Escobar, PO3 Tumaneng and PO Angoluan arrived and asked where PO2 Sibal was, to which accused-appellant answered that the latter was in the hospital. PO3 Lacambra asked who of them was from Caloocan and he answered that he was. The police then instructed PO2 Cusipag and Peejay to leave the house. Then accused-appellant found himself being handcuffed. He tried to resist, but PO3 Lacambra punched him. The police asked about the illegal drugs and its source but he denied knowing anything about it. He was then placed beside the door and the police officers continued with the drinking spree. After 20 minutes, the police called for the members of the *barangay*. The police conducted inventory as soon as *Kagawad* Siubal and PO3 Tumaliuan arrived.¹¹

Ruling of the RTC

On 28 September 2018, the RTC rendered its Joint Judgment, convicting accused-appellant of the offenses charged, thus:

WHEREFORE, in view of all the foregoing, the court renders judgment convicting accused YHONZ OLIVA y Basco @ NOY for violation of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as follows:

⁹ Id. at 10.

¹⁰ Id.

¹¹ Id. at 10-11.

1. SECTION 5, 1st paragraph of Article II of R.A. 9165 (Sale of Dangerous Drugs) in Criminal Case No. 18721 and sentences him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos P500,000.00;

2. SECTION 11, 2nd paragraph No. 3 (Possession of Dangerous Drugs) in Criminal Case No. 18722 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal* as minimum to fourteen (14) years as maximum and a fine of P300,00.00

x x x x

SO ORDERED.¹²

The RTC found that the prosecution has proved all the elements of illegal sale and illegal possession of *shabu*. Accused-appellant was positively identified by PO2 Escobar as the same person who sold him the plastic sachet with *shabu* for ₱1,000.00. Upon accused-appellant's lawful arrest, PO3 Lacambra also found one heat-sealed plastic sachet with suspected *shabu* in his possession. Accused-appellant failed to show that he had legal authority to possess the same. Moreover, the evidence and records sufficiently established that the integrity and evidentiary value of the seized items were properly preserved, as shown by the unbroken chain of custody over the same.¹³

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In its Decision dated 09 October 2020, the CA affirmed accused-appellant's conviction. The dispositive portion of said decision reads:

ACCORDINGLY, absent error on the part of the Regional Trial Court, Branch 03, Tuguegarao City, we DISMISS the appeal, and AFFIRM the Joint Judgment dated 28 September 2018, in Criminal Cases Numbers 18721 and 18722.

SO ORDERED.¹⁴

The CA held that the RTC did not err when it convicted accused-appellant. It held that the prosecution proved all the elements of Illegal Sale and Illegal Possession of Dangerous Drugs. Further, the prosecution proved the unbroken chain of custody of the seized contraband and the police officers' compliance with Art. II, Sec. 21, RA No. 9165, as amended by RA

¹² CA rollo, p. 61.

¹³ Id. at 58-60.

¹⁴ Rollo, p. 23.

No. 10640.¹⁵ The CA also disregarded accused-appellant's denial and held that said defense cannot prevail over the positive testimonies of the prosecution witnesses. Moreover, accused-appellant did not impute any improper motive on the part of the police officers.¹⁶

Hence, this appeal.

Issue

The issue for resolution is whether the CA correctly affirmed accused-appellant's conviction for violation of Secs. 5 and 11, Art. II of RA No. 9165.

The Court's Ruling

We grant the appeal.

In every case for illegal sale of dangerous drugs, the prosecution must be able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment.¹⁷ On the other hand, to convict an accused for illegal possession of dangerous drugs, the prosecution must prove: (a) that the accused was in possession of an item or an object identified as a dangerous drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed said drug.¹⁸ What is material is the proof that the transaction or sale took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer, and the receipt by the seller of the marked money, successfully consummate the buy-bust transaction.¹⁹

Sale or possession of dangerous drugs can never be proven without seizure and identification of the prohibited drug. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.²⁰ Therefore, it is essential that the identity and integrity of the seized drug be established with moral certainty.

¹⁵ 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: 15 July 2014.

¹⁶ Id. at 15-22

¹⁷ *People v. Ygot*, 790 Phil 236, 240 (2016).

¹⁸ *People v. Ching*, 819 Phil 565, 575-576 (2017).

¹⁹ *People v. Guiara*, 616 Phil 290, 302 (2009).

²⁰ *People v. Nacua*, 702 Phil 739, 751 (2013).

Sec. 21, Art. II of RA No. 9165, as amended by RA No. 10640,²¹ the applicable law at the time of the commission of the offenses,²² requires, among others, that the marking, physical inventory, and photograph-taking of the seized items be conducted immediately after the seizure and confiscation of the same. It was made compulsory that the physical inventory and photograph-taking be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well these required witnesses: (a) if **prior** to the amendment of RA No. 9165 by RA No. 10640 on 07 August 2014,²³ “a representative from the media AND the Department of Justice (DOJ), and any elected public official”; or (b) if **after** said amendment, “[an] elected public official and a representative of the National Prosecution Service OR the media.”²⁴

Moreover, to ensure the integrity of the seized drugs, the prosecution must likewise establish the chain of custody of the dangerous drugs: *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.²⁵

In this case, the police officers failed to comply with the requirements of Sec. 21 of RA No. 9165, as amended by RA No. 10640, as well as the chain of custody requirement.

The seized drugs were not immediately marked upon seizure

According to PO2 Escobar and PO3 Lacambra, they did not immediately mark the seized sachets upon seizure but waited for about 20-25 minutes for the arrival of the witnesses to the inventory. While waiting, they were holding the respective sachet seized in their hands.²⁶ It is settled that immediate marking of the item seized in a buy-bust operation in the presence of the accused is indispensable to establish its identity in court.²⁷ It is equally settled that the presence of the witnesses from the Department of Justice, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug.²⁸

²¹ 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: 15 July 2014.

²² The Information alleged that the offenses were committed on 05 January 2017.

²³ See *People v. Gutierrez*, 842 Phil 681 (2018).

²⁴ *People v. Bangalan*, 839 Phil 455, 461-462 (2018).

²⁵ See *People v. Dahil*, 750 Phil 212, 226-227 (2015).

²⁶ TSN, 06 November 2017, Witness PO2 Bryan Escobar, p. 19, 21; TSN, 15 November 2017, Witness PO3 Lacambra, p. 20.

²⁷ *People v. Beran*, 724 Phil 788, 820 (2014).

²⁸ *People v. Tomawis*, 830 Phil 385, 409 (2018).

This also means that the three required witnesses should already be physically present at the time of apprehension – a requirement that could easily be complied with by the team considering that the buy-bust operation is, by its nature, a planned activity. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.²⁹

Notably, the marking of the seized drugs in this case was not done immediately after seizure, considering the late arrival of the insulating witnesses. Worse, the police officers failed to recognize, much more explain said lapse in the procedure.

There was no testimony as to how the seized items were preserved from the time it was examined until it was presented in court

PO3 Tumaliuan, the investigator, testified that after the seized items were turned over to him, he prepared the request for laboratory examination and brought the same together with the seized items to the crime laboratory, where it was duly received by PO2 Mora.³⁰ In the stipulated testimony of PCI Tulauan, she received from PO2 Mora the request for laboratory examination together the two plastic sachets with suspected *shabu* before conducting the examination. After the conduct of the examination, she turned over the items to PO3 Carag. The testimony of PO3 Carag, the evidence custodian, was also stipulated upon as to his receipt of the seized items from PCI Tulauan before the same were turned over to the court.³¹ Remarkably, there was no testimony as to how the specimens were handled, stored, and the precautions taken before the same were presented in court. Thus, it was not convincingly shown whether the specimens submitted to the court were the same sachets of *shabu* recovered from accused-appellant.

In *People v Ubungen*,³² the Court held that in the absence of the testimony regarding the management, storage, and preservation of the illegal drugs seized after its qualitative examination, the fourth link in the chain of custody could not be reasonably established.

Likewise, in *People v Rivera, et.al.*,³³ accused-appellants were exonerated considering that the stipulated testimony of the forensic chemist did not provide information as to the manner the seized items were managed, stored, preserved, or handled at the crime laboratory before it was presented

²⁹ *People v. Narvas*, G.R. No. 241254, 08 July 2019.

³⁰ TSN, 27 November 2017, Witness PO3 Tumaliuan, p. 9.

³¹ Records, pp. 54-55.

³² 836 Phil 888, 901 (2018).

³³ G.R. No. 252886, 15 March 2021.

in court for identification. Absent these required stipulations, the fourth link of the chain of custody could not be reasonably established.

As a rule, strict compliance with Sec. 21 of RA No. 9165, as amended, is mandatory. A deviation may be allowed only if the following requisites concur: (1) the existence of justifiable grounds allowing departure from the rule on strict compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending team. Thus, when there is a showing of lapses in the procedure, the prosecution must recognize such, and justify the same, in order to warrant the application of the saving mechanism.³⁴ Furthermore, in *People v. De Guzman*,³⁵ it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the courts cannot presume what these grounds are or whether they even exist.

In this case, however, the saving mechanism of Sec. 21 of the IRR of RA No. 9165, as amended, cannot be applied because the police officers failed to recognize their lapses, as well as justify or explain the same. To emphasize, strict compliance with the law is mandated; especially where the amounts of the seized drugs are miniscule, since it is highly susceptible to planting, tampering, or alteration of evidence,³⁶ as in this case.

Clearly, the procedural lapses committed by police officers, as well as the prosecution's failure to establish all the links in the chain of custody, created serious uncertainty over the identity of the seized drug. Thus, for failure of the prosecution to prove the *corpus delicti* beyond reasonable doubt, the Court is constrained to acquit accused-appellant.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals dated 09 October 2020 in CA-G.R. CR HC No. 12532, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Yhonz Oliva y Basco *alias* "Noy" is **ACQUITTED** of violations of Sections 5 and 11, Article II of Republic Act No. 9165, for failure of the prosecution to establish his guilt beyond reasonable doubt.

Accused-appellant Yhonz Oliva y Basco *alias* "Noy" is **ORDERED** immediately **RELEASED** from detention unless he is being confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for **IMMEDIATE IMPLEMENTATION** and to **INFORM** the Court of the action taken within five days from receipt thereof.

Let entry of judgment be issued immediately.

³⁴ *Dizon v. People*, G.R. No. 239399, 25 March 2019.

³⁵ 630 Phil 637, 648-649 (2010).

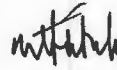
³⁶ *People v. Pulgado*, G.R. No. 254622, 16 February 2022.

SO ORDERED.” *Marquez, J., on official business.*

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:



MARIA TERESA B. SIBULO
Deputy Division Clerk of Court ^{4/26}

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APR 26 2023

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
1000 Manila
(CA-G.R. CR-HC No. 12532)

The Hon. Presiding Judge
Regional Trial Court, Branch 3
Tuguegarao City, 3500 Cagayan
(Crim. Case Nos. 18721 & 18722)

PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Accused-Appellant
5/F, DOJ Agencies Building
NIA Road cor. East Avenue
Diliman, 1101 Quezon City

Mr. Yhonz B. Oliva *alias* "Noy" (x)
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

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