



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **March 29, 2023**, which reads as follows:*

“G.R. No. 251008 (People of the Philippines v. Roston Alar y Ducusin @ “Roston”). – This is an ordinary appeal under Rule 122 of the Rules of Court, as amended, seeking to reverse and set aside the Decision¹ dated July 20, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09532. The said issuance affirmed with modification the Joint Decision² dated May 31, 2017 and the Resolution³ dated July 10, 2017 issued by Branch 29 of the Regional Trial Court (RTC) of the City of San Fernando, La Union in Criminal Case Nos. 11382 and 11383 which found accused-appellant Roston Alar y Ducusin @ “Roston” (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. In Criminal Case No. 11384, accused-appellant was acquitted from the charge of violation of Section 12, Article II of R.A. No. 9165.

Antecedents

By virtue of three Informations which were all dated February 12, 2016, accused-appellant was indicted for violation of Sections 5, 11, and 12, Article II of R.A. No. 9165. The accusatory portions of said Informations read as follows:

Criminal Case No. 11382

That on or about the 10th day of February [2016], in the City of San Fernando, La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and without first securing the necessary permit, license or prescription from the proper government agency to possess[s] the same, did then and there, willfully, unlawfully and feloniously, deliver and sell two (2) pieces of

¹ *Rollo*, pp. 3-20; penned by Associate Justice Priscilla J. Baltazar-Padilla (a former Member of this Court) with Associate Justices Nina G. Antonio-Valenzuela and Carmelita Salandanan-Manahan concurring.

² *CA rollo*, pp. 76-86; rendered by Judge Asuncion Fikingas-Mandia.

³ *Id.* at 87-89.

heat sealed transparent plastic sachets containing Methamphetamine Hydrochloride otherwise known as “Shabu”, a dangerous drugs, with a total net [weight] of Zero Point Zero Nine Zero Seven (0.0907) grm to PO1 Ubungen, who posed as Poseur buyer and in consideration of said shabu, used marked money one [1] piece genuine One Thousand Peso (P1,000.00)[-]bill bearing serial numbers [sic] ZD815899 without first securing the necessary permit, license or authority from the government agency.

Contrary to law.⁴

Criminal Case No. 11383

That on or about the 10th day of February [2016], in the City of San Fernando, La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and without first securing the necessary permit, license or prescription from the proper government agency to posses[s] the same, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control two (2) pieces of heat sealed transparent plastic sachets containing Methamphetamine Hydrochloride otherwise known as “Shabu”, a dangerous drugs, with a total net [weight] of One Point Zero Five Seven Six (1.0576) grms without first securing the necessary permit, license or authority from the government agency.

Contrary to law.⁵

Criminal Case No. 11384

That on or about the 10th day of February 2016, in the City of San Fernando, Province of La Union, Philippines and within the jurisdiction of this Honorable Court the above-named accused, without authority of law and without first securing the necessary permit, license or prescription from the proper government agency to possess the same, did then and there willfully, unlawfully and feloniously have in his possession, custody and control six (6) pieces improvised tooters which are equipments, instruments, apparatus and paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing “shabu”, a dangerous drug into the body.

Contrary to law.⁶

Upon arraignment, accused-appellant, assisted by counsel, pleaded not guilty to the crimes charged.⁷ Thus, pre-trial⁸ ensued, followed by trial on the merits.

Version of the prosecution

⁴ Records, p. 1.

⁵ Id. at 35.

⁶ Id. at 130.

⁷ Id. at 50-51.

⁸ Id. at 54-56.

The evidence for the prosecution established that on February 10, 2016, at around 4:00 p.m., a confidential informant (CI) went to the San Fernando Police Station of the Philippine National Police (PNP) to report to Police Officer (PO) 1 Mark Joseph Ubungen (PO1 Ubungen) that accused-appellant was engaged in the selling of illegal drugs,⁹ specifically *shabu*.¹⁰ Upon receiving this information, PO1 reported the same to Police Inspector (PInsp.) Juanito Buaron (PInsp. Buaron) who, in turn, immediately organized a buy-bust operation.¹¹

PO1 Ubungen was designated as poseur-buyer,¹² while PO1 Pierre Gatchalian (PO1 Gatchalian) was assigned as his back-up.¹³ PO1 Ubungen prepared¹⁴ the Coordination Report¹⁵ and the Pre-Operational Report¹⁶ which were submitted to the Philippine Drug Enforcement Agency (PDEA).¹⁷ In turn, the PDEA issued a Certificate of Coordination¹⁸ to the PNP.

PO1 Ubungen then prepared a ₱1,000.00 bill with serial number ZD815899,¹⁹ bearing the initials “MJU” in its left margin, as marked money.²⁰ Upon PO1 Ubungen’s instruction, the CI then called accused-appellant.²¹ The latter agreed to the former’s proposal that the transaction be held at the Shell gasoline station at the Diversion Road, Barangay Sevilla, San Fernando, La Union.²²

During the buy-bust operation, PO1 Ubungen handed accused-appellant the ₱1,000.00 marked money in exchange for two transparent heat-sealed plastic sachets containing suspected *shabu*.²³ After examining the contents thereof, PO1 Ubungen performed the pre-arranged signal of removing the bull cap that he was wearing on his head,²⁴ prompting the rest of the buy-bust team to approach them, thereby leading to accused-appellant’s arrest.²⁵

Accused-appellant having been apprised of his constitutional rights, PO1 Ubungen conducted a body search on him.²⁶ He also searched accused-appellant’s bag, leading to the discovery of two more transparent heat-sealed plastic sachets containing suspected *shabu*. The buy-bust team also

⁹ Transcript of Stenographic Notes (TSN), May 18, 2016, p. 2.

¹⁰ Id. at 16.

¹¹ Id. at 2-3.

¹² Id. at 3.

¹³ TSN, May 25, 2016, p. 9.

¹⁴ TSN, May 18, 2016, p. 8.

¹⁵ Records, p. 17.

¹⁶ Id. at 16.

¹⁷ TSN, May 18, 2016, p. 9.

¹⁸ Records, p. 18.

¹⁹ Id. at 26.

²⁰ TSN, May 18, 2016, p. 9.

²¹ TSN, May 25, 2016, p. 10.

²² TSN, May 18, 2016, p. 9.

²³ Id. at 10.

²⁴ TSN, May 25, 2016, p. 10.

²⁵ TSN, May 18, 2016, p. 10.

²⁶ TSN, May 25, 2016, p. 12.

confiscated from accused-appellant a Nokia cellular phone and six improvised tooters.²⁷

PO1 Ubungen immediately marked the four confiscated plastic sachets with his initials, signature and date in the presence of Barangay Kagawad Danilo Nisperos²⁸ and media representative Aleo S. De Guzman²⁹ who, thereafter, signed the Certificate of Inventory³⁰ that PO1 Ubungen likewise prepared.³¹ PO1 Ubungen also marked the two plastic sachets sold to him by accused-appellant with the word “SOLD” while the other two plastic sachets that were retrieved from accused-appellant’s bag were marked with the word “RECOVERED.”³² Photographs³³ of the conduct of the marking and inventory were taken by PO1 Gatchalian.³⁴

Accused-appellant was brought to the City Health Office and, thereafter, to the San Fernando Police Station³⁵ where he was booked.³⁶ PO1 Ubungen then prepared the Request for Laboratory Screening Test,³⁷ the Request for Laboratory Examination,³⁸ and the Affidavit of Complaint/Arrest.³⁹ Accused-appellant and the confiscated items were then brought by PO1 Ubungen to the PNP Regional Crime Laboratory for testing.⁴⁰

The Chain of Custody Form for Seized Dangerous Drugs⁴¹ (Chain of Custody Form) shows that at around 10:25 p.m. of February 10, 2016, PO1 Ubungen turned over the four plastic sachets to PO3 Edison B. Ballada (PO3 Ballada) of the PNP Regional Crime Laboratory. Upon receiving the items, PO3 Ballada counterchecked the same with the Request for Laboratory Examination.⁴² PO3 Ballada observed that two of the plastic sachets contained the markings MJU-1 and MJU-2 dated 2-10-16 with a signature and the word “SOLD”; as well as two heat-sealed transparent plastic sachets containing white crystalline substance suspected to be *shabu*, marked as MJU-3 and MJU-4, also dated 2-10-16 with a signature and the word “RECOVERED.”⁴³ Afterwards, he affixed his own signature on the Chain of Custody Form as evidence that he has formally received the confiscated items from PO1 Ubungen.⁴⁴

²⁷ TSN, May 18, 2016, p. 10.

²⁸ TSN, July 4, 2016, p. 1.

²⁹ TSN, May 25, 2016, pp. 14-15.

³⁰ Records, p. 11.

³¹ TSN, May 18, 2016, p. 11.

³² Id. at 14.

³³ Records, pp. 19-25.

³⁴ TSN, May 25, 2016, p. 15.

³⁵ TSN, May 18, 2016, p. 11.

³⁶ Records, p. 27.

³⁷ Id. at 13.

³⁸ Id. at 12.

³⁹ Id. at 5-7.

⁴⁰ TSN, May 18, 2016, p. 11.

⁴¹ Records, p. 81.

⁴² TSN, May 25, 2016, p. 3.

⁴³ Id. at 4.

⁴⁴ Id. at 5.

At 10:35 p.m. of that same night,⁴⁵ PO3 Ballada turned over the custody of the confiscated items to Police Senior Inspector (PSI) Ma. Theresa Amor Manuel-Sobejana (PSI Manuel-Sobejana)⁴⁶ who, thereafter, also checked if the markings in the four sachets matched the descriptions in the Request for Laboratory Examination.⁴⁷ Then, she conducted a qualitative examination of the contents of the plastic sachets.⁴⁸ Afterwards, PSI Manuel-Sobejana re-sealed said sachets and placed her own markings on the same.⁴⁹

At 6:00 a.m. of the following day,⁵⁰ PSI Manuel-Sobejana turned the confiscated items over to the evidence custodian, PO3 Bucasas.⁵¹ As evidence of his receipt of the subject plastic sachets, PO3 Bucasas also affixed his signature on the Chain of Custody Form.

The Chain of Custody Form does not show if the six tooters allegedly confiscated from accused-appellant were brought to the Regional Crime Laboratory for testing.

Per Chemistry Report No. D-069-2016⁵² dated February 11, 2016, the qualitative examination of the four plastic sachets revealed that all of them tested positive for Methamphetamine Hydrochloride or *shabu*. On the other hand, Chemistry Report No. DT-017-2016,⁵³ also dated February 11, 2016, showed that accused-appellant's urine sample tested positive for the presence of *shabu*.

Version of the defense

Professing innocence, accused-appellant advanced the defense of denial and frame-up. His testimony was summarized by the CA as follows:

For the defense, only accused-appellant testified before the lower court. Accused-appellant raised the defenses of denial and frame-up. He narrated that on 10 February 2016, he went to Bauang, La Union to buy a tire. While he was traversing the diversion road on his way home to Santiago Norte, he observed that the tire he bought, which he tied up at the back of his motorcycle was about to fall so he stopped at the Shell Gas Station and proceeded near the kerosene dispenser to properly tie the tire. When he was about to leave, a black Honda Civic car blocked his path. He tried to avoid it but the car followed him and blocked his way again. Thereafter, four (4) male persons wearing handkerchief masks alighted from the said car and headed towards him. When the male persons were already near him, he asked who they were. Accused-appellant heard them say "This is the Muslim" then they grabbed his bag so he shouted "hold-

⁴⁵ Records, p. 81.

⁴⁶ TSN, May 25, 2016, p. 6.

⁴⁷ TSN, May 18, 2016, p. 4.

⁴⁸ Id.

⁴⁹ Id. at 6-7.

⁵⁰ Records, p. 81.

⁵¹ TSN, May 18, 2016, p. 5.

⁵² Records, p. 82.

⁵³ Id. at 14.

up". This prompted one of the male persons to bring out his gun and ordered him not to talk and move. Accused-appellant shouted for help and tried to run but one of the men kicked him causing him to fall down with his face down. The men took his bag and while on the ground, they repeatedly stepped on his back then handcuffed him. The male persons searched for the contents of his bag and to his surprise, they told him that they found drugs inside his bag. He denied ownership of the said drugs but no one believed him. He was brought to the Police Station and it is there where he learned that two of the male persons who arrested him were PO1 Ubungen and PO1 Gachalian.

On cross-examination, accused-appellant maintained that the plastic sachets as well as the drug paraphernalia came from the group of PO1 Ubungen. He could have used some of the gasoline boys as his witnesses as they saw the incident but when his wife came to them to ask them to testify, they refused because they did not want to get involved.⁵⁴

The RTC Ruling

On May 31, 2017, the RTC rendered a Joint Decision⁵⁵ finding accused-appellant guilty of violating Sections 5 and 11, Article II of R.A. No. 9165. However, he was acquitted from the charge of violating Section 12 of the same law.

The trial court ruled that the prosecution was able to prove the presence of all of the elements for violation of Sections 5 and 11, Article II of R.A. No. 9165, as well as the unbroken chain in the custody of the four plastic sachets containing *shabu* that were seized from accused-appellant. The RTC said that apart from his own testimony, accused-appellant's defense of denial and alibi was not corroborated by any other evidence.

As for violation of Section 12, Article II of R.A. No. 9165, the RTC declared that the prosecution failed to prove that the six improvised tooters were fit or intended to be used in administering, consuming or smoking *shabu*. Thus, accused-appellant's acquittal in Criminal Case No. 11384 was in order.

The decretal part of the RTC's Joint Decision⁵⁶ reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 11382, the accused Roston Alar y Ducusin, is found GUILTY beyond reasonable doubt for violation of Sec. 5, Art. II, RA 9165 and is sentenced to suffer life imprisonment and to pay a fine of P500,000.00. The period during which he was detained at San Fernando City Jail shall be considered in his favor pursuant to existing rules. The OIC Branch Clerk of Court is directed to transmit to the

⁵⁴ *Rollo*, p. 8.

⁵⁵ *CA rollo*, pp. 76-86.

⁵⁶ *Id.*

Philippine Drug Enforcement Agency (PDEA) the two (2) plastic sachets of shabu subject matter of this case for proper disposition.

2. In Criminal Case No. 11383, the accused Roston Alar y Ducusin, is found GUILTY beyond reasonable doubt for violation of Sec. 11, Art. II, RA 9165 and is sentenced to suffer imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of P300,000. The period during which he was detained at the San Fernando City Jail shall be credited in his favor pursuant to existing rules. The OIC Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the two (2) sachets of shabu subject matter of this case for proper disposition.

3. In Criminal Case No. 11384, the accused Roston Alar y Ducusin is acquitted on the ground of reasonable doubt. The 6 pieces of improvised tooters are however confiscated to be disposed of in accordance with law.

SO ORDERED.⁵⁷

Appellant filed a Motion for Reconsideration⁵⁸ arguing, *inter alia*, that the prosecution was not able to prove with accuracy which among the *shabu* confiscated from accused-appellant were allegedly sold to PO1 Ubungen and which were allegedly recovered from his bag.

In its Resolution⁵⁹ dated July 10, 2017, the RTC ruled that as regards Criminal Case No. 11382, accused-appellant was guilty only of illegal possession, instead of illegal sale, of dangerous drugs. Thus:

A thorough review of the testimony of PO1 Ubungen indeed shows that while he marked the pieces of evidence with his initials, signature, and the date and marked the 2 sachets sold to him with the word "SOLD", and the other two (2) sachets recovered with the word "RECOVERED" immediately after the arrival of the witnesses, he failed to state whether he secured the items separately from the items recovered. In his Affidavit of Complaint/Arrest, PO1 Ubungen stated that he secured the items sold to him on the left front pocket of his pants but he did not state whether he likewise secured the two other plastic sachets recovered also inside his left front pocket or secured them separately at his right front pocket. This fact, however, will not result in the acquittal of the accused since it was established that the two sachets sold were among the four sachets of shabu possessed by the accused before he sold two of these to PO1 Ubungen, hence, he could still be convicted for illegal possession of shabu, a crime necessarily included in the crime of illegal sale of shabu. x x x⁶⁰

Accordingly, the RTC modified the decretal part of its earlier ruling, viz.:

WHEREFORE, the dispositive portion of the Joint Decision dated May 2017 is hereby modified to read as follows:

⁵⁷ Id. at 85-86.

⁵⁸ Records, pp. 141-153.

⁵⁹ CA *rollo*, 87-89.

⁶⁰ Id. at 88.

1. In Criminal Case No. 11382, the accused Roston Alar y Ducusin, is found GUILTY beyond reasonable doubt of violation of Sec. 11, Art. II, RA 9165 and is sentenced to suffer imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of P300,000.00. The period during which he was detained at the San Fernando City Jail shall be credited in his favor pursuant to existing rules. The OIC Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the two (2) sachets of shabu subject matter of this case for proper disposition.⁶¹

Undaunted, accused-appellant interposed an appeal to the CA.

The CA Ruling

In the herein assailed Decision⁶² dated July 20, 2018, the CA denied accused-appellant's appeal and reinstated the RTC's original ruling in its May 31, 2017 Joint Decision.⁶³

The CA reasoned that contrary to the RTC's finding, there was no confusion as to the identity of the plastic sachets of *shabu* that were sold to PO1 Ubungen and those that were recovered from accused-appellant following the latter's arrest. Hence, the RTC erred in adjudging accused-appellant guilty only of the crime of illegal possession of dangerous drugs in Criminal Case No. 11382:

In the present case, WE find that the prosecution duly established the identity of accused-appellant as the drug seller or pusher, through the testimonies of PO1 Ubungen, the poseur-buyer, and PO1 Gatchalian, back-up officer. The police officers positively identified accused-appellant as the one who transacted and sold 2 sachets of shabu to PO1 Ubungen in exchange of the marked money consisting of one One Thousand Peso bill. As per Chemistry Report of PSI Sobejana, the submitted items consisting of four sachets of shabu yielded positive results for the presence of methamphetamine hydrochloride, a dangerous drug. It is likewise undisputed that the prohibited drugs sold by accused-appellant to PO1 Ubungen were presented before the court *a quo*. Although it was not clear whether PO1 Ubungen placed the two plastic sachets recovered from accused-appellant in his right or left pocket, records disclosed that the items that were sold were properly marked with the word "SOLD" and the items recovered with the word "RECOVERED". The said sachets of shabu can, therefore, be properly identified from one another by simply looking at their respective markings. The commission of illegal sale merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by accused-appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In this case, the prosecution has amply proven all the elements

⁶¹ Id. at 89.

⁶² *Rollo*, pp. 3-20.

⁶³ *CA rollo*, pp. 76-86.

of the drugs sale with moral certainty, therefore accused-appellant should be held liable for Violation of Sec. 5, Art. II of RA 9165 in Crim. Case No. 11382.

Though the RTC found accused-appellant guilty of Violation of Sec. 11, Art. II of RA 9165 only in Crim. Case No. 11382, when he appealed from the decision of the trial court, he waived the constitutional safeguard against double jeopardy and threw the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate, whether favorable or unfavorable to the accused-appellant. Thus, despite the trial court's finding that accused-appellant was guilty only of illegal possession of dangerous drugs, WE find and so hold that he is guilty of illegal sale of dangerous drugs under Sec. 5, Art. II of RA 9165.⁶⁴

Ultimately, the appellate court decreed:

WHEREFORE, the extant appeal is hereby **DENIED**.

The Resolution dated 10 July 2017 of the court *a quo* is hereby **AFFIRMED with MODIFICATION** in that in Criminal Case No. 11382, accused-appellant is found **GUILTY** of Violation of Section 5, Article II of RA 9165 (Illegal Sale of Dangerous Drugs).

Accordingly, the Joint Decision dated 31 May 2017 rendered by the said court finding accused-appellant Roston Alar y Ducusin liable for Violation of both Sections 5 and 11, Article II of RA 9165 is **REINSTATED**.

SO ORDERED.⁶⁵

Hence, the present recourse.

On August 22, 2018, the CA issued a Minute Resolution⁶⁶ giving due course to the Notice of Appeal⁶⁷ filed by appellant, thereby ordering the elevation of the records of the instant case to this Court.

In a Resolution⁶⁸ dated March 2, 2020, this Court noted the records of the case forwarded by the CA. The parties were then ordered to file their respective supplemental briefs, should they so desire, within 30 days from notice.

On August 24, 2020, accused-appellant, through the Public Attorney's Office, filed a Manifestation and Motion (In Lieu of Supplemental Brief)⁶⁹ stating that he would no longer file a supplemental brief because all

⁶⁴ *Rollo*, pp. 17-18.

⁶⁵ *Id.* at 20.

⁶⁶ *CA rollo*, p. 217.

⁶⁷ *Id.* at 213-215.

⁶⁸ *Rollo*, pp. 28-29.

⁶⁹ *Id.* at 38-41.

of his contentions have been exhaustively ventilated in the Appellant's Brief⁷⁰ that he submitted to the CA. On even date, the Office of the Solicitor General (OSG) filed a similar Manifestation (In Lieu of Supplemental Brief)⁷¹ on behalf of the People.

Arguments

In his Brief, accused-appellant asserted that no valid buy-bust operation took place because the prosecution not only failed to establish the details of the buy-bust operation in question but was also not able to present the CI as a witness during the trial;⁷² that, as a result, all of the evidence seized by the police officers are inadmissible in court;⁷³ and that, consequently, his defense of denial must be given credence and premium, thus necessitating his acquittal from all charges.⁷⁴

Repudiating accused-appellant's arguments, the OSG asseverated in its Brief⁷⁵ that a valid buy-bust operation took place, resulting in accused-appellant's arrest for illegal sale of drugs;⁷⁶ that the presentation of the CI as a witness in an illegal drugs case is neither essential nor indispensable for the conviction of an accused;⁷⁷ that the elements of unlawful possession were also established by the prosecution;⁷⁸ that the prosecution was likewise able to prove the unbroken chain in the custody of the confiscated plastic sachets of *shabu*;⁷⁹ and, *ergo*, there is no reason to disturb accused-appellant's conviction in the two criminal cases filed against him.⁸⁰

Issue

The issue raised for the Court's consideration is whether the CA erred in affirming with modification appellant's conviction for violation of Sections 5 and 11, Article II of R.A. No. 9165.

Ruling of the Court

We acquit.

⁷⁰ CA rollo, pp. 54-75.

⁷¹ Rollo, pp. 32-37.

⁷² CA rollo, pp. 65-66.

⁷³ Id. at 71.

⁷⁴ Id. at 72-73.

⁷⁵ Id. at 149-184.

⁷⁶ Id. at 171.

⁷⁷ Id. at 180.

⁷⁸ Id. at 172-173.

⁷⁹ Id. at 174.

⁸⁰ Id. at 182.

I.

In every criminal case, the accused is entitled to acquittal unless his guilt is shown beyond reasonable doubt.⁸¹ Proof beyond reasonable doubt does not mean such degree of proof as to exclude the possibility of error and produce absolute certainty; only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.⁸² Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense.⁸³

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution is required to prove the following elements: (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 therefor.⁸⁴

On the other hand, for a successful prosecution of an offense for illegal possession of dangerous drugs, the prosecution must establish the following elements: (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.⁸⁵

As a general rule, 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.⁸⁶ The only way by which the State could lay the foundation of the *corpus delicti* is to establish beyond reasonable doubt the illegal sale or illegal possession of the dangerous drug by preserving the identity of the drug offered as evidence against the accused. The State does so only by ensuring that the drug presented in the trial court was the same substance bought from the accused during the buy-bust operation or recovered from his/her possession at the moment of arrest.⁸⁷ Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved.⁸⁸ In *People v. Jaafar*,⁸⁹ the Court explained further:

Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of

⁸¹ *People v. Claro*, 808 Phil. 455, 457 (2017).

⁸² *XXX v. People*, G.R. No. 243049, October 5, 2020.

⁸³ *People v. Lumikid*, G.R. No. 242695, June 23, 2020, 940 SCRA 90, 108.

⁸⁴ *People v. Manabat*, G.R. No. 242947, July 17, 2019, 909 SCRA 543, 560-561.

⁸⁵ *People v. Quijano*, G.R. No. 247558, February 19, 2020, 933 SCRA 348, 358.

⁸⁶ *People v. De Dios*, G.R. No. 243664, January 22, 2020, 930 SCRA 41, 47.

⁸⁷ *People v. Nepomuceno*, 840 Phil. 356, 364 (2018).

⁸⁸ *People v. Ubungen*, 836 Phil. 888, 897 (2018).

⁸⁹ 803 Phil. 582 (2017).

authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.⁹⁰ (Citations omitted)

It is the obligation of the prosecution to establish the chain of custody for evidence sent to testing laboratories — that is, to establish “the identity and integrity of physical evidence by tracing its continuous whereabouts.”⁹¹ Indeed, the trial court requires a more stringent foundation “entailing a ‘chain of custody’ of the item with *sufficient completeness* to render it *improbable* that the original item has either been exchanged with another or been contaminated or tampered with.”⁹² The prosecution must introduce sufficient proof so that a reasonable juror could find that the items seized are in “substantially the same condition” as when they were seized.⁹³ The government need only show that “it took reasonable precautions to preserve the original condition of the evidence.”⁹⁴

Since the Information alleges that the crime was committed by accused-appellant on February 10, 2016, the rules on chain of custody are governed by R.A. No. 10640⁹⁵ which amended R.A. No. 9165.

Section 1 of R.A. No. 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” is hereby amended to read as follows:

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

⁹⁰ Id. at 591.

⁹¹ *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009).

⁹² *United States v. Cardenas*, 864 F.2d 1528 (1989).

⁹³ *United States v. Harrington*, 923 F.2d 1371 (1991).

⁹⁴ *United States v. Prieto*, 549 F.3d 513 (2008).

⁹⁵ 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.” (July 15, 2014)

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 X

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification. (Emphasis Ours)

The rules mandate that the following links should be established in the chain of custody of the confiscated items: *first*, the seizure and marking, if practicable, 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 from the forensic chemist to the court.⁹⁶

Indeed, the procedures laid out in Section 21, Article II of R.A. No. 9165 are considered substantive law and not merely a procedural technicality.⁹⁷ They are crucial in safeguarding the integrity and credibility of the seizure and confiscation of the evidence.⁹⁸

II.

In the recent case of *Nisperos v. People (Nisperos)*,⁹⁹ the Court decreed that the marking be done immediately upon confiscation, and that the required insulating witnesses be readily available to witness the ensuing inventory.

Here, the records do not show that the required witnesses, while not present at the time of accused-appellant's apprehension, were readily available to witness the ensuing inventory of the seized items.

⁹⁶ *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

⁹⁷ *Uy v. People*, G.R. No. 21797, February 23, 2022.

⁹⁸ *Luna v. People*, G.R. No. 231902, June 30, 2021.

⁹⁹ G.R. No. 250927, November 29, 2022.

The members of the buy-bust team who were called to testify in open court merely stated that the seized items were marked in the presence of the witnesses Barangay Kagawad Danilo Nisperos (Barangay Kagawad Nisperos) and media representative Aleo S. De Guzman (De Guzman). They severely lacked additional details as to when said witnesses arrived at the crime scene.

When he was called to the witness stand to profess his knowledge of the circumstances surrounding accused-appellant's arrest, PO1 Ubungen clearly admitted that both witnesses arrived after the buy-bust operation was conducted:

Q: After putting your markings on the items recovered, what else happened?

A: The barangay kagawad of Sevilla, San Fernando City, were witnesses to the placing of the marking on the items.

Q: You said that your [markings] were witness[ed] by the barangay kagawad and the media representative, where did those 2 come from?

A: From the place of the incident sir.

Q: They were there when you arrived?

A: No sir some of our companions called for them.¹⁰⁰

PO3 Ballada's testimony, which the prosecution proffered in order to corroborate PO1 Ubungen's account, was likewise unable to show if the required witnesses were present during the seizure of the suspected drug items:

Q: After PO1 Ubungen accomplished the Certificate of Inventory Form, what happened next?

A: The witnesses signed the confiscated evidences (sic) sir.

Q: Where did they sign Mr. witness?

A: On the Certificate of Inventory sir.

Q: There is a signature above the name Danilo Nisperos, do you know whose signature is this?

A: The Brgy. Kagawad, sir.

Q: Did you see him signed (sic)?

A: Yes sir.

Q: There is also a signature above the name Aleo de Guzman, do you know whose signature is this?

A: Yes sir, Aleo de Guzman, the media representative.¹⁰¹

To further highlight the apprehending team's failure to comply with Section 21, Article II of R.A. No. 9165, Barangay Kagawad Nisperos

¹⁰⁰ TSN, May 18, 2016, p. 11.

¹⁰¹ TSN, May 25, 2016, p. 14.

himself narrated that he was called by the buy-bust team after accused-appellant's apprehension:

Q: At about past 6 p.m. of February 10, 2016 can you recall where were you at that time?

A: At 6 o'clock in the evening I was at home then somebody called for me then thereafter I proceeded to Shell. Accordingly, there was an arrest regarding shabu.

Q: So when you proceeded to the Shell Station, where is that Mr. Witness?

A: Sevilla.

Q: Is that the one along Diversion Road?

A: Diversion Road.

Q: Upon arrival at the Shell Station, what happened there?

A: I was told that the suspect was seated along with the policeman who was in civilian clothes.

x x x x

Q: So Mr. Witness while they are sitting there, what did you do?

A: I approached the police and asked hm where the evidence is and I was showed (sic) a plastic which came from the bag and I was told that this is shabu.

Q: By the way, Mr. Witness, who called you at your home?

A: The bystanders.¹⁰²

Clearly, Barangay Kagawad Nisperos and De Guzman arrived only after the conduct of the alleged buy-bust operation. Worse, it appears that the buy-bust team never even bothered to coordinate with Barangay Kagawad Nisperos beforehand, as he was only called to the scene by bystanders. That the prosecution failed to even acknowledge this lapse let alone justify it leaves excusing it unlikely.¹⁰³

And while this Court in *Nisperos* allowed the relaxation of the rule that the mandatory witnesses be present at the time of the apprehension of drug suspects provided that the said witnesses are readily available to witness the immediately ensuing inventory, this ruling is not applicable in this case. In the first place, there was no indication as to how far the mandatory witnesses were from the crime scene as would show that they were readily available to witness the marking and inventory of the items seized from accused-appellant. And secondly, the prosecution failed to show that there was no unjustifiable delay in the conduct of the inventory because the buy-bust team had to wait for the arrival of these mandatory witnesses.

¹⁰² TSN, July 4, 2016, pp. 2-3.

¹⁰³ *Tañamor v. People*, G.R. No. 228132, March 11, 2020, 935 SCRA 511, 536.

With these unjustified lapses in the very first and most crucial link in the chain of custody, *i.e.*, the confiscation of illegal drugs from the accused, as well as in the inventory, the Court cannot merely ignore the lingering doubts, not only as to the identity and integrity of the subject *shabu* in this case, but more so as to the source thereof.¹⁰⁴ Considering that the procedural lapses committed by the arresting officers, which were unfortunately left unjustified, militate against a finding of guilt beyond reasonable doubt against accused-appellant, as the integrity and evidentiary value of the *corpus delicti* had been compromised, the Court is constrained to rule that his acquittal on all charges is in order.¹⁰⁵

III.

Individual citizens are but specks of particles or molecules *vis-a-vis* the vast and overwhelming powers of government. Their only guarantee against oppression and tyranny are their fundamental liberties under the Bill of Rights which shield them in times of need.¹⁰⁶ Thus, our legal system has been crafted to protect the people from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.¹⁰⁷

Our Constitution so declares that the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.¹⁰⁸ Verily, no person should be subjected to punishment unless the evidence shows beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged.¹⁰⁹

The drug crisis, so to speak, does not license the aggrandizement of governmental power in lieu of civil liberties.¹¹⁰ While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of accused-appellant to be presumed innocent and cannot itself constitute proof beyond reasonable doubt.¹¹¹ For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.¹¹²

When the law enforcers' performance of their duties is tainted with irregularities, the presumption of regularity is effectively destroyed.¹¹³ Those who are supposed to enforce the law are not justified in disregarding the

¹⁰⁴ *People v. Globa*, G.R. No. 241251, December 10, 2019, 927 SCRA 587, 603.

¹⁰⁵ *People v. Dela Torre*, G.R. No. 238519, June 26, 2019, 906 SCRA 465, 486.

¹⁰⁶ *Secretary of Justice v. Lantion*, 379 Phil. 65, 185 (2000).

¹⁰⁷ *Brinegar v. United States*, 338 U.S. 160 (1949).

¹⁰⁸ *People v. Dumanjug*, G.R. No. 235468, July 1, 2019, 907 SCRA 89, 114.

¹⁰⁹ *United States v. White*, 569 F.2d 263 (1978).

¹¹⁰ *United States v. Radka*, 904 F.2d 357 (1990).

¹¹¹ *People v. Angeles*, G.R. No. 224223, November 20, 2019, 925 SCRA 584, 605.

¹¹² *People v. Escaran*, G.R. No. 212170, June 19, 2019, 905 SCRA 86, 104.

¹¹³ *People v. Cantalejo*, 604 Phil. 658, 668 (2009).

rights of the individual in the name of order. Order is too high a price for the loss of liberty.¹¹⁴

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 20, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09532 is hereby **REVERSED** and **SET ASIDE**. For failure on the part of the prosecution to prove his guilt beyond reasonable doubt, accused-appellant **Roston Alar y Ducusin @ “Roston”** is **ACQUITTED** of the crimes charged in Criminal Case Nos. 11382 and 11383. He is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being detained for some other lawful cause.

Let a copy of this Resolution be furnished the Director General of the Bureau of Corrections for immediate implementation and to report to this Court the action he has taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
GER
3/29/23

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134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 29, San Fernando City
2500 La Union
(Crim. Case Nos. 11382 and 11383)

¹¹⁴ *People v. Aminnudin*, 296 Phil. 424, 435 (1988).

Gen. Gregorio Pio P. Catapang, Jr. AFP (Ret) CESE
Director General
BUREAU OF CORRECTIONS
New Bilibid Prison
1770 Muntinlupa City

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Roston Alar y Ducusin @ "Roston"
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New Bilibid Prison
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1770 Muntinlupa City

PGen. Benjamin C. Acorda, Jr.
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G.R. No. 251008

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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 251008

-versus-

ROSTON ALAR y DUCUSIN
@ "ROSTON,"
Accused-Appellant.
x-----/

ORDER OF RELEASE

TO: Gen. Gregorio Pio P. Catapang, Jr., AFP (Ret.) CESE
Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on March 29, 2023 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

"WHEREFORE, the appeal is **GRANTED**. The Decision dated July 20, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09532 is hereby **REVERSED** and **SET ASIDE**. For failure on the part of the prosecution to prove his guilt beyond reasonable doubt, accused-appellant **Roston Alar y Ducusin @ "Roston"** is **ACQUITTED** of the crimes charged in Criminal

- over -

Case Nos. 11382 and 11383. He is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being detained for some other lawful cause.

Let a copy of this Resolution be furnished the Director General of the Bureau of Corrections for immediate implementation and to report to this Court the action he has taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.”

NOW, THEREFORE, you are hereby ordered to immediately release **Roston Alar y Ducusin @ “Roston,”** unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **ALFREDO BENJAMIN S. CAGUIOA,** Chairperson of the Third Division of the Supreme Court of the Philippines, this **29th** day of **March 2023.**

By authority of the Court:

MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
SR
5/11/13

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