



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated June 21, 2023, which reads as follows:

“G.R. No. 258692 (*People of the Philippines v. Alvin Magno y Merin a.k.a. “Binoy Magno”*). – Assailed in this ordinary appeal is the Decision¹ dated November 26, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 11784, which affirmed the Decision² dated March 6, 2018 of the Regional Trial Court (RTC) of Olongapo City, Branch 75 in the consolidated Criminal Case Nos. 2016-2038 and 2016-2039, finding Alvin Magno y Merin a.k.a “Binoy Magno” (accused-appellant) guilty of illegal sale and illegal possession of a dangerous drug in violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165.

The Facts

This case stemmed from two separate Informations filed before the RTC, charging accused-appellant with the crime of illegal sale and illegal possession of a dangerous drug, known as *shabu*, in violation of Sections 5 and 11, Article II of R.A. No. 9165. The accusatory portion of the Informations read:

CRIM. CASE NO. 2016-2038

[Violation of Sec. 5, Article II, R.A. No. 9165]

That on or about the eighteenth (18th) day of October, 2016, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully, and knowingly sell, deliver and give away to PO3 Sherwin Tan, a police poseur-buyer, One Hundred Fifteen Thousandths of a Gram (0.115g) of Methamphetamine Hydrochloride or “Shabu”, a dangerous drug, contained in one (1) heat-sealed transparent plastic sachet marked in evidence as “Exh A ST BCS”. for and in consideration of Five Hundred Pesos (P500.00), Philippine Currency.

¹ *Rollo*, pp. 8-28. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Celia C. Librea-Leagogo and Gabriel T. Robeniol, concurring.

² *Id.* at 30-39. Penned by Judge Raymond C. Viray.

CONTRARY TO LAW.³

CRIM. CASE NO. 2016-2039

[Violation of Sec. 11, Article II, R.A. No. 9165]

That on or about the eighteenth (18th) day of October, 2016, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and knowingly have in his possession and under his custody and control fifteen (15) heat-sealed transparent plastic sachets each containing Methamphetamine Hydrochloride or “Shabu”, a dangerous drug, with the following respective markings and weight:

Exh B-1 ACC BCS =	4.785 grams
Exh B-2 ACC BCS =	4.608 grams
Exh B-3 ACC BCS =	0.291 grams
Exh B-4 ACC BCS =	0.312 grams
Exh B-5 ACC BCS =	0.373 grams
Exh B-6 ACC BCS =	0.321 grams
Exh B-7 ACC BCS =	0.273 grams
Exh B-8 ACC BCS =	0.402 grams
Exh B-9 ACC BCS =	0.429 grams
Exh B-10 ACC BCS =	0.138 grams
Exh B-11 ACC BCS =	0.433 grams
Exh B-12 ACC BCS =	0.290 grams
Exh B-13 ACC BCS =	0.335 grams
Exh B-14 ACC BCS =	0.446 grams
Exh B-15 ACC BCS =	0.343 grams
Total =	13.779 grams

or a total weight of Thirteen point Seven Hundred Seventy-Nine Thousand Grams, said accused not having the corresponding license and/or authority to possess said dangerous drugs.

CONTRARY TO LAW.⁴

Upon arraignment, accused-appellant pleaded “not guilty” to both charges in Crim. Case No. 2016-2038 and Crim. Case No. 2016-2039. Thereafter, the two cases were consolidated for joint hearing and disposition. Trial ensued.⁵

Version of the Prosecution

During trial, the prosecution presented the following witnesses: (1) Police Officer (PO) 2 Sherwin Tan (PO2 Tan), as the *poseur*-buyer; and (2) PO1 Al Castillo (PO1 Castillo).⁶ Meanwhile, the testimonies of the following witnesses were stipulated upon by the parties and dispensed with: (1) PO2 Benedict

³ Id. at 10.

⁴ Id. at 11

⁵ Id.

⁶ Id. at 32.

Sarmiento (PO2 Sarmiento), the assigned investigator; and (2) Forensic Chemist Ma. Cecilia Tang (Forensic Chemist Tang).⁷

According to the prosecution, on October 18, 2016, the City Anti- Illegal Drug Special Operation Team organized a buy-bust operation prompted by reports from barangay officials that accused-appellant was involved in illegal drug trade at Fendler Street in East Tapinac, Olongapo City.⁸ During the preparation, PO2 Tan was designated as the *poseur*-buyer and Police Officers Delos Reyes, Salazar, Sarmiento, Resumadero, Jugatan, and the City Intelligence Branch personnel were his back-up and area security.⁹

At about 2:00 o'clock in the afternoon, the buy-bust team proceeded to Fendler Street, East Tapinac, Olongapo City. PO2 Tan was accompanied by a confidential informant (CI) who knew accused-appellant.¹⁰ PO2 Tan and the CI saw accused-appellant standing in front of a *sari-sari* store. Accused-appellant thereafter approached the pair and the CI introduced PO2 Tan as a drug user and potential buyer.¹¹ Accused-appellant then asked PO2 Tan how much he intends to buy; and the latter replied that he would buy worth ₱500.00. Accused-appellant took out a coin purse and picked one sachet and handed it to PO2 Tan. PO2 Tan handed the marked money and thereafter executed the pre-arranged signal by removing his bull cap. As soon as he made the signal, the arresting officers rushed to the scene and arrested accused-appellant.¹²

PO1 Castillo rushed to the scene and frisked accused-appellant recovering from him the coin purse containing 15 sachets and the marked money.¹³ Upon instruction of their team leader, the inventory of the seized items were conducted at the police station.¹⁴ No marking was likewise done immediately or at the place of arrest but at the police station.¹⁵ PO2 Tan kept custody of the sachet bought from accused-appellant, meanwhile PO1 Castillo kept custody of the purse containing several sachets of *shabu* while they proceeded back to the police station.¹⁶

At the police station, PO1 Castillo and PO2 Tan turned over the seized items to PO2 Sarmiento, the investigator-on-duty.¹⁷ PO2 Sarmiento then marked the seized items with his initials.¹⁸ Thereafter, PO2 Sarmiento prepared the inventory and took photographs of the seized items in the presence of accused-appellant and the barangay and media representatives.¹⁹ Afterwards, PO2 Sarmiento prepared the Request for Laboratory Examination and delivered the

⁷ Id. at 32.

⁸ Id. at 11.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id. at 13.

¹⁴ Id. at 12.

¹⁵ Id. at 14.

¹⁶ Id. at 13.

¹⁷ Id.

¹⁸ Id. at 14.

¹⁹ Id.

seized items to the crime laboratory.²⁰ Forensic Chemist Tang received the seized items from PO2 Sarmiento. After conducting examinations, she found them positive for *shabu*. She sealed each of the sachets with masking tape and placed her initials on them.²¹ Thereafter, Forensic Chemist Tang turned over the seized items to the prosecutor's office.²²

Version of Accused-Appellant

The defense presented accused-appellant and Jaime Joy Perez, accused-appellant's landlady as their witnesses. For his part, accused-appellant denied the charge and claimed that he was merely framed by the police.

According to accused-appellant, on October 18, 2016, while he was having lunch with his family at their house located at Fendler St., several armed men barged into their house.²³ Accused-appellant recognized PO2 Tan who was asking for the former's gun to which he replied that he had no gun.²⁴ The men searched the rooms but found no gun.²⁵ Accused-appellant was brought to the police station and was interrogated regarding his gun, which he denied having. Thereafter, he was shown two sachets of *shabu*, but did not know where they came from.

Ruling of the RTC

In its *Decision*, the RTC jointly resolved the charges against accused-appellant and found him guilty beyond reasonable doubt of illegal sale and illegal possession of a dangerous drug, *viz.* :

WHEREFORE, judgment is rendered as follows:

1. In **Criminal Case No. 2016-2038**, the Court finds *Alvin Magno y Merin* **GUILTY** beyond reasonable doubt of **Violation of Section 5, R.A. 9165** and sentences him to **suffer the penalty of life imprisonment and to pay a fine of P500,000.00 plus cost**, without subsidiary imprisonment in case of insolvency; and
2. In **Criminal Case No. 2016-2039**, the Court finds *Alvin Magno y Merin* **GUILTY** beyond reasonable doubt of **Violation of Section 11, R.A. 9165** and sentences him to **suffer the penalty of life imprisonment and to pay a fine of P400,000.00 plus cost**, without subsidiary imprisonment in case of insolvency.

The accused shall also suffer the accessory penalties under Section 35, R.A.9165 and shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code, as amended

²⁰ Id.
²¹ Id. at 25.
²² Id.
²³ Id. at 14.
²⁴ Id.
²⁵ Id. at 15.

The shabu sachets marked and offered in evidence are ordered confiscated in favor of the government and to be disposed of in accordance with law

SO DECIDED.²⁶ (Emphases in the original)

Aggrieved, accused-appellant filed a Notice of Appeal,²⁷ which was given due course by the RTC in its Order dated March 26, 2018.²⁸ Thus the RTC Decision and accused-appellant's conviction was elevated to the CA.

Ruling of the CA

In its Decision dated November 26, 2019, the CA affirmed the RTC Decision likewise finding accused-appellant guilty beyond reasonable doubt of the crime of illegal sale and illegal possession of a dangerous drug. The dispositive portion of the CA Decision, reads:

WHEREFORE, in view of the foregoing, the appeal is **DISMISSED**. The Decision dated march 6, 2018 rendered by the Regional Trial Court in Olongapo City, Branch 75, in Criminal Case Nos. 2016-2038 and 2016-2039 is **AFFIRMED**.

SO ORDERED.²⁹

The appellate court ratiocinated that the trial court correctly convicted accused-appellant as the prosecution was able to sufficiently prove the essential elements of illegal sale and illegal possession of a dangerous drug. The CA similarly concluded after a review of the records and the testimonies of the witnesses during trial that the chain of custody was unbroken and that the integrity and evidentiary value of the seized drugs were preserved.³⁰

Thereafter, accused-appellant filed his Notice of Appeal.³¹ On February 22, 2022, the CA elevated to this Court the records of this case,³² pursuant to its Resolution³³ dated February 11, 2021, which gave due course to the Notice of Appeal.

In the Resolution dated July 25, 2022, this Court took note of the records of the case forwarded by the CA. The parties were likewise ordered to file their respective supplemental briefs, should they so desire, within 30 days from notice.³⁴

²⁶ Id. at 30-39.

²⁷ CA *rollo*, p. 10.

²⁸ Id. at 11.

²⁹ *Rollo*, p. 28.

³⁰ Id. at 23-25.

³¹ Id. at 3.

³² Id. at 1.

³³ Id. at 7.

³⁴ Id. at 41.

On November 15, 2022, the Office of the Solicitor General on behalf of the People of the Philippines filed a Manifestation in Lieu of a Supplemental Brief dated November 2, 2022.³⁵ On December 23, 2022 accused-appellant filed a Supplemental Brief dated December 22, 2022.³⁶

Issue

The sole issue for this Court's resolution is whether the prosecution has proven beyond reasonable doubt that accused-appellant is guilty of illegal sale and illegal possession of a dangerous drug under Sections 5 and 11, Article II of R.A. No. 9165.

Ruling of the Court

We find the appeal to be meritorious.

The elements for illegal possession of dangerous drugs under Section 11 of Republic Act No. 9165 require: (1) the possession by the accused of an item or object identified to be a prohibited or dangerous drug; (2) that such possession is not authorized by law; and (3) that accused freely and consciously possessed the drug.³⁷

In cases involving sale or possession of dangerous drugs, conviction cannot be sustained if doubt persists on the identity of the confiscated items, considering that the dangerous drugs and paraphernalia themselves form an integral part of the *corpus delicti* of the crime. The identity of the dangerous drug and related paraphernalia, therefore, must be established with moral certainty.³⁸ Accordingly, in order to obviate any unnecessary doubt on the their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the dangerous drugs and related paraphernalia are seized up to their presentation in court as evidence of the crime.³⁹

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court until destruction.⁴⁰ Compliance thereof ensures the integrity of confiscated drugs and related paraphernalia in four respects: *first*, the nature of the substances or items seized; *second*, the quantity (e.g., weight) of the substances or items seized; *third*, the relation of the substances or items seized to the incident allegedly causing their seizure; and *fourth*, the relation of the

³⁵ Id. at 46-50.

³⁶ Id. at 57-72.

³⁷ *People v. Pavia*, 750 Phil. 871, 879 (2015).

³⁸ *People v. Del Mundo*, 818 Phil. 575, 584-585 (2017), citing *People v. Gayoso*, 808 Phil. 19, 30 (2017).

³⁹ *People v. Viterbo*, 739 Phil. 593, 601 (2014).

⁴⁰ *Ramos v. People*, 826 Phil. 663, 675-676 (2018).

substances or items seized to the person/s alleged to have been in possession of or peddling them.⁴¹

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure, marking, and inventory 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.

The foregoing requirements must be strictly complied with as they ensure the possibility of planting or substitution of evidence.⁴² To avoid any doubt, the prosecution must show the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.⁴³

In the instant case, there were significant irregularities in the chain of custody, which puts in doubt the integrity and evidentiary value of the *corpus delicti*. After a circumspect review of the records of the case reveals that the *first* and *fourth* link of the chain of custody were not complied with.

The *first link* includes compliance with the seizure, marking, photograph, and inventory of the illegal drug recovered from the accused in accordance with the law.⁴⁴ After marking the seized items, the apprehending team shall conduct a physical inventory and photograph the seized items in the presence of the accused or his representative or counsel, together with the required insulating witnesses.

Marking of the dangerous drug and/or related items after seizure is the starting point in the custodial link⁴⁵ and is indispensable in the preservation of their integrity and evidentiary value.⁴⁶ It consists of affixing on the dangerous drugs or related items by the apprehending officer or the *poseur*- buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.⁴⁷

The prompt marking of the seized drugs or related items is crucial, because succeeding handlers will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other materials from the moment they are confiscated until they are

⁴¹ *People v. Adobar*, 832 Phil. 731, 752 (2018), citing *People v. Dela Cruz*, 744 Phil. 816, 829-830 (2014).

⁴² *People v. Gonzales*, 708 Phil. 121, 129 (2013).

⁴³ *People v. Belmonte*, 835 Phil. 719, 744 (2018).

⁴⁴ *People v. Omamos*, G.R. No. 223036, July 10, 2019.

⁴⁵ *People v. Coreche*, 612 Phil. 1238, 1244 (2009).

⁴⁶ *People v. Mazo*, G.R. No. 242273, November 23, 2020.

⁴⁷ *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.⁴⁸

Accordingly, this Court in *Nisperos v. People*,⁴⁹ laid down the following guidelines to guide the bench, the bar and the public on the rules to be observed in the conduct of marking and inventory of seized articles:

1. The marking of the seized dangerous drugs must be done:
 - a. Immediately *upon* confiscation;
 - b. At the place of confiscation; and
 - c. In the presence of the offender (unless the offender eluded the arrest);
2. The conduct of inventory and taking of photographs of the seized dangerous drugs must be done:
 - a. Immediately *after* seizure and confiscation;
 - b. 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; and
 - c. Also in the presence of the insulating witnesses, as follows:
 - i. if the seizure occurred during the effectivity of R.A. No. 9165, or from July 4, 2002 until August 6, 2014, the presence of three (3) witnesses, namely, an elected public official; a Department of Justice representative; *and* a media representative;
 - ii. if the seizure occurred after the effectivity of R.A. No. 10640, or from August 7, 2014 onward, the presence of two (2) witnesses, namely, an elected public official; and a National Prosecution Service representative *or* a media representative.
3. In case of any deviation from the foregoing, the prosecution must positively acknowledge the same and prove (1) justifiable ground/s for non-compliance and (2) the proper preservation of the integrity and evidentiary value of the seized item/s.

In the instant case, it is undisputed that the marking of the sachets of *shabu* were not done immediately after seizure at the place of the arrest. Moreover, neither were the conduct of inventory and taking of photographs of the seized dangerous drugs done immediately *after* seizure and confiscation.

According to PO2 Tan, after accused-appellant was arrested and a search of his person was conducted yielding 15 sachets of *shabu*, accused-appellant

⁴⁸ Id.

⁴⁹ G.R. No. 250927, November 29, 2022.

together with the seized item were brought to the police station. PO2 Tan during cross-examination testified that the decision to immediately proceed to the police station without conducting any marking or inventory was due to the order of their team leader. No other justification was given by the arresting team why the marking could not be done upon confiscation and why the inventory could not be done immediately after seizure and confiscation.

Clearly, there was an appreciable lapse of time from the moment these items were seized up to their actual marking and inventory, which put in doubt the very identity and integrity of the *corpus delicti*.

Anent the *fourth link*, We likewise find that the same was not convincingly established and proven.

The fourth link refers to the turnover and submission of the dangerous drug from the forensic chemist to the court. We have ruled in *People v. Omamos*⁵⁰ that it is of paramount necessity that the forensic chemist testifies on the details pertaining to the handling and analysis of the dangerous drug submitted for examination, *i.e.*, when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen.

However, this Court has allowed the prosecution to dispense with the testimony of the forensic chemist after the parties stipulated as to the substance of their testimony subject to certain guidelines. In *People v. Pajarin*,⁵¹ We held that the stipulation should include the required precautionary steps taken by the forensic chemist to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial.⁵²

In this case, the parties stipulated on the substance of the testimony of forensic chemist Tang, to wit:

2. MA. CECILIA G. TANG as the chemist assigned at the PNP OCCLO who examined the subject specimens after receiving the same from PO3 Sarmiento and found them positive for shabu; that after examination, she sealed each of them with masking tape and placed her initials MCGT and C.R. No. 566-2016 and turned them over to the Prosecutor['] officer [sic] upon the latter's request.

⁵⁰ Supra note 44.

⁵¹ 654 Phil. 461 (2011).

⁵² Id. at 466.

We find the foregoing stipulation on the substance of the testimony of the forensic chemist wanting as to the crucial information necessary to prove that the integrity and evidentiary value of the seized items were preserved.

Given the foregoing discussion, We find that the prosecution failed to establish the chain of custody, which casts serious doubts upon the integrity and evidentiary value of the *corpus delicti* and thus, warrants accused-appellant's acquittal.

WHEREFORE, the Decision dated November 26, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11784 is **REVERSED** and **SET ASIDE**. Accused-appellant Alvin Magno y Merin a.k.a. "Binoy Magno" is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless confined for some other lawful cause.

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

Let entry of judgment be issued immediately.

SO ORDERED." (Dimaampao, J. and Singh, J., on official business.)

By authority of the Court:

~~Misael Domingo C. Battung III~~
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
7/20/23

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