



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated October 9, 2023, which reads as follows:

“G.R. No. 238591 (*People of the Philippines v. Norie Munar y Gagarin**). — The Court resolves to **GRANT** the appeal of accused-appellant Norie Munar y Gagarin (accused-appellant) from the Decision¹ dated September 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08222, which affirmed the Decision² dated February 2, 2016 of the Regional Trial Court (RTC), Branch 64, City of Makati in Criminal Case Nos. 15-543 to 15-544, that found him guilty of violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165.³

After a judicious examination of the records of the case, the Court found that the courts *a quo* overlooked a material fact that, otherwise, would have led to the acquittal of the accused-appellant. While the Court understands the importance of buy-bust operations as an effective method of apprehending drug pushers who are the scourge of society, We are likewise aware that a buy-bust operation is susceptible to abuse. It is for this reason that the Court must be extra vigilant in trying drug cases.⁴

In this case, the Court finds that the prosecution failed to prove that the apprehending team complied with Section 21, Article II of RA 9165,⁵ as

* “Norie Munar y Gagarin @ “Bakla” in some parts of the CA rollo.

¹ Rollo, pp. 84-101. Penned by Associate Justice Elihu A. Ybañez, and concurred in by Associate Justices Fernanda Lampas-Peralta and Carmelita Salandanan-Manahan.

² CA rollo, pp. 47-52.

³ 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 THEREFOR, AND FOR OTHER PURPOSES.” Approved: June 7, 2002.

⁴ *People v. Tiu*, 460 Phil. 95, 103 (2003).

⁵ Sec. 21 of RA 9165, as amended reads:

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

amended by RA 10640,⁶ on the custody and handling of confiscated dangerous drugs, particularly the required presence of the mandatory witnesses during the inventory and the taking of photos of the dangerous drugs allegedly seized during police operations. This omission affects the identity and integrity of the *corpus delicti* and suffices as a ground for accused-appellant's acquittal based on reasonable doubt.⁷

In drugs cases, the *corpus delicti* is the seized drug itself. Conviction cannot be sustained if doubt persists on the identity of the dangerous drugs. The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of sale and illegal possession are present, the fact that the subject dangerous drugs are the same drugs offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.⁸

The prosecution must satisfy the court, by proving an unbroken chain of custody, that the drugs confiscated from the accused are the same specimens presented in court as evidence. Sec. 21, Article II of RA No. 9165, as amended, outlines the post-seizure procedure for the custody and disposition of seized drugs. The provision requires the presence of an elected public official, *and* a representative of the National Prosecution Service (NPS) *or* the media to serve as insulating witnesses at the inventory and taking of photos of the dangerous drugs. These mandatory witnesses are required to ensure the integrity of the seized evidence. Their presence would also controvert the usual defense of frame-up as the witnesses would be able to testify that the inventory of the seized drugs was done in their presence in accordance with Sec. 21, Article II of RA 9165.⁹

In this case, the prosecution has not provided any justification for the absence of a representative of the NPS or of the media during the inventory

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 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.

⁶ 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: July 23, 2014.

⁷ See *People v. Asaytuno*, 867 Phil. 184, 190 (2019).

⁸ *People v. Del Mundo*, 818 Phil. 575, 584-585 (2017).

⁹ *People v. Asaytuno*, supra note 7 at 209, citing *People v. Tomawis*, 830 Phil. 385, 409 (2018).



and the taking of photographs of the alleged contrabands recovered from the accused-appellant during the buy-bust operations.¹⁰ In *People v. Sipin*,¹¹ We have enumerated instances that may justify the absence of the required witnesses, as follows:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) *earnest efforts to secure the presence of a DOJ or media representative* and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention: or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.¹² (Emphasis supplied)

None of these justifying circumstances were invoked by the prosecution. Hence, not even the saving clause under Sec. 21, Article II of RA 9165, as amended, may be applied in this case. Verily, the saving clause may only be appreciated in the prosecution's favor if the latter shows a valid reason for not observing the procedure laid out under the said provision.¹³

It must be stressed that the prosecution has the burden of proving compliance with the law as well as the duty to provide a sufficient explanation in case of non-compliance. The police officers' breaches of the procedure outlined in Sec. 21, Article II of RA 9165, as amended, if left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* has been compromised.¹⁴ This is especially so when, as here, only miniscule amounts of prohibited drugs (0.04 gram and 0.37 gram) are involved.¹⁵ Non-compliance with the rule on the required third-party witnesses during the inventory of the allegedly seized illegal drugs creates a gap in the chain of custody, producing doubt on the integrity of the illicit drugs presented in court.¹⁶

Thus, We are constrained to acquit the accused-appellant of the crimes charged against him on the ground of reasonable doubt.

¹⁰ *Rollo*, pp. 15-16.

¹¹ 833 Phil. 67 (2018).

¹² *Id.* at 93.

¹³ See *People v. Acub*, 853 Phil. 171, 188 (2019).

¹⁴ *People v. Fayo*, 921 Phil. 487, 504 (2019), citing *People v. Sumili*, 753 Phil. 342, 349-350 (2015).

¹⁵ *Rollo*, p. 3. See also *People v. Asaytuno*, *supra* note 7 at 190.

¹⁶ *People v. Asaytuno*, *id.* at 206, citing *People v. Coreche*, 612 Phil. 1238, 1245 (2009).

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 29, 2017 of the Court of Appeals in CA-G.R.CR-HC No. 08222 is **REVERSED** and **SET ASIDE**. Accused-appellant Norie Munar y Gagarin is **ACQUITTED** of the crimes charged against him in Criminal Case Nos. 15-543 and 15-544 filed before the Regional Trial Court, Branch 64, City of Makati, on the ground of reasonable doubt.

The Director General of the Bureau of Corrections, Muntinlupa City, is **ORDERED** to **IMMEDIATELY RELEASE** accused-appellant from custody, unless he is being held for some other lawful cause, and to inform this Court of his action hereon within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED." (*HERNANDO, J.*, on leave)

By authority of the Court:



MARIA TERESA B. SIBULO
Division Clerk of Court

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The Solicitor General
Amorsolo St., Legaspi Village
1229 Makati City

Mr. Norie Munar y Gagarin (x)
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

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Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 08222)

PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Accused-Appellant
DQJ Agencies Building
NIA Road cor. East Ave.
Diliman, 1104 Quezon City

The Presiding Judge
Regional Trial Court, Branch 64
1200 Makati City
(Crim. Case Nos. 15-543 & 15-544)

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

JUP