



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 4, 2023**, which reads as follows:*

“G.R. No. 256256 (*People of the Philippines v. Emiliana Macababbad y Araojo a.k.a. “SEPA”*). – This appeal¹ seeks to reverse and set aside the Decision² promulgated on 24 January 2020 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 12239, which affirmed the Judgment³ dated 10 September 2018 of Branch 1, Regional Trial Court (RTC) of Tugegarao, Cagayan, in Criminal Case No. 18056, finding accused-appellant Emiliana Macababbad y Araojo a.k.a. “SEPA” (accused-appellant), guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165.⁴

Antecedents

Accused-appellant was charged with violation of Section 5, Article II of RA 9165, in an Amended Information, the accusatory portion of which reads:

¹ *Rollo*, pp. 33-36. See Notice of Appeal with Entry of Appearance dated 18 February 2020.

² *Id.* at 4-32; Penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Ramon A. Cruz and Gabriel T. Robeniol.

³ *CA rollo*, pp.45-55; Penned by Presiding Judge Raymond R. Lauigan.

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 Therefor, And For Other Purposes.” Approved 07 June 2002.

JK

Criminal Case No. 18056

That on April 30, 2016, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused, **EMILIANA ARAOJO MACABABBAD @Sepa**, without 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 HYDROCHLORIDE**, commonly known as “shabu”, a dangerous drug weighing **0.105 gram** to **PO3 BERNARDO MUSA APOLINARIO**, who acted as a poseur-buyer, that when accused **EMILIANA ARAOJO MACABABBAD @Sepa** handed to the poseur buyer the dangerous drugs, the poseur buyer in turn handed to the accused the agreed purchase price in the amount of **P1,000.00** consisting of **one (1) piece genuine Five Hundred (Php500.00) Peso bill** bearing **Serial No. GJ999233** and **one (1) piece Five Hundred (Php500.00) Peso bill** boodle money bearing the **Serial No. ZJ075381**, respectively, 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 her direct possession, control and custody along Arellano St., Centro 9, this city by members of the PNP assigned at the Provincial Intelligence Branch, Cagayan Police Provincial Office, Camp Tirso H. Gador, Tuguegarao City, who formed the buy bust team, in coordination with the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 02, based at Camp Marcelo Adduru, Tuguegarao City; that the buy-bust operation also led to the confiscation of the dangerous drug.

CONTRARY TO LAW.⁵

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

Version of the Prosecution

At around 3:00 o'clock in the afternoon of 30 April 2016, Police Superintendent Ronald M. Tagao (PSupt Tagao), Chief of the Provincial Intelligence Branch, Cagayan Police Provincial Office, Camp Tirso H. Gador, Tuguegarao City, Cagayan received information from a confidential informant (CI) that a female drug peddler named *alias* Sepa, later identified as the accused-appellant, was looking for buyers of shabu. Psupt. Tagao thus ordered the CI to call accused-appellant and arrange for the purchase of P1,000.00 worth of shabu. The CI then called accused-appellant and they agreed to meet at 4:30 o'clock in the afternoon of the same day at Arellano

⁵ Records, pp. 47-48.

⁶ Rollo, pp. 9-10.

Street, Centro Nine, for the delivery of the *shabu*.⁷

A buy bust team was formed where Police Officer 3 Bernardo Musa Apolinario (PO3 Apolinario) was designated as the poseur buyer while Senior Police Officer 4 Fernando Pagulayan (SPO4 Pagulayan)⁸ and PO1 Alberto Darilag (PO1 Darilag) were designated as arresting officers. The team thereafter proceeded to the vicinity of Delos Santos Clinic at Arellano Street, Centro Nine, Tuguegarao City and they waited for accused-appellant. After a few minutes, accused-appellant arrived and the CI introduced PO3 Apolinario as the buyer of *shabu*. Accused-appellant handed one (1) heat-sealed plastic sachet with suspected *shabu* to PO3 Apolinario. In exchange, he gave accused-appellant the buy bust money as payment. After PO3 Apolinario executed the pre-arranged signal to signify consummation of the transaction, PO1 Darilag and SPO4 Pagulayan rushed to the place and arrested accused-appellant.⁹

PO1 Darilag recovered the buy-bust money and one (1) black cellular phone from accused-appellant while SPO4 Pagulayan informed the latter of her rights. The team decided to conduct the marking, inventory, and taking of photographs of the seized items at their office considering that there were lots of patients having their check-up at Delos Santos Clinic and a commotion was already building up at the area.¹⁰

Before proceeding to their office, they dropped by PTU Don Domingo police station to report the incident.¹¹ Thereafter, upon arrival at their office, SPO4 Jennifer Verzon bodily searched accused-appellant. PO3 Apolinario marked the seized items, after which an inventory and photograph taking of the same was conducted in the presence of Ferdinand Gangan (Gangan), representative from the Department of Justice (DOJ), Barangay *Kagawads* Benneth Anog and Daniel Samonte of Barangay Centro Nine, Tuguegarao City.¹²

PO3 Apolinario, together with the team, then brought the seized items to the crime laboratory duly received by PO3 Hannibal Ulep. Upon examination, Forensic Chemist Police Chief Inspector (PCI) Mayra Madria Tulauan (PCI Tulauan) found the seized drug positive for *Methamphetamine Hydrochloride (shabu)*.¹³

⁷ Id. at 5.

⁸ Also referred to as SPO3 Pagulayan in some parts of the records.

⁹ *Rollo*, p. 6.

¹⁰ Id.

¹¹ *CA rollo*, p. 51.

¹² *Rollo*, p. 7.

¹³ Id.

Version of the Defense

Accused-appellant denied the charge. She claimed that on 30 April 2016 at around 1:30 o'clock in the afternoon, she had lunch at a restaurant in Calle Pilapil, Barangay 10, Tuguegarao City. She was about to go to the cockpit on board the motorcycle of Joel Addun, when a male person approached them and invited them to a Starex van at the other side of the road. As they were nearing the van, several men emerged therefrom and forcibly brought them inside the van. While inside the van, she recognized SPO4 Ramil Agcaoili, her former classmate, as well as her neighbor Marcelo Boyet Relos (Relos). The latter forced her to place a cigarette pack in her pocket. Later, upon arrival at the Cagayan Police Provincial Office, Relos attempted to put another cigarette pack in her pocket but she refused. Relos then handed the cigarette pack to a female police officer and brought her inside the office. Gangan and the barangay officials arrived at the office, signed a piece of paper and left. She was brought to the crime laboratory and was later detained at the Cagayan Provincial Police Office.¹⁴

Ruling of the RTC

On 10 September 2018, the RTC rendered its Decision, convicting accused-appellant of the offense charged, thus:

WHEREFORE, the Court finds the accused **EMILIANA MACABABBAD y ARAOJO GUILTY BEYOND REASONABLE DOUBT** of the **CRIME OF VIOLATION OF SECTION 5, ARTICLE II of REPUBLIC ACT NO. 9165** otherwise known as the Comprehensive Dangerous Act of 2002 (Sale of Dangerous Drugs), and hereby sentences her to suffer life imprisonment and a **FINE of FIVE HUNDRED THOUSAND PESOS (P500,000.00).**

X X X.

SO DECIDED.¹⁵

The RTC initially denied the demurrer to evidence filed by accused-appellant finding that there is sufficient evidence adduced by the prosecution to *prima facie* prove the case of illegal sale of dangerous drugs against her.¹⁶ Later, in convicting accused-appellant, it held that the evidence presented by the prosecution witnesses has clearly established that an actual and valid buy bust operation was conducted. The RTC also held that the chain of custody was duly complied with and that the integrity and evidentiary value of the seized drug was properly preserved with the police officers' substantial

¹⁴ Id. at 8.

¹⁵ CA rollo, p. 52.

¹⁶ Id. at 46.

compliance with Section 21 (1) of RA 9165.¹⁷ There is no showing of any ill motive on the part of the said witnesses that would erode the credibility of their testimonies. Upon the other hand, it entertained doubts on the narrative of accused-appellant that she was framed-up by the police officers.¹⁸

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In its Decision¹⁹ dated 24 January 2020, the CA affirmed accused-appellant's conviction. The dispositive portion of said decision reads:

WHEREFORE, the trial court's Judgment dated September 10, 2018 is **AFFIRMED**.

SO ORDERED.²⁰

The CA affirmed accused-appellant's conviction. It held that the prosecution, through the credible testimonies of PO3 Apolinario and PO1 Darilag, was able to establish all the elements of illegal sale of *shabu* beyond reasonable doubt.²¹ The CA was also convinced that the integrity and evidentiary value of the seized item was properly preserved by the apprehending team. It gave credence to the testimonies of the prosecution witnesses who categorically testified on the manner by which the seized item was handled from the time it was confiscated until it was turned-over to the crime laboratory and eventually presented in court.²²

Hence, this appeal.

Issue

The sole issue in this case is whether the CA correctly affirmed accused-appellant's conviction for illegal sale of dangerous drugs under Section 5, Article II, RA 9165.

The Court's Ruling

¹⁷ Id. at 52.

¹⁸ Id. at 50.

¹⁹ *Rollo*, pp. 4-32.

²⁰ Id. at 31-32.

²¹ Id. at 15.

²² Id. at 25-31.

The appeal is granted.

The elements of illegal sale of dangerous drugs under Section 5, Art II of RA 9165 are: (a) the identity of the buyer and the seller, the object of the sale and the consideration; and (b) the delivery of the thing sold and its payment.²³ The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the illegal sale transaction. What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.²⁴

In drug-related cases, the seized drugs themselves is the *corpus delicti* — the body of the offense. It is therefore incumbent upon the prosecution to establish that the drugs presented in court as evidence are the exact same drugs seized from the accused and examined by the crime laboratory.²⁵

Corollary thereto, Section 21, Article II of RA 9165, as amended by RA 10640,²⁶ the applicable law at the time of the commission of the offenses,²⁷ 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 9165 by RA 10640 on 07 August 2014, “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.”²⁸

In the same vein, to ensure the integrity of the seized drugs, the prosecution must likewise establish the chain of custody of the dangerous drugs, *i.e.*, 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,

²³ *People v Cuevas*, G.R. No. 238906, 05 November 2018, 842 Phil. 709.

²⁴ *People v. Amaro*, 786 Phil 139, 147 (2016).

²⁵ See *People v. Asaytuno, Jr.*, 867 Phil 184 (2019).

²⁶ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE “COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, approved on 15 July 2014

²⁷ The Information alleged that the offense was committed on 30 April 2016.

²⁸ *People v. Bangalan*, G.R. No. 232249, 03 September 2018, 839 Phil 455.

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the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.²⁹

The prosecution failed to show the police officers' strict compliance with the established safeguards in Section 21, creating substantial gaps in the chain of custody.

According to SPO1 Apolinario, he marked the seized drugs at their office and not at the place of transaction. He explained that the place was near the Delos Santos Clinic and there were plenty of people having a check-up and there was also a commotion.³⁰ PO1 Darilag upon the other hand explained that their team decided to conduct the inventory of the seized items at their office because of bad weather and that there was threat.³¹

Immediate marking is indispensable as it ensures that the items seized from the accused are the same ones subjected to inventory and photographing and later on presented in court as evidence of the *corpus delicti*.³² While marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 thereof, the Court has ruled, long before the passage of R.A. No. 9165, that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti*,³³ as in this case.

To emphasize, the buy-bust operation was a pre-planned activity. The police officers are rightly presumed to be aware that they were conducting an operation near the clinic and would necessary rouse people's curiosity. The inconsistent excuses offered by the police officers cannot justify the transfer of venue. As this Court held in *People v. Casa*,³⁴ hollow excuses such as "the crowd [was] getting bigger," the area was "quite dangerous," or that "the buy-bust team felt unsafe" do not justify the transfer of venue.

Even granting that the team was justified in not immediately marking the seized drugs at the place of seizure, the police officers still failed to mark the same when they reported the incident at PTU Don Domingo before proceeding to the police station at Camp Tirso Gador.³⁵ In the affidavits³⁶ of the police officers, it was mentioned that the confiscated items were photographed, receipted and inventoried at Camp Tirso Gador. Notably, there was no mention that the items were marked nor was there any

²⁹ See *People v. Taglucop*, G.R. No. 243577, 15 March 2022.

³⁰ TSN dated 3 April 2018, Witness SPO1 Apolinario, p. 10.

³¹ TSN dated 6 February 2018, Witness PO1 Darilag, p. 14.

³² See *People v. Beran*, GR No. 203028, 724 Phil 788 (2014).

³³ See *People v. Dahil*, G.R. No. 212196, 750 PHIL 212. (2015).

³⁴ GR No. 254208, 16 August 2022, citing *People v. Taglucop*, G.R. No. 243577, 15 March 2022.

³⁵ TSN dated 6 February 2018, Witness PO1 Darilag, pp. 11-13.

³⁶ Records, pp. 7-10.

explanation as to why the marking, inventory and taking photographs were not immediately made at place of arrest. Clearly, at the onset, the chain of custody was already jeopardized. From the beginning, there was doubt on the identity of the items that would later be inventoried, photographed, examined and presented as evidence.

While Section 21 of RA 9165 provides a saving mechanism for any deviation of the provision prescribed therein, the same cannot be applied because the police officers in this case failed to recognize their lapses, as well as justify or explain the same. Moreover, the seized items involved a miniscule amount of *shabu*, *i.e.*, .105 gram, which underscores the need for more exacting compliance with Section 21.³⁷ The police officers' unjustified breach of procedure effectively invalidates their seizure of and custody over the seized drug, compromising the identity and integrity of the same. Consequently, for failure of the prosecution to prove the *corpus delicti* beyond reasonable doubt, the Court is therefore constrained to acquit accused-appellant.

WHEREFORE, the appeal is **GRANTED**. The Decision promulgated on 24 January 2020 by the Court of Appeals in CA-G.R. CR-HC No. 12239, finding accused-appellant EMILIANA MACABABBAD Y ARAOJO a.k.a. "SEPA" guilty beyond reasonable doubt of violating Section 5, Article II, RA No. 9165, is **REVERSED** and **SET ASIDE**. She is hereby **ACQUITTED** on the ground of reasonable doubt. She is ordered immediately **RELEASED** from detention unless she is being confined for some other lawful cause.

The Superintendent, Correctional Institution for Women is **DIRECTED** to **IMPLEMENT** this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED." *Hernando, J., on leave.*

By authority of the Court:



MARIA TERESA B. SIBULO
Division Clerk of Court

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³⁷ See *People v. Que*, G.R. No. 212994, 824 Phil. 882 (2018).

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(CA-G.R. CR-HC No. 12239)

The Hon. Presiding Judge
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