



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 19, 2021** which reads as follows:*

**“G.R. No. 240223 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus ELVIE LESACA y AFABLE A.K.A. “GENELYN” AND CLARK LUTCHINA y FIÑEZA, accused-appellants.**

After a careful review of the records of the instant case, the Court reverses and sets aside the Court of Appeals (CA) Decision<sup>1</sup> dated December 29, 2017 in CA-G.R. CR-HC No. 08805 which affirmed the Decision<sup>2</sup> of the Regional Trial Court which convicted accused-appellants Elvie Lesaca y Afable a.k.a. “Genelyn” of violation of Sections 5 and 11, and Clark Lutchina y Fiñeza of violation of Sections 5, 11, and 12, Article II of Republic Act No. (RA) 9165,<sup>3</sup> otherwise known as the Comprehensive Dangerous Drugs Act of 2002 as amended by RA 10640.<sup>4</sup>

To secure a conviction under RA 9165, as amended, the prosecution must prove the identity and the integrity of the *corpus delicti*, which is the dangerous drug itself, beyond reasonable doubt.<sup>5</sup> This is necessitated by the unique characteristic of illegal drugs as they are indistinct, not readily identifiable, and easily open to

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<sup>1</sup> *Rollo*, pp. 2-14. Penned by Associate Justice Ricardo R. Rosario (now a member of this Court) with the concurrence of Associate Justices Eduardo B. Peralta, Jr. and Maria Elisa Sempio Diy.

<sup>2</sup> *CA rollo*, pp. 46-52. Penned by Presiding Judge Dorcas P. Ferriols-Perez.

<sup>3</sup> 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.

<sup>4</sup> 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” (2014). As the offense in the instant case was committed on August 14, 2015, the amendatory law applies.

<sup>5</sup> *People v. Siaton*, G.R. No. 208353, July 4, 2016, 795 SCRA 478, 489.

tampering, alteration, or substitution either by accident or otherwise.<sup>6</sup> As such, the Court has consistently emphasized that there must be strict compliance with the mandatory procedure under Section 21 of RA 9165 during and after the seizure of dangerous drugs and related paraphernalia, during the custody and transfer thereof for examination, and at all times up to their presentation in court.<sup>7</sup>

Section 21 of RA 9165, requires that: (1) the seized items must be marked, inventoried and photographed immediately after seizure or confiscation; and (2) the marking, physical inventory, and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, and (c) a representative from the National Prosecution Service or a representative from the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.<sup>8</sup>

However, the law itself recognizes that strict compliance with the procedure may not always be possible. Section 21 of RA 9165 contains a “saving clause” which provides that non-compliance with the requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved, shall not render void and invalid the seizure and custody over the confiscated items. For the saving clause to apply, the prosecution must still satisfactorily prove that: (a) there was justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items were properly preserved.<sup>9</sup>

In a long line of cases, including *People v. Mendoza*,<sup>10</sup> *People v. Reyes*,<sup>11</sup> *People v. Sagana*,<sup>12</sup> *People v. Guieb*,<sup>13</sup> *People v. Tomawis*<sup>14</sup> (*Tomawis*), *People v. Lim*<sup>15</sup> (*Lim*), *People v. Miranda*,<sup>16</sup> *People v. Dayon*,<sup>17</sup> *Tañamor v. People*,<sup>18</sup> *People v. Arellaga*,<sup>19</sup> and *People v.*

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<sup>6</sup> *Id.*, citing *People v. Beran*, G.R. No. 203028, January 15, 2014, 714 SCRA 165, 189.

<sup>7</sup> *People v. Nacua*, G.R. No. 200165, January 30, 2013, 689 SCRA 819, 832.

<sup>8</sup> As amended by RA 10640.

<sup>9</sup> *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

<sup>10</sup> G.R. No. 192432, June 23, 2014, 727 SCRA 113.

<sup>11</sup> G.R. No. 199271, October 19, 2016, 806 SCRA 513.

<sup>12</sup> G.R. No. 208471, August 2, 2017, 834 SCRA 225.

<sup>13</sup> G.R. No. 233100, February 14, 2018, 855 SCRA 620.

<sup>14</sup> G.R. No. 228890, April 18, 2018, 862 SCRA 131.

<sup>15</sup> G.R. No. 231989, September 4, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.

<sup>16</sup> G.R. No. 218126, July 10, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65602>>.

<sup>17</sup> G.R. No. 229669, November 27, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65994>>.

<sup>18</sup> G.R. No. 228132, March 11, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66109>>.

<sup>19</sup> G.R. No. 231796, August 24, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66340>>.

*Casilang*,<sup>20</sup> the Court acquitted the accused because the police officers failed to strictly comply with the mandatory procedure under Section 21. The Court has consistently emphasized that the presence of the enumerated witnesses — namely, an elected official, as well as a representative from the Department of Justice or the media — during the seizure and inventory of the seized items is required by law to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.<sup>21</sup> Worse, the prosecution in these cases did not even bother to explain the reason for the procedural lapses, which rendered the saving clause inapplicable. This underscored the doubt and suspicion on the integrity and credibility of the prosecution's evidence and thus, on the accusation that accused violated RA 9165.

Perforce, herein accused-appellants should be acquitted because the police officers failed to secure the presence of the mandatory witnesses during the seizure of the seized items at or near the place of apprehension, a crucial stage in a buy-bust operation. The members of the buy-bust team, PO1 Krestina Crisandra Santos and PO1 Eduardo C. Masilungan were consistent in their testimonies that the witnesses Barangay Captain Richard Ericson Talag, Barangay Councilor Patricio Contreras and media representative Benedicto Griño were called in **only after** the conduct of the buy-bust operation and they witnessed only the inventory and the marking of the items.<sup>22</sup> As the witnesses arrived only after the buy-bust operation, they would not have known whether the drugs and paraphernalia being inventoried in their presence were actually confiscated from accused-appellants. Their presence did not in any way preclude the possibility that a switching, planting, or contamination of the evidence had transpired.

In *Tomawis*,<sup>23</sup> the Court emphasized held that the witnesses must be present not only during the inventory but more importantly, at or near the place and time of the warrantless arrest and seizure of the items. It is at this point in which the presence of the required witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drugs. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would

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<sup>20</sup> G.R. No. 242159, February 5, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66075>>.

<sup>21</sup> *People v. Guieb*, supra note 13, at 637.

<sup>22</sup> TSN, November 11, 2015, p. 20; TSN, January 22, 2016, pp. 16-17.

<sup>23</sup> Supra note 14.

also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.<sup>24</sup>

In addition, the Court notes another lapse in the conduct of the buy-bust operation. A perusal of the records shows that the Certificate of Inventory<sup>25</sup> of the seized items does not bear the signatures of accused-appellants. Section 21 mandates that accused-appellants and the witnesses shall sign the inventory and be given copies thereof. The signing of the inventory by the accused and the witnesses is not a trivial requirement. This is another layer of protection to ensure the identity and integrity of the seized items. The failure of the agents to comply with the requirement and failure to acknowledge and explain the absence of the signatures of accused-appellants, raises doubt on the evidentiary value of the seized items.

Moreover, the saving clause does not apply in this case because the prosecution failed to establish any justifiable reason for the absence of the witnesses at the time of the seizure of the items and for the absence of the signatures of accused-appellants in the Certificate of Inventory. In *Lim*,<sup>26</sup> the Court held that earnest effort to secure the attendance of the necessary witnesses must be proven. Considering that a buy-bust operation is a planned activity, and police officers are given sufficient time to make necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the prescribed requirements of Section 21, police officers are compelled not only to state reasons for their non-compliance but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.<sup>27</sup> It is the positive duty of the prosecution to establish the justifiable reasons for any deviation in the procedure mandated under Section 21.<sup>28</sup> It is not for the Court to presume the existence of justifiable grounds.<sup>29</sup>

The Court reiterates that the presumption of regularity in the performance of duty cannot overcome the stronger presumption of

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<sup>24</sup> *Id.* at 150; *People v. Callejo*, G.R. No. 227427, June 6, 2018, 865 SCRA 405, 430-431; and *People v. Claudel y Lucas*, G.R. No. 219852, April 3, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65135>>.

<sup>25</sup> Exhibit "G," records, p. 11.

<sup>26</sup> *Supra* note 15.

<sup>27</sup> *Id.*

<sup>28</sup> *People v. Baptista*, G.R. No. 225783, August 20, 2018, 878 SCRA 124, 140.

<sup>29</sup> *People v. Año*, G.R. No. 230070, March 14, 2018, 828 Phil. 439, 450, citing *People v. De Guzman*, G.R. No. 186498, March 26, 2010, 616 SCRA 652, 662.

innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.<sup>30</sup> All told, the prosecution failed to prove the *corpus delicti* of the offenses of sale and possession of illegal drugs and paraphernalia due to the unexplained breaches of procedure committed by the police officers. Thus, absent any proof beyond reasonable doubt of the *corpus delicti* of the crimes charged, the presumption of accused-appellants' innocence must be upheld and accused-appellants must be acquitted.

**WHEREFORE**, in view of the foregoing, the appeal<sup>31</sup> is hereby **GRANTED**. The Court of Appeals Decision dated December 29, 2017 in CA-G.R. CR-HC No. 08805 is hereby **REVERSED and SET ASIDE**. Accordingly, accused-appellants **ELVIE LESACA y AFABLE @ "GENELYN" AND CLARK LUTCHINA y FIÑEZA** are **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and are **ORDERED IMMEDIATELY RELEASED** from detention unless they are being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendents of Correctional Institution for Women, Mandaluyong City, and Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Superintendents are **ORDERED to REPORT** to this Court within five (5) days from receipt of this Resolution the action that they have taken.

**SO ORDERED."**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *1/19/21*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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<sup>30</sup> *Tuates v. People*, G.R. No. 230789, April 10, 2019, 901 SCRA 493, 509.

<sup>31</sup> *Rollo*, pp. 15-17.



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Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 08805)

The Hon. Presiding Judge  
Regional Trial Court, Branch 84  
4200 Batangas City  
(Crim. Case Nos. 20146 to 20149)

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