



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 June 2021** which reads as follows:*

**“G.R. No. 240538 (*People of the Philippines v. Rosalinda Bulda-Plata a.k.a “Lulu”*)**. —Assailed in this appeal is the February 28, 2018 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08750, which affirmed the Decision of the Regional Trial Court (RTC)<sup>2</sup> dated September 7, 2016 in Criminal Case Nos. 18213-18214.

**ANTECEDENTS**

In two separate Informations, Rosalinda Bulda-Plata (Rosalinda) was charged with Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs committed as follows:

Criminal Case No. 18213

That on or about July 18, 2013, at around 12:15 in the morning at Brgy. Tingga Labac, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully, and criminally sell, dispense or deliver one (1) transparent plastic sachet of Methamphetamine Hydrochloride, more commonly known as *shabu*, a dangerous drug, weighing 0.07 gram, which is a clear violation of the above-cited law.

CONTRARY TO LAW.

Criminal Case No. 18214

That on or about July 18, 2013, at around 12:15 in the morning at Brgy. Tingga Labac, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully, and criminally possess or have under her custody and control three (3) heat-sealed transparent plastic sachets with an aggregate weight of 8.72 grams of Methamphetamine

<sup>1</sup> *Rollo*, pp. 2-9. Penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Ramon R. Garcia and Myra V. Garcia-Fernandez.

<sup>2</sup> *CA rollo*, pp. 56-72.

Hydrochloride, more commonly known as *shabu*, a dangerous drug, which is a clear violation of the above-cited law.

CONTRARY TO LAW.<sup>3</sup>

After Rosalinda's plea of not guilty, trial ensued with the presentation of the prosecution's and defense's evidence, respectively.

The prosecution alleged that on July 17, 2013, at around 10:00 p.m., a police asset arrived at Batangas City Police Station. He reported that he could buy *shabu* from one "Lulu" (later identified as Rosalinda Bulda-Plata) in *Barangay Tingga Labac*, Batangas City. Batangas City Police coordinated with the Philippine Drug Enforcement Agency (PDEA) and planned a buy-bust operation. Senior Police Officer 3 Rommel Gabarda (SPO3 Gabarda), the team leader, formed a buy-bust team with Police Officer 3 Joryel Borbon Alo (PO3 Alo), Police Officer 3 Adrian Endozo (PO3 Endozo), Police Officer 3 Dennis Dinglasan (PO3 Dinglasan), Senior Police Officer 2 Macario Victor (SPO2 Victor), and Police Officer 1 John Kenneth Bay (PO1 Bay) as members. Meanwhile, the police asset acted as the poseur-buyer. PO3 Alo prepared a ₱500.00 bill and marked it with his initials "JBA." Before leaving the police station, SPO3 Gabarda frisked the members of the team and the police asset to make sure that they do not have illegal objects.<sup>4</sup>

At around 11:30 p.m, the buy-bust team proceeded to Tingga Labac *barangay* hall to coordinate the operation with the *barangay* officials. Then, they went to Catapang Road, where the sale would take place. Upon reaching the meeting place, the buy-bust team stayed inside a tinted Toyota Revo parked at about five (5) meters away from the place of sale. The police asset alighted from the vehicle and walked towards Catapang Road. He stopped in front of the light post and approached Rosalinda, who was with two men at that time. After a short conversation, the police asset handed the marked money to Rosalinda. In turn, Rosalinda gave something to the police asset. Thereupon, the police asset executed the pre-arranged signal by inserting his right hand in his right pocket. Upon seeing the pre-arranged signal, SPO3 Gabarda, PO3 Alo, PO3 Endozo, and PO3 Dinglasan approached them. PO3 Alo recovered the marked money and a tape-sealed paper containing three (3) plastic sachets of *shabu* from Rosalinda. The police asset gave the plastic sachet of *shabu* he bought from Rosalinda to PO3 Alo. PO3 Alo apprised Rosalinda of her constitutional rights and marked the plastic sachet with "JBA." He also marked the tape-sealed paper he recovered as "JBA 07-18-13" and the three (3) plastic sachets inside as "JBA 1 07-18-13," "JBA 2 07-18-13," and "JBA 3 07-18-13." The buy-bust team also recovered a tape-sealed paper from each of the two men identified as Nelson Zapata y Macandili (Nelson) and Magno Villapando y Torres (Magno). PO1 Bay took pictures during the marking of the seized items.<sup>5</sup>

<sup>3</sup> CA *rolle*, at 59.

<sup>4</sup> *Id.* at 60-61.

<sup>5</sup> *Id.* at 60-62.

The buy-bust team brought the suspects to the *barangay* hall, where *Barangay* Captain Miriam Catapang (*Barangay* Captain Catapang) recorded the result of the operation. After that, the inventory in the presence of *Barangay* Captain Catapang and Prosecutor Evelyn Jovellanos of the Department of Justice (DOJ) followed, and the buy-bust team turned over the seized items to Senior Police Officer 1 Pepito Adelantar (SPO1 Adelantar). The suspects were then brought to the police station.<sup>6</sup>

SPO1 Adelantar prepared the joint Sworn Statement of PO3 Alo, PO3 Endozo, and PO3 Dinglasan, Request for Laboratory Examination, Spot Report, Request for Drug Test, and Separate Booking Sheet/Arrest Report. Then, he brought the seized items to the Batangas Provincial Crime Laboratory Office. Senior Police Officer 3 Lito Vargas (SPO3 Vargas) received the items and forwarded them to Police Senior Inspector Herminia C. Llacuna (PSI Llacuna) for examination. The items tested positive for methamphetamine hydrochloride.<sup>7</sup> Accordingly, Rosalinda was charged with the illegal sale and possession of dangerous drugs. On the other hand, Nelson and Magno were charged with illegal possession of dangerous drugs.<sup>8</sup>

Rosalinda denied the accusations against her and claimed that she was at home with her family when the police officers suddenly arrived and searched her house. The police officers did not find anything in her house. However, they still brought her to the outpost in *Barangay* Balagtas and then to the Batangas City Police Station.<sup>9</sup>

On September 7, 2016, the RTC convicted Rosalinda for the illegal sale and possession of dangerous drugs. Meanwhile, Nelson and Magno were acquitted because of a lack of sufficient evidence.<sup>10</sup> On appeal, the CA affirmed Rosalinda's conviction, thus:

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<sup>6</sup> CA *rollo*, at 62.

<sup>7</sup> Id. at 62-63.

<sup>8</sup> Id. at 58-60.

<sup>9</sup> Id. at 64.

<sup>10</sup> Id. at 70-71.

**WHEREFORE**, judgment is hereby rendered as follows:

a) In Criminal Case No. 18213 wherein the accused is ROSALINDA BULDA-PLATA @ "Lulu" for Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002, she is found GUILTY beyond reasonable doubt and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00) with costs.

b) In Criminal Case No. 18214[4] wherein the accused is ROSALINDA BULDA-PLATA @ "Lulu" for Violation of Section 11, Article II of Republic Act No. 9165, she [is] found GUILTY beyond reasonable doubt and is hereby sentenced to suffer the indeterminate penalty of TWELVE YEARS (12) and ONE (1) DAY to FOURTEEN (14) YEARS and to pay a fine of THREE HUNDRED THOUSAND PESOS (P300,000.00) with costs.

c) In Criminal Case No. 18215, wherein the accused is MAGNO VILLAPANDO y Torres for Violation of Section 11, Article II of Republic Act No. 9165, for lack of sufficient evidence he is hereby ACQUITTED.

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The 7 September 2016 Decision of the Regional Trial Court of Batangas City, Branch 2 in Criminal Case Nos. 18213 and 18214 is **AFFIRMED**.

**SO ORDERED.**<sup>11</sup>

Hence, this recourse.

### THE COURT'S RULING

We acquit.

In the illegal sale and possession of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense, and the fact of its existence is vital to a judgment of conviction.<sup>12</sup> Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.<sup>13</sup> Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court.<sup>14</sup> Here, records reveal a broken chain of custody.

Notably, the alleged crime happened before RA No. 10640<sup>15</sup> amended RA No. 9165. Thus, the original provisions of Section 21 and its counterpart provision in Section 21(a), Article II of the Implementing Rules and Regulations (IRR) shall apply, to wit:

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d) In Criminal Case No. 1821[6], wherein the accused is NELSON ZAPATA y Macandili for Violation of Section 11, Article II of Republic Act No. 9165, for lack of sufficient evidence he is hereby ACQUITTED.

The bail bond posted by Villapando and Zapata for their provisional liberty is cancelled.

The OIC of this Court, Mr. Albert Julius M. Hagan, is hereby directed to coordinate with PDEA for the immediate destruction of the *shabu* subject of the instant case pursuant to the provisions of RA 9165.

**SO ORDERED.**

<sup>11</sup> *Rollo*, p. 9.

<sup>12</sup> *People of the Philippines v. Partoza*, 605 Phil. 883, 890 (2009).

<sup>13</sup> *People v. Ismael*, 806 Phil. 21, 33 (2017).

<sup>14</sup> *People v. Bugtong*, 826 Phil 628, 638 (2018).

<sup>15</sup> Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF [RA] NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," approved on July 15, 2014, states that it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." Verily, a copy of the law was published on July 23, 2014 in the respective issues of "The Philippine Star" (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and the "Manila Bulletin" (Vol. 499, No. 23: World News section, p.6). Thus, RA No. 10640 became effective on August 7, 2014.

**[Section 21, paragraph 1, Article II of RA No. 9165]**

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory 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, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof.

**[Section 21(a), Article II of the IRR of R.A. No. 9165]**

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory 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, **a representative from the media and the Department of Justice (DOJ), and any elected public official** 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 office/team, whichever is practicable**, in case of warrantless seizures; **Provided, further, that non-compliance with 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 of and custody over said items.** (Emphases and italics supplied.)

This Court ruled that a deviation from the standard procedure in Section 21 of the IRR dismally compromises the integrity of the evidence, unless (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.<sup>16</sup> In this case, the buy-bust team breached the initial custody requirements under Section 21 of RA No. 9165 and its IRR without justifiable grounds. The prosecution also failed to establish the integrity and evidentiary value of the seized items.

Foremost, Section 21 of RA No. 9165 and its IRR require that the physical inventory and photography of the seized items be made immediately after seizure and confiscation. Thus, it should be made at the place of arrest, the nearest police station, or the nearest office of the apprehending officer/team, whichever is practicable. Invariably, the Court has held that a *barangay* hall is not one of the alternative places under Section 21.<sup>17</sup> Later, the Court emphasized the importance of the presence of the three insulating witnesses during the physical inventory and the photography of the seized items.<sup>18</sup> The presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized

<sup>16</sup> See *People v. De la Cruz*, 591 Phil. 259, 272 (2008).

<sup>17</sup> See *People v. Tomawis*, 830 Phil. 385, 406 (2018); *People v. De Leon*, G.R. No. 214472, November 28, 2018; *People v. Valenzuela*, G.R. No. 246465, October 7, 2020.

<sup>18</sup> See *People v. Rodriguez*, G.R. No. 233535, July 1, 2019.

drugs.<sup>19</sup> Any deviation or non-compliance must be adequately explained and proven as a fact.<sup>20</sup> Sheer statements of unavailability of the insulating witnesses cannot justify non-compliance. There must be an actual and serious attempt to contact them.<sup>21</sup> In *People v. Ramos*,<sup>22</sup> this Court explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence but also the fact that earnest efforts were made to secure their attendance:

[I]t is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or **a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their noncompliance, 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>23</sup> (Emphases in the original; citation omitted.)

In *People v. Estavillo*,<sup>24</sup> the Court considered the Philippine Drug Enforcement Agency (PDEA) agents’ explanation that they exerted earnest efforts to secure the presence of the required witnesses as unjustified. Meanwhile, in *People v. Ramos*,<sup>25</sup> the police officers failed to convince the Court that they exerted earnest efforts to secure the insulating witnesses’ presence during the inventory and photography of the seized items. While the police officers, in this case, conducted the buy-bust operation after office hours,<sup>26</sup> they had sufficient time to secure the presence of the DOJ and the media representatives before the buy-bust operation.

In this case, the buy-bust team failed to immediately inventory and photograph the seized items in the presence of the insulating witnesses. They conducted the inventory at the *barangay* hall without explaining why it could

<sup>19</sup> *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, *supra* note 18; and *People v. Maralit*, G.R. No. 232381, August 1, 2018.

<sup>20</sup> See *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>21</sup> See *Matabilas v. People*, G.R. No. 243615, November 11, 2019.

<sup>22</sup> 826 Phil. 981 (2018), cited in *People v. Lim*, G.R. No. 231989, September 4, 2018.

<sup>23</sup> *Id.* at 996.

<sup>24</sup> G.R. No. 238400 (Notice), March 4, 2020.

<sup>25</sup> *Supra* note 22.

<sup>26</sup> *Rollio*, pp. 3-4.

not be done at the place of arrest, the nearest police station, or the nearest office of the apprehending officer/team. Also, there was no representative from the media as only the *Barangay* Captain and a representative from the DOJ were present. Considering that Rosalinda committed the alleged violation before the amendment of Section 21, the presence of a media representative during the inventory is indispensable. The buy-bust team's excuse that a media representative is unavailable is insufficient to justify deviation from the standard procedure under Section 21. On this point, PO3 Alo testified as follows:

- Q Was there any media representative during the inventory?  
A None, ma'am, **we cannot contact a media representative at that time.**  
Q Who tried to contact the media representative?  
A SPO1 Adelantar, ma'am.  
Q **Who was that media representative whom SPO1 Adelantar tried to contact at that time?**  
A **He called ABS-CBN, but there was no media representative available at that time, ma'am.**<sup>27</sup> (Emphases supplied)

SPO1 Adelantar did not confirm PO3 Alo's testimony that he contacted the media representative. Be that as it may, the Court cannot consider the buy-bust team's supposed effort to secure the presence of a media representative as genuine and sufficient. Significantly, they did not even bother to look for other possible media representatives.

Under the circumstances, the prosecution failed to justify the buy-bust team's deviations from the procedure under RA No. 9165 and its IRR. Verily, the team's repeated breaches in the procedure cast doubt on the identity and integrity of the *corpus delicti*.

Moreover, the last link between the forensic chemist and the court was not established with certainty. In *People v. Balvarez*,<sup>28</sup> citing *People v. Pajarin*,<sup>29</sup> the Court enumerated the following matters ordinarily covered by the forensic chemist's testimony: (1) that he received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the contents; and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial. Here, PSI Llacuna's testimony and the parties' stipulations are insufficient to show the precautions taken to ensure that the seized items could not be tampered pending trial. The parties only stipulated that PSI Llacuna received the marked and sealed plastic sachets from SPO3 Lito Vargas.<sup>30</sup> There was no stipulation on how PSI Llacuna handled the seized items after the examination and before its submission to the court. Without the testimonies or stipulations detailing when and how the seized items were transferred from the crime laboratory to the court, the court cannot ascertain whether the seized items presented in evidence were the same ones confiscated from Rosalinda upon her arrest.<sup>31</sup>

<sup>27</sup> TSN, October 21, 2013, p. 24.

<sup>28</sup> G.R. No. 246999, July 28, 2020.

<sup>29</sup> 654 Phil. 461 (2011).

<sup>30</sup> TSN June 9, 2014, p. 3-5.

<sup>31</sup> See *People v. Mola*, 830 Phil 364, 381 (2013).

June 16, 2021

The prosecution's failure to prove the turnover and submission of the seized items from PSI Llacuna to the RTC puts serious doubt on the integrity of the chain of custody.

All told, the breaches in the procedure provided in Section 21, Article II of RA No. 9165 and its IRR committed by the buy-bust team and left unexplained by the State, in this case, is undeniable. The Court cannot rely on the presumption of regularity of performance by the police officers of their official duties as it only applies when nothing in the record suggests that they deviated from the standard conduct of official duty required by law.<sup>32</sup> It is not conclusive, and it cannot overcome the constitutional presumption of innocence by itself. Thus, any taint of irregularity, as in this case, affects the whole performance and should make the presumption unavailable.<sup>33</sup> Hence, Rosalinda must be acquitted of the charges against her, given the prosecution's failure to prove an unbroken chain of custody.

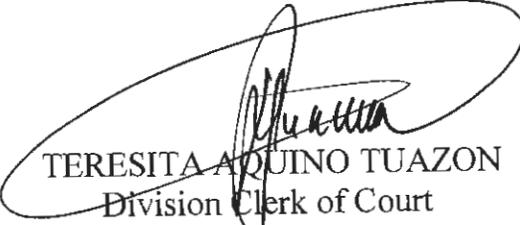
**FOR THESE REASONS**, the appeal is **GRANTED**. The Decision of the Court of Appeals dated February 28, 2018, in CA-G.R. CR-HC No. 08750 is **REVERSED**. Rosalinda Bulda-Plata is **ACQUITTED** in Criminal Case Nos. 18213 and 18214, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is likewise **ORDERED to REPORT** to this Court the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

**SO ORDERED.**" (Lopez, J.Y., J., designated additional Member *per* Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court  
11 AUG 2021

<sup>32</sup> See *People v. Que*, G.R. No. 212904, January 31, 2019.

<sup>33</sup> *People v. Capuno*, 655 Phil. 226, 244 (2011).

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Correctional Institution for Women  
1550 Mandaluyong City

THE SUPERINTENDENT (x)  
Correctional Institution for Women  
1550 Mandaluyong City

THE DIRECTOR (x)  
Bureau of Corrections  
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
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(Crim. Case Nos. 18213 & 18214)

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