



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated February 17, 2021, which reads as follows:*

“G.R. No. 227186 (*People of the Philippines v. Carbert Aguilar y Quilario*). – This is an Appeal<sup>1</sup> assailing the Decision<sup>2</sup> dated March 13, 2015 of the Court of Appeals (CA), Cebu in CA - G.R. CR-11C No. 01536 which affirmed the Joint Judgment<sup>3</sup> dated August 17, 2012 of Branch 30, Regional Trial Court (RTC), Dumaguete City in Criminal Case Nos. 20587 and 20586 finding Carbert Aguilar y Quilario (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5<sup>4</sup> and 11,<sup>5</sup> Article II of Republic Act No. (RA) 9165,<sup>6</sup> otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

*The Antecedents*

The instant case stemmed from two Informations<sup>7</sup> docketed as Criminal Case Nos. 20587 and 20586 filed before the RTC charging accused-appellant with violation of Sections 5 and 11, Article II of RA 9165. The accusatory portions of the Informations state:

<sup>1</sup> *Rollo*, pp. 22-23.

<sup>2</sup> *Id.* at 4-21; penned by Associate Justice Renato C. Francisco with Associate Justices Pamela Ann Abella Maxino and Germano Francisco D. Legaspi, concurring.

<sup>3</sup> *CA rollo*, pp. 14-25; penned by Judge Rafael Creccencio C. Tan, Jr.

<sup>4</sup> Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x.

<sup>5</sup> SEC. 11. *Possession of Dangerous Drugs.* The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x.

<sup>6</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,” approved on June 7, 2002.

<sup>7</sup> Records, pp. 3 and 56.

## Criminal Case No. 20587 (Violation of Section 5)

"That on or about the 15<sup>th</sup> day of July, 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur[-]buyer one (1) heat-sealed transparent plastic sachet containing 0.01 gram of Methamphetamine Hydrochloride, commonly called "*shabu*," a dangerous drug.

Contrary to Section 5, Article II of RA 9165."<sup>8</sup>

## Criminal Case No. 20586 (Violation of Section 11)

"That on or about the 15<sup>th</sup> day of July, 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there willfully, unlawfully and feloniously possess and keep nine (9) heat-sealed transparent plastic sachets containing an approximate aggregate weight of 2.51 grams of Methamphetamine Hydrochloride, commonly called "*shabu*," a dangerous drug.

Contrary to Section 11, Article II of RA 9165."<sup>9</sup>

On arraignment, accused-appellant, pleaded not guilty to the offenses charged.<sup>10</sup> The two cases were then consolidated and jointly tried.

The prosecution established that on July 15, 2011, at around 8:00 a.m., Task Force Kasaligan of Dumaguete City received a tip from a confidential informant that a certain Carby Aguilar (later identified as accused-appellant) was engaged in selling prohibited drugs. Thus, a team was immediately formed composed of Senior Police Officer III Allen June Germodo (SPO3 Germodo), Police Officer II Glenn Corsame (PO2 Corsame), Police Officer II Mark Jester Ayunting (PO2 Ayunting) and Police Officer III Jerry Magsayo (PO3 Magsayo). PO3 Magsayo was designated as the *poseur*-buyer.<sup>11</sup>

The buy-bust team then proceeded to the target area. Upon arrival thereat, PO3 Magsayo parked his motorcycle in front of accused-appellant's rented house. PO3 Magsayo and the confidential informant then went to an alley where they found accused-appellant standing. The confidential informant introduced PO3 Magsayo to accused-appellant; the latter asked PO3 Magsayo how much he would buy. PO3 Magsayo responded, "*kinye only bay*" (five hundred pesos only, friend). After PO3

<sup>8</sup> Records, p. 56.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> CA rollo, p. 15.

<sup>11</sup> Rollo, pp. 5-6.

Magsayo handed over the ₱500.00 bill marked money, accused-appellant took a small sachet containing white crystalline substance and gave it to PO3 Magsayo.<sup>12</sup>

In no time, PO3 Magsayo executed the pre-arranged signal and arrested accused-appellant. When he conducted a body search on the person of accused-appellant, he recovered nine more sachets. PO2 Corsame assisted PO3 Magsayo in restraining accused-appellant. While still in the area, the police officers marked and took photographs of the seized items. Subsequently, the seized items were brought to the crime laboratory, where after examination, the contents tested positive for methamphetamine hydrochloride or *shabu*.<sup>13</sup>

In his defense, accused-appellant insisted that there was no buy-bust operation that took place. He maintained that on July 15, 2011, he was on his way home after buying something for his son, who was then suffering from a high fever. SPO3 Germodo alighted from a motorcycle and suddenly grabbed him from behind. Thereafter, PO3 Corsame and the other police officers arrested him and brought him to his house.<sup>14</sup> Thereat, they repeatedly asked him to produce the "*shabu*" he allegedly brought from Cebu. He denied the accusations of the police officers. Thereafter, accused-appellant noticed that SPO3 Germodo had a piece of paper and Mentos candy container. The police officers brought out several sachets of *shabu* and insisted that it belonged to accused-appellant. Afterwards, he was forcibly brought to the police station where he was charged with illegal possession of *shabu*.<sup>15</sup>

### *The RTC Ruling*

In a Joint Judgment<sup>16</sup> dated August 17, 2012, the RTC found accused-appellant guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of RA 9165. The dispositive portion reads:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 20587, the accused Carbert Aguilar y Quilario is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.01 gram of *shabu* in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* at 6-7.

<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> CA rollo, pp. 14-25.

The one (1) heat-sealed transparent plastic sachet containing 0.01 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 20586, the accused Carbert Aguilar y Quilario is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 2.51 grams of *shabu* in violation of Section 11, Article II, of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The nine (9) heat-sealed transparent plastic sachets containing 0.35 gram, 0.34 gram, 0.36 gram, 0.32 gram, 0.118 gram, 0.16 gram, 0.36 gram, 0.08 gram and 0.36 gram of *shabu*, respectively, or an approximate aggregate weight of 2.51 grams of *shabu*, are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused Carbert Aguilar y Quilario shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.<sup>17</sup>

The RTC found that the prosecution established beyond reasonable doubt all the essential elements of illegal sale and possession of *shabu*. It ruled that accused-appellant's arrest was based on the successful buy-bust operation that was conducted by the police officers. Lastly, it found that the buy-bust team complied with the requirements under Section 21, Article II of RA 9165.<sup>18</sup>

Undaunted, accused-appellant filed an Appeal.<sup>19</sup>

#### *The CA Ruling*

In the assailed Decision,<sup>20</sup> the CA affirmed *in toto* the RTC's Joint Judgment<sup>21</sup> convicting accused-appellant for Illegal Sale and Possession of Dangerous Drugs. The CA disposed of the case as follows:

WHEREFORE, premises considered, the Appeal is DENIED. The Joint Judgment dated August 17, 2012 of Branch 30, Regional Trial Court, Dumaguete City in Criminal Case Nos. 20587 and 2058[6] is hereby AFFIRMED in toto.

<sup>17</sup> *Id.* at 24-25.

<sup>18</sup> *Id.* at 22.

<sup>19</sup> *Rollo*, pp. 22-23.

<sup>20</sup> *Id.* at 4-21.

<sup>21</sup> *CA rollo*, pp. 14-25.

SO ORDERED.<sup>22</sup>

Hence, the instant appeal.

*Issue*

Whether the CA erred in affirming accused-appellant's conviction.

*The Court's Ruling*

The appeal is meritorious.

For a successful prosecution of Illegal Sale of Dangerous Drugs penalized under Section 5, Article II of the Comprehensive Dangerous Drugs Act, the following elements must be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefore.<sup>23</sup>

On the other hand, to successfully prosecute a case of Illegal Possession of Dangerous Drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>24</sup>

In cases of Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the offense.<sup>25</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.<sup>26</sup>

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.<sup>27</sup> Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account

<sup>22</sup> *Rollo*, pp. 20-21.

<sup>23</sup> *People v. Castillo*, G.R. No. 238339, August 7, 2019, citing *People v. Unisa*, 674 Phil. 89, 108 (2011).

<sup>24</sup> *People v. Punzalan*, 773 Phil. 72, 90 (2015), citing *People v. Lagahit*, 746 Phil. 896, 907-908 (2014).

<sup>25</sup> *Matabilus v. People*, G.R. No. 243615, November 11, 2019, citing *People v. Crispo*, 828 Phil. 416, 429 (2018); *People v. Magsano*, 826 Phil. 947, 959 (2018); *People v. Manansala*, 826 Phil. 578 (2018).

<sup>26</sup> *Id.*, citing *People v. Gamba*, 833 Phil. 1055 (2018).

<sup>27</sup> *People v. Malabanan*, G.R. No. 241950, April 10, 2019, 901 SCRA 600, 611, citing *People v. Suan*, 627 Phil. 174 (2010).

to sustain a judgment of conviction beyond reasonable doubt.<sup>27</sup> Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, 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 drugs are seized up to its presentation in court as evidence of the offense.<sup>28</sup> This includes testimony about every link in the chain, from the moment the item was seized up to the time it was offered as evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.<sup>29</sup>

In *People v. Sipin*,<sup>30</sup> the Court reiterated the links that must be established in the chain of custody in a buy-bust operation, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officers; (2) the turnover of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.<sup>31</sup>

On August 7, 2014, RA 10640<sup>32</sup> became effective amending RA 9165 as follows:

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 physical inventory of the seized items and photograph the same in the presence of the accused or the persons 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: x x x

Moreover, RA 10640 directs that the inventory and photography be done in the presence of the accused from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640, a representative from the media and the Department of Justice (DOJ), and any elected public official;<sup>33</sup> or (b) if after the amendment of

<sup>27</sup> *People v. Malabanan*, G.R. No. 241950, April 10, 2019, 901 SCRA 600, 611, citing *People v. Swan*, 627 Phil. 174 (2010).

<sup>28</sup> *People v. Gamboa*, *supra* note 25, citing *People v. Viterbo*, 739 Phil. 593 (2014).

<sup>29</sup> *Mallillin v. People*, 576 Phil. 576, 587 (2008).

<sup>30</sup> 833 Phil. 67 (2018).

<sup>31</sup> *Id.*

<sup>32</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,'" approved: July 15, 2014.

<sup>33</sup> Section 21 (1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

The offenses were allegedly committed on July 15, 2011. Thus, the three (3) witness requirement under RA 9165 must be complied with during the conduct of the inventory and photography of the seized items. It is well-settled that the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.<sup>35</sup>

An inventory of the items was allegedly made in the presence of accused-appellant, a media representative, *barangay kagawad* and a DOJ representative.<sup>36</sup> However, records show that only the following witnesses were present to witness the alleged marking and inventory: (1) DOJ representative Anthony Chilius Benlot; (2) media representative Neil Rio; and (3) the accused-appellant. *Barangay Kagawad* Guillermo Tajada Jr. (Tajada), did not actually witness the alleged inventory of the seized items as he was made to sign the inventory receipt with pre-listed items (after being asked by the police officers) even before the conduct of the alleged buy-bust operation. This factual evidence gives doubt whether an actual buy-bust operation took place and whether the law enforcers conducted an actual inventory of the seized items.

Moreover, the buy-bust team committed several procedural lapses in the conduct of the seizure, initial custody, marking, inventory, and handling of the seized item. The lapses created reasonable doubt as to the identity and integrity of the drugs.

*First*, the police officers failed to state in detail each link in the chain of custody from the moment the sachets of *shabu* were seized up to its presentation in court as evidence of the heroin offenses. The prosecution witnesses failed to account on how the ten sachets of *shabu* were received, where they were kept, what happened to the sachets while in the evidence custodian's possession, the condition in which the sachets were received, and the condition in which they were delivered to the next link in the chain. With this, there is no assurance that the identity and integrity of the seized items were preserved, not compromised, or substituted.

*Second*, PO3 Magsayo admitted that immediately after the seizure of the ten small sachets of *shabu*, he merely kept them in his pocket. The sachet of *shabu* which was the subject of the alleged illegal sale and the nine other sachets of *shabu* which were the subject of illegal possession were placed by PO3 Magsayo in his pocket after the seizure.<sup>37</sup> PO3 Magsayo merely kept in his pocket all the sachets of *shabu* – subject of two separate offenses (Illegal Sale and Illegal Possession of Dangerous Drugs). He failed to place them separately in sealed evidence bags for

<sup>35</sup> *Gamboa v. People*, 799 Phil. 584 (2016), citing *People v. Umipang*, 686 Phil. 1024 (2012).

<sup>36</sup> *Rollo*, p. 19.

<sup>37</sup> TSN, May 7, 2012, pp. 45-46 and p. 50.

easy identification. Clearly, the police officers failed to comply with the rule on the chain of custody and preserve the integrity and evidentiary value of the seized items.

In *People v. Leaño*,<sup>38</sup> the Court reiterated that a single police officer's act of bodily keeping the seized drugs is viewed with distrust, fraught with dangers, reckless, if not dubious and a doubtful and suspicious way of ensuring the integrity of the items, thus:

*Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.*

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counterchecking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.<sup>39</sup> (Emphasis Supplied.)

PO3 Magsayo's act of placing all the unmarked sachets of *shabu* in his pocket and the prosecution's failure to explain as to which unmarked seized sachet of *shabu* (subject of the buy-bust operation) was among the other unmarked seized sachets (subject of the illegal possession) created a doubt and confusion as to the identity of the respective sachets. Thus, the lapse affected the accuracy and truthfulness of the subsequent markings and inventory of the seized items.

Third, evidence shows that before the buy-bust operation on July 15, 2011, Tajada was already asked by the police officers to witness an inventory of seized sachets of *shabu* and sign an inventory receipt before the conduct of the operation and arrest of the accused-appellant.<sup>40</sup> It must be highlighted that Tajada was already informed by the police officers of the buy-bust operation even before the alleged tip from the confidential informant was relayed by the latter to the police at around 8:00 a.m. In other words, the police officers' statement that they received a tip from the confidential informant at around 8:00 a.m. is utterly false. Similarly, the police officers lied when they claimed that the witnesses signed the receipt during the inventory of the seized items. Evidently, the items that were allegedly confiscated are pre-listed as it was already written and

<sup>38</sup> G.R. No. 246461, July 28, 2020, citing *People v. Dela Cruz*, 744 Phil. 816 (2014).

<sup>39</sup> *People v. Dela Cruz*, *id.* at 834-835.

<sup>40</sup> TSN, April 2, 2012, pp. 3-5.



signed way before the conduct of the alleged buy-bust operation. A judicious scrutiny of the records discloses that the prosecution never bothered to clarify the matter. Evidently, the conduct of the operation is peppered with several irregularities which affected the veracity of the prosecution's evidence.

In all, the guilt of accused-appellant was not proved beyond reasonable doubt.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated March 13, 2015 of the Court of Appeals, Cebu in CA - G.R. CR-HC No. 01536 is **REVERSED** and **SET ASIDE**. Accused-appellant Carbert Aguilar y Quilario is hereby **ACQUITTED**.

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Carbert Aguilar y Quilario unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution. 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.**"

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court *for*  
*1/15/21*

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Mr. Carbert Q. Aguilar  
c/o The Superintendent  
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(Crim. Case Nos. 20587 & 20586)

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