



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 3, 2021 which reads as follows:

“**G.R. No. 247904 (People of The Philippines, Plaintiff-Appellee, v. Rolando Tenepere y Magno @ Tolong, Accused-Appellant)**. – This appeal¹ seeks to reverse and set aside the Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10070 dated 13 August 2018, which affirmed with modification the Joint Decision³ dated 28 September 2017 of Branch 69, Regional Trial Court (RTC) of Lingayen, Pangasinan in Criminal Case Nos. L-11404 & L-11405, finding Rolando Tenepere y Magno @ Tolong (accused-appellant) guilty beyond reasonable doubt of illegal sale and illegal possession of dangerous drugs.

Antecedents

Accused-appellant was charged with violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165, in two (2) separate Informations, the accusatory portions of which read:

Criminal Case No. L-11404
(Section 5, Article II, R.A. No. 9165)

That sometime in the afternoon of December 29, 2016 in Pogombo, Aguilar, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully and unlawfully sell *one (1) sachet of Methamphetamine Hydrochloride or Shabu*, a dangerous drug worth Php500.00, a marked money to PO3 Dennis G. Bautista, a police operative

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¹ *Rollo*, pp. 20-21.

² *Id.* at 3-19; penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Magdangal M. De Leon and Pedro B. Corales of the Special Sixth Division, Court of Appeals, Manila.

³ Records, pp. 68-77; penned by Presiding Judge Loreto S. Alog, Jr.

acting as poseur-buyer during the police buy-bust operation conducted against him due to his dealings with dangerous drugs without authority.

Contrary to Section 5, Article II of R.A. 9165, The Comprehensive Dangerous Drugs Act of 2002.⁴

Criminal Case No. L-11405
(Section 11, Article II, R.A. No. 9165)

That sometime in the afternoon of December 29, 2016 in Pogombo, Aguilar, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully and unlawfully have in his possession *one (1) sachet containing 0.04 gram of Methamphetamine Hydrochloride or Shabu*, a dangerous drug which was seized from him during the routine body check after he was arrested for unlawful selling of dangerous drugs during the police buy-bust operation conducted against him.

Contrary to Section 11, Article II of R.A. 9165, The Comprehensive Dangerous Drugs Act of 2002.⁵

Upon arraignment, accused-appellant pleaded not guilty to the charges filed against him. After pre-trial was terminated, trial on the merits ensued.⁶

Version of the Prosecution

On 29 December 2016, at around 3:50 P.M., a briefing was conducted at the Aguilar Police Station for a buy-bust operation against accused-appellant, a known *shabu* peddler and a person under the drug watch list. The buy-bust operation team consisted of the following: the confidential asset who was designated as the poseur-buyer, PO3 Dennis Bautista (PO3 Bautista), who was assigned as the confidential asset's companion, and PO3 Reyjene T. Roque (PO3 Roque), who was tasked to be PO3 Bautista's back-up officer.⁷

During the briefing, the marked money, a Php500.00 bill with the serial number KL741108 and initially marked by PO3 Bautista with "DGC-1 12/29/2016," was handed over to the confidential asset. A Pre-Coordination Sheet and Coordination Form were also submitted to the Philippine Drug Enforcement Agency (PDEA) by the buy-bust team.⁸

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⁴ *Rollo*, p. 4.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 6.

⁸ *Id.*

Afterwards, the buy-bust team proceeded to *Brgy. Pogombia, Aguilar*, the designated place of transaction. Upon arriving thereat, they saw accused-appellant with his mountain bike. Upon seeing them, accused-appellant immediately approached them and handed one (1) transparent plastic sachet containing white crystalline granules to the confidential asset. In exchange, the confidential asset gave the marked Php500.00 bill to accused-appellant. At once, PO3 Bautista executed the pre-arranged signal, prompting PO3 Roque to approach them. Subsequently, the confidential asset turned over the seized plastic sachet to PO3 Bautista.⁹

After arresting accused-appellant and informing him of his constitutional rights, PO3 Bautista asked accused-appellant to show him what was inside his pocket. Consequently, accused-appellant took out the following items from his pocket: (1) another transparent plastic sachet with white crystalline granules; (2) a yellow disposable lighter; and (3) the Php500.00 marked money.

Upon confiscation of the foregoing items, PO3 Bautista conducted the marking at the place of transaction, in the presence of accused-appellant, *Brgy. Kagawad Dionisio Castro (Brgy. Kagawad Castro)*, *Brgy. Kagawad Tita Soriano* and other police officers. PO3 Bautista marked the disposable lighter as "DGB-3 12/29/2016," the accused-appellant's mountain bike as "DG-5 12/29/2016," the plastic sachet of *shabu* sold to him as "DGB-4 12/29/2016," and the plastic sachet in accused-appellant's possession as "DGB-2 12/29/2016." On the other hand, the inventory and documentation of the confiscated items were conducted by the investigator of the case, SPO1 Wayne Dela Cruz (SPO1 Dela Cruz).¹⁰

Thereafter, accused-appellant and the seized items were brought to the Aguilar Police Station before they were eventually brought by PO3 Bautista to the Provincial Crime Laboratory for laboratory examination.¹¹

PCI Myrna Malojo-Todeno (PCI Todeno) testified that she personally received the plastic sachets of *shabu* from PO3 Bautista. She also identified these sachets in court and claimed that she made her own markings "A-1" and "A-2" therein. Accordingly, as a result of qualitative examination she conducted, she found that seized items contained methamphetamine hydrochloride or *shabu*. Her findings are

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⁹ *Id.* at 6-7.

¹⁰ *Id.* at 7.

¹¹ *Id.*

reflected in the Chemistry Report No. D-1280-2016L which she prepared and subsequently submitted to the court.¹² After examination, PCI Todeno sealed the sachets with a masking tape, signed and placed them in a brown envelope which she likewise sealed and signed to make it tamper proof.¹³

All throughout, from the time of seizure up to their delivery to the crime laboratory, the two (2) sachets remained in the custody of PO3 Bautista. The eventual transfer thereof to PCI Todeno, their delivery to the evidence custodian, and their retrieval for submission as evidence in these cases were documented in the chain of custody form.¹⁴

The prosecution likewise presented *Brgy. Kagawad* Castro as witness. He asserted that in the morning of 29 December 2016, the policemen called him to witness the marking and inventory of the items seized from accused-appellant. Notably, when asked if he was certain that the incident happened in the morning and not in the afternoon as reported by the police officers, he answered in the affirmative. He likewise averred that despite being present during the marking and inventory, he could not remember being shown the Php500.00 marked money.¹⁵

Version of the Defense

Accused-appellant denied the charges filed and maintained that the evidence against him was planted. He averred that on 29 December 2016, at around 4:00 p.m., he was on his way home to Ninoy, Aguilar when three (3) men accosted him along the highway and pulled him on the side of the road. Thereafter, they handcuffed him and introduced themselves as policemen. However, they did not inform him of the reason for his arrest. Afterwards, he was frisked but they did not find anything. Shortly after, other police officers arrived and they placed something at his back pocket and on his palm. It turned out to be *shabu*.¹⁶

Ruling of the RTC

On 28 September 2017, the RTC rendered its Joint Decision finding accused-appellant guilty beyond reasonable doubt of the crimes charged, to wit:

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¹² *Id.*

¹³ *Id.* at 85.

¹⁴ *Id.*

¹⁵ *Id.* at 8.

¹⁶ *Id.*

WHEREFORE, premises considered, the accused is hereby found guilty beyond reasonable doubt

(1) IN CRIMINAL CASE NO. L-11404: of violation of Section 5, Article II of Republic Act No. 9165 and is accordingly sentenced to suffer the penalty of life imprisonment, and to pay a fine of P500,000.00; and

(2) IN CRIMINAL CASE NO. L-11405: of violation of Section 11, Article II of Republic Act No. 9165 and is accordingly sentenced to suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day, as minimum, to seventeen (17) years, as maximum, and to pay a fine of P300,000.00

and such accessory penalties provided for in the law.

The two (2) sachets of methamphetamine hydrochloride subject of these cases are confiscated in favor of the government for disposal in the manner set forth in the law.

SO ORDERED.¹⁷

The RTC found the elements of the crimes charged were duly proven by the prosecution. Likewise, it held that the chain of custody remained intact and unbroken. Finally, the court *a quo* held that the presumption of regularity in the performance of official duty prevails over the defenses of denial and frame up.¹⁸

Ruling of the CA

On 13 August 2018, the CA affirmed with modification accused-appellant's conviction, *viz*:

WHEREFORE, premises considered, the appeal is **DENIED**. The Joint Decision dated 28 September 2017 of Branch 69, Regional Trial Court of Lingayen, Pangasinan in Crim. Case Nos. L-11404 & L-11405 is **AFFIRMED** with **MODIFICATIONS**, *in that*:

1. In *Criminal Case No. L-11404*, accused-appellant **ROLANDO TENEPERE Y MAGNO @ "TOLONG"** is sentenced to suffer the penalty of life imprisonment without eligibility for parole and ordered to pay a fine of Five Hundred Thousand Pesos (P500,000.00); and

2. In *Criminal Case No. L-11405*, accused-appellant **ROLANDO TENEPERE Y MAGNO @ "TOLONG"** is sentenced to suffer the penalty of imprisonment of 12 years and 1

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¹⁷ *Id.* at 92.

¹⁸ *Id.* at 88-91.

day as minimum to 14 years and 8 months as maximum and ordered to pay a fine of Three Hundred Thousand Pesos (P300,000.00).

SO ORDERED.¹⁹

In affirming the RTC, the CA held that accused-appellant was validly arrested, as such, the evidence recovered are admissible. It likewise reiterated that the elements of the crimes charged and the unbroken chain of custody were duly established by the prosecution. It underlined that accused-appellant's defense of denial cannot prevail over positive testimonies.²⁰

The CA, however, underscored that pursuant to Section 2 of the Indeterminate Sentence Law, accused-appellant is not eligible for parole. It also reduced the penalty of imprisonment imposed by the RTC in light of recent jurisprudence.²¹ Hence, this appeal.²²

Issue

The sole issue in this case is whether the CA correctly affirmed accused-appellant's conviction for illegal sale and illegal possession of dangerous drugs punishable under Sections 5 and 11, Article II of RA 9165.

Ruling of the Court

We grant the petition.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article 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 On the other hand, to obtain a conviction for Illegal Possession of Dangerous Drugs under Section 11 of RA 9165, the prosecution must prove that: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.²⁴

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¹⁹ *Id.* at 18-19.

²⁰ *Id.* at 10-17.

²¹ *Id.* at 17-18.

²² *Id.* at 20-21.

²³ *People v Cuevas*, G.R. No. 238906, 05 November 2018 [Per J. Perlas-Bernabe].

²⁴ *People v. Castillo*, G.R. No. 238339, 07 August 2019 [Per J. Leonen].

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *delicti* of the violation of the law. While it is true that buy-bust operation is legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.²⁵

On this matter, Section 21, Article II of RA 9165, as amended by RA 10640, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The said provision requires that: **(1) the seized items be inventoried and photographed at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; (2) the 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 of the National Prosecution Service (NPS) or the media; and (3) the accused or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof.**²⁶

Case law instructs that in illegal sale of prohibited drugs, it is essential that the identity of the prohibited drug be established with moral certainty. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody of the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.²⁷

The buy-bust team failed to comply with the mandatory requirements of Section 21 of Article II of RA 9165, as amended by RA 10640

It is well-settled that the following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused

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²⁵ *People v. Rasos*, G.R. No. 243639, 18 September 2019 [Per J. Caguioa].

²⁶ *Id.*

²⁷ *See People v. Viterbo*, G.R. No. 203434, 23 July 2014 [Per J. Perlas-Bernabe].

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, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.²⁸

In this regard, ideally, the presence of the insulating witnesses must be secured **not only during the inventory but, more importantly, at the time of the warrantless arrest.** It is at this point that the presence of the 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 drug.²⁹ Verily, without the insulating presence of the witnesses required by law during the seizure and marking of the seized items, the evils of switching, “planting,” or contamination of the evidence that had tainted buy-bust operations in prior years again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu*. The insulating presence of such witnesses would have preserved an unbroken chain of custody.³⁰

Here, the evidence for the prosecution clearly established the failure of the police officers to secure the presence of the required witnesses. The absence of a representative of the NPS or the media as an insulating witness at the time of the warrantless arrest and during the inventory and photograph of the seized items, puts serious doubt as to the integrity of the chain of custody. To be sure, only two Brgy. Kagawads were present during the inventory of evidence at the place of arrest.³¹ The records likewise failed to show that the accused-appellant and the said witnesses were given their copies of said inventory.

It is also worthy to note that *Brgy. Kagawad Castro*, upon cross-examination, averred that despite being present during the marking and inventory, he could not remember being shown the Php500.00 marked money.³²

The prosecution failed to give a justifiable ground for non-compliance

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²⁸ *People v. Ubungen*, G.R. No. 225497, 23 July 2018 [Per J. Martires].

²⁹ *People v. Fatallo*, G.R. 218805, 07 November 2018 [Per Justice Caguioa] citing *People v. Tomawis*, G.R. No. 228890, 18 April 2018 [Per J. Caguioa].

³⁰ *See People v. Mendoza*, G.R. No. 192432, 23 June 2014, 736 Phil. 749 (2014) [Per J. Bersamin].

³¹ *People v. Padua*, G.R. No. 244287, 15 June 2020 [Per J. Lopez].

³² *Id.* at 8.

The Court recognizes that strict compliance with the chain of custody procedure may not always be possible. During such eventualities, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in the IRR of RA 9165, which was later adopted into the text of RA 10640. However, for the saving clause to apply, the prosecution must explain the reasons behind the procedural lapses. Further, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.³³

With respect to the absence of key witnesses during the arrest, this Court in *People v. Gajir Acub*,³⁴ cited the separate concurring opinion of then Associate Justice (now Chief Justice) Diosdado Peralta in the case of *Lamberto Mariñas v. People (Mariñas case)*.³⁵ In the *Mariñas* case, Chief Justice Peralta stressed that the prosecution, in accordance with the Rules on Evidence, has the burden of proving a justifiable cause for non-compliance with Section 21, Article II of RA 9165. He likewise provided some of the justifiable reasons therefor:

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for any of the following reasons, such as: (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[s] 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.³⁶

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³³ See *People v. Doctolero*, G.R. No. 243940, 20 August 2019 [Per J. Perlas-Bernabe]; *People v. Fulinara*, G.R. No. 237975, 19 June 2019 [Per J. Caguioa].

³⁴ G.R. No. 220456, 10 June 2019 [Per J. Leonen].

³⁵ G.R. No. 232891, 23 July 2018 [Per J. Reyes, Jr.].

³⁶ *People v. Acub*, G.R. No. 220456, 10 June 2019 [Per J. Leonen] citing the Separate Concurring Opinion of J. (now CJ) Peralta in *Lamberto. Mariñas v. People*, G.R. No. 232891, 23 July 2018.

None of these instances is present in the instant case. In fact, it appears that the police officers failed to exert genuine and sufficient efforts to secure the presence of the necessary witnesses under the law. The prosecution did not even bother to explain in detail the earnest efforts exerted by the buy-bust team to secure the attendance of said representatives. This, despite the fact that said operation was planned.³⁷

To underline, mere statements of the required witnesses' unavailability, absent actual serious attempts to secure their attendance, are unacceptable and do not justify non-compliance.³⁸ The prosecution must allege and prove the reasons for the absence of the mandatory witnesses and convince the Court that earnest efforts were exerted to secure their attendance.³⁹ However, it is not borne from the records that earnest efforts were exerted to secure their presence for the buy-bust operation. The lack of evidence of serious attempts to secure the presence of the required witnesses results in a substantial gap in the chain of custody of evidence that adversely affects the authenticity of the prohibited substance presented in court.⁴⁰

Certainly, the prosecution cannot simply invoke the saving clause without justifying their failure to comply with the requirements stated therein.⁴¹ More importantly, **a stricter adherence to the procedural rules is required where the quantity of illegal drugs seized is minuscule**, as in the instant case where 0.04 gram of *shabu* was allegedly obtained from accused-appellant, since it is highly susceptible to planting, tampering or alteration of evidence.⁴²

Accused-appellant must be acquitted for reasonable doubt

The law mandates that (1) if there are no justifiable grounds offered by the police when the requirements under Section 21 of RA 9165 are not complied with, or (2) even if there are justifiable grounds that warrant the non-compliance of the requirements under Section 21 of RA 9165, but such grounds were not clearly stated in the sworn statements/affidavits of the apprehending/seizing officers: such non-compliance shall render void and invalid the seizures and custody over seized items.⁴³

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³⁷ TSN of Hearing dated 25 May 2017, Testimony of PO3 Dennis Bautista, pp. 23-24.

³⁸ *People v. Paran*, G.R. No. 220447, 25 November 2019 [Per J. Inting].

³⁹ *See People v. Laway*, G.R. No. 227741, 27 March 2019 [Per J. Del Castillo].

⁴⁰ *People v. Vistro*, G.R. No. 225744, 06 March 2019 [Per J. Del Castillo].

⁴¹ *People v. Bahoyo*, G.R. No. 238589, 26 June 2019 [Per J. A.B. Reyes, Jr.].

⁴² *People v. Bayang*, G.R. No. 234038, 13 March 2019 [Per J. (now CJ) Peralta].

⁴³ *Supra* at note 25.

Since the representative of the media or NPS was absent during warrantless arrest and the seizure, marking and inventory of the police officers, and no cogent justification for such lapse was offered by the prosecution, there is serious doubt whether the drugs taken from the accused-appellant were the same drugs presented in court. And when there are doubts on whether the seized substance was the same substance examined and established to be the prohibited drug, there can be no crime of illegal sale and illegal possession of a prohibited drug.⁴⁴ Hence, accused-appellant's acquittal is in order.

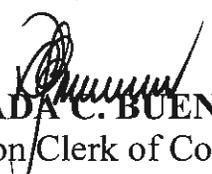
WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated 13 August 2018 of the Court of Appeals in CA-G.R. CR-HC No. 10070, which affirmed with modification the Joint Decision dated 28 September 2017 of Branch 69, Regional Trial Court of Lingayen, Pangasinan in Criminal Case Nos. L-11404 & L-11405, finding Rolando Tenepere y Magno @ Tolong guilty beyond reasonable doubt of illegal sale and illegal possession of dangerous drugs is **REVERSED and SET ASIDE**.

Accordingly, accused-appellant Rolando Tenepere y Magno @ Tolong is **ACQUITTED** of the crime of violation of Sections 5 and 11 Article II of RA 9165. The Bureau of Corrections is **ORDERED** to **CAUSE** the **IMMEDIATE RELEASE** of Rolando Tenepere y Magno @ Tolong, unless the latter is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is ordered to report to this Court within five (5) working days from receipt of this Resolution the action he has taken.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *mcb*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁴⁴ See *People of the Philippines v. Hilario*, G.R. No. 210610, 11 January 2018 [Per J. Leonardo-De Castro].



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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 10070)

The Hon. Presiding Judge
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