



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 251648 (*People of the Philippines v. Marlon Dayag y Cabocan*). –

Accused-appellant is guilty of Illegal Sale of Dangerous Drug

In a prosecution for the Illegal Sale of Dangerous Drugs, such as *shabu*, the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Simply stated, the prosecution must prove that the transaction or sale actually took place, coupled with the presentation of the seized dangerous drugs as evidence in court.¹ The commission of the offense of Illegal Sale of Dangerous Drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by accused-appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.²

PO2 Rommel Osio (PO2 Osio) testified:

¹ *People v. Grayana*, G.R. No. 229680, June 06, 2019.

² *People v. Dumlaog*, 554 Phil. 772-738 (2008).

Q: And where were you when your chief received that information?

A: I was at the Office too, ma'am.

Q: And where is that Office located?

A: At Camp Marcelo Marcelo (sic) Adduru, Tuguegarao City, ma'am.

x x x x

Q: You mentioned that during your initial briefing, you were assigned as the poseur buyer who were (sic) given two (2) pieces of genuine ₱1,000.00 peso bills. If these two (2) pieces of ₱1,000.00 peso bills which you indicated in your affidavit will be shown to you, will you be able to identify the same?

A: Yes, ma'am.

x x x x

Q: Officer, how long did you conduct the briefing if you can still remember?

A: More or less one (1) hour, ma'am.

Q: Where was the confidential informant if you know during the briefing?

A: He was also there, ma'am.

Q: In paragraph 4 of your affidavit, you mentioned that you proceeded to Carig Sur, Tuguegarao City. Why did you proceed to Carig Sur, Tuguegarao City?

A: To conduct a buy-bust operation, ma'am.

x x x x

Q: Did the accused arrive?

A: Yes, sir.

Q: And this is a buy-bust operation, right?

A: Yes, sir.

Q: And you went to the designated place of transaction. You used the word "transaction", what do you mean by that?

A: To buy an item, sir.

Q: You mean to say that you had a transaction with the accused?

A: Yes, sir.

x x x x

Q: And when then did you have a transaction with the accused?

A: When the CI introduced to me the accused, sir.

x x x x

Q: You also mentioned during cross that your two (2) other officers arrested after Marlon had given you what you bought from him. What is that you bought from him?

A: Allegedly, *shabu* ma'am (sic).³

³ CA rollo, pp. 71-73.

PO2 Christopher Arugay personally witnessed the sale of illegal drug between accused-appellant Marlon Dayag y Cabocan (accused-appellant) and PO2 Osio, *viz.*:

Q: When can you say that the transaction was already consummated?

A: Through the pre-arranged signal wherein PO2 Osio removed his bull cap, Ma'am.⁴

Verily, the crime of Illegal Sale of Dangerous Drug was consummated when accused-appellant delivered the *corpus delicti* to PO2 Osio in consideration of ₱2,000.00 which the former received from the latter.

Indeed, a buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. In this jurisdiction, the operation is legal and has been proven to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.⁵

***The chain of custody
was preserved***

Accused-appellant allegedly committed a violation of Section 5, Article II of Republic Act No. 9165 (RA 9165) on May 19, 2014. The governing law is the version of RA 9165 and its implementing rules, prior to their amendment. Section 21, Article II of RA 9165 reads:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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; x
x x

⁴ *Id.* at 73.

⁵ *People v. Quigod*, 633 Phil. 408, 421 (2010).

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing the Comprehensive Dangerous Drugs Act of 2002, defines “chain of custody,” as follows:

“Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

Under Section 21, Article II of RA 9165, the inventory and photographing should be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely, “*a representative from the media and the Department of Justice (DOJ), and any elected public official.*”⁶

In Illegal Drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution, therefore, is tasked to establish that the substance illegally possessed by the accused is the same substance presented before the court.⁷ It is the prosecution’s onus to prove every link in the chain of custody – from the time the drug is seized from the accused, until the time it is presented in court as evidence.⁸ The saving clause under Section 21 (a), Article II, RA 9165 Implementing Rules and Regulations ordains that non-compliance with the prescribed requirement shall not invalidate the seizure and custody of the items, provided that such non-compliance is justified and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.⁹

Generally, there are four (4) links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the investigating officer to the forensic chemist for examination; and (iv) its turnover by the forensic chemist to the court.¹⁰

The **first link** refers to the seizure and marking which must be done immediately at the place of the arrest. Too, it includes the physical inventory and taking of photograph of the seized items which should be done in the

⁶ *People v. Sanchez*, G.R. No. 239000, November 05, 2018, 884 SCRA 318, 327.

⁷ *People v. Miranda*, G.R. No. 218126, July 10, 2019.

⁸ *People v. Dumagay*, 825 Phil. 726, 741 (2018).

⁹ *People v. Frias*, G.R. No. 234686, June 10, 2019.

¹⁰ *People v. De Leon*, G.R. No. 227867, June 26, 2019.

presence of the accused or his/her representative or counsel, together with an elected public official and representatives of the DOJ and the media.

Here, the poseur buyer, PO2 Osio, immediately marked the heat-sealed plastic sachet with “RRO 5-19-14” at the place of arrest. Also at the place of arrest, photographs were taken of the seized drug and other items in the presence of accused-appellant and Barangay Kagawad Roberto Adduru (elected official), Maryjane Atal of Bombo Radio (media representative), and DOJ representative Ferdinand Gangan.¹¹ On this score, the trial court keenly noted:

As to the integrity of the item subject of this case, the Court is satisfied that the same remained intact. Under *Section 21 of Republic Act 9165* and *Article II, Section 21 (a) of the Implementing Rules and Regulations (IRR)* of the said law the apprehending team having initial custody and control of the drug shall immediately after seizure and confiscation immediately physically inventory and photograph the same in the presence of the accused. The said requirement was duly complied with by the police officers. The marking of the buy bust item subject of the sale was made in the waiting shed where the sale took place. The poseur buyer Osio marked the one piece transparent plastic sachet containing white crystalline substance which was the buy bust stuff with RRO 5-19-14 which is his initials and the date along with his signature. The inventory was also conducted at the place of the transaction. The marking and inventory are evidenced by pictures marked as Exhibit “R” and series which show the presence of the accused. Per testimony of Arugay, the accused was beside him during the marking, inventory and taking of photographs. Ferdinand Gangan, the DOJ representative also attested to the presence of the accused. The aforementioned markings were reflected in the Receipt and Inventory of Evidence thereby validating the fact that the items were properly sealed and their integrity and identity duly preserved.¹²

The **second link** in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing. Thus, the investigating officer’s possession of the seized drugs must be documented and established.¹³

The rule on chain of custody includes testimony about every link in the chain, from the moment the item was picked up to the time it is offered in 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. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity

¹¹ *Rollo*, p. 6.

¹² *CA rollo*, p. 55.

¹³ *People v. Del Rosario*, G.R. No. 235658, June 22, 2020.

for someone not in the chain to have possession of the same. Indeed, it is from the testimony of every witness, who handled the evidence from which a reliable assurance can be derived, that the evidence presented in court is one and the same as that seized from the accused.¹⁴

Here, though the *corpus delicti* was not turned over to an investigating officer, PO2 Osio was able to account for the condition of the specimen since he held on to it from the time he recovered it from accused-appellant at 12:55 in the afternoon on May 19, 2014 until he turned it over, together with the letter-request for laboratory examination, to the Regional Crime Laboratory Office at 5:30 in the afternoon the same day. Indeed, the absence of the investigating officer, *per se*, does not affect the integrity and identity of the *corpus delicti* so long as the transfer of custody is accounted for.

The **third link** is the delivery by the investigating officer of the illegal drug to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance. Additionally, the **fourth link** involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.¹⁵

In this case, both third and fourth links were duly established as well. PO2 Osio confirmed that he turned over the *corpus delicti* to forensic chemist PCI Glenn Ly Tuazon (PCI Tuazon). The latter then conducted a qualitative examination of the specimen and found it positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. On April 29, 2015, PCI Tuazon personally turned over the specimen to the trial court. Thus, the trial court found:

Significantly, the identity and integrity of the subject prohibited drugs remained intact from the place of the transaction up to the delivery thereof to the crime laboratory for examination and even upon completion of such examination. Osio was the one who turned the item to the crime laboratory. The forensic chemist, Glenn Ly Tuazon possessed the item from the time he examined the same up to the time he turned it over to the court on April 29, 2015 by placing it in an igloo chest box with padlock which only he could have access to during that time. In any event, the defense never questioned the integrity and identity of the subject item as the same was barely touched during the cross examination of the prosecution witnesses.¹⁶

Additionally, the Court of Appeals noted:

(5) the letter-request for laboratory examination and the seized plastic sachet were brought by PO2 Osio to the crime laboratory, which

¹⁴ *People v. Martin*, G.R. No. 233750, June 10, 2019.

¹⁵ *People v. Bangcola*, G.R. No. 237802, March 18, 2019.

¹⁶ *CA rollo*, p. 56.

were received by PCI Tuazon; (6) the laboratory examination conducted by PCI Tuazon confirmed that the plastic sachet with white crystalline substance tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug; and (7) PCI Tuazon safely kept the sachet marked with "RRO 5-19-14" in a storage box inside a locked room in the laboratory until he delivered the same to the court *a quo* on 29 April 2015.¹⁷

So must it be.

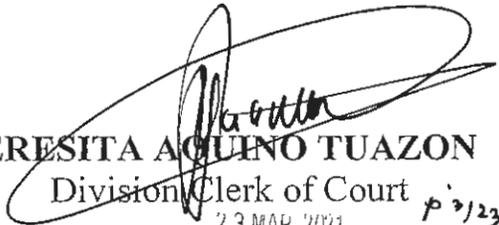
Lastly, the penalty imposed on accused-appellant by the trial court, as affirmed by the Court of Appeals, is in order. Pursuant to Section 5, Article II of RA 9165, appellant is sentenced to life imprisonment and a fine in the amount of ₱500,000.00.¹⁸

WHEREFORE, the appeal is **DISMISSED**. The Decision dated October 11, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10753 is **AFFIRMED**.

Accused-appellant **MARLON DAYAG y CABOCAN** is found **GUILTY** of **ILLEGAL SALE OF DANGEROUS DRUG** under Section 5, Article II of Republic Act No. 9165 and sentenced to **LIFE IMPRISONMENT** and a **FINE** of ₱500,000.00.

SO ORDERED.

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
23 MAR 2021 p 2/23

¹⁷ *Rollo*, p. 11.

¹⁸ *People v. Sahibil*, G.R. No. 228953, January 28, 2019.

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HON. PRESIDING JUDGE (reg)
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