



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **15 July 2020** which reads as follows:*

“**G.R. No. 247273** (*People of the Philippines v. Lucky Kudera Detros*). – Before the Court is an Appeal<sup>1</sup> from the Decision<sup>2</sup> promulgated on September 27, 2018 of the Court of Appeals (CA) Cagayan de Oro City in CA-G.R. CR-HC No. 01803-MIN. The CA affirmed the Judgment<sup>3</sup> dated October 19, 2017 of Branch 32, Regional Trial Court (RTC) of Lupon, Davao Oriental in Crim. Case No. 1872-15 and Crim. Case No. 1873-15 for violation of Sections 5 and 11, respectively, of Republic Act (RA) No. 9165<sup>4</sup> or the Comprehensive Dangerous Drugs Act of 2002.

*The Facts*

Lucky Kudera Detros (accused-appellant) was charged with violation of Sections 5 and 11 of RA 9165 under two separate Informations:

Criminal Case No. 1872-15

That on or about July 24, 2015, in the Municipality of Banaybanay, Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and consciously, sold and

<sup>1</sup> *Rollo*, pp. 15-16.

<sup>2</sup> *Id.* at 4-14; penned by Associate Justice Oscar V. Badelles with Associate Justices Tita Marilyn Payoyo-Villordon and Walter S. Ong, concurring.

<sup>3</sup> *CA rollo*, at 53-75; penned by Presiding Judge Emilio G. Dayanghirang III.

<sup>4</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.

delivered to PO2 PETE T. AQUINO, a poseur-buyer, one (1) sachet of “shabu” weighing 0.0737 grams, which is a dangerous drug, to the damage and prejudice of the state.

CONTRARY TO LAW.<sup>5</sup>

Criminal Case No. 1873-15

That on or about July 24, 2015, in the Municipality of Banaybanay, Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and consciously had in his possession and control six (6) sachets of “shabu,” a dangerous drug, with a total weight of 0.3628 grams, to the damage and prejudice of the state.

CONTRARY TO LAW.<sup>6</sup>

Accused-appellant entered a plea of not guilty to the two charges.<sup>7</sup>

The prosecution presented PO2 Pete Aquino (PO2 Aquino) and PO3 Caesar Ryan Mante (PO3 Mante) as its witnesses; while the defense presented accused-appellant, Nelia Palanas (Palanas), and Divina Rama (Rama).<sup>8</sup>

*Version of the Prosecution*

PO2 Aquino is the Assistant Operation Police Non-Commissioned Officer (PNCO) at Banaybanay Municipal Police Station. He testified as follows:

On July 24, 2015, his team conducted a buy-bust operation against accused-appellant at *Purok 4, Brgy. Poblacion, Banaybanay, Davao Oriental*. PO2 Aquino was assigned as the *poseur-buyer*. At around 11:20 p.m., they went to the Central Convenience Store of Banaybanay, near Petron Gasoline Station, where their informant and accused-appellant agreed to meet. When they arrived at the agreed place, PO2 Aquino saw accused-appellant enter the convenience store. After a while, he saw accused-appellant go out of the store. Apparently, accused-appellant saw the informant; thus he rode his motorcycle and approached the informant. At that time, PO2 Aquino was beside the informant. Thereafter, accused-appellant asked the informant how much he would

<sup>5</sup> CA rollo, pp. 53-54.

<sup>6</sup> *Id.* at 54.

<sup>7</sup> Rollo, p. 7.

<sup>8</sup> CA rollo, pp. 55-60.



buy; the informant answered ₱500.00 worth of *shabu*. Accused-appellant got a sachet from his right pocket and gave it to the informant. In turn, the informant gave the sachet to PO2 Aquino. Accused-appellant then received the ₱500.00 marked bill from PO2 Aquino as payment.<sup>9</sup>

At that point, PO2 Aquino lifted his bull cap, the agreed pre-arranged signal, to let his back-up know that the sale transaction was already consummated. When accused-appellant sensed that PO2 Aquino is a policeman, accused-appellant got on his motorcycle to escape. However, PO3 Mante flagged accused-appellant. Accused-appellant tried to evade PO3 Mante, but he fell off his motorcycle. PO3 Mante then arrested, handcuffed accused-appellant, and informed him of his constitutional rights. PO3 Mante searched the person of accused-appellant and found six sachets of *shabu* and the marked money. The team tagged the items, conducted an inventory, and took pictures in the presence of Pastor Ricky Salera (Pastor Salera) and *Kagawad* Amelito Cordova (Cordova) as witnesses.<sup>10</sup>

PO3 Mante corroborated the testimony of PO2 Aquino. He testified that he was the back-up officer of PO2 Aquino. At the time of the sale transaction, he was about 15 meters away from PO2 Aquino, the informant, and accused-appellant. From his place, he witnessed the whole incident. Accused-appellant approached PO2 Aquino and the informant. The three of them then moved to another place. Accused-appellant got something from his pocket and gave it to the informant, who then gave it to PO2 Aquino. After that, PO2 Aquino retrieved an item from his pocket and handed it to the informant, who then gave it to accused-appellant. After accused-appellant pocketed the item, PO2 Aquino lifted his bullcap as a signal for him to make his move. At that point, accused-appellant attempted to flee using his motorcycle, but the other operative, PO3 Mante, pursued accused-appellant until the latter fell off his motorcycle. He arrested accused-appellant and informed him of his constitutional rights. PO3 Mante bodily searched accused-appellant and recovered six sachets of *shabu*, a cellphone, drug paraphernalia, and the marked ₱500.00 bill.<sup>11</sup>

Cordova and Pastor Salera arrived a few seconds after accused-appellant was arrested. PO3 Mante and PO2 Aquino conducted an inventory and marking. They took pictures of the seized items at the place of the arrest, with Cordova and Pastor Salera as witnesses. PO2

<sup>9</sup> *Id.* at 55.

<sup>10</sup> *Id.* at 56.

<sup>11</sup> *Id.* at 56-57.

Aquino then gave the sachet of *shabu* subject of the transaction to PO3 Mante. They proceeded to the police station where they recorded the incident. The next day, they sent the seven sachets of *shabu* to the crime laboratory for examination.<sup>12</sup>

#### *Version of the Defense*

Palanas testified that on July 24, 2015 at around 11:00 p.m., she was inside the convenience store at Banaybanay, Davao Oriental to buy ice cream. She saw accused-appellant come in to buy cigarettes. Since accused-appellant is a driver of a single motorcycle, she told him that she will ride with him in going home. When accused-appellant went out of the convenience store, she followed him. Then she noticed two persons approach accused-appellant when the latter boarded his motorcycle. The two were policemen. The policemen pulled accused-appellant from his motorcycle and accosted him. Then one of them mauled and kicked accused-appellant. They directed accused-appellant to board an Innova van. Later on, they ordered accused-appellant to alight from the vehicle and sit on the road. At that point, PO3 Mante threw *shabu* and a ₱500.00 bill at accused-appellant. They then ordered accused-appellant to board again the Innova van and brought him to the police station. After the Innova van left, a Pastor and a *kagawad* arrived at the scene of the incident; they followed the policemen and accused-appellant to the police station.<sup>13</sup>

Defense witness Rama corroborated the testimony of Palanas. She testified that on the night of the incident, she was at the convenience store waiting for her husband. She knows accused-appellant as a tricycle driver, who sometimes plays basketball. While she was there at the store, accused-appellant entered, and after three minutes, left the store. She saw accused-appellant board his motorcycle. Thereafter, a person from an Elf van alighted and pulled his firearm; while another person pulled accused-appellant's arm until the latter fell off his motorcycle. Another person came out from the Elf van and wrestled with accused-appellant. After which, PO3 Mante and Tugade handcuffed and frisked accused-appellant.<sup>14</sup>

After about twenty minutes, a patrol car arrived. The policemen asked accused-appellant to board the patrol car. After some time, a

<sup>12</sup> *Id.* at 57.

<sup>13</sup> *Id.* at 58-59.

<sup>14</sup> *Id.* at 59-60.



motorcycle arrived with one Ronnie Labos and PO2 Aquino on board. They ordered accused-appellant to alight from the patrol car and sit on the road. With the use of a cellphone, the policemen took pictures of the items on the ground near accused-appellant. However, she could not tell where the items came from and she never saw accused-appellant talking with any other person before the arrest.<sup>15</sup>

Accused-appellant testified that on July 24, 2015 at around 11:00 p.m., he was at the convenience store to buy a cigarette. Palanas asked him if she could ride with him. He answered that he would first buy gasoline from the *talipapa*. On his way, a man in civilian clothes suddenly pulled his right arm causing him to fall off his motorcycle. PO3 Mante and Tugade went on top of him and pushed his face - the left side on the ground. They informed him that he was being arrested for being included in a list of persons using drugs. There were no *barangay* officials present during that time. Accused-appellant further alleged that a police mobile arrived after 15 minutes. They ordered him to board the police mobile. After 30 minutes, PO2 Aquino arrived and ordered his police companions to frisk him. They did not get anything from him. After a while, *barangay* officials arrived and the policemen started tagging and marking items placed in front of the police mobile. When the policemen were done with the tagging and marking, they ordered him to get out of the vehicle. They took pictures of him alongside the items. Afterwards, the policemen brought accused-appellant to the police station.<sup>16</sup>

Accused-appellant asserted that PO3 Mante had a grudge against him because the latter's goat he was tasked to take care of was bitten by a snake. PO3 Mante did not believe him; he filed a complaint against him with the *barangay*.<sup>17</sup>

#### *The Decision of the RTC*

In the Judgment<sup>18</sup> dated October 19, 2017, the RTC found accused-appellant guilty beyond reasonable doubt of violation of Sections 5 and 11 of RA 9165. The RTC ruled that the prosecution was able to establish that a buy-bust operation was conducted and the sale of *shabu* took place. It held that during the search conducted after the buy-bust operation, the policemen found six sachets of *shabu* in accused-

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<sup>15</sup> *Id.* at 60.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 59.

<sup>18</sup> *Id.* at 53-75.

appellant's possession.<sup>19</sup>

The RTC ruled that the prosecution was able to establish the unbroken chain of custody and possession of the seized items from the time the sale was consummated. The RTC further ruled that the laboratory examination showed that all the sachets tested positive for methamphetamine hydrochloride or *shabu*, and that the integrity and evidentiary value of the seized items have not been compromised at any stage of the proceeding.<sup>20</sup>

The RTC rejected accused-appellant's defense of *alibi* and denial. The RTC declared that *alibi* and denial could not overcome the positive and affirmative testimonies of the prosecution witnesses.<sup>21</sup>

The dispositive portion of the RTC Judgment reads:

WHEREFORE, premises considered, accused LUCKY KUDERA DETROS is hereby found guilty beyond reasonable doubt for violations of Sections 5 and 11, Article II of Republic Act No. 9165, as amended by Republic Act No. 9346, and he is sentenced [to] suffer the penalty of life imprisonment without eligibility for parole and ordering him to pay the fine of P500,000.00, for violation of Section 5, Article II, Republic Act No. 9165, and imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and a fine of P300,000.00, for violation of Section 11, Article II, Republic Act No. 9165.

The seven sachets of *shabu* subject of these cases are confiscated in favor of the Government and are ordered to be turned-over to the Philippine Drug Enforcement Agency for its appropriate disposal.

SO ORDERED.<sup>22</sup>

Accused-appellant filed a Notice of Appeal.<sup>23</sup>

#### *The Decision of the CA*

In the Decision<sup>24</sup> dated September 27, 2018, the CA affirmed the

<sup>19</sup> *Id.* at 75.

<sup>20</sup> *Id.* at 66-67.

<sup>21</sup> *Id.* at 73.

<sup>22</sup> *Id.* at 75.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> *Rollo*, pp. at 4-14; penned by Associate Justice Oscar V. Badelles with Associate Justices Tita Marilyn Payoyo-Villordon and Walter S. Ong, concurring.



## RTC Judgment.

The CA, like the RTC, did not give credence to the testimonies of the defense witnesses. The CA ruled that accused-appellant failed to prove ill motive on the part of PO2 Aquino; and that accused-appellant failed to rebut the presumption of regularity in the performance of official duties on the part of the policemen who arrested him.<sup>25</sup>

The CA found that the chain of custody was preserved in the cases filed against accused-appellant. The CA ruled that the *poseur-buyer*, PO2 Aquino, marked the seized items including the sachet subject of the transaction. The CA disregarded the argument of accused-appellant that he did not hand the sachet of *shabu* to PO2 Aquino because the intermediary, the police informant, was just beside PO2 Aquino who witnessed the entire transaction.<sup>26</sup>

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Judgment dated October 19, 2017 of the Regional Trial Court, 11<sup>th</sup> Judicial Region, Branch 32, Lupon, Davao in Crim. Case No. 1872-15 and Crim. Case No. 1873-15 for violation of Sections 5 and 11 of Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, is hereby AFFIRMED.

SO ORDERED.<sup>27</sup>

Accused-appellant appealed from the Decision of the CA.

*The Issue*

The only issue before the Court is whether the guilt of accused-appellant has been proven beyond reasonable doubt.

*The Ruling of the Court*

The appeal has merit.

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<sup>25</sup> *Id.* at 9-10.

<sup>26</sup> *Id.* at 12.

<sup>27</sup> *Id.* at 13-14.

Accused-appellant was charged with violations of Sections 5 and 11, Article II of RA 9165 for illegal sale and illegal possession of dangerous drugs.

The elements for illegal sale of dangerous drugs are as follows: (1) the identity of the buyer and of the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment.<sup>28</sup> On the other hand, the elements for illegal possession of dangerous drugs are the following: (1) the accused was in possession of an item or object identified as a prohibited drug; (2) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>29</sup> It is important that in both cases, the identity of the prohibited drug is established beyond reasonable doubt as it forms an integral part of the *corpus delicti* of the crime.<sup>30</sup>

It is the responsibility of the State to establish beyond reasonable doubt the identity of the dangerous drugs by showing that the drugs offered in court as evidence are the same as the drugs sold or seized during the buy-bust operation.<sup>31</sup> The Court is guided by Section 21(1) of RA 9165, as amended by RA 10640<sup>32</sup> which states:

(1) 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 a physical inventory of the seized items 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, 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: 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 officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of 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 and custody over said items.

<sup>28</sup> *People v. Lumaya*, G.R. No. 231983, March 7, 2013, 858 SCRA 114,125.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *People v. Dayon*, G.R. No. 229669, November 27, 2019.

<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."



In *People v. Gutierrez*,<sup>33</sup> the Court clarified the chain of custody procedure, thus:

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography 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) 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; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official AND a representative of the National Prosecution Service OR the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

In the case before the Court, the buy-bust operation took place after the amendment of RA 9165 by RA 10640. As such, the law provides that the inventory and photographing of the seized items should be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, *with an elected public official and a representative of the National Prosecution Service or the media as witnesses*. Here, the inventory and photographing of the seized items in this case was witnessed by Pastor Salera, whose official designation was not identified, and Cordova, a *barangay Kagawad*. PO3 Mante stated that these witnesses arrived at the place "seconds" after they arrested accused-appellant.<sup>34</sup>

In *People v. Tomawis*,<sup>35</sup> the Court ruled that the presence of the witnesses from the DOJ, the media, and the public elective office is necessary in order to protect against the possibility of planting, contamination, or loss of the seized drugs. As such, the presence of the witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest where their presence is

<sup>33</sup> G.R. No. 236304, November 5, 2018.

<sup>34</sup> *CA rollo*, p. 67.

<sup>35</sup> G.R. No. 228890, April 18, 2018, 862 SCRA 131-162.

most needed.<sup>36</sup> The Court explained:

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so - and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished - does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."<sup>37</sup>

In this case, the witnesses arrived at the scene after the arrest of accused-appellant. Pastor Salera and Cordova did not witness the arrest of accused-appellant. Moreover, they were not presented as witnesses. The Court cannot ascertain in what capacity Pastor Salera went to the place of the incident. In addition, there was no representative from either the National Prosecution Service or the media, without any justification or explanation on the part of the prosecution for the absence.

Section 21(1) of RA 9165, as amended by RA 10640 admits of a *proviso* that allows non-compliance for justifiable grounds. Thus:

Provided, finally, that noncompliance of 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 and custody over said items.<sup>38</sup>

Non-compliance with Section 21(1) of RA 9165, as amended by RA 10640, is subject to the following requisites: (1) the prosecution must specifically allege, identify, and prove justifiable grounds; and (2) the prosecution must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved.<sup>39</sup> The prosecution failed in this regard. The

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</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."

<sup>39</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 523.



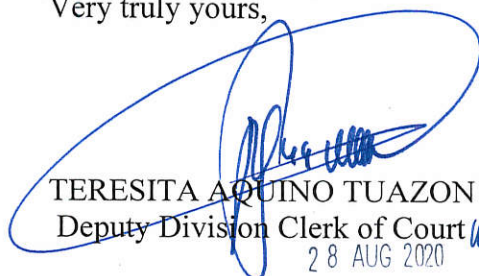
prosecution's failure to comply with the provisions of Section 21(1) of RA 9165, as amended by RA 10640 compromised the integrity and evidentiary value of the *corpus delicti* and warrants the acquittal of accused-appellant from the charges against him.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated September 27, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01803-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant Lucky Kudera Detros is **ACQUITTED** of the offense charged on the ground of reasonable doubt.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Lucky Kudera Detros, 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.

**SO ORDERED.**"

Very truly yours,

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *Wht. 8/28*  
28 AUG 2020

- more -

(119)URES(a)

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HON. PRESIDING JUDGE (reg)  
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