



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **29 June 2020** which reads as follows:*

“G.R. No. 237776 (*People of the Philippines v. Rose Dela Cruz y Lacostales*). – After a careful review of the records of the case, the Court resolves to acquit Rose Dela Cruz y Lacostales (Dela Cruz) on the ground of reasonable doubt. The prosecution failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of Republic Act No. 9165 (RA 9165), the applicable law at the time of the commission of the alleged crime.

In cases involving dangerous drugs, the State bears the burden of proving (1) all elements in the illegal sale of drugs, and (2) the *corpus delicti* or the body of the crime. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,¹ the law nevertheless requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

Section 21 of RA 9165 states:

SEC. 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**

¹ *People v. Angeles*, G.R. No. 237355, 21 November 2018, citing *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

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. (Emphasis supplied)

Section 21 of RA 9165 lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; (2) and 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, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy.

In the present case, PO2 Baslan, the apprehending officer, marked the seized item as “RLD” at the place of arrest.² However, no photographs and physical inventory of the seized item were done in the presence of the accused or his counsel and the required witnesses – representatives from the media, DOJ and an elected public official. Even PO1 Salazar, the poseur buyer, in his testimony before the RTC, admitted that he does not have any evidence proving compliance with Section 21 of RA 9165.³

The law is clear that the inventory and presence of the required witnesses at the time of the apprehension is mandatory. The law imposes the requirement because their presence serves an essential purpose. In *People v. Tomawis*,⁴ we held that the purpose of the witnesses is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Their presence must be secured not only during the inventory but more importantly at the time of the warrantless arrest. This situation would belie any doubt as to the source, identity, and integrity of the seized drug.

Also, the amount of shabu seized from Dela Cruz was at 0.04 gram. Similar to the case of *People v. Mamuyac*,⁵ we declared in that case that the amount of shabu seized at 0.0343 gram was miniscule. Citing *People v. Holgado*,⁶ we underscored the need for an exacting compliance with Section 21 of RA 9165 especially when there is a miniscule amount of narcotics seized, thus:

While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malilin v. People*, this court said that “the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical

² Records, TSN of PO2 Arnel Baslan dated 7 February 2012, pp. 11-12.

³ Records, TSN of PO1 Noel Salazar dated 25 August 2010, p. 14.

⁴ G.R. No. 228890, 18 April 2018.

⁵ G.R. 234035, 19 August 2019.

⁶ 741 Phil. 78 (2014).

characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.

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Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered. Also, doubt normally follows in cases where an accused has been discharged from other simultaneous offenses due to mishandling of evidence.

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It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of *shabu* under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.

In applying the need for an exacting compliance with Section 21, the prosecution clearly failed to comply with the requirements of the chain of custody rule. Here, the apprehending officers failed to take photographs and do a physical inventory of the seized item at the place of arrest or at the police station. Also, the team had enough time to comply with the requirement of securing the attendance of the three witnesses from the media, DOJ and the elected public official. The Special Operations Group received the information from its asset at 11 a.m. and carried out the buy-bust operation the next day at 1 a.m. However, they failed to do so. Neither did the police officers offer a justification or any explanation on the non-compliance of these requirements.

In *People v. Lim*,⁷ we held that the law enforcement officers must state in the sworn statements/affidavits the justifiable grounds for non-compliance with the requirements, as well as the steps taken to preserve the identity and evidentiary value of the seized/confiscated items. However, in this case, the police officers failed to issue any sworn statements and furnish adequate grounds for their non-compliance. The mandatory policy in *Lim* was adopted precisely to address the pervasive issue of non-compliance with

⁷ G.R. No. 231989, 4 September 2018.

Section 21 of RA 9165.

It must be borne in mind that the prosecution has the burden of proving compliance with Section 21 of RA 9165 and supplying the necessary justification or sufficient explanation for its non-compliance. For failing to comply or at the very least provide a justification for the omission, this situation casts a reasonable doubt on the identity and integrity of the *corpus delicti* of the crime. Thus, on the ground of reasonable doubt, the conviction against Dela Cruz must be overturned.

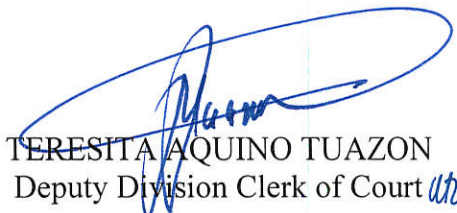
WHEREFORE, the Decision dated 25 August 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07329 is **REVERSED** and **SET ASIDE**. Accused-appellant Rose Dela Cruz y Lacostales is hereby **ACQUITTED** of the crime charged on the ground of reasonable doubt.

The Superintendent of the Correctional Institution for Women, Mandaluyong City, is **ORDERED** to: (a) cause the immediate release of Rose Dela Cruz y Lacostales, unless she 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.

Let entry of judgment be issued.

SO ORDERED." (*J. Gaerlan, designated Additional Member per Special Order No. 2780 dated May 11, 2020.*)

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *utb 8/20*

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THE DIRECTOR (x)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 68
Binangonan, Rizal
(Crim. Case No. 09-220)

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Please notify the Court of any change in your address.
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