



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated November 16, 2020, which reads as follows:

“G.R. No. 242639 (*People of the Philippines v. Sylvia Galero y Dulay and Rolando Sevilla y Galero*). – This is an Appeal¹ from the Decision² dated March 16, 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07929 affirming *in toto* the Decision³ dated October 22, 2015 of Branch 120, Regional Trial Court (RTC), Caloocan City in Crim. Case No. C-87610 for Violation of Section 5 in relation to Section 26,⁴ Article II of Republic Act No. (RA) 9165⁵ and Crim. Case No. C-89121 for Violation of Section 11, Article II, RA 9165.

The consolidated cases stemmed from two Informations⁶ filed before the RTC against accused-appellants Sylvia Galero y Dulay (Galero) and Rolando Sevilla y Galero (Sevilla). The Informations read:

¹ *Rollo*, pp. 15-16.

² *Id.* at 2-14; penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan (now a member of the Court), concurring.

³ *CA rollo*, pp. 21-38; penned by Judge Aurelio R. Ralar, Jr.

⁴ Section 26. *Attempt or Conspiracy*. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same provided under the Act:

- (a) Importation of any dangerous drug and/or controlled precursor and essential chemical;
- (b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
- (c) Maintenance of a den, dive or resort where any dangerous drug is used in any from;
- (d) Manufacture of any dangerous drug and/or controlled precursor and essential chemical;
- (e) Cultivation or culture of plants which are sources of dangerous drugs.

x x x x.

⁵ Entitled “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.

⁶ *CA rollo*, pp. 10-15.

Criminal Case No. C-87610

That on or about the 17th day of February, 2012 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court[,] the above-named accused, conspiring together and mutually helping one another, without being authorized by law, did then and there wilfully [sic], unlawfully and [feloniously] sell and deliver to PO3 ANTHONY ONG, who posed as buyer, METHAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.06 gram, knowing the same to be such, with Rolando Sevilla y Galero receiving the buy bust money from said PO3 Anthony Ong, immediately get the item and turned over the said items to Sylvia Galero y Dulay who, in turn, handed to PO3 Anthony Ong subject plastic sachets and from whom the buy bust money was recovered.

Contrary to Law.⁷

Criminal Case No. C-89121

That on or about the 17th day of February, 2012 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control Two (2) heat sealed transparent plastic sachets each with markings MR 2-17-2012 and MR 2-17-12 containing METHAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.08 gram & 0.05 gram, which when subjected for laboratory examination gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in gross violation of the above-cited law.

Contrary to Law.⁸

The prosecution's version of the buy-bust operation is as follows:

On or about 10:00 in the morning of 16 February 2012, a confidential informant (CI), accompanied by Mr. Leandro Nepomuceno ("Nepomuceno"), segment producer of T3, an investigative program of TV5, arrived at the office of PNP AIDSOTF SOU-2, Camp Crame, Quezon City and reported to PO3 Ong the flagrant shabu selling activity of alias "Bill" and cohorts at No. 2, Road 5, GSIS Hills, Barangay 164, District 1, Talipapa, Caloocan City. After PCI Arnulfo G. Ibañez of the said office validated said report through the surveillance video shown by Nepomuceno, he was ordered by the chief of the same office to head a team that would conduct a casing/surveillance against the target persons.

The following day after the casing/surveillance or on or about 8:30 in the morning of 17 February 2012, the team conducted a briefing for the buy-bust operation. PO3 Ong was designated to pose as buyer while PO3 Rigor was designated to act as back-up arresting officer x x x.

⁷ CA rollo, p. 10.

⁸ *Id.* at 14.

At around 9:30 in the morning of the same day, the buy-bust team, together with the CI and crew of T3, proceeded to the target area. PO3 Ong and the informant went ahead thereto while the rest of the team members positioned themselves strategically around said area. Upon arrival thereat, the [CI] knocked at the door of the target area, which was the house of alias "Bill." A woman, who the CI introduced as alias "Ibyang," wife of alias "Bill," and later identified as accused Galero, answered the door. When the CI asked the whereabouts of alias "Bill," accused Galero answered, "*Sinundo ng amo nyang pulis pero wag kayong mag-alala, may iniwan kay JR.*" Accused Galero then asked PO3 Ong how much he would buy. The latter then answered worth Five Hundred Pesos (Php500.00). Thereafter, accused Galero called alias "JR," later identified as accused Sevilla and asked him "*Asan na yung iniwan ni Bill?*" Accused Sevilla then pulled out from his pocket three (3) pieces heat-sealed transparent plastic sachet containing white crystalline substance suspected to be shabu and handed it to accused Galero. The latter then handed to PO3 Ong one of the plastic sachets and instructed the later to give to accused Sevilla the payment therefor. After the sale was consummated, PO3 Ong examined the contents of the plastic sachet and executed the pre-arranged signal.⁹

As the sale was consummated, Police Officer Anthony Ong (PO3 Ong) arrested Sevilla and recovered from him the buy-bust money. Police Officer 3 Monina Ringor (PO3 Ringor) arrested Galero. Upon frisking Galero, PO3 Ringor recovered from Galero two more plastic sachets containing white crystalline substance. The seized items were then marked, inventoried, and photographed at the crime scene in the presence of accused-appellants, *Barangay Kagawad* Rodrigo Sarmiento, *Barangay Tanod* Cornelio Concepcion, and media representative Leandro Nepomuceno of TV5. Thereafter, they turned over the seized items to investigator SPO1 Enrico Calva, who then brought them to the crime laboratory for examination; the seized items proved positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.¹⁰

In defense, accused-appellants denied the respective charges against them. Galero asserted that five male persons and one female person arrived and entered her house. The female person suddenly grabbed her, brought her inside the comfort room, and frisked her for *shabu*. The persons searched Galero's house. They asked Galero to bring out the *shabu*, but no *shabu* was produced. Then, one of the persons, named Anthony, brought out a white envelope containing plastic sachets of *shabu* and several ₱100.00 bills and placed it on top of a table. Anthony asked Sevilla and Galero to come near the table. When Galero resisted, one of the male persons hit her in the stomach and submerged her head in a drum filled with water inside the comfort room. When the *barangay* officials arrived, they forced accused-appellants to sign a document. Thereafter, they boarded the accused-appellants inside a

⁹ *Id.* at 25-26.

¹⁰ *Id.* at 145.

vehicle and brought them to Camp Crame.¹¹

For his part, Sevilla alleged that he was at the house of his aunt, Galero, when someone knocked at the door. When his cousin opened the door, Galero saw two male persons enter the house looking for a certain Billy. When Galero replied that she does not know of any Billy, the male persons got mad at her. Thereafter, PO3 Ong took out a plastic sachet containing *shabu* and forced Sevilla to admit ownership of it. When he refused, PO3 Ong poked a gun at him, asked Sevilla and Galero to sit in front of a table where a plastic sachet containing *shabu* was placed and forced them to sign some documents.¹²

Ruling of the RTC

The RTC held that the prosecution had sufficiently established all the elements of Illegal Possession and Illegal Sale of Dangerous Drugs. It did not find merit in accused-appellants' defenses of denial and frame-up, or extortion for being self-serving. It further held that there was an unbroken chain of custody.¹³

Thus, in Crim. Case No. C-87610, the RTC sentenced Galero and Sevilla to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. In Crim. Case No. C-89121, the RTC sentenced Galero to suffer the penalty of twelve (12) years and one (1) day to fourteen (14) years and to pay a fine of ₱300,000.00.¹⁴

Aggrieved, both accused-appellants appealed to the CA.

Ruling of the CA

In the Decision¹⁵ dated March 16, 2018, the CA affirmed the RTC *in toto*. It held that the integrity and evidentiary value of the seized items have been preserved as the prosecution had established an unbroken chain of custody. With respect to the absence of a representative from the Department of Justice (DOJ), the CA held that: "[I]t bears stressing that appellants never assailed the propriety and regularity of the process of marking and inventory of the seized items during the prosecution's presentation of evidence on that matter during the testimonies of PO3 Ong and PO3 Ringor."¹⁶

Hence, this appeal.

The issue before the Court is whether the CA erred in affirming accused-appellants' conviction.

¹¹ *Id.* at 146-147.

¹² *Id.*

¹³ *Id.* at 36-37.

¹⁴ *Id.* at 37.

¹⁵ *Rollo*, pp. 2-14.

¹⁶ *Id.* at 12.

The Court's Ruling

The appeal is meritorious.

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, and the consideration; and (b) the delivery of the thing sold and the payment;¹⁷ whereas, the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.¹⁸

For a successful prosecution of the offenses of Illegal Sale and/or Illegal Possession of Dangerous Drugs, not only is the prosecution bound to establish the above elements, but it is equally essential that the identity of the dangerous drug be established with moral certainty.¹⁹ Thus, the prosecution must account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.²⁰ As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photographing of the seized items be conducted immediately after seizure and confiscation.²¹

The law further requires that the 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 10640,²² a representative from the media and the 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.²³

Generally, there must be strict compliance with the chain of custody procedure.²⁴ However, in cases where this strict compliance is not possible, the seizure and custody of the seized items will not be rendered void *if the prosecution satisfactorily proves that there is justifiable ground for the deviation, and the integrity and evidentiary value of the seized items are properly preserved.*²⁵

¹⁷ *People v. Crispo*, 828 Phil. 416, 429 (2018).

¹⁸ *Id.*

¹⁹ See *People v. Santos*, G.R. No. 243627, November 27, 2019.

²⁰ See *People v. Año*, 828 Phil. 439, 448 (2018). See also *People v. Viterbo*, 739 Phil. 593, 601 (2014) and *People v. Alagarme*, 754 Phil. 449, 459-460 (2015).

²¹ See *People v. Gabunada*, G.R. No. 242827, September 9, 2019.

²² Entitled "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.

²³ *People v. Gabunada*, *supra* note 21.

²⁴ *People v. Sendad*, G.R. No. 242025, November 20, 2019.

²⁵ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

As to the witness requirement, non-compliance therewith may be permitted *if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of the required witnesses, albeit the latter failed to appear.*²⁶ Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.²⁷ These considerations anent the witness requirement arise from the fact that police officers are ordinarily given sufficient time to prepare for a buy-bust operation and thus make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.²⁸

In the present case, there was non-compliance with the witness requirement under RA 9165, the law that applies as the offenses were committed in 2012. The marking, inventory, and photography of the seized items were conducted only in the presence of accused-appellants, a *barangay kagawad*, a *barangay tanod*, and a media representative. There was no representative from the DOJ. The prosecution did not even explain the absence of a DOJ representative. Worse, the records do not show that the arresting officers exerted genuine and sufficient efforts to secure the presence of a representative from the DOJ.

The unjustified procedural lapses committed by the arresting officers put into question the integrity and evidentiary value of the dangerous drugs allegedly seized from accused-appellants. The prosecution did not account for the absence of a DOJ representative as it failed to provide a justifiable reason therefor or, at the very least, show that genuine and sufficient efforts were exerted by the apprehending officers to secure his or her presence.²⁹ Thus, the Court is constrained to rule that the integrity and evidentiary value of the *corpus delicti* in this case have been compromised.

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 16, 2018 of the Court of Appeals in CA-G.R. CR HC No. 07929 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Sylvia Galero *y* Dulay and Rolando Sevilla *y* Galero are **ACQUITTED** of the offenses charged.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Rolando Sevilla *y* Galero and Sylvia Galero *y* Dulay unless they are 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.

²⁶ *People v. Gabunada*, *supra* note 21.

²⁷ *People v. Santos*, *supra* note 19.

²⁸ *People v. Gabunada*, *supra* note 21, citing *People v. Crispo*, *supra* note 17 at 436.

²⁹ *People v. Sendad*, *supra* note 24.


Let entry of judgment be issued.”

SO ORDERED.”

By authority of the Court:

MISAEEL DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court

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