



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **24 August 2020** which reads as follows:*

“G.R. No. 247908 (*People of the Philippines vs. Rafael Garcia y Tejada @ “Rap Rap” and Jimmy Macalang y Gonzales @ “Erong”*). – After a judicious study of the case, the Court resolves to **DISMISS** the instant appeal and **AFFIRM** the Decision¹ dated October 22, 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 09985 for failure of Rafael Garcia y Tejada *a.k.a* “Rap Rap” (Garcia) and Jimmy Macalang y Gonzales *a.k.a* “Erong” (Macalang) (collectively known as accused-appellants) to sufficiently show that the CA committed any reversible error in affirming their conviction for the offenses of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, Article II of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

As correctly ruled by the CA, the prosecution was able to establish the elements of the two offenses.² For Illegal Sale of Dangerous Drugs, the prosecution had clearly established the following, to wit: (1) the identities of the buyer and the sellers, namely, SPO2 Apolonio Ellao (SPO2 Ellao) and accused-appellants;³ Macalang handed to Garcia four sachets of *shabu*; accused-appellant Garcia, upon receipt, handed one plastic of *shabu* to SPO2 Ellao for a consideration of ₱200.00;⁴ (2) the identities of the object and the consideration:⁵ one plastic sachet of

¹ *Rollo*, pp. 3-39; penned by Associate Justice Amy C. Lazaro-Javier (now a member of the Court) with Associate Justices Rosmari D. Carandang (now a member of the Court) and Jhosep Y. Lopez concurring.

² *Id.* at 15 and 26.

³ *Id.* at 18.

⁴ *Id.*

⁵ *Id.* at 20.

shabu and two marked ₱100.00 peso bills⁶ based on the categorical testimony of SPO2 Ellao and the entries in Chemistry Report No. D-456-16;⁷ (3) the delivery of one plastic sachet containing methamphetamine hydrochloride or *shabu* to SPO2 Ellao and the payment in the amount of ₱200.00;⁸ and (4) the presentation in court of the *corpus delicti* or the illicit drug which was the plastic sachet containing methamphetamine hydrochloride or *shabu* marked "RTG", the two marked ₱100.00-bills, and the Chemistry Report No. D-456-16 as evidence or as parts of the record of the case.⁹

Likewise, for the successful prosecution of the violation of Illegal Possession of Dangerous Drugs, the prosecution established all the elements, to wit: (1) Garcia was in possession of items or plastic sachets the contents of which were identified to be a prohibited drug; (2) such possession was not authorized by law; and (3) Garcia freely and consciously possessed the prohibited drug.¹⁰

In so far as Garcia is concerned, during the succeeding search on his person, the arresting officers recovered from him three plastic sachets marked as "RTG-1," "RTG-2," and "RTG-3" with a total net weight of 0.079 grams that all yielded positive to the test for methamphetamine hydrochloride or *shabu* per Chemistry Report No. D-456-16.¹¹ Garcia did not assert or prove that he was authorized by law to possess the prohibited drugs.¹² Therefore, his possession was illegal.¹³

As aptly ruled by the CA, there was not enough proof to convict Macalang for violation of Section 11, Article II of RA 9165 because of the absence of PO3 Raymund Boco's testimony relating to the circumstances of his purported confiscation from accused-appellant Macalang of the plastic sachet of *shabu* marked as "JGM"; and the integrity in the handling of the seized item from the time of its confiscation until its turnover to the crime laboratory for examination.¹⁴

⁶ *Id.* at 21.

⁷ *Id.*

⁸ *Id.* at 22.

⁹ *Id.* at 24-25.

¹⁰ *Id.* at 26.

¹¹ *Id.* at 27.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

For the offense of Illegal Sale of Dangerous Drugs against accused-appellants and for the offense of Illegal Possession of Dangerous Drugs against accused-appellant Garcia, the chain of custody pertaining to the integrity and evidentiary value of the seized items: (1) one plastic sachet of *shabu* which SPO2 Ellao bought from Garcia, who conspired with Macalang in the buy-bust operation; and (2) three plastic sachets of *shabu* confiscated from the person of Garcia after his arrest were properly observed. SPO2 Ellao was in the sole custody of the seized items from the time they were bought and confiscated from accused-appellants until they were delivered and received in the crime laboratory for examination and subsequently presented to the trial court.¹⁵ Notably, there was compliance with the requirements under Section 21 of RA 9165, as amended by RA 10640.¹⁶

Accused-appellants allegedly committed the offenses charged on May 23, 2016 or after the effectivity of RA 10640, amending Section 21 of RA 9165 which laid down the requirements in handling the seized dangerous drugs after the arrest of the accused – the conduct of a physical inventory and photographing of the seized items in the presence of the required witness:

(i) The initial custody requirements must be done immediately after seizure or confiscation;

¹⁵ *Id.* at 30.

¹⁶ Republic Act No. 10640, otherwise known as “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.”

“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 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.

(ii) The physical inventory and photographing must be done in the presence of the following persons, who shall be required to sign the copies of the inventory and be given a copy thereof:

- a. the accused or his representative or counsel;
- b. elected public official
- c. representative of the National Prosecution Service (NPS) OR media

(iii) The conduct of the physical inventory and photograph shall be done at the:

- a. place where the search warrant is served; or
- b. nearest police station; or
- c. nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.¹⁷

In the instant case, it was established that at the Police Station 2, Chief SAID Police Inspector (CPI) Luisito Mababangloob III (Mababangloob) called for a media representative and a representative from the Department of Justice (DOJ), but only Danny Garrendola,* the media representative, arrived.¹⁸ Further, from the testimony of SPO2 Ellao, he sufficiently explained why the marking of the items was held at Police Station 2 and the reason that only a media representative arrived to witness the marking and inventory; thus:

That PO2 Francisco call (sic) any elected barangay officials to witness the inventory of seized evidence but no elected official came for the reason that they were out of town for *Barangay Summer Outing* x x x.¹⁹

x x x x.

Q: Now, it is only in the police station that you were able to marked (sic), inventoried (sic) and photographed (sic) those and during the inventory, Mr. Witness, who was the one who called for a *barangay* official?

A: At the area, PO2 Francisco.

¹⁷ *Id.*

* Garendola and Gerrendola in some parts of the *rollo* and records.

¹⁸ TSN, March 23, 2013, Records, p. 204.

¹⁹ TSN, March 23, 2013, Records, pp. 203- 204.

Q: And, how did PO2 Francisco called for that *barangay* official?

A: He just walked, sir, because the area where the buy-bust operation took place is just near the *barangay*.

Q: And it is your testimony that he was not able to find one, correct?

A: Yes, sir.

Q: And would you confirm that it was only Garrendola that was present or your co-police officer was able to contact, correct?

A: Yes, sir.²⁰

x x x x.

Q: Now, Mr. Witness, in marking the evidence, why did you fail to mark the evidence at the place of the operation, can you please explain?

A: Because as per the instruction of our Chief SAID, sir, if no witness during markings of the inventory, we proceed to the office, sir.²¹

Worth stressing is that the saving clause previously contained in Section 21 (a), Article II of the IRR of RA 9165 is likewise adopted in RA 10640 which reads, “[t]hat 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.”²² Hence, for this saving clause to apply, the following conditions must be met, to wit: (1) the prosecution must acknowledge or recognize the lapse/s in the prescribed procedure, and then provide justifiable reasons for said lapse/s,²³ and (2) the prosecution must show that the integrity and evidentiary value of the seized items had been properly preserved.²⁴ The justifiable ground/s for failure to comply with the procedural safeguards mandated by the law must be proven as a fact, as the Court cannot presume what these grounds are or that they even exist.²⁵

²⁰ TSN, March 23, 2017, Records, p. 221.

²¹ *Id.* at 223.

²² *People v. Maganon*, G.R. No. 234040, June 26, 2019.

²³ *People v. Maganon*, *id.* citing *People v. Alagarme*, 754 Phil. 449, 461 (2015).

²⁴ *People v. Maganon*, *supra* note 21 citing *People v. Ramos*, 826 Phil. 981, 997 (2018)

²⁵ *People v. Maganon*, *supra* note 22 citing *People v. Ramos*, *id.* at 994.

In this case, the records show that only Danny Garrendola, the media representative, was present during the physical inventory and photographing of the seized items which happened at the Police Station 2. This was in fact duly admitted by the prosecution. However, the Court finds that, through SPO2 Ellao's testimony, the prosecution was able to sufficiently justify the absence of an elected public official because of an out of town *barangay* summer outing.

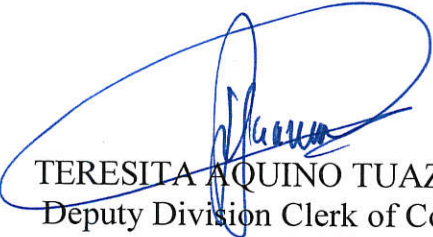
As aptly ruled by the CA, the presumption of regularity in the performance of official duties must be upheld in the absence of any clear showing that the arresting officers had ill motive to falsely testify against accused-appellants.²⁶ Like in this case, both accused-appellants denied having known or having encountered any of the members of the buy-bust team prior to their arrest, and both also failed to indict any members of the buy-bust team despite claiming that they were falsely charged with violation of RA 9165.²⁷

All told, the Court finds that the CA committed no reversible error in affirming accused-appellants' conviction. The conclusions reached are sufficiently supported by the evidence and are in accord with law and prevailing jurisprudence.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated October 22, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09985 is **AFFIRMED** *in toto*.

SO ORDERED." (BALTAZAR-PADILLA, *J.*, on official leave).

By authority of the Court:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
30 SEP 2020 9/29

²⁶ *Rollo*, p. 33.

²⁷ *Id.* at 34.

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
5th Floor, PAO-DOJ Agencies Building
NIA Road corner East Avenue
Diliman, 1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

RAFAEL GARCIA y TEJADA @ "RAP RAP" (reg)
JIMMY MACALANG y GONZALES @ "ERONG" (reg)
Accused-Appellants
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (reg)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 28
1000 Manila
(Crim. Case No. 16-32554 to 44)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-1-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR-H.C. No. 09985

Please notify the Court of any change in your address.
GR247908. 08/24/2020B(142)URES *yg/24*