



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. 246955 (People of the Philippines v. Mellany Tuazon y de Dios a.k.a. ‘Melanie Tuazon y de Dios’ a.k.a. ‘Lanie’). – Assailed in this ordinary appeal¹ is the Decision² dated August 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08936, which affirmed the November 15, 2016 Decision³ of the Regional Trial Court of Pallocan West, Batangas City, Branch 4 (RTC), finding accused-appellant Mellany Tuazon y de Dios a.k.a. “Melanie Tuazon y de Dios” a.k.a. “Lanie” (accused-appellant) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the ‘Comprehensive Dangerous Drugs Act of 2002.’

The Facts

This case stemmed from an Information⁵ filed before the RTC charging accused-appellant with the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that at around 10:00 o’clock in the evening on March 12, 2013, pursuant to a tip of a confidential informant, members of the Intelligence Section of the Batangas City Police Station successfully implemented a buy-bust operation against accused-appellant, during which, a small plastic sachet containing 0.15 gram of white crystalline substance was recovered from her. At the place of arrest, Police Officer 1 Paul Admyr Mandocdoc immediately conducted the marking and photography of the seized items. Thereafter, they brought accused-appellant and the seized items to the Barangay Hall, where they were inventoried and again photographed in the presence of Fiscal Evelyn

¹ See Notice of Appeal dated September 14, 2017; *rollo*, pp. 22-23.

² *Id.* at 3-21. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan, concurring.

³ *CA rollo*, pp. 61-65. Penned by Presiding Judge Albert A. Kalalo.

⁴ 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.

⁵ See *CA rollo*, p. 61.

Jovellanos (Fiscal Jovellanos) and Barangay *Kagawad* Armando Hernandez (*Kgwd.* Hernandez). They alleged that they tried to invite a media representative, but none was available. They then proceeded to the police station, where the necessary documents were prepared. Subsequently, the seized items were brought to the crime laboratory, which, after examination, yielded positive to *methamphetamine hydrochloride*, a dangerous drug.⁶

For her part, accused-appellant denied the charge and instead claimed that at the time of the incident, she was at her friend's house, when three (3) men suddenly entered and asked her if she was Mellany Tuazon. When she answered in the affirmative, she was asked about the drugs delivered to her, to which she replied 'what drugs?' Thereafter, the men searched the house, but could not find anything. She was then boarded into a car, where the amount of ₱6,000.00 was allegedly taken from her. Subsequently, she was brought to the police station and placed inside a room, where a female officer asked her to undress, and thereafter, put her clothes back on. Afterwards, she saw Fiscal Jovellanos arrive, followed by a police officer who carried the plastic sachet containing a white crystalline substance. She likewise alleged that the men who arrested her were different from the police officers who testified during the trial.⁷

In a Decision⁸ dated November 15, 2016, the RTC found accused-appellant **guilty** of the crime charged, and accordingly, sentenced her to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00. It held that the prosecution was able to establish all the elements of the crime charged, as well as the compliance with the chain of custody rule in handling the seized item. It did not give evidentiary weight to the sole and self-serving testimony of accused-appellant *vis-à-vis* the testimonies of the prosecution witnesses.⁹ Aggrieved, accused-appellant appealed to the CA.

In a Decision¹⁰ dated August 29, 2017, the CA affirmed the RTC ruling upon a finding that the prosecution's evidence positively proved the presence of all the elements of the crime charged. Moreover, it held that accused-appellant failed to show that the apprehending officers were impelled by any improper motive or that they did not properly perform their duty. Anent the absence of a media representative during the conduct of the inventory of the seized items, the CA held that non-compliance with Section 21 of RA 9165 did not render accused-appellant's arrest illegal, as long as the integrity and evidentiary value of the seized items were preserved, which the prosecution was able to establish in this case.¹¹

Hence, this appeal seeking that accused-appellant's conviction be overturned.

⁶ See *rollo*, pp. 4-6.

⁷ See *id.* at 6-7.

⁸ *CA rollo*, pp. 61-65.

⁹ See *id.* at 64-65.

¹⁰ *Rollo*, pp. 3-21.

¹¹ See *id.* at 9-21.

The Court's Ruling

The appeal is meritorious.

In cases of Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,¹² it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.¹³ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.¹⁴

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to 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.¹⁵ 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. In this regard, case law recognizes that “[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”¹⁶ Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.¹⁷

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 10640,¹⁸ a representative from the

¹² 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; while 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. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015])

¹³ See *People v. Crispo*, id.; *People v. Sanchez*, id.; *People v. Magsano*, id.; *People v. Manansala*, id.; *People v. Miranda*, id.; and *People v. Mamangon*, id. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

¹⁴ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

¹⁵ See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, supra note 12; *People v. Sanchez*, supra note 12; *People v. Magsano*, supra note 12; *People v. Manansala*, supra note 12; *People v. Miranda*, supra note 12; and *People v. Mamangon*, supra note 12. See also *People v. Viterbo*, supra note 13.

¹⁶ *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

¹⁷ See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

¹⁸ Entitled “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

media **and** the Department of Justice (DOJ), and any elected public official;¹⁹ 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.’²⁰ 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.’²¹

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded ‘not merely as a procedural technicality but as a matter of substantive law.’²² This is because ‘[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.’²³

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.²⁴ As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.²⁵ The foregoing is based on the saving clause found in Section 21 (a),²⁶ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.²⁷ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,²⁸ and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.²⁹

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, even if they eventually failed to

‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.’” As the Court noted in *People v. Gutierrez* (See G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro Section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; World News Section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

¹⁹ Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

²⁰ Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

²¹ See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, supra note 12. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²² See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 13, at 1038.

²³ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

²⁴ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

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

²⁶ Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**Provided, further, that non-compliance with 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 of and custody over said items[.]**” (Emphasis supplied)

²⁷ Section 1 of RA 10640 pertinently states: “**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.**” (Emphasis supplied)

²⁸ *People v. Almorfe*, supra note 25.

²⁹ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.³⁰ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.³¹ These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.³²

Notably, the Court, in *People v. Miranda*,³³ issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that '[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.'³⁴

In this case, the marking and photography of the seized items were not made in the presence of the required witnesses, *i.e.*, 'a representative from the media **and** the Department of Justice (DOJ), and any elected public official'³⁵ in light of the date of the buy-bust operation on March 12, 2013 and the applicable law at that time. Here, the Certificate of Inventory³⁶ of even date shows that only Fiscal Jovellanos, a DOJ representative, and *Kgwd.* Hernandez, an elected official, were present at the Barangay Hall to witness the inventory of the seized items.

Unfortunately, a media representative was absent thereat.³⁷ To justify this lapse in procedure, the apprehending officers claimed that they tried to invite a media representative, but no one was available.³⁸ As earlier adverted to, however, it is incumbent upon the prosecution to account for the absence of the required witnesses by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Verily, sheer statements of unavailability is undoubtedly too flimsy of an excuse and hence, would not pass the foregoing standard to trigger the operation of the saving clause.³⁹

Thus, in view of the foregoing, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized

³⁰ See *People v. Manansala*, supra note 12, at 375.

³¹ See *People v. Gamboa*, supra note 14, citing *People v. Umipang*, supra note 13, at 1053.

³² See *People v. Crispo*, supra note 12, at 376-377.

³³ Supra note 12.

³⁴ See *id.*

³⁵ Supra note 12.

³⁶ Records, p. 10.

³⁷ See CA rollo, pp. 62-63.

³⁸ Rollo, p. 5.

³⁹ See *People v. Misa*, G.R. No. 236838, October 1, 2018.

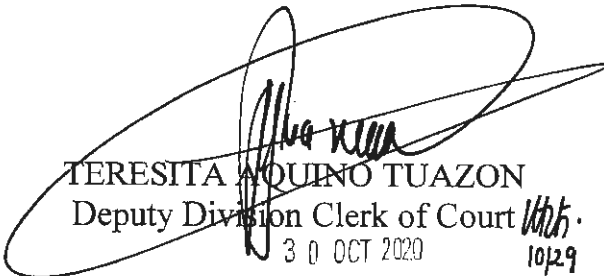
from accused-appellant were compromised, which consequently warrants her acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08936 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Mellany Tuazon y de Dios a.k.a. 'Melanie Tuazon y de Dios' a.k.a. 'Lanie' is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to: (a) cause accused-appellant's immediate release, unless she is being lawfully held in custody for any other 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 immediately.

SO ORDERED. (Baltazar-Padilla, J., on official leave.)"

By authority of the Court:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
30 OCT 2020 10:29

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HON. PRESIDING JUDGE (reg)
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(Crim. Case No. 17951)

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c/o The Superintendent
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THE SUPERINTENDENT (x)
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