



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **23 November 2020** which reads as follows:*

“G.R. No. 251140 (People of the Philippines v. John Jose Besinan y Versoza a.k.a. ‘Toyang’ and Enrique Sayson, Jr. y Besinan a.k.a. ‘Digoy’). – Before the Court is an ordinary appeal<sup>1</sup> filed by accused-appellants John Jose Besinan y Versoza a.k.a. ‘Toyang’ (Besinan) and Enrique Sayson, Jr. y Besinan a.k.a. ‘Digoy’ (Sayson; collectively, accused-appellants) assailing the Decision<sup>2</sup> dated February 28, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09123, which affirmed the Decision<sup>3</sup> dated November 7, 2016 of the Regional Trial Court of Makati City, Branch 64 (RTC) in Crim. Case Nos. R-MKT-16-01625-CR and R-MKT-16-01626-CR finding: (a) accused-appellants guilty of violation of Section 5, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002;” and (b) Besinan guilty of violation of Section 11, Article II of the same law.

**The Facts**

This case stemmed from two (2) Informations<sup>5</sup> filed before the RTC, charging accused-appellants of the crime of Illegal Sale of Dangerous Drugs, and Besinan of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, respectively, Article II of RA 9165. The prosecution alleged that at around 4:30 in the afternoon of August 17, 2016, acting on a tip given by a confidential informant, operatives of the Makati Police Station’s Anti-Illegal Drugs Special Operations Task Group successfully

<sup>1</sup> See Notice of Appeal dated March 19, 2018; *rollo*, pp. 15-16.

<sup>2</sup> Id. at 3-14. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Eduardo B. Peralta, Jr. and Ronaldo Roberto B. Martin, concurring.

<sup>3</sup> CA *rollo*, pp. 68-74. Penned by Presiding Judge Gina M. Bibat-Palamos.

<sup>4</sup> 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.

<sup>5</sup> Crim. Case No. R-MKT-16-01625-CR is for the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165 (records [Crim. Case No. R-MKT-16-01625-CR], p. 1); while Crim. Case No. R-MKT-16-01626-CR is for the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165 (records [Crim. Case No. R-MKT-16-01626-CR], p. 1).

conducted a buy-bust operation against accused-appellants along Varona St., Barangay Tejeros, Makati City, during which one (1) plastic sachet containing 0.05 gram of white crystalline substance was recovered from them. Upon apprehension, the police officers confiscated three (3) more sachets containing a total weight of 0.34 gram of the same substance from Besinan's possession. Accused-appellants were then brought to the Makati Police Station, where the seized items were marked, inventoried,<sup>6</sup> and photographed<sup>7</sup> in the presence of accused-appellants themselves, as well as Barangay Captain Teresa H. Brillante. The arresting officers sought the assistance of a representative of the National Prosecution Service (NPS) and the media, but none were available. Subsequently, the seized items were brought<sup>8</sup> to the Southern Police District Laboratory Office where, upon examination,<sup>9</sup> it tested positive for the presence of *methamphetamine hydrochloride*, or *shabu*, a dangerous drug.<sup>10</sup>

Upon arraignment, accused-appellants entered a plea of not guilty. According to Sayson, he and his cousin Besinan were in the house of their neighbor, when two (2) armed men arrived, asking him to reveal the whereabouts of a certain Ivy. He told them that he did not know anyone by that name. The armed men then searched the house and when they couldn't find anything, arrested accused-appellants. Sayson further alleged that they were arrested at around 11:00 o'clock in the evening of August 14, 2016, contrary to the claim of the prosecution that they were arrested at 4:45 in the afternoon of August 17, 2016.<sup>11</sup>

In a Decision<sup>12</sup> dated November 7, 2016, the RTC found: (a) accused-appellants guilty of the crime of Illegal Sale of Dangerous Drugs in Crim. Case No. R-MKT-16-01625-CR, and accordingly, sentenced each of them to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00, without subsidiary imprisonment in case of insolvency; and (b) Besinan guilty of Illegal Possession of Dangerous Drugs in Crim. Case No. R-MKT-16-01626-CR, and accordingly, sentenced him to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine in the amount of ₱400,000.00, without subsidiary imprisonment in case of insolvency.<sup>13</sup> It ruled that the prosecution successfully established the existence of all the elements of the crimes charged, and that the integrity and evidentiary value of the seized items had been properly preserved under the chain of custody rule. It did not give credence to accused-appellants' defense of denial and found that they failed to overcome the presumption of regularity in the handling of exhibits and proper discharge of duties by public officers.<sup>14</sup>

Aggrieved, accused-appellants appealed<sup>15</sup> to the CA.

<sup>6</sup> See Inventory Receipt dated August 17, 2016; records (Crim. Case No. R-MKT-16-01625-CR), p. 56.

<sup>7</sup> Id. at 57-58.

<sup>8</sup> See Chain of Custody Form; id. at 59.

<sup>9</sup> See Chemistry Report No. D-1184-16 dated August 17, 2016; id. at 55.

<sup>10</sup> See *rollo*, pp. 5-6.

<sup>11</sup> See id. at 6.

<sup>12</sup> CA *rollo*, pp. 68-74.

<sup>13</sup> Id. at 73-74.

<sup>14</sup> See id. at 71-74.

<sup>15</sup> See Notice of Appeal dated November 10, 2016; id. at 14-15.

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In a Decision<sup>16</sup> dated February 28, 2018, the CA affirmed the RTC ruling. It agreed with the RTC that the prosecution successfully established the existence of all the elements of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, and that accused-appellants' uncorroborated defense of denial failed to overcome the presumption of regularity in the performance of the official duties of the police officers. Moreover, it ruled that the conduct of inventory in the presence of accused-appellants and an elected public official constituted substantial compliance with Section 21 of RA 9165, it appearing that the integrity and evidentiary value of the seized evidence had been properly preserved. It ratiocinated that under justifiable circumstances, slight procedural lapses are not fatal and will not render the seized items inadmissible in evidence.<sup>17</sup>

Hence, the instant appeal.

### The Court's Ruling

The appeal is meritorious.

Preliminarily, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.<sup>18</sup> 'The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.'<sup>19</sup>

In this case, accused-appellants were charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165, and Besinan with the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of the same law. In Illegal Sale of Dangerous Drugs, it is essential that the following elements be proven: (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.<sup>20</sup> Meanwhile, in Illegal Possession of Dangerous Drugs, the following elements must be proven: (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.<sup>21</sup> Equally essential to proving the foregoing elements is establishing the identity of the dangerous drug with moral certainty, considering that the prohibited drug itself forms an integral part of the *corpus delicti* of the crime. Accordingly, the prosecution must be able to account for each link of the chain of

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<sup>16</sup> *Rollo*, pp. 3-14.

<sup>17</sup> See *id.* at 8-13.

<sup>18</sup> See *People v. Dahil*, 750 Phil. 212, 225 (2015).

<sup>19</sup> *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

<sup>20</sup> *People v. Sumili*, 753 Phil. 342, 348 (2015).

<sup>21</sup> *People v. Bio*, 753 Phil. 730, 736 (2015).

custody from the moment the illegal drugs are seized up to their presentation in court as evidence of the crime.<sup>22</sup>

In this regard, Section 21, Article II of RA 9165, as amended by RA 10640,<sup>23</sup> outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.<sup>24</sup> Section 21 mandates that the inventory and photography of the confiscated items 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,<sup>25</sup> ‘a representative from the media **and** the DOJ, and any elected public official;’<sup>26</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, ‘an elected public official and a representative of the National Prosecution Service’<sup>27</sup> **or** the media.’<sup>28</sup> The law

<sup>22</sup> See *People v. Manansala*, G.R. No. 229029, February 21, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alivio*, 664 Phil. 565, 576-580 (2011) and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

<sup>23</sup> Section 1 of RA 10640, 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 ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,’” states:

Section 1. Section 21 of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” is hereby amended to read as follows:

“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 persons 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.

X X X X”

<sup>24</sup> See *People v. Sumili*, 753 Phil. 342, 348 (2015).

<sup>25</sup> 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.

<sup>26</sup> Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

<sup>27</sup> Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE AND THE OFFICES OF THE PROVINCIAL AND CITY FISCALS, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of RA 10071, entitled “AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE” otherwise known as the “PROSECUTION SERVICE ACT OF 2010” [lapsed into law on April 8, 2010].)

<sup>28</sup> Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

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.”<sup>29</sup>

The law itself nevertheless provides an exception to exacting compliance of its procedural requirements. It states that under justifiable grounds, non-compliance shall not render void and invalid such seizures and custody over said items as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team. Thus, consistent with case law prior to the enactment of RA 10640, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165, as amended by RA 10640, does 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 justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items had been properly preserved.<sup>30</sup>

Nonetheless, as this Court has stressed in *People v. Almorfe*,<sup>31</sup> **for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**<sup>32</sup> Also, in *People v. De Guzman*,<sup>33</sup> it was emphasized 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.**<sup>34</sup>

After a judicious study of the case, the Court finds that the apprehending officers failed to sufficiently explain the reasons for their lapses, thereby putting into question the integrity and evidentiary value of the items purportedly seized from accused-appellants.

Records reveal that while the inventory and photography of the seized plastic sachets were indeed conducted, it was only in the presence of accused-appellants and an elected public official. There was no representative either from the NPS or the media as required by RA 10640, the law which applies in this case in view of the commission of the crime on August 17, 2016. This was expressly admitted by PO2 Michelle Gimena (PO2 Gimena), *viz.*:

#### PO2 Gimena on Cross-examination

[Atty. Mardane Gizelle A. De Castro]: You also earlier identified an Inventory Receipt which you said you prepared at PCP 1. I am showing to you the same Inventory Receipt. Can you tell me if there is any indication of the weight of the items No. 1 and No. 4, and the plastic sachet with white crystalline substance?

<sup>29</sup> See *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42.

<sup>30</sup> See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

<sup>31</sup> 631 Phil. 51 (2010).

<sup>32</sup> *Id.* at 60.

<sup>33</sup> 630 Phil. 637 (2010).

<sup>34</sup> *Id.* at 649.

[PO2 Gimena]: None, ma'am

Q: You did not weigh these items?

A: No, ma'am.

Q: The person who signed under the phrase "Barang[a]y Official" Teresita Brillante, what is her position?

A: She is the elected Brgy. Captain.

Q: So, aside from the Brgy. Captain, there were no other persons aside from her who witnessed the conduct of the physical inventory?

A: Yes, ma'am.

Q: **So, there was no representative from the media or DOJ?**

A: **None, ma'am, only the elected official.**

Q: But did you try to contact a media representative or DOJ representative?

A: I don't know, ma'am to the other operative if they tried to contact them, but as far as I remember, I made the inventory in front of the elected official, Brgy. Capt. Brillante.

Q: But you, personally, you did not try to contact them?

A: No, ma'am, I did not.

x x x x<sup>35</sup> (Emphases and underscoring supplied)

Thus, while the absence of the aforementioned required witnesses does not *per se* render the confiscated items inadmissible,<sup>36</sup> a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** must therefore be adduced.<sup>37</sup>

In the case at bar, PO2 Gimena's testimony that she is unaware if the other operatives tried to contact the media or the NPS and that she did not exert any effort to contact them is indicative of the lack of any genuine and sufficient effort to secure the presence of the required witnesses. With the passage of RA 10640, it

<sup>35</sup> TSN, September 7, 2016, pp. 19-20.

<sup>36</sup> *People v. Umipang*, 686 Phil 1024, 1052 (2012).

<sup>37</sup> *Id.* at 1052-1053.

bears stressing that the presence of only one (1) witness *in addition to the elected public official* – either a representative of the media or the NPS – is required. Regrettably, however, the prosecution failed to establish why they could not secure the presence of either one. Thus, there is no basis to justify non-compliance with the requirements of the law.

Verily, the procedure enshrined in Section 21, Article II of RA 9165, as amended by RA 10640, is a matter of substantive law and cannot be brushed aside as a simple procedural technicality.<sup>38</sup> For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.<sup>39</sup>

In view of the foregoing, the Court thus concludes that there has been an unjustified breach of procedure; hence, the integrity and evidentiary value of the *corpus delicti* had been compromised.<sup>40</sup> Consequently, accused-appellants' acquittal are in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x<sup>41</sup>

'In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.** Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully

<sup>38</sup> See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *id.* at 1038.

<sup>39</sup> *Gamboa v. People*, 799 Phil. 584, 597 (2016).

<sup>40</sup> See *People v. Sumili*, *supra* note 30, at 352.

<sup>41</sup> See *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988). See also *People v. Miranda*, G.R. No. 229671, January 31, 2018.

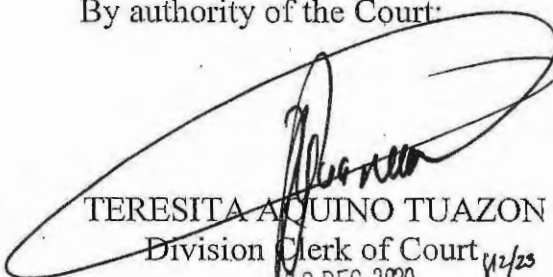
examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.<sup>42</sup>

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 28, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09123 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants John Jose Besinan y Versoza a.k.a. 'Toyang' and Enrique Sayson, Jr. y Besinan a.k.a. 'Digoy' are **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to: (a) cause accused-appellants' immediate release, unless they are 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.** (Gaerlan, J., designated Additional Member *vice* Rosario, J., per S.O. 2797-A dated November 6, 2020.)"

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court  
23 DEC 2020

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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 64  
Makati City  
(R-MKT-16-01625-CR & R-MKT-16-01626-CR)

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<sup>42</sup> See *People v. Miranda*, supra note 29.