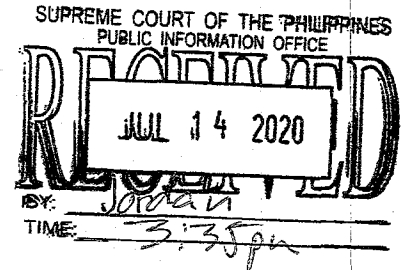




Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **February 5, 2020**, which reads as follows:*

“G.R. No. 239084 (People of the Philippines, Plaintiff-Appellee, v. Norhata Unda y Abubacar, Accused-Appellant). – The Court **NOTES** the letter dated November 20, 2019 of J/Insp. Angelina L. Bautista (ret.), Acting Superintendent of the Correctional Institution for Women, Mandaluyong City, confirming the confinement therein of accused-appellant since November 15, 2016.

This appeal¹ seeks to reverse and set aside the Decision² dated 15 December 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 09077, which affirmed the Decision³ dated 06 November 2016 of Branch 82, Regional Trial Court (RTC) of Quezon City in Criminal Case No. Q-12-179398, finding accused-appellant Norhata Unda y Abubacar (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165.⁴

Antecedents

Accused-appellant was indicted for violation of Section 5, Article II of RA 9165 in an Information, the accusatory portion of which reads:

That on or about the 29th day of October 2012, in Quezon City[,] Philippines, the above-named accused, without lawful authority, did [,] then and there[,] willfully and unlawfully[,] sell, trade, administer, dispense, deliver, give away, to another, distribute, dispatch in transit or transport or act as brokers in the said transaction[,] two [2] heat sealed transparent plastic sachet[s] containing one nine point one five six six

¹ *Rollo*, pp. 13-15.

² *Id.* at 2-12; penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Rafael Antonio M. Santos of the Special Sixteenth (16th) Division, Court of Appeals, Manila.

³ *CA rollo*, pp. 44-53; penned by RTC Presiding Judge Lyn Eborá-Cacha.

⁴ Comprehensive Dangerous Drugs Act of 2002.

(19.1566) and one nine point one two seven four (19.1274) grams with a total net weight of three eight point two eight four zero (38.2840) grams of Methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁵

Upon arraignment, accused-appellant pleaded not guilty to the charge.⁶ After pre-trial,⁷ trial on the merits ensued.

Version of the Prosecution

On 29 October 2012, acting on an information regarding the alleged illegal drug trade activities of accused-appellant in Pampanga and Quezon City, the Philippine Drug Enforcement Agency (PDEA) Regional Office III at Camp Olivas, San Fernando City, Pampanga (Camp Olivas) conducted a buy-bust operation against her in Quezon City Memorial Circle (QCMC). During the buy-bust, accused-appellant sold and handed the poseur-buyer, Intelligence Officer 1 Arnel Buena (IO1 Buena), transparent plastic sachets enclosed in a red *ampao*, containing 40 grams of suspected *shabu* worth Php168,000.00.⁸ Then and there, IO1 Paulo D. Rodriguez (IO1 Rodriguez) rushed to the scene and arrested accused-appellant. He bodily frisked her and recovered from her possession the buy-bust money.⁹

Thereafter, the team proceeded to the PDEA National Headquarters where *Barangay Kagawad* Jose Y. Ruiz, Jr. (*Brgy. Kgd. Ruiz*) witnessed the inventory¹⁰ and marking of the seized item.¹¹ IO1 Buena then brought the seized items to the crime laboratory. Per Chemistry Report No. PDEA-DD012-416,¹² the seized items tested positive for methamphetamine hydrochloride, a dangerous drug.

Version of the Defense

Accused-appellant denied the charges against her. She claimed that on 27 October 2012, while selling toys along a sidewalk at Metropolis, Alabang, Muntinlupa City, five (5) men, who introduced themselves as PDEA agents, approached and boarded her to their vehicle. She denied selling drugs when the PDEA agents asked if she was doing so. Thereafter,

⁵ Records, p. 1.

⁶ *Id.* at 36.

⁷ *Id.* at 49-50.

⁸ TSN dated 15 October 2015, pp. 3-7.

⁹ *Id.* at 7.

¹⁰ Records, p. 13.

¹¹ TSN dated 15 October 2015, pp. 8-11.

¹² Records, p. 118.

they brought her to Camp Olivas in Pampanga for investigation, and later, to Camp Karingal in Quezon City for detention.¹³

Ruling of the RTC

On 06 November 2016, the RTC rendered its Decision,¹⁴ the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered[,] finding the accused **NORHATA UNDA Y ABUBACAR Guilty** of violation of Section 5, Article II of R.A. 9165[,] and is sentenced to suffer the penalty of Life Imprisonment and to pay a Fine in the amount of Five [H]undred Thousand (P500,000.00) Pesos.

The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the dangerous drugs subject of [this] [case] for proper disposition and final disposal.

SO ORDERED.¹⁵

The RTC held that the prosecution was able to establish all the elements of the offense charged.¹⁶ IO1 Buena positively identified accused-appellant as the person who sold him Php168,000.00 worth of *shabu*.¹⁷ Moreover, it held that the arresting officers' failure to strictly comply with Section 21, Article II of RA 9165¹⁸ was excusable¹⁹ since there was substantial compliance in preserving the identity and integrity of the drugs seized.²⁰ According to the RTC, the plastic sachets seized from accused-appellant during the buy-bust operation were the same evidence tested, introduced, and testified on by the prosecution witnesses in court.²¹

Aggrieved, accused-appellant appealed to the CA.²²

¹³ TSN dated 19 October 2016, pp. 20-25.

¹⁴ CA *rollo*, pp. 44-53.

¹⁵ *Id.* at 52.

¹⁶ *Id.* at 48.

¹⁷ *Id.* at 50.

¹⁸ Section 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.

¹⁹ CA *rollo*, p. 52.

²⁰ *Id.* at 49-50.

²¹ *Id.* at 51-52.

²² Records, p. 115.

Ruling of the CA

On 15 December 2017, the CA promulgated the assailed Decision,²³ affirming accused-appellant's conviction, thus:

WHEREFORE, premises considered, the appeal is **DENIED**. The November 6, 2016 Decision of the Regional Trial Court, Branch 82, Quezon City in Criminal Case No. Q-12-179398 is **AFFIRMED**.

SO ORDERED.²⁴

The CA agreed "that the integrity and evidentiary value of the confiscated *shabu* were preserved, and any deviation from the chain of custody procedure was adequately justified."²⁵ It stressed that the law allows the apprehending team to conduct physical inventory and photography of the seized drugs at the place of arrest or the nearest police station, whichever is practicable, in case of warrantless seizures.²⁶

Hence, this appeal.²⁷

Issue

The issue is whether or not the CA correctly affirmed accused-appellant's conviction for illegal sale of dangerous drugs under RA 9165.

Ruling of the Court

We find merit in the appeal.

In every prosecution for illegal sale of dangerous drugs, the following elements must be established with moral certainty: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.²⁸ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove accused-appellant's guilt beyond reasonable doubt, hence, warranting an acquittal.²⁹

²³ *Rollo*, pp. 2-12.

²⁴ *Id.* at 11.

²⁵ *Id.*

²⁶ *Id.* at 10.

²⁷ *Id.* at 13-15.

²⁸ *People v. Goyena*, G.R. No. 229680, 06 June 2019.

²⁹ *People v. Acabo*, G.R. No. 241081, 11 February 2019.

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.³⁰ The chain of custody rule removes unnecessary doubts on the identity of the dangerous drugs presented in court.³¹

RA 9165, the applicable law at the time of the commission of the alleged offense,³² provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs in order to preserve their integrity and evidentiary value.³³ Section 21 thereof requires that the seized items be inventoried and photographed **immediately after seizure and confiscation** in the presence of the accused or his/her representative or counsel, as well as **three (3) required witnesses**, namely: (a) an elected public official, (b) a representative from the media, **AND** (d) a representative from the Department of Justice.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension.³⁴ Hence, all the required witnesses should already be physically present at the time of the conduct of the inventory of the seized items.³⁵

In this case, the prosecution failed to establish strict compliance with the mandatory requirements of Section 21.

First, the arresting officers failed to obtain the presence of all the required witnesses at the time of accused-appellant's arrest. IO1 Buela testified, *viz*:

[Fiscal Ocampo]

Q: How many were you who conducted the said operation?

[IO1 Buela]

A: [We] were six [6] including the informant.

Q: There [were] six [6] agents from the PDEA?

A: Five [5] and one [1] informant.³⁶

³⁰ *Loayon v. People*, G.R. No. 232940, 14 January 2019.

³¹ *People v. Sultan*, G.R. No. 225210, 07 August 2019.

³² As amended by RA No. 10640, "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'" approved on 15 July 2014. The law, which took effect on 07 August 2014, now requires only two (2) witnesses: an elected public official and a representative of the National Prosecution Service OR the media.

³³ *See People v. Bangcola*, G.R. No. 237802, 18 March 2019.

³⁴ *People v. Caranto*, G.R. No. 217668, 20 February 2019.

³⁵ *Id.*

³⁶ TSN dated 15 October 2015, p. 10.

Second, the transparent plastic sachets were seized from accused-appellant in QCMC but IO1 Buela marked the same only at the National Headquarters.³⁷ It must be stressed, however, that as part of the chain of custody procedure, the marking, physical inventory, and photography of the seized items must be conducted immediately after seizure and confiscation of the same.³⁸

Third, while the said deviation may be brushed aside since the law allows the marking and inventory of the seized items to be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure,³⁹ this Court nevertheless finds other unjustified deviations from the prescribed chain of custody rule. As the records bear, the arresting officers failed to photograph⁴⁰ the seized items in the presence of all the required witnesses. The photographs submitted in evidence show that the seized items were taken in the presence of *Brgy. Kgd. Ruiz* only. Similarly, the marking and inventory of the seized items were witnessed solely by the said *Kagawad*.⁴¹

It bears emphasis that the presence of the witnesses from the DOJ, media, and public elective office at the time of the apprehension and inventory is mandatory.⁴² The law imposes the said requirement because their presence is necessary to protect against the possibility of planting, contamination, or loss of the seized drug.⁴³

Admittedly, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites exist: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.⁴⁴ If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the non-compliance with the mandatory requirements of Section 21. For this saving clause to apply, however, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.⁴⁵

In this case, the saving clause does not apply since the arresting officers did not have any cogent reason for their inability to obtain the presence of all the required witnesses at the time of accused-appellant's

³⁷ *Id.* at 9.

³⁸ *See People v. Aure and Maravilla*, G.R. No. 237809, 14 January 2019.

³⁹ *See People v. Dela Victoria*, G.R. No. 233325, 16 April 2018.

⁴⁰ *Records*, p. 23.

⁴¹ TSN dated 15 October 2015, pp. 10-12.

⁴² *People v. Fulinara*, G.R. No. 237975, 19 June 2019.

⁴³ *See People v. Claudel*, G.R. No. 219852, 03 April 2019.

⁴⁴ *See People v. Caranto*, G.R. No. 217668, 20 February 2019.

⁴⁵ *Id.*

apprehension. Neither did the said officers justify the absence of the DOJ and the media representatives during the marking and inventory of the seized items.

IO1Buela further testified:

[Atty. Mison]

Q: You have no witness from the DOJ and the media. You do not know why?

[IO1 Buela]

A: We do not know, sir.

Q: Would you know the reason?

A: That was the order by our team leader, sir.⁴⁶

The lack of the required statement explaining the absence of required witnesses at the time of the apprehension, marking, and inventory in this case leaves the evidence of the prosecution in proving compliance with the chain of custody gravely wanting. Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against accused-appellant as the integrity and evidentiary value of the *corpus delicti* would have been compromised.⁴⁷

All the foregoing duly considered, this Court is constrained to acquit accused-appellant based on reasonable doubt.

WHEREFORE, the Appeal is hereby **GRANTED**. The Decision dated 15 December 2017 by the Court of Appeals in CA-G.R. CR HC No. 09077, affirming the conviction of accused-appellant **NORHATA UNDA y ABUBACAR** for the offense of illegal sale of dangerous drugs, is **REVERSED** and **SET ASIDE**. Accused-appellant is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is detained for any other lawful cause.

The Superintendent of the Correctional Institution for Women is **DIRECTED** to report to this Court the action taken hereon within five (5) days from receipt.

⁴⁶ TSN dated 15 October 2015, pp. 13-14.

⁴⁷ *Supra* at note 42.

SO ORDERED.”

Very truly yours,

Misa DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

pm 7/9/20

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1000 Manila

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134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Director General
BUREAU OF CORRECTIONS
1770 Mandaluyong City

The Superintendent
CORRECTIONAL INSTITUTION FOR WOMEN
1550 Mandaluyong City

Ms. Norhata Unda y Abubacar
c/o The Superintendent
CORRECTIONAL INSTITUTION FOR WOMEN
1550 Mandaluyong City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 82, Quezon City
(Criminal Case No. Q-12-179398)

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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 239084

-versus-

NORHATA UNDA y
ABUBACAR,
Accused-Appellant:

x-----/

ORDER OF RELEASE

TO: The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: The Superintendent
CORRECTIONAL INSTITUTION FOR WOMEN
1550 Mandaluyong City

GREETINGS:

WHEREAS, the Supreme Court on **February 5, 2020** promulgated a **Resolution** in the above-entitled case, the dispositive portion of which reads:

“**WHEREFORE**, the Appeal is hereby **GRANTED**. The Decision dated 15 December 2017 by the Court of Appeals in CA-G.R. CR HC No. 09077, affirming the conviction of accused-appellant **NORHATA UNDA y ABUBACAR** for the offense of illegal sale of dangerous drugs, is **REVERSED** and **SET ASIDE**. Accused-appellant is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is detained for any other lawful cause. *CA*”

The Superintendent of the Correctional Institution for Women is **DIRECTED** to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.”

NOW, THEREFORE, You are hereby ordered to immediately release **NORHATA UNDA y ABUBACAR** unless there are other lawful causes for which she should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **5th** day of **February 2020**.

Very truly yours,

Misael DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
2/11/20

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The Presiding Judge
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