



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 8, 2020 which reads as follows:

“G.R. No. 247004 – PEOPLE OF THE PHILIPPINES vs. ROBERTO GARQUE Y GEMUDIANO

The Case

This appeal seeks to reverse the Decision¹ dated October 30, 2018 of the Court of Appeals in CA-G.R. CEB CR HC No. 02432 affirming the conviction of appellant Roberto Garque y Gemudiano for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).²

The Proceedings Before the Trial Court

The Charges

On February 14, 2014, two (2) Informations were filed against appellant for violations of Sections 5 and 11, Article II of RA 9165, viz.:

Criminal Case No. 14-904

The Provincial Prosecutor of the Province of Guimaras accuses ROBERTO GARQUE y GEMUDIANO, resident of Brgy. Ravina, Sibunag, Guimaras, of the crime of Violation of Section 5, Art. II of Republic Act 9165, committed as follows:

That on or about the 16th day of January 2014, in the Municipality of Jordan, Province of Guimaras, Philippines, and

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¹ Penned by Associate Justice with Pamela Ann Abella Maxino and concurred in by Associate Justice Edward B. Contreras and Associate Justice Louis P. Acosta, *rollo*, pp. 5-14.

² Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

within the jurisdiction of the Honorable Court, the above-named accused, with deliberate intent and without justifiable motive, did then and there, willfully, unlawfully, and feloniously sell and distribute to a poseur-buyer, PO2 Ediben Jacildo, one (1) heat-sealed transparent plastic sachet of methamphetamine hydrochloride (shabu), a dangerous drug, weighing 0.0329 gram for Five Hundred Pesos (P500.00), without being authorized by law or permit from competent authority to sell or distribute the same.

CONTRARY TO LAW.³

Criminal Case No. 14-903

The Provincial Prosecutor of the Province of Guimaras accuses ROBERTO GARQUE y GEMUDIANO, resident of Brgy. Ravina, Sibunag, Guimaras, of the crime of Violation of Section 11, Art. II of Republic Act 9165, committed as follows:

That on or about the 16th day of January 2014, in the Municipality of San Miguel, Jordan, Province of Guimaras, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with deliberate intent and without justifiable motive, did then and there, willfully, unlawfully, and feloniously possess two (2) heat-sealed transparent plastic sachets of methamphetamine hydrochloride (shabu), a dangerous drug, with total weight of 0.0622, without being authorized by law or permit from competent authority to possess the same.

CONTRARY TO LAW.⁴

The cases were raffled to the Regional Trial Court (RTC) – Branch 65, Jordan, Guimaras. On arraignment, appellant pleaded not guilty to both charges.⁵

During the trial, PO2 Ediben Jacildo (PO2 Jacildo)⁶ of the Philippine National Police (PNP) – Guimaras Police Provincial Office, PO2 Alexander Villa (PO2 Villa)⁷ of the Jordan Municipal Police Station, IO1 Rodito Lobaton, Jr. (IO1 Lobaton)⁸ of the Philippine Drug Enforcement Agency (PDEA) – Region VI, Forensic Chemist Hernand Donado (Forensic Chemist Donado)⁹ of the PNP

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³ Record, p. 3.

⁴ *Id.* at 1.

⁵ Certificates of Arraignment dated March 17, 2014; *id.* at 28-29.

⁶ TSN, August 11, 2014.

⁷ TSN, September 15, 2014.

⁸ TSN, September 7, 2015.

⁹ TSN, August 4, 2014.

Crime Laboratory Office VI, and TV Journalist Ronelo Adolfo¹⁰ of GMA Iloilo testified for the prosecution.¹¹ On the other hand, appellant alone testified for the defense.¹²

The Prosecution's Evidence

On December 29, 2013, the Provincial Anti-Illegal Drugs Task Group (PAIDSOTG) - Guimaras received information that a certain Roberto Garque was selling illegal drugs in the vicinity of San Miguel and neighboring barangays in Jordan, Guimaras.¹³ PS/Supt. Ricardo T. Dela Paz (PS/Supt. Dela Paz) of the PNP-Guimaras Police Provincial Office directed P/Supt. Alfredo M. Calama-an (P/Supt. Calama-an) to conduct surveillance and validate the report. The surveillance yielded positive result.¹⁴

On January 16, 2014, the PAIDSOTG - Guimaras and Jordan Municipal Police Station in coordination with PDEA Region VI organized a buy-bust operation. PO2 Jacildo was designated as poseur-buyer while PO2 Villa, as back-up. The other members of the buy-bust team were IO1 Lobaton and PO3 Rodriguez. The team proceeded to the New Site Public Market, San Miguel, Jordan, Guimaras.¹⁵

Around 2 o'clock in the afternoon, the team reached the target area. There, they met the confidential informant. PO2 Jacildo and the informant proceeded in front of the Myrn's Pharmacy. On the other hand, PO2 Villa positioned himself about two (2) meters from Myrn's Pharmacy. When appellant arrived, the informant introduced PO2 Jacildo to appellant as a buyer of *shabu*. PO2 Jacildo gave ₱500 buy-bust money to the informant consisting of three (3) ₱100 bills and one (1) ₱200 bill. The informant then handed the ₱500 buy-bust money to appellant. In exchange, appellant gave one (1) small heat-sealed plastic sachet containing suspected *shabu* to the informant. PO2 Jacildo received it from the informant. Then, PO2 Jacildo raised his cap as pre-arranged signal that the sale had been consummated.¹⁶

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¹⁰ TSN, September 7, 2015.

¹¹ CA *rollo*, p. 33.

¹² *Id.* at 34.

¹³ *Id.* at 33.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Acting thereon, PO2 Villa and IO1 Lobaton immediately closed in. It was PO2 Jacildo and PO2 Villa who arrested appellant. They searched him and recovered the ₱500 buy-bust money and one (1) elongated plastic sachet containing suspected *shabu* from his pocket.¹⁷

Since the market goers had started to gather around and there was no available table which the police officers could use for the conduct of the inventory, they were constrained to move to the opposite side of the road about ten (10) meters away from the buy-bust area.¹⁸ Meanwhile, PO2 Jacildo and PO2 Villa called three (3) witness from Iloilo to proceed to Guimaras to witness the inventory.¹⁹

Around 4 o'clock in the afternoon, Brgy. Kagawad Nenita Tagarda (Brgy. Kagawad Tagarda), DOJ Representative Agnes Gamuyao (DOJ Representative Gamuyao), and media representative Adolfo arrived.²⁰ Thereupon, PO2 Villa again did a body search on appellant again and recovered another one (1) elongated plastic sachet containing suspected *shabu* from the bottom hem of appellant's pants. PO2 Villa turned it over to PO2 Jacildo to be included in the inventory to be done.²¹

During the inventory, PO2 Jacildo marked the object of the sale as "RG-BB"²² and the two (2) sachets recovered from appellant's possession as "RG-01"²³ and "RG-02",²⁴ respectively. IO1 Lobaton took pictures²⁵ of the recovered items while Brgy. Kagawad Tagarda, DOJ Representative Gamuyao, and media representative Adolfo witnessed the inventory.²⁶

Thereafter, the police officers brought appellant and the confiscated items to the Jordan Municipal Police Station.²⁷ There, the incident was entered in the blotter per entry no. 14-0047 dated January 16, 2014 signed by PO1 Kepler Abrasosa (PO1 Abrasosa) and P/Sr. Inspector Reuben Siason (P/Sr. Inspector Siason).²⁸

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¹⁷ *Id.* at 34.

¹⁸ *Id.* at 33-34.

¹⁹ TSN, September 15, 2014, pp. 8-9.

²⁰ TSN, September 7, 2015, pp. 7-8.

²¹ CA *rollo*, pp. 33-34.

²² Exhibit "J-1-a"; See Formal Offer of Exhibits dated December 7, 2015; record, pp. 244-248

²³ Exhibit "J-2"; See Formal Offer of Exhibits dated December 7, 2015; record, pp. 244-248.

²⁴ Exhibit "J-3"; See Formal Offer of Exhibits dated December 7, 2015; *id.*

²⁵ Exhibits "F-1", "F-2", "G-1" and "G-2"; See Formal Offer of Exhibits dated December 7, 2015; *id.* at 244248

²⁶ CA *rollo*, pp. 33-34.

²⁷ TSN, August 11, 2014, p. 28.

²⁸ Exhibit "C"; See also TSN, September 7, 2015, p. 17.

P/Sr. Inspector Siason prepared a request for qualitative examination which PO2 Jacildo brought to the PNP Crime Laboratory Office VI, together with the seized items for examination.²⁹

Forensic Chemist Donado found that the items yielded positive result for *methamphetamine hydrochloride*. The items marked as “RG-BB” weighed 0.0329 gram; “RG-01,” 0.0401 gram; and “RG-02,” 0.0221 gram.³⁰ He formalized his findings under Chemistry Report No. D-012-2014³¹ dated January 16, 2014.

The prosecution submitted the following evidence: (1) Joint Affidavit of Arrest of PO2 Villa and PO2 Jacildo; (2) Memorandum dated January 17, 2014 addressed to the Provincial Director of Guimaras Police Provincial Office; (3) Blotter Report under entry no. 14-0047 dated January 16, 2014; (4) Receipt of Property/Items Seized; (5) Certificate of Inventory dated January 16, 2014; (6) Photographs taken by IO1 Lobaton during the inventory; (7) Request for Laboratory Examination; (8) three (3) plastic sachets of specimen with markings “RG-BB,” “RG-01,” and “RG-02;” (9) buy-bust money; and (10) certification of marked money.³²

The Defense’s Evidence

On January 16, 2014, around 2 o’clock in the afternoon, appellant was feeding his chicken in the vicinity of his home in Barangay Ravina, Sibunag, Guimaras. Thereafter, he decided to go to the New Site Public Market to buy feeds. He only had ₱200 in his pocket. After getting off a jeepney, he went to a candy store. On his way out, PO2 Jacildo, PO2 Villa, and other two (2) police officers apprehended him. They handcuffed him without explaining why he was being arrested. The police officers searched him and slid a match box into his pocket. Then, the police officers took the same match box out of his pocket and showed him the sachets inside containing *shabu*. They accused him of buying *shabu* from the candy store.³³

Thereafter, the police officers took him to the opposite side of the road. They marked the sachets and made him sign a document but he refused. He denied owning the illegal items allegedly seized from him. Despite his denial, the police officers brought him to the Jordan Municipal Police Station where he got detained.³⁴

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²⁹ CA *rollo*, p. 34.

³⁰ *Id.*

³¹ Exhibit “I”; record, p. 19.

³² Formal Offer of Exhibits dated December 7, 2015; *id.* at 244-248.

³³ CA *rollo*, pp. 34-35.

³⁴ *Id.*

The defense did not present any documentary evidence.³⁵

The Trial Court's Ruling

Under Decision³⁶ dated August 30, 2016, the trial court convicted appellant of illegal sale of dangerous drugs under Section 5, Article II of RA 9165 but acquitted him of illegal possession of dangerous drugs under Section 11 thereof, *viz.*:

IN VIEW WHEREOF, the court finds accused Roberto Garque **GUILTY** beyond reasonable doubt in Criminal Case No. 14-1904 for Violation of Section 5 of R.A. 9165. He is sentenced to **LIFE IMPRISONMENT** and to pay a **FINE** of ₱500,000.00. Accused is **ACQUITTED** in Criminal Case No. 14-1903 for Violation of Section 11 of R.A. 9165. The items recovered from the accused are **CONFISCATED** in favor of the government to be **DESTROYED** in accordance with the provisions of R.A. 9165.

SO ORDERED.³⁷

Appellant was acquitted of illegal possession of dangerous drugs because of the hazy and conflicting testimonies of PO2 Jacildo and PO2 Villa. During the trial, there was confusion as to who between PO2 Jacildo and PO2 Villa actually recovered the sachet of *shabu* marked as "RG-01." PO2 Jacildo testified that he recovered item "RG-01" from appellant's pocket while his companion PO2 Villa found item "RG-02" purportedly in the hem of appellant's pants. PO2 Villa, on the other hand, testified he found "RG-01" not "RG-02" in the hem of appellant's pants. According to the trial court, the ambiguity in the testimonies of PO2 Jacildo and PO2 Villa, put to doubt the identity of the two (2) sachets of *shabu* marked as "RG-01" and "RG-02" allegedly found in appellant's possession.³⁸

As for the charge of illegal sale of dangerous drugs, the trial court found that the prosecution was able to establish all its elements.³⁹ There was substantial compliance with the chain of custody rule. It gave credence to the justification of the prosecution witnesses that there was a need to move to the opposite side of the road for the purpose of complying with the marking, inventory, and photographing requirements. Too, other than appellant's denial, he did

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³⁵ RTC Order dated August 15, 2016; record, p. 289.

³⁶ Penned by Judge Rosario Abigail M. Dris-Villanueva; *CA rollo*, pp. 32-39.

³⁷ *Id.* at 39.

³⁸ *Id.* at 36-39.

³⁹ Elements: (1) proof that the transaction or sale took place and, (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence; See *People v. Dela Cruz*, G.R. No. 229053, July 17, 2019.

not present any evidence to prove he was framed-up. Hence, the presumption of regularity in the performance of official duty on the part of the police officers concerned was upheld.⁴⁰

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for ruling that the elements of illegal sale of dangerous drugs under Section 5, Article II of RA 9165 were proved based on the incredible testimony of PO2 Jacildo. It was absurd for him to sell illegal drugs along a bustling road where people come and go. The trial court also overlooked the buy-bust team's failure to observe the mandatory safeguards under Section 21 of RA 9165, viz.: (1) the marking of the items was not done at the place of apprehension; (2) the prosecution failed to show how PO2 Jacildo preserved the seized items from the place of arrest until their turnover to the forensic chemist for examination; and (3) there was no testimony as to who was in custody of the items after they were examined from the crime laboratory up to their presentation in court.⁴¹

For its part, the People through the Office of the Solicitor General (OSG), countered, in the main: (1) the elements of illegal sale of dangerous drugs were present and appellant's guilt was proven beyond reasonable doubt; (2) pushers could sell prohibited drugs to any prospective customer, whether in private or public places, even during daytime; (3) the trial court's assessment of PO2 Jacildo's credibility should be respected since it was in a better position to observe his manner of testimony; and (4) the prosecution adequately showed PO2 Jacildo's unbroken possession of the sachet of *shabu* subject of the illegal sale from the time it was recovered from appellant until its turnover to the crime laboratory.⁴²

The Court of Appeals' Ruling

By Decision⁴³ dated October 30, 2018, the Court of Appeals affirmed.

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

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⁴⁰ *Rollo*, pp. 35-36.

⁴¹ Brief for the Accused-Appellant dated June 9, 2017; *CA rollo*, pp. 13-31.

⁴² Brief for the Appellee dated August 31, 2017; *id.* at 44-58.

⁴³ Penned by Associate Justice with Pamela Ann Abella Maxino and concurred in by Associate Justice Edward B. Contreras and Associate Justice Louis P. Acosta; *rollo*, pp. 5-14.

For the purpose of this appeal, both the OSG and appellant manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.⁴⁴

Issue

Did the Court of Appeals err in affirming the verdict of conviction against appellant for illegal sale of drugs?

Ruling

We acquit.

The Information⁴⁵ for illegal sale of dangerous drugs here alleged that the crime charged was committed on January 16, 2014. The governing law, therefore, is RA 9165 prior to its amendment on July 15, 2014.⁴⁶ Section 21 thereof sets out the step by step procedure to ensure preservation of the *corpus delicti* in illegal drug cases, viz:

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. – 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 drugs shall, **immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;** (Emphasis added)

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⁴⁴ Appellee's Manifestation and Motion dated September 5, 2019; *id.* at 23-25 and Appellant's Manifestation (in lieu of Supplemental Brief) dated October 18, 2019; *id.* at 33-36.

⁴⁵ Record, p. 3.

⁴⁶ 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." *Amendment to R.A. No. 9165 (Anti-Drug Campaign of the Government), Republic Act No. 10640, [July 15, 2014].*

The Implementing Rules and Regulations (IRR) of RA 9165 further commands:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official 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, 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.** (Emphases added)

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:⁴⁷ *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.⁴⁸ This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.⁴⁹

Here, records show that the arresting officers had repeatedly breached the chain of custody rule.

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⁴⁷ As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

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⁴⁸ *People v. Victoria*, G.R. No. 238613, August 19, 2019.

⁴⁹ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

First. The required witnesses only arrived two (2) hours *after* appellant had been arrested and the dangerous drugs already seized. PO2 Jacildo, PO2 Villa, IO1 Lobaton, and media representative Adolfo uniformly testified, thus:

PO2 Jacildo on direct:

Q: What time was the taking of the photographs took place?

A: **On or about 3:00 to 4:00 in the afternoon.** I cannot remember the exact time, Sir.

Q: How many seconds or minutes or hours **after the arrest of the accused?**

A: **More than an hour because the media representative come from Iloilo City.**⁵⁰

PO2 Villa on direct:

Q: Upon reaching the place just in front of the place where the accused was arrested what did you do there if any?

A: We let the accused sit and **then we called for a media and DOJ representative and likewise the barangay officials for the inventory sir.**

Q: Did the persons you mentioned (,) the barangay officials and the DOJ representative respond to your call?

A: Yes, sir.⁵¹

IO1 Lobaton on cross:

Q: Did I get you correct that you took pictures at **around past four (4:00) in afternoon** already?

A: Yes, sir.

Q: And according to the team, the drug team, they conducted the said buy-bust operation **around 2:10 in the afternoon of that day?**

A: Yes, Sir.

Q: **So more than two (2) hours ago (had) already gone and you took pictures only after the inventory (?) after two (2) hours?**

A: **Yes, Sir because we waited for the other witnesses, the media representative, elected barangay official (,) and DOJ representative.**⁵²

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⁵⁰ TSN, August 11, 2014, p. 27.

⁵¹ TSN, September 15, 2014, pp. 8-9.

⁵² TSN, September 7, 2015, pp. 7-8.

Ronelo Adolfo on re-direct:

Q: At the time you arrived at the scene where the accused was during the conduct of inventory and you were one of the witnesses in that inventory, did you notice if the accused was investigated by the police?

A: Yes (,) Sir.

Q: They investigate? Do you know what is (the) investigation about?

A: **When I arrived at the area Sir (,) they were already conducting the inventory.**⁵³

In *People v. Tomawis*,⁵⁴ the Court declared that the insulating witnesses required under Section 21 of RA 9165 ought to be present *as early as the time of arrest, viz.:*

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. xxx

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. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension** — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

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The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the **usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.**

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⁵³ *Id.* at 16.

⁵⁴ *See* G.R. No. 228890, April 18, 2018, 862 SCRA 131, 146-150.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — **does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.** (Emphasis and underscoring supplied, citations omitted)

In *People v. Castillo*,⁵⁵ the Court reiterated that the presence of the insulating witnesses *at the onset* of the arrest and seizure ensures that the items subsequently inventoried, photographed, examined, and presented in Court are the same items initially obtained from the accused, thus:

Here, the absence of witnesses during seizure and marking casts reasonable doubt on the actual origin and identity of the drugs introduced in evidence as those allegedly seized from accused-appellant. Ultimately, this same absence casts reasonable doubt on accused-appellant's guilt for the offenses with which he is charged.

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Having third-party witnesses present only during the subsequent physical inventory and photographing renders the whole requirement of their presence futile. Securing third-party witnesses provides a layer of protection to the integrity of the items seized and forecloses any opportunity for the planting of dangerous drugs. Having their presence only at a very late stage reduces them to passive automatons, xxx. (Emphasis supplied)

Further, *People v. Galuken*⁵⁶ ordained that the “*calling in*” of the required witnesses at the place of inventory albeit only for the purpose of signing the Inventory Receipt is not sufficient compliance with the mandatory requirements of the law, thus:

xxx none of the required witnesses was present at the place of arrest. The police officers merely called-in a Barangay Kagawad and media representative when they were already at the police station to sign the inventory receipt which they had already prepared prior to the arrival of said witnesses. Thus, it is clear that they failed to comply with the mandatory requirements of the law.

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⁵⁵ See G.R. No. 238339, August 7, 2019.

⁵⁶ See G.R. No. 216754, July 17, 2019.

Time and again, the Court has held that the practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — **does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.** (Emphasis supplied)

Here, none of the required witnesses were present at the time of appellant’s arrest and the subsequent seizure of the alleged *shabu*. The apprehending officers even admitted that the three (3) required witness were only “called in.” They waited for them before they conducted the inventory. The witnesses only came around 4 o’clock in the afternoon or after two (2) hours had passed from the time the buy-bust operation started at 2 o’clock. Within the span of two (2) hours, a lot could have happened. In such an environment, police impunity becomes inherent⁵⁷ so much so that even where evidence was planted, it would be *virtually impossible* for appellant to overcome the oft-favored testimony of the police officers through a mere denial.⁵⁸

Tañamor v. People,⁵⁹ elucidates that the requirement of the presence of the insulating witnesses at the time of arrest and seizure can be easily complied with by the buy-bust team considering that the buy-bust operation is, by its nature, *a planned activity*. The police officers could have complied with the requirements of the law had they intended to, since they had days to secure the attendance of the required witnesses. They even had the time to conduct both surveillances and a test-buy prior to the actual buy-bust. The fact that the apprehending team had days to plan and do surveillances renders the absence of the insulating witnesses at the place of operation inexcusable. The prosecution’s failure to even acknowledge this lapse let alone justify it leaves excusing it unlikely.⁶⁰

Notably, the buy-bust team here received the confidential information on December 29, 2013 – *seventeen (17) days* before the actual buy-bust operation took place on January 16, 2014. Undeniably, the buy-bust team had more than enough time to make the necessary arrangements to ensure the presence of the insulating witnesses at the time of appellant’s arrest.⁶¹ But the buy-bust team did not.⁶²

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⁵⁷ See *People v. Luna*, G.R. No. 219164, March 21, 2018, 860 SCRA 1, 26-27.

⁵⁸ *Id.*

⁵⁹ G.R. No. 228132, March 11, 2020.

⁶⁰ *Id.*

⁶¹ See *People v. Manabat*, G.R. No. 242947, July 17, 2019.

⁶² See *People v. Posos*, G.R. No. 226492, October 2, 2019.

Clearly, the *first link* of the chain of custody rule here had been breached.

Second. There is nothing on record showing how the seized drug was handled, stored, and secured before, during, and after it came to the custody of Forensic Chemist Donado. The testimony of Forensic Chemist Donado only covered his findings on the drug sample submitted by PO2 Jacildo based on his Chemistry Report No. D-012-2014. He did not discuss how he handled the dangerous drug from the time he received it until the time it got presented in court. There was also no description of the method he utilized in analyzing the chemical composition of the drug sample.

In *People v. Onamus*,⁶³ the Court decreed that it is of paramount necessity in drug related cases that the forensic chemist testifies on the details pertaining to the handling and analysis of the dangerous drug submitted for examination *i.e.*, when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen. Otherwise, the *fourth link* of the chain of custody rule is breached, as in this case.

In view of the repeated breach of the chain of custody rule in this case, the integrity and evidentiary value of the *corpus delicti* are deemed compromised, as well. Consequently, a verdict of acquittal is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated October 30, 2018 of the Court of Appeals in CA-G.R. CEB CR HC No. 02432 is **REVERSED** and **SET ASIDE**.

Appellant **ROBERTO GARQUE y GEMUDIANO** is **ACQUITTED** in Criminal Case No. 14-1904 for illegal sale of dangerous drugs under Section 5, Article II of Republic Act No. 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to cause the immediate release of **Roberto Garque y Gemudiano** from custody unless he is being held for some other lawful cause, and to submit his report on the action taken within five (5) days from notice.

Let an entry of final judgment be issued immediately.


- over -

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⁶³ G.R. No. 223036, July 10, 2019.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *546*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
180-B

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals
6000 Cebu City
(CA-G.R. CEB CR HC No. 02432)

The Hon. Presiding Judge
Regional Trial Court, Branch 65
Jordan, 5045 Guimaras
(Crim. Case No. 14-1904)

PUBLIC ATTORNEY’S OFFICE
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Mr. Roberto G. Garque (x)
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

The Director General (x)
Bureau of Corrections
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