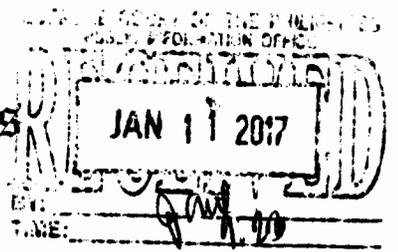




Republic of the Philippines  
 Supreme Court  
 Manila



FIRST DIVISION

ANTONIO GAMBOA y DELOS SANTOS,

G.R. No. 220333

Petitioner,

Present:

- versus -

SERENO, C.J., Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PERLAS-BERNABE, and  
 CAGUIOA, \* JJ.

PEOPLE OF THE PHILIPPINES,

Respondent.

Promulgated:

**NOV 14 2016**

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DECISION

**PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari*<sup>1</sup> filed by petitioner Antonio Gamboa y Delos Santos (Gamboa) assailing the Decision<sup>2</sup> dated May 28, 2015 and the Resolution<sup>3</sup> dated August 25, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35709, which affirmed the Decision<sup>4</sup> dated September 25, 2012 of the Regional Trial Court of Angeles City, Branch 62 (RTC) in Crim. Case Nos. 03-171, 03-172, and 03-173 finding Gamboa and Elizabeth Musni y Sarona (Elizabeth) guilty beyond reasonable doubt of violating Section 11,<sup>5</sup> Article II of Republic Act No. (RA) 9165,<sup>6</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

\* On leave.

<sup>1</sup> *Rollo*, pp. 10-28.

<sup>2</sup> *Id.* at 35-44. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy concurring.

<sup>3</sup> *Id.* at 47-48.

<sup>4</sup> *Id.* at 69-82. Penned by Judge Gerardo Antonio P. Santos.

<sup>5</sup> The pertinent portion of Section 11, Article II provides:

Section 11. *Possession of Dangerous Drugs.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless

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### The Facts

The instant case stemmed from three (3) Informations filed before the RTC accusing Gamboa and Elizabeth of violating Sections 11 and 12, Article II of RA 9165, viz.:

#### **Criminal Case No. 03-171**<sup>7</sup>

That on or about the 1<sup>st</sup> day of May 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, [Elizabeth], did then and there willfully, unlawfully and feloniously have in her possession, custody and control one (1) small transparent plastic sachet containing Methamphetamine Hydrochloride (SHABU) weighing more or less FIVE TENTHS (5) OF A GRAM, which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.

#### **Criminal Case No. 03-172**<sup>8</sup>

That on or about the 1<sup>st</sup> day of May 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, [Gamboa], did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) small transparent plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE (SHABU), weighing more or less FIVE TENTHS (5) OF A GRAM, which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.

#### **Criminal Case No. 03-173**<sup>9</sup>

That on or about the 1<sup>st</sup> day of May 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, [Elizabeth and Gamboa], conspiring and confederating together and mutually aiding and abetting each other, without authority whatsoever, did then and there willfully, unlawfully and feloniously have in their possession and control a

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authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

<sup>6</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."

<sup>7</sup> *Rollo*, pp. 69-70.

<sup>8</sup> Records, p. 11.

<sup>9</sup> Id. at 21-22.

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lighter, empty pieces of small plastic sachet with *shabu* residue, crumpled aluminum foils, scissor[s], empty plastic packets and improvised tin burner, which are fit or intended for smoking, consuming, administering or introducing any dangerous drug into the body.

CONTRARY TO LAW.

The prosecution alleged that at around 6 o'clock in the evening of May 1, 2003, Police Officer I (PO1) Wendy Sahagun (PO1 Sahagun) and Senior Police Officer I (SPO1)<sup>10</sup> Roberto Manuel (SPO1 Manuel) received information from a confidential informant (agent) that a certain Jun Negro (Negro) was engaged in illegal drug activity in Angeles City. They relayed the information to their Deputy Chief, Inspector Elaine Villasis (P/Insp. Villasis),<sup>11</sup> who then formed a buy-bust team composed of herself, SPO1 Manuel, PO3 Jerry Espadera, a certain PO2 Lagman, PO1 Sahagun, and the agent. PO1 Sahagun was designated as the poseur-buyer and was provided with two (2) ₱100.00 bills as buy-bust money, while the rest would serve as back-up officers. At around 6:30 o'clock in the evening, the buy-bust team proceeded to the target area at Hadrian Extension 3, Sitio Ipil-Ipil, Pulung Maragul, Angeles City.<sup>12</sup>

Upon their arrival at the target area, PO1 Sahagun and the agent encountered Negro. They approached him and the agent told him that they wanted to buy ₱200.00 worth of *shabu*. Negro then handed a plastic sachet containing suspected *shabu* to PO1 Sahagun and, in exchange, she gave him the buy-bust money. With the sale consummated, she executed the pre-arranged signal – by placing her hand on top of her head – prompting the back-up officers to rush in and arrest Negro. Negro, however, sensed that something was afoot and ran into a nearby house. PO1 Sahagun gave chase, but Negro managed to elude her. Inside the house, she discovered Gamboa and Elizabeth seated by a table which had *shabu* paraphernalia on top, and accordingly, arrested them with the assistance of the back-up officers. PO1 Sahagun frisked Elizabeth and recovered one (1) plastic sachet containing *shabu* residue from her pockets, while SPO1 Manuel confiscated one (1) plastic sachet of *shabu* from Gamboa.<sup>13</sup> They were then brought to the police station together with the seized items. At the office, PO1 Sahagun marked the sachet subject of the sale and the one she seized from Elizabeth with “WPS” A and B, respectively, while SPO1 Manuel marked the sachet he confiscated from Gamboa with “RLM.”<sup>14</sup> Thereafter, they prepared the request for laboratory examination<sup>15</sup> dated May 2, 2003, among other necessary documents.<sup>16</sup> The next day, SPO1 Manuel delivered the seized items to the crime laboratory for examination, which was examined by

<sup>10</sup> “PO3” in some parts of the records.

<sup>11</sup> See records, p. 73.

<sup>12</sup> See *id.* at 37-38 and 72-73.

<sup>13</sup> See *id.* at 38 and 73-74.

<sup>14</sup> See TSN, October 7, 2003, pp. 6-8.

<sup>15</sup> Prosecution’s Documentary Exhibits, p. 2.

<sup>16</sup> See TSN, February 17, 2005, p. 12.

Forensic Chemist Divina Mallare Dizon,<sup>17</sup> who found that the seized sachets contained methamphetamine hydrochloride or *shabu*, an illegal drug.<sup>18</sup>

In his defense, Gamboa denied the charges leveled against him. He claimed that at around 6 o'clock in the evening of May 1, 2003, he was at Rolly Musni's (Rolly) house to pick up the television set he had dropped off for repairs. As he was chatting with Rolly outside the latter's house, two (2) men came and dragged them inside the house, where they were frisked along with Elizabeth and, thereupon, made it appear that illegal drugs were recovered from them. Thereafter, they were all handcuffed and taken to the police station.<sup>19</sup>

Upon arraignment, Elizabeth and Gamboa pleaded not guilty to the charges against them.<sup>20</sup> While awaiting trial, Elizabeth jumped bail.<sup>21</sup>

### The RTC Ruling

In a Decision<sup>22</sup> dated September 25, 2012, the RTC found Gamboa and Elizabeth guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165 in Crim. Case Nos. 03-171 and 03-172, for illegal possession of dangerous drugs and sentenced them to each suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years, and to pay a fine in the amount of ₱300,000.00.<sup>23</sup>

The RTC held that a valid buy-bust operation had been conducted, and the subsequent warrantless arrests were lawful. It noted that although the officers failed to mark the items at the scene of the crime and instead, brought them to the police station where they were marked and thereafter, to the crime laboratory for examination, they were able to preserve their integrity and identity. However, it dismissed the charge of illegal possession of drug paraphernalia against Gamboa and Elizabeth in Crim. Case No. 03-173 for the prosecution's failure to establish who had actual control or possession of the same.<sup>24</sup>

Aggrieved, Gamboa elevated his conviction before the Court of Appeals (CA).<sup>25</sup>

<sup>17</sup> See *id.* at 14-15. See also *rollo*, p. 76; and Prosecution's Documentary Exhibits, p. 1. "Divina Mallari-Dizon" in some parts of the records.

<sup>18</sup> See *rollo*, pp. 38-39, 73-74, and 76. See also Chemistry Report No. D-176-2003; Prosecution's Documentary Exhibits, p. 1.

<sup>19</sup> *Id.* at 39.

<sup>20</sup> See Orders dated May 29, 2003 and June 24, 2003 penned by Judge Melencio W. Claros; records, pp. 33 and 47, respectively.

<sup>21</sup> *Rollo*, p. 79.

<sup>22</sup> *Id.* at 69-82.

<sup>23</sup> *Id.* at 81.

<sup>24</sup> See *id.* at 78-81.

<sup>25</sup> See Notice of Appeal dated December 3, 2012; records p. 277.

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### The CA Ruling

In a Decision<sup>26</sup> dated May 28, 2015, the CA affirmed the RTC ruling *in toto*,<sup>27</sup> finding that the prosecution had established beyond reasonable doubt that Gamboa illegally possessed dangerous drugs in violation of Section 11, Article II of RA 9165.<sup>28</sup>

The CA held that a valid buy-bust operation was conducted despite the lack of coordination with the Philippine Drug Enforcement Agency (PDEA). It opined that the buy-bust operation was an *in flagrante delicto* arrest sanctioned by Section 5, Rule 113 of the Revised Rules of Criminal Procedure. It gave no credence to Gamboa's claim that the police officers' failure to abide by Section 21 of RA 9165 was fatal to the case, considering that the seized items may be marked at the nearest police station or office of the apprehending team instead of the place of arrest. Further, the absence of inventory or photographs neither raised doubts as to the identity of the illegal drugs seized nor rendered the same inadmissible as evidence, as the integrity and evidentiary value of the same had been preserved. Consequently, it ruled that the prosecution had shown an unbroken chain of custody over the illegal drugs confiscated from Gamboa.<sup>29</sup>

Unperturbed, Gamboa moved for reconsideration,<sup>30</sup> which was, however, denied by the CA in a Resolution<sup>31</sup> dated August 25, 2015; hence, the instant petition.

### The Issue Before the Court

The issue for the Court's resolution is whether or not Gamboa's conviction for illegal possession of dangerous drugs defined and penalized under Section 11, Article II of RA 9165 should be upheld.

### The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and 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>32</sup> The appeal confers the appellate court full

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<sup>26</sup> *Rollo*, pp. 35-44.

<sup>27</sup> *Id.* at 44.

<sup>28</sup> *See id.* at 39-44.

<sup>29</sup> *See id.* at 40-44.

<sup>30</sup> *See* motion for reconsideration dated July 2, 2015; *CA rollo*, pp. 109-119.

<sup>31</sup> *Rollo*, pp. 47-48.

<sup>32</sup> *See People v. Dahil*, G.R. No. 212196, January 12, 2015, 745 SCRA 221, 233.

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jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>33</sup>

In this case, Gamboa was charged with illegal possession of dangerous drugs under Section 11, Article II of RA 9165. In order to secure the conviction of an accused charged with illegal possession of dangerous drugs, the prosecution must prove that: (a) the accused was in possession of an item or object identified as a dangerous drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>34</sup>

Notably, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.<sup>35</sup>

In his petition before the Court, Gamboa averred that the police officers violated Section 21, Article II of RA 9165 and its Implementing Rules and Regulation (IRR) in that: (a) no photographs of the *shabu* and drug paraphernalia were taken; (b) the marking and inventory were not done at the place of search and in the presence of the accused or his representative; (c) no representative from the Department of Justice and any elected official were present when SPO1 Manuel marked and inventoried the seized items; (d) the confiscated drugs and drug paraphernalia were not brought to the PDEA Forensic Laboratory or PNP Crime Laboratory within twenty four (24) hours from the time of seizure; and (e) the prosecution failed to show an unbroken chain of custody over the items purportedly seized from him, among others.<sup>36</sup>

Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve its integrity and evidentiary value.<sup>37</sup> Under the said section, the apprehending team shall, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a**

<sup>33</sup> *People v. Comboy*, G.R. No. 218399, March 2, 2016, citing *Manansala v. People*, G.R. No. 215424, December 9, 2015.

<sup>34</sup> *People v. Bio*, G.R. No. 195850, February 16, 2015, 750 SCRA 572, 578.

<sup>35</sup> See *People v. Viterbo*, G.R. No. 203434, July 23, 2014, 730 SCRA 672, 680.

<sup>36</sup> *Rollo*, pp. 21-23.

<sup>37</sup> *People v. Sumili*, G.R. No. 212160, February 4, 2015, 750 SCRA 143, 150-151.

**copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.**<sup>38</sup> The IRR of RA 9165 mirror the content of Section 21, Article II of the same law, but adds that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21, Article II– under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.<sup>39</sup>

As a general rule, the apprehending team must strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR. However, their failure to do so does not *ipso facto* render the seizure and custody over the items as void and invalid if: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>40</sup> **The aforementioned saving clause in Section 21, Article II of the IRR of RA 9165 applies only where the prosecution has recognized the procedural lapses on the part of the police officers or PDEA agents, and thereafter explained the cited justifiable grounds; after which, the prosecution must show that the integrity and evidentiary value of the seized items have been preserved.**<sup>41</sup>

In the instant case, PO1 Sahagun and SPO1 Manuel marked and inventoried the seized items upon arrival at the police station. However, their testimonies failed to show that they took photographs of the said items and that Gamboa, or his representative, was able to observe or, at the very least, knew that the confiscated items were being marked. They were likewise silent as to the presence of the other required witnesses, *i.e.*, the representative from the Department of Justice (DOJ) and any elected public official.<sup>42</sup> An examination of the records would similarly show that the prosecution did not offer the photographs of the seized items.<sup>43</sup>

As stated earlier, the IRR of RA 9165 provides a saving clause which permits minor deviations from the procedure. In order for the said saving clause to be effective, the prosecution must first recognize any lapses on the part of the police officers and justify the same.<sup>44</sup> Here, the prosecution failed to acknowledge the shortcomings of the apprehending team in complying with Section 21, Article II of RA 9165 and its IRR. It was silent on the absence of a representative from the DOJ and an elected public official to

<sup>38</sup> See Section 21 (1) and (2), Article II of RA 9165.

<sup>39</sup> See Section 21 (a) and (b), Article II of the IRR of RA 9165.

<sup>40</sup> See *People v. Viterbo*, supra note 34, at 683.

<sup>41</sup> See *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

<sup>42</sup> See TSN, October 7, 2003, pp. 19-22. See also TSN, February 17, 2005, pp. 12-14.

<sup>43</sup> See Formal Offer of Evidence dated June 23, 2005; records, pp. 147-149.

<sup>44</sup> See *People v. Alagarme*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 329.

witness the inventory and receive copies of the same. Similarly unexplained was the dearth of photographs of the seized items, which could have taken place in the police station where they were marked and inventoried.

Further, the items were delivered to the PNP Crime Laboratory beyond twenty four (24) hours from seizure. The items were seized on May 1, 2003 and were delivered only on May 3, 2003,<sup>45</sup> without any acknowledgment on the part of the prosecution of such deviation, and without explanation from the police officers. Worse, SPO1 Manuel and PO1 Sahagun both failed to identify the custodian of the seized items during the intervening period, where they were kept, and how they were secured. When police officers do not turn over dangerous drugs to the laboratory within twenty-four (24) hours from seizure, they must identify its custodian, and the latter must be called to testify. The custodian must state the security measures in place to ensure that the integrity and evidentiary value of the confiscated items were preserved,<sup>46</sup> which did not take place in this case.

All told, the breaches of the procedure contained in Section 21, Article II of RA 9165 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.<sup>47</sup> Case law states that, the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.<sup>48</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.

With the foregoing pronouncement, the Court finds petitioner's acquittal in order. As such, it is unnecessary to delve into the other issues raised in this case.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated May 28, 2015 and the Resolution dated August 25, 2015 of the Court of Appeals in CA-G.R. CR No. 35709 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Antonio Gamboa y Delos Santos is **ACQUITTED** of the crime charged.

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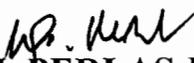
<sup>45</sup> See Chemistry Report No. D-176-2003 dated May 3, 2003 examined by Forensic Chemical Officer, P/Insp. Divina Mallare Dizon and Request for Laboratory Examination dated May 2, 2003 signed by P/Insp. Villasis; Prosecution's Documentary Exhibits, pp. 1-2.

<sup>46</sup> See *People v. Abetong*, G.R. No. 209785, June 4, 2014, 725 SCRA 304, 312-320.

<sup>47</sup> See *People v. Sumili*, supra note 34, at 152 and 154.

<sup>48</sup> See *People v. Umipang*, supra note 40, at 1038-1039; citations omitted.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

On leave  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice