Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

AMRODING LINDONGAN *y* AMPATUA, Petitioner,	**UDK-16615**
- versus -	Present: PERLAS-BERNABE, *S.A.J.*, Chairperson, GESMUNDO, LAZARO-JAVIER, LOPEZ, and ROSARIO, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated: FEB 15 2021

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 28, 2018 and the Resolution[3] dated July 25, 2018 rendered by the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08782, which affirmed *in toto* the Judgment[4] dated May 17, 2016 of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 45 (RTC) in Crim. Case No. U-16620 finding petitioner Amroding Lindongan *y* Ampatua (Lindongan) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs under Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise

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1 See Lindongan's letter treated as a petition for review on *certiorari*; *rollo*, pp. 4-5.

2 CA *rollo*, pp. 129-138. Penned by Presiding Justice Romeo F. Barza with Associate Justices Stephen C. Cruz and Carmelita Salandanan Manahan, concurring.

3 Id. at 166-168.

4 Id. at 45-53. Penned by Presiding Judge Tita S. Obinario.

5 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.

known as the "Comprehensive Dangerous Drugs Act of 2002." Likewise assailed is the Resolution[6] dated January 27, 2020 of the CA denying petitioner's Motion to Recall Entry of Judgment and Notice of Appeal.

The Facts

The present case stemmed from an Information[7] filed before the RTC charging Lindongan with Illegal Sale of Dangerous Drugs, as defined and penalized under Section 5, Article II of RA 9165, the accusatory portion of which reads:

> That on or about 2:00 o'clock dawn of December 21, 2009 at Doña Loleng Village, Brgy. Nancayasan, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) heat sealed plastic sachet containing Methamphetamine Hydrochloride (*SHABU*), weighing 0.054 gram, a dangerous drug.
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> CONTRARY to Section 5, Article II, R.A. 9165.[8]

The prosecution alleged that in the wee hours of the morning of December 21, 2009, acting upon a tip from a confidential informant about the illegal drug peddling activities of a certain "Amron" – later identified as Lindongan – at Doña Loleng Village, Barangay Nancayasan, Urdaneta City, Pangasinan, several operatives of the Intel Division of the Drug Enforcement Unit of the Urdaneta City Police, led by Police Officer 2 Marman E. Dela Cruz (PO2 Dela Cruz) as poseur buyer, successfully implemented a buy-bust operation against Lindongan. The buy-bust team was immediately dispatched at the target area; PO2 Dela Cruz, accompanied by the confidential informant, positioned themselves at a pathway near a mosque to wait for Lindongan. Upon Lindongan's arrival, he asked PO2 Dela Cruz, "*Magkano ang bibilhin mo?*" to which the latter replied, "₱300.00." Lindongan then produced a brown leather purse containing a plastic sachet of suspected *shabu*, which he handed to PO2 Dela Cruz, who in turn, gave the former the marked money. After PO2 Dela Cruz performed the pre-arranged signal, the rest of the buy-bust team rushed to the scene and apprehended Lindongan. The arresting officers apprised him of his constitutional rights and violation. PO2 Dela Cruz was able to recover the plastic sachet containing white crystalline substance as well as the buy-bust money from Lindongan.[9]

Thereafter, Lindongan and the confiscated items were brought to the police station where PO2 Dela Cruz and Police Officer 3 Danny A. Ventura

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6 CA *rollo*, pp. 200-202. Penned by Associate Justice Stephen C. Cruz with Associate Justices Celia C. Librea-Leagogo and Rafael Antonio M. Santos, concurring.

7 Records, p. 1.

8 Id.

9 See CA *rollo*, pp. 48 and 130-131.

(PO3 Ventura) marked the plastic sachet with their respective initials, "MEC" and "DAV" in the presence of Lindongan. Likewise, after preparing the Joint Affidavit of Arrest,[10] Confiscation Receipt,[11] Coordination Form,[12] and Request for Laboratory Examination,[13] they conducted the inventory[14] and photography[15] in the presence of Lindongan.[16] PO3 Ventura then brought the seized items and the Confiscation Receipt to the barangay hall for the signature of Barangay Captain Gerola, but the latter refused to sign.[17] Subsequently, PO2 Dela Cruz brought the seized items to the Philippine National Police Crime Laboratory for qualitative examination, which was received by Police Officer 3 Marie June Milo, who then turned over the confiscated item to Police Chief Inspector Emelda B. Roderos (PCI Roderos), the forensic chemist.[18] After qualitative examination,[19] the contents tested positive for 0.054 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug. PCI Roderos placed her markings on the specimen before turning it over to NUP Merceditas C. Velasco, who had custody thereof before PCI Roderos retrieved the same for presentation in court.[20]

In defense, Lindongan claimed that at around 6:30 in the evening of December 20, 2009, he was in front of his house at Doña Loleng Village talking with his fellow Muslims when a black car suddenly stopped nearby where three (3) persons disembarked and approached him. One of them, whom he recognized as a police officer, frisked him and confiscated a cellphone and some cash. When he asked why he was being frisked, there was no answer. Thereafter, he was brought to the police station where he was asked to settle his case.[21]

In a Judgment[22] dated May 17, 2016, the RTC found Lindongan **guilty** beyond reasonable doubt of the crime charged and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[23] The RTC found that the prosecution was able to prove all the elements of the crime of Illegal Sale of Dangerous Drugs and that the chain of custody of the seized items had been observed. Conversely, the RTC rejected Lindongan's uncorroborated defense and asserted that there was no reason for the police to single him out if, as he claimed, he was speaking with a group of people when he was arrested.[24]

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10 Dated December 21, 2009. Records, pp. 5-6.
11 Dated December 21, 2009. Id. at 9.
12 Dated December 21, 2009. Id. at 21.
13 Dated December 21, 2009. Id. at 7.
14 See Confiscation Receipt dated December 21, 2009; id. at 9.
15 Id. at 10-19.
16 See CA *rollo*, pp. 48-49 and 131.
17 See id. at 50.
18 See id. at 49 and 131.
19 See Chemistry Report No. D-103-2009-U dated December 21, 2000; records, p. 8.
20 See CA *rollo*, pp. 50 and 131-132.
21 See id. at 50-51 and 132.
22 Id. at 45-53.
23 Id. at 53.
24 See id. at 51-53.

On appeal to the CA, Lindongan's conviction was **affirmed *in toto*** in a Decision[25] dated February 28, 2018 upon a finding that all the elements of the crime charged had been successfully proven, the chain of custody rule had been complied with, and the presumption that official duty had been performed by the arresting officers was not overcome.[26]

Lindongan's motion for reconsideration [27] was **denied** in a Resolution[28] dated July 25, 2018. In the absence of any appeal filed before the Court, the CA's February 28, 2018 Decision attained finality on August 30, 2018 per Entry of Judgment[29] dated January 17, 2019. This prompted Lindongan to file, assisted by the Humanitarian Paralegal Assistance of the New Bilibid Prison, a Motion to Recall Entry of Judgment and Notice of Appeal[30] on March 13, 2019 before the CA, explaining that he has been exerting efforts to contact his counsel of record, Atty. Ernesto T. Buquing (Atty. Buquing), even from the time the CA rendered its Decision, but to no avail. Asserting that Atty. Buquing abandoned his appeal to the Court, Lindongan pleaded reconsideration from the CA.[31]

However, in a Resolution[32] dated January 27, 2020, the CA **denied** his motion. While admitting the fact that Lindongan had already lost communication with his counsel on record, the CA nonetheless ascribed fault upon Lindongan for his failure to secure the services of a new counsel before its February 28, 2018 Decision became final. As such, the CA held that Lindongan is now barred from availing of post-conviction remedies.[33]

Hence, the present petition filed by Lindongan sans the assistance of counsel.

The Issue Before the Court

The essential issue for the Court's resolution is whether the CA correctly: (*a*) denied Lindongan's Motion to Recall Entry of Judgment and Notice of Appeal; and (*b*) affirmed Lindongan's conviction for Illegal Sale of Dangerous Drugs.

The Court's Ruling

The petition is meritorious.

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25 Id. at 129-138.
26 See id. at 134-137.
27 Dated March 27, 2018. Id. at 145-152.
28 Id. at 166-168.
29 Id at 181.
30 Dated February 16, 2019. Id. at 182-183.
31 See id.
32 Id. at 200-202.
33 See id. at 201-202.

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At the outset, it bears stressing that, as a rule, "a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land."[34] However, "[the] Court has relaxed this rule in order to serve substantial justice considering (*a*) matters of **life, liberty**, honor or property, (*b*) the existence of **special or compelling** circumstances, (*c*) the **merits** of the case, (*d*) a cause **not entirely attributable to the fault or negligence of the party** favored by the suspension of the rules, [and] (*e*) a **lack of any showing that the review sought is merely frivolous** and dilatory."[35]

In relation thereto, the general rule is that the negligence of counsel binds the client, even on mistakes in the application of procedural rules. However, this rule should not apply "when the reckless or gross negligence of the counsel deprives the client of due process of law"[36] or of his liberty or property, and where the interest of justice so requires.[37]

Finding the existence of all the above-enumerated considerations justifying the relaxation of the rule on immutability of judgments in this case, as well as the acknowledged fact that Lindongan exerted efforts not just to contact Atty. Buquing for the purpose of pursuing his appeal, but also to file such appeal even without the assistance of counsel at the soonest time possible,[38] the Court finds it proper to: (*a*) recall the CA's Entry of Judgment dated January 17, 2019; (*b*) consider Lindongan's notice of appeal filed; and (*c*) resolve the case on the merits, in the interest of justice.

A meticulous review of the records reveals glaring lapses committed by the arresting officers in complying with the chain of custody rule, particularly with respect to the witness requirement.

In cases for Illegal Sale of Dangerous Drugs under RA 9165,[39] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[40] Failing to prove the integrity of the *corpus*

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34 *Barnes v. Judge Padilla*, 482 Phil. 903, 915 (2004).

35 Id.; emphases supplied.

36 *Ong Lay Hin v. CA*, 752 Phil. 15, 23-24 (2015).

37 See *Curammeng v. People*, 799 Phil. 575, 582-583 (2016), citing *City of Dagupan v. Maramba*, 738 Phil. 71, 87 (2014).

38 The Entry of Judgment was issued on January 17, 2019 and Lindongan's Motion to Recall Entry of Judgment and Notice of Appeal was filed on March 13, 2019 (see CA *rollo*, pp. 181-182).

39 The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. (See *People v. Crispo*, 828 Phil. 416, 429 (2018); *People v. Sanchez*, 827 Phil. 457, 465 (2018); *People v. Magsano*, 826 Phil. 947, 958 [2018]; *People v. Manansala*, 826 Phil. 578, 586 [2018]; *People v. Miranda*, 824 Phil. 1042, 1050 [2018]; and *People v. Mamangon*, 824 Phil. 728, 735-736 [2018]; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015]; and *People v. Bio*, 753 Phil.730, 736 [2015].)

40 See *People v. Crispo*, id.; *People v. Sanchez*, id.; *People v. Magsano*, id. at 959; *People v. Manansala*, id.; *People v. Miranda*, id.; and *People v. Mamangon*, id. at 736. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[41]

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[42] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.

The law further requires that the inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[43] "a representative from the media ***and*** the Department of Justice [DOJ], and any elected public official";[44] or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service[45] ***or*** the media."[46] The law requires the presence of these witnesses primarily to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.[47]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.[48] This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential

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41 See *People v. Gamboa*, 867 Phil. 548, 570 (2018), citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

42 See *People v. Año*, 828 Phil. 439, 448 (2018); *People v. Crispo*, supra note 39; *People v. Sanchez*, supra note 39; *People v. Magsano*, supra note 39, at 959; *People v. Manansala*, supra note 39; *People v. Miranda*, supra note 39, at 1051; and *People v. Mamangon*, supra note 39, at 736. See also *People v. Viterbo*, supra note 40.

43 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.'" 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.

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

45 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].)

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

47 See *People v. Bangalan*, G.R. No. 232249, September 3, 2018. See also *People v. Miranda*, supra note 39; and *People v. Mendoza*, 736 Phil. 749, 761 (2014).

48 See *People v. Miranda*, id. at 1059. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, supra note 41, at 1038.

police abuses, especially considering that the penalty imposed may be life imprisonment.'"[49]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[50] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[51] The foregoing is based on the saving clause mandated under RA 10640.[52] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[53] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[54]

Anent the ***witness requirement***, non-compliance *may* be permitted *if* the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[55] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[56] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[57]

In this case, records reveal that the inventory and photography of the seized items were conducted only in Lindongan's presence and absent the presence of the required witnesses as stated above. Considering the date of the buy-bust operation on December 21, 2009, the applicable law[58] at the time requires the presence of the following witnesses: (*a*) a representative

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49 See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, id.

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

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

52 Section 1 of RA 10640 pertinently states: "*Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

53 *People v. Almorfe*, supra note 51.

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

55 See *People v. Mancasala*, supra note 39, at 591.

56 See *People v. Gamboa*, supra note 41, at 569, citing *People v. Umipang*, supra note 41, at 1053.

57 See *People v. Crispo*, supra note 39, at 436.

58 See Section 21 (1) and (2), Article II of RA 9165.

from the media; (*b*) a representative from the DOJ; and (*c*) an elected public official. Here, there is dearth of evidence to show that any one of the said witnesses was present at the photography and inventory, or that the arresting officers attempted, at the very least, to secure the presence of any one of them. PO3 Ventura's testimony that he brought the seized items, as well as the Confiscation Receipt, for the signature of Barangay Captain Gerola miserably fails to satisfy the chain of custody requirements, as the mere signature of the required witnesses therein does not suffice – the law requires the *actual and physical presence* of said witnesses.[59] Finally, even assuming *arguendo* that Barangay Captain Gerola was present during the photography and inventory, this still falls short of the mandate of RA 9165 which requires the presence of all the aforesaid witnesses. As it stands, there was complete and unjustified non-compliance with the chain of custody rule, which therefore constrains the Court to rule that the integrity and evidentiary value of the items purportedly seized from Lindongan have been compromised.

As a final word, the Court, in *People v. Miranda*,[60] issued a definitive reminder to prosecutors when dealing with drugs cases. It declared that "[since] the [procedural] requirements are clearly set forth in the law, then the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[61] So must it be in the case of Lindongan, whose acquittal is clearly in order.

WHEREFORE, the petition is **GRANTED**. The Court hereby resolves as follows:

1) The Entry of Judgment dated January 17, 2019 issued by the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08782 is **RECALLED**; and

2) The Decision dated February 28, 2018 as well as the Resolutions dated July 25, 2018 and January 27, 2020 rendered by the CA in CA-G.R. CR-H.C. No. 08782 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Amroding Lindongan *y* Ampatua (Lindongan) is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (*a*) cause the immediate release of Lindongan, unless he is being lawfully held in custody for any other reason; and (*b*) inform the

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[59] See *People v. Acaba*, G.R. No. 241081, February 11, 2019.
[60] Supra note 39.
[61] See id. at 1059.

Court of the action taken within five (5) days from receipt of this Decision.

Let entry of judgment be issued immediately.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

ATTESTATION

I attest 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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.

DIOSDADO M. PERALTA
Chief Justice