



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated November 10, 2020 which reads as follows:*

**“G.R. No. 199870 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. JOSEPHINE JARQUE Y DUKA, accused-appellant).** – This resolves an appeal from the Decision<sup>1</sup> dated June 30, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 03272, which affirmed the Decision<sup>2</sup> dated September 10, 2007 of the Regional Trial Court (RTC) of Makati City, Branch 64, in Criminal Case Nos. 04-341 to 04-342, finding accused-appellant Josephine Jarque y Duka (Jarque) guilty beyond reasonable doubt of Illegal Sale and Illegal Possession of methylamphetamine hydrochloride, commonly known as “*shabu*”, a dangerous drug, in violation of Sections 5 and 11(3), respectively, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

**Facts**

In two Informations<sup>3</sup> filed before the RTC of Makati City, Jarque was charged with violations of Sections 5 and 11(3), Article II, R.A. No. 9165, allegedly committed as follows:

Criminal Case No. 04-341

That on or about the 20th day of January 2004, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-mentioned accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute

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<sup>1</sup> *Rollo*, pp. 2-24; penned by Associate Justice Elihu A. Ybañez, and concurred in by Associate Justices Bienvenido L. Reyes (now a retired member of this Court) and Estela M. Perlas-Bernabe (now a Member of this Court).

<sup>2</sup> *CA rollo*, pp. 21-28; penned by Acting Presiding Judge Maria Cristina J. Cornejo.

<sup>3</sup> *Id.* at 19 and 20.

Methylamphetamine Hydrochloride, a dangerous drug, weighing zero point zero one (0.01) gram, in consideration of P200.00.

CONTRARY TO LAW.<sup>4</sup>

Criminal Case No. 04-342

That on or about the 20th day of January 2004, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-mentioned accused, not being authorized to possess any dangerous drugs and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in her possession, control and custody zero point zero four (0.04) gram Methamphetamine Hydrochloride (*shabu*), a dangerous drug.

CONTRARY TO LAW.

During arraignment, Jarque pleaded “not guilty” to both charges. After termination of the pre-trial, a full-blown trial ensued.<sup>5</sup>

According to the prosecution’s version of facts, at around 11:00 o’clock in the morning of January 20, 2004, chairman Vic del Prado of Barangay Olympia, Makati City, Cluster 3 Head of the Makati Anti-Drug Abuse Council (MADAC) received an informant’s tip that Jarque was selling *shabu* at San Francisco Street in Barangay Olympia. Acting thereon, the chairman coordinated with the Anti-Illegal Drugs Special Operation Sub-Task Force of the Makati Police Station. Early that same afternoon, Police Officer 1 (PO1) Alex Inopia (Inopia) arrived at the Cluster 3 Office with a Philippine Drug Enforcement Agency (PDEA) coordination sheet. PO1 Inopia then conducted a briefing in preparation for the buy-bust operation and designated MADAC Operative Wilfredo Serrano (Serrano) as the poseur buyer. PO1 Inopia then provided Serrano two pieces of ₱100.00 peso bills with markings “C-3” and bearing serial numbers NO234168 and LF819452 as entrapment money.<sup>6</sup>

After the briefing, the buy-bust team proceeded to San Francisco Street, Barangay Olympia, Makati City and arrived there at around 3:15 in the afternoon. The informant and Serrano saw Jarque standing on the street. Meanwhile the other members of the team stationed themselves at about 18 to 20 meters away. The informant approached Jarque and told her that his companion wanted to buy *shabu* from her. The informant then asked MADAC Operative Serrano, then acting as poseur buyer, how much he wanted to buy and he replied, “*dalawang daang piso.*” Jarque accepted the

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<sup>4</sup> Id. at 19.

<sup>5</sup> *Rollo*, p. 4.

<sup>6</sup> Id.

marked money paid by him and drew out a plastic container from her pocket, from which she then took out one plastic sachet containing suspected *shabu*, which she handed to Serrano.<sup>7</sup>

Serrano then executed the pre-arranged signal by shaking the hand of the informant. PO1 Inopia and MADAC Operative Roberto Bayona (Bayona) then quickly converged on Jarque and arrested her. Simultaneously, they apprised her of her constitutional rights. Serrano then ordered Jarque to empty her pockets and he recovered from her the buy-bust money and four more plastic sachets containing suspected *shabu*. Right there, the plastic sachets were marked “JJD-1” to “JJD-4” (subject of possession) and “JJD” (subject of the sale) by Serrano in front of Jarque and in the presence of PO1 Inopia and Bayona.<sup>8</sup>

The team then brought Jarque to the office of the Drug Enforcement Unit (DEU), and shortly thereafter, she was taken to the Fort Bonifacio Crime Laboratory for laboratory examination on the confiscated substances and for a drug test on her. The Physical Science Reports prepared by the Philippine National Police (PNP) Crime Laboratory yielded positive results for the drug test conducted on Jarque and on the laboratory examination of the substances seized from her.<sup>9</sup>

On the other hand, the defense offered the testimony Jarque to establish her innocence. She denied that she was caught selling *shabu* and that she was caught in possession thereof. She claimed that on January 20, 2004, she was inside the house located in San Francisco corner Sacramento streets Barangay Olympia, Makati playing *tong-its* with two women. She was waiting for a relative of the girl, who eloped with her son. Suddenly, six men, who introduced themselves as MADAC operatives, entered the house and took their playing cards and money. They told her that they were arresting her for selling *shabu*. As she denied their accusation and explained that she was just waiting for somebody, two men then held her by the arms and dragged her to a waiting vehicle outside. They brought her to the barangay hall of Barangay South Avenue, where they frisked her. Thereafter, they brought her to the DEU, where she was detained for a while, and from there she was taken to Bicutan. In Bicutan, she was ordered to produce a urine sample for laboratory test, but she could not produce enough urine, and so they filled the bottle with cold water.<sup>10</sup>

Jarque further recounted that in 2002, she was also suspected of drug pushing in Makati, but she eventually was acquitted in the corresponding

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<sup>7</sup> Id. at 5.

<sup>8</sup> Id.

<sup>9</sup> Id. at 6.

<sup>10</sup> Id. at 6-7.

case filed against her. It was also MADAC operatives Serrano and Bayona, who caused her arrest back then. According to her, since she no longer resided in Makati area and was then already residing in Cabuyao, Laguna at the time of the present charge, the MADAC operatives misunderstood the purpose of her presence that afternoon in Barangay Olympia, in the light of the previous case against her. Jarque then admitted that the buy-bust team members did not try to extort money from her in exchange for her release and that she also did not file any charges against them.<sup>11</sup>

On September 10, 2007, the RTC rendered a Decision,<sup>12</sup> finding Jarque guilty beyond reasonable doubt of the crimes charged, viz.:

WHEREFORE, premises considered, judgement is rendered as follows:

- 1) In Criminal Case No. 04-341, finding accused Josephine Jarque y Duka GUILTY beyond reasonable doubt of Violation [of] Section 5, Art II, RA 9165 (illegal sale of dangerous drugs) and sentencing her to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00.
- 2) In Criminal Case No. 04-342, finding accused Josephine Jarque y Duka GUILTY beyond reasonable doubt of Violation of Section 11, Art II, RA 9165 (illegal possession of dangerous drugs) and sentencing her to suffer imprisonment of twelve (12) years and one (1) day and to pay a fine in the amount of P300,000.00.

Said accused shall be given credit for the period of her preventive detention. It is further directed that the plastic sachets containing shabu subject of these cases be transmitted to the Philippine Drug Enforcement Agency (PDEA) for appropriate disposition.

SO ORDERED.<sup>13</sup>

The trial court ruled that the prosecution, through the testimonies of witnesses Serrano and Bayona, was able to establish all the elements necessary for the prosecution of the crimes of illegal sale and illegal possession of dangerous drugs. The RTC rejected Jarque's defense of bare denial.<sup>14</sup>

On appeal, the CA affirmed the Decision of the RTC. It found that all the elements of the offenses of illegal sale and illegal possession of

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<sup>11</sup> Id. at 7.

<sup>12</sup> CA *rollo*, pp. 21-28.

<sup>13</sup> Id. at 27-28.

<sup>14</sup> Id. at 25-26.

dangerous drugs had been established. It held that the prosecution had established an honest-to-goodness entrapment operation, which has repeatedly been accepted as a valid means of arresting violators. Furthermore, it concluded that the chain of custody of the items seized was not shown to have been broken, and that in any case, non-compliance with the proper procedure in the seizure and custody of illicit drugs is not fatal; what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items. Lastly, the appellate court modified the penalty in Criminal Case No. 04-342, from the straight penalty of imprisonment of 12 years and one day as imposed by the trial court, to the indeterminate penalty of 12 years and one day as minimum to 14 years as maximum. The decretal portion of the assailed CA Decision reads:

**WHEREFORE**, premises considered, the appealed Decision is **AFFIRMED with MODIFICATION**: For Criminal Case No. 04-342, appellant is sentenced to suffer imprisonment of TWELVE (12) YEARS and ONE (1) day, as minimum, to FOURTEEN (14) YEARS, as [maximum], plus a fine of P300,000.00.

SO ORDERED.<sup>15</sup>

Hence, this appeal.

For resolution is the issue of whether or not Jarque's guilt for violating Sections 5 and 11, Article II of R.A. No. 9165, was established beyond reasonable doubt.

We rule in the negative, and thereby, grant Jarque's appeal.

At the outset, the Court draws attention to the unique nature of an appeal in a criminal case: the appeal throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned. Prevailing jurisprudence uniformly hold that the trial court's findings of fact, especially when affirmed by the CA, are, as a general rule, entitled to great weight and will not be disturbed on appeal. However, this rule admits of exceptions and does not apply where facts of weight and substance, with direct and material bearing on the final outcome of the case, have been overlooked, misapprehended or misapplied.<sup>16</sup>

In this case, We find that notwithstanding the wholesale acceptance by both lower courts of the prosecution's version of facts, the RTC and the CA brushed aside crucial facts borne out by the prosecution evidence itself, which justify a different conclusion.

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<sup>15</sup> *Rollo*, p. 23-24.

<sup>16</sup> *People v. Peña*, G.R. No. 233750, June 10, 2019.

Jarque was charged with illegal sale and illegal possession of shabu. In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.<sup>17</sup> Furthermore, in order to secure the conviction of an accused for the charge of Illegal Possession of Dangerous Drugs, the prosecution must prove the following elements: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>18</sup>

As a component of the first element of both crimes, case law dictates that it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>19</sup> By “identity” is meant the exactitude that the illegal drugs ultimately offered in court are the same substances found and seized from accused's possession. This requirement is demanded by the nature of the dangerous drug itself that is likely to be tampered, altered, contaminated, or substituted.<sup>20</sup> Establishing the identity thereof is done by showing an unbroken chain of custody over the confiscated items and accounting for each link in the chain of custody from the moment of seizure up to their presentation in court as evidence of the crime.<sup>21</sup>

Jurisprudence identified four critical links in the chain of custody of the dangerous drugs, to wit: first, the seizure and marking, if practicable, 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 from the forensic chemist to the court.<sup>22</sup>

Section 21, paragraph 1,<sup>23</sup> Article II of R.A. No. 9165 lays down the procedure for the first link in the chain of custody. It describes in detail the steps to be taken by the apprehending team having initial custody and

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<sup>17</sup> *People v. Paz*, G.R. No. 233466, August 7, 2019.

<sup>18</sup> *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548, 563.

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

<sup>20</sup> *People v. Alvarado*, 830 Phil. 785, 799 (2018).

<sup>21</sup> *People v. Dela Victoria*, 829 Phil. 675, 682 (2018).

<sup>22</sup> *People v. Belmonte*, G.R. No. 224588, July 4, 2018, 871 SCRA 17, 34-35.

<sup>23</sup> Said provision has been amended by R.A. No. 10640, which was approved on July 15, 2014. But since the alleged offense in this case was committed prior to the amendment, the original law and its corresponding implementing rules and regulations shall be applied, being more favorable to the petitioner.

control of the drugs.<sup>24</sup> The procedure laid down therein 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>25</sup> It states:

Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered, Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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.

This is supplemented by Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which reads:

(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.

A review of the records indubitably shows that the apprehending team failed to comply with the mandatory requirement of conducting physical inventory of the items seized. The prosecution's primary witness, MADAC Operative Serrano testified:

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<sup>24</sup> *People v. Asjali*, G.R. No. 216430, September 3, 2018, 878 SCRA 514, 526.

<sup>25</sup> *People v. Jugo*, 824 Phil. 743, 756 (2018).

PROSECUTOR

So what happened next after you receive this sachet taken from this plastic?

WITNESS

I shook the hand of the informant. Thereafter, police officer Inopia together with Bayona approached us.

PROSECUTOR

What happened after police officer Inopia and your MADAC backup approached you?

WITNESS

PO1 Inopia told Josephine Jarque her constitutional rights.

PROSECUTOR

What else happened after the accused was arrested?

WITNESS

We were able to recover from her another sachet of shabu inside the plastic.

PROSECUTOR

Who recovered this sachet of shabu from the accused?

WITNESS

I was the one who recovered it from her right hand, sir.

PROSECUTOR

Now, how many sachets of shabu were recovered?

WITNESS

Four, sir.

PROSECUTOR

Now, if this Josephine Jarque is presented in court will you be able to identify her?

WITNESS

Yes, Sir.

PROSECUTOR

Will you please point her out to us, Mr. Witness?

WITNESS

(The witness pointed to a woman who identified herself as Josephine Jarque y Du[k]a.)

COURT

Witness identified the accused.

PROSECUTOR

Now, Mr. Witness, if the shabu, which you bought from the accused will be shown to you, will you be able to identify the same?

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WITNESS

Yes, sir.

PROSECUTOR

How about the four sachets of shabu that were recovered from her possession after the arrest will be shown to you, will you be able to identify those sachets?

WITNESS

Yes, sir.

PROSECUTOR

I am showing to you, Mr. Witness, several sachets containing white crystalline substance, what relations do these have to the sachets of shabu that are the subject matter of these cases.

WITNESS

This one, sir.

PROSECUTOR

The witness, Your Honor, identified a sachet containing white crystalline substance, which was previously marked as exhibit E for the prosecution as the sachet of shabu subject matter of the sale transaction. And the witness also identified four other sachets previously marked as Exhibit F to I as the sachets subject matter of possession, and the witness also identified the plastic container previously marked as Exhibit J for the prosecution, Your Honor. Why are you certain, Mr. Witness, that these are the sachets of shabu that are now the subject matter of these cases?

WITNESS

Because I was the one who placed the initial JJD when all the items that were recovered.

PROSECUTOR

And where were you when you placed [the] markings?

WITNESS

I was in front of the accused together with a police officer when I placed the markings, sir.

PROSECUTOR

Where were you in particular at the time that you were in front of the accused when you placed the markings?

WITNESS

In Brgy. San Francisco Brgy. Olympia, Makati City.

PROSECUTOR

Do you remember having executed an affidavit in connection with this case against the accused Josephine Jarque?

WITNESS

Yes, Sir.

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PROSECUTOR

If that affidavit will be shown to you, will you be able to identify the same.

WITNESS

Yes, Sir.

PROSECUTOR

I'm showing to you, Mr. Witness, a two-page affidavit. Will you please go over the same and tell us what relation does this have to the affidavit you executed in connection with the operation that you conducted against the accused?

WITNESS

This is the same, sir.

PROSECUTOR

There is a signature above the name of Wilfredo Serrano, would you know whose signature is that?

WITNESS

That is my signature, sir.

PROSECUTOR

Under your present oath, Mr. Witness, do you still confirm and affirm the truthfulness of all the allegations in this affidavit?

WITNESS

Yes, Sir.

PROSECUTOR

May we request, Your Honor, that the signature of the witness be marked as exhibit M-1. After you have arrested the accused, where did you bring her?

WITNESS

We brought her to the office of the DEU, sir.

PROSECUTOR

And from the office of the DEU, where did you bring the accused?

WITNESS

We brought her to Ft. Bonifacio Crime Laboratory for laboratory examination of the shabu and for drug test of the accused, sir.

PROSECUTOR

No further questions, Your Honor.<sup>26</sup>

The testimony of MADAC Operative Serrano leaves much to be desired. As may be gleaned above, he never mentioned that the sachets

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<sup>26</sup> TSN October 7, 2004, pp. 11-16.

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were physically inventoried after the arrest of Jarque. Similarly, the corroborating testimony of MADAC Operative Bayona, likewise bears no narration of a physical inventory conducted during the post-operation proceedings.

PROSECUTOR

x x x [W]hat happened after the recovery of these four plastic sachets of shabu that you said were placed in a plastic container?

WITNESS

Wilfredo Serrano marked the items recovered, sir.

PROSECUTOR

Where were you Wilfredo Serrano marked these items?

WITNESS

We were beside each other, sir.

PROSECUTOR

Do you recall the markings placed on the sachets?

WITNESS

Yes, sir. JJD as the subject of the sale and JJD-1 to JJD-4 the subjects of possession.

PROSECUTOR

If the item that was marked as JJD as the subject of the sale will be shown to you will be able to identify the same?

WITNESS

Yes, sir.

PROSECUTOR

How about if the four sachets he marked as JJD-1 to JJD-4 is shown to you, would you be able to identify the same?

WITNESS

Yes, sir.

PROSECUTOR

If the plastic container with marking JJD-5 is shown to you would you be able to identify it?

WITNESS

Yes, sir.

PROSECUTOR

I'm showing you sachets containing white crystalline substance. Please go over the same and identify the sachet subject of sale and the sachets subject of possession.

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WITNESS

This is the subject of the sale and the other four sachets are the subjects of possession, sir.

PROSECUTOR

The witness, Your Honor, identified Exhibit E as the subject of the sale, while Exhibits F to I of possession. I'm showing to you this plastic container with marking JJD-5, what relation does this have to the plastic container which contained four sachets subjects of possession?

WITNESS

This is the container of the items recovered by MADAC Wilfredo Serrano, sir.

PROSECUTOR

Your Honor, this container was previously marked as Exhibit J. Mr. Witness, during the arrest of the accused, what did PO1 Alex Inopia do if you know?

WITNESS

He informed the accused of her constitutional rights, sir.

PROSECUTOR

After the arrest of the accused, where did you bring her?

WITNESS

She was brought to the PNP crime laboratory, sir.

PROSECUTOR

What happened in the PNP crime laboratory?

WITNESS

The accused as well as specimens were submitted for drug testing and laboratory examination, respectively, sir.<sup>27</sup>

Tellingly, the prosecution failed to adduce any inventory report of the items seized; rather, only a spot report<sup>28</sup> was offered in evidence by the prosecution. However, it has been held the preparation of the spot report did not replace the conduct of the actual inventory that R.A. No. 9165 and its IRR specifically required. The inventory and the spot report were entirely distinct and different from each other. The latter referred to an immediate initial investigative or incident narrative on the commission of the crime (or occurrence of natural or manmade disaster or unusual incidents involving loss of lives and damage to properties), and was addressed to higher officers; it was an internal report on the arrest incident prepared without the participation of other persons like the accused,

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<sup>27</sup> TSN October 17, 2005, pp. 74-77.

<sup>28</sup> Records, page 152.

representatives of the media, the DOJ and a public official to witness the preparation of the inventory and to sign the inventory. In contrast, the inventory indicated the drugs and related material seized or recovered from the suspect, and should bear the signatures of the relevant persons that would insulate the process of incrimination from suspicion. Another distinction pertained to the requirement to furnish the suspect a copy of the inventory, which did not apply to the spot report.<sup>29</sup>

One more crucial deviation from the procedure required by law was the failure to take photographs of the seized items. Again, neither testimonial nor documentary evidence was offered to establish compliance with this requirement. It has been held that the photographs were intended by law as another means to confirm the chain of custody of the dangerous drugs.<sup>30</sup>

The mere marking of seized items, unsupported by a proper physical inventory and taking of photographs, and in the absence of the persons whose presence is required by Section 21 will not justify a conviction.<sup>31</sup>

On this score, We find it even needless to dwell on the Three-Witness Rule ordained in the original text of Section 21(1) of R.A. No. 9165, which requires the insulating presence of a representative from the media and DOJ, and any elected public official to witness the post-operation procedures,<sup>32</sup> for the purpose of removing any suspicion of switching, planting, or contamination of evidence.<sup>33</sup> Surely, there could have been no compliance with the three-witness requirement, when there was no physical inventory and photograph-taking to speak of in the first place.

We are mindful that under varied field conditions, strict compliance with the requirements of Section 21 of R.A. No. 9165, may not always be possible.<sup>34</sup> This is precisely the reason for providing a saving clause in the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, which states that “failure to strictly comply with the said directive is not necessarily fatal to the prosecution's case.” This saving clause, however, applies only whenever the prosecution satisfactorily proves that: (a) there is

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<sup>29</sup> *People v. Nepomuceno*, G.R. No. 216062, September 19, 2018, 880 SCRA 440, 455-456.

<sup>30</sup> *People v. Seguinte*, G.R. No. 218253, June 20, 2018, 867 SCRA 268, 277.

<sup>31</sup> *People v. Que*, 824 Phil. 882, 910(2018), citing *People v. Garcia*, 599 Phil. 416, 429 (2009).

<sup>32</sup> Under RA No. 10640, Section 21 now only requires two (2) witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; and (b) either a representative from the DOJ or the media. However, the original provision of Section 21 and its IRR is applicable at the time of the commission of the offense charged herein.

<sup>33</sup> *People v. Barrion*, G.R. No. 240541, January 21, 2019.

<sup>34</sup> *People v. Paz*, 824 Phil. 1025, 1036 (2018).

justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>35</sup> In this connection, the prosecution has a two-fold duty of identifying any lapse in procedure and proving the existence of a sufficient reason why it was not strictly followed.<sup>36</sup>

In this case, the apprehending officers failed to recognize their lapses and to explain their failure to follow the mandated procedure in drugs cases. Thus, the lower courts misapplied the saving clause under Section 21(a), Article II of the IRR of R.A. No. 9165, in complete disregard of the operative phrase “justifiable grounds” as essential requirement to excuse non-compliance therewith. Suffice it to state, the breach committed by the police officers of Section 21 of R.A. No. 9165—left unacknowledged and unexplained by the State—is fatal to the prosecution's cause.

Considering the presence of unjustified gaps at the initial stage of the chain of custody, uncertainty—on whether the identity and integrity of the items confiscated from Jarque had been preserved—had loomed early in this case. Thus, the attainment of moral conviction that all subsequent handlers of the confiscated drug dealt with the same specimen retrieved from the accused was perforce illusory.<sup>37</sup> But likewise equally damning for the prosecution is its utter failure to establish the other links in the chain of custody. Turning back to the aforesaid testimonies of MADAC operatives Serrano and Bayona, the prosecution glaringly made no attempt to account therefor. All told, the prosecution failed to prove the *corpus delicti* beyond reasonable doubt, which resultantly warrants the acquittal of Jarque.

By way of final note, it may not be amiss to state that since compliance with the procedure laid down in Section 21 of R.A. No. 9165 is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.<sup>38</sup>

**WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision dated June 30, 2011 of the Court of Appeals is hereby

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<sup>35</sup> *Ramos v. People*, G.R. No. 233572, July 30, 2018, 874 SCRA 595, 609-610.

<sup>36</sup> *People v. Angeles*, G.R. No. 218947, June 20, 2018, 867 SCRA 281, 292.

<sup>37</sup> *People v. Patricio*, G.R. No. 202129, July 23, 2018.

<sup>38</sup> *People v. Magsano*, 826 Phil. 947, 966 (2018).

**REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of accused-appellant Josephine Jarque y Duka, who is accordingly **ACQUITTED** of the crime charged against her and ordered immediately **RELEASED** from custody, unless she is being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this Resolution and to inform this Court of the date of the actual release from confinement of accused-appellant Josephine Jarque y Duka within five (5) days from receipt hereof.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *gsk/dk*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**145-B**

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

Court of Appeals (x)  
Manila  
(CA-G.R. CR No. 03272)

The Hon. Presiding Judge  
Regional Trial Court, Branch 64  
1200 Makati City  
(Crim. Case Nos. 04-341 & 04-342)

The Director General (x)  
Bureau of Corrections  
1770 Muntinlupa City

PUBLIC ATTORNEY'S OFFICE  
Special and Appealed Cases Service  
Counsel for Accused-Appellant  
DOJ Agencies Building  
Diliman, 1101 Quezon City

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M.  
No. 12-7-1-SC)

Ms. Josephine D. Jarque (x)  
Accused-Appellant  
c/o The Superintendent  
Correctional Institution for Women  
1550 Mandaluyong City

Judgment Division (x)  
Supreme Court

The Superintendent (x)  
Correctional Institution for Women  
1550 Mandaluyong City

UR

*Am*

*AKF*