



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. 229365 (*People of the Philippines v. Jennifer Lacson y Diwa*). - This is an appeal from the Decision¹ dated May 18, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06051, denying appellant Jennifer Lacson y Diwa's appeal and affirming the Decision² dated November 6, 2012 of the Regional Trial Court (RTC), Branch 41, San Fernando City, in Criminal Cases No. 17277 and No. 17278, convicting appellant of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The facts are as follows:

On November 3, 2010, at around 11:10 a.m., by virtue of an information that a certain alias “Jennifer” was selling shabu at Purok 4, Brgy. San Jose, San Fernando City, Police Chief Inspector Joven De Guzman ordered the conduct of a buy-bust operation. PO1 Aldrian Lingat (*Lingat*) was designated as the poseur-buyer and PO1 Jayson Sampang (*Sampang*) was his back-up. A marked ₱500.00 bill bearing serial number S816383 was set aside for the buy-bust. Sampang and Lingat also prepared a coordination form and pre-operation report before going to the PDEA, Camp Olivias, San Fernando City with the informant. After coordinating with the PDEA, the police officers allegedly dropped by the San Juan Barangay Hall for further coordination with the barangay.³

- over – thirteen (13) pages ...

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¹ Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier (now a member of this Court) concurring; *rollo*, pp. 2-14.

² Penned by Judge Divina Luz P. Aquino-Simbulan; CA *rollo*, pp. 42-74.

³ *Id.* at 126.

At 12:40 p.m., Sampang, Lingat and the informant rode a motorcycle in going to the target area at Purok 4, Barangay San Jose. Arriving at their destination, Sampang positioned himself at an empty lot, about 10 meters away from the house of the accused. Lingat and the informant walked to the house of the accused whom they saw in front of the house. The informant introduced Lingat to the accused as a friend who needed shabu for personal use. Accused then reached into the right front pocket of her short pants and brought out one heat-sealed transparent pack containing a substance suspected to be shabu which she handed over to Lingat. In turn, Lingat gave the marked ₱500.00 bill to accused as payment, and thereupon, removed his bull cap as a signal to Sampang who rushed to Lingat's side and the two introduced themselves as police officers. They arrested the accused and apprised her of her constitutional rights. From her right pocket, accused took out nine (9) heat-sealed plastic sachets containing a substance suspected to be shabu, as well as the marked ₱500.00 bill. Sampang marked each of the nine sachets with his initials "JKS," while Lingat marked the sachet subject of the sale with his initials "ABL." They then proceeded to the police station.⁴

On the same day, the arresting officers presented the accused and the seized items to PO2 Carlo F. Zaragoza. PO2 Zaragoza prepared the sworn statements of the arresting officers, the request for laboratory examination, turn-over receipt for the seized evidence, and the confiscation receipt in the presence of the media representative Talao, Provincial Prosecution Office employee Manuel Villanueva, and San Jose Barangay Kagawad Deo Sazon. PO2 Zaragoza also accomplished the inventory and investigation report. Photographs were taken of the proceedings, and of the accused, the officials in attendance, the marked money and confiscated items. At 4:00 p.m., PO2 Zaragoza gave the request for laboratory examination and the seized items to Sampang.⁵

At around 4:10 p.m., Forensic Chemist Angel C. Timario received from Sampang the request for laboratory examination and the seized specimens which were contained in a plastic bag and folded bond paper. The examination yielded positive results for the presence of methamphetamine hydrochloride. After the examination, he put the marking "D-075-10" and his initials "ACT" on each of the masking tapes that sealed the plastic sachets.⁶

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⁴ *Id.* at 127.

⁵ *Id.*

⁶ *Id.* at 126-128.

Thus, accused-appellant was then charged with violation of Section 5 and 11 of Article II of R.A. 9165, which reads as thus:

CRIMINAL CASE NO. 17277

That on or about the 3rd day of November, 2010 in the City of San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized, did then and there willfully, unlawfully, and feloniously sell, distribute, deliver, and transport a heat-sealed transparent plastic sachet containing methamphetamine hydrochloride with marking "ABL", weighing FOUR HUNDRED TWENTY[-]NINE TEN THOUSANDTHS (0.0429 g) of a GRAM, a dangerous drug.

CONTRARY TO LAW.⁷

CRIMINAL CASE NO. 17278

That on or about the 3rd day of November, 2010 in the City of San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized, did then and there willfully, unlawfully, and feloniously have in her possession custody and control nine (9) heat-sealed transparent plastic sachet with markings "JKS-1" to "JKS-9," containing METHAMPHETAMINE HYDROCHLORIDE with a total weight of FOUR THOUSAND SIX HUNDRED FIFTY[-]ONE TEN THOUSANDTHS (0.4651g) of a GRAM, a dangerous drug.

CONTRARY TO LAW.⁸

During her arraignment, accused-appellant pleaded "not guilty" on both charges.⁹ Trial on the merits ensued.

By way of defense, accused-appellant alleged that on November 3, 2010, she was in her house in Purok 4, San Jose, San Fernando City, Pampanga, when at around 12:30 p.m., a green car, bearing the plate number UPR 110 stopped in front of her house and three men in civilian clothes alighted and entered her house. The three men, whom accused identified later as Lingat, Yco and a certain Poncheska, were looking for her father, Tito Lacson, who allegedly sold drugs to them. She told the men that his father was not in the house, but to her surprise, the men entered the bedroom. She asked the men why they entered the room, but they handcuffed her instead.

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⁷ *Id.* at 42.

⁸ *Id.* at 42-43.

⁹ *Id.* at 43.

She protested in a loud voice, but she was forcibly dragged out of her house. As she boarded in the car, accused asked the men where they were bringing her. They told her that she will be brought to their superior, Joven De Guzman. Accused was brought to a warehouse where she saw De Guzman. For an hour and a half, the men repeatedly asked accused where her father was and assured her that she would be freed if she cooperates. Accused could have called her father on her cellphone, but she had no load on her cellular phone. As she could not tell the men where her father was, accused was brought to the municipal hall.

On November 6, 2012, the RTC promulgated its Decision¹⁰ finding accused-appellant guilty beyond reasonable doubt of the charges filed against her, the dispositive portion of which reads:

VIEWED IN THE LIGHT OF THE FOREGOING, this court finds the accused JENNIFER LACSON y DIWA, guilty beyond reasonable doubt of the crime of Violation of R.A. 9165 and is hereby sentenced, as follows:

1. in Criminal Case No. 17277 for Violation of Section 5, Article II, the accused is sentenced to suffer the penalty of life imprisonment and to pay a fine of Php100,000.00; and
2. in Criminal Case No. 17278 for Violation of Section 11, Article II, the accused is sentenced to suffer the penalty of Twelve (12) Years and One (1) day, as minimum, to Fourteen (14) years, as maximum, and to pay a fine of Php100,000.00.

The OIC-Bra[n]ch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the ten (10) plastic sachets of shabu subject matter of these cases for said agency's proper disposition.

Cost de officio.

The RTC held that the buy-bust operation conducted by the police officers is valid. It also ruled that all the elements for violation of Sections 5 and 11, Article II of R.A. No. 9165 were proven beyond reasonable doubt. Furthermore, the same court held that appellant's bare denial is intrinsically weak.

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¹⁰ *Id.* at 42-74.

Appellant elevated the case to the CA, which on May 18, 2016, denied appellant's appeal, thus:

WHEREFORE, the Joint Decision dated November 6, 2012, of the Regional Trial Court, Branch 41, San Fernando City, Pampanga, in Criminal Case Nos. 17277 and 17278 is AFFIRMED.

SO ORDERED.¹¹

Hence, the present appeal raising the following issues:

I

THE TRIAL COURT ERRED IN FAILING TO SEE THAT THE SHABU PRESENTED IN COURT IS TAINTED EVIDENCE.

II

THE TRIAL COURT ERRED IN NOT APPRECIATING THE TESTIMONY OF PROSECUTION WITNESS MANUEL VILLANUEVA WHICH SHOWS THAT THE PLASTIC SACHETS PRESENTED IN COURT WERE TAINTED EVIDENCE.

III

THE TRIAL COURT ERRED IN BELIEVING THE TESTIMONIES OF PO1 ALDRIAN LINGAT AND PO1 JAYSON SAMPANG.

IV

THE TRIAL COURT ERRED IN HOLDING THAT THE FACT THAT THE ACCUSED DID NOT FILE ANY CRIMINAL OR ADMINISTRATIVE CHARGES AGAINST THE ARRESTING OFFICERS SHOWS THAT SHE DID NOT HAVE A CAUSE OF ACTION AGAINST THEM.

V

THE TRIAL COURT ERRED IN NOT APPRECIATING THE TESTIMONIES OF THE DEFENSE WITNESS.

VI

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED.¹²

Appellant claims that the elements of illegal sale and illegal possession of dangerous drugs were not sufficiently proven beyond

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¹¹ *Supra* note 1.

¹² *CA rollo*, p. 13.

reasonable doubt. She argues that there was no buy-bust operation; thus, the sachets of *shabu* that were allegedly recovered were not identified with certainty and exactness. Appellant also claims that the provisions of R.A. No. 9165 was not complied with and that the chain of custody was not proved to be unbroken.

The appeal is meritorious.

Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

(1) The identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.¹³

In the illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge. Thus, the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.¹⁴

Also, under Section 11, Article II of R.A. No. 9165, or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted:

[1] The accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.¹⁵

In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.¹⁶ In *People v. Gatlabayan*,¹⁷ the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is

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¹³ *People v. Mustafa Sali y Alawaddin a.k.a. "Tapang/Pang,"* G.R. No. 236596, January 29, 2020.

¹⁴ *Id.*

¹⁵ See *People v. Mariano*, 698 Phil. 772, 785 (2012).

¹⁶ *People v. Ismael*, 806 Phil. 21, 29 (2017)

¹⁷ 669 Phil. 240, 252 (2011).

exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.¹⁸ Thus, the chain of custody carries out this purpose “as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”¹⁹

To ensure an unbroken chain of custody, Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team, to wit:

- (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[.]

And Section 21 (a) of the IRR of R.A. No. 9165 provides:

- (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[.]

R.A. No. 10640 amended Section 21 of R.A. No. 9165 and incorporated the saving clause contained in the IRR, and requires that the conduct of the physical inventory and taking of photograph of the seized items be done in the presence of (1) the accused or the person/s

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¹⁸ *People v. Mirondo*, 771 Phil. 345, 356-357 (2015).

¹⁹ See *People v. Ismael*, *supra* note 16.

from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media.

However, since the alleged crime was committed in 2010, the old provisions of Section 21 of R.A. No. 9165 and its IRR are applicable which provide that after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physical inventory and photograph the seized items in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media and (3) from the Department of Justice (DOJ); and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these persons will guarantee "against planting of evidence and frame-up, [*i.e.*, they are] necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."²⁰

In the instant case, there was no indication that upon seizure and confiscation of the items, inventory and photograph of the same were immediately made. There was also no mention that the inventory and photograph of the items were made in the presence of 1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media and (3) from the Department of Justice (DOJ); and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Further, on cross-examination, Mr. Manuel Villanueva, an employee of the Office of the Provincial Prosecutor of Pampanga and representative of the Department of Justice, testified that upon the invitation of Sampang and Lingat, he went to the police station of the City of San Fernando, Pampanga, around 3 to 4 o'clock in the afternoon of November 3, 2010, for the inventory. He testified that before he signed the inventory of the confiscated evidence, he examined them thoroughly and admitted that the ten (10) plastic sachets did not have any markings or initials of the arresting officers, to wit:

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²⁰ *Jesus Edangalino y Dionisio v. People*, G.R. No. 235110, January 8, 2020.

Atty. Antonio S. Yumul:

Q. In your testimony, you stated that you were invited by policemen Lingat and Sampang at 3:00 in the afternoon of November 3, 2010. Do you confirm that?

A. ***They called me up sir and they told me they had arrested a person involving drugs and they asked me to go to the police station.***

Q. My question to you is the time when you were invited to got to the police station to witness the preparation of the inventory. Was it 3:00, I said, in the afternoon?

A. I could no longer remember, sir, but it was probably around 3:00 to 4:00 in the afternoon.

Q: ***You said that you were invited there to make an inventory, right?***

A. ***Yes, sir.***

Q. Now, you saw these specimens which were marked which are now being shown to you. You saw them between 3:00 to 4:00 in the afternoon of November 3, 2010, is that correct?

A. Yes, sir, when we made the inventory.

Q. Who was bringing these specimens before they were shown to you if you know?

A. I could no longer remember, sir, but it was one of the two (2) police officers.

Q. So only one of the police officers was bringing the specimens based on your answer?

A. Yes, sir, one of them was bringing the specimens.

COURT:

When you say "one of them was bringing the specimens," only one of them would be bringing the evidence, is that what you are saying?

A. One of them was holding the specimens, Your Honor, when they were presented on the table.

COURT:

Proceed, counsel.

Atty. Yumul:

Q. And did you see the police officers who presented these items if he took them from his pocket or from any part of his body?

A. I could no longer remember, sir, but when we conducted the inventory, they were placed on the table.

Q. ***When they were placed on the table, you examined them?***

A. ***Yes, sir.***

Q. And that was before they affixed their signature[s]. You examined them before they affixed their signature[s] or initials?

A. While we were examining the items, we would ask for the items and thereafter, they would put their initials, sir.

COURT:

So they placed their initials when you were already there?

A. Yes, ma'am.

COURT:

And you saw them placed their initials?

A. Yes, ma'am,

Atty. Yumul:

Q. In the picture, two (2) police officers were holding a [pentel pen]. I will show the pictures to you. This is Lingat and this is Sampang and it is very clear that the two (2) were holding a [pentel pen]. Are these the [pentel pen] that they used in putting their initials on the plastic?

A. Yes, sir.²¹

Thus, based on the above testimony, it was apparent that the DOJ representative was invited only to the police station, and he was neither present during the buy-bust operation nor during the seizure, confiscation and arrest of the accused. It was also admitted that while the police officers coordinated the buy-bust operation to the Barangay Hall of San Jose and with Kagawad Deo Sason, the latter was not present during the buy-bust operation.²² Incidentally, in the Appellee's Brief²³ dated November 5, 2013, the prosecution argued that the police operatives could not be expected to wait before all representatives are present before they conduct the "entrapment," and admitted that the inventory and taking of the photographs were done at the police station where the representatives of the DOJ, media and barangay were gathered.²⁴ Considering these, it is clear that none of the required witnesses were present during the seizure, confiscation, and arrest of the accused. It can also then be concluded that the inventory and marking was not immediately done in the presence of these required witnesses.

Moreover, no explanation whatsoever was provided as to why the inventory and marking of the items were not immediately done in the presence of the required witnesses to the inventory. The prosecution never alleged and proved that the presence of the required

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²¹ TSN, August 22, 2011, as cited in the CA *rollo*, pp. 14-17. (Emphasis ours)

²² *Id.* at 53.

²³ *Id.* at 87-109.

²⁴ *Id.* at 105.

witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official[s] themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.²⁵

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. The prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of R.A. 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.** Since compliance with this procedure 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.²⁶

On this note alone, this Court must acquit the appellant for the prosecution's failure to prove her guilt beyond reasonable doubt. Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, *no matter how strong*, should not sway judgment against

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²⁵ *People v. Sipin*, G.R. No. 224290, June 11, 2018.

²⁶ *People v. Mercader*, G.R. No. 233480, June 20, 2018.

him. It further means that the courts should duly consider every evidence favoring him, and that in the process, the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account. That is what we must be do herein, for he is entitled to nothing less.²⁷

Further, we, likewise, find no basis on the RTC's and the CA's findings that the police officer regularly performed his official duty. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.²⁸ The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.²⁹

WHEREFORE, premises considered, the Decision dated May 18, 2016 in CA-G.R. CR-H.C. No. 06051 affirming the Decision dated November 6, 2012 of the Regional Trial Court, Branch 41, San Fernando City, in Criminal Case Nos. 17277 and 17278, convicting appellant Jennifer Lacson y Diwa of violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is **REVERSED** and **SET ASIDE**. Appellant Jennifer Lacson y Diwa is **ACQUITTED** for the prosecution's failure to prove her guilt beyond reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for immediate implementation. Said Director is **ORDERED** to **REPORT** to this Court, within five (5) working days from receipt of this Resolution, the action he/she has taken.

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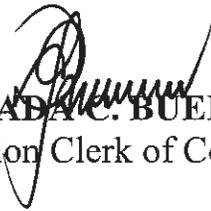
²⁷ *People v. Claro*, 808 Phil. 455, 468 (2017).

²⁸ *People v. Ramirez*, G.R. No. 225690, January 17, 2018, 852 SCRA 85, 99.

²⁹ *People of the Philippines v. Dave Claudel y Lucas*, G.R. No. 219852, April 3, 2019.

SO ORDERED.” *Zalameda, J., on wellness leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
9/17/20

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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