



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 10 February 2021 which reads as follows:

“G.R. No. 243788 (*People of the Philippines v. Myra Francisco y Gatchalian, Wilfredo Riquez y Salansang and Mark Anthony Jacinto y Ronquillo*).

Accused-appellants Myra Francisco y Gatchalian (Myra), Wilfredo Riquez y Salansang (Wilfredo) a.k.a. Jun, Mark Anthony Jacinto y Ronquillo (Mark Anthony) a.k.a. Macky (Macky) (accused-appellants) were charged with violation of Section 5,¹ in relation to Section 26,² Article II³ of Republic Act (RA) No. 9165,⁴ under the following Information:

That on or about December 5, 2011, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, not being authorized by law to sell, trade, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully, knowingly and jointly sell or offer for sale to a

¹ *Sale, Trading, Administration, Dispensation, Delivery Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos ([P]500,000.00) to Ten million pesos ([P]10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including all any and species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x

² *Attempt or Conspiracy.* — Any attempt or conspiracy to commit the following unlawful acts shall penalized by the same penalty prescribed for the commission of the same as provided under this Act:

- (a) Importation of any dangerous drug and/or controlled precursor and essential chemical;
 - (b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
 - (c) Maintenance of a den, dive or resort where any dangerous drug is used in any form;
 - (d) Manufacture of any dangerous drug and/or controlled precursor and essential chemical;
- and
- (e) Cultivation or culture of plants which are sources of dangerous drugs.

³ Unlawful Acts and Penalties.

⁴ COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; approved on June 7, 2002.

police officer/poseur buyer One (1) heat-sealed transparent plastic bag containing **FOUR NINE POINT NINE ZERO FOUR THREE (49.9043)** grams of white crystalline substance known as “SHABU” containing methamphetamine hydrochloride, a dangerous drug.

Contrary to law.⁵ (Emphasis in the original.)

Accused-appellants pleaded not guilty;⁶ hence, trial ensued.

On December 5, 2011, on the basis of the information provided by a confidential informant that accused-appellants are engaged in illegal drug trade, SOIII Beltran Lacap, Jr. (SOIII Lacap, Jr.) called for a briefing for the conduct of a buy-bust operation. Thereat, it was agreed that IO1 Rufino Lumase, Jr. (IO1 Lumase, Jr.) will act as *poseur-buyer* while IO1 Randy Tindaan (IO1 Tindaan) and IO1 Jake Million (IO1 Million) will serve as arresting officers. Upon the instruction of SOIII Lacap, Jr., the confidential informant, in the presence of the buy-bust team, contacted Myra, through cellular phone, and arranged a transaction for the purchase of 50 grams of *shabu* (methamphetamine hydrochloride) for the price of ₱2,000.00. Myra and the confidential informant agreed to meet at 5:00 p.m. of the same day inside Kentucky Fried Chicken (KFC) fast food restaurant at F.B. Harrison corner Pablo Ocampo, Sr. Street, Manila.

The buy-bust team arrived at the place of transaction about 3:30 p.m. Forthwith, IO1 Tindaan, IO1 Million, and SOIII Lacap, Jr. surveyed the area and positioned themselves strategically while the confidential informant and IO1 Lumase, Jr., went inside KFC restaurant. About 10 minutes later, Myra arrived. The confidential informant introduced Myra to IO1 Lumase, Jr., who immediately inquired about the *shabu* that he intends to buy. Myra replied that it is not with her but with a certain Macky. Myra texted Macky, who arrived after a few minutes. Macky told IO1 Lumase, Jr. that he wanted to see the money. Thus, IO1 Lumase, Jr. showed him a black paper bag containing a lunch box where the buy-bust money is kept. Macky took a glance and told IO1 Lumase, Jr. to wait for the *shabu* as it is not with him. Macky left the restaurant to the direction of F.B. Harrison and returned together with another male person who he introduced as Jun. IO1 Lumase, Jr. asked Jun if he has the *shabu*. Jun replied, “oo,” and opened a multi-colored pouch bag containing one sealed transparent plastic bag containing white crystalline substance. Convinced that the contents are *shabu*, IO1 Lumase, Jr. told Jun, “*Pare, akin na yan.*” Jun handed the pouch bag to him. IO1 Lumase, Jr. put the pouch bag beside him, then gave Jun the paper bag containing the buy-bust money. Afterwards, IO1 Lumase, Jr. raised his arms, as if he was stretching, as a signal that the sale has been consummated. Immediately, IO1 Million and IO1 Tindaan rushed to the scene, introduced themselves

⁵ Records (Criminal Case No. 11-288546), p. 1.

⁶ *Id.* at 57 (Certificate of Arraignment); *id.* at 58 (Order dated January 6, 2012).

as Philippine Drug Enforcement Agency (PDEA) agents, and arrested the accused-appellants. Meanwhile, IO1 Lumase, Jr. secured the *shabu* and took the buy-bust money from Jun. Due to the brewing commotion, SOIII Lacap, Jr. decided to withdraw from the place and instructed the team to proceed to the PDEA main office at Barangay Pinyahan, Quezon City (Brgy. Pinyahan). IO1 Lumase, Jr. kept the seized drugs with him during the commute.

When they arrived at the PDEA office, the arresting team booked the accused-appellants and called for representatives from the local government, the media and the Department of Justice (DOJ). Kagawad Jose Ruiz, Jr. from Brgy. Pinyahan and media representative, Jimmy Mendoza, came. In the presence of these witnesses, the accused-appellants, and the arresting officers, IO1 Lumase, Jr. marked the seized drugs with his initials, "RTL," and made the inventory.⁷ The arresting team, on the other hand, took photographs.⁸ Kagawad Jose Ruiz, Jr., Jimmy Mendoza, IO1 Tindaan and IO1 Lumase, Jr. signed the inventory. After, IO1 Lumase, Jr. prepared the request for laboratory examination,⁹ and brought the request, together with the specimen, to the laboratory service where they were received by Chemist Ronald V. Bobis. The examination of the specimen yielded a positive result for methamphetamine hydrochloride.¹⁰ Meanwhile, the buy-bust money, and the other item seized from the accused-appellants were deposited by IO1 Lumase, Jr. with the evidence custodian.

Myra denied the charges. On December 5, 2011, around 2:00 p.m., she was eating with her three (3)-year old grandson at the food court in SM Manila. A man, wearing civilian clothes, approached her and asked her where the woman sitting beside her was. Myra was confused because no one was sitting beside her. The man then introduced himself as a PDEA agent and invited her to come with him. Myra and her grandson were then led to the parking lot and made to board a vehicle where three other women and two men were inside. All of them, except Myra's grandson, were brought to KFC fast food restaurant at Harrison Plaza. Myra used the comfort room of the restaurant, and when she came out, two women brought her to a drugstore and told her to go home. Myra refused because her grandson was not with her. Later, the vehicle, they earlier boarded, picked them up from the drugstore. Myra was reunited with her grandson who was in the vehicle. They were then brought to a place unfamiliar to her and made them stay in a hut. The male PDEA agent contacted Myra's daughter and told her to pick up the child. Afterwards, Myra was brought to the office of PDEA where photographs of her were taken by two male persons. After she was photographed, she

⁷ *Id.* at 42.

⁸ *Id.* at 48-49.

⁹ *Id.* at 14 (Inventory Seized Property/Items).

¹⁰ *Id.* at 15 (Chemistry Report No. PDEA-DDO11-384)

was put inside the jail. The following day, she was asked to produce ₱300,000.00, but she had no money.

Wilfredo and Mark Anthony likewise denied the charges. Mark Anthony claimed that, on December 5, 2011, he went to the house of Wilfredo to play basketball with his brother. Wilfredo's brother, however, was not there, so Wilfredo asked Mark Anthony to accompany him to KFC fast food at Harrison Plaza to buy food for his son. Mark Anthony went with Wilfredo. At the restaurant, Wilfredo narrated that, while he was ordering food, a man bumped him from behind, and suddenly took him outside. It turned out that the man and his companions were PDEA agents, who made him and Mark Anthony board a red FX van with tinted windows. Inside the FX van, Wilfredo and Mark Anthony were handcuffed and blindfolded, and brought to the PDEA office in Quezon City. There, they were told to wait at the visitor's area where they met Myra for the first time, but the PDEA agents told them that she was involved in their drug deal. One of the agents told Wilfredo and Mark Anthony to produce ₱300,000.00 for their release. When they could not produce the money, they were put inside the jail and subjected to inquest.

In its Joint Decision dated April 6, 2016, the trial court¹¹ found accused-appellants guilty for illegal sale of dangerous drugs under Section 5, Article II of RA No. 9165, and sentenced them to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.¹² The trial court ruled that the prosecution established the elements of Illegal Sale of Dangerous Drugs and an unbroken chain of custody.

On appeal, the accused-appellants argued that the arresting officers failed to establish an unbroken chain of custody, as prescribed in Section

¹¹ Regional Trial Court of Manila City, Branch 13.

¹² Records (Criminal Case No. 11-288546), pp. 191-199. The dispositive portion of the Joint Decision reads:

In Criminal Case No. 11-288546

WHEREFORE, in view of the foregoing, this Court finds the accused MYRA FRANCISCO y GATCHALIAN, WILFREDO RIQUEZ y SALANSANG, and MARK ANTHONY JACINTO y RONQUILLO GUILTY beyond reasonable doubt as principals for violation of Section 5 of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for pushing shabu) as charged and sentences each of them to suffer the penalty of LIFE IMPRISONMENT and to pay a Fine in the amount of ₱500,000.00 each.

X X X X

The plastic sachet/ bag of shabu and other items bought and recovered from the accused are ordered confiscated in favor of the government to be disposed of in accordance with law.

Issue mittimus orders committing (1) MYRA FRANCISCO y GATCHALIAN to the Correctional Institution for Women and (2) WILFREDO RIQUEZ y SALANSANG and MARK ANTHONY JACINTO y RONQUILLO to the National Bilibid Prisons (sic) for service of sentence.

Send copies of this Decision to the Director General of the Philippine Drug Enforcement Agency (PDEA) and to the Director of the National Bureau of Investigation (NBI).

SO ORDERED. *Id.* at 198-199.

21, Article II of RA No. 9165, to wit: (a) IO1 Lumase, Jr. failed to prepare a chain of custody report; (b) the prosecution did not present the chemist who examined the seized drugs; (c) the chemistry report was not authenticated; (d) the marking, inventory, and photograph of the seized drugs were done at the PDEA office, not at the place of arrest; and, (e) there was no representative from the DOJ who witnessed the inventory and photograph of the seized drugs. Also, accused-appellants' defense of denial should not have been brushed aside. The testimonies of the accused-appellants corroborated each other, particularly as to the fact that the PDEA agents extorted ₱300,000.00 from them. In the assailed Decision,¹³ dated April 30, 2018, the Court of Appeals (CA) affirmed the guilt of the accused-appellants,¹⁴ and ruled that accused-appellants were caught *in flagrante delicto* selling *shabu* in a buy-bust operation. The *poseur-buyer*, IO1 Lumase, Jr. positively identified them as the sellers who transacted with him, received the buy-bust money and gave him the plastic sachet of *shabu*. The chain of custody was intact and unbroken.

Hence, this appeal. On separate dates, the Office of the Solicitor General¹⁵ and the accused-appellants¹⁶ manifested to this Court that they will not file a supplemental brief, considering that they have sufficiently addressed the issues and arguments in their respective briefs.

We acquit accused-appellants Myra Francisco y Gatchalian, Wilfredo Riquez y Salansang, and Mark Anthony Jacinto y Ronquillo.

In the prosecution of Illegal Sale of Dangerous Drugs under RA No. 9165, 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. Failure to prove the integrity of the *corpus delicti* renders the evidence of the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.¹⁷

Section 21, Article II of RA No. 9165¹⁸ outlines the post-seizure procedure for the custody and disposition of seized drugs. The law

¹³ *Rollo*, pp. 2-26; penned by Associate Justice Maria Filomena D. Singh, with the concurrence of Associate Justices Sesinando E. Villon and Edwin D. Sorongon

¹⁴ *Id.* at 25-26; the dispositive portion of the Decision reads:

WHEREFORE, the appeal is **DENIED**. The Joint Decision dated 6 April 2016 of the Regional Trial Court, Branch 13, Manila City, in Criminal Case No. 11-288546, finding accused-appellants Myra Francisco y Gatchalian, Wilfredo Riquez y Salansang and Mark Anthony Jacinto y Ronquillo guilty of Violation of Section 5, in relation to Section 26, Article II of Republic Act No. 9165, is **AFFIRMED**.

SO ORDERED. (Emphases in the original.)

¹⁵ *Id.* at 36-41 (Manifestation [In Lieu of Supplemental Brief]).

¹⁶ *Id.* at 42-44 (Manifestation [In Lieu of Supplemental Brief]).

¹⁷ *People v. Don Emilio Cariño Agustin*, G.R. No. 233336, January 14, 2019.

¹⁸ Section 21, Article II of R.A. No. 9165 reads:

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. --

mandates that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory and take a photograph of the drug 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 DOJ, and any elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof. All three (3) insulating witnesses are required since the commission of the crime in this case happened before the amendment of RA No. 9165 by RA No. 10640.¹⁹

Accordingly, the following links must be established in the chain of custody: *first*, the seizure and marking at the place of arrest, 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

The PDEA shall take charge and have custody of all dangerous drugs, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the dangerous drugs shall, immediately after seizure and confiscation, physical inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied.)

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations of RA No. 9165 which 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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (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[.]

¹⁹ *People v. Lim*, G.R. No. 231989, September 4, 2018, citing *People v. Ocampo*, G.R. No. 232300, August 1, 2018; *People v. Allingag*, G.R. No. 233477, July 30, 2018; *People v. Sipin*, 833 Phil. 67, 91-92 (2018); *People v. Reyes*, 830 Phil. 619, 631 (2018); and *People v. Mola*, 830 Phil. 364, 377-378 (2018).

marked illegal drug seized from the forensic chemist to the court.²⁰

In this case, we find that the identity of the *corpus delicti* had been compromised. The prosecution failed to establish that the illegal drug seized from the accused-appellants was the same drug presented before the trial court.

Foremost, there was a failure to immediately mark the contraband at the place of arrest in the City of Manila. It was at the PDEA main office in Quezon City where the seized item was marked. During transit, the sachet of *shabu* remained unmarked causing a significant gap in the chain of custody that may have compromised the evidence. In *People v. Ismael*,²¹ the Court highlighted the importance of marking the seized drugs immediately upon arrest, *viz.*:

The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. **Marking**, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, **should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will also use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**²² (Emphasis supplied.)

The prosecution offered no justification for this deviation. IO1 Lumase, Jr. plainly explained that there was already a commotion at the KFC restaurant and that it was the directive of their Team Leader for them to proceed to the PDEA office. However, this is not a compelling reason for the arresting officers to defer marking especially when proof is wanting that their safety was threatened. We have consistently ruled that failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence.²³ By belatedly marking the seized item, the apprehending team failed to remove any suspicion of tampering, switching or planting of evidence.

Also, the requirement of having the three (3) required witnesses to be physically present at the time of inventory was not complied with.

²⁰ *People v. Caranto*, 728 Phil. 507, 521 (2014).

²¹ 806 Phil. 21 (2017).

²² *Id.* at 31-32, citing *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

²³ *People v. Asjali*, G.R. No. 216430, September 3, 2013; *People v. Asdali*, G.R. No. 219835, August 29, 2018; *People v. Madria*, G.R. No. 233207, August 20, 2018; *People v. Gajo*, 824 Phil. 140, 153-154 (2018).

There were only two (2) witnesses present during the marking and the inventory, namely: Kagawad Jose Ruiz, Jr. and Jimmy Mendoza from the media. There was no representative from the DOJ. The prosecution failed to proffer a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.²⁴ Here, when asked if there was a representative from the DOJ, IO1 Lumase, Jr. plainly replied, "*Wala pong present during that time, Ma'am.*"²⁵ He did not explain more. Verily, there was no indication that the apprehending officers exerted genuine efforts to secure the presence of a representative from the DOJ, or that such efforts failed.

Jurisprudence dictates that the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. 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.²⁶ Owing to the unjustified breach of Section 21 that compromised the integrity and evidentiary value of the *corpus delicti*, we acquit the accused-appellants.

FOR THESE REASONS, the appeal is **GRANTED**. The Court of Appeals' Decision dated April 30, 2018 in CA-G.R. CR HC No. 08259 is **REVERSED** and **SET ASIDE**. Myra Francisco y Gatchalian, Wilfredo Riquez y Salansang a.k.a. "Jun," and Mark Anthony Jacinto y Ronquillo a.k.a. "Macky" are **ACQUITTED** and are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five (5) days from receipt of this Resolution.

SO ORDERED."

²⁴ *People v. Maricel Patacsil*, G.R. No. 234052, August 6, 2018.

²⁵ TSN, November 14, 2014, p. 22.

²⁶ *People v. Baptista*, G.R. No. 225783, August 20, 2018.

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *by r/23*
28 MAY 2021

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MS. MYRA G. FRANCISCO (x)
Accused-Appellant
c/o The Superintendent
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THE DIRECTOR (x)
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1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 13
1000 Manila
(Crim. Case No. 11-288546)

THE SUPERINTENDENT (x)
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