



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 17, 2020** which reads as follows:*

**“G.R. No. 241600 – Mark Joshua Abella y Garcia @ “Josan”  
v. People of the Philippines**

This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45, questioning the Decision<sup>2</sup> dated April 27, 2018 and Resolution<sup>3</sup> dated August 16, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39865, which affirmed the Decision<sup>4</sup> dated March 22, 2017 of the Regional Trial Court (RTC) of Manila, Branch 42, in Criminal Case Nos. 16-327252-53, wherein Mark Joshua Abella y Garcia @ “Josan” (petitioner) was found guilty of violation of Section 11(3), Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

**The Facts**

In two separate Information, petitioner was charged with Violation of Section 5 (illegal sale) and 11(3) (illegal possession), Article II of R.A. No. 9165, respectively, the accusatory portions thereof read:

Criminal Case No. 16-327252

That on or about July 26, 2016, in the City of Manila, Philippines, the said accused, not being then authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell to one PO1

- over – eleven (11) pages ...

117

<sup>1</sup> *Rollo*, pp. 12-28.

<sup>2</sup> Penned by Associate Justice Renato C. Francisco, with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda (now a Member of the Court), concurring; *id.* at 32-45.

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

<sup>4</sup> Penned by Presiding Judge Dinnah C. Aguila-Topacio; *id.* at 67-78.

PRINCETON FELIA, a police officer/poseur buyer, **ONE (1) heat-sealed transparent plastic sachet with markings "MJA" July 26, 2016 with signature containing ZERO POINT ONE THREE SEVEN (0.137) GRAMS** of white crystalline substance containing Methamphetamine hydrochloride, commonly known as "SHABU", a dangerous drug.

Contrary to law.<sup>5</sup>

Criminal Case No. 16-327253

That on or about July 26, 2016, in the City of Manila, Philippines, the said accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control **TWO (2) heat-sealed transparent plastic sachets with the following markings and recorded net weights, to wit:**

**"MJA1" July 26, 2016 w/ signature ZERO POINT ZERO NINE FOUR (0.094) GRAMS "MJA2" July 26, 2016 w/ signature ZERO POINT ONE FOUR THREE (0.143) GRAMS**

**or with a total net weight of ZERO POINT TWO THREE SEVEN (0.237) GRAMS** of white crystalline substance containing Methamphetamine hydrochloride commonly known as "SHABU", a dangerous drug.

Contrary to law.<sup>6</sup>

Petitioner pleaded not guilty to the charges during arraignment. Pre-trial and trial then ensued accordingly.<sup>7</sup>

The prosecution had PO2 Princeton Felia (PO2 Felia), PO2 Jocelyn Samson (PO2 Samson), Barangay Chairman Jaime Anselmo (Chairman Anselmo), and PCI Elisa Arturo (PCI Arturo) as witnesses.

PO2 Felia testified that at around 6:00 p.m. of July 25, 2015, an informant came to their office in Sta. Ana Police Station to report about some illegal drug activities involving a certain Josan, later identified to be petitioner. Acting upon said information, the Station Commander immediately formed a buy-bust team, assigning PO2 Felia as the poseur buyer. The operation, which was scheduled to be conducted the next day, was coordinated with the Philippine Drug Enforcement Agency (PDEA).<sup>8</sup>

- over -

117

---

<sup>5</sup> Id. at 14.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id. at 15.



As scheduled, at around 3:30 p.m. of July 26, 2016, PO2 Felia, together with the informant and the rest of the team proceeded to the target area. Upon seeing petitioner, the informant introduced PO2 Felia to the former as his friend who wanted to buy *shabu*. When asked how much he was going to buy, PO2 Felia responded that he wanted a 200-peso worth of *shabu*. Petitioner then took out one plastic sachet containing white crystalline substance from his left pocket and handed it to PO2 Felia. In turn, PO2 Felia gave petitioner the two marked 100-peso bills. PO2 Felia then took off his ball cap, which was the team's pre-arranged signal that the transaction was completed. Immediately thereafter, PO2 Felia grabbed petitioner, identified himself as a police officer, frisked petitioner's body, and asked him to empty his pocket. From his left pocket, petitioner took out two more plastic sachets containing similar white crystalline substance. The marked 100-peso bills were, on the other hand, recovered from his right pocket. PO2 Felia alleged that one of his fellow police officers, a certain PO1 Ala, at that stage of the operation, immediately looked for a *barangay* official to witness the marking of the seized evidence, to no avail. It was further alleged that as people started to interfere with the arrest, the police officers decided to immediately leave the area. PO2 Felia placed all of the seized items in a plastic Ziploc bag before proceeding to their office.<sup>9</sup>

At the police station, PO2 Felia presented the evidence to the investigator on duty, PO2 Samson. Thereafter, inventory, marking, and taking of photographs of the seized items were conducted in the presence of petitioner, the arresting officers, and Chairman Anselmo. PO2 Felia was the one who marked the items with "MJA" July 26, 2016 and his signature; "MJA 1" July 26, 2016 and his signature; and "MJA 2" July 26, 2016 and his signature, respectively. The first item marked was supposed to be the one that he bought from petitioner, while the last two items marked were supposed to be those recovered from petitioner's left pocket after the sale. PO2 Felia was also the one who brought the seized items to the crime laboratory for examination.<sup>10</sup>

PO2 Samson, whose testimony was stipulated upon, alleged that she was the investigator-on-case; that she prepared the Affidavit of Investigator, Booking and Information Sheet of Suspect, Receipt/Inventory of Item/s of Property Seized, Photographs of suspect and documentation of evidence, and Chain of Custody and Spot Report; and that she has no personal knowledge on the manner of

- over -

117

---

<sup>9</sup> Id.

<sup>10</sup> Id.

petitioner's arrest, as well as on the ultimate source of the evidence against petitioner.<sup>11</sup>

The parties also stipulated on the testimony of Chairman Anselmo, stating that he witnessed the inventory conducted at the police station, but he has no personal knowledge on the manner of petitioner's arrest and the latter's identity until he was summoned at the police station. He likewise has no personal knowledge of the ultimate source of the evidence against petitioner.<sup>12</sup>

The following testimony of PCI Arturo was likewise stipulated upon: that she personally received the Request for Laboratory Examination together with the specimen allegedly seized from petitioner; that she conducted the examination, wherein she found that the specimen were positive for methamphetamine hydrochloride, a dangerous drug. Same as with PO2 Samson and Chairman Anselmo, the parties stipulated that PCI Arturo has no personal knowledge of the ultimate source of the evidence against petitioner.<sup>13</sup>

For its part, the defense presented petitioner as its lone witness, who interposed the defense of denial and alibi. Petitioner testified that, at around 2:00 p.m. of July 26, 2016, he was in a computer shop when he noticed people running and suddenly, someone strangled him. He identified the person who strangled him as a certain PO John Alfred Taruc. When he asked why he was being apprehended, he was told that it was because he was selling *shabu*. Despite denial of the accusation against him, he was allegedly handcuffed, blindfolded, and brought to the police station. Thereat, he was frisked and ordered to disclose where he got his drug supply, otherwise he was threatened to be killed.<sup>14</sup>

### **The RTC Ruling**

In its March 22, 2017 Decision,<sup>15</sup> the RTC convicted petitioner of illegal possession, but acquitted him of the illegal sale charge. The trial court took into consideration the fact that the marking and inventory of the seized evidence were not done at the place of seizure and arrest but at the police station. Crucial in that stage, according to the RTC, was the fact that the seized items – one sachet supposedly recovered from the sale; and two sachets supposedly recovered from the petitioner's pocket – were all placed inside one Ziploc bag without

- over -

117

---

<sup>11</sup> Id. at 71.

<sup>12</sup> Id. at 70-71.

<sup>13</sup> Id. at 68-69.

<sup>14</sup> Id. at 71.

<sup>15</sup> Supra note 4.



any markings. Thus, the RTC concluded that with the commingling of the pieces of evidence, the prosecution, evidently, could not prove with certainty the identity of the *corpus delicti* for the illegal sale charge.

For the illegal possession charge, on the other hand, the RTC ruled that despite failure to prove with certainty which plastic sachet was for the illegal sale charge and which others were for the illegal possession, the prosecution was able to clearly establish petitioner's illegal possession of all three sachets of *shabu* with the total weight of below five grams.

The RTC proceeded then to rule that the prosecution was able to prove the identity and integrity of the *corpus delicti* of the illegal possession case, as well as established the unbroken chain of custody thereof. For the RTC, the fact that the marking and inventory of the seized items were done at the police station, not at the place of arrest, did not compromise the integrity of said seized items.

The RTC thus, disposed of the case as follows:

**WHEREFORE**, Accused **MARK JOSHUA ABELLA Y GARCIA** is found **GUILTY** beyond reasonable doubt of violation of Section 11 (3), Article II of Republic Act 9165 in Criminal Case No. 16-327253. Consequently, said accused is hereby ordered to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) month, as minimum to fourteen (14) years and eight (8) months as maximum, and to pay a fine of Three Hundred Thousand Pesos ([P]300,000.00).

Accused is hereby **ACQUITTED** of violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 16-327252.

The specimens are forfeited in favor of the government to be turned over to the Philippine Drug Enforcement Agency for disposal in accordance with the law and rules.

**SO ORDERED.**<sup>16</sup>

### **The CA Ruling**

In its April 27, 2018 assailed Decision,<sup>17</sup> the CA affirmed in its entirety the RTC Decision, thus:

- over -

117

---

<sup>16</sup> *Rollo*, pp. 77-78.

<sup>17</sup> *Supra* note 2.

**WHEREFORE**, in light of the foregoing, the instant appeal is hereby **DENIED** and the assailed Decision rendered by Branch 42 of the Regional Trial Court of Manila on 22 March 2017 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>18</sup>

Petitioner's motion for reconsideration of said CA Decision was likewise denied in the CA's August 16, 2018 assailed Resolution,<sup>19</sup> the dispositive thereof reads:

**WHEREFORE**, premises considered, the instant motion for reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**<sup>20</sup>

Hence, this petition.

### **The Issue**

Whether or not petitioner is guilty beyond reasonable doubt of illegal possession under Section 11(3), Article II of R.A. No. 9165.

Petitioner contends that, as in the illegal sale case, the integrity and evidentiary value of the illegal drugs in the illegal possession case were also not proven to be preserved as required under the law. Specifically, petitioner points out that while, under the rules, the inventory is allowed to be conducted in the nearest police station for justifiable reasons, there was no proof in this case that the police station where petitioner was brought was the nearest one from the place of arrest. Petitioner also points out that there is no representative from the National Prosecution Service (NPS) nor from the media present during the conduct of the inventory. Petitioner further raises the fact that, as found by both the RTC and the CA, the identity of the seized items was not established as the same were commingled in a plastic bag when brought to the police station.

### **The Court's Ruling**

The Court finds merit in the petition.

At the outset, it is important to emphasize that in all criminal prosecutions involving dangerous drugs, case law instructs that it is

- over -

117

---

<sup>18</sup> *Rollo*, p. 44.

<sup>19</sup> *Id.* at 47-48.

<sup>20</sup> *Id.* at 48.



crucial that the identity of the drug subject of the case be established beyond reasonable doubt, considering that the drug itself forms an integral part of the *corpus delicti* of the crime.<sup>21</sup> Therefore, both law and jurisprudence have developed certain mandatory rules and guidelines in order to obviate any unnecessary doubt on the integrity and evidentiary value of the alleged seized dangerous drug, and ultimately, to ensure that rights are safeguarded.<sup>22</sup>

Specifically, Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640,<sup>23</sup> outlines the mandatory procedure to be followed by police officers dealing with the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. As the crime charged in this case was allegedly committed on July 26, 2016, the amended version of said provision applies, which, notably, provides for lesser stringent requirement than the original version with respect to the persons required to witness the conduct of physical inventory and photograph-taking.

Said provision mandates that the initial custody requirements – marking, inventory, and taking of photographs – be done **immediately after seizure or confiscation**; that the same be done **in the presence of (a) the accused or his representative or counsel, (b) an elected public official and (c) a representative of the NPS or the media** who are all required to sign the copies of the inventory and be given a copy thereof; and that the physical inventory and photograph be **conducted at the place where the search warrant is served or at the nearest police station, or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.**

To be sure, while strict compliance with these guidelines is mandated, the law allows deviation therefrom due to varied field circumstances but **only in exceptional cases and conditioned upon the existence of justifiable grounds, and upon the prosecution being able to prove with moral certainty that, despite departure from the mandatory requirements of the law, the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers/team.**<sup>24</sup> In *People v. De Guzman*,<sup>25</sup> it was

- over -

117

<sup>21</sup> *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

<sup>22</sup> *People v. Angeles*, G.R. No. 237355, November 21, 2018.

<sup>23</sup> 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.” Approved on July 15, 2014.

<sup>24</sup> *People of the Philippines v. Ga-a and Adobar*, G.R. No. 222559, June 6, 2018.

<sup>25</sup> 630 Phil. 637 (2010).

emphasized that the justifiable ground invoked for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

Further, over time, jurisprudential guidelines were developed based on the law and considering the hard fact faced by both the law enforcers and the accused in drugs cases, *i.e.*, imputations of frame-up and/or extortion against police officers, or the potential abuses by police officers who fail to appreciate the gravity of the penalties faced by the accused in an illegal drugs case. Thus, the Court has consistently ruled in recent cases that by the same intent of the law behind the mandate that the initial custody requirements be done “immediately after seizure and confiscation,” the aforesaid witnesses are required to already be physically present at the time of apprehension and seizure. Notably, this is a reasonable requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its very nature, a planned activity.<sup>26</sup> The rationale for this requirement is simple: the seizure of the drugs and arrest of the accused is the crucial point when the presence of the said witnesses is most needed, precisely because the ultimate source of the evidence can be traced at that very stage of the operation. It is the presence of said witnesses at the time of the seizure and apprehension, the very first link in the chain of custody, which would belie any doubt as to the source, identity, and integrity of the seized drug.

In *People v. Tomawis*,<sup>27</sup> the Court emphatically ruled:

The practice of police operatives of not bringing to the intended place of arrest the three witnesses [or two under R.A. No. 10640], when they could easily do so – and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has been finished – does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses [or two under R.A. No. 10640] at the time of seizure and confiscation of the drugs must be secured and complied with at the time of warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”<sup>28</sup>

- over -

117

<sup>26</sup> *People v. Ga-a and Adobar*, supra.

<sup>27</sup> G.R. No. 228890, April 18, 2018.

<sup>28</sup> Id.



Guided by the foregoing, the Court finds that the police officers in this case committed unjustified deviations from the strict mandatory procedure outlined by the law, which militates against the integrity of the sachets of *shabu* used as evidence against petitioner.

Foremost, it is undisputed that there was no compliance with the two-witness rule. There was no representative from the NPS or the media. Only one witness, an elected *barangay* official, was present during the conduct of the physical inventory and photograph-taking. What is more, no justification, or at least an explanation, was given by the prosecution for such departure from the clear and mandatory requirement of the law. As can be gleaned from the factual backdrop of this case, the buy-bust team actually seems to be unaware of this mandatory requirement considering that on two occasions – after the seizure and apprehension at the target area; and at the police station during the inventory – the police officers only sought for the presence of a *barangay* official to witness the inventory.

More importantly, none of the required witnesses were present during the seizure and apprehension. To reiterate for emphasis, Chairman Anselmo was summoned to witness only the inventory at the police station. As stipulated upon by the parties, said *barangay* official has no personal knowledge of the ultimate source of the drugs subject of the inventory that he witnessed.

Evidently, this Court is left with absolutely no guarantee, other than the self-serving assurance of PO2 Felia, that the sachets of *shabu* used as evidence against petitioner were indeed sourced from the latter. This is precisely the evil sought to be prevented by the mandatory procedure outlined by the law – a procedure which is “supposed to be plain, standardized, even run-of-the-mill”<sup>29</sup> but still ignored or infringed by the apprehending officers in this case.

In an attempt to justify such omission, PO2 Felia explained that immediately after seizure and apprehension, his colleague tried to look for a *barangay* official to witness the marking of the seized evidence, which was supposedly to be done at the place of arrest and seizure. However, his colleague allegedly could not secure one. Certainly, this is not an acceptable reason, much less the “justifiable ground” contemplated in Section 21.

It should be emphasized that procuring the presence of the insulating witnesses at that stage of the buy-bust operation was not the

- over -

117

---

<sup>29</sup> *People v. Que*, G.R. No. 212994, January 31, 2018.

proper time to do the same. As above-discussed, the presence of these witnesses is imperative, not only during the inventory and photograph-taking, but most crucially during the seizure and apprehension. It was, thus, too late for the officers to summon the witnesses after the alleged seizure and apprehension. Consequently, in total disregard of the clear and mandatory requirements of the law, no one but the police officers witnessed the alleged seizure of the sachets of *shabu* from petitioner.

Furthermore, the alleged unavailability of the witness/es at that moment cannot excuse the officers' blunder as they should have summoned the required witnesses in as early as the planning stage of the buy-bust operation, which gives them more time to actually secure the availability of the required witnesses. To be sure, the police officers had ample time to secure the presence of these witnesses that could have supported their case; considering that they began to plan the buy-bust operation at around 6:00 p.m. of July 25, 2016, and they did not execute the same until 3:00 p.m. of the next day.

Inevitably, thus, these omissions and unjustified departure from the unequivocal mandatory requirements of the law begets reasonable doubts on the identity and integrity of the supposed concrete evidence of the crime imputed against petitioner. Acquittal must, perforce, be adjudged.

**WHEREFORE**, the petition is **GRANTED**, the Decision dated April 27, 2018 and the Resolution dated August 16, 2018 of the Court of Appeals in CA-G.R. CR No. 39865 are **REVERSED and SET ASIDE**. Accordingly, Mark Joshua Abella y Garcia @ "JOSAN" is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Director of the Bureau of Corrections, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Resolution, the action he has taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency for their information.

Let entry of final judgment be issued immediately.



**SO ORDERED.”**

Very truly yours,

**LIBRADA C. BUENA**  
Division Clerk of Court *mal/r*

by:

*mtb*  
**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**117**

PUBLIC ATTORNEY’S OFFICE  
Special and Appealed Cases Service  
Counsel for Petitioner  
DOJ Agencies Building, Diliman  
1101 Quezon City

Mr. Mark Joshua G. Abella (x)  
Petitioner  
c/o The Director General  
Bureau of Corrections  
1770 Muntinlupa City

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

Court of Appeals (x)  
Manila  
(CA-G.R. CR No. 39865)

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

The Hon. Presiding Judge  
Regional Trial Court, Branch 42  
1000 Manila  
(Crim. Case No. 16-327253)

The Director General  
PHILIPPINE NATIONAL POLICE  
Camp Crame, 1111 Quezon City

The Director General  
PHILIPPINE DRUG ENFORCEMENT  
AGENCY  
PDEA National Office  
NIA Northside Road, Diliman  
1101 Quezon City

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

Judgment Division (x)  
Supreme Court

UR

*mtb*

*mtb*