



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 247322 (*People of the Philippines v. Marian Echeveria y Benedicto*). – The Court **NOTES:** 1) the Manifestation in lieu of supplemental brief dated November 8, 2019 of counsel for Marian Echeveria y Benedicto (accused-appellant), adopting the appellant’s brief filed before the Court of Appeals (CA) as accused-appellant’s supplemental brief to avoid repetition of the issues and arguments already discussed therein; and 2) the Letter dated November 19, 2019 of CSupt. Benhur V. Pantaleon, Officer-in-Charge, Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, confirming the confinement of accused-appellant on October 3, 2019 at the Davao Prison and Penal Farm/CIW-Mindanao.

Assailed in this appeal is the Decision¹ dated January 22, 2019 of the Court of Appeals in CA-G.R. CR-H.C. No. 01735-MIN which affirmed with modification the Consolidated Judgment² dated August 23, 2017 of Branch 40, Regional Trial Court (RTC), Cagayan De Oro City, Misamis Oriental. The assailed CA Decision upheld accused-appellant’s conviction for the Illegal Sale of Dangerous Drugs under Section 5, Article II of Republic Act No. (RA) 9165, or the Comprehensive Dangerous Drugs Act of 2002, but acquitted accused-appellant of the charge of Illegal Possession of Dangerous Drugs under Section 11, Article II of the same Act.

The Antecedents

Accused-appellant was charged with the Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 and the Illegal Possession of Dangerous Drugs under Section 11, Article II of the same Act in two Informations dated

¹ *Rollo*, pp. 4-19; penned by Associate Justice Tita Marilyn Payoyo-Villordon, with Associate Justices Edgardo A. Camello and Loida S. Posadas-Kahulugan, concurring.

² *CA rollo*, pp. 66-78; penned by Presiding Judge Ma. Corazon B. Gaite-Llanderal.

December 16, 2014 which read:

Criminal Case No. 2014-1516.

That on or about December 13, 2014 at, more or less, 11:15 in the morning, at Poblacion, Villanueva, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there wilfully, unlawfully and feloniously, for and in consideration of the buy-bust money, sell and deliver to the *poseur*-buyer one (1) heat-sealed transparent plastic sachet containing 0.1316 gram of Methamphetamine Hydrochloride or *shabu*, a dangerous drug.

Contrary to and in violation of Section 5, Article II of Republic Act 9165.³

Criminal Case No. 2014-1515.

That on or about December 13, 2014 at, more or less, 11:15 in the morning, at Poblacion, Villanueva, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to possess, did then and there wilfully, unlawfully, feloniously and knowingly, without being authorized by law, have in her possession and control 0.2804 gram of *marijuana*, two (2) hand-rolled cigarettes all containing marijuana with a total net weight of 0.0622 gram, and four (4) unsealed transparent plastic sachets containing traces of Methamphetamine Hydrochloride or *shabu*, said *marijuana* and *shabu* being dangerous drugs.

Contrary to and in violation of Section 11, Article II of Republic Act 9165.⁴

During her arraignment on January 21, 2015, accused-appellant entered her pleas of not guilty.⁵ Trial ensued.

Version of the Prosecution

On December 13, 2014, at around 11:15 a.m., a buy-bust team led by Police Senior Inspector Rogelio Rabuya Labor, Jr. (PSI Labor) of the Villanueva Police Station conducted a buy-bust operation against accused-appellant at her residence in Purok 7, Poblacion 1, Villanueva, Misamis Oriental. Police Officer 1 Jerlyn Rapatan (PO1 Rapatan) confiscated one heat-sealed, transparent plastic sachet containing white crystalline substance and the marked money from the accused-appellant after the buy-bust sale. PSI Labor immediately placed accused-appellant under arrest and informed her of the nature of her offenses and her constitutional rights.⁶

³ CA rollo, pp. 66-67.

⁴ *Id.* at 66.

⁵ See Certificates of Arraignment, records, Crim. Case No. 2014-1516, p. 18, and records, Crim. Case No. 2014-1515, p. 23.

⁶ See Judicial Affidavit of PSI Labor, records, Crim. Case No. 2014-1515, p. 8.

The buy-bust team also recovered a plastic container above the laundry inside accused-appellant's house which contained, among others, the following: (a) four unsealed, transparent plastic sachets with traces of white crystalline substance; (b) one staple-sealed, transparent plastic sachet containing suspected dried *marijuana* leaves; and (c) two hand-rolled paper containing suspected dried *marijuana* leaves. PO1 Rapatan then marked and inventoried the seized items while Police Officer 2 Joel Arquiza* (PO2 Arquiza) took photographs thereof, in the presence of *Barangay Kagawads* Jose Abejo, Elmer Ramos, and Ma Quilang.⁷

Afterwards, the buy-bust team proceeded to the police station for documentation purposes where PSI Labor prepared the Request for Laboratory Examination of Seized Evidence⁸ and Request for Drug Test.⁹ Later, PO1 Rapatan personally brought the accused-appellant and the seized items to the Regional Crime Laboratory Office for examination.¹⁰ Per Chemistry Report No. D-574-2014¹¹ dated December 14, 2014 prepared by PSI Charity Peralta Caceres, the subject specimens tested positive for the presence of methamphetamine hydrochloride, more commonly known as *shabu*, and *marijuana*, respectively, viz.:

SPECIMEN SUBMITTED:

- A – One (1) heat-sealed transparent plastic sachet with markings “JR1” containing 0.1316 gram [of] white crystalline substance
B to E – Four (4) unsealed transparent plastic sachets with markings “JR2” to “JR5” each containing traces of white crystalline substance
Two (2) used hand rolled cigarettes each containing dried alleged Marijuana leaves with the following markings and corresponding net weights: F (“JR7”) - 0.0412 gram G (“JR8”) - 0.0210 gram
H – One (1) staple-sealed transparent cellophane with markings “JR6” containing 0.2804 gram [of] dried alleged marijuana fruiting tops.

FINDINGS:

Qualitative examination conducted on the above-stated specimen[s] revealed the following results:

1. Specimen[s] A, B, C, D[,] and E gave **POSITIVE** result[s] for the presence of Methamphetamine Hydrochloride (Shabu), a dangerous drug.
2. Specimen[s] F, G[,] and H gave **POSITIVE** result[s] for the presence of Marijuana, a dangerous drug.¹²

* Arquiza in some parts of the *rollo*.

⁷ *Id.*

⁸ *Id.* at 13.

⁹ *Id.* at 15.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 10.

¹² See Chemistry Report No. D-574-2014, records, Criminal Case No. 2014-1575, p. 11.

Version of the Defense

Accused-appellant raised the defenses of denial and frame-up. She claimed that on December 13, 2014, at around 8:00 a.m., she was changing her clothes at the second floor of her house when two armed men in civilian clothes barged in and handcuffed her. A policewoman later arrived and assisted her in putting on her clothes. Afterwards, the policewoman subjected her to a body search while the other men searched her cabinet. Having found nothing of consequence, they brought her downstairs, still in handcuffs, and continued the search. While standing in the kitchen, she observed that two persons placed a cellophane, one sachet, and some money on a table. Thereafter, she was taken to and detained at the Villanueva Police Station. She was later informed that she had been arrested for her involvement in drug activities in the area.¹³

Ruling of the RTC

In the Consolidated Judgment¹⁴ dated August 23, 2017, the RTC found accused-appellant guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165.¹⁵ The RTC ruled that the prosecution had sufficiently proven the elements of the illegal sale and possession of dangerous drugs and established the chain of custody over the seized items.¹⁶

Accordingly, the RTC sentenced accused-appellant to suffer the penalties of: (a) life imprisonment and a fine of ₱500,000.00 for violation of Section 5, Article II of RA 9165 in Criminal Case No. 2014-1516; and (b) imprisonment for a period of twelve (12) years and one (1) day, as minimum, to twelve years (12) years and two (2) days, as maximum, and a fine of ₱300,000.00 for violation of Section 11, Article II of RA 9165 in Criminal Case No. 2014-1515.¹⁷

Accused-appellant thereafter appealed the RTC Decision before the CA.¹⁸

Ruling of the CA

In the Decision¹⁹ dated January 22, 2019, the CA affirmed the RTC Decision with modification in that the appellate court upheld accused-appellant's conviction for the Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, but acquitted her of the charge of Illegal Possession of Dangerous Drugs

¹³ See Appellant's Brief, CA *rollo*, pp. 34-36.

¹⁴ *Id.* at 66-78.

¹⁵ CA *rollo*, p. 77.

¹⁶ *Id.* at 75-77.

¹⁷ *Id.* at 77.

¹⁸ See Notice of Appeal, CA *rollo*, pp. 9-10.

¹⁹ *Rollo*, pp. 4-19.

under Section 11, Article II of the same Act.²⁰

The CA found that accused-appellant had been caught *in flagrante delicto* selling *shabu* to the confidential informant. It noted that the sale transaction was witnessed by PO1 Rapatan, who testified regarding the details of the incident before the trial court.²¹ The CA also ruled that the prosecution had sufficiently established an unbroken chain of custody over the seized *shabu*, viz.:

The team of P01 Rapatan duly preserved the integrity of the *shabu*, from the time it was seized to the time it was presented as evidence in the trial court. Upon the arrest of the accused-appellant, the CI/*poseur*-buyer immediately turned over to P01 Rapatan the plastic sachet containing *shabu*. P01 Rapatan then placed the markings "JR1" on the said sachet. In the presence of the accused-appellant and three (3) barangay officials, x x x P01 Rapatan conducted an inventory and while the photographs of the seized items were taken by P02 Arquiza. Thereafter, P01 Rapatan brought the sachet to the Villanueva Police Station and turned it over to their Chief of Police (COP), who prepared and signed the Request for the laboratory examination of the contents of the marked sachet. x x x. Thereafter, P01 Rapatan hand-carried the Letter Request and the seized item to the Regional Crime Laboratory Office (RCLO). Forensic Chemist P/SI Charity Peralta Caceres of the RCLO recorded the delivery of the request and the marked sachet.²² (Italics supplied.)

The CA further held that PSI Labor had satisfactorily explained that "there was no media representative during the inventory and taking of photographs [of the seized items] in view of the absence of media in their area of responsibility."²³

However, the CA found all the pieces of evidence discovered inside accused-appellant's house, *i.e.*, four unsealed, transparent plastic sachets with traces of *shabu*, one staple-sealed, transparent plastic sachet containing dried *marijuana* fruiting tops, and two hand-rolled paper containing dried *marijuana* leaves, to be inadmissible in evidence as there was no proof that these items were within the plain view of PO1 Rapatan at the time of the accused-appellant's warrantless arrest.²⁴

Hence, this appeal before the Court for the review and reversal of accused-appellant's conviction for the Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165.²⁵

²⁰ *Rollo*, pp. 18-19.

²¹ *Id.* at 10-11.

²² *Id.* at 14-15.

²³ *Id.* at 15.

²⁴ *Id.* at 17-18.

²⁵ See Notice of Appeal, *id.* at 20-21.

The Court's Ruling

The appeal is meritorious.

“For prosecutions involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.”²⁶ Thus, the identity of the dangerous drug, coupled with the other elements of the offense/s charged, must be established with moral certainty.²⁷ “Such proof requires an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him.”²⁸

Section 21, Article II of RA 9165 provides the procedural safeguards that the apprehending team is required to observe in the handling and safekeeping of seized illegal drugs in order to preserve their identity and integrity as evidence. “As indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case.”²⁹

Since the buy-bust operation against accused-appellant took place on December 13, 2014, the procedure under Section 21, par. 1, as amended by RA 10640,³⁰ is applicable in this case, viz.:

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, *immediately after seizure and confiscation*, conduct a physical inventory of the seized items and photograph the same **in the presence of the**

²⁶ *Derilo v. People*, 784 Phil. 679, 686 (2016) citing *People v. De Guzman* G.R. 219955, February 05, 2018, 854 SCRA 116.

²⁷ *Derilo v. People*, *supra*.

²⁸ *People v. De Guzman*, *supra* note 26.

²⁹ *People v. De Guzman*, *Id.* citing *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

³⁰ In *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), the Court noted that RA 10640, which was approved on July 15, 2014, was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and the Manila Bulletin (Vol. 499, No. 23, World News section, p. 6), and appears to have become effective on August 7, 2014, or fifteen (15) days after its publication in the mentioned newspapers of general circulation.

accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally*, That noncompliance of these requirements **under justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphases and italics supplied.)

After a careful review of the records, the Court finds that the buy-bust team had failed to strictly comply with the prescribed procedure under Section 21, par. 1, as amended by RA 10642, considering the notable absence of a representative from either the Department of Justice (DOJ) or the media during the marking, physical inventory, and taking of photograph of the *shabu* allegedly seized from the accused-appellant.

While it is true that “non-compliance with the prescribed procedures under Section 21, par. 1, as amended by RA 10642 does not, as it should not, *automatically* result in an accused’s acquittal,”³¹ the saving mechanism that excuses any deviations from the standard procedure only operates “under justifiable grounds, and as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.”³² Thus, the Court emphasized in *People v. Sipin*³³ that:

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. [The apprehending officer/team’s] failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. x x x (Emphasis and underscoring supplied.)

³¹ See *People v. De Guzman*, *supra* note 26.

³² *People v. Prudencio*, 800 Phil. 128, 140 (2016).

³³ G.R. No. 224290, June 11, 2018, 866 SCRA 73, 98.

In this case, the prosecution failed to squarely address the absence of a representative from the DOJ *or* the media during the marking, physical inventory, and taking of photograph of the confiscated *shabu*. Although the absence of the necessary witnesses under Section 21, par. 1, as amended by RA 10640, does not *per se* render the seized dangerous drugs inadmissible in evidence, the prosecution must sufficiently show that earnest efforts were employed by the apprehending officers/team to secure their attendance in order to comply with the procedural requirements under the law.³⁴ “Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.”³⁵

Furthermore, in *People v. Lim*,³⁶ the Court stressed that the prosecution, too, must allege and prove that the presence of the three witnesses to the physical inventory and taking of photograph of the seized dangerous drug was not secured due to reason/s such as:

- (1) their attendance was impossible because the place of arrest was a remote area;
- (2) their safety during the inventory and photograph[-taking] 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 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.³⁷

Here, the prosecution clearly failed to allege and prove that: *first*, earnest efforts were employed by PSI Labor and his team to secure the attendance of the necessary witnesses despite having considerable time to do so;³⁸ and *second*, the attendance of a representative from either the DOJ or the media was not secured due to any of the reasons enumerated in *Lim*. In fact, per PSI Labor’s testimony, he merely claimed that there were no media representatives to invite as witnesses in Villanueva, Misamis Oriental, but he did not explain why the buy-bust team did not even attempt to invite a representative from the DOJ to comply with the

³⁴ *People v. Ramos*, G.R. No. 233744, February 28, 2018, 857 SCRA 175, 190.

³⁵ *Id.*, citing *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

³⁶ G.R. No. 231989, September 4, 2018.

³⁷ *Id.* Emphasis omitted and *People v. Sipin*, *supra* note 33 at 99-100.

³⁸ The records show that surveillance and a test buy operation was supposedly conducted against Echeveria on November 2, 2014, or more than a month prior to the buy bust operation on December 13, 2014. See Judicial Affidavit of PSI Labor, records, Crim. Case No. 2014-1515, p. 7-8.

witness requirement under RA 10640.³⁹

Based on these considerations, the Court finds the absence of a representative from the DOJ or the media during the marking, physical inventory, and taking of photograph of the seized *shabu* in this case to be inexcusable. It is quite evident that the buy-bust team led by PSI Labor failed to make the necessary arrangements before the buy-bust operation took place, despite knowing full well that they were required to strictly comply with the procedural safeguards under the law.

All told, the buy-bust team's unjustified noncompliance with the witness requirement broke the chain of custody and tainted the integrity and the evidentiary value of the seized *shabu* that was ultimately presented as evidence before the trial court in Criminal Case No. 2014-1516. Given the prosecution's failure to prove the indispensable element of *corpus delicti*, accused-appellant must necessarily be acquitted of the charge of Illegal Sale of Dangerous Drugs on the ground of reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision dated January 22, 2019 of the Court of Appeals in CA-G.R. CR-H.C. No. 01735-MIN is **REVERSED** and **SET ASIDE** insofar as it affirmed accused-appellant Marian Echeveria y Benedicto's conviction for Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 is concerned. Accused-appellant is hereby **ACQUITTED** of the charge of Illegal Sale of Dangerous Drugs against her in Criminal Case No. 2014-1516 for failure of the prosecution to prove her guilt beyond reasonable doubt.

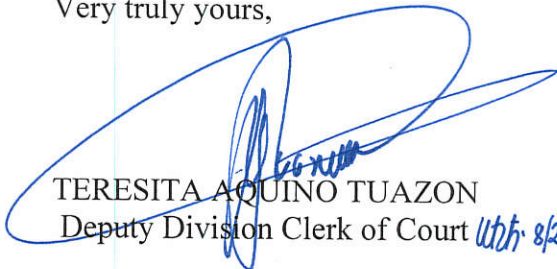
The Superintendent of the Davao Prison and Penal Farm is **ORDERED** to: (a) cause the immediate release of accused-appellant Marian Echeveria y Benedicto, unless she is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

³⁹ TSN, February 10, 2016, p. 10.

SO ORDERED.” (GAERLAN, J., designated as additional member, per Special Order No. 2780 dated May 11, 2020).

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Utah 8/26*

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HON. PRESIDING JUDGE (reg)
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(Crim. Case No. 2014-1515 & 2014-1516)

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