

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 18, 2020 which reads as follows:

“G.R. No. 249302 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus MANOLITO FAJARDO Y MANLAPAZ @ BOY/LITO, accused-appellant.

After a careful review of the records of the instant case, the Court **REVERSES AND SETS ASIDE** the Decision¹ dated April 6, 2018 (assailed Decision) of the Court of Appeals, Special Seventh Division (CA) in CA-G.R. CR-H.C. No. 09198, which affirmed the Decision² dated March 14, 2017 of the Regional Trial Court of Manila City, Branch 42 (RTC) in Criminal Cases No. 16-327204 and No. 16-327205, finding accused-appellant Manolito Fajardo y Manlapaz @ Boy/Lito (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5 and 11(3) of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

In cases involving violations of RA 9165, the prosecution must prove beyond reasonable doubt not only every element of the crime or offense charged but must likewise establish the identity of the *corpus delicti*, i.e., the seized drugs.³ It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court.⁴ As such, the State should establish beyond doubt the identity of the dangerous drugs by showing that the

¹ *Rollo*, pp. 8-16. Penned by Associate Justice Jhosep Y. Lopez with Associate Justices Manuel M. Barrios and Myra V. Garcia-Fernandez, concurring.

² *CA rollo*, pp. 57-68. Penned by Judge Dinnah C. Aguila-Topacio.

³ *People v. Arbuis*, G.R. No. 234154, July 23, 2018, 873 SCRA 543, 549.

⁴ *People v. Burdeos*, G.R. No. 218434, July 17, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65487>>.

dangerous drugs offered in court as evidence were the same substances bought during the buy-bust operation.⁵

For this purpose, Section 21 (1)⁶ of RA 9165, as amended by RA 10640,⁷ the applicable law at the time of the commission of the alleged crime in this case,⁸ lays down the procedure to be followed in the seizure and custody of the dangerous drugs. Section 21(1) requires that as regards the items seized and subjected to marking, the performance of two actions is necessary immediately after seizure and confiscation: physical inventory and photographing. Existing jurisprudence clarifies that the phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs must be made immediately after seizure, exactly where the seizure was done, as it minimizes, if not eliminates, room for adulteration, switching or the planting of evidence.⁹ It is only when the same is not practicable, and upon due justification,¹⁰ that the law allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.¹¹

There are instances, however, wherein strict compliance with the requirements of Section 21 is not observed, but the Court nonetheless gave a verdict of conviction because the integrity and evidentiary value of the seized drugs were well-preserved. This is supported under the Implementing Rules and Regulations of RA 9165 and now made part of RA 10640 which provides that “noncompliance

⁵ *People v. Angngao y Makay*, 755 Phil. 597, 604 (2015), citing *People v. Pagaduan*, 641 Phil. 432 (2010).

⁶ The relevant provision reads:

(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 accused or the person/s 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 x x x.

⁷ 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.”

⁸ The offense subject of this appeal was allegedly committed on July 23, 2016.

⁹ *Id.*

¹⁰ See *People v. Lim*, G.R. No. 231989, September 4, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.

¹¹ Section 21(a), Article II, IRR of RA 9165.

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.” For this to apply, the prosecution must prove that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.¹²

Concerning the conduct of physical inventory and taking of photograph of the seized items in drugs cases, Section 21 of RA 9165, as amended, requires the presence of witnesses aside from the accused or the persons from whom such items were confiscated and seized or his/her counsel, particularly: (1) an elected public official; and (2) a representative of the National Prosecution Service or the media. Thereafter, all of them should sign copies of the inventory and be given a copy thereof.¹³ It is to be noted that RA 10640 simplified the number of witnesses in anti-drug operations.

As to when the presence of the witnesses is required, their attendance must be secured not only during the inventory but also more importantly at the time of the warrantless arrest.¹⁴ Thus, in the cases of *People v. Tomawis*,¹⁵ *People v. Adobar*,¹⁶ *People v. Musor*,¹⁷ *People v. Sebilleno*,¹⁸ and *People v. Arellaga*,¹⁹ the Court acquitted the accused, on reasonable doubt, because the third-party witnesses were not present during the apprehension of the accused. The presence of third-party witnesses at the apprehension stage in an anti-drug operation is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug.²⁰ 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.”²¹

¹² *People v. Ceralde*, 815 Phil. 711, 721 (2017).

¹³ *People v. Rendon*, G.R. No. 227873, November 14, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64860>>.

¹⁴ *People v. Tomawis*, G.R. No. 228890, April 18, 2018. 862 SCRA 131,150.

¹⁵ Id.

¹⁶ G.R. No. 222559, June 6, 2018, 865 SCRA 220.

¹⁷ G.R. No. 231843, November 7, 2018, 885 SCRA 154.

¹⁸ G.R. No. 221457, January 13, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66092>>.

¹⁹ G.R. No. 231796, August 24, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66340>>.

²⁰ *People v. Tomawis*, supra note 12. See also *People v. Adobar*, supra note 14, *People v. Musor*, supra note 15, *People v. Sebilleno*, supra note 16, *People v. Arellaga*, supra note 17.

²¹ *People v. Musor*, supra note 15 at 179.

In the instant case, without the required number of witnesses during the apprehension of accused-appellant and during the inventory coupled with the law enforcement officers' failure to justify the non-compliance with the mandatory procedures of the law, accused-appellant must be acquitted because the integrity and evidentiary value of the *corpus delicti* were tainted.

First, the inventory was only witnessed by a certain Leonard Basillio, a photo journalist of the MPD press corps, and there was no elected public official. In his testimony, SPO2 Baltazar explained that his team requested the presence of a barangay official, but it was only the media representative who was able to arrive at the police station, thus:

Q: So upon arrival, were the witnesses already present?

A: They were called.

Q: How many minutes did it take for the witnesses to arrive?

A: **Leonard Basillio arrived fifteen or twenty minutes and the barangay official that we requested was not able to arrive because maybe of the heavy rains.**

Notably, the absence of the required third-party witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under the law must be adduced.²² The prosecution has the burden of proving its compliance with Section 21 of RA 9165, as amended, and in case of non-compliance, it must provide an adequate explanation of the police authorities' failure to follow the mandated procedure. Thus, in *People v. Lim*,²³ the Court *en banc* unanimously ruled:

It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained 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 of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and

²² *People v. Ramos*, 826 Phil. 981, 996 (2018).

²³ G.R. No. 231989, September 4, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.

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.²⁴

None of the foregoing reasons is applicable here. Considering that a buy-bust operation is a planned activity, it behooves the police officers to secure the attendance of the required witnesses. The explanation of SPO2 Baltazar that they requested the presence of the barangay official, but he never came probably because of the heavy rains is not a justifiable reason which this Court can accept as there was no genuine and sufficient attempt to comply with what the law requires. Worse, Leonardo Basillio — the only witness present during the inventory, arrived late at the police station.

Second, none of the third-party witnesses was present at or near the place of arrest. Leonardo Basillio, the media representative, was only present during the inventory at the police station. In fact, when the buy-bust team was already at the police station, Leonardo Basillio was not yet there — he belatedly appeared at the police station to witness the inventory and photographing of the seized items. This is certainly a clear deviation from the requirements of the law as the attendance of third-party witnesses must be secured as early as the actual seizure of the items, not only during inventory and taking of photographs.²⁵ Nowhere was it indicated here that Leonardo Basillio was present at the time of the warrantless arrest or at the time of the drugs' seizure and confiscation from the accused-appellant. This connotes that the prosecution failed to prove that earnest efforts were employed in securing the presence of third-party witnesses as early as the apprehension stage.

²⁴ Id.

²⁵ See *People v. Sebilleno*, supra note 16.

Third, Leonardo Basillio took photographs of the seized items and the marked money at the police station. SPO2 Baltazar explained that they did not conduct the inventory at the place of arrest because the inventory papers would get wet, thus:

Q: Why did you fail to mark the pieces of evidence at the place of recovery?

A: Because of the heavy downpour during that time.

Q: Heavy rain?

A: Yes, Ma'am.

Q: Is that a valid reason, Mr. Witness?

A: Yes, Ma'am because **if we conduct the actual inventory of the evidence and when it's raining, it will destroy all the documents, di po natin masusulatan yung evidence.**

Q: Isn't it that you could still mark it?

A: Ma'am mababasa po yung mga papel?

Q: What papers?

A: The inventory, Ma'am.

Q: I mean the plastic sachet itself, not the papers?

A: We decided to bring the accused and the evidence at our office so that the evidence will not be destroyed.

SPO2 Baltazar's explanation — that they conducted the inventory at the police station to keep the papers from getting destroyed by rain — is a flimsy excuse. Worse, SPO2 Baltazar failed to explain why the buy-bust team did not even attempt to take photographs of the seized *shabu*. The pictorial evidence would have more firmly established the identity of the seized items for purposes of preserving the chain of custody.²⁶

Finally, a considerable time was unaccounted for by the prosecution from the seizure and confiscation of the drugs at the place of arrest to the time of its inventory at the police station.²⁷ When heavy rain poured, the buy-bust team here decided to board a car in

²⁶ *People v. Mendoza*, 739 Phil. 749, 765 (2014).

²⁷ See *People v. Que*, 824 Phil. 882 (2018) and *People v. Adobar*, supra note 14.

proceeding to the police station and they traveled for almost 30 minutes because of the rainstorm and the ongoing construction of the skyway.²⁸ The prosecution failed to account for the intervening period when the members of the buy-bust team, together with the accused-appellant, were on board the car. A lot could happen in seconds, and what more if it is close to 30 minutes since there might be a possibility that the seized drugs subject of the illegal possession of drugs case was switched with the item subject of the illegal sale of drugs. This is material considering that the imposable penalty for illegal possession of *shabu* depends on the quantity or weight of the seized drug.²⁹ Evidently, there was a blatant failure to explain how the seized drugs were preserved in transit and how they were handled following their confiscation from the accused-appellant.

The mandatory procedures under Section 21, RA 9165, as amended, exist to safeguard the rights of individuals and avoid situations where the *corpus delicti* is planted fraudulently, which would lead to wrongful conviction. Law enforcement officers must then be reminded of their importance, *viz.*:

Compliance with the chain of custody requirement provided by Section 21, therefore, ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement **forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.**³⁰

For the reasons mentioned above and with the integrity and evidentiary value of the *corpus delicti* of the crimes for which accused-appellant was charged having been necessarily compromised, it necessarily follows that accused-appellant must be acquitted. Thus, when the chain of custody is severely compromised, and when it appears that the police did not even attempt to comply with such a procedure — these create, in the mind of the Court, that the supposed buy-bust did not really transpire, and was merely concocted by the police to circumvent and violate the law.

²⁸ CA rollo, p. 61.

²⁹ *People v. Ismael*, 806 Phil. 21, 36 (2017).

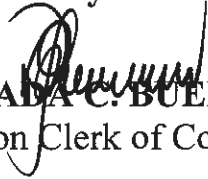
³⁰ *People v. Holgado*, 741 Phil. 78, 93 (2014).

WHEREFORE, the instant appeal is hereby **GRANTED**. The Decision dated April 6, 2018 of the Court of Appeals, Special Seventh Division (CA) in CA-G.R. CR-H.C. No. 09198, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Manolito Fajardo y Manlapaz @ Boy/Lito is **ACQUITTED** for failure of the prosecution to establish his guilt beyond reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Superintendent of New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED." (CARANDANG, J., on official leave)

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court ¹¹⁵

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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