



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 14, 2022, which reads as follows:

“G.R. No. 247622 (*People of the Philippines v. Miso Maca-Ayong a.k.a. Alex Macayo Masalop*). — This resolves the appeal¹ filed by accused-appellant Miso Maca-ayong a.k.a. Alex Macayo Masalop (accused-appellant), challenging the July 31, 2018 Decision² of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08165 which affirmed the February 24, 2016 Decision³ of the Regional Trial Court (RTC) of Antipolo City, Branch 73 in Criminal Case Nos. 03-25278 and 03-25279, finding accused-appellant guilty of Illegal Sale and Illegal Possession of a Dangerous Drug, known as shabu, in violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the “Comprehensive Dangerous Act of 2002.”

The Factual Antecedents

The Informations⁵ charging accused-appellant with violation of Sections 5 and 11, Article II of RA 9165 alleged:

Criminal Case No. 03-25278
(For violation of Section 11, 2nd paragraph, No. 3,
Article II of RA 9165)

That, on or about the 10th day of March 2003 in the Municipality of Taytay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law,

¹ *Rollo*, pp. 16-17.

² *CA rollo*, pp. 159-171. Penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Romeo F. Barza and Stephen C. Cruz.

³ *Id.* at 13-21 and 93-101. Penned by Acting Presiding Judge Leili C. Suarez.

⁴ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.” Approved: June 7, 2002.

⁵ Records, pp. 1 and 6.

did, then and there willfully, unlawfully and knowingly have in his possession, custody and control two (2) heat-sealed transparent sachets each containing 3.69 grams and 0.04 gram respectively, or in the aggregate weight of 3.73 grams of crystalline substance, which were found positive to the test for Methamphetamine Hydrochloride, also known as “shabu,” a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.⁶

Criminal Case No. 03-25279
(For violation of Section 5, 1st paragraph,
Article II of RA 9165)

That, on or about the 10th day of March 2003 in the Municipality of Taytay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to another one (1) heat-sealed transparent sachet containing 0.07 gram of white crystalline substance, which was found positive to the test for Methamphetamine hydrochloride also known as “shabu”, a dangerous drug, in consideration of the amount of Php 100.00, in violation of the above-cited law.

CONTRARY TO LAW.⁷

Upon arraignment, accused-appellant pleaded not guilty to the charges.⁸ Thereafter, the pre-trial was conducted and subsequently trial ensued.⁹

Version of the Prosecution

On March 9, 2003 at around 10:00 a.m., Senior Police Officer 4 Ramon B. Berug¹⁰ (SPO4 Berug) of the Philippine National Police (PNP), Taytay, Rizal, received information from their asset that accused-appellant was engaged in selling drugs in the latter’s house located at Mabolo St., *Barangay* San Juan, Taytay, Rizal. SPO4 Berug relayed the information to their Chief, Police Chief Inspector Rodino Elfa (P/CInsp. Elfa), who, in turn, instructed the immediate conduct of a surveillance in the area to validate the information.¹¹

At 5:00 p.m. of the same day, SPO4 Berug, Police Officer 2 Froilan Loyola (PO2 Loyola), Police Officer 1 John Arvin Mariano (PO1 Mariano), and the asset conducted a surveillance on accused-appellant’s house. After three hours of surveillance, the police operatives confirmed the information that accused-appellant is indeed selling drugs. Thus, P/CInsp. Elfa instructed for the conduct of a buy-bust operation.¹²

⁶ Id. at 160; see also records, pp. 1-2.

⁷ CA *rollo*, p. 160; see also records, pp. 6-7.

⁸ Records, p. 41.

⁹ CA *rollo*, p. 160.

¹⁰ Records, pp. 2 and 167.

¹¹ CA *rollo*, p. 142.

¹² Id.

On March 10, 2003, at 8:00 p.m., a briefing was held for the buy-bust operation against accused-appellant, with SPO4 Berug as team leader, PO1 Mariano and the asset as the poseur-buyers, and PO2 Loyola and the members of the Municipal Anti-Drug Abuse Council of Taytay as back-up. The buy-bust team prepared a ₱100.00-bill, with serial number BX-839936, and initials of SPO4 Berug, as marked money for the operation. The buy-bust team also coordinated with the Philippine Drug Enforcement Agency (PDEA).¹³

At 9:00 p.m. of March 10, 2003, the buy-bust team proceeded to the target area using PO2 Loyola's vehicle. Upon arrival, PO1 Mariano and the asset proceeded to accused-appellant's house while the rest of the team positioned themselves approximately 10 meters away. At that moment, accused-appellant was seen talking to two male persons, identified as Mongkao Macalbe (Macalbe) and Madid Acmad (Acmad). Upon seeing PO1 Mariano and the asset, accused-appellant asked them: "*o kuha kayo?*" In response, PO1 Mariano gave the marked money to accused-appellant who then pulled out three small plastic sachets containing white crystalline substance. He gave one sachet to PO1 Mariano and distributed the other two sachets to Macalbe and Acmad. Upon receipt of the sachet, PO1 Mariano executed the pre-arranged signal to inform the rest of the team that the transaction has been consummated.¹⁴

Consequently, the other members of the buy-bust team rushed towards the area and assisted SPO4 Berug and PO1 Mariano in arresting accused-appellant, Macalbe and Acmad. After accused-appellant was handcuffed, SPO4 Berug frisked him and recovered two more plastic sachets containing white crystalline substance and the marked money. Both Macalbe and Acmad were also frisked and the plastic sachets they received from accused-appellant were recovered. PO1 Mariano then gave to SPO4 Berug the plastic sachet he bought from accused-appellant. Thereafter, SPO4 Berug brought accused-appellant, Macalbe and Acmad, together with all the recovered and confiscated sachets of white crystalline substance, to the Taytay Police Station.¹⁵

Upon arrival at the police station, SPO4 Berug logged in all the confiscated evidence from the buy-bust operation and turned them over to the duty investigator, Senior Police Officer 1 Rogelio Marundan (SPO1 Marundan). SPO1 Marundan then placed his initials on the sachets containing white crystalline substance which were bought from accused-appellant. The marking "RVM-1" was placed on the plastic sachet that PO1 Mariano bought from accused-appellant, while the two sachets recovered from accused-

¹³ Id. at 142-143.

¹⁴ Id. at 143.

¹⁵ Id.

appellant after his arrest were marked as “RVM-2” and “RVM-3.”¹⁶

Thereafter, the confiscated sachets were delivered to the PNP Crime Laboratory Service for chemical examination. The three sachets of white crystalline substance yielded positive results for the presence of methamphetamine hydrochloride or shabu, as indicated in Chemistry Report No. 433-03E¹⁷ dated March 11, 2003 and issued by Forensic Chemist Police Inspector Joseph Perdido (P/Insp. Perdido).¹⁸

The prosecution presented three witnesses during the trial, namely: forensic chemist P/Insp. Perdido, team leader SPO4 Berug and PO2 Loyola.¹⁹

Version of the Defense

Accused-appellant vehemently denied the accusation against him. He averred that on March 9, 2003, at around 10:00 p.m., he was inside his house together with his wife, their four children and his two friends, Macalbe and Acmad, when police officers suddenly entered their house and pointed guns at them. The police officers asked for a certain “Alex,” and when accused-appellant replied in the negative, the police officers arbitrarily searched his house.²⁰

They showed him a plastic sachet of drugs. Then, accused-appellant, Macalbe, and Acmad were brought to the police station of Taytay, Rizal. Accused-appellant was falsely charged with Illegal Sale and Possession of Dangerous Drugs. The police officers fabricated a story that they caught him in the act of illegally selling and possessing dangerous drugs in a buy-bust operation conducted by their group.²¹

Ruling of the Regional Trial Court

In a February 24, 2016 Decision, the RTC found accused-appellant guilty of the charges, the dispositive portion of which reads:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered as follows:

1.) In Criminal Case No. 03-25279, Miso Maca-ayong is hereby found **GUILTY** beyond reasonable doubt of illegal sale of dangerous drugs, as defined and penalized under Section 5, 1st paragraph, Article II of R.A. No. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand (Php 500,000.00) pesos; and

¹⁶ Id. at 143-144.

¹⁷ Records, p. 254

¹⁸ CA *rollo*, p. 144.

¹⁹ Id. at 82.

²⁰ Id. at 162.

²¹ Id.

2.) In Criminal Case No. 03-25278, Miso Maca-ayong is hereby found **GUILTY** beyond reasonable doubt of illegal possession of dangerous drugs, as defined and penalized under Section 11, 2nd par., No. 3, Article II of R.A. No. 9165, and is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and to pay a fine of Three Hundred Thousand (Php 300,000.00) pesos.

The contrabands subject hereof are hereby confiscated, the same to be disposed of as the law prescribes.

SO ORDERED.²²

Ruling of the Court of Appeals

Aggrieved by the RTC's ruling, accused-appellant filed an appeal²³ with the CA. However, in its July 31, 2018 Decision, the appellate court affirmed the findings of the trial court, the *fallo* of which reads:

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The challenged *Decision* of the Regional Trial Court of Antipolo City, Branch 73 in Criminal Case Nos. 03-25278 and 03-25279 are **AFFIRMED**.

SO ORDERED.²⁴

Aggrieved, accused-appellant filed the instant appeal.

Accused-appellant postulates that the prosecution failed to prove his guilt beyond reasonable doubt and pointed out the following lapses: (i) there was noncompliance with Section 21 of RA 9165 by the apprehending team because there was no physical inventory presented and there were no photographs taken of the same in the presence of the accused-appellant, any elected public official and representatives from the media and the Department of Justice (DOJ);²⁵ (ii) marking was made by the police investigator, SPO1 Marundan, at the police station and not immediately at the place of the arrest by the apprehending officer, in violation of the procedure laid down in Section 21 of RA 9165;²⁶ (iii) the link in the chain of custody was not duly established because the prosecution failed to present the poseur-buyer, PO1 Mariano, and the police investigator who allegedly made the markings on the seized items;²⁷ and (iii) the prosecution failed to clearly establish that the integrity and evidentiary value of the allegedly confiscated drug were preserved.²⁸

²² Id. at 20-21.

²³ Id. at 22-23.

²⁴ Id. at 171.

²⁵ Id. at 81.

²⁶ Id. at 81-82.

²⁷ Id. at 82.

²⁸ Id. at 87.

Issue

The fundamental issue in the instant case is whether accused-appellant is guilty beyond reasonable doubt for the offenses charged against him.

Our Ruling

The instant appeal is meritorious.

To secure a conviction for Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (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.²⁹ “What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.”³⁰

On the other hand, for Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165, the following elements must be established: (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 the dangerous drugs.³¹

In illegal drugs cases, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved with moral certainty.³² “The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”³³

After a careful examination of the records of the instant case, We find that the prosecution failed to establish an unbroken chain of custody of the seized drugs in violation of Section 21, Article II of RA 9165. Notably, RA 9165 is the law applicable since the alleged crimes herein were committed on March 10, 2003, prior to its amendment by RA 10640³⁴ on July 15, 2014. The pertinent provisions of Section 21 of RA 9165 state:

Section 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*

²⁹ *People v. Ordiz*, G.R. No. 206767, September 11, 2019.

³⁰ *People v. Refe*, G.R. No. 233697, July 10, 2019.

³¹ *People v. De Dios*, G.R. No. 243664, January 22, 2020.

³² *People v. Arellaga*, G.R. No. 231796, August 24, 2020.

³³ *People v. Ambrosio*, G.R. No. 234051, November 27, 2019.

³⁴ Entitled “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.

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 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;** (Emphasis supplied)

Similarly, the Implementing Rules and Regulations (IRR) further elaborate on the proper procedure to be followed in Section 21 (a) of RA 9165. It states:

(a) The apprehending office/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;

In *People v. Mejia*,³⁵ We reiterated the underlying principle of the chain of custody rule as follows:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.³⁶ (Emphasis supplied)

³⁵ *People v. Mejia*, G.R. No. 241778, June 15, 2020.

³⁶ *Id.*

The links that must be established in the chain of custody in a buy-bust situation, are: “**first**, the seizure and marking, 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 marked illegal drug seized from the forensic chemist to the court.”³⁷

The first link in the chain is the marking of the seized drug. We have previously held that:

Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, ‘planting,’ or contamination of evidence.³⁸

It is of utmost importance that the seized drugs be immediately marked as soon as they are seized from the accused in order to preserve its integrity and ensure that they are the same items confiscated from the accused, examined in the laboratory, and eventually presented in the trial. Thus, in *Mapandi v. People*,³⁹ the Court reiterated that:

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 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 the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**⁴⁰ (Emphasis supplied)

In this case, during the direct testimony of SPO4 Berug, he narrated the details of how the seized drugs were handled following their confiscation as follows:

³⁷ *People v. Mahinay*, 802 Phil. 698, 708 (2016). Citations omitted.

³⁸ *People v. Bermejo*, G.R. No. 199813, June 26, 2019.

³⁹ *Mapandi v. People*, 829 Phil. 198 (2018).

⁴⁰ *Id.* at 208-209.

Q: Mr. Witness, you mentioned last hearing that the poseur buyer in this case in the person of PO1 John Arvin Mariano already made a pre-arranged signal. Seeing that PO1 Mariano made the pre-arranged signal, what did you do?

A: We rushed to the area and introduced ourselves as police officers of Taytay Police Station.

x x x x

Q: After that, what did you do with Miso Maca-ayong?

A: I instructed him to pull out all the things inside his pocket and he voluntarily pulled out the marked money and small plastic box.

Q: x x x [W]hat did you do after that?

A: When I opened the small plastic box, it yielded two plastic sachets of shabu.⁴¹

Q: What happened to the marked money?

A: I confiscated it.

Q: All in all, how many specimens were you able to confiscate and the subject of your operation?

A: All in all from accused Miso Maca-ayong, three plastic sachets of shabu.

Q: But you were able to confiscate from his person two, can you account for the other one?

A: The one plastic sachet of shabu was turned over to me by PO1 Mariano, the one he bought from the accused.

Q: Where were you when it was turned over by PO1 Mariano?

A: At the area of operation.

Q: What did PO1 Mariano do when he turned over if any to the specimen?

A: He told me that one plastic sachet he turned over as the one he bought from the accused.⁴²

Q: After that, what happened to the accused?

A: After that, we apprised his constitutional rights and we brought him to our station.

x x x x

Q: x x x [W]hat happened at the police station?

A: We logged in all evidences confiscated and the operation and the accused and I turned over to the duty investigator SPO1 Rogelio Marundan.

Q: What did you turn over to Rogelio Marundan?⁴³

⁴¹ TSN, September 23, 2009, p. 3.

⁴² Id. at 4.

⁴³ Id. at 5.

A: All evidences confiscated, the marked money and the persons arrested.

Q: Who was in possession of the shabu bought and confiscated from accused Miso Maca-ayong from the area of the operation up to the police station?

A: Me.

Q: After turning over the specimens to SPO1 Rogelio Marundan, what happened next?

A: SPO1 Rogelio Marundan made a letter request for laboratory examination.

Q: By the way, what happened to the specimens?

A: He also put his initial on the evidences confiscated.

Q: Where were you when the markings were placed on the specimens?

A: I was seated on the table.

Q: Do you know what markings were placed by Rogelio Marundan on the envelope of shabu brought by PO1 John Arvin Mariano?⁴⁴

A: He put his initial RVM-1.

Q: How about the specimens confiscated from accused Miso Mica-ayong?

A: RVM-2 and RVM-3.

Q: And after placing the markings on the specimens, what happened next?

A: We brought them to the PCCL for examination.

Q: What was the result of the examination?

A: Positive for methamphetamine hydrochloride.⁴⁵ (Emphasis supplied)

Based on the foregoing, it is evident that there was a break in the very first link of the chain when SPO4 Berug failed to mark the sachets of *shabu* immediately upon seizing them from accused-appellant. According to him, after confiscating the seized illegal drugs from accused-appellant, he turned over the same to the duty investigator SPO1 Marundan at the police station and the latter placed his initials as markings on the seized drugs. SPO4 Berug did not even explain why he failed to mark or why he could not have marked the seized items immediately upon confiscation. Furthermore, poseur-buyer PO1 Mariano and duty investigator SPO1 Marundan were not presented in court or their testimony stipulated upon thereby creating another break in the chain of custody. We are not unmindful of this Court's consistent ruling that not all people who came into contact with the seized drugs are required to testify in court. Nevertheless, the prosecution must clearly establish that the chain of custody of the seized drug was not broken.⁴⁶ However, in the instant case, from the time the drugs were seized from accused-appellant until the time SPO1 Marundan marked the same, there was already a significant gap in

⁴⁴ Id. at 6.

⁴⁵ Id. at 7.

⁴⁶ *People v. Macaspac*, G.R. No. 246165, November 28, 2019.

the chain of custody. The first link of the chain was already seriously compromised such that there can be no assurance against switching, planting, or contamination. We have previously held that, "failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence warranting an acquittal on reasonable doubt."⁴⁷ Consequently, there is no certainty that the sachets of drugs presented as evidence in the trial court were the same drugs confiscated from accused-appellant. Moreover, due to the failure in immediately marking the seized items, it promotes the possible scenario wherein the seized item subject of the sale transaction was switched with the seized items subject of the illegal possession case. This is material considering that the imposable penalty for illegal possession of shabu depends on the quantity or weight of the seized drug.⁴⁸

The second, third, and fourth links were likewise not convincingly established. It is not clear to Us from whom the confiscated drugs were received in each link, the efforts made to preserve its evidentiary value, and the condition of the specimen when it was turned over to the next link. During the direct examination of PO2 Loyola, he testified on the transfer of the seized drug upon apprehension, as follows:

Q: Upon reaching the area, what happened next?

A: Upon reaching the area, we alighted from the vehicle x x x.

Q: How far were you and your group from the accused when you saw him talking to two persons?

A: More or less, 12 meters away.

Q: After seeing him, what did you do next?

A: SPO4 Berug tasked Mariano along with the asset to buy shabu from the target.⁴⁹

x x x x

Q: After this instruction by Berug, what happened?

A: In our place, we can see that they are talking with each other, Mariano, Roy and the target.

Q: How far were you from them when you saw them talking?

A: About 10 to 12 meters away.

x x x x

Q: After that, what happened next?

A: I saw that Mariano gave something to the target.

Q: Were you able to see what was handed by Mariano to the target?

⁴⁷ *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019.

⁴⁸ Section 11, Article II of R.A. No. 9165, as amended.

⁴⁹ TSN, March 29, 2007, p. 7.

A: Marked money.

Q: What did the accused do with the marked money?

A: The target person received the money and he pulled out something from his pocket, he pulled out something which he gave to the two male persons and also to Mariano.⁵⁰

x x x x

Q: After that, what happened next?

A: He gave the pre-arranged signal, Mariano gave the signal.

Q: Upon seeing the signal, what did you do?

A: We approached them and introduced ourselves as police officers.

Q: You personally? What did you do?

A: I was just back-up.

Q: Who arrested the accused?

A: SPO4 Berug and Mariano.⁵¹

x x x x

Q: Who handcuffed the accused?

A: Berug.

Q: What was Mariano doing when Berug was handcuffing the accused?

A: After handcuffing the accused, **Mariano gave the shabu he bought from accused to Berug.**

Q: What did Berug do with the shabu given by Mariano?

A: He was the one who held it and he was the one who turned it over to the police investigator.⁵²

Q: And when all these were happening, what were you doing?

A: I was just there and secured the arrest.

x x x x

Q: You said that the marked money was given to the accused, how was it turned over to the Fiscals' office?

A: When the accused was arrested, he was asked to pull out the contents of his pocket.

Q: What was confiscated from the accused, aside from the marked money?

A: The box containing shabu with two more sachets.

Q: What happened to the box containing two other sachets?

A: It was Berug who was in possession of that.

⁵⁰ Id. at 8-9.

⁵¹ Id. at 9.

⁵² Id. at 10.

Q: Who was in possession of the box and plastic sachets given to Mariano?

A: It was Berug.⁵³ (Emphasis supplied)

However, We reiterate that poseur-buyer PO1 Mariano and duty investigator SPO1 Marundan, who allegedly made the markings on the seized items at the police station, were not presented as witnesses nor their supposed testimony stipulated upon. The testimony of the prosecution's witnesses on the chain of custody were likewise unsubstantiated by evidence on record, such as through the chain of custody form or any other evidence to establish the links. Likewise, the prosecution failed to show the efforts made by the forensic chemist to preserve the identity of the drug and to whom it was turned over for safekeeping prior to the presentation of the specimens in court. In drug cases, every person who takes possession of seized drugs must show or at least stipulate on how it was handled and preserved while in his or her custody to prevent any switching or replacement.⁵⁴

Aside from the failure to mark the seized drugs immediately upon arrest and the break in the chain of custody, the requirements of making an inventory and taking of photographs of the seized drugs were likewise omitted without offering any explanation for its noncompliance. Failure to comply with this requirement is fatal to the prosecution's case. This procedural lapse tainted the integrity and evidentiary value of the seized drugs presented in court. Consequently, the very identity of the seized drugs became highly doubtful.⁵⁵

Section 21, Article II of RA 9165 clearly requires the apprehending team to conduct a physical inventory, and to photograph the seized item in the presence of the accused or his representative or counsel, and witnessed by an elected public official and representatives of DOJ and the media. The law mandates that the insulating witnesses be present during the actual inventory, and the taking of photographs of the seized items to prevent the possibility of planting evidence.⁵⁶ Although strict compliance of the procedure may not always be possible, the prosecution has the burden to prove justifiable reasons for noncompliance.⁵⁷ However, in the instant case, no explanation was offered for noncompliance with Section 21, Article II of RA 9165. Thus, aside from the gaps in the chain of custody of the seized specimen, the Court finds that no photograph and inventory of the seized item were made in the presence of the accused-appellant, an elected public official, a representative of the DOJ and of the media.

We note that the prosecution only offered the following exhibits as their evidence: (i) Request for Laboratory Examination; (ii) plastic sachet marked "MMA/BB 3-10-03 RVM" containing a smaller sachet (small plastic sachet

⁵³ Id. at 11.

⁵⁴ *People v. Burdeos*, G.R. No. 218434, July 17, 2019.

⁵⁵ *People v. Villojan, Jr.*, G.R. No. 239635, July 22, 2019.

⁵⁶ *People v. Sampa*, G.R. No. 242160, July 8, 2019.

⁵⁷ Id.

marked RVM-1 containing white crystalline substance that was purchased from accused-appellant); (iii) plastic sachet marked MMA/POS 3-10-03 RVM containing two smaller sachets (plastic sachet marked RVM-2 containing 3.69 grams of white crystalline substance that was recovered from the accused-appellant and a small plastic sachet marked RVM-3 containing white crystalline substance recovered from the accused-appellant; (iv) Chemistry Report No. D-433-03E; (v) Transmittal Letter by APP Mariam Bien to the Records Officer of the Provincial Prosecutor Office of Rizal or PPOR (to prove the existence of the marked money and its transmittal by the inquest prosecutor to the records officer of the PPOR; and (vi) PDEA Certification with control number RIZ-03-10-03.⁵⁸

Furthermore, during cross-examination, SPO4 Berug testified, to wit:

Q: When did you conduct the surveillance?

A: March 9, 2003 around 5:00 p.m.

Q: Who were with you in conducting the surveillance?

A: The informant alias Roy, PO1 John Arvin Mariano, PO2 Froilan Loyola and Lauro Loyola.⁵⁹

Q: When did you conduct the buy bust operation?

A: March 10, 2003.

Q: What time?

A: About 9:00 p.m.

Q: In between your operation, surveillance and buy bust operation, **did you secure the presence of any barangay elected official?**

A: **No, Sir.**

Q: **The same is true with any representative from the DOJ or media?**

A: **No, Sir.**

Q: Did you blotter the same in the official blotter?

A: Yes, sir.⁶⁰

x x x x

Q: When the pre-arranged signal was given, you rushed to the area?

A: Yes, Sir.

Q: Did you take any photograph on the items confiscated from Miso Maca-ayong?

A: I cannot remember if the investigator took pictures.

Q: How about a written inventory of the items?

A: I think the investigator made a written inventory.⁶¹

⁵⁸ Records, pp. 251-251.

⁵⁹ TSN September 23, 2009, p. 8

⁶⁰ Id. at 9.

Q: Personally, did you see the inventory?

A: At the office, Sir.

Q: Did you let the accused sign the inventory?

A: I cannot remember, Sir.

Q: Did you give him a copy of the inventory?

A: I cannot remember, Sir.

x x x x

Q: Did you include the box that was confiscated from the accused in the inventory?

A: Yes, Sir.

Q: Did you bring the same to the PNP Crime Laboratory for examination to determine if there is [sic] any smudges of shabu?

A: No, Sir.⁶² (Emphasis supplied)

Upon examination of the records, this Court has confirmed that there was no physical inventory or photographs taken. The presence of the insulating witnesses were also not secured despite the considerable time that had elapsed between the conduct of the surveillance and buy-bust operation. Certainly, the arresting officers had sufficient time to procure the presence of the insulating witnesses since the surveillance was conducted a day before the buy-bust operation. In addition, the prosecution failed to prove that despite their absence, earnest efforts were made to procure the attendance of the insulating witnesses.⁶³

This Court finds that with the foregoing unjustified procedural lapses and material gaps in the chain of custody, the evidentiary value and integrity of the illegal drug, the *corpus delicti* of the crime, have been highly compromised. Consequently, We cannot determine with moral certainty whether the supposed drugs seized from accused-appellant were the same ones submitted and examined by the crime laboratory, and eventually, presented in court.

This Court is thus constrained to acquit accused-appellant based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The July 31, 2018 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 08165 is **REVERSED** and **SET ASIDE**.

⁶¹ Id. at 13.

⁶² Id. at 14.

⁶³ *People v. Vistro*, G.R. No. 225744, March 6, 2019.

Accused-appellant Miso Maca-ayong (a.k.a. Alex Macayo Masalop) is **ACQUITTED** based on reasonable doubt and is ordered released from detention unless confined for any other lawful cause.

The Director General of the Bureau of Corrections is directed to inform the Court of the action taken hereon within five days from receipt of the Resolution.

Let entry of judgment be issued immediately.

The letter dated October 8, 2020 of Presiding Judge Gay Marie F. Lubigan-Rafael, Regional Trial Court, Branch 73, Antipolo City, in compliance with the Resolution dated October 7, 2020, informing the Court that a Commitment Order dated October 8, 2020 was issued directing that the accused-appellant be brought to the New Bilibid Prison, Muntinlupa City, and submitting the thereto attached copies of the said commitment order and certificate of detention, is **NOTED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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SEP 21 2022

The Solicitor General
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1229 Makati City

Court of Appeals (x)
1000 Manila
(CA-G.R. CR-HC No. 08165)

The Hon. Presiding Judge
Regional Trial Court, Branch 73
1870 Antipolo City
(Crim. Case Nos. 03-25278 & 03-25279)

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Mr. Miso Maca-Ayong a.k.a.
Alex Macayo Masalop (x)
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

The Director General (x)
Bureau of Corrections
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