



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated March 15, 2022 which reads as follows:

“G.R. No. 253364 – (People of the Philippines v. Faustino Abagat y Ternida). – This is an appeal of the Decision¹ dated July 26, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09776 which affirmed the Judgment² dated August 31, 2017, of the Regional Trial Court (RTC) of Naga City, Branch 24, in Criminal Case No. 2013-0403. The RTC convicted Faustino Abagat y Ternida (Abagat) for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Antecedent Facts

An Amended Information dated August 16, 2013 was filed charging Abagat and Mike Maleniza (Maleniza) with the crime of Illegal Sale of Dangerous Drugs. The accusatory portion of the Amended Information states:

That on or about July 15, 2013, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, without authority of law, did, then and there, willfully, unlawfully, and criminally sell, dispense and deliver one (1) piece medium-sized heat[-]sealed transparent plastic sachet containing white crystalline substance, weighing more or less 5.463 grams and with markings MNC 7-15-13, to a PDEA poseur[-]buyer, which yielded positive for the presence of Methamphetamine

- over – thirteen (13) pages ...

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¹ *Rollo*, pp. 3-17. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Apolinario D. Bruselas, Jr. and Germano Francisco D. Legaspi concurring.

² *CA rollo*, pp. 63-74. Penned by Presiding Judge Valentin E. Pura, Jr.

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Hydrochloride popularly known as “shabu”, accused FAUSTINO ABAGAT y TERNIDA handed said one piece medium size [sic] heat[-]sealed plastic sachet containing white crystalline substance to poseur[-]buyer Michael N. Consulta while accused MIKE MALENIZA demanded the payment of shabu, a prohibited drug, in violation of the above-cited law.

ACTS CONTRARY TO LAW.³

Despite the issuance of a warrant of arrest, Maleniza remained at large. The case proceeded against Abagat who pleaded not guilty during his arraignment on September 5, 2013. Trial on the merits ensued.

Evidence for the Prosecution

The prosecution established that on July 15, 2013, at around 7:00 p.m., Philippine Drug Enforcement Agency (PDEA) Intelligence Officer Ken Villafuerte received a report from a confidential informant (CI) that Abagat and Maleniza were engaged in selling *shabu*. Acting on this tip, a buy-bust operation was planned with Agent Michael N. Consulta (Agent Consulta) as the poseur-buyer and Agent Edward Kenn Ampongan as the arresting officer.

The buy-bust operation took place on Dimasalang Street. Agent Consulta and the CI met up with Abagat and Maleniza and purchased a plastic sachet containing a white crystalline substance from them in exchange for marked money. Agent Consulta gave the pre-arranged signal for the team to approach and make the arrest. Maleniza immediately ran to the alley and was able to escape. Abagat, on the other hand, was prevented from running and arrested.⁴

Agent Consulta seized the plastic sachet subject of the sale from Abagat and marked it with “MNC 7-15-13” representing his initials and the date of seizure. The team then brought Abagat and the seized drug to the PDEA field office to wait for the mandatory witnesses.⁵ The inventory was accomplished at the PDEA field office in the presence of Barangay Captain Lorenzo Narvaez, Department of Justice (DOJ) representative Rodrigo Borigas, and media representative Tex Agor

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³ *Rollo*, p. 4.

⁴ *Id.* at 5-6.

⁵ *Id.* at 6.

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who all signed the Certificate of Inventory.⁶ The seized plastic sachet was brought to the crime laboratory for examination and its contents yielded positive for methamphetamine hydrochloride, or *shabu*.⁷

Evidence for the Defense

The defense presented Abagat's cousin-in-law, Emelita Abagat (Emelita), as its sole witness. She testified that she was walking home at around 7:30 p.m. on July 15, 2013, when she saw her brother-in-law's friend, Norman, and Abagat who was onboard a motorcycle. To her surprise, Norman and Abagat suddenly pointed guns at each other. This made her run home for safety and she observed the commotion from the terrace of her house.⁸

She allegedly saw Abagat running towards the gate of her house while being chased by Norman, a certain Macky Perez (Perez), and an unnamed assailant. They shot at Abagat but missed. They eventually caught up to him and mauled him. Emelita's brother-in-law, Ronaldo, tried to pacify the situation but Perez pointed a gun at him and told him not to interfere. The group then dragged Abagat along the alley and boarded him into a white van.⁹

The RTC Ruling

The RTC rendered its Judgment¹⁰ convicting Abagat for the crime of illegal sale of dangerous drugs:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding herein accused FAUSTINO ABAGAT Y TERNIDA, GUILTY beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." He is therefore sentenced to suffer the penalty of Life Imprisonment and to pay a Fine of P500,000.00.

In the service of his sentence, accused shall be credited with the period of his preventive detention pursuant to the provisions of Article 29 of the Revised Penal Code, as amended.

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⁶ Id. at 13-14.

⁷ Id. at 6.

⁸ Id. at 6-7.

⁹ Id. at 7.

¹⁰ CA rollo, pp. 63-74.

The sachet of *shabu*, subject of this case is hereby confiscated in favor of the government and shall be dealt with as the law directs.

SO ORDERED.¹¹

The RTC held that the prosecution sufficiently proved the essential elements of the crime and established the chain of custody of the seized drug to preserve its evidentiary value.

Aggrieved, Abagat appealed¹² the decision to the CA claiming it was contrary to law and the evidence available.

The CA Ruling

The CA rendered its Decision¹³ denying the appeal and sustaining Abagat's conviction:

WHEREFORE, the appeal is **DENIED**. The Judgment dated 31 August 2017 rendered by the Regional Trial Court, Fifth Judicial Region, Branch 24, Naga City, in Criminal Case No. 2013-0403 is **AFFIRMED**.

SO ORDERED.¹⁴

The CA affirmed that the PDEA conducted a valid buy-bust operation. It also concurred that the prosecution proved the unbroken chain of custody of the seized drug through the PDEA agents' testimonies.¹⁵ Abagat's defenses of denial and frame-up were weak and unworthy of credence for being unsubstantiated.

Undeterred, Abagat filed the instant appeal¹⁶ with this Court.

This Court issued its Resolution¹⁷ dated December 2, 2020 giving due course to the appeal and ordering the parties to file their respective supplemental briefs.

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¹¹ Id. at 74.
¹² Id. at 16.
¹³ *Rollo*, pp. 3-17.
¹⁴ Id. at 17.
¹⁵ Id. at 13-15.
¹⁶ Id. at 18-21.
¹⁷ Id. at 24.

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The State, represented by the Office of the Solicitor General (OSG), filed a Manifestation¹⁸ stating that it will no longer file a supplemental brief and will adopt the arguments from its Appellee's Brief.¹⁹

Abagat, represented by the Public Attorney's Office, likewise filed a Manifestation²⁰ that he will no longer file a supplemental brief because all arguments and issues have already been exhaustively discussed in his Appellant's Brief.²¹

The Parties' Arguments

Abagat in his appellant's brief claimed that the prosecution failed to prove the valid conduct of a buy-bust operation since it did not present a complete picture of the procedures followed. Specifically, the CI was not presented in court to prove the intelligence report to the PDEA and the initial dealings with Abagat.²²

Moreover, he argued that the court should not have given credence to the prosecution witnesses' testimonies. It could not apply the presumption of regularity in the performance of the PDEA agents' duties since their actions were irregular on its face.²³ The PDEA agents allegedly committed the following errors:

1. Abagat was unjustifiably brought to the PDEA field office located in Barangay Tinago instead of the much nearer Barlin Police Station from Dimasalang Street.²⁴
2. The Certificate of Inventory and Request for Laboratory Examination both did not indicate the weight of the allegedly confiscated drug. Absent any evidence of the weight of the *shabu* allegedly confiscated and the weight of the *shabu* turned over to the crime laboratory and eventually turned over to the court, there can be no data to verify the integrity of the evidence.²⁵

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¹⁸ Id. at 25-31.
¹⁹ CA *rollo*, pp. 86-108.
²⁰ *Rollo*, pp. 32-37.
²¹ CA *rollo*, pp. 43-62.
²² Id. at 51-52.
²³ Id. at 54-55.
²⁴ Id. at 56.
²⁵ Id. at 56-57.

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3. The assigned PDEA agent who took the photographs of the evidence was not presented in court to testify.²⁶
4. The marking on the seized drug did not conform to the standard marking provided under Section 13(c) of the Philippine National Police Manual on Anti-Illegal Drugs Operation and Investigation.²⁷

The OSG in its Appellee's Brief²⁸ responded that Agent Consulta's testimony proved that Abagat was caught *in flagrante delicto* selling *shabu* to him during the entrapment operation. It also argued that each link in the unbroken chain of custody of the seized drug was sufficiently established through the testimonies of each agent who handled it from seizure until presentation in court. Abagat's defenses of denial and frame-up are likewise unbelievable and unsubstantiated. It thus cannot outweigh the positive testimonies of the prosecution's credible witnesses.

Abagat filed a Reply Brief²⁹ alleging that the prosecution failed to prove that the mandatory witnesses were present during the actual buy-bust operation. He cited the case of *People v. Tomawis*³⁰ where it was held that the required witnesses should "already be physically present at the time of apprehension – a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity."³¹ He additionally claimed that the prosecution failed to preserve and prove the integrity of the seized drugs as Agent Consulta testified that he merely kept it in his pocket after its seizure.

The Issue

The sole issue in this case is whether or not Abagat is guilty beyond reasonable doubt for the crime of Illegal Sale of Dangerous Drugs.

The Ruling of this Court

The appeal is granted. Abagat is acquitted.

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²⁶ Id. at 57.

²⁷ Id.

²⁸ Id. at 86-108.

²⁹ Id. at 110-116.

³⁰ 830 Phil. 385 (2018).

³¹ Id. at 405.

At the outset, it bears stressing that an appeal in criminal cases opens the entire case for review. Accordingly, it is within the powers and duty of the reviewing court to correct, cite, and appreciate all errors in the appealed judgment, whether assigned or unassigned.³²

To sustain a conviction for illegal sale of dangerous drugs, the prosecution must establish the unbroken chain of custody of the seized drugs. This is achieved by showing compliance with the mandatory procedural requirements under Section 21, Article II of R.A. No. 9165, which provides:

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 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;
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous

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³² *People v. Libre*, 839 Phil. 221, 230 (2018).

drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

It is clear from the foregoing that: (1) the seized drugs must be inventoried and photographed immediately after their seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.³³

These procedural requirements are mandatory and non-compliance tarnishes the identity and integrity of the *corpus delicti* of the crime.³⁴ Strict compliance has been deemed necessary to remove all unnecessary doubts on the evidence supporting the accused's conviction.³⁵

Significantly, this Court in *People v. Sarabia*³⁶ acquitted the accused because of the police officers' failure to ensure the presence of the required witnesses during the marking of the seized drugs which is considered an integral part of the physical inventory stage. It was pertinently held:

But more importantly, the marking of the evidence, which is a crucial element of the physical inventory process, was conducted without the presence of any of the required witnesses.

As factually found by the lower courts, "[i]n the meantime as [the buy-bust team] waited for the witnesses, the team tagged the confiscated plastic sachets and marked them."

This was confirmed by the testimony of IO1 Bahiyan on direct examination, unequivocally testifying that the witnesses were called up only when the allegedly seized drug specimens were already marked:

- Q Now, after marking all those specimens, what next happened?
- A Our team leader coordinated with the barangay officials and then he called the cameraman of ABS CBN to witness the inventory, sir x x x.

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³³ *People v. Manabat*, G.R. No. 242947, July 17, 2019.

³⁴ *People v. Que*, 824 Phil. 882, 896 (2018).

³⁵ *People v. Castillo*, G.R. No. 238339, August 7, 2019.

³⁶ G.R. No. 243190, August 28, 2019.

The marking of the evidence is an indispensable aspect of the physical inventory process. Marking the seized drug specimen is crucial as it establishes the link between the specimen seized during the buy-bust operation and the specimen that is examined and later presented as evidence during the trial. In short, the marking of the seized specimen is the definitive process undertaken by the authorities to establish the identity of the drug specimen retrieved from the accused. **Therefore, with the marking of the evidence being an integral part of the physical inventory, in accordance with Section 21 of RA 9165, the authorities have the duty of securing the presence of the required witnesses during the marking of the allegedly seized plastic sachets.**

To reiterate the Court's holding in *People v. Tomawis*, the very essence of requiring the three witnesses during the buy-bust operation is to erase any doubt as to the source, identity, and integrity of the seized drug. Thus, permitting the absence of the required witnesses during the marking of the drug specimen, which is the crucial process in establishing the identity of the specimen, will bring to naught and render nugatory the statutory requirement of securing the presence of the required witnesses. Simply stated, the non-presence of the witnesses during the marking of the subject evidence puts into doubt the identity of the allegedly retrieved drug specimen.³⁷ (Emphasis and underscoring supplied; citations omitted)

This Court in *People v. Dahil*³⁸ discussed the importance of marking the seized drugs to sufficiently prove the chain of custody:

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. 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 specimens 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.³⁹ (Citation omitted)

It was therefore pronounced in *People v. Castillo*⁴⁰ that the significance of the marking stage requires the presence of the third-party witnesses to ensure that the drugs inventoried, examined, and

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³⁷ Id.
³⁸ 750 Phil. 212 (2015).
³⁹ Id. at 232.
⁴⁰ Supra note 35.

eventually presented in court are the same drugs initially obtained from the accused. The absence of the required witnesses during the marking stage creates reasonable doubt on the origin and identity of the seized drugs and, ultimately, on the accused's guilt:

Such significance impels the presence of third-party witnesses during the actual seizure and marking, which must immediately follow seizure. **The presence of third-party witnesses during seizure and marking ensures that whatever items are subsequently inventoried, photographed, examined, and presented in court are the same substances that were initially obtained from the accused.**

x x x x

Here, **the absence of witnesses during seizure and marking casts reasonable doubt on the actual origin and identity of the drugs introduced in evidence as those allegedly seized from accused-appellant.** Ultimately, **this same absence casts reasonable doubt on accused-appellant's guilt for the offenses with which he is charged.**

The prosecution maintains that after the alleged confiscation of items from accused-appellant, the buy-bust team went inside their vehicle parked near the place of arrest, and there did the marking. This claim alone acknowledges the ostensibly clandestine conduct of the police officers. Moreover, there is no independent guarantee on the integrity of whatever it was that the police officers did next. Other than them and their self-serving assurances, no other person could attest to how they conducted themselves at the place of the arrest and, ultimately, in the isolation of their own vehicle.

It was also only at the police station that Limbo, the Department of Justice representative, and Barangay Chair Latayan were called in to witness the inventory and photographing. It is clear that the required witnesses themselves had no personal knowledge of the supposed sale and subsequent apprehension, search, seizure, and marking.

Having third-party witnesses present only during the subsequent physical inventory and photographing renders the whole requirement of their presence futile. Securing third-party witnesses provides a layer of protection to the integrity of the items seized and forecloses any opportunity for the planting of dangerous drugs. **Having their presence only at a very late stage reduces them to passive automatons, utilized merely to lend hollow legitimacy by belatedly affixing signatures on final inventory documents despite**

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lacking authentic knowledge on the items confronting them. They are then reduced to rubberstamps, oblivious to how the dangers sought to be avoided by their presence may have already transpired.⁴¹ (Emphasis and underscoring supplied; citations omitted)

Applying the foregoing, the Court finds that the prosecution in this case failed to prove sufficient compliance with the mandatory witness requirement under Section 21, Article II of R.A. No. 9165.

The prosecution alleged and admitted that Agent Consulta marked the seized drug immediately after its seizure solely in the presence of Abagat. It was only after they brought him and the seized drug to the PDEA field office that the required witnesses arrived for the inventory and photographing.⁴² The RTC likewise stated in its Judgment that the mandatory witnesses arrived after the buy-bust operation and marking were finished at the PDEA office in the Naga City Civic Center.⁴³

The PDEA agents thus evidently violated their duty to secure the presence of the required witnesses during the marking of the seized drug.⁴⁴ Similar to *Castillo*, the required witnesses in this case who appeared only for the subsequent inventory and photographing rendered the witness requirement under the law futile. They were reduced to mere “passive automatons”⁴⁵ who did not have any personal knowledge on the identity of the seized drugs and items they were confronted with. They could not possibly certify that the seized drug inventoried, examined, and presented in court was the same drug actually seized from Abagat and marked in their presence.

Although non-compliance with the requirements under Section 21, Article II of R.A. No. 9165 does not *ipso facto* invalidate the seizure and custody of the drugs, it must be shown that: (1) there is justifiable ground for non-compliance, and (2) the integrity and evidentiary value of the seized items are properly preserved.⁴⁶ This justifiable ground for non-compliance must be proven as a fact and cannot be presumed by the court to exist.⁴⁷

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⁴¹ Id.

⁴² CA *rollo*, pp. 48-49.

⁴³ Id. at 64, 71.

⁴⁴ *People v. Sarabia*, supra note 36.

⁴⁵ *People v. Castillo*, supra note 35.

⁴⁶ *People v. Baptista*, 839 Phil. 108, 117 (2018).

⁴⁷ *People v. Mama*, 840 Phil. 782, 792 (2018).

Regrettably, the prosecution in this case did not even allege, much less prove, any justifiable explanation as to why the PDEA agents failed to secure the presence of the required witnesses during the marking of the seized drug. It is emphasized that a buy-bust operation is a planned activity and they could have easily complied with the requirement if they intended to do so and made the necessary arrangements.

Consequently, this unjustified failure to comply with the mandatory witness requirement under Section 21, Article II of R.A. No. 9165 is fatal to the prosecution. It has raised reasonable doubt on the origin, identity, and integrity of the *corpus delicti* of the crime and must result in Abagat's acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 26, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 09776 which affirmed the Judgment dated August 31, 2017 of the Regional Trial Court of Naga City, Branch 24, in Criminal Case No. 2013-0403, is **REVERSED** and **SET ASIDE**. Accordingly, Faustino Abagat y Ternida is **ACQUITTED** of the crime charged and ordered **IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause.

The Director General of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court^{4/21}

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The Hon. Presiding Judge
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