



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated April 6, 2022, which reads as follows:

“G.R. No. 254250 (*People of the Philippines, plaintiff-appellee v. Alberto Morales y Santiago and Dennis Pepaño y Conchas, accused-appellants*). –

The Case

This appeal assails the Decision¹ dated February 18, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 12546 entitled *People of the Philippines v. Alberto Morales y Santiago and Dennis Pepaño y Conchas* affirming the conviction of appellants Alberto Morales (Alberto) and Dennis Pepaño (Dennis) for violations of Section 5 and Section 11, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Proceedings Before the Regional Trial Court

In **Criminal Case No. N18-274-CR**, appellant Alberto was charged with Violation of Section 11, Article II of RA 9165, *viz.*:

That on or about the 24th day of April 2018, in the City of Navotas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) [heat-sealed] transparent plastic sachet marked as ‘RMM-3 04-24-18 with signature’ containing 0.03 grams of white crystalline substance, which substance, when subjected to qualitative examination gave positive result to the test for Methamphetamine Hydrochloride otherwise known as ‘Shabu’, a dangerous drug.

CONTRARY TO LAW.²

¹ Penned by Associate Justice Manuel M. Barrios with concurrence of Associate Justice Ronaldo Roberto B. Martin and Associate Justice Walter S. Ong, *rollo*, pp. 4–16.

² CA *rollo*, p. 61.

In **Criminal Case No. N18-276-CR**, appellant Dennis was likewise charged with Violation of Section 11, Article II of RA 9165, *viz.*:

That on or about the 24th day of April 2018, in the City of Navotas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control four (4) [heat-sealed] transparent plastic sachets marked as 'CC-1 04-24-2018 with signature' containing 0.04 grams, 'CC-2 04-24-2018 with signature' containing 0.04 grams, 'CC-3 04-24-2018 with signature' containing 0.03 grams, and 'CC-4 04-24-2018 with signature' containing 0.03 grams of white crystalline substance, which substance, when subjected to qualitative examination gave positive result to the test for Methamphetamine Hydrochloride otherwise known as 'Shabu', a dangerous drug.

CONTRARY TO LAW.³

In **Criminal Case No. N18-277-CR**, appellants were further charged with Violation of Section 5, Article II of RA 9165, *viz.*:

That on or about the 24th day of April 2018, in the City of Navotas, [Philippines] and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another, being private persons and without authority of law, did, then and there, willfully, unlawfully and feloniously in consideration of the sum of Php300.00 Philippine Currency consisting of three (3) pcs. of one hundred peso bill bearing serial no. AUB21993, DD628755 and BV712811 sell and distribute to Jessie Grafe y Tagbulusan, two (2) [heat-sealed] transparent plastic sachets with markings 'RMM-1 04-24-18 with signature' containing 0.04 grams and 'RMM-2 04-24-18 with signature' containing 0.03 grams of white crystalline substance, which when subjected to qualitative examination gave positive result for Methamphetamine Hydrochloride otherwise known as 'Shabu', a dangerous [drug].

CONTRARY TO LAW.⁴

On arraignment, appellants pleaded *not guilty* to all charges.⁵

During the trial, the prosecution presented Police Officer 1 Ceferino Cabrera II (PO1 Cabrera) and PO1 Raymart Marcos (PO1 Marcos), while appellants testified for the defense.

³ *Id.*

⁴ *Id.* at 33.

⁵ *Id.*

Prosecution's Version

On April 24, 2018, PO1 Cabrera and PO1 Marcos went to Market 3, Barangay NBBN, Navotas City to conduct a survey pursuant to the Simultaneous Anti-Criminality Law Enforcement Operation (SACLEO) intended to intensify the campaign against criminality, including the sale and possession of illegal drugs. They dropped by a store where they overheard appellants talking about an upcoming deal involving dangerous drugs. After a while, PO1 Cabrera and PO1 Marcos saw a man, later identified as Jessie Grafe (Jessie) approach Dennis. They heard Jessie telling Dennis: "*kuha ako tres.*"⁶

PO1 Cabrera and PO1 Marcos discreetly moved closer and saw Dennis taking the money and handing Jessie a plastic sachet containing white crystalline substance. Thereafter, Alberto said, "*pre, hati tayo*" and gave another sachet to Jessie. Dennis then gave Alberto One Hundred Pesos (₱100.00).⁷

Thereupon, PO1 Cabrera and PO1 Marcos approached and introduced themselves as police officers. They directed Dennis, Alberto, and Jessie to lie on the ground.⁸

PO1 Cabrera frisked Dennis and recovered a multicolored coin purse containing a pair of scissors, four (4) sachets of suspected *shabu*, and Two Hundred Pesos (₱200.00). PO1 Cabrera secured them inside his pocket.⁹

PO1 Marcos, on the other hand, confiscated the two (2) sachets of *shabu* from Jessie and likewise secured them inside his right pocket. He also seized from Alberto one (1) transparent plastic sachet of *shabu*, which he slid in his left pocket; and a One Hundred Peso (₱100.00) bill, which he slid in the front pocket of his sling bag. They decided to proceed to the Navotas City Police Station since there were many people at the marketplace.¹⁰

At the station, the confiscated items were marked and inventoried in the presence of appellants, Jessie, and media representative Ka Maeng Santos (Santos). Thereafter, they went to the NBBN Barangay Hall and conducted another inventory soon after Kagawad Armando Sevilla (Kagawad Sevilla) arrived.¹¹

⁶ *Rollo*, p. 63.

⁷ *Id.* at 35.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 35-36.

They brought appellants and Jessie to the Navotas City Medical Center for physical examination and back to the police station where they conducted an investigation and prepared the necessary documents. They turned over the seized items to the duty investigator, PO1 Japhet Clark Perez (PO1 Perez).¹²

PO1 Perez, together with the apprehending officers, brought the seized items to the crime laboratory for examination.¹³ Forensic Chemist Police Chief Inspector Mark Alain B. Ballesteros (PCI Ballesteros) received the specimens, did qualitative tests thereon, and found the same positive for *methamphetamine hydrochloride* or *shabu*.¹⁴

Defense's Version

Appellants interposed denial and frame up.¹⁵

Dennis testified that on April 24, 2018, he was on board his tricycle at Market 3 when a motorcycle parked near him. Two (2) men wearing masks alighted from the motorcycle and went around his tricycle. As soon as he alighted his tricycle, the duo accosted and frisked him and took his wallet and driver's license. When they learned his name for the first time, one of them uttered, "*positive ito pare, eto si Dennis, may warrant ito pare.*" They then brought him to the police station where he saw Alberto for the first time, as well as the drugs that were used as evidence against them.¹⁶

For his part, Alberto testified that on April 24, 2018, he was on his way to work when he encountered some people running. They bumped into him, causing him to fall. As he was standing up, an armed man wearing a mask ordered him not to move. He was handcuffed and brought to a Flying V gas station along with other arrested individuals and, thereafter, to the Navotas City Police Station.¹⁷

The Ruling of the Regional Trial Court

By Joint Decision¹⁸ dated January 15, 2019, the trial court found Alberto and Dennis guilty of both illegal possession and illegal sale of drugs, viz.:

¹² *Id.* at 64.

¹³ *Id.*

¹⁴ *CA rollo*, p. 65.

¹⁵ *Rollo*, p. 36.

¹⁶ *Id.* at 7.

¹⁷ *Id.*

¹⁸ Penned by Presiding Judge Pedro T. Dabu, Jr., *id.* at 60-72.

WHEREFORE, judgment is rendered as follows:

In Criminal Case No. N18-274-CR, the Court finds accused Alberto Morales y Santiago guilty of the crime of possession of methamphetamine hydrochloride defined under Section 11, Article II of RA 9165. Considering that the drugs confiscated from him weigh 0.03 grams, the Court sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum penalty to fourteen (14) years as maximum and to pay a fine in the amount of Three Hundred Thousand Pesos (P300,000.00).

In Criminal Case No. N18-276-CR, the Court finds accused Dennis Pepaño y Conchas guilty of the crime of possession of methamphetamine hydrochloride defined under Section 11, Article II of RA 9165. Considering that the drugs confiscated from him weigh 0.14 grams, the Court sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum penalty to fourteen (14) years as maximum and to pay a fine in the amount of Three Hundred Thousand Pesos (P300,000.00).

In Criminal Case No. N18-277-CR, the Court finds Alberto Morales y Santiago and Dennis Pepaño y Conchas guilty of the crime of sale of methamphetamine hydrochloride defined under Section 5, Article II of RA 9165. Accordingly, the Court sentences them to suffer the penalty of life imprisonment and each to pay a fine of P500,000.00.

The Branch Clerk of Court is directed to immediately deliver the drugs, subject matter of Criminal Case Nos[.] N18-274-CR and N18-276-CR only, to the Philippine Drug Enforcement Agency for destruction. The sachets subject matter of Criminal Case No. N18-277-CR shall remain with the Court since these are also the subject matter of Criminal Case No. N18-275, where the motion to plea bargain of accused Jessie Grafe is still pending for action by the Court.

SO ORDERED.¹⁹

The Ruling of the Court of Appeals

In its assailed Decision²⁰ dated February 18, 2020, the Court of Appeals affirmed. It ruled that appellants were validly arrested *sans* judicial warrant as they were caught *in flagrante delicto* selling two (2) sachets of *shabu* to Jessie. The consequent search conducted on them which yielded five (5) more sachets of *shabu* was, therefore, legal. The prosecution had established all the elements of illegal sale and illegal possession of dangerous drugs through an unbroken chain of custody over the seized items. The integrity and evidentiary value of the seized illegal drugs were preserved.

¹⁹ *Id.* at 71–72.

²⁰ *Id.* at 4–16.

The Present Appeal

Appellants now pray anew for their acquittal. For the purpose of this appeal, appellants²¹ and the OSG²² manifested that, in *lieu* of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

Ruling

The warrantless arrest and incidental search effected by the police officers on appellants were valid

Section 5, Rule 113 of the Rules of Criminal Procedure enumerates the instances when a warrantless arrest may be effected, thus:

Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

x x x x

Here, appellants were caught *in flagrante delicto* selling *shabu*. For an *in flagrante delicto* warrantless arrest to be valid, the following requisites must concur: (i) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (ii) such overt act is done in the presence or within the view of the arresting officer. The officer's personal knowledge of the fact of the commission of an offense is absolutely required. The officer himself or herself must witness the crime.²³

These elements are all present here as PO1 Marcos and PO1 Cabrera witnessed appellants actually committing a crime in front of them. The police officers were conducting a survey pursuant to the SACLEO when they overheard appellants discussing an upcoming illegal drug deal. When they moved in closer, they saw appellants selling to Jessie two (2) plastic sachets containing white crystalline substance which later tested positive for *shabu*. They introduced themselves as police officers and conducted a search on the persons of the accused, which yielded five (5) more plastic sachets containing white crystalline substance that also tested positive for *shabu*.

²¹ *Id.* at 26–28.

²² *Id.* at 32–33.

²³ *Cajigal, Jr. v. People*, G.R. No. 252437 (Notice), October 5, 2020.

These circumstances justify the *in flagrante delicto* arrest.²⁴

Since appellants were caught *in flagrante delicto*, the police officers were not only authorized but duty-bound to arrest them even without a warrant. Considering that appellants' arrest was lawful, the consequent search and seizure was likewise lawful.²⁵

The police officers failed to comply with the chain of custody rule and to preserve the integrity and evidentiary value of the confiscated drugs

Appellants were charged with Illegal Sale and Illegal Possession of Dangerous Drugs, all allegedly committed on April 24, 2018. The applicable law is RA 9165, as amended by Republic Act No. 10640 (RA 10640),²⁶ which took effect on August 7, 2014.

Section 21 thereof prescribes the standard in preserving the *corpus delicti* in illegal drugs cases, *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 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: 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,

²⁴ *Id.*

²⁵ *People v. Badilla*, 794 Phil. 263, 274 (2016).

²⁶ 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," July 15, 2014.

shall not render void and invalid such seizures and custody over said items. (Emphases supplied.)

In drug cases, the State bears not only the burden of proving the elements, but also of proving the *corpus delicti* or the body of the crime.²⁷ In both illegal sale and illegal possession of dangerous drugs, the drug itself constitutes the *corpus delicti* of the offense. The prosecution must, therefore, prove that the dangerous drug seized from the accused is the same substance eventually offered in court.²⁸

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: **first**, the seizure and marking 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 by the forensic chemist to the court.²⁹

Here, the chain of custody rule was violated several times over.

First. Section 21 of RA 9165 requires, among others, that the apprehending team mark the seized items immediately after seizure or confiscation to maintain the integrity of the confiscated drugs to be used as evidence. Thus, the same must be done at the place of arrest and seizure, unless there is a cogent explanation why it was done somewhere else.³⁰

In *People v. Victoria*,³¹ the Court acquitted Victoria on the ground that the vital step of marking of the seized item immediately after seizure was not complied with, sans any justification, thus, compromising the integrity and veracity of the evidence.³²

Here, from the time the drugs were confiscated and *en route* to the police station, the same remained unmarked, thus, exposing them to switching, planting and contamination. Note that there were several drugs seized by the two police officer. Each one supposedly secured some of the drugs in their respective right and left pockets. These police officers only did the marking at the police station, casting doubt on how they recalled which ones were slid into the right or left pocket of whom. The risk

²⁷ *Nagal v. People*, G.R. No. 246242, November 16, 2020.

²⁸ *People v. Areola, Jr.*, G.R. No. 251919, May 12, 2021.

²⁹ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019, 911 SCRA 128, 139; *People v. Andanar*, G.R. No. 246284, June 16, 2021.

³⁰ *People v. Leño*, G.R. No. 246461, July 28, 2020.

³¹ G.R. No. 238613, August 19, 2019, citing *People v. Ramirez*, 823 Phil. 1215, 1225 (2018).

³² *People v. Nuarin*, 764 Phil. 550, 557–558 (2015).

of error, confusion, or merger was real. That it was allegedly “impractical” to mark these items at the *situs criminis* because there were many people or other suspects apprehended that day did not justify non-compliance with the required immediate marking of the seized items. In *People v. Dumanjug*,³³ the Court rejected the argument that the police officers failed to do the marking of the seized drug immediately at the place of arrest because a crowd of two hundred (200) people had gathered creating a dangerous environment.

Second. The confiscated items were not inventoried in the presence of the required insulating witnesses. The law requires that the inventory be done in the presence of the accused or his representative or counsel, as well as an elected public official and a representative of the National Prosecution Service or the media.³⁴

*People v. Lim*³⁵ stressed the importance of the presence of the insulating witnesses. The law requires the presence of these witnesses primarily to ensure not only compliance with the chain-of-custody rule but also to remove any suspicion of switching, planting, or contamination of evidence.³⁶

Here, records show that the police conducted two separate inventories -- one at the police station, in the presence of media representative Santos; and thereafter, another one at the barangay hall, in the presence of Kagawad Sevilla. No justifiable reason was offered for the failure of the police officers to secure the presence of **both** the media representative and elective local official at the same time during the first inventory. Neither was it shown that the apprehending officers exerted genuine and sufficient efforts to secure the presence of both witnesses during the first inventory. At any rate, the subsequent presence of Kagawad Sevilla during the second inventory did not validate the incipiently defective marking at the *situs criminis*, and absence of an elective official during the first inventory.

Third. PO1 Cabrera admitted putting four (4) sachets into his pocket. PO1 Marcos, likewise, admitted placing in his right pocket the two (2) sachets seized from Jessie; and in his left pocket, one (1) plastic sachet seized from Alberto. It was not shown how the two (2) police officers kept and handled the specimens until they were turned over to the laboratory for examination.

Fourth. The parties stipulated that Forensic Chemist PCI

³³ G.R. No. 235468, July 1, 2019, 907 SCRA 89, 108–109.

³⁴ *People v. Dela Cruz*, G.R. No. 238212, January 27, 2020, 879 SCRA 31.

³⁵ 839 Phil. 598 (2018).

³⁶ *People v. Santos*, 842 Phil. 681 (2018).

Ballesteros received the specimens from PO1 Perez; tested and found the same positive for *methamphetamine hydrochloride*, a dangerous drug; and thereafter reduced his findings in his Chemistry Report No. D-491-18.³⁷

In *People v. Baltazar*,³⁸ the accused was acquitted of illegal sale of dangerous drugs because the records were bereft of any evidence on how the illegal drugs were brought to court. There was no showing how the alleged seized item was stored after it was examined by the forensic chemist, who handled the specimen after examination, and where the same was kept until it was retrieved and presented in court.

Absent any testimony regarding the management, storage, and preservation of the illegal drugs allegedly seized herein following their qualitative examination, the fourth link in the chain of custody could not be reasonably established.³⁹

In light of the prosecution's failure to establish with moral certainty the identity and unbroken chain of custody of the dangerous drugs seized from appellants, a verdict of acquittal is in order.⁴⁰

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated February 18, 2020 of the Court of Appeals CA-G.R. CR-HC No. 12546, is **REVERSED and SET ASIDE**.

Appellants **Alberto Morales y Santiago** and **Dennis Pepaño y Conchas** are **ACQUITTED** in Criminal Case Nos. N18-274-CR, N18-276-CR and N18-277-CR, respectively. The Director General of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release them from custody unless they are being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice.

Let entry of final judgment be issued immediately.

SO ORDERED."

By authority of the Court:

MisPDCBatt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
6PR
10/2/22

³⁷ CA rollo, p. 65.

³⁸ G.R. No. 229037, July 29, 2019, 911 SCRA 199, 215.

³⁹ *People v. Andanar*, supra note 29.

⁴⁰ *People v. Villojan, Jr.*, G.R. No. 239635, July 22, 2019, 910 SCRA 58, 79; *People v. Andanar*, id.

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PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
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Diliman, 1104 Quezon City

COURT OF APPEALS
CA-G.R. CR HC No. 12546
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
1229 Legaspi Village, Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 286, 1485 Navotas City
(RTC CR N18-274-CR)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
BUREAU OF CORRECTIONS
New Bilibid Prison
1770 Muntinlupa City

Messrs Alberto Morales y Santiago and
Dennis Pepano y Conchas
c/o The Superintendent
BUREAU OF CORRECTIONS
New Bilibid Prison
1770 Muntinlupa City

PGEN. Rodolfo S. Azurin Jr.,
CHIEF, PHILIPPINE NATIONAL POLICE
National Headquarters
Camp Crame, Quezon City

The Director General
PHILIPPINE DRUG ENFORCEMENT AGENCY
PDEA Bldg., NIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

The Chairman
DANGEROUS DRUGS BOARD
3rd Floor DDB-PDEA Bldg.,
NIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

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