Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **February 13, 2023** *which reads as follows:*

"G.R. No. 243159 (*Minda Clemente*[1] *y Diaz v. People of the Philippines*).—This resolves the Petition for Review on *Certiorari*[2] filed by petitioner Minda Clemente *y* Diaz assailing the April 23, 2018 Decision[3] and the November 7, 2018 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CR. No. 39727, which affirmed with modification the January 27, 2016 Decision[5] of the Regional Trial Court (RTC), Manila, Branch 27 in Criminal Case No. 16-327088, finding petitioner guilty beyond reasonable doubt of violation of Section 11 (Illegal Possession of Dangerous Drugs), Article II of Republic Act No. (RA) 9165,[6] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Petitioner was charged with violation of Sec. 11, Art. II of RA 9165 under the following Information:

> That on or about July 23, 2016, in the City of Manila, Philippines, the said accused not having been authorized by law to possess any dangerous drug did then and there willfully, unlawfully, and knowingly have in her possession and under her custody and control one (1) heat-sealed transparent plastic sachet marked as "MDC" containing ZERO POINT ZERO SIX FOUR (0.064) gram of white crystalline substance containing Methamphetamine Hydrochloride commonly known as Shabu, a dangerous drug.
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> Contrary to law.[7]

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1 Also referred to as "Clementa" in some parts of the *rollo*.
2 *Rollo*, p. 11-36
3 Id. at 40-49. Penned by Presiding Justice and Chairperson Romeo F. Barza and concurred in by Associate Justices Stephen C. Cruz and Carmelita Salandanan Manahan.
4 Id. at. 51-53.
5 Id. at 87-90. Penned by Judge Teresa Patrimonio-Soriaso.
6 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.
7 *Rollo*, p. 41.

When arraigned on September 28, 2016, petitioner pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.[8]

Version of the Prosecution

At around 1:30 p.m. of July 23, 2016, Police Officers 1 Rea S. Rivera (PO1 Rivera) and Jason Quiben (PO1 Quiben) were patrolling the premises of Plaza Sta. Cruz, Manila. Suddenly, both of them heard a woman shout *"putang ina nyo, nawala ang ibang laman ng bag ko."*[9] They then approached the woman, who was later identified as herein petitioner, and introduced themselves as police officers. They also informed petitioner that she violated Section 844 of the Revised Ordinance of the City of Manila (Manila City Ordinance), which punishes breaches of the peace.[10]

Meanwhile, as a standard operating procedure,[11] PO1 Rivera frisked the body of petitioner and ordered her to empty her pockets. PO1 Rivera recovered from the front right pocket of petitioner's shorts a transparent plastic sachet containing white crystalline substance. PO1 Rivera then confiscated it and placed the same inside her shirt's breast pocket. Thereafter, petitioner was placed under arrest.[12]

PO1 Rivera and PO1 Quiben brought petitioner and the seized item to the Manila Police District (MPD) Station 11 (police station). When they arrived at the police station, they presented the seized item to Senior Police Officer 4 Victor Lalata (SPO4 Lalata), the assigned police investigator, who marked the same as MDC. Meanwhile, PO1 Rivera prepared and issued the Receipt of Property/Evidence Seized, in the presence of a certain Gary Garendola (Garendola) and *Kagawad* Jamid Salambat (Kagawad Salambat), who affixed their signatures thereon. PO1 Rivera also prepared the Chain of Custody Form, while SPO4 Lalata took photographs of petitioner and the seized item. Police Senior Inspector (PS/Insp.) Leandro Gutierrez prepared a Memorandum Request for laboratory examination (Memorandum) for the seized item.[13]

Thereafter, PO1 Rivera brought the Memorandum and the seized item to the MPD Crime Laboratory Office. Police Crime Investigator Elisa Reyes Arturo (PCI Arturo) of the MPD Crime Laboratory Office, received from PO1 Rivera the Memorandum and the seized item. PCI Arturo then conducted the laboratory examination on the seized item, where results yielded positive for shabu, a dangerous drug, per Chemistry Report No. D-855-16. PCI Arturo

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8 Id.
9 Id.
10 Id. at 97.
11 Id.
12 Id. at 41.
13 Id. at 41-42.

kept the seized item in the evidence room until it was brought to the trial court for presentation and identification.[14]

Version of the Defense

Petitioner denied the allegations against her and contended that on July 17, 2016, at around 11:00 a.m., she was alone in Ronquillo Street, Sta. Cruz, Manila preparing her wares, peanuts and water, which she intended to sell that day. Thereafter, she noticed a person alight from a motorcycle. The same individual approached and accused her of littering. Petitioner denied his accusations. This angered the individual, who then told petitioner to remain silent. She was brought to an outpost through the motorcycle where the individual asked her for money to buy snacks, to which petitioner refused. While at the outpost, petitioner heard police officers say "*sige na, magbigay ka na kay Sir Marcus.*"[15]

After one hour of staying at the outpost, the individual, who petitioner later identified as Marcus, transferred her to Gandara Station, where she was detained in a jail cell until evening. She was then made to board a police vehicle, which brought her to the police station. After having been detained for six days, PO1 Rivera arrived at the police station and told petitioner "*nanay Minda, pasensya ka napo, ako po ang naatasan ng Hepe naming na umaresto sa inyo.*"[16] During inquest, petitioner discovered that she was being charged with violating Sec. 11(3), Art. II of RA 9165.[17]

Ruling of the Regional Trial Court

On January 27, 2016, the RTC rendered a Decision[18] finding petitioner guilty beyond reasonable doubt of violating Sec. 11 of RA 9165, the dispositive portion of which states:

> **WHEREFORE**, in view of all the foregoing, judgment is hereby rendered finding accused **MINDA CLEMENTE y DIAZ**, guilty beyond reasonable doubt of Violation of Section 11 (3), Article II, Republic Act No. 9165 and hereby sentencing her to suffer the penalty of imprisonment of from [sic] twelve (12) years, as minimum to fourteen years (14) years as the maximum penalty, to pay a fine of P300,000.00; and to pay the costs.
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> x x x x
>
> **SO ORDERED.**[19]

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[14] Id. at 42.
[15] Id.
[16] Id. at 9.
[17] Id. at 42.
[18] Id. at 87-90.
[19] Id. at 90.

The RTC held that the arrest of petitioner came about when she committed the offense of breach of peace, and that the recovery of shabu in her possession was established by the testimonies of the prosecution witnesses. The trial court also held that the police officers are presumed to have regularly performed their official duties in the absence of proof to the contrary.[20]

Ruling of the Court of Appeals

On April 23, 2018, the CA affirmed petitioner's conviction with modification. The dispositive portion of the CA Decision[21] states:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DISMISSED** for lack of merit. The appealed Decision dated January 27, 2016 convicting **MINDA CLEMENTE *y* DIAZ** of [v]iolation of Section 11 (3), Article II of R.A. No. 9165 is hereby **AFFIRMED with modification** in that she is sentenced to suffer the penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, to pay a fine of Php300,000.00, and to pay the costs.
>
> **SO ORDERED.**[22]

The CA held that the warrantless search made upon petitioner was valid, and, consequently, the shabu confiscated from her is admissible in evidence. Giving credence to the testimonies of the prosecution witnesses, the CA also held that all the elements of Illegal Possession of Dangerous Drugs had been duly established, and that there was proper compliance with the chain of custody rule. The CA further emphasized that petitioner's defenses of frame-up failed to overcome the presumption of regularity in the performance of the police officers' official duties.

Hence, the instant petition before the Court.

Issue

The issue raised for this Court's consideration is whether the CA erred in affirming the conviction of petitioner for violation of Sec. 11, Art. II of RA 9165.

As basis for her acquittal, petitioner stresses that her arrest was illegal, which thus makes the transparent plastic sachet supposedly seized from her inadmissible in evidence. In this regard, petitioner contends that when she uttered "*putang ina nyo, nawala ang ibang laman ng bag ko*," there was no such disruption of communal tranquility, nor was such utterance slanderous, threatening, or abusive in nature which would justify her arrest and

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[20] Id. at 89.
[21] Id. at 40-49.
[22] Id. at 48-49.

consequent search of her person.[23] In support of her argument, petitioner presented the February 6, 2017 Order[24] of the Metropolitan Trial Court of Manila (MeTC)-Branch 13, which dismissed the case against her for violation of the same Manila City Ordinance. The relevant portion of the said MeTC Order states:

> A perusal of the foregoing testimonies of the arresting officers, it cannot be said that the alleged act of shouting at the top of the voice of accused violates Section 844, Revised Ordinance because it bears stressing that the words she allegedly shouted "*putang ina nyo nasan na yung ibang item ko and/or putang ina nyo sino lumapit sa bag ko bakit nawala ang ibang item ko sino kumuha, putang ina nyo*" (TSN dated September 15, 2016, p. 11 and Judicial Affidavit dated September 6, 2016, A16 respectively[)] – are not slanderous, threatening or abusive, and thus, could not have tended to disturb the peace or disruption of the communal tranquility at the time of her arrest, and other passerby were just looking at her (TSN dated September 15, 2016, p. 13).
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> Clearly, the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. x x x[25]

Petitioner also contends that the prosecution was unsuccessful in establishing an unbroken chain of custody of the seized drugs considering that the police officers deviated from the mandatory procedure under Section 21 of RA 9165.[26]

Our Ruling

The petition is meritorious.

Petitioner is not precluded from questioning the admissibility of the evidence obtained from her in the course of the warrantless search

The illegality of an arrest leads to several consequences among which include the trial court's failure to acquire jurisdiction over the person of an accused, and the invalidity of any search incident to such arrest. This also renders the evidence acquired from the accused as constitutionally inadmissible.[27]

An accused is estopped from assailing any irregularity of his or her arrest if he or she fails to raise this issue or move for the quashal of the

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[23] Id. at 18-30.
[24] Id. at 84-85.
[25] Id. at 85.
[26] Id. at 30-32.
[27] *Veridiano v. People*, 810 Phil. 642, 653 (2017).

information on this ground before arraignment.[28] Moreover, "the voluntary submission of an accused to the jurisdiction of the court and his or her active participation during trial cures any defect or irregularity that may have attended the arrest."[29] There is no question in this case that petitioner assailed for the first time before the CA the legality of her arrest. In fact, she voluntarily submitted to the court's jurisdiction by entering a plea and by actively participating in the proceedings before the RTC. Thus, she is deemed to have waived her right to question this issue.

This notwithstanding, this waiver is limited only to her arrest and affects only the jurisdiction of the court over her person. Her failure to timely question the validity of her warrantless arrest does not bar her from assailing the admissibility of the seized drugs incidental to the arrest. This is because the jurisdiction over the person of an accused and the constitutional admissibility of evidence are separate and mutually exclusive consequences of an illegal arrest. A waiver of an illegal warrantless arrest, therefore, does not carry with it a waiver of the inadmissibility of evidence seized during the said illegal warrantless arrest. [30] The connotation of this rule only means that petitioner's warrantless arrest cannot, in itself, be a basis of her acquittal, but may otherwise be grounded on other findings warranting the same.

Given the foregoing premises, this Court shall rule on the admissibility of the seized drug evidence in the case at bench. In this respect, it is necessary to ascertain whether the search which yielded the alleged dangerous drug was lawful.

The proper rule to be applied in the instant case is Sec. 5 (a), Rule 113 of the Rules of Court

In the case at bar, respondent, through the Office of the Solicitor General (OSG), argues that the search was incidental to a lawful arrest. The CA, on the other hand, found that it was a valid "stop and frisk" search.

A search incidental to a lawful arrest and a stop and frisk search are often confused with each other.[31] However, We explained in *Malacat v. Court of Appeals (Malacat)*[32] that these two types of warrantless searches "differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope."[33]

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[28] *Alaska v. Garcia*, G.R. No. 228298, June 23, 2021.
[29] *Veridiano v. People*, supra at 654.
[30] Id.
[31] *Manibog v. People*, G.R. No. 211214, March 20, 2019.
[32] 347 Phil. 462 (1997).
[33] Id. at 479-480.

To be clear, stop and frisk searches, on one hand, are necessary for law enforcement and to prevent the commission of offenses. In *Malacat*, this Court laid down the test to a reasonable stop and frisk search:

> [W]hile probable cause is not required to conduct a "stop and frisk," it nevertheless holds that mere suspicion or a hunch will not validate a "stop and frisk." A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him.[34]

In this connection, *Terry vs. Ohio*,[35] the Decision of the United States Supreme Court from which our local stop and frisk doctrine was based, states that:

> At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized. The [police officer] carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that[,] **where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where[,] in the course of investigating this behavior[,] he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a *carefully limited search of the outer clothing* of such persons in an attempt to discover weapons which might be used to assault him.**[36] (Emphasis, underscoring, and italics supplied)

Otherwise stated, a stop and frisk search is allowed only under specific and limited circumstances: "(1) it should be allowed only on the basis of the police officer's reasonable suspicion, in light of his or her experience, that criminal activity may be afoot and that the persons with whom he/she is dealing may be armed and presently dangerous; (2) the search must only be a carefully limited search of the outer clothing; and (3) it must be conducted for the purpose of discovering weapons which might be used to assault him/her or other persons in the area."[37]

Here, the warrantless search cannot be justified as a valid stop and frisk search. The prosecution failed to elicit from the police officers the specific circumstances and acts done by petitioner that would indicate that she was armed with a weapon, which might be used to assault them or other persons

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[34] Id. at 481, citing *Terry vs. Ohio*, 392 U.S. 1 (1968).
[35] Supra.
[36] Id. at 30-31.
[37] *People v. Cristobal*, G.R. No. 234207, June 10, 2019.

around the area. Moreover, while the prosecution admitted in its Plaintiff-Appellee's Brief that the search done by PO1 Rivera was a "standard operating procedure,"[38] such defense cannot supplant the stringent requirements of a valid stop and frisk search.

In any case, contrary to the observations of the CA, We find that the facts on record do not point to a stop and frisk search. Rather, what transpired was a warrantless search incidental to a lawful arrest. The warrantless search of petitioner's person was not precipitated by the police officers' intent to discover concealed weapons that might be used by petitioner to assault them. What remains undisputed is that they made a warrantless search of petitioner's person since they supposedly caught her in *flagrante delicto* when she allegedly committed a breach of peace in their presence in violation of the Manila City Ordinance. Hence, the proper rule to be applied in the case at bench is that prescribed under Sec. 5 (a), Rule 113 of the Rules of Court.[39]

There could have been no valid warrantless search and seizure incidental to a lawful arrest

A valid warrantless arrest, which justifies a subsequent search, is carried out under the parameters of Sec. 5 (a), Rule 113 of the Rules of Court. This rule requires that the arresting officer must have been spurred by probable cause to arrest a person caught in *flagrante delicto.*[40] Case law requires two requisites for a valid in *flagrante delicto* warrantless arrest, namely that: (a) the person to be arrested must execute an overt act indicating that he or she has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer.[41] Accordingly, the law requires that there should first be a lawful warrantless arrest before a search can be made. The process cannot be reversed.[42]

Upon a careful review of the records of this case, the Court holds that petitioner was not validly arrested without a warrant.

In this case, the police officers arrested petitioner for allegedly violating Section 844 of the Manila City Ordinance, which states:

> Sec. 844. – *Breaches of the Peace.* – No person shall make, and, countenance, or assist in making any riot, affray, disorder, disturbance, or breach of the peace; or assault, beat or use personal violence upon another

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38 *Rollo*, p. 97.

39 Sec. 5(a) Rule 113 of the Rules of Court provides:
(a) When, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense.

40 *Martinez v. People*, 703 Phil. 609, 617-618 (2013).

41 *Sindac v. People*, 794 Phil. 421, 427 (2016), citing *People v. Comboy*, 782 Phil. 187,196 (2016).

42 *Veridiano v. People*, supra note 27 at 657.

> without just cause in any public place; or utter any slanderous, threatening or abusive language or expression or exhibit or display any emblem, transparency, representation, motto, language, device, instrument, or thing; or do any act, in any public place, meeting or procession, tending to disturb the peace or excite a riot, or collect with other persons in a body or crowd for any unlawful purpose; or disturbance or disquiet any congregation engaged in any lawful assembly.
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> PENALTY: Imprisonment of not more than six (6) months and / or fine not more than Two Hundred pesos (PHP 200.00).[43]

The foregoing ordinance penalizes the following acts: (1) making, countenancing, or assisting in making any riot, affray, disorder, disturbance, or breach of the peace; (2) assaulting, beating or using personal violence upon another without just cause in any public place; (3) uttering any slanderous, threatening or abusive language or expression or exhibiting or displaying any emblem, transparency, representation, motto, language, device, instrument, or thing; and (4) doing any act, in any public place, meeting or procession, tending to disturb the peace or excite a riot, or collect with other persons in a body or crowd for any unlawful purpose, or disturbance or disquiet any congregation engaged in any lawful assembly.

From the foregoing recitals, the acts penalized by the Manila City Ordinance are those which disturb the peace or disrupt communal tranquility. Thus, in order to justify a warrantless arrest based on these offenses, it must be established that the warrantless arrest was effected after a reasonable assessment by the police officer that a public disturbance is being committed.[44]

In the case at bench, it cannot be said that petitioner's alleged act of shouting, albeit in a public area, violated the Manila City Ordinance. The testimony of PO1 Rivera, which detailed the surrounding circumstances leading to petitioner's warrantless arrest, reveal that petitioner's act did not cause any disturbance or riot in the surrounding area, thus:

> Q: How many people were around that area, Madam Witness?
> A: More or less fifteen (15), Sir.
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> Q: What were they doing at that time, Madam Witness?
> A: They were sleeping, Sir.
>
> Q: Where were [sic] did they sleep, Madam Witness?
> A: Infront of the church, scattered in the area, Sir.
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> Q: Were there passers-by in the area?
> A: Yes, Sir.

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[43] *Martinez v. People*, supra at 618.
[44] Id. at 619.

Q: These passers-by, did they complain regarding the actuations of accused Miranda Clemente?
A: Nobody complained, Sir.

Q: Did you take the affidavit of those persons who were disturbed while sleeping at the time?
A: No, Sir.

Q: So, you have no proof that those persons were disturbed during that time?
A: Yes, Sir.[45]

Nor could petitioner's statements be considered as slanderous, threatening or abusive as her words are considered instinctive reactions or expressions of anger from a person whose belongings were stolen. As such, the police officers had no basis to arrest petitioner for supposedly committing a breach of peace pursuant to the said Manila City Ordinance.

Interestingly, a similar conclusion was reached by the Court in *Martinez v. People* (*Martinez*).[46] In *Martinez*, the accused who shouted "*Putang ina mo! Limang daan na ba ito*?" along Balingkit Street, Malate, Manila, was apprehended by police officers for purportedly violating Section 844 of the Manila City Ordinance. When the police officers directed the accused to empty his pockets, they were able to recover from him a small transparent plastic sachet containing white crystalline substance suspected to be shabu. While both the trial court and appellate court found the accused guilty of the crime of Illegal Possession of Dangerous Drugs under RA 9165, the Court acquitted him as the confiscated drugs were discovered through an unlawful search. Simply put, the search in *Martinez* did not qualify as one incidental to a lawful arrest:

> To elucidate, it cannot be said that the act of shouting in a thickly-populated place, with many people conversing with each other on the street, would constitute any of the acts punishable under Section 844 of the Manila City Ordinance as above-quoted. Ramon was not making or assisting in any riot, affray, disorder, disturbance, or breach of the peace; he was not assaulting, beating or using personal violence upon another; and, the words he allegedly shouted – "*Putang ina mo! Limang daan na ba ito*?" –are not slanderous, threatening or abusive, and thus, could not have tended to disturb the peace or excite a riot considering that at the time of the incident, Balingkit Street was still teeming with people and alive with activity.
>
> Further, it bears stressing that no one present at the place of arrest ever complained that Ramon's shouting disturbed the public. On the contrary, a disinterested member of the community (a certain Rosemarie Escobal) even testified that Ramon was merely standing in front of the store of a certain Mang Romy when a man in civilian clothes, later identified as PO2 Soque, approached Ramon, immediately handcuffed and took him away.

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[45] *Rollo*, p. 23, citing TSN, November 25, 2016 pp. 26-27 and as cited in the *Brief for the Accused-Appellant*, paragraph 19.
[46] Supra note 39.

> In its totality, the Court observes that these facts and circumstances could not have engendered a well-founded belief that any breach of the peace had been committed by Ramon at the time that his warrantless arrest was effected. All told, no probable cause existed to justify Ramon's warrantless arrest.[47]

On a final note, even if the seized drug is admissible in evidence, the handling thereof was in clear violation of the chain of custody rule in Sec. 21, Art. II of RA 9165. A review of the records would reveal that the prosecution made no attempt at justifying the lapses in the chain of custody.

In the instant case, petitioner, Kagawad Salambat, and a certain individual named Garendola witnessed the marking, inventory, and photography taking of the seized item. The prosecution offered no explanation for the failure to secure the other required witnesses, *i.e.*, a representative of the National Prosecution Service or the media.[48]

Furthermore, there is an unaccounted movement of the seized drug as the prosecution failed to show how it was kept right after the seizure and before the marking. Records show that right after the confiscation of the seized item, PO1 Rivera placed the item inside her shirt's breast pocket. Thereafter, PO1 Rivera and PO1 Quiben brought petitioner and the seized item to the police station. Upon arrival at the police station, PO1 Rivera and PO1 Quiben presented the seized item to SPO4 Lalata who then made the markings thereon. The prosecution failed to provide any justification why they failed to immediately mark the item at the place of the arrest. Also, the prosecution failed to show any of the precautionary measures they undertook to preserve the identity and integrity of the seized item. There is therefore a lingering doubt as to whether the item presented by PO1 Rivera and PO1 Quiben to SPO4 Lalata was the same item recovered from the person of the petitioner.

There was also no testimony as to how the item was managed, stored, and preserved after its qualitative examination. In *People v. Ubungen*,[49] We held that "in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he/she resealed it after examination of the

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[47] Id. at 621-622.

[48] Republic Act No. 10640 (R.A. 10640), which took effect in August 7, 2014, requires only three witnesses to be present during the inventory and taking of photographs of the seized evidence, namely: [1] the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, [2] an elected public official, and [3] a representative of the National Prosecution Service or the media. See *People v. Bangcola*, G.R. No. 237802, March 18, 2019.

[49] 836 Phil. 888 (2018).

content; and (3) that he/she placed his/her own marking on the same to ensure that it could not be tampered pending trial."[50]

In this case, the testimony of PCI Arturo nor the stipulations between the parties contain the aforesaid conditions.

The foregoing breaches of the procedure outlined in Sec. 21 of RA 9165 committed by the police officers, and left unacknowledged and unexplained by the prosecution, militate against a finding of guilt beyond a reasonable doubt. Without any justifiable explanation, the evidence of the *corpus delicti* is unreliable.

Ultimately, as a consequence of petitioner's unlawful warrantless arrest, it necessarily follows that there was no valid search incidental to a lawful arrest which had yielded the plastic sachet of shabu. Since the evidence seized by the police officers are inadmissible against petitioner, — as these were obtained in violation of her right against unreasonable searches and seizures — and given that the alleged illegal drugs are the very *corpus delicti* of the crime charged, petitioner's acquittal should therefore come as a matter of course.

WHEREFORE, the petition is **GRANTED** and the April 23, 2018 Decision and the November 7, 2018 Resolution of the Court of Appeals in CA-G.R. CR. No. 39727 are **REVERSED and SET ASIDE.** Petitioner Minda Clemente *y* Diaz is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause.

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

Let an entry of final judgment be issued immediately.

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[50] Id. at 901.

SO ORDERED." ***Rosario, J.,*** *on official leave.*

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

267-A
FEB 21 2023

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