



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

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

"G.R. No. 256124 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. LHEA VELASQUEZ y GARCIA a.k.a. “Lea” and JAYRICK ABANTE y RECTO a.k.a. “Jay,” Accused; JAYRICK ABANTE y RECTO a.k.a. “Jay,” Accused-Appellant.

Before this Court is a Petition for Review on *Certiorari*,¹ treated as an appeal, filed by accused-appellant Jayrick Abante y Recto assailing the Decision,² dated 21 September 2020, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 13215, denying his appeal. The Court of Appeals affirmed the Decision,³ dated 30 March 2019, of the Regional Trial Court of Batangas City, Branch 8 (RTC) in Criminal Case Nos. 17-22282, 17-22283, and 17-22291, finding the accused-appellant and Lhea Velasquez y Garcia a.k.a. “Lea” guilty of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, the Comprehensive Dangerous Drugs Act, as amended.

The Facts

Three separate Informations⁴ were filed before the RTC, charging the accused-appellant Jayrick Abante y Recto (**Jayrick**) and Lhea Velasquez (**Lhea**) with violation of Sections 5 and 11, Article II of R.A. No. 9165, as follows:

Criminal Case No. 17-22282
(Sale of Illegal Drugs)

“The undersigned Special Prosecutor hereby accuses Lhea Velasquez y Garcia @ “Lea” and Jayrick Abante y Recto for violation of

¹ *Rollo*, pp. 1.

² *Id.*, pp. 86-114. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Nina G. Antonio-Valenzuela and Tita Marilyn B. Payoyo-Villordon concurring.

³ *Id.*, pp. 114-129. Penned by Presiding Judge Ernesto L. Marajas.

⁴ *Id.*, pp. 90-92.

Section 5 in relation to Section 26(b) Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, committed as follows:

That on or about January 23, 2017, at around 1:30 in the afternoon at Brgy. Sta. Clara, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, not being authorized by law, did then and there knowingly, willfully and criminally sell or dispense one (1) heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride, more commonly known as shabu, weighing 0.07 gram, a dangerous drugs (sic), which is a clear violation of the above-cited law.

CONTRARY TO LAW.

***Criminal Case No. 17-22283
(Possession of Illegal Drugs)***

The undersigned Special Prosecutor hereby accuses Lhea Velasquez y Garcia @ "Lea" and Jayrick Abante y Recto for violation of Section 11 Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, committed as follows:

That on or about January 23, 2017, at around 1:30 in the afternoon at Brgy. Sta. Clara, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully and criminally possess or have under her custody and control eight (8) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride, more commonly known as Shabu, a dangerous drug, with an aggregate weight of 7.09 grams, which is a clear violation of the above-cited law.

CONTRARY TO LAW.

***Criminal Case No. 17-22291
(Possession of Illegal Drugs)***

The undersigned Special Prosecutor hereby accuses Jayrick Abante y Recto @ "Jay" for violation of Section 11 Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, committed as follows:

That on or about January 23, 2017, at around 1:30 in the afternoon at Brgy. Sta. Clara, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully and criminally possess or have under her custody and control one (1) self-sealing transparent plastic sachet containing 3.35 g dried marijuana fruiting tops, which is a clear violation of the above-cited law.

CONTRARY TO LAW.

The prosecution alleged that at 11:00 a.m. of 23 January 2017, a confidential informant arrived at the Batangas City Police Station (**BCPS**) and informed Police Officer 2 Carlos Eje (**PO2 Eje**) that he bought *shabu* from Lhea, and that he will be transacting with her again on the same day at the Philippine Port Authority Access Road, Barangay Sta. Clara, Batangas City.⁵

Upon hearing the tip, PO2 Eje relayed the information to Police Officer 2 Ponciano Asilo (**PO2 Asilo**). Together, the two police officers planned a buy-bust operation against Lhea. PO2 Eje marked a Php 500.00 bill with his initials "CVE," which they intended to use as marked money for the planned buy-bust operation. PO2 Eje then sent out copies of the Pre-Operation Report and Coordination Form via email to the Philippine Drug Enforcement Agency (**PDEA**) Office in Canlubang, Laguna. The PDEA acknowledged receipt of the email by replying with the control number for the operation.⁶

At around 12:30 p.m., PO2 Alex Macalindong (**PO2 Macalindong**) recorded in the blotter the dispatch of the buy-bust operation and witnessed the frisking of PO2 Eje, PO2 Asilo, and the confidential informant to ensure that they were not in possession of any dangerous drugs before proceeding to the site of the buy-bust operation.⁷

After checking, the apprehending team, along with the confidential informant, rode together in a car to travel to the transaction site. At around 1:00 p.m., PO2 Eje and the confidential informant alighted from the vehicle and positioned themselves under a tree while waiting for Lhea.⁸

PO2 Eje and the confidential informant noticed a gray Toyota Corolla moving towards them. The confidential informant identified the vehicle as Lhea's vehicle. The confidential informant called for Lhea while flagging down the vehicle. Lhea rolled down her window and asked how much PO2 Eje and the confidential informant were going to buy. The confidential informant responded by asking if his Php 500.00 could get anything. Lhea answered in the affirmative. She accepted the Php 500.00 from PO2 Eje and handed to the latter a small plastic sachet containing white crystalline substance. After visually examining the sachet, PO2 Eje introduced himself as a police officer and asked both Lhea and her companion, who was later identified as Jayrick, to step out of the vehicle. As both Lhea and Jayrick were alighting from the vehicle, PO2 Asilo quickly approached the scene.

⁵ *Rollo*, p. 87.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*, at 198.

PO2 Eje recovered the buy-bust money from Jayrick, while a blue pouch containing two Php 500.00 bills and eight plastic sachets with white crystalline substance, which were later confirmed to be *shabu*, were recovered from Lhea. PO2 Eje proceeded to frisk Jayrick, which resulted in the discovery of marijuana fruiting tops tucked in the latter's waist. PO2 Eje then informed both Lhea and Jayrick of the cause of their arrest, as well as their constitutional rights.⁹

At the site of the buy-bust operation, PO2 Eje marked the items that were obtained from Jayrick and Lhea. PO2 Eje marked the sachet handed by Lhea to him as "CVE1," and the sachets found in the blue pouch as "CVE2" to "CVE9." PO2 Eje marked the blue pouch as "CVE 11." As for the Php 500.00 bills found in the blue pouch, the same were marked by PO2 Eje as "1" and "2." After marking the items, PO2 Asilo then took pictures of the items seized from Lhea and Jayrick.¹⁰

Lhea and Jayrick were then brought to the BCPS for the inventory. Upon arriving, PO2 Eje conducted the inventory of the items seized from Lhea and Jayrick before the investigating officer, SPO2 Richard Ante (**SPO2 Ante**), and the required witnesses, Barangay Kagawad Cunag (**Kagawad Cunag**), and Rodel Espina (**Espina**) of the Department of Justice (**DOJ**). SPO2 Ante also prepared Requests for Drug Test and Physical/Medical Examination.¹¹

PO2 Eje, with these requests, brought Jayrick and Lhea to the Barangay Provincial Crime Laboratory Office (**BPCLO**), where PO2 Arjie Manjares (**PO2 Manjares**) received the seized items. These items were then forwarded to Forensic Chemist Police Chief Inspector Herminia Llacuna (**PCI Llacuna**), who conducted qualitative examination of the seized items. The qualitative examination of the seized substances yielded positive result for the presence of Methamphetamine Hydrochloride, more commonly known as *shabu*.¹²

After the qualitative examination, PCI Llacuna entrusted the seized items to PO2 Joel Barcelona (**PO2 Barcelona**), the evidence custodian of the BPCLO, for safekeeping until the same were transported to the Office of the City Prosecutor in Batangas City.¹³

In his defense, Jayrick denied the charges, and argued that he and Lhea were only framed by the police officers. Jayrick alleged that on 23

⁹ Id., at 199.

¹⁰ Id., at 200.

¹¹ Id.

¹² Id.

¹³ Id., at 90.

January 2017, Lhea and her partner, Jayson Morales¹⁴ (**Jayson**), were on board a motorcycle when the same broke down along the Philippine Port Authority Access Road, Barangay Sta. Clara, Batangas City.¹⁵ Jayson asked Jayrick for assistance, and he arrived after 30 minutes with a car to help the former and Lhea. Lhea and Jayson boarded Jayrick's vehicle but as soon as they were on board, a motorcycle blocked the car's way. The rider of the motorcycle, who was later identified as PO2 Asilo, pulled out a gun and pointed the same to Jayson to alight from the vehicle. Jayson obliged and slowly alighted from the vehicle. He was then ordered by PO2 Asilo to empty his pockets. Afterwards, PO2 Asilo then put his hand inside the pocket of Jayson and pulled out a small plastic sachet. Alarmed by the situation, Jayson escaped and ran to a nearby ricefield. PO2 Asilo fired his gun in Jayson's direction but did not chase after him. Instead, he boarded the car and asked Jayrick and Lhea where Jayson was heading and should they refuse to answer, they will suffer the consequences.¹⁶

PO2 Asilo then called someone on his cellphone after a few minutes, four male persons arrived, including one identified as PO2 Eje. Lhea and Jayrick were then handcuffed and told to hold the small plastic sachet that PO2 Asilo took from Jayson's pocket and some money, but they refused. The men then took photographs of the sachet laid down on the car's hood in front of Jayrick and Lhea.¹⁷

After taking the photographs, the men brought Jayrick and Lhea to the BCPS, where the police officers brought out a small pouch and asked if the two were willing to cooperate. Lhea maintained their position that they do not know where Jayson went.¹⁸

After questioning them in the BCPS, Jayrick and Lhea were brought back to area of apprehension, where they were again made to stand in front of Jayrick's car for photographing but this time, the contents of the small pouch held by the police officers were laid out on top of the hood of Jayrick's vehicle. Jayrick and Lhea were then brought to the BCPS, then Camp Miguel Malvar, the Batangas Regional Hospital, and then back to the BCPS where they were finally incarcerated.¹⁹

The RTC Ruling

In a Decision dated 30 March 2019,²⁰ the RTC found Jayrick and Lhea guilty beyond reasonable doubt of the offense of illegal sale and

¹⁴ Referred to as "Jason" or "Jayson" in the *rollo*.

¹⁵ *Id.*

¹⁶ *Id.*, at 18.

¹⁷ *Id.*, at 19.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*, at 114-129.

delivery of *shabu* in violation of Section 5, Article II of R.A. No. 9165 and sentenced them to suffer the penalty of life imprisonment and to pay a fine of Eight Hundred Thousand Pesos (Php 800,000.00).

Lhea was further found guilty beyond reasonable doubt of the offense of possession of 7.09 grams of methamphetamine hydrochloride in violation of Section 11, Article II of R.A. No. 9165 and was sentenced to imprisonment for a period of twenty years up to life imprisonment and to pay a fine of Four Hundred Thousand Pesos (Php 400,000.00).

Jayrick was also found guilty beyond reasonable doubt of the offense of possession of 3.35 grams of dried marijuana fruiting tops also in violation of Section 11, Article II of R.A. No. 9165 and was sentenced to twelve years and one day up to twenty years of imprisonment and to pay a fine of Three Hundred Thousand Pesos (Php 300,000.00).

In convicting Jayrick and Lhea, the RTC found that the prosecution was able to prove the existence of the essential elements of the respective offenses charged. The RTC also found that the buy-bust operation was legitimate, and the chain of custody rule was observed.²¹

Aggrieved, Jayrick and Lhea appealed separately to the CA.

The CA Ruling

In a Decision dated 21 September 2020,²² the CA denied the appeals of Jayrick and Lhea and affirmed the Decision of the RTC. The CA agreed with the RTC that the positive testimony of the prosecution cannot be defeated by the defenses of bare denial and frame-up of the accused. Courts view these defenses with disfavor as these have become standard defense ploys in dangerous drugs cases. Without any proof to the contrary, the police officers are presumed to have performed their duties in a regular manner.²³

Hence, this appeal.²⁴

The Issue

Is Jayrick guilty beyond reasonable doubt of the crimes of illegal sale and illegal possession of dangerous drugs?

²¹ Id.

²² Id., at 86-113.

²³ Id. at 17.

²⁴ Id. at 20-38.

The Court's Ruling

The Court finds the appeal meritorious.

Uncorroborated testimony of a poseur-buyer

For a successful prosecution of the offense of illegal sale of dangerous drugs, the following elements must be proven: (1) the identity of the buyer and the seller, object and the consideration; and (2) the delivery of the thing sold and the payment.²⁵

On the other hand, to successfully prosecute a case of illegal possession of dangerous drugs, the following requisites must be established: (1) the accused is in possession of the an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.²⁶

It is the duty of the prosecution to establish the elements of the offenses charged. The prosecution, to prove the guilt of the accused must rely on the strength of its evidence, and not on the weakness of the defense of the accused.²⁷ Courts must take caution in weighing the probative value of the lone testimony of the poseur-buyer, especially when the same is not corroborated by the other members of the team that conducted the buy-bust operation.²⁸

In *People v. Ordiz*,²⁹ the Court could not be any clearer:

“In accordance with these principles, the Court has held that, considering the gravity of the penalty for the offense charged, courts should be careful in receiving and weighing the probative value of the testimony of an alleged poseur-buyer especially when it is not corroborated by any of his teammates in the alleged buy-bust operation. **Sheer reliance on the lone testimony of an alleged poseur-buyer in convicting the accused does not satisfy the quantum of evidence required in criminal cases, that is, proof beyond reasonable doubt.**” (emphasis supplied)

In this case, the prosecution relied on the testimony of PO2 Eje, poseur-buyer in the buy-bust operation. Given the stark differences in the versions of the facts of the prosecution and the defense, corroboration of the testimony is warranted. By giving full credence to the testimony of PO2 Eje,

²⁵ *People v. Hilario*, G.R. No. 210610, 11 January 2018.

²⁶ *People v. Cabrellos*, G.R. No. 229826, 30 July 2018.

²⁷ *Daayata et. al v. People*, G.R. No. 205745, 8 March 2017.

²⁸ *People v. Ordiz*, G.R. No. 206767, 11 September 2019.

²⁹ *Id.*

the RTC and the CA relied on the presumption of regularity of duty and their finding that the police officer gave a credible and straightforward testimony regarding the alleged buy-bust operation. Both the RTC and the CA failed to realize that the uncorroborated testimony of PO2 Eje left far too many gaps and questions as to compliance with the statutorily prescribed procedure in the handling of seized drugs.

The Court wonders why the prosecution did not present PO2 Asilo to corroborate the testimony of PO2 Eje. To recall, there were only three persons present for the apprehending team in the alleged buy-bust operation: PO2 Eje, PO2 Asilo, and the confidential informant. Hence, the presentation of PO2 Asilo as a witness would have ensured greater weight and credence of the prosecution's evidence. The case of *People v. Cantalejo*³⁰ is instructive on this matter:

“In the case at bar, the testimonies for the prosecution and for the defense are diametrically opposed to each other. **The prosecution's version of events consisted of the two police officers' testimonies regarding the buy-bust operation whereas appellant and his wife denied that there had been a sale at all and cried frame-up.** An examination of the decisions of the trial court and the Court of Appeals revealed a heavy reliance on the testimonies of the police officers and a blind dependence on the presumption of regularity in the conduct of police duty. In light of the defense's theory of frame-up and an unconstitutional search and seizure, it is imperative that the prosecution present more evidence to support the police officers' allegations. **The prosecution could have presented the other police officers who were members of the back-up team and should have offered rebuttal evidence to refute the defense of frame-up. This omission does not hold well for the cause of the prosecution. It creates doubts on whether there has actually been any buy-bust operation at all.**” (emphasis supplied)

The prosecution in this case did worse than in *Cantalejo*. Only PO2 Eje was presented to attest to the conduct of the buy-bust operation, as opposed to the presentation of the defense of its three witnesses: Jayson, Jayrick, and Lhea. To reiterate, the sheer reliance of the RTC and the CA on the lone uncorroborated testimony of PO2 Eje is misplaced, as this fails to satisfy the quantum of evidence of proof beyond reasonable doubt.

Corpus delicti

In any case involving dangerous drugs, the *corpus delicti* is the seized contraband itself. Hence, its presentation and subsequent offer as evidence is ever so crucial.³¹ It must be proven with moral certainty that the seized dangerous drugs during the buy-bust operation are the same substances that

³⁰ G.R. No. 182790, 24 April 2009.

³¹ *People v. Manabat*, G.R. No. 242947, 17 July 2019.

will be presented in court and offered in evidence.³² This requirement is known as the chain of custody rule, as espoused in Section 21 of R.A. No. 9165. Notably, Section 21 of R.A. No. 9165 was amended by R.A. No. 10640, and said amendment became effective on 7 August 2014. As the alleged offense was committed on 29 December 2014, or after the effectivity of the amendment, the amended provision under R.A. No. 10640 shall apply:

“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, shall not render void and invalid such seizures and custody over said items.

“x x x

“(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of 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 drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification;

The chain of custody rule is a method of authenticating object or real evidence. The object evidence, in this case, the seized contraband, will only pass admissibility if there is testimony that will accompany it to confirm that the same items seized during the buy-bust operation are the same ones being

³² *People v. Alon-Alon*, G.R. No. 237803, 27 November 2019.

presented to the court and offered as evidence. As the Court held in *Tumabini v. People*.³³

“Here, Congress enacted Sec. 21 of R.A. No. 9165 to ensure the identity and integrity of the seized drugs and to prevent tampering thereof. As stated in *People v. Acub*, in all prosecutions for violations of R.A. No. 9165, the corpus delicti is the dangerous drug itself. Its existence is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established. Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. **The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.**” (emphasis supplied)

The chain of custody rule under R.A. No. 9165 was designed to safeguard the integrity of the confiscated dangerous drugs in buy-bust operations. Thus, failure to comply with this rule without justifiable reasons constrains the Court to acquit the person charged.³⁴

To comply with the chain of custody rule, the prosecution must establish strict compliance with the four links of the chain, namely: first, the seizure and marking of the contraband recovered from the accused by the apprehending officer; second, the turnover of the items 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 and qualitative examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.³⁵

In this case, the Court finds that the CA erred in affirming the RTC finding of guilt beyond reasonable doubt against Jayrick for the crimes charged. The prosecution failed to establish strict compliance with the chain of custody rule.

With regard to the first link in the chain of custody, the Court finds that the prosecution failed to comply with the requirements set forth by Section 21, as further explained in jurisprudence. The relevant portion of Section 21 provides:

“xxx

³³ G.R. No. 224495, 19 February 2020.

³⁴ *People v. Salenga*, G.R. No. 239903, 11 September 2019.

³⁵ *People v. Villarta*, G.R. No. 217887, 14 March 2018.

- (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:..." (emphasis supplied)

The Court has, in multiple instances, defined the phrase "immediately after seizure and confiscation" with respect to the conduct of inventory of the seized items in buy-bust operations:

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that **the three 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. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.³⁶ (emphasis supplied)

Based on the narration of facts of both the prosecution and the defense, the required witnesses were not present immediately after the seizure and confiscation. In this case, the presentation of the required witnesses was dispensed with and the prosecution and the defense stipulated that on 23 January 2017, on the day of the alleged buy-bust operation, at around 1:30 p.m., Kagawad Cunag received a phone call from PO2 Eje to witness the conduct of the inventory relative to the arrest of Lhea and Jayrick.³⁷ The DOJ representative, Espina, was also only called in after the apprehension of Lhea and Jayrick. Both witnesses were not present at the place of the seizure and arrest.

The witnesses were only "called in" after the buy-bust operations were concluded. This is not consistent with the intent of R.A. No. 9165. The presence of the mandatory witnesses must be secured at the place of the warrantless arrest.³⁸ The rationale for this pronouncement is best explained in *People v. Tomawis*:³⁹

³⁶ *People v. Dumanjug*, G.R. No. 235468, 1 July 2019.

³⁷ *Rollo*, p. 93.

³⁸ *Tañamor v. People*, G.R. No. 228132, 11 March 2020.

³⁹ G.R. No. 228890, 18 April 2018.

It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so - and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished - does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation. (emphasis supplied)

In this case, the buy-bust transaction occurred at 1:30 p.m. This is the same time that the required witnesses allegedly received calls from PO2 Eje requesting their presence for the conduct of the inventory.

Additionally, a close review of the testimony given by PO2 Eje reveals inconsistencies. On direct examination, PO2 Eje testified that he picked up the DOJ representative, Espina, after apprehending Lhea and Jayrick.⁴⁰ This is inconsistent with the stipulation of the parties that Espina, upon receiving the call from PO2 Eje, proceeded to the BPCS on his own.⁴¹

In any case, it is clear that the witnesses were only contacted after the conduct of the buy-bust operation. This defeats the legislative intent of Section 21 of R.A. No. 9165. Further, the prosecution did not offer any explanation for the belated presence of the required witnesses, which could have excused their failure to comply with the chain of custody rule.

Aside from the absence of the witnesses immediately after the apprehension and seizure, the Court notes that the inventory was not conducted at the place of arrest.

⁴⁰ *Rollo*, p. 106.

⁴¹ *Id.*, at 194.

As a general rule in buy-bust operations, the inventory and photography must be done at the place of apprehension. The case of *People v. Tagluco*⁴² provides guidelines:

However, recent jurisprudence clarified that even in a warrantless seizure, the general rule that the inventory and taking of photographs must be conducted at the place of seizure remains. In *People v. Musor* (*Musor*) it was declared by the Court that the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It adds that only when the same is not practicable does the law allow the inventory and photographing to be done by the buy-bust team at the nearest police station or at the nearest office of the apprehending officer/team. The Court added that the explanation provided therein regarding the inventory and taking of photographs elsewhere because people were already starting to gather was insufficient to justify a transfer of venue. In *People v. Tubera*, the prosecution did not even attempt to explain why it was impracticable to conduct the inventory and taking of photographs at the place of seizure, which led the Court to acquit therein accused. (emphasis supplied)

The prosecution may only be excused from this requirement when (a) it is not practicable to conduct the inventory at the place of seizure, or (b) the items seized are threatened by immediate or extreme danger at the place of seizure.⁴³ It is only upon the determination of either of these requirements that the buy-bust team may conduct the inventory at the nearest police station or the office of the apprehending officer/team.

Neither of these exempting circumstances was established. In fact, the prosecution offered no justification for their decision to conduct the inventory in a place other than the site of seizure and apprehension. Hence, their non-compliance cannot be excused.

The inexcusable non-compliance of the buy-bust team with the insulating witnesses requirement and the venue of the inventory damaged the prosecution's case. This resulted in the prosecution's failure to establish with moral certainty the identity of the items seized. There being reasonable doubt as to such identity, this Court must acquit Jayrick.

Even the fourth link in the chain of custody was also compromised. To recall, the prosecution and the defense dispensed with the testimony of the Forensic Chemist, PCI Llacuna, and stipulated only that PO2 Barcelona, the evidence custodian, received from PCI Llacuna the Chemistry Report No. BD-080-2017, together with the nine transparent plastic sachets

⁴² *People v. Tagluco*, G.R. No. 243577, 15 March 2022.

⁴³ *Id.*

containing white crystalline substance (marked CVE1-CVE9) and the sachet of dried marijuana (marked as CVE11) subjected to a laboratory examination, placed in a plastic pouch with attached masking tape (marked BD-080-2017), together with the Request for Laboratory Examination from the Chief of Police of the BCPS and the Chain of Custody form.⁴⁴

These stipulations are not enough.

The Court has already laid down the minimum stipulations required should the testimony of the forensic chemist be dispensed with. In *People v. Ubungen*,⁴⁵ the Court held:

In *People v. Pajarin*, the Court ruled 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 resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial.

Here, these stipulations are lacking. The record is bereft of information on the manner how PCI Llacuna dealt with the seized items. Absent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized herein after its qualitative examination, the fourth link in the chain of custody could not be reasonably established.⁴⁶

Aside from the lacking witnesses and the breaks in the first and fourth links in the chain of custody, the prosecution also failed to establish regularity with regard to the marking of the seized items. Paragraph 2.35, Section 2-6 of the Revised PNP Manual on Anti-Illegal Drug Operations and Investigation (**PNP Manual**) states:

2.35. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found/recovered or seized.

Based on the evidence presented during trial, PO2 Eje marked the seized items with the initials “CVE 1” up to “CVE 9,” which presumably represents the initials of PO2 Eje and the number corresponding to the items marked. PO2 Eje, as the seizing officer, failed to place his initials, as well as the time and place of the buy-bust operation, as required by the PNP Manual.

⁴⁴ *Rollo*, p. 193.

⁴⁵ G.R. No. 225497, 23 July 2018.

⁴⁶ *Id.*

While admittedly not a controlling requirement for compliance with Section 21 of R.A. No. 9165, the PNP Manual still serves as a guide for police officers in the conduct of buy-bust operations. Hence, non-compliance with the requirements set forth in the PNP Manual only adds doubt as to whether the police officers complied with the prescribed procedure and whether the items seized are untainted.

Buy-bust operations, by their very nature, are planned activities, and given the opportunity to prepare, strict compliance is expected of our law enforcement agents conducting said operations. Hence, it is the duty of the prosecution to justify any irregularity committed during buy-bust operations. The prosecution failed in this regard.

Accordingly, the Court finds that the serious lapses in procedure, and the failure of the prosecution to properly establish the first and fourth links in the chain of custody irreparably diminished the integrity and evidentiary value of the seized contraband. The Court thus resolves to acquit Jayrick.

*Favorable result on appeal
benefits co-accused*

Finally, the Court notes that while only Jayrick persisted in appealing his case with this Court, Section 11 of Rule 122 of the Revised Rules of Criminal Procedure provides:

“SEC. 11. Effect of appeal by any of several accused.-

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.”

The evidence used to support the conviction of both Lhea and Jayrick for all the charges against them stem from the same buy-bust operation. Hence, a finding of irregularity and non-compliance with the chain of custody is fatal for all charges against both accused. As discussed, the chain of custody of the seized items suffers from fatal irregularities that casts doubt on their integrity and evidentiary value. Hence, any conviction resulting from the same must be reversed, both in favor of Jayrick and Lhea.

WHEREFORE, the Court resolves to **GRANT** the appeal. The Decision, dated 21 September 2020, of the Court of Appeals in CA-G.R. CR-HC No. 13215 is **REVERSED**. The accused-appellant Jayrick Abante y Recto and his co-accused Lhea Velasquez y Garcia @ Lea are **ACQUITTED** on the ground of reasonable doubt.

Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director General is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action taken in compliance with this order.

SO ORDERED.”

By authority of the Court:

MisDcBatt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court *jr 01-19-23*

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COURT OF APPEALS
CA G.R. CR HC No. 13215
1000 Manila

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

The Presiding Judge
REGIONAL TRIAL COURT
Branch 8, Batangas
(Crim. Case Nos. 17-22282, 17-22283 and 17-22291)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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