



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **October 5, 2022**, which reads as follows:*

“G.R. No. 255166 [Formerly UDK No. 16812] (Jose Maria Antonio Agustin Kilayko y Montilla alias “Jack” v. People of the Philippines). – The Court resolves to:

- (1) **GRANT** the Office of the Solicitor General’s (OSG) motion for an extension of sixty (60) days from February 12, 2022 within which to file comment on the petition for review on *certiorari*; and
- (2) **NOTE:**
 - (a) petitioner’s Manifestation dated February 23, 2021, submitting certified true copies of the Decision and Resolution of the Court of Appeals dated November 28, 2019 and November 9, 2020, respectively;
 - (b) petitioner’s Compliance dated January 25, 2022, with the Resolution dated May 3, 2022, submitting a compact disc containing the soft copy of the petition; and
 - (c) the OSG’s Comment dated April 12, 2022 on the petition.

This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by Jose Maria Antonio Agustin Kilayko y Montilla *alias* “JACK” (petitioner), questioning the Decision² dated November 28, 2019 and the Resolution³ dated November 9, 2020 of the Court of Appeals (CA) in CA-G.R.

¹ *Rollo*, pp. 10-35.

² *Id.* at 157-176. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Marilyn B. Lagura-Yap and Alfredo D. Ampuan, concurring.

³ *Id.* at 149-153. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura –Yap, concurring.

CEB CR-HC No. 02885, which affirmed the Decision⁴ dated February 22, 2018 of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 1, which found petitioner guilty beyond reasonable doubt of illegal sale and possession of *shabu*, and illegal possession of equipment, instrument, apparatus, and other paraphernalia in violation of Sections 5, 11, and 12, Article II of Republic Act (R.A.) No. 9165, respectively.

Facts of the Case

This case stemmed from three (3) Informations filed before the RTC, charging petitioner with violation of Sections 5, 11, and 12 of R.A. No. 9165, the accusatory portion of each of the Information reads:

Criminal Case No. 11270 (Violation of Section 5, Article II of R.A. No. 9165)

That in the early morning of the 21st day of October, 2013, at Sitio Bolabog, Barangay Balabag, Municipality of Malay, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named[]accused, without authority of law, did then and there willfully, unlawfully and feloniously sell to a poseur-buyer one (1) small heat-seal transparent plastic sachet containing white crystalline substance of Methamphetamine Hydrochloride, a dangerous drug commonly known as “shabu”, weighing 0.035 gram, marked as “JACK” with signature and date (marked and signed by the seizing officer),[]as per Chemistry Report No. D-046-2013AK, in exchange ONE[]THOUSAND PESOS (Php 1,000.00) buy-bust money composed of[]five (5) one-hundred peso bills bearing Serial Nos. P350067, JE208033 (both marked money), CC691415, CY588463, PM992200[](unmarked money) and one (1) five-hundred-peso bill bearing Serial[]No. PZ416334, which were confiscated from the possession, custody and control of the accused during the search after the[]conduct of a buy-bust operation by elements of the Provincial Intelligence Branch Operatives (PIBO)-Aklan Police Provincial Office, Camp Pastor Martelino, New Buswang, Kalibo,[]Aklan.

[]CONTRARY TO LAW.⁵

Criminal Case No. 11271 (Violation of Section 11, Article II of R.A. No. 9165)

That in the early morning of the 21st day of October, 2013,[]at Sitio []Bolabog, Barangay Balabag, Municipality of Malay,[]Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully[]and feloniously have in his possession, control and custody two[](2) small masking[]tape and heat-sealed transparent plastic[]sachet containing white crystalline substance[]of Methamphetamine Hydrochloride, a dangerous drug locally known as “Shabu”, marked by seizing officer[s] as “JACK-1” and “JACK-2” with date and signatures, weighing 0.747 gram and 0.736 gram, respectively, as per Chemistry Report No. D-046-2013AK, issued by PSINSP Alvin

⁴ Id. at 42-71. Penned by Acting Presiding Judge Josefina F. Muego.

⁵ Id. at 43.

Raymundo Pascual, Forensic Chemist, Regional Crime Laboratory office 6, Camp Martin Delgado, Iloilo City, which were confiscated from the possession of the accused during the search after the conduct of a buy-bust operation by elements of the Provincial Intelligence Branch Operatives (PIBO)-Aklan Police Provincial Office, Camp Pastor Martelino, New Buswang, Kalibo, Aklan.

Further confiscated from the possession, control and custody of the accused were one (1) Nokia model C2-01 cellphone color black, one (1) Myphone model B88i Duo cell phone color white, both cellphones containing text messages of suspected illegal drug transactions, two (2) pieces Philippine passports, both in the name of JOSE MARIA ANTONIO AGUSTIN KILAYKO y MONTILLA, color green, bearing passport Nos. WW418531 and JJ819743, one (1) small spiral notebook containing suspected illegal drug transactions/accounts and one (1) ball pen.

CONTRARY TO LAW.⁶

Criminal Case No. 11272
(Violation of Section 12, Article II of R.A. No. 9165)

That in the early morning of the 21st day of October, 2013, at Sitio Bolabog, Barangay Balabag, Municipality of Malay, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there[]willfully, unlawfully and feloniously have in his possession, control and custody three (3) small strips aluminum foil marked as “JACK-3”, “JACK-4” and “JACK-5” with residue of Methamphetamine Hydrochloride, a dangerous drug commonly known as “Shabu”, as per Chemistry Report No. D-047-2013AK issued by PSINSP Alvin Raymundo Pascual, Forensic Chemist, Regional Crime Laboratory office 6, Camp Martin Delgado, Iloilo City, two (2) improvised tooters marked as “JACK-6” and “JACK-7”, with residue of Methamphetamine Hydrochloride, as per Chemistry Report No. D-046-2013AK, issued by the same, one (1) weighing scale CDR King brand marked as “JACK-8”, and one small wooden box color black containing two (2) disposable lighters used as improvised burners, two (2) improvised tooters, one (1) small stainless scissors and four (4) unused small transparent plastic sachets, which were confiscated from the possession of the accused during the search after the conduct of a buy-bust operation by elements of the Provincial Intelligence Branch Operatives (PIBO)-Aklan Police Provincial Office, Camp Pastor Martelino, New Buswang, Kalibo, Aklan.

CONTRARY TO LAW.⁷

Version of the Prosecution

The prosecution presented the following witnesses: (1) Senior Police Officer 1 (SPO1) Reynold Galicha (SPO1 Galicha), the investigating officer; (2) Police Officer 1 (PO1) Dagie O. Sonajo (PO1 Sonajo), the photographer; (3) Police Officer 2 (PO2) Manny Lorenzo (PO2 Lorenzo), the *poseur*-buyer and arresting officer; (4) PO2 Lazaro Perlas, Jr. (PO2 Perlas, Jr.), back-up and

⁶ Id. at 43-44.

⁷ Id. at 44-45.

arresting officer; and (5) Police Senior Inspector Alvin Raymundo Pascual (P/SInsp. Pascual), the forensic chemist.⁸

According to the prosecution, at around 4:00 p.m. of October 20, 2013, a team of police operatives conducted a pre-operation briefing regarding a possible buy-bust operation against petitioner. Among the police officers present was, PO2 Lorenzo from the Boracay Tourist Assistance Center, Boracay Island, Malay, Aklan, who was designated as the *poseur*-buyer.⁹ Likewise present during the briefing was the confidential informant who had brought to the attention to the police the drug activities of petitioner.¹⁰

The buy-bust team was able to identify that petitioner was staying at Room No. 5, Banana Guesthouse, Sitio Bolabog, Boracay Island. Thereafter, the confidential informant left the group and proceeded to meet with petitioner to confirm the transaction. At around 11:00 p.m., the confidential informant sent a message to PO2 Lorenzo that the transaction would be pushing through and that petitioner was ready with the items.¹¹ PO2 Lorenzo and PO2 Perlas, Jr. proceeded to the Banana Guesthouse, where the confidential informant was waiting for them at the entrance.¹²

PO2 Lorenzo, PO2 Perlas, Jr., and the confidential informant went to Room 5, where petitioner was staying and conducting his transactions. The confidential informant knocked and petitioner opened the door. The confidential informant then introduced PO2 Lorenzo and PO2 Perlas, Jr. to petitioner as the potential buyers of *shabu*.¹³ PO2 Lorenzo purchased *shabu* and handed the marked ₱1,000.00-bills to petitioner. In exchange, petitioner handed a sachet containing white crystalline substance, suspected as *shabu*.¹⁴ After receiving the item, PO2 Lorenzo put it inside his pocket.¹⁵

At this point, PO2 Lorenzo and PO2 Perlas, Jr., introduced themselves as police officers and arrested petitioner. While PO2 Lorenzo and PO2 Perlas, Jr., subdued petitioner, he was read his constitutional rights. Thereafter, PO2 Lorenzo conducted a body search on petitioner and found another two (2) bigger sachets (one side was heat-sealed and the other side was taped with masking tape) containing white crystalline powder in the right front pocket of petitioner's short pants.¹⁶ After petitioner was detained and frisked, PO2 Lorenzo observed several items on top of the table, which he belied to be drug paraphernalia, in particular, aluminum foil, tooters, and lighters.¹⁷

Thereafter, the investigator on case, SPO1 Galicha and the photographer, PO1 Sonajo arrived at the scene. During the early morning the

⁸ Id. at 45.

⁹ Id. at 76-77.

¹⁰ Id. at 77.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id. at 46.

¹⁵ Id.

¹⁶ Id. at 77.

¹⁷ Id.

next day, the three (3) witnesses arrived at the scene, namely: (1) Kagawad Jupiter Aelred G. Gallenero of the Sangguniang Bayan of Malay; (2) Malbert S. Dalida of Yes, FM, representing the media; and (3) Assistant Provincial Prosecutor Flosemer Chris I. Gonzales. After the witnesses arrived, PO2 Lorenzo proceeded with marking the seized items with the initials "JACK" marked sequentially and the date "10.21.2013." Thereafter, the team proceeded with the physical inventory and photography of the seized items.¹⁸

After the inventory, the seized items were turned over to SPO1 Galicha, who then brought it to the police station. Thereafter, the seized items were turned over to the forensic chemist, P/SInsp. Pascual of the Aklan Provincial Laboratory, together with the Chain of Custody Form.¹⁹ Forensic Chemist P/SInsp. Pascual then conducted an examination of the seized items, which included the plastic sachet and the drug paraphernalia. The samples taken from the contents of the plastic sachet and the drug paraphernalia yielded positive for Methamphetamine Hydrochloride, otherwise known as *shabu*.²⁰

Version of the Defense

The defense denied the allegations against petitioner and countered that he was illegally arrested. The defense presented petitioner and a certain Liza Jane Advincula, alias "Micay" (Micay), as its witnesses.

According to the defense, petitioner arrived in Boracay on October 18, 2013 together with his girlfriend, Micay. They had originally checked in at Euro Hotel, but eventually moved out the following day. On October 19, 2013 petitioner and Micay were picked up by a certain Roy Sogano (Roy), petitioner's friend, and they were brought to the Banana Guesthouse at Sitio Bolabog, where they checked-in.²¹

On October 20, 2013, after they had dinner, Micay left the room to meet another friend while petitioner stayed behind. Thereafter, Roy returned and brought with him a friend whom he introduced as a certain Joey Evangelio (Joey). Joey was selling rechargeable flashlights and petitioner was interested in purchasing one.²² Petitioner borrowed ₱1,000.00 from Roy and handed it to Joey. Thereafter, Roy excused himself and left the room, leaving petitioner and Joey behind.²³

At around 9:30 to 10:30 p.m., three men in civilian clothing barged into the room and announced themselves as police officers, pointing their guns at petitioner and Joey.²⁴ Petitioner was then frisked and hand cuffed and was

¹⁸ Id.

¹⁹ Id. at 78.

²⁰ Id.

²¹ Id. at 11.

²² Id. at 12.

²³ Id.

²⁴ Id.

made to sit down, while Joey was brought out of the room. Petitioner also saw the police officers hand a gun to Roy and was told to go out.²⁵ The police officers then proceeded to search petitioner's and Micay's bags.

Later on, petitioner was informed that he was being arrested for drug-related activities, to which he vehemently denied. The police officers then placed several items on the table. Afterwards, SPO1 Galicha entered the room.²⁶

It was only during the early morning, the next day (October 21, 2013), that the witnesses started to arrive. After the arrival of the last witness, the police officer conducted the inventory.²⁷ Petitioner denied that he was involved in any drug-related activities and that the items placed on the table belonged to him.²⁸

Afterwards, he was brought to the Boracay Police Station where he was processed and detained.²⁹

Ruling of the RTC

In a Decision³⁰ dated February 22, 2018, the RTC found petitioner guilty beyond reasonable doubt of illegal sale and possession of *shabu*, and illegal possession of equipment, instrument, apparatus, and other paraphernalia in violation of Sections 5, 11, and 12, Article II of R.A. No. 9165, respectively, *viz.*:

WHEREFORE, judgment is hereby rendered against accused JOSE MARIA ANTONIO AGUSTIN KILAYKO y MONTILLA @ "JACK" as follows:

1. In Criminal Case No. 11270 for violation of Section 5 of Republic Act No. 9165, GUILTY[]beyond reasonable doubt, he is hereby sentenced to suffer the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00);
2. In Criminal Case No. 11271 for violation of Section 11 of Republic Act No. 9165, GUILTY beyond reasonable doubt, he is hereby sentence to suffer the [indeterminate penalty of imprisonment] of twelve (12) years and one (1) day to 16 years and to pay a fine of P300,000.00;

In Criminal Case No. 11272 for violation of Section 12 of Republic Act No. 9165, GUILTY beyond reasonable doubt, he is hereby sentenced to suffer the indeterminate penalty of

²⁵ Id.
²⁶ Id.
²⁷ Id. at 13.
²⁸ Id.
²⁹ Id.
³⁰ Id. at 42-71.

imprisonment of six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and a fine of P10,000.00.

The Branch Clerk of Court is directed to transmit the dangerous drugs subject of this case to the Philippine Drug Enforcement Agency, Regional Office 6, Iloilo City, for its proper disposal.

SO ORDERED.³¹ (Emphasis in the original)

Aggrieved, petitioner appealed the RTC's decision and elevated his conviction before the CA.

Ruling of the CA

In a Decision dated November 28, 2019, the CA affirmed the RTC's decision, likewise finding petitioner guilty of all the charges against him:³²

WHEREFORE, the Decision dated 22 February 2018 of the Regional Trial Court, 6th Judicial Region, Branch 1, Kalibo, Aklan, convicting the accused-appellant Jose Maria Antonio Agustin Kilayko y Montilla @ "JACK", for violation of Sections 5, 11 and 12 of Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

SO ORDERED.³³ (Emphases in the original)

The CA concluded that the RTC correctly convicted petitioner as the prosecution was able to prove beyond reasonable doubt that the essential elements of the crimes charged against petitioner were present.

The CA was, likewise, convinced that the prosecution had properly established the unbroken chain of custody resulting in the preservation of the integrity and evidentiary value of the seized items. The CA in fact painstakingly identified and concluded that the buy-bust team had complied with each of the links and ensured the integrity and evidentiary value of the *corpus delicti*, from the moment they were seized and marked until they were eventually brought and submitted to the RTC during trial.³⁴ It is noteworthy to quote the findings of the CA below:

1st link (seizure and marking, inventory and photographing)

Records show that PO2 Lorenzo recovered from the accused-appellant the other two (2) sachets of shabu, and these stayed with him until he marked and inventoried these together with the rest of the confiscated items. The marking and inventory was done inside Room No. 5 of the Banana Guesthouse in Boracay, where the accused-appellant was staying and the buy-bust operation conducted, in the presence of the accused-appellant, the three (3) witnesses, namely: the DOJ representative, Pros. Flosemer Chris I.

³¹ Id. at 70-71

³² Id. at 72-93.

³³ Id. at 93.

³⁴ Id. at 85-90.

Gonzales, the media representative, Malbert S. Dalida of the YES FM-Boracay, and Sanggunian Member Jupiter Aelred G. Gallenero, and case investigator SPO1 Galicha.

x x x x

PO1 Sonajo took photographs of the confiscated items laid on the table including the marked money, PO2 Lorenzo who was in the act of marking, with the accused-appellant watching nearby, and witnesses and police officers in the act of signing.

x x x x

2nd link (turn-over to the case investigator)

As testified to by PO2 Lorenzo the inventoried items were turned over to the case investigator, SPO1 Galicha. x x x

x x x x

Thereafter, SPO1 Galicha brought these to the police station where a request for qualitative examination was made.

3rd Link (to the crime laboratory)

SPO1 Galicha [turned] over the items for examination to PO2 Lorenzo, who then brought these, together with the request and chain of custody from, to the PNP Crime Laboratory.

x x x x

P/SInsp Pascual, upon receipt of the items, immediately conducted the examination. x x x

x x x x

After the conduct of the laboratory examination, the Chemistry Reports revealed that the contents of the said sachets and the residue on the tooters and three (3) strips of aluminum foil tested positive for methamphetamine hydrochloride or shabu.

4th Link (from forensic chemist to court)

As testified to by the forensic chemist, P/SInsp Pascual, he, himself, brought the examined items to the RTC, as shown on the dorsal portion of the Chemistry Report Nos. D-046-2013AK, D-047-2013AK, and D-048-2013AK.

In conclusion, there is no iota of doubt that the integrity and evidentiary value of the seized items were preserved. And finally, it is clear from the foregoing that the chain of custody was not broken.” (Emphasis supplied; citations omitted)

Thereafter, petitioner filed his motion for reconsideration, assailing the foregoing decision, which was eventually denied by the CA in its Resolution dated November 9, 2020.³⁵

The Petition

On February 1, 2021, petitioner filed a petition for review on *certiorari* under Rule 45 of the Rules of Court questioning the decision and the resolution of the CA and praying for his acquittal.³⁶

Petitioner argues that the CA erred in affirming the RTC decision and concluding that the buy-bust team complied with the proper procedures in maintaining the integrity and evidentiary value of the seized items. Petitioner pointed out several irregularities in the buy-bust operation. In particular petitioner argues that the buy-bust team did not immediately conduct a physical inventory and photography of the seized items.³⁷ Petitioner alleges that the buy-bust operation was conducted around 9:30 to 10:30 p.m., however, the inventory was conducted only on the next day around 5:00 a.m., or after the lapse of around eight hours since the buy-bust operation, when the barangay official finally arrived.³⁸ Petitioner admits that while the required insulating witnesses arrived early morning the next day, none of them were present during the actual conduct of the buy-bust operation and the seizure of the confiscated items.³⁹ In addition, petitioners cast doubt as to the validity of the buy-bust operation by citing the following irregularities: (1) the absence of a prior surveillance of petitioner; (2) the absence of any prior reports on illegal activities of petitioner; and (3) the absence of prior coordination with the Philippine Drug Enforcement Agency.⁴⁰

Moreover, petitioner questions the findings of the RTC, as affirmed by the CA that the prosecution was able to prove all the elements of the crimes charged, despite the supposed conflicting testimonies of the prosecution's witnesses.⁴¹

In the Resolution⁴² dated May 3, 2021, this Court took note of petitioner's Manifestation with Motion dated January 5, 2021 and, likewise, directed respondent to file a comment to the petition for review on *certiorari*.

On April 12, 2022, respondent, through the Office of the Solicitor General, filed its Comment⁴³ of even date.

Respondent argues that the delay in the arrival of the required insulating witnesses was justified by the circumstances. According to respondent, the buy-

³⁵ Id. at 96.

³⁶ Id. at 10.

³⁷ Id. at 18.

³⁸ Id. at 18.

³⁹ Id. at 20.

⁴⁰ Id. at 21.

⁴¹ Id. at 31.

⁴² Id. at 177.

⁴³ Id. at 193-213.

bust team received the tip from their confidential informant regarding petitioner's illegal activities on October 20, 2013 at around 4:00 p.m. It was only around 10:00 p.m. that the confidential informant informed the buy-bust team that petitioner was ready to sell drugs. According to the buy-bust team, there was no reasonable time for them to coordinate and gather the required witnesses to be present at the scene of the operation.⁴⁴

Anent petitioner's other arguments questioning the regularity of the buy-bust operation, respondent argues that these were not condition *sine qua non* to a buy-bust operation.⁴⁵

Ruling of the Court

At the outset, We note that petitioner brought the present appeal to this Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court. We take this opportunity to clarify the proper remedy under the rules.

Generally, appeals of criminal cases shall be brought to this Court by filing a petition for review on *certiorari* before it under Rule 45 of the Rules of Court.⁴⁶ However, in cases where the CA imposes the penalty of *reclusion perpetua*, life imprisonment, or a lesser penalty, the judgment may be appealed to this Court by notice of appeal filed with the CA⁴⁷ pursuant to Section 13(c), Rule 124 of the Rules of Court,⁴⁸ as amended by A.M. No. 00-5-03-SC.⁴⁹

In this case, the CA affirmed the penalty imposed by the RTC sentencing petitioner to suffer the penalty of Life Imprisonment for violation of Section 5 of R.A. No. 9165, among others. The proper mode of appeal to this Court should have been to file a notice of appeal with the CA under Section 13 of Rule 124, instead of a petition for review on *certiorari*. Thus, petitioner clearly availed of the wrong remedy.

Nevertheless, in the interest of justice, despite petitioner's procedural lapse, this Court shall treat the instant petition as an appeal under Section 13(c) of Rule 124. As such, the entire case is thrown wide open for review, conferring jurisdiction to this Court to review even questions of fact.

⁴⁴ Id. at 208.

⁴⁵ Id. at 208.

⁴⁶ REVISED RULES ON CRIMINAL PROCEDURE, Rule 122, Section 3(e) reads:
Section 3. How appeal taken. –
x x x x

(e) Except as provided in the last paragraph of Section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45.

⁴⁷ *People v. Estonilo*, G.R. No. 248694, October 14, 2020.

⁴⁸ REVISED RULES ON CRIMINAL PROCEDURE, Rule 124, Section 13(c) reads:
Section 13. Certification or appeal of case to the Supreme Court. –
x x x x

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

⁴⁹ Re: Amendments to The Revised Rules of Criminal Procedure to Govern Death Penalty Cases, which took effect on October 15, 2004.

After an exhaustive examination of the records, this Court finds the appeal to be meritorious and rules that the trial and appellate court misapprehended material facts in this case.

In cases involving sale or possession of dangerous drugs and related paraphernalia, conviction cannot be sustained if doubt persists on the identity of the confiscated items, considering that the dangerous drugs and paraphernalia themselves form an integral part of the *corpus delicti* of the crime. The identity of the dangerous drug and related paraphernalia, therefore, must be established with moral certainty.⁵⁰ Accordingly, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the dangerous drugs and related paraphernalia are seized up to their presentation in court as evidence of the crime.⁵¹

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court until destruction.⁵² Compliance thereof ensures the integrity of confiscated drugs and related paraphernalia in four respects: *first*, the nature of the substances or items seized; *second*, the quantity (*e.g.*, weight) of the substances or items seized; *third*, the relation of the substances or items seized to the incident allegedly causing their seizure; and *fourth*, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.⁵³

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure, marking, and inventory 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.

The foregoing requirements must be strictly complied with as they ensure the possibility of planting or substitution of evidence.⁵⁴ To avoid any doubt, the prosecution must show the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.⁵⁵

⁵⁰ *People v. Del Mundo*, 818 Phil. 575, 585 (2017), citing *People v. Gayoso*, 808 Phil. 19 (2017).

⁵¹ *People v. Viterbo*, 739 Phil. 593, 601 (2014).

⁵² *Ramos v. People*, 826 Phil. 663, 675 (2018).

⁵³ *People v. Adobar*, 832 Phil. 731, 752 (2018), citing *People v. Dela Cruz*, 744 Phil. 816 (2014).

⁵⁴ *People v. Gonzales*, 708 Phil. 121, 129 (2013).

⁵⁵ *People v. Belmonte*, 835 Phil. 719, 744 (2018).

In the instant case, We observe that there was significant irregularities in the *first link* of the chain, which puts in doubt the integrity and evidentiary value of the *corpus delicti*.

First, the buy-bust team did not mark the seized items immediately after seizure and confiscation.

Marking of the dangerous drug and/or related items after seizure is the starting point in the custodial link⁵⁶ and is indispensable in the preservation of their integrity and evidentiary value.⁵⁷ It consists of affixing on the dangerous drugs or related items by the apprehending officer or the poseur- buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.⁵⁸

We emphasized in *People v. Gonzales*⁵⁹ that the prompt marking of the seized drugs or related items is crucial, because succeeding handlers will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other materials from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**⁶⁰

In the instant case, the marking of the sachets of shabu and the drug paraphernalia were done only upon arrival of the last insulating witness at Room No. 5 of the Banana Guesthouse, who arrived early in the morning the next day.⁶¹ The marking was done by PO2 Lorenzo, who testified:

Court:

Q: Officer, where did you mark these items?

A: I mark[ed] them at room 5.

Q: Did you mark them before the inventory or before?

A: I mark[ed] them during the inventory. .

x x x x

Clearly, PO2 Lorenzo did not immediately mark the plastic sachets and paraphernalia after their confiscation. There was an appreciable lapse of time from the moment these items were seized up to their actual marking.

⁵⁶ *People v. Coreche*, 612 Phil. 1238, 1244 (2009).

⁵⁷ *People v. Mazo*, G.R. No. 242273, November 23, 2020.

⁵⁸ *People v. Gonzales*, supra note 54 at 130-131.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ *Rollo*, p. 86.

Second, the conduct of the inventory was not made immediate after seizure and confiscation of the plastic sachets and paraphernalia.

In the instant case, petitioner was arrested pursuant to a buy-bust operation conducted on October 20, 2013. Thus, the applicable law is R.A. No. 9165, prior to the amendments introduced by R.A. No. 10640.⁶² In this regard Section 21 of R.A. No. 9165, prescribes the standard and procedure to be followed in connection with the proper seizure, custody and disposition of confiscated, seized and/or surrendered drugs and/or drug paraphernalia:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

In several cases, We have interpreted that the foregoing provision requires that the apprehending team shall conduct a physical inventory of the seized items and photograph the same “**immediately after seizure and confiscation**”⁶³ in the presence of the accused or his representative or counsel, together with the following three insulating witnesses: (1) elected public official; (2) a representative of the Department of Justice; and (3) the media.

The phrase “**immediately after seizure and confiscation**” means that the physical inventory and photographing of the drugs must be at the place of apprehension and/or seizure and if not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.⁶⁴ Thus, the required insulating witnesses must be present at the time of and at or near the place of apprehension and seizure.⁶⁵ The presence of the required witnesses during seizure and marking ensures that whatever items are subsequently inventoried, photographed, examined, and presented in court are the same substances that were initially obtained from the accused.⁶⁶

⁶² 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,” effective August 7, 2014. See also *People v. Gutierrez*, 842 Phil. 681 (2018).

⁶³ *People v. Luna*, 828 Phil. 671, 692 (2018).

⁶⁴ *People v. De Vera*, 837 Phil. 348, 370 (2018).

⁶⁵ *Id.*

⁶⁶ *People v. Castillo*, G.R. No. 238339, August 7, 2019.

This requirement was precisely put in place to guard against the possibility of planting or substituting evidence in anti-narcotics operations, which necessarily takes place at the point of seizure and confiscation. Hence, it is at this point that their presence is most crucial.⁶⁷

In the instant case, although the apprehending team conducted an inventory of the alleged seized items, it is likewise beyond dispute that the required witnesses were not present during the seizure and confiscation of the plastic sachets and drug paraphernalia.

According to the trial court, SPO1 Galicha testified that “the items seized by PO2 Lorenzo and PO2 Perlas, Jr. were already laid on top of the table when the witnesses to the inventory arrived.”⁶⁸

To Our mind, the circumstances of the conduct of the inventory casts serious doubt as to the validity and legitimacy of the buy-bust operation. There is no guarantee that the items placed on the table were indeed taken or seized from petitioner when he was arrested and frisked.

We must emphasize that the presence of the insulating witnesses is a high prerogative requirement, the non-fulfillment of which casts serious doubts upon the integrity of the *corpus delicti* itself — the very prohibited substance itself — and for that reason imperils the prosecution’s case.⁶⁹ Otherwise, the avowed purpose of the required witnesses rule — which is to prevent the evils of switching, planting, or contamination of the *corpus delicti* resulting in the tainting of its integrity and evidentiary value — will be greatly diminished or even completely negated.⁷⁰

Although Section 21, Article II of R.A. No. 9165 and its Implementing Rules and Regulations, provide for a saving clause which allows for a deviation from the mandatory procedural requirements, it nevertheless falls upon the prosecution to establish the following: (1) justifiable grounds must be shown to exist warranting a departure from the rule on strict compliance; and (2) the apprehending team must prove that the integrity and the evidentiary value of the seized items had been properly preserved.⁷¹

In the instant case, respondent justified the absence of the witness during the actual seizure and confiscation of the items on the lack of reasonable time to coordinate and gather them and to ensure their presence at the scene of the buy-bust operation.⁷² We find such excuse weak and unavailing.

According to the witnesses for the prosecution, at around 4:00 p.m. of October 20, 2013, they were already being briefed about a possible buy-bust

⁶⁷ *People v. De Vera*, supra note 64 at 370.

⁶⁸ *Rollo*, p. 54.

⁶⁹ *People v. Manansala*, G.R. No. 229509, July 3, 2019.

⁷⁰ *People v. Cabrellos*, 837 Phil. 428, 443 (2018).

⁷¹ *People v. Luna*, supra note 63 at 686.

⁷² *Rollo*, p. 203.

operation to be conducted against petitioner. Thereafter, they received around 10:00 p.m. the confirmation from their confidential informant that petitioner was supposedly ready to sell drugs. No proof was ever adduced that during the interim, the buy-bust team ever exerted effort to contact and coordinate with the required witnesses to ensure their presence during the operation. The six-hour period in between the briefing until the confidential informant informed them of petitioner's supposed illegal activities is more than reasonable time for them to coordinate with the required witnesses.

Based on the foregoing, We find that the prosecution failed to establish the first link in the chain of custody, which casts serious doubts upon the integrity and evidentiary value of the *corpus delicti* and thus, warrants petitioner's acquittal.

WHEREFORE, the Decision dated November 28, 2019 and the Resolution dated November 9, 2020 of the Court of Appeals in CA-G.R. CEB CR-HC No. 02885 are **REVERSED** and **SET ASIDE**. Petitioner Jose Maria Antonio Agustin Kilayko y Montilla @ "JACK" is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless confined for some other lawful cause.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General of the Bureau of Corrections is **DIRECTED** to report to this Court, within five (5) days from receipt of this Resolution, the action he has taken. Copies shall also be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

SO ORDERED." (Inting, J. and Singh, J., on official business.)

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *02-26-23*

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 1, Kalibo Aklan
(Crim. Case Nos. 11270-72)

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Acting Director General
BUREAU OF CORRECTIONS
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The Superintendent
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