



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 3, 2021** which reads as follows:*

“G.R. No. 250177 (People of the Philippines, Plaintiff-Appellee, v. Michael Manalo y Abuyuan, Accused-Appellant). – This is an appeal seeking to reverse and set aside the Decision¹ dated April 26, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10619. The assailed Decision of the CA affirmed the Decision² dated January 30, 2018 of the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 8, finding accused-appellant Michael Manalo y Abuyuan (Manalo) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Information³ filed against Manalo reads as follows:

That on **SEPTEMBER 6, 2016, or thereabout**, in the Municipality of **Aparri**, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, without any legal authority thereof, did then and there willfully, unlawfully and feloniously sell, deliver, dispense, give away one (1) piece heat sealed transparent plastic sachet containing white crystalline substance which gave [a] **POSITIVE** result to the test for methamphetamine hydrochloride, a dangerous drug, locally known as **SHABU**, with an aggregate weight of **4.94 grams** to a poseur buyer element of [the] Philippine National Police, Aparri Police Station, Aparri, Cagayan, said accused knowing fully well

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¹ Penned by Associate Justice Ramon R. Garcia, with the concurrence of Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Robeniol; *rollo*, pp. 3-16A.

² Penned by Presiding Judge Nicanor S. Pascual, Jr.; *CA rollo*, pp. 50-58.

³ Records, p. 2.

and aware that it is prohibited for any person to sell, deliver, dispense, give away to another or transport any dangerous drug regardless of quantity, quality or degree of purity thereof, unless authorized by law.

CONTRARY TO LAW.⁴ (Emphasis in the original)

Manalo pleaded not guilty to the crime charged against him.⁵ Trial on the merits then ensued.

The prosecution presented: (a) PO3 Mark Anthony Nolasco (PO3 Nolasco); (b) PO2 Neptune Tolentino (PO2 Tolentino); (c) PO3 Hannibal Ulep (PO3 Ulep); (d) PO2 Roy Collado (PO2 Collado); and (e) Analyn Parallag. The testimonies of Barangay Kagawad Feliciano Palattao (Kgd. Palattao), Police Chief Inspector Pepito Mendoza (PCI Mendoza), and Police Chief Inspector Mayra Madria Talauan (PCI Talauan) were merely stipulated on.⁶

For his part, Manalo testified on his own behalf.⁷

The prosecution's evidence established that on September 5, 2016, a certain PO2 Jake Guinoban received a tip from a confidential informant that two individuals – known under the aliases Ken-ken and Jo-jo – are selling illegal drugs. At 5:30 p.m., Acting Deputy Chief of Police SPO4 Edmundo Batalla organized and briefed a 10-person buy-bust team against Ken-ken and Jo-jo. PO3 Nolasco was assigned as the *poseur*-buyer while PO2 Callado and PO2 Tolentino were designated as the arresting officers. PO3 Nolasco received one genuine ₱500-bill, which he marked with his initials (*i.e.*, MAN), one fake ₱500-bill, and 19 pieces ₱1,000-bills. The confidential informant then called one of the targets through cell phone and set a meeting at Centro 09 beside Metrobank to purchase ₱20,000.00 worth of *shabu*. Although the buy-bust team proceeded to the agreed place at 6:20 p.m., Ken-ken and Jo-jo postponed the scheduled transaction *via* text message. The following day (*i.e.*, September 6, 2016) at 9 a.m., the buy-bust team proceeded inside the compound of Charles W Shelby Memorial Hospital. After waiting for several hours, Ken-ken and Jo-jo changed the place of the transaction to the front of the Public Cemetery in Barangay Maura and informed the confidential informant that a certain Michael Manalo will deliver the illegal drugs. At 1:30

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⁴ Id.

⁵ Id. at 38.

⁶ Id. at 66-67.

⁷ Id. at 61-64.

p.m. the buy-bust team arrived at the meeting place with the confidential informant and PO3 Nolasco waiting at a vacant lot in front of the public cemetery while the rest of the back-up team waited behind the 6-foot concrete fence of a boarding house located some five meters away from the cemetery. Ten minutes later, Manalo arrived on board a black tricycle with a certain Jeg-jeg Ambiong Reynon (Reynon) seated at the back. The confidential informant introduced Manalo to PO3 Nolasco. PO3 Nolasco asked for the items, which prompted Manalo to hand over one heat sealed transparent plastic sachet containing white crystalline substance to PO3 Nolasco in exchange for the buy-bust money. PO3 Nolasco then executed the pre-arranged signal of removing his ball cap, which caused the rest of the buy-bust team to head to the place of the transaction. PO2 Tolentino then arrested Manalo and confiscated the buy-bust money, one mobile phone, and the motorcycle. PO2 Tolentino also arrested Reynon and retrieved a stripe sling bag containing one heat sealed transparent plastic sachet containing white crystalline substance. The buy-bust team then brought Manalo and Reynon to the Barangay Hall of Maura where the items recovered were marked, inventoried, and photographed in the presence of two Barangay Kagawads and a representative of the media.⁸ The Inventory of Seized Properties/Items⁹ contained the following description and marking of the items recovered from Manalo and Reynon:

Item Nr	QUANTITY/DESCRIPTION	REMARKS
1	One (1) pc rolled paper with transparent packing tape	MAN w/ date and signature
2	One (1) big heat sealed transparent plastic sachet containing white crystalline substance allegedly to be <i>shabu</i>	MAN w/ date and signature
3	One (1) pc genuine five hundred peso bill (₱500.00) w/ serial nr GN328015 and markings initial "MAN"	NLT-01 w/ date and signature
4	One (1) pc scanned five hundred peso bill (₱500.00) w/ serial nr GN523896	NLT-03 w/ date and signature
5	Nineteen (19) pcs scanned one thousand peso bill (₱1,000.00) w/ serial nr HD735410	NLT-02 w/ date and signature
6	One (1) unit Cherry mobile cellphone	NLT-04 w/ date and signature
7	One (1) Black Maton 150cc w/ bearing plate nr 6995BV and w/ black sidecar bearing body NR 1541	--

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⁸ Id. at 9.

⁹ Id. at 12.

8	One (1) pc big heat sealed transparent plastic sachet containing white crystalline substance allegedly to be <i>shabu</i>	NLT w/ date and signature
9	One (1) pc stripe sling bag	NLT-05 w/ date and signature ¹⁰

Thereafter, the buy-bust team brought Manalo and Reynon to the Aparri Police Station. Around 7 p.m., PO3 Nolasco and PO2 Tolentino brought the seized items, Manalo, and Reynon to Regional Crime Laboratory Office 2 for drug testing and laboratory examination.¹¹ According to the Chain of Custody Form, however, PO3 Nolasco and PO2 Tolentino brought the two plastic sachets retrieved from Manalo and Reynon to PO3 George B. Carag (PO3 Carag) at 9:30 p.m. prior to handing the same over to PCI Talauan.¹² PCI Talauan's Chemistry Report¹³ on the two plastic sachets handed over to her show that she received the items at 9:30 p.m. and that the specimen retrieved from Manalo (containing 4.94 grams of a mixture of white crystalline substance and opaque white mentholated sticky crystals) were positive for the presence of methamphetamine hydrochloride or *shabu*. PCI Talauan then delivered the Chemistry Report and seized items back to PO3 Carag, who turned the same over to PO3 Ulep.¹⁴ PO3 Ulep then surrendered the items to RTC's Branch Clerk of Court.¹⁵

For his defense, Manalo testified that on September 6, 2016, he was driving a motorcycle with Reynon as his backrider when PO2 Tolentino – a Barangaymate of his – flagged him down by a vacant lot in front of a public cemetery. Initially, PO2 Tolentino was alone but when he stopped the motorcycle, there were many armed non-uniformed people who were approaching him. PO3 Nolasco, whom he knew, was not among those present. They, then, poked a gun at him and Reynon and handcuffed him when he alighted from the tricycle. They frisked Manalo and Reynon but was not able to recover anything from both of them as they did not carry items. He and Reynon were boarded on a vehicle and brought to the Barangay hall. It was only upon their arrival at the Barangay hall that two plastic sachets and money were brought out. After pictures were taken of the items, they were brought to the Aparri police station prior to being brought to a crime laboratory in Tuguegarao City. It was at the crime laboratory that he heard the person who received the sachet remark that the

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¹⁰ Id.

¹¹ Id. at 9.

¹² Id. at 13.

¹³ Id. at 18.

¹⁴ Id. at 90, 100.

¹⁵ Id. at 56.

sachet he allegedly sold was not drugs. After spending some time in Tuguegarao City, they were brought back to the Office of the Provincial Prosecutor of Aparri where the instant case was filed against them.¹⁶

On January 30, 2018, the RTC found Manalo guilty of illegal sale of dangerous drugs. Manalo was thus sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.¹⁷

The RTC ruled that the prosecution was able to establish all the elements of the crimes charged. PO3 Nolasco, the *poseur*-buyer, bought from Manalo a sachet of *shabu* worth ₱20,000.00, with the delivery of the drugs sold and the payment made when PO3 Nolasco and Manalo handing over the money and sachet, respectively, to each other.¹⁸

The RTC declared that the identity of the evidence was likewise established. The prosecution proved that all those who handled the evidence from their recovery to their submission to the court were accounted for. The failure to present the marked money will not lead to an acquittal since the sale of dangerous drugs was adequately proven. The RTC also noted that marking was done and inventory was conducted in the presence of the accused and the required witnesses with photographs taken to show compliance with the requirements under Section 21 of R.A. 9165.¹⁹

The RTC opined that Manalo's alibi is uncorroborated by other witnesses especially of Reynon who was arrested and incarcerated with him.²⁰

Aggrieved, Manalo appealed his conviction to the CA. In his Brief,²¹ Manalo alleged that the existence of the sale was not proven beyond reasonable doubt since PO3 Nolasco had no personal knowledge that the subject drugs was really what Ken-ken and Jo-jo were selling to the confidential informant. Manalo also questioned PO3 Nolasco's unsubstantiated claim of a sale transpiring between him and Manalo since the other members of the buy-bust team failed to see the transaction take place. Neither was the confidential informant presented in court to corroborate PO3 Nolasco's testimony.²²

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¹⁶ Id. at 161-162.

¹⁷ Id. at 167.

¹⁸ Id. at 164-165.

¹⁹ Id. at 165-166.

²⁰ Id. at 166.

²¹ CA *rollo*, pp. 30-49.

²² Id. at 39-40.

Manalo questioned the integrity of the item allegedly sold by him. He contended that the subject sachet sold remained unmarked from the place of arrest up to the Barangay hall and was not subjected to an immediate inventory at the place of arrest, thus, breaking the first link in the required chain of custody and casting doubts as to the origin of the *shabu*. PO3 Nolasco's claim that marking and inventory were done at the Barangay hall for security purposes deserved scant consideration since the buy-bust team was composed of 10 armed policemen.²³ Manalo noted that there was no existing and serious threat because there was no one present in front of the public cemetery aside from the buy-bust team, Manalo, and Reynon.²⁴ Manalo also questioned the eligibility of the three witnesses because they were never presented in court to prove that they were indeed elected public officials or a legitimate representative of the media.²⁵

The Office of the Solicitor General (OSG), appearing for the prosecution, stated that the prosecution has proven all the elements of sale of illegal drugs with moral certainty.²⁶ The buy-bust team's failure to immediately mark the items at the time of arrest will not sustain an acquittal because every link in the chain of custody was accounted for.²⁷ For failure to prove that the buy-bust team was induced by any ill-motive to falsely accuse him of illegally selling dangerous drugs, the police officers' testimonies were properly given full faith and credit since they are presumed to have regularly performed their duties.²⁸

In its Decision²⁹ dated April 26, 2019, the CA affirmed the RTC Decision.³⁰ The CA found that the prosecution was able to establish the elements of illegal sale of dangerous drugs. The testimonies of PO3 Nolasco, PO2 Tolentino, and PO2 Collado were intelligible, candid, and unwavering. The fact that PO3 Nolasco was not privy to a previous arrangement between the confidential informant and Ken-ken/Jo-jo was irrelevant since the sale clearly happened between PO3 Nolasco and Manalo on September 6, 2016 at the vacant lot in front of the public cemetery in Barangay Maura. The testimonies were further corroborated by the Chemistry Report showing that the plastic sachet recovered from Manalo tested positive for *shabu*.³¹

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²³ Id. at 42-44.
²⁴ Id. at 44-45.
²⁵ Id. at 45-47.
²⁶ Id. at 90-92.
²⁷ Id. at 94.
²⁸ Id. at 96.
²⁹ Supra note 1.
³⁰ *Rollo*, p. 16A.
³¹ Id. at 13-15.

The CA debunked Manalo's claim of a break in the chain of custody. The failure to mark at the place of arrest did not render the evidence inadmissible because Section 21 of the Implementing Rules and Regulations of R.A. 9165 (IRR) allowed the conduct of inventory and the taking of pictures at the nearest police station or nearest office of the apprehending officer/team. The appellate court explained that marking and inventory of the items seized outside a public cemetery may result in Manalo's escape. "It would be impractical, if not dangerous, for merely three police officers to conduct the marking of such illegal drugs in broad daylight and in open public, without the assistance and security of other police officers."³²

Undeterred, Manalo filed a Notice of Appeal.³³ Both the OSG and Manalo manifested that they will no longer file any supplemental brief.³⁴

The sole issue to be determined is whether the prosecution established Manalo's guilt beyond reasonable doubt for illegal sale of prohibited drugs under R.A. 9165.

The appeal is meritorious.

To successfully prosecute illegal sale of prohibited drugs: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor must be established.³⁵

In cases of illegal sale of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."³⁶

An accused shall only be convicted of the crime charged once it has been established with "certainty that the drugs examined and presented in court were the very ones seized."³⁷ To satisfy this

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³² Id. at 15-16A.

³³ Id. at 17.

³⁴ Id. at 23, 32.

³⁵ *People v. Ismael*, 806 Phil. 21, 29 (2017)

³⁶ Id. at 29 citing *Fajardo v. People*, 691 Phil. 752 (2012), citing *People v. Gutierrez*, 614 Phil. 285, 293 (2009).

³⁷ *People v. Guzon*, 719 Phil. 441, 459 (2013).

requirement, the procedure under Section 21³⁸ of R.A. 9165 must be complied with. This provision was later amended by R.A. 10640 which took effect in 2014. Since the offense charged was allegedly committed on September 6, 2016, the apprehending team is required to conduct immediately a physical inventory and to photograph the seized items in the presence of the accused or from whom the items were seized, or his representative or counsel, as well as required witnesses, namely: an elected public official, and a representative from the National Prosecution Service or the media.

The prosecution failed to show that the arresting officers strictly complied with the procedure. Neither did it justify the arresting officers' non-compliance.

The marking of the seized drugs was not done at the place of arrest immediately after seizure. It is undisputed that following Manalo's arrest, they proceeded to the Barangay Hall of Maura, with the items remaining unmarked. The seized items were evidently exposed to possible switching, planting, and contamination. When asked by the trial court why marking was not done at the place of arrest but at the barangay hall, PO3 Nolasco, the *poseur*-buyer, simply replied "[f]or security purposes."³⁹

A mere allegation that marking and inventory were not done at the place of arrest "for security purposes" will not justify a deviation from the requirement under Section 21 of R.A. 9165, as amended by R.A. 10640. Such allegation becomes more suspect in view of the fact that (1) there were only two original accused (*i.e.*, Manalo and Reynon); (2) there was no allegation, much more proof, that the accused were armed; (3) there was no allegation nor proof of any threat to the buy-bust team's security; (4) the place of arrest was cordoned off; and (5) the buy-bust team were composed of 10 armed police officers. In the absence of sufficient justification, marking,

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³⁸ 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:

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, 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;

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³⁹ TSN dated September 4, 2017, p. 16.

inventory, and taking photographs must be done immediately after, or at the place of apprehension. This also means that the “required witnesses should already be physically present at the time of apprehension – a requirement that can be easily complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.”⁴⁰ The buy-bust team had enough time especially since the transaction was postponed from September 5, 2016 to the following day.

In *People v. Victoria*,⁴¹ this Court acquitted the accused after the prosecution witnesses admitted that the seized items were not marked at the place of arrest. This is because “[a] failure to mark at the time of taking of initial custody imperils the integrity of the chain of custody that the law requires.”⁴²

The Inventory of Seized Properties/Items⁴³ indicate that it was not signed by accused-appellant Manalo or by his counsel or representative, in violation of the requirement under Section 21(1) of R.A. 9165, as amended and its IRR.

The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.⁴⁴

The prosecution's sweeping guarantees as to the identity and integrity of the seized drug will not secure a conviction.⁴⁵ “While law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of

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⁴⁰ *People v. Manabat*, G.R. No. 242947, July 17, 2019; see also *People v. Tomawis*, 830 Phil. 385 (2018).

⁴¹ *People v. Victoria*, G.R. No. 238613, August 19, 2019.

⁴² *People v. Zakaria*, 699 Phil. 367, 381 (2012).

⁴³ *Id.* at 12.

⁴⁴ *Supra* note 35 at 31.

⁴⁵ *People v. Hementiza*, 807 Phil. 1017, 1033 (2017), citing *People v. Holgado*, 741 Phil. 78, 93 (2014).

regularity is merely just that – a mere presumption disputable by contrary proof and which when challenged by evidence cannot be regarded as binding truth.”⁴⁶

Aside from such procedural lapses, this Court notes some inconsistencies that cast doubt as to the legitimacy of the buy-bust operation. *First*, PO3 Nolasco claimed that he executed the pre-arranged signal of removing his ball cap upon the consummation of the sale, which prompted the rest of the buy-bust team to proceed to the exact place of the sale. However, PO3 Nolasco and PO2 Tolentino admitted that the back-up team were hiding behind a 6-foot concrete wall and that the back-up team could not and did not see PO3 Nolasco, the confidential informant, and Manalo. It was thus incredulous that the back-up was able to catch PO3 Nolasco’s execution of the pre-arranged signal. *Second*, PO3 Nolasco’s testimony (*via* his Affidavit) disclosed that PO2 Tolentino arrested Manalo and confiscated the items whereas PO2 Collado and PO2 Tolentino’s joint Affidavit of Arrest stated that it was PO2 Collado who effected the arrest on Manalo.

All told, the abovementioned lapses to preserve the identity and integrity of the drugs allegedly seized from Manalo fall short of the required evidence to prove the guilt of accused-appellant beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 26, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10619 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Michael Manalo *y* Abuyuan is **ACQUITTED** and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director General is **DIRECTED** to report the action taken to this Court, within five (5) days from receipt of this Resolution.

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⁴⁶

Id., citing *People v. Sabdula*, 733 Phil. 85 (2014).

SO ORDERED.”

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court *mb*

by: *mb*
MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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The Hon. Presiding Judge
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