



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 30, 2020** which reads as follows:*

**“G.R. No. 246520 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus MUHAMMAD ALI UMPAR y MARABONG, accused-appellant.**

Assailed in this ordinary appeal<sup>1</sup> is the Decision<sup>2</sup> dated September 28, 2018 of the Court of Appeals, Special Eighth Division (CA), in CA-G.R. CR HC No. 09435, which affirmed the Decision<sup>3</sup> dated May 25, 2017 of the Regional Trial Court of Muntinlupa City, Branch 203 (RTC), in Criminal Case No. 10-671, which found accused-appellant Muhammad Ali Umpar y Marabong (accused-appellant Umpar) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

**The Facts**

An Information docketed as Criminal Case No. 10-671 was filed against accused-appellant Umpar, the accusatory portion of which reads:

That on or about the 5<sup>th</sup> day of October, 2010, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, deliver and give away to another Methylamphetamine

- over – eleven (11) pages ...

**166-B**

<sup>1</sup> *Rollo*, pp.18-20.

<sup>2</sup> *Id.* at 3-17. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Franchito N. Diamante and Rafael Antonio M. Santos.

<sup>3</sup> *Records*, pp. 261-278; penned by Presiding Judge Myra B. Quiambao.

Hydrochloride, a dangerous drug, weighing 0.04 gram, contained in one (1) small heat-sealed transparent plastic sachet, in violation of the above-cited law.

Contrary to law.<sup>4</sup>

During arraignment, accused-appellant Umpar pleaded not guilty.<sup>5</sup> The trial thereafter followed.

*Evidence of the Prosecution*

The prosecution presented the testimonies of PO3 Elmer Manuel (PO3 Manuel) as the receiving officer, PCI Engr. Richard Allan B. Mangalip (PCI Mangalip) a forensic chemist, SPO1 Aires Abian (SPO1 Abian) as the evidence custodian of the Southern Police District (SPD) Crime Laboratory, and SPO1 Gerardo Parchaso (SPO1 Parchaso), who was the poseur-buyer during the alleged buy-bust operation where accused-appellant Umpar was apprehended.

The totality of the prosecution's evidence alleged that at about 10:00 in the evening of October 4, 2010, PSSupt. Romulo E. Sapitula ordered the Station Anti-Illegal Drugs-Special Operation Task Group (SAID-SOTG) to conduct a surveillance on the reported extensive selling of illegal drugs by an alias "Ali" at Purok 7C, Barangay Alabang, Muntinlupa City. The team thereafter confirmed from their reliable sources that an alias "Ali" was indeed involved in the illegal sale of *shabu* in the target area. A pre-operation briefing was thereafter held, where SPO1 Parchaso was designated as the poseur-buyer, and PO2 Rondivar Hernaez (PO2 Hernaez) as the back-up arresting officer. They also accomplished the standard Coordination Form<sup>6</sup> and Pre-Operational Report.<sup>7</sup> The team thereafter proceeded to the target area, but accused-appellant Umpar was not around then. The next day, on October 5, 2010 at 6:30 in the evening when the team returned to the target area, the buy-bust operation took place. Upon seeing accused-appellant Umpar, the informant allegedly introduced SPO1 Parchaso to him, after which the former bought ₱500.00 worth of *shabu* weighing 0.04 gram from the latter.<sup>8</sup>

Upon consummation of the sale, SPO1 Parchaso gave the pre-arranged signal, after which PO2 Hernaez moved in. SPO1 Parchaso

- over -

**166-B**

---

<sup>4</sup> Id. at 261.

<sup>5</sup> Id. at 62, 263.

<sup>6</sup> Id. at 11.

<sup>7</sup> Id. at 12.

<sup>8</sup> Id. at 263.

then introduced himself as a police officer and immediately arrested accused-appellant Umpar.<sup>9</sup> SPO1 Parchaso frisked accused-appellant Umpar and recovered the ₱500.00 marked money. After informing accused-appellant Umpar of his rights and the reason for his arrest, SPO1 Parchaso brought him and the seized evidence to their office, where the marking, inventory, and photographing of the seized evidence took place.<sup>10</sup> SPO1 Parchaso later explained that the marking, inventory, and photographing were undertaken at the office and not at the place of arrest because a crowd was already gathering at the buy-bust site, along with the fact that they were unable to bring the materials needed for the marking of the confiscated items.<sup>11</sup> At the police station, the marking, inventory, and photographing were witnessed by Ely Diang (Diang), a local government employee of Muntinlupa City. The absence of a locally elected official, and the Department of Justice (DOJ) and media representatives was explained to have been due to the fact that although the team called for these representatives several times, no one came, and they nevertheless decided to proceed with the marking and inventory in order that they could meet the period within which the seized evidence should be submitted to the SPD Crime Laboratory.<sup>12</sup> The buy-bust team prepared the Booking and Information Sheet,<sup>13</sup> Spot Report,<sup>14</sup> the Receipt/Inventory of Property Seized<sup>15</sup> as signed by Diang, and the Request for Laboratory Examination on Seized Evidence.<sup>16</sup>

After laboratory examination conducted by PCI Mangalip, the seized item tested positive for Methylamphetamine Hydrochloride.<sup>17</sup>

#### *Evidence of the Defense*

Accused-appellant Umpar countered with denial and allegations of frame-up and extortion.<sup>18</sup> He alleged that on the day he was arrested, he was in Muntinlupa to visit and give money to a friend of his who was then detained at the Muntinlupa City Jail. He said he was merely delivering money from his detained friend's mother who was in Mindanao. He added that he ate at Jollibee at around 9:00 in the morning, and when he stepped out of the same, two unidentified men

- over -

**166-B**

---

<sup>9</sup> Id.  
<sup>10</sup> Id. at 263-264.  
<sup>11</sup> Id at 264.  
<sup>12</sup> Id.  
<sup>13</sup> Id. at 20.  
<sup>14</sup> Id. at 21.  
<sup>15</sup> Id. at 14.  
<sup>16</sup> Id. at 19.  
<sup>17</sup> Id. at 18.  
<sup>18</sup> Id. at 264.

suddenly grabbed him and pulled him inside a vehicle. He testified that once inside the vehicle, he was handcuffed, and they kept driving around while the men frisked and searched his person. He said that the men searched his backpack and took his wallet, driver's license and Automated Teller Machine (ATM) card. The men allegedly also withdrew money through his ATM card somewhere in Alabang, after which they just kept driving around again, all the while the men were repeatedly asking him if he had money to settle his case.<sup>19</sup>

He also noticed that one of the men was named SPO3 Dela Cruz, based on the name written on his handcuff. He said that after a while, he was turned over to a certain "Terzero" in front of the "TMG" office by the Alabang flyover, and he was finally brought to the Crime Investigation and Detection Group (CIDG) Headquarters, where he was detained. He alleged that he was taken out of detention several times, and was asked if he would like to just pay to settle the case and avoid the charges against him, to which he refused, maintaining his innocence.<sup>20</sup> He further alleged that SPO1 Parchaso visited him several times during his detention at the Bicutan City Jail, to ask money from him for all sorts of reasons, including the debut of his daughter, the redemption of his wife's pawned wedding ring, and even the anti-rabies injection for his child who was bitten by a dog. In all, accused-appellant Umpar said he was able to give SPO1 Parchaso a sum of ₱15,000.00. As proof of said extortion, accused-appellant Umpar offered the audio-recording of one of SPO1 Parchaso's visits to him in detention, as duly recorded on the cellular phone of one SGI Kenneth Gamboa.<sup>21</sup>

Accused-appellant Umpar's wife, Mary Ann Maramba, also testified to corroborate her husband's testimony, adding that her husband was a cellphone technician in Dagupan City, and that in the morning of October 4, 2010, her husband left their house in Dagupan to go to Pasig to meet with his aunt, but was arrested without cause instead.<sup>22</sup>

### **Ruling of the RTC**

After trial on the merits, the RTC convicted accused-appellant Umpar of the crime charged in its Decision dated May 25, 2017, with the dispositive portion reading thus:

- over -

**166-B**

---

<sup>19</sup> Id. at 265.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id. at 265-266.

WHEREFORE, premises considered, the Court finds accused Muhammad Ali Umpar y Marabong GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and hereby sentences him to *life imprisonment* and a fine of Five Hundred Thousand Pesos (P500,000.00).

The preventive imprisonment undergone by the accused shall be credited in his favor.

The Branch Clerk of Court is directed to turn-over the methamphetamine hydrochloride subject of this case to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.<sup>23</sup>

In finding accused-appellant Umpar guilty, the RTC found that all the elements of the illegal sale of dangerous drugs were proven beyond reasonable doubt. It gave full faith and credence to SPO1 Parchaso's testimony and positive identification of accused-appellant Umpar as the one who sold him *shabu*. The RTC likewise upheld the presumption of regularity in the performance of the official duties of the arresting officers.<sup>24</sup> It found that the buy-bust operation was well-documented, and the conduct of the police officers was well within the acceptable standard of operations.<sup>25</sup> It also held that the non-compliance with Section 21 of the Implementing Rules and Regulations (IRR) of R.A. 9165 was sufficiently justified. It found that the holding of the marking, inventory, and photographing of the seized item in the police station, as well as the absence of all three insulating witnesses were adequately explained by the apprehending officers, and excused them from complying with the Chain of Custody Rule.<sup>26</sup>

With respect to the purported audio-recording showing SPO1 Parchaso's extortion from accused-appellant Umpar, the RTC dismissed the same as inadmissible and of no probative value, given that the memory card and the corresponding transcript of the conversation recorded therein were not properly authenticated by the person who transcribed the same.<sup>27</sup> The audio-recorded conversation in

- over -

**166-B**

---

<sup>23</sup> Id. at 277.

<sup>24</sup> Id. at 270.

<sup>25</sup> Id. at 271.

<sup>26</sup> Id. at 272-273.

<sup>27</sup> Id. at 275-276; Sec. 1, Rule 4 of RULES ON ELECTRONIC EVIDENCE (A.M. No. 01-7-01-SC) states:

SECTION. 1. *Original of an electronic document.* – An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

question was also not played out in open court, as required by Section 1, Rule 11 of the Rules on Electronic Evidence.<sup>28</sup>

The RTC concluded that the prosecution proved that the integrity of the seized drug was preserved, while accused-appellant Umpar failed to present clear and convincing evidence to support his counter-allegations.<sup>29</sup>

Aggrieved, accused-appellant Umpar filed an appeal to the CA.

### **Ruling of the CA**

In the assailed Decision dated September 28, 2018, the CA was unpersuaded by accused-appellant Umpar's contentions, and held instead that the prosecution successfully established its case.<sup>30</sup> It found that the prosecution duly proved that a buy-bust operation took place, giving full credence to the narration of the police officers who testified on the entrapment.<sup>31</sup> It dismissed accused-appellant Umpar's denial as unidentified, unexplained and, unauthenticated, and since he offered no admissible evidence, accused-appellant Umpar had nothing to substantiate his accusations of extortion and frame-up with.<sup>32</sup>

The CA also found that the prosecution convincingly established an unbroken chain of custody,<sup>33</sup> holding further that the departures from Section 21 of the IRR of R.A. 9165 were sufficiently justified.<sup>34</sup>

Hence, the instant appeal.

### **Issue**

The sole issue for the Court's resolution is whether the lower courts erred in convicting accused-appellant Umpar for violating Section 5, Article II of R.A. 9165.

- over -

**166-B**

<sup>28</sup> Id. at 276; Sec. 1, Rule 11 provides:

SECTION. 1. *Audio, video and similar evidence.* – Audio, photographic and video evidence of events, acts or transactions shall be admissible provided [it] shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof.

<sup>29</sup> Id. at 273-274.

<sup>30</sup> *Rollo*, p. 8.

<sup>31</sup> Id. at 9.

<sup>32</sup> Id. at 10.

<sup>33</sup> Id. at 11.

<sup>34</sup> Id. at 16.

### The Court's Ruling

The appeal is impressed with merit.

The unjustified non-compliance with Section 21 of R.A. 9165 IRR, particularly the absence of all three insulating witnesses at the time of seizure, marking, inventory and photographing is more than sufficient to put the identity and integrity of the *corpus delicti* in doubt. Verily, a verdict of acquittal is in order.

In drug cases, the very *corpus delicti* pertains to the dangerous drug itself.<sup>35</sup> Buy-bust operations in anti-illegal drug campaigns have been considered valid, effective, and legally sanctioned means for apprehending drug peddlers and distributors.<sup>36</sup> However, owing to the peculiar nature of a buy-bust operation, the law requires precise compliance with procedures and safeguards to ensure that the credibility of the *corpus delicti* is safeguarded. This is in view, as well, of the notoriety of anti-narcotics operations, with the facility with which illegal drugs may be planted therein, switched or otherwise adulterated.<sup>37</sup>

Pursuant to this purpose, Section 21,<sup>38</sup> Article II of R.A. 9165 provides for the procedure that police operatives are required to observe in order to assure the integrity of the confiscated drugs. Known as the Chain of Custody Rule, the said provision requires that: (1) the seized items be inventoried and photographed at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; (2) **the marking, physical inventory, and photographing must be done in the**

- over -

166-B

<sup>35</sup> *People v. Guzon*, 719 Phil. 441, 451 (2013).

<sup>36</sup> *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

<sup>37</sup> *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

<sup>38</sup> The said section reads as follows:

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 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;

x x x x



**presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

The apprehending team failed to obtain the presence of all three insulating witnesses, who were absent from the time of seizure up to the physical inventory and photographing, which is fatal to the prosecution's case.<sup>39</sup>

Emphasizing the import of the insulating witnesses, the Court held in *People v. Tomawis*:<sup>40</sup>

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. 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 R.A. 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.

- over -

**166-B**

---

<sup>39</sup> Records, p. 264.

<sup>40</sup> G.R. No. 228890, April 18, 2018, 862 SCRA 131.



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.”<sup>41</sup>

To be sure, the absence of the three insulating witnesses does not *per se* invalidate a buy-bust operation. However, as we have held in *People v. Umipang*,<sup>42</sup> the prosecution must be able to prove that earnest efforts were employed in contacting the three witnesses enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.<sup>43</sup>

In *People v. Lim*,<sup>44</sup> this Court outlined the proper manner by which the prosecution may justify the absence of the three witnesses at the time of the physical inventory and photographing, to wit:

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

**(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove[d] futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**<sup>45</sup>

- over -

166-B

---

<sup>41</sup> Id. at 149-150; citations omitted, emphasis and underscoring in the original.

<sup>42</sup> G.R. No. 190321, April 25, 2012, 671 SCRA 324.

<sup>43</sup> Id. at 354.

<sup>44</sup> G.R. No. 231989, September 4, 2018.

<sup>45</sup> Id.; emphasis in the original, citations omitted.

In this case, the prosecution failed to show that the arresting officers exerted genuine and sufficient effort to secure the required witnesses. Stated differently, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.

Lastly, the Court likewise finds the lower courts' reliance on the presumption of regularity in the performance of official duty mistaken, in the face of two important lapses that are clearly illustrative of irregularity. Undoubtedly, the presumption of regularity in the performance of duties holds only until proof to the contrary is shown, as in this case.

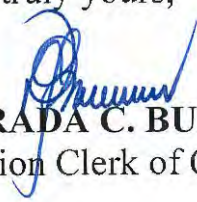
Clearly, therefore, the evidentiary value of the *corpus delicti* in this case was compromised beyond excuse, and accused-appellant Umpar must unavoidably be acquitted.

**WHEREFORE**, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 28, 2018 of the Court of Appeals, Special Eighth Division, in CA-G.R. CR HC No. 09435 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Muhammad Ali Umpar y Marabong is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court *10/29*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**166-B**

The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 09435)

The Hon. Presiding Judge  
Regional Trial Court, Branch 203  
1770 Muntinlupa City  
(Crim. Case No. 10-671)

PUBLIC ATTORNEY'S OFFICE  
Special and Appealed Cases Service  
Counsel for Accused-Appellant  
DOJ Agencies Building  
Diliman, 1101 Quezon City

Mr. Muhammad Ali M. Umbar (x)  
Accused-Appellant  
c/o The Director General  
Bureau of Corrections  
1770 Muntinlupa City

The Director General (x)  
Bureau of Corrections  
1770 Muntinlupa City

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M.  
No. 12-7-1-SC)

Judgment Division (x)  
Supreme Court



**166-B**

UR

NAF