



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 November 2020** which reads as follows:*

“G.R. No. 247503 (People of the Philippines v. Jan Mark Viliran also known as “Mac-Mac”). –

The Case

This appeal seeks to reverse the Decision¹ dated October 30, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02473, affirming the conviction of Jan Mark Viliran alias “Mac-Mac” (appellant) for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).²

The Proceedings Before the Trial Court

Appellant was charged with illegal sale of dangerous drugs under Section 5, Article II of RA 9165, viz.:

That on or about [the] 26 May 2015 in the City of Dumaguete, Philippines and within the jurisdiction of the Honorable Court, the said accused JAN MARK VILIRAN a.k.a. “Mac-[M]ac”, did, then and there willfully, unlawfully, and criminally sell, deliver and give to a police poseur buyer, four (4) heat sealed transparent plastic sachets respectively containing: 0.24 gram, 0.25 gram, 0.27 gram and 0.27 gram, or a total of 1.03 grams of methamphetamine hydrochloride, commonly known as “shabu”, a dangerous drug under R.A. No. 9165.

¹ Penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by now Supreme Court Associate Justice Edgardo L. Delos Santos and Associate Justice Louis P. Acosta, *rollo*, pp. 5-17; CA *rollo*, pp. 94-106.

² Otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

That accused has been found positive for the use of Methamphetamine Hydrochloride, a dangerous drug as reflected in Chemistry Report No. DT-150-15 (sic)

CONTRARY TO LAW.³

On arraignment, appellant pleaded not guilty.⁴ Trial ensued.

Police Chief Inspector Josephine Llena (PCI Llena), PO3 Edilmar Manaban (PO3 Manaban), PO1 Crisanto Panggoy (PO1 Panggoy), SPO1 Jonathan Abucayon (SPO1 Abucayon), PO1 Jerald Manlan (PO1 Manlan), Philippine Drug Enforcement Agent IO1 Carlito Mascardo, Jr. (IO1 Mascardo), Department of Justice (DOJ) representative Anthony Chilius Benlot, Kagawad Roxan Pahayahay (Kagawad Pahayahay), and media representative Juancho Gallarde testified for the prosecution. On the other hand, appellant, his grandmother Lumen Viliran (Lumen), and his mother Evangeline Rosalem (Evangeline) testified for the defense.

Version of the Prosecution

On May 26, 2015, around 8 o'clock in the morning, the Provincial Anti-Illegal Drugs Special Operations Task Group (PAID-SOTG) of the Negros Oriental Provincial Police Office (NOPPO) received a tip from their confidential informant that a certain "Mac-Mac" was engaged in the sale of illegal drugs in Purok Gumamela, Canday-Ong, Calindagan, Dumaguete City. Acting thereon, the Chief of the PAID-SOTG instructed PO1 Panggoy to conduct a brief casing and surveillance on this "Mac-Mac."⁵

PO1 Panggoy and the confidential informant then went to Purok Gumamela where the latter pointed to a man called "Mac-Mac." The man was talking to some people who the confidential informant identified to be buyers of illegal drugs.⁶

Upon receipt of the surveillance report, the Chief of the PAID-SOTG formed a team to conduct a buy-bust operation on "Mac-Mac." During the briefing, PO1 Panggoy was designated as poseur buyer and given one (1) ₱500.00 bill with serial no. SG392815 as buy-bust money. The confidential informant told them that "Mac-Mac's" full name was Jan Mark Viliran.⁷

³ CA rollo, p. 53.

⁴ *Id.*

⁵ *Id.* at 54.

⁶ *Id.*

⁷ *Id.*

PO1 Panggoy coordinated with the Philippine Drug Enforcement Agency (PDEA) which issued the Certificate of Coordination for the buy-bust operation.⁸

Thereafter, PO1 Panggoy and the rest of the buy-bust team went to the target area. There, PO1 Panggoy walked towards appellant and nodded his head to signal the latter that he wanted to buy drugs. Appellant approached and told him that he (appellant) had four (4) sachets with him. When PO1 Panggoy nodded his head again, appellant handed him four (4) heat-sealed transparent sachets, all containing white crystalline substance. In turn, PO1 Panggoy gave him the ₱500.00 bill. As appellant was about to leave, PO1 Panggoy held the former's hands and announced himself as a police officer. He also informed appellant of his constitutional rights in the Visayan dialect and asked appellant if he understood the same, to which appellant nodded. Meantime, the rest of the buy-bust team had closed in.⁹

PO1 Panggoy immediately marked the sachets he bought from appellant with "JV-BB1-05-26-15," "JV-BB2-05-26-15," "JV-BB3-05-26-15," and "JV-BB4-05-26-15." He also wrote the sequential number on each sachet and the date of the buy-bust operation and affixed his signature thereto. To secure the items, he slid them inside a brown envelope. The team then decided to proceed to the police station for the inventory and photographing for "security reasons." While in transit, PO1 Panggoy held on to the brown envelope containing the seized items.¹⁰

At the police station, DOJ representative Anthony Chilius Benlot, Kagawad Pahayahay, and media practitioner Juancho Gallarde witnessed the inventory together with appellant. PO1 Vera Cruz took photographs of the inventory. Thereafter, PO1 Panggoy slid back the seized items into the brown envelope which he tape-sealed and signed.¹¹

PO1 Panggoy later brought the request for chemical examination to the crime laboratory. He also brought with him the brown envelope and appellant. It was PO3 Manaban who received the sealed brown envelope at the crime laboratory. After checking the contents of the envelope and the items listed on the request, PO3 Manaban returned the items inside the envelope which he re-sealed and signed. He secured it inside his locker which only he could access.¹²

Around 9:15 in the evening of the same day, PO3 Manaban turned over the sealed brown envelope and urine sample to Forensic Chemist PCI Llena. The latter immediately opened the brown envelope to verify and finding everything in order, PCI Llena marked and affixed her signature to the items.

⁸ *Id.*

⁹ *Id.* at 54-55.

¹⁰ *Id.* at 55.

¹¹ *Id.*

¹² *Id.* at 56.

Per her Chemistry Report No. D-184-15, PCI Llana found the contents of the sachets positive for methamphetamine hydrochloride (*shabu*), a dangerous drug; and per her Chemistry Report No. DT-150-15, found appellant's urine sample also positive for the presence of the same drug.¹³ After the procedure, PCI Llana kept all the items including the accompanying documents inside the evidence vault to which she had exclusive access.¹⁴

Version of the Defense

On May 26, 2016, around 6 o'clock in the evening, appellant was in the house of his grandmother, Lumen. While waiting for dinner, he heard the sound of the gate being kicked open. When he ran downstairs to check, he was met by at least fifteen (15) police officers, one of them was PO1 Panggoy. They instantly arrested him without informing him of the reason. He shouted for help but one of the police pointed a gun at him. He managed to run upstairs where some of the police officers had already ransacked his things. The police officers, however, did not find anything illegal. He was later boarded into a police vehicle and brought to the police station.¹⁵

There, he was shown a ₱500.00 bill and sachets but he insisted that he did not know where they came from. His mother, Evangeline, followed him to the police station but she did not witness what actually transpired because she was simply made to sit at the waiting area the whole time.¹⁶

The Trial Court's Ruling

By Judgment¹⁷ dated January 6, 2017, the trial court found appellant guilty as charged, *viz.*:

WHEREFORE, in the light of the foregoing, the Court hereby finds the accused Jan Mark Viliran **GUILTY** beyond reasonable doubt of the offense of illegal sale and delivery of 1.03 grams of *shabu* in violation of Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The four (4) heat-sealed transparent plastic sachets with markings "JV-BB1-05-26-15" to "JV-BB4-05-26-15," respectively, each with signature containing a total of 1.03 grams of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

¹³ *Id.* at 56-57.

¹⁴ *Id.* at 57.

¹⁵ *Id.* at 57.

¹⁶ *Id.* at 58.

¹⁷ Penned by Judge Rafael Crescencio C. Tan, Jr., *id.* at 8-20 and 53-65.

In the service of sentence, the accused Jan Mark Viliran shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.¹⁸

The trial court held that the prosecution was able to recount how the buy-bust operation was conducted and establish with certainty the identity of appellant as the seller of the dangerous drugs,¹⁹ and the proper handling and preservation of the specimens. In contrast, appellant offered nothing but denial.²⁰

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction. He argued²¹ that the supposed surveillance, the buy-bust, the inventory, the photographing, the chemical examination, and the release of its results were all dubious. For these things took place in just a matter of hours within the same day – May 26, 2015.²²

Too, the trial court erred when it gave credence to the inconsistent testimonies of PO1 Panggoy and PO1 Manlan on the identity of the person who took photographs during the inventory. PO1 Panggoy said it was PO1 Vera Cruz, yet, PO1 Manlan claimed it was he who did it.²³

More, PO1 Panggoy's testimony regarding the alleged sale was incredible. He said that he simply nodded his head to signal that he wanted to buy drugs. But, it was incredible for a seller to approach a man he did not know and readily sell him an illegal item. Also, PO1 Panggoy already prepared ₱500.00 bill for the sale although he did not know yet how much the items would cost. It would also be incredulous for a seller not to check the amount paid him by a stranger.²⁴

For its part, the Office of the Solicitor General (OSG), through State Solicitor Alberto T. Talampas, countered²⁵ that the prosecution was able to prove all the elements of illegal sale of dangerous drugs. This was clearly established by the testimonies of the prosecution witnesses. On the other hand, appellant offered nothing but denial and allegation of frame-up.²⁶ The

¹⁸ *Id.* at 19 and 64.

¹⁹ *Id.* at 59.

²⁰ *Id.* at 62-63.

²¹ See Appellant's Brief dated July 17, 2017, *id.* at 30-51.

²² *Id.* at 40.

²³ *Id.* at 43-45.

²⁴ *Id.* at 49.

²⁵ See Appellee's Brief dated November 20, 2017, *id.* at 75-88.

²⁶ *Id.* at 83.

alleged inconsistencies in the prosecution witnesses' testimonies pertained to trivial matters, which did not destroy their credibility.²⁷

The Court of Appeals' Ruling

By its assailed Decision²⁸ dated October 30, 2018, the Court of Appeals affirmed. It concurred with the trial court that all the elements of illegal sale of dangerous drugs were duly established, especially the identity of appellant as seller. In buy-bust operations, the testimonies of the police officers who apprehended the accused are given full faith and credit because of the presumption that they have regularly performed their duties. There being no clear and convincing evidence to the contrary, the presumption remains.²⁹ The prosecution witnesses were also able to establish the chain of custody of the items seized from the time the same were handed to PO1 Panggoy up to the time of their presentation in court.³⁰ Appellant's defense of frame-up cannot be given credence considering that he did not present any evidence to prove that the police officers had any motive to falsely testify against him.³¹

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

For the purpose of this appeal, both the OSG and appellant manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.³²

Issues

Was the chain of custody rule complied with in this case?

Ruling

We acquit.

²⁷ *Id.* at 86.

²⁸ Penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by now Supreme Court Associate Justice Edgardo L. Delos Santos and Associate Justice Louis P. Acosta, *rollo*, pp. 5-17; CA *rollo*, pp. 94-106.

²⁹ *Id.* at 101-102.

³⁰ *Id.* at 102-103.

³¹ *Id.* at 104.

³² *Rollo*, pp. 32-33 and 36-38.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.³³ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants a verdict of acquittal.³⁴

Appellant was charged with illegal sale of dangerous drugs which he allegedly committed on May 26, 2015. The applicable law, therefore, is RA 9165 as amended by Republic Act No. 10640 (RA 10640) which was approved on July 15, 2014.

Section 21, Article II of RA 9165, as amended by RA 10640, prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz.*:

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

x x x

x x x

³³ *People v. Barte*, 806 Phil. 533, 542 (2017).

³⁴ *See People v. Dela Cruz*, G.R. No. 238212, January 27, 2020.

To ensure the integrity of the seized drug item, the prosecution must account for each link in the chain of custody. *People v. Gayoso*³⁵ enumerates the **links** in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, *i.e.*, **first**, the seizure and marking, if practicable, 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 from the forensic chemist to the court.

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.³⁶

We focus on the **first link**, specifically the marking of the seized drugs which should be done immediately at the place of arrest and seizure in the presence of the accused.

In *People v. Sanchez*,³⁷ the Court stressed that the “marking” of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) **in the presence of the apprehended violator** (2) immediately upon confiscation, as this step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft.

Here, PO1 Panggoy testified that after he got hold of the sachets, he immediately marked them at the place of arrest with “JV-BB1-05-26-15,” “JV-BB2-05-26-15,” “JV-BB3-05-26-15,” and “JV-BB4-05-26-15,” respectively. After the marking, he slid the items inside a brown envelope which he sealed and signed. He did not mention, however, that appellant himself witnessed the actual marking of the seized items. Nowhere in PO1 Panggoy’s testimony can it be inferred that appellant witnessed the purported marking of the seized items. He simply stated that upon appellant’s arrest, he marked the seized items. Notably too, no one from the back up team testified that appellant truly witnessed the marking.

Marking is the first and most crucial step in the chain of custody rule as it initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from

³⁵ *People v. Gayoso*, 808 Phil. 19, 31 (2017).

³⁶ *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

³⁷ 590 Phil. 214, 241 (2008).

harassment suits based on planting of evidence. This is when the apprehending officer or poseur-buyer places his or her initials and signature on the item/s seized. Marking serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, thus preventing switching, planting, or contamination of evidence.³⁸

While it may be true that appellant was in the same area, what the law requires is that the apprehended violator must witness the marking to ensure that what was allegedly confiscated from him or her is the same item that would be marked and submitted to the investigating officer, crime laboratory, and eventually to the court. As discussed, it was not clearly established that appellant himself witnessed the marking. From this point on, the chain of custody had already been broken.

In view of the procedural infirmity in the chain of custody right at the outset, the integrity and evidentiary value of the seized item cannot be said to have been preserved at all. The incipient procedural infirmity had already cast serious doubt on the identity and integrity of the *corpus delicti*. As a result, there was no metaphorical chain to speak of, hence, appellant's right to liberty should not have been restrained in the first place. A verdict of acquittal, therefore, is in order.³⁹

As the Court stated in *People v. Macud*,⁴⁰ we recognize the pernicious effects of dangerous drugs in our society, but the efforts to defeat or eradicate these cannot trample on the constitution rights of individuals, particularly those at the margins of our society who are prone to abuse at the hands of the armed and uniformed men of the State. Time and again, we have exhorted courts "to be extra vigilant in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses." As in *Macud*, this case also exhibits how a miniscule amount of 1.03 grams of drugs could have cost a man his liberty for a lifetime due to a bungled up buy-bust operation.

In light of the foregoing considerations, we find it unnecessary to further pass upon the other assigned errors raised by appellant.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated October 30, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02473 is **REVERSED and SET ASIDE**. Appellant Jan Mark Viliran also known as "Mac-Mac" is **ACQUITTED** of violation of Section 5, Article II of Republic Act No. 9165.

³⁸ *People v. Ramirez*, 823 Phil. 1215, 1225-1226 (2018).

³⁹ *People v. Año*, 828 Phil. 439, 451-452 (2018).

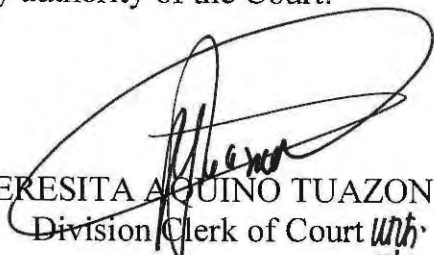
⁴⁰ 822 Phil. 1016, 1042 (2017).

The Court further **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to: (a) cause the immediate release of Jan Mark Viliran also known as “Mac-Mac” from custody unless he is being held for some other lawful cause or causes; and (b) inform the Court of the action taken within five (5) days from notice.

Let entry of judgment immediately issue.

SO ORDERED.” (Rosario, J., additional member per Special Order No. 2797 dated November 5, 2020)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *with*
12/18

18 DEC 2020

PUBLIC ATTORNEY’S OFFICE (reg)
Regional Special & Appealed Cases Unit
3F, Taft Commercial Center
Metro Colon Carpark, Osmeña Boulevard,
Brgy. Kalubihan, 6000 Cebu City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 30
Dumaguete City
(Crim. Case No. 2015-22955)

JAN MARK VILIRAN a.k.a. “MAC-MAC” (x)
Accused-Appellant
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (x)
Bureau of Corrections
1770 Muntinlupa City

JUDGMENT DIVISION (x)
Supreme Court, Manila

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Cebu City
CA-G.R. CR-HC No. 02473

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