



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 8, 2020 which reads as follows:

“G.R. No. 248366 – People of the Philippines v. Jacob Robles y Frondoza

This is an appeal from the March 13, 2019 Decision¹ of the Court of Appeals – Cebu City (CA) in CA-G.R. CR-HC No. 02734, which affirmed the November 17, 2017 Decision² of the Regional Trial Court (RTC) of Jordan, Guimaras, Branch 65, finding Jacob Robles y Frondoza (appellant) guilty beyond reasonable doubt of violating Sections 5³ and 11⁴ of Republic Act (R.A.) No. 9165.⁵

The case stems from two Information dated April 1, 2014, the accusatory portions of which are as follows:

Crim. Case No. 14-1923

That on or about the 12th day of February 2014, in the Municipality of Jordan, Province of Guimaras, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, not being authorized by law to sell any dangerous drug, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another, 0.0189 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methamphetamine Hydrochloride, also known as “shabu”, in violation of the afore-cited law.

CONTRARY TO LAW.⁶
- over – seven (7) pages ...
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¹ Penned by Associate Justice Edward B. Contreras, with Associate Justices Gabriel T. Ingles and Dorothy P. Montejo-Gonzaga, concurring; *rollo*, pp. 5-13.

² *CA rollo*, pp. 49-53.

³ Illegal Sale of Dangerous Drugs.

⁴ Illegal Possession of Dangerous Drugs.

⁵ COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

⁶ *CA rollo*, p. 8.

Crim. Case No. 14-1924

That on or about the 12th day of February 2014, in the Municipality of Jordan, Province of Guimaras, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly possess and have in his custody and control 0.0619 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methamphetamine Hydrochloride, also known as “shabu”, in violation of the afore-cited law.

CONTRARY TO LAW.⁷

As established by the prosecution, the Guimaras Police Provincial Office received information on February 7, 2014, that appellant was engaged in the sale of illegal drugs. Upon directive of the Chief of the said office, Police Officer 2 Arnel Failanga (PO2 Failanga) and PO1 Kepler Abrasosa (PO1 Abrasosa) conducted surveillance to verify the report. Subsequently or on February 12, 2014, the Provincial Anti-Illegal Drug Special Operations Task Group organized a buy-bust operation against appellant with PO2 Failanga as poseur buyer and PO1 Abrasosa as back up officer. After planning, the buy-bust team proceeded to *Barangay* Rizal, in the Municipality of Jordan, Guimaras, to execute the plan.⁸

PO2 Failanga arrived at the designated area with the confidential asset at around 5:00 p.m., where they waited for appellant. When appellant arrived, the confidential asset told him that they wanted to buy one sachet of *shabu* worth ₱500.00. The confidential asset gave appellant the ₱500.00 buy-bust money, and in exchange, appellant handed a sachet to the confidential asset who, in turn, handed the same to PO2 Failanga. The latter removed his cap, which was the pre-arranged signal to his back up officer that the transaction was consummated. PO2 Failanga arrested appellant, but the latter tried to flee. The officers chased appellant, who was then subdued and apprehended.⁹

As it was already getting dark, the police officers conducted the inventory at the *barangay* hall, which was about five meters away from the point of sale. *Barangay* Captain Remus Canon and DOJ representative Agnes Gamuyao were summoned to witness the inventory. Upon the two witnesses' arrival, PO2 Failanga frisked

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⁷ Id. at 9.

⁸ *Rollo*, pp. 5-6.

⁹ Id. at 6.

appellant. Another sachet of *shabu* and the buy-bust money were recovered from appellant's pocket. After PO2 Failanga marked the object of the sale with "JR-BB," the other sachet recovered from appellant's pocket was marked with "JR-1." PO1 Joel Erpelua took photographs during the inventory while the said marked items were listed by PO2 Failanga on the certificate of inventory and on the receipt of property seized. Afterwards, PO2 Failanga brought the items to the Regional Crime Laboratory Office 6 for qualitative examination. The laboratory examination conducted by PS/Insp. Hernand Donado revealed that "JR-BB," which weighed 0.0189 gram, and "JR-1," which weighed 0.0619 gram, were both positive for methamphetamine hydrochloride or *shabu*.¹⁰

On the other hand, appellant denied the charges. Instead, appellant narrated that on the afternoon of February 12, 2014, he was at the store of a certain Sauro. Appellant was talking to his friends, Bon Ravi, Andrew Fritch Fabientes, and JV Serna, when two persons suddenly approached and grabbed him. Appellant resisted because he did not know the two men. Appellant then ran towards the house of *Barangay Kagawad* Gary Gando, who was not at home, so appellant proceeded to the *barangay* hall to seek help from the *barangay* captain. However, when appellant reached the *barangay* hall, he saw the two persons who grabbed him earlier. They pointed to appellant as the one who sold them *shabu*. Appellant told the *barangay* captain that he had not done anything wrong and that the items recovered were not his, but the *barangay* captain advised appellant to calm down and face the charges in court.¹¹

Despite appellant's denial that a buy-bust operation took place or that *shabu* was recovered in his possession on February 12, 2014, the RTC of Jordan, Guimaras, Branch 65, promulgated a Decision¹² on November 17, 2017, the dispositive portion of which states:

IN VIEW WHEREOF, the court finds accused Jacob Robles y Frondoza **GUILTY** beyond reasonable doubt of Violation of Sections 5 and 11 of R.A. 9165. He is sentenced to **LIFE IMPRISONMENT** and to pay a **FINE** of **₱500,000.00** in Criminal Case No. 14-1923. He is also sentenced to an indeterminate penalty of **TWELVE (12) YEARS AND ONE (1) DAY** imprisonment as minimum to **FIFTEEN (15) YEARS** imprisonment as maximum and to pay a **FINE** of **₱300,000.00** in Criminal Case No. 14-1924. The items recovered from the accused

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¹⁰ Id.

¹¹ *Rollo*, pp. 6-7.

¹² *Supra* note 2.

are **FORFEITED** in favor of the government to be dealt with in accordance with the law. The accused who is presently detained shall be credited in the service of his sentence.

SO ORDERED.¹³

On appeal, the CA deemed the evidence sufficient to sustain appellant's conviction and affirmed the RTC's judgment.¹⁴ Both the Office of the Solicitor General and the appellant manifested that they are no longer filing any supplemental brief as their arguments have been thoroughly discussed in the appeal briefs before the CA. Thus, we revisit whether or not appellant's guilt on both charges was established beyond reasonable doubt by the prosecution.

A scrutiny of the appealed decision discloses that it confined itself merely to the ascribed errors in the trial court's decision, such as the non-presentation of the confidential asset who appears to have acted as the poseur buyer and not PO2 Failanga, who stood a mere two meters away and was alleged to have witnessed the transaction closely.¹⁵ It is curious to note that the illegal sale transpired without so much as an introduction of PO2 Failanga made by the confidential asset to appellant, given that they were dealing in contraband. Other than minor inconsistencies relating to witnesses' testimonies raised in the appeal brief, the decision hardly discussed how the integrity and evidentiary value of the recovered sachets could have been proven beyond reasonable doubt, despite failure to comply with the witnesses' requirement at the time of appellant's arrest. Recall that "an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned."¹⁶

In this case, reasonable doubt is engendered by the buy-bust team's failure to secure the required witnesses for the *in flagrante delicto* arrest, and not merely during the subsequent frisking of appellant at the *barangay* hall, which was incidental to the arrest. We additionally note that the officers involved had about five days to plan and prepare before the alleged transaction, yet they only managed to summon two witnesses for the subsequent marking and inventory at the *barangay* hall. Nothing on record shows an attempt to secure the presence of three witnesses on hand, despite the planned nature of the operation. It then becomes of little value that there were two

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¹³ *Supra* note 2, at 53.

¹⁴ *Rollo*, pp. 23-27, 26-30.

¹⁵ *Id.* at 10.

¹⁶ *People v. Patricia Cabrellos*, G.R. 229826, July 30, 2018.

disinterested witnesses at the subsequent stage because of the unexplained gap at the prior stage, which is material to everything that took place after the alleged sale of *shabu*. "The illegal drug itself constitutes the *corpus delicti* of the offense. Its existence must be proved beyond reasonable doubt."¹⁷

Pertinently:

x x x Section 21, Article II of [R.A.] 9165, the applicable law at the time of the commission of the alleged crimes, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation;** and (2) **the physical inventory and photographing must be done in the 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 Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

This must be so because with the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.

Section 21 of [R.A.] 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be done in the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made **immediately after, or at the place of apprehension.** It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of [R.A.] 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension - a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has enough time to gather and bring with it the said witnesses.¹⁸ (Emphasis in the original)

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¹⁷ *People v. Lahmodin Ameril*, G.R. No. 222192, March 13, 2019.

¹⁸ *People v. Mario Manabat*, G.R. No. 242947, July 17, 2019.

Given the aforecited lapse, we are hard pressed to accord much evidentiary weight on the object evidence relied on by the prosecution to establish, sans reasonable doubt, that appellant had indeed sold a sachet of *shabu* to the confidential asset on the date in question and in full view of PO2 Failanga, who was indisputably unfamiliar to appellant. The same lapse also does not foreclose any reasonable doubt that evidence subsequently recovered could not have been planted. As aptly pointed out in the Separate Concurring Opinion in *People v. Patricia Cabrellos*, “the consequence relates not to inadmissibility that would automatically destroy the prosecution’s case but rather to the weight of evidence presented for each particular case.”¹⁹ Viewed in this light, the prosecution’s case crumbles and there is insufficient evidence to support appellant’s conviction on both charges.

It bears stressing at this juncture:

[P]rosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of [R.A.] 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.** Since compliance with the procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court’s bounden duty to acquit the accused, and perforce, overturn a conviction.²⁰ (Emphasis in the original)

For the foregoing reasons, it is this Court’s duty to overturn appellant’s conviction.

WHEREFORE, the subject appeal is **GRANTED** and Jacob Robles y Frondoza is **ACQUITTED** on the ground of failure to establish his guilt beyond reasonable doubt. Consequently, appellant’s **IMMEDIATE RELEASE** is in order, unless appellant is confined for other lawful cause.

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¹⁹ Supra note 16.

²⁰ Id.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *of the*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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The Hon. Presiding Judge
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(Crim. Case Nos. 14-1923 & 14-1924)

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