



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 12 May 2021 which reads as follows:*

**“G.R. No. 242022 (*People of the Philippines v. Mary Jane Marcaban y Lantaco*).** — The conviction of Mary Jane Marcaban y Lantaco (Mary Jane) for Illegal Sale of Dangerous Drugs is the subject of review in this appeal assailing the Decision<sup>1</sup> dated June 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01691-MIN, which affirmed the findings of the Regional Trial Court (RTC).

*Antecedents*

On August 19, 2009, the Philippine Drug Enforcement Agency (PDEA) received a report from an informant that Mary Jane was selling illegal drugs at the Provincial Jail Site, Padap Road, San Jose District, Pagadian City. The PDEA, in coordination with the Pagadian City Police Station, organized a buy-bust operation with Intelligence Officer 1 Brenda Joy Congreso (IO1 Congreso) as the *poseur-buyer* and Police Officer 1 Ken Tare (PO1 Tare) as the arresting officer. After preparing the buy-bust money, the team, together with the informant, proceeded to the Provincial Jail Site. There, IO1 Congreso and the informant saw Mary Jane outside a house. After approaching her, the informant introduced IO1 Congreso as the buyer of *shabu* (methamphetamine hydrochloride). Mary Jane asked how much *shabu* he will be buying because she had only one sachet left. IO1 Congreso replied that they will purchase ₱200.00 worth and handed two 100-peso bills to Mary Jane who, in turn, gave IO1 Congreso one (1) small plastic sachet containing white crystalline substance. After receiving the sachet, IO1 Congreso waved to PO1 Tare to signal the completion of the transaction.<sup>2</sup>

IO1 Congreso then arrested Mary Jane and recovered from her the buy-bust money. The team brought Mary Jane and the seized item to the

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<sup>1</sup> *Rollo*, pp. 3-12.

<sup>2</sup> *Id.* at 4; *CA rollo*, pp. 54-56.

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police station where IO1 Congreso marked the sachet with “BJC 08-19-09.” The item was inventoried and photographed in the presence of an elected public official, a representative from the Department of Justice and a representative from the media. Later, IO1 Congreso delivered the seized item, along with a request for laboratory examination, to the Provincial Crime Laboratory in Camp Abelon where it was received by a certain PO2 Angcon.<sup>3</sup> The sachet was turned over to Police Chief Inspector Farah Diva Dela Llana Guillergan (PCI Guillergan), who conducted a qualitative examination on the specimen. In Chemistry Report No. D-0742009-ZDS, PCI Guillergan concluded that the sachet marked with “BJC 08-19-09” yielded a positive result for methamphetamine hydrochloride, a dangerous drug.<sup>4</sup>

Accordingly, Mary Jane was charged with violation of Section 5,<sup>5</sup> Article II of Republic Act (RA) No. 9165<sup>6</sup> in the following Information:

That on August 19, 2009 at around 4:15 in the afternoon at Padap Road, San Jose District, Pagadian City, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously and without being authorized by law, sell one (1) sachet of methamphetamine hydrochloride otherwise known as *shabu*, a dangerous drug, worth P200.00, to IO1 Brenda Joy T. Congreso who acted as poseur-buyer which act is in gross violation of Section 5[,] Article II of R.A. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

CONTRARY TO LAW.<sup>7</sup>

Mary Jane denied the accusation against her, and claimed that she was framed by the police. She testified that she was sleeping inside her house when she was awakened by policemen who entered the kitchen. The police demanded her to bring out the *shabu* but Mary Jane answered that she does not have any. The police frisked her and searched the house. Mary Jane was then forcibly brought to the police station where she was detained.<sup>8</sup>

On May 10, 2017, the RTC found Mary Jane guilty of selling dangerous drugs and ruled that the prosecution proved the necessary links in the chain of custody, thus:<sup>9</sup>

<sup>3</sup> PO2 Angcon’s name was not stated; *rollo*, p. 4; *CA rollo*, pp. 42, 48-49, and 54.

<sup>4</sup> *Supra* note 2.

<sup>5</sup> Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

<sup>6</sup> AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES; approved on June 7, 2002.

<sup>7</sup> *Rollo*, p. 5.

<sup>8</sup> *Id.* at 5-6; *CA rollo*, pp. 57-58.

<sup>9</sup> *CA rollo*, pp. 53-72; penned by Presiding Judge Felix B. Rodriguez, Jr. Docketed as Criminal Case No. 9631-2K9.

WHEREFORE, premises considered, the Court finds the accused MARY JANE MARCABAN y LANTACO guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 and hereby sentences her to suffer the penalty of life imprisonment, to pay a fine of five hundred thousand pesos (P500,000.00), and to suffer the accessory penalties provided for by law.

The one (1) heat-sealed transparent plastic sachet of methamphetamine hydrochloride (*shabu*) weighing 0.01 gram used as evidence in this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with the rules governing the same.

Costs against the accused.

SO ORDERED.<sup>10</sup>

Aggrieved, Mary Jane elevated the case to the CA.<sup>11</sup> On June 29, 2018, the CA affirmed the RTC's findings, and held that the chain of custody remained intact from the time the contraband was seized until it was presented in court.<sup>12</sup> Hence, this appeal. Mary Jane argues that the prosecution failed to establish the integrity of the chain of custody.<sup>13</sup>

### *Ruling*

We acquit.

In charges of Illegal Sale of Dangerous Drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.<sup>14</sup> Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.<sup>15</sup> The prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by

<sup>10</sup> *Id.* at 72.

<sup>11</sup> *Id.* at 40-51, and 85-102.

<sup>12</sup> *Rollo*, pp. 3-12; penned by Associate Justice Oscar V. Badelles, with the concurrence of Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon. Docketed as CA-G.R. CR-HC No. 01691-MIN. The dispositive portion reads:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated May 10, 2017 of the Regional Trial Court, 9<sup>th</sup> Judicial Region, Branch 18, Pagadian City in Crim. Case No. 9631-2K9 finding accused-appellant Mary Jane Lantaco Marcaban guilty beyond reasonable doubt for selling *shabu*, a dangerous drugs [*sic*], constituting a violation of Section 5, Article II of Republic Act No. 9165, otherwise known, as the Comprehensive Dangerous Drugs Act of 2002, is hereby AFFIRMED.

SO ORDERED. *Id.* at 11-12.

<sup>13</sup> *Id.* at 20-21, and 26-27. In their Manifestations, the parties dispensed with the filing of Supplemental Briefs, and adopted their Appellant's and their Appellee's Briefs, filed before the CA as their respective Supplemental Briefs.

<sup>14</sup> See *People v. Crispo*, 828 Phil. 416, 436-437 (2018); *People v. Sanchez*, 827 Phil. 457, 472-473 (2018); *People v. Magsano*, 826 Phil. 947, 964-965 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018); *People v. Miranda*, 824 Phil. 1042, 1055-1054 (2018); *People v. Mamangon*, 824 Phil. 728, 741 (2018); and *People v. Partoza*, 605 Phil. 883, 891 (2009).

<sup>15</sup> *People v. Futralan*, G.R. No. 243394, January 20, 2021; *Buasan v. People*, G.R. No. 232476, November 9, 2020; and see *People v. Padua*, G.R. No. 244287, June 15, 2020.

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the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court.<sup>16</sup> Here, records reveal a broken chain of custody.

Notably, the alleged crime happened before RA No. 10640<sup>17</sup> amended RA No. 9165.<sup>18</sup> Thus, the original provisions of Section 21 and its Implementing Rules and Regulations (IRR) applies, to wit:

**Section 21, paragraph 1, Article II of RA No. 9165**

(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 copies of the inventory and be given a copy thereof. (Emphasis supplied.)

**Section 21(a), Article II of the IRR of RA No. 9165**

(a) The apprehending officer/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: **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, further, that non-compliance with 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 of and custody over said items[.]** (Emphasis supplied.)

<sup>16</sup> See *People v. Bugtong*, 806 Phil. 628, 638-639 (2018).

<sup>17</sup> 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," approved on July 15, 2014, states that it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." Verily, a copy of the law was published on July 23, 2013 in the respective issues of the "The Philippines Star" (Vol. XXVIII, No. 359, Philippine Star Metro Section, p. 21) and the "Manila Bulletin" (Vol. 499, No. 23; World News Section, p. 6); hence, RA NO. 10640 became effective on August 7, 2014.

N.B. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

<sup>18</sup> AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES; approved on June 7, 2002.

The chain of custody rule requires the conduct of inventory and photograph of the seized items “immediately after seizure and confiscation,” which is intended by law to be made immediately after, or at the place of apprehension. In warrantless seizures, the law and the implementing rules allow the inventory and photograph as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending team, whichever is practicable. However, we clarified that the deviation from the standard procedure in Section 21 will not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (1) there is justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.<sup>19</sup> The prosecution must explain the reasons behind the procedural lapses.<sup>20</sup>

In this case, there was a failure to immediately mark the seized evidence at the place of arrest as the marking was instead done at the police station. Thus, during the buy-bust team’s transit to the police station, the sachet of *shabu* remained unmarked causing a significant gap in the first link of the chain of custody that compromised the evidence. The prosecution neither addressed this irregularity nor provided an explanation for the belated marking. Recent jurisprudence is abound with cases “holding that” the failure to mark the confiscated drug immediately after its confiscation, absent any explanation or reasonable justification, is deemed as a serious breach in the chain of custody.<sup>21</sup> Verily, keeping the seized evidence unmarked, without any other safeguard, rendered it extremely vulnerable to switching or planting.

The Court has consistently held that marking of the evidence is the starting point of the custodial link.<sup>22</sup> Marking, which is the 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, is the first stage in the chain of custody. We have held that prompt marking is important because succeeding handlers of the dangerous drugs or related items will use the marking as reference. The marking operates to set the subject evidence of dangerous drugs or other related evidence apart from other materials as well as to preclude their switching, planting, or contamination. Consistency with the chain of custody rule requires, therefore, that marking be made in the presence of the apprehended violator immediately upon

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<sup>19</sup> *Ampatua v. People*, UDK-16615, February 15, 2021; *People v. Suarez*, G.R. No. 249990, July 8, 2020; and *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>20</sup> *People v. Gadiana*, 644 Phil. 686, 694 (2010).

<sup>21</sup> See *People v. Magayon*, G.R. No. 238873, September 16, 2020; see *People v. Delina*, G.R. No. 243578, June 30, 2020; see also *People v. Claudel*, G.R. No. 219852, April 3, 2019; and *People v. Cadungog*, G.R. No. 229926, April 3, 2019.

<sup>22</sup> See *People v. Alejandro*, 671 Phil. 33, 46 (2011).

arrest.<sup>23</sup> In *People v. Ismael*,<sup>24</sup> the Court highlighted the importance of marking the seized drugs immediately upon arrest, viz.:

The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. **Marking**, which is the 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.** The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will also use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material 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 dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**<sup>25</sup> (Emphasis supplied.)

Here, the prosecution offered no justification for this deviation. There was no showing whether the safety of the apprehending team was threatened, or whether the urgency of the anti-drug operation led the team to postpone the inventory.<sup>26</sup> Worse, IO1 Congreso “felt that the area [was] safe”<sup>27</sup> but forestalled marking the drug at the place of apprehension. Notably, the buy-bust operation was planned in advance, and the police officers had sufficient time to coordinate and prepare for the appropriate procedure in compliance with the chain of custody rule, but they failed to do so. Thus, we cannot excuse the buy-bust team’s lapses against the mandated procedure.

Lastly, it must be stressed that while the 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 regularity is disputable and cannot be regarded as binding truth.<sup>28</sup> Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.<sup>29</sup>

We reiterate that Section 21, Article II of RA No. 9165 embodies the constitutional aim to prevent the imprisonment of innocent people. This Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Mary Jane Marcaban y Lantaco must be

<sup>23</sup> *People v. Ismael*, 806 Phil. 21, 31 (2017); *People v. Gonzales*, 708 Phil. 121, 130-131 (2013); *People v. Alejandro*, *supra* note 22; and *People v. Sanchez*, 590 Phil. 214, 241 (2008).

<sup>24</sup> 806 Phil. 21 (2017).

<sup>25</sup> *Id.* at 31-32, citing *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

<sup>26</sup> See *People v. Sanico*, G.R. No. 240431, July 7, 2020, citing *People v. Sipin*, 833 Phil. 67, 93 (2018).

<sup>27</sup> CA rollo, p. 61.

<sup>28</sup> See *Mallillin v. People*, 576 Phil. 576, 593 (2008); and *People v. Cañete*, 433 Phil. 781, 794 (2002).

<sup>29</sup> *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

acquitted of the charge against her given the prosecution's failure to prove an unbroken chain of custody.

**FOR THESE REASONS**, the appeal is **GRANTED**. The Court of Appeals' Decision dated June 29, 2018 in CA-G.R. CR-HC No. 01691-MIN is hereby **REVERSED** and **SET ASIDE**. Mary Jane Marcaban y Lantaco is **ACQUITTED** in Criminal Case No. 9631-2K9, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Superintendent of the Correctional Institution for Women – Mindanao for immediate implementation. The Superintendent is directed to report to this Court the action taken within five (5) days from receipt of this Resolution.

**SO ORDERED.**" (J. Lopez, J., designated additional Member per Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court

27 JUL 2021

*epdho 7/27*

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THE SUPERINTENDENT (reg)  
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HON. PRESIDING JUDGE (reg)  
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(Crim. Case No. 9631-2K9)

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