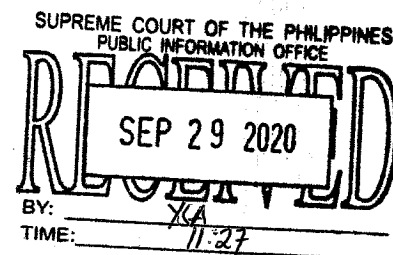




Republic of the Philippines  
Supreme Court  
Manila



SPECIAL THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated July 29, 2020, which reads as follows:*

“G.R. No. 226484 (*People of the Philippines v. Niño Fabroa y Lacaba @ “Putol”*). – This is a Motion for Reconsideration<sup>1</sup> assailing the Court’s Resolution<sup>2</sup> dated June 21, 2017 that affirmed the Decision<sup>3</sup> dated December 17, 2015 of the Court of Appeals (CA) in CA-G.R. CR. H.C. No. 06845 finding Niño Fabroa y Lacaba @ “Putol” (accused-appellant) guilty of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

*The Antecedents*

The Information<sup>4</sup> charging accused-appellant with Illegal Sale of Dangerous Drugs reads as follows:

“That on March 17, 2010, in the City of Tuguegarao, Province of Cagayan and within the jurisdiction of this Honorable Court, the accused NIÑO FABROA y LACABA alias “PUTOL”, without authority of law and without any permit to sell, transport, deliver and distribute dangerous drugs, did then and there, willfully, unlawfully and feloniously, sell, and distribute one (1) piece heat-sealed transparent plastic sachet containing 0.02 gram of METHAMPHETAMINE HYDROCHLORIDE commonly known as “shabu”, a dangerous drug to IO1 EDNA C. BITAMUG, who acted as a poseur buyer; that when the accused received the P 500.00 peso-bill bearing Serial No. DY903873 marked buy bust money from the said poseur buyer, he in turn handed the heat-sealed plastic sachet containing the dangerous drug to the said poseur buyer and this led to the apprehension and arrest of the accused and the confiscation of the dangerous drug and the P 500.00 buy-bust money from his possession along the Maharlika Highway at Carig Sur, Tuguegarao City, by members of the Philippine Drug Enforcement Agency

<sup>1</sup> *Rollo*, pp. 41-47.

<sup>2</sup> *Id.* at 39-40.

<sup>3</sup> *Id.* at 2-15; penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Danton Q. Bueser and Renato C. Francisco, concurring.

<sup>4</sup> *Id.* at 3-4.

(PDEA), Regional Office No. 02, Camp Adduru, this city, who formed the buy-bust team.

CONTRARY TO LAW.”<sup>5</sup>

The prosecution established that on March 17, 2010, Philippine Drug Enforcement Agency (PDEA) Regional Office No. 2 Officer-in-Charge PCI Primitivo Bayongan, Jr., acting on a tip given by a confidential informant (CI), formed a buy-bust team against a certain alias “*Putol*” of Carig Sur, Tuguegarao City. In the meeting, he assigned IO2 Joseph Sacolles as the team leader, IO1 Edna Bitamug (IO1 Bitamug) as the *poseur*-buyer, and IO1 Robert Baldovizo (IO1 Baldovizo) as back-up officer. He furnished IO1 Bitamug one piece of genuine ₱500.00 bill with serial number DY 903873 as buy-bust money.

On even date, at about 6:00 p.m., the buy-bust team together with the CI proceeded to the designated place of transaction at Maharlika Highway Carig Sur, Tuguegarao City. Accused-appellant approached the CI and IO1 Bitamug; they had a short conversation. Thereafter, IO1 Bitamug handed to accused-appellant the pre-marked one piece ₱500.00 buy-bust money. Thereafter, accused-appellant handed one piece heat-sealed transparent sachet containing white crystalline substance to IO1 Bitamug. At that instance, IO1 Bitamug executed the pre-arranged signal – removing her shoulder bag. The back-up team rushed to the transaction scene and arrested accused-appellant. The team then introduced themselves as PDEA agents.

For his part, accused-appellant testified that on March 17, 2010, he was tending the goats and feeding the hens in the lot of his cousin. Thereafter, he gathered the dry clothes. After a while, a white van pulled over. Uniformed men alighted, pulled and shoved him into the van, and drove the van to a vacant lot. There, the men brusquely asked him about a person whose name he can no longer recall. When he answered that he did not know the man, the men, who became irate, drove the van to the PDEA Headquarters at Camp Adduru. When they reached the office, IO1 Bitamug appeared and handed to her companions a white heat-sealed plastic sachet. They confronted him about the plastic sachet, but he denied the accusation that he was selling illegal drugs. He asserted that the case filed against him was a frame-up.

In the Decision rendered on May 15, 2014, the Regional Trial Court (RTC), Branch 5, Tuguegarao City found accused-appellant guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs (*shabu*), sentenced him to suffer the penalty of life imprisonment, and ordered him to pay a fine of ₱400,000.00.

<sup>5</sup> *Id.* at 3.

On December 17, 2015, the CA denied the appeal. It held that the prosecution was able to establish all the elements of illegal sale of dangerous drugs; and that there was substantial compliance with Section 21 of RA 9165.<sup>6</sup> The CA disposed of the case as follows:

WHEREFORE, the appeal is DENIED. Consequently, the assailed Decision is AFFIRMED with MODIFICATION that the fine imposed by the trial court in the amount of Four Hundred Thousand pesos (P400,000.00) is increased to Five Hundred Thousand Pesos (P500,000.00) and the appellant shall not be eligible for parole under the Indeterminate Sentence Law.

IT IS SO ORDERED.<sup>7</sup>

In the minute Resolution<sup>8</sup> dated June 21, 2017, the Court affirmed the CA decision.

Accused-appellant interposed a Motion for Reconsideration<sup>9</sup> reiterating the failure of the buy-bust team to comply with Section 21, Article II of RA 9165 thereby putting in doubt the integrity and preservation of the *corpus delicti*. He averred that the absence of the witnesses as required by the law puts the entire buy-bust operation in question.<sup>10</sup> Thus, he deserves an acquittal.

In its Comment,<sup>11</sup> the OSG countered that accused-appellant failed to give any compelling reason to disturb the Court's Resolution dismissing the appeal.

#### *Our Ruling*

The Court grants the Motion for Reconsideration.

The main issue in this case hinges on the determination of whether the elements of illegal sale of dangerous drugs were all satisfied, and whether the integrity and evidentiary value of the sachet containing *shabu* were duly preserved by complying with the requirements provided under Section 21, Article II of RA 9165.

Section 21 (a), Article II of RA 9165 provides for the manner by which law enforcement officers should handle the seized items in dangerous drugs cases. The law was amended on August 7, 2014 by RA 10640.<sup>12</sup>

<sup>6</sup> *Id.* at 13.

<sup>7</sup> *Id.* at 15.

<sup>8</sup> *Id.* at 39-42.

<sup>9</sup> *Id.* at 41-47.

<sup>10</sup> *Id.* at 42.

<sup>11</sup> *Id.* at 56-62.

<sup>12</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

After a buy-bust operation or arrest of an accused for violating the Dangerous Drugs Law, the marking, physical inventory, and photography of the confiscated drugs must be conducted immediately after seizure. Moreover, the inventory and photography must be done in the presence of the accused from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative from the media *and* the Department of Justice (DOJ), *and* any elected public official;<sup>13</sup> or (b) if *after* the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media.<sup>14</sup> Evidently, before the amendment of RA 9165, three witnesses are required to be present during inventory and photography of the seized items. After such amendment, only two witnesses are required to be present, it could either be an elected public official and representative of the NPS or a representative from the media. The presence of the required witnesses is intended to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.<sup>15</sup>

The rationale of this requirement is very well explained in *People v. Tomawis*,<sup>16</sup> *thus*:

The presence of the witnesses from the DOJ, media and from public elective office is necessary against the possibility of planting, contamination, or loss of the seized drugs. 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 seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-bust conducted under the regime of RA 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 were 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 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

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Dangerous Drugs Act of 2002.

<sup>13</sup> Section 21(1) and (2), Article II of RA 9165.

<sup>14</sup> Section 21, Article II of RA 9165, as amended by RA 10640.

<sup>15</sup> *People v. Alconde*, G.R. No. 238117, February 04, 2019.

<sup>16</sup> G.R. No. 228890, April 18, 2018.

the seized drugs were done in their presence in accordance with Section 21 of RA 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 in 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 planting of drugs.

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 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>17</sup> (Emphasis supplied; citations omitted.)

In the instant case, since the offense charged was purportedly committed on March 17, 2010 when RA 9165 was not yet amended, the three-witness rule is applicable. The required witnesses would readily 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.<sup>18</sup>

After a judicious review of the records of the case, the Court finds that the prosecution failed to prove the *corpus delicti* of the offense charged as it failed to demonstrate that the arresting police officers observed the three-witness rule in the case. Further, the records disclose that the physical inventory took place at the PDEA office and no representative from the media and the DOJ were present to witness the inventory.<sup>19</sup>

The Court cannot merely gloss over the lapse, especially when what had been allegedly seized from accused-appellant is only 0.02 grams of *shabu*. Recent cases have highlighted the need to ensure the integrity of the seized drugs in the chain of custody when only a miniscule amount of drugs had been allegedly seized from the accused.<sup>20</sup>

Although it is well-settled that non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses,<sup>21</sup> the records disclose that the prosecution failed to offer a plausible

<sup>17</sup> *Id.*

<sup>18</sup> *Mallillin v. People*, 576 Phil. 576, 587 (2008).

<sup>19</sup> *Rollo*, p. 42.

<sup>20</sup> *People v. Del Mundo*, 818 Phil. 575 (2017).

<sup>21</sup> *People v. Alconde*, *supra* note 15 citing *People v. Manansala*, G.R. No. 229092, February 21, 2018.

explanation as to why no representative from the DOJ and media were present during the inventory and photography of the confiscated *shabu*. Neither did the prosecution offer proof that the police officers exerted genuine and sufficient efforts to secure the presence of the required witnesses. The failure to follow the three-witness requirement under Section 21, Article II of RA 9165 was completely ignored and left unjustified by the prosecution.

Considering that the marking and inventory of the seized drugs are questionable, there is no assurance that the sachet of *shabu* tested in the laboratory was the same sachet of dangerous drug allegedly confiscated from accused-appellant. Evidently, the integrity and evidentiary value of the seized sachet of *shabu* were never preserved.

It bears stressing that the identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.<sup>22</sup> In drugs cases, conviction cannot be sustained if there is a persistent doubt on the identity of the drug.

In light of the above disquisitions, the identity of the object of the sale not having been adequately established, the Court resolves to acquit accused-appellant based on reasonable doubt.

**WHEREFORE**, the Motion for Reconsideration is **GRANTED**. The Resolution dated June 21, 2017 affirming the Court of Appeals Decision dated December 17, 2015 in CA-G.R. CR. H.C. No. 06845 is **REVERSED** and **SET ASIDE**. Accused-appellant Niño Fabroa y Lacaba @ "Putol" is hereby **ACQUITTED**. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Niño Fabroa y Lacaba @ "Putol", unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

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<sup>22</sup> *Id.*

**SO ORDERED."**

By authority of the Court:

*Mi = DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
GER  
9/22/20

PUBLIC ATTORNEY'S OFFICE  
Special & Appealed Cases Service  
DOJ Agencies Building  
East Avenue cor. NIA Road  
Diliman, 1104 Quezon City

COURT OF APPEALS  
CA G.R. CR HC No. 06845  
1000 Manila

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
Legaspi Village, 1229 Makati City

The Director  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Mr. Nino L. Fabroa y Lacaba @ Putol"  
c/o The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 5, Tuguegarao City  
3500 Cagayan  
(Crim. Case No. 13383)

The Director General  
PHILIPPINE NATIONAL POLICE  
National Headquarters  
Camp Crame, Quezon City

The Director General  
PHILIPPINE DRUG ENFORCEMENT  
AGENCY  
PDEA Bldg., NIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

DANGEROUS DRUGS BOARD  
3<sup>rd</sup> Floor DDB-PDEA Bldg.,  
NIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

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G.R. No. 226484

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Republic of the Philippines  
**Supreme Court**  
Manila

**SPECIAL THIRD DIVISION**

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

**G.R. No. 226484**

-versus-

NIÑO FABROA y LACABA @  
"Putol",  
Accused-Appellant.

x-----/

**ORDER OF RELEASE**

**TO: The Director General**  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Thru: **The Superintendent**  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

**GREETINGS:**

WHEREAS, the Supreme Court on July 29, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

**"WHEREFORE**, the Motion for Reconsideration is **GRANTED**. The Resolution dated June 21, 2017 affirming the Court of Appeals Decision dated December 17, 2015 in CA-G.R. CR. H.C. No. 06845 is **REVERSED** and **SET ASIDE**. Accused-appellant Niño Fabroa y Lacaba @ "Putol" is hereby **ACQUITTED**. He is ordered immediately **RELEASED** from **M**

detention, unless he is confined for any other lawful cause.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Niño Fabroa y Lacaba @ "Putol", unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

**SO ORDERED."**

**NOW, THEREFORE,** You are hereby ordered to immediately release **NIÑO FABROA y LACABA @ "Putol"** unless there are other lawful causes for which she should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

**GIVEN** by the Honorable **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **29<sup>th</sup>** day of **July 2020**.

By authority of the Court:

*Misa PDC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

*GER*  
*7/22/20*

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G.R. No. 226484 *CA*

