



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 15, 2022 which reads as follows:

“G.R. No. 242208 (*People of the Philippines, plaintiff-appellee v. Judith Collado y Dayot, accused-appellant*).

Before Us is an appeal from the June 29, 2018 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01675-MIN which affirmed the January 18, 2017 Omnibus Decision² of the Regional Trial Court of Butuan City, Branch 4 (RTC), finding Judith Collado y Dayot (*accused-appellant*) guilty of selling and using illegal drugs.

Antecedents

In two (2) separate informations, accused-appellant was indicted for violation of Sections 5 and 15, Article II of Republic Act (R.A.) No. 9165,³ the respective accusatory portions of which read:

Criminal Case No. 15720 –

x x x x

That at more or less 11:30 o'clock in the [evening] of March 01, 2012, at Brgy. San Ignacio, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell one (1) heat-sealed sachet of methamphetamine hydrochloride, otherwise known as shabu, weighing zero point zero two two [sic] eight nine (0.0289) grams, more or less, a dangerous drug to a poseur buyer for a total consideration of ₱500.00.

- over – seventeen (17) pages ...

180-A

¹ *Rollo*, pp. 3-14; penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon, concurring.

² *CA rollo*, pp. 47-60; penned by Judge Godofredo B. Abul, Jr.

³ *Comprehensive Dangerous Drugs Act of 2002*.

CONTRARY TO LAW[.]

Criminal Case No. 15721

x x x x

That at more or less 11:30 o'clock in the [evening] of March 01, 2012, at Brgy. San Ignacio, Butuan City, 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 use methamphetamine hydrochloride, otherwise known as shabu, which is a dangerous drug and found positive for use, after a confirmatory test.

CONTRARY TO LAW[.]⁴

During arraignment, accused-appellant pleaded not guilty to the charges. After pre-trial was terminated, trial on the merits ensued.

Version of the Prosecution

The prosecution presented the following witnesses: Philippine Drug Enforcement Agency (*PDEA*) agents IO1 Myrian A. Balbada (*IO1 Balbada*), IA1 Cheryl Legaspi (*IA1 Legaspi*); Philippine National Police (*PNP*) Crime Laboratory Forensic Chemist P/SInsp. Joel P. Signar (*P/SInsp. Signar*); and Department of Justice (*DOJ*) representative Ronaldo Bedrijo (*Bedrijo*).

IO1 Balbada testified that the following events transpired leading to the apprehension of accused-appellant. At 8:00 a.m. on March 1, 2012, a confidential informant (*CI*) reported to the PDEA Regional Office 13 that a certain Judith Collado, alias Inday Praning, and alleged cohort of Tata Buyan who is a target of the PDEA, was actively engaged in the illegal selling of *shabu* at the "*kulalong*"⁵ spot at Montilla Street, San Ignacio, Butuan City. After verifying the information, PDEA Regional Office 13 Director Joel B. Plaza formed a buy-bust team to be led by Agent Louie Giberson (*Agent Giberson*), with IA1 Legaspi as poseur-buyer and IO1 Balbada as arresting officer, among other members.

At 10:30 p.m. of the same day, the buy-bust team proceeded to the target area. After an hour, IA1 Legaspi and the CI approached accused-appellant who was playing *kulalong*. The CI introduced IA1

- over -

180-A

⁴ CA rollo, pp. 47-48.

⁵ Slot machine.

Legaspi to accused-appellant as the buyer. Thereafter, accused-appellant handed to IA1 Legaspi one sachet of suspected *shabu*. In turn, IA1 Legaspi handed to accused-appellant the ₱500.00 marked money. At that point, IA1 Legaspi introduced herself as a PDEA agent. This prompted the other members of the buy-bust team to enter the premises and arrest accused-appellant. IA1 Legaspi marked the seized sachet with "111."

Agent Giberson decided to conduct the inventory at the office "because it was already midnight and there were already onlookers" and they received information that the area "was infiltrated with armed men."⁶ IA1 Legaspi had possession of the seized sachet from the moment it was confiscated from accused-appellant until their arrival at the office for the inventory which was witnessed by accused-appellant, media representative Rey Brangan, and DOJ representative Bedrijo. IO1 Balbada took photographs during the conduct of inventory.

Afterwards, IA1 Legaspi brought the seized sachet and accused-appellant to the PNP Crime Laboratory for examination, which yielded positive results for the presence of methamphetamine hydrochloride in both the sample taken from the seized sachet and in the urine of accused-appellant. During cross-examination, IO1 Balbada acknowledged that she had no personal knowledge whether *barangay* officials had been contacted for the inventory.⁷

IA1 Legaspi corroborated IO1 Balbada's testimony in its material points, and added that she could not remember who among the buy-bust team members was tasked to contact an elected official for the inventory.⁸

It appears from the records that the parties stipulated on the testimonies of P/SInsp. Signar and DOJ representative Bedrijo. With regard to P/SInsp. Signar, it was stipulated, based on the RTC's March 18, 2015 Omnibus Order,⁹ that:

1. That the witness is a Licensed Chemical Engineer;
2. That he is an expert on illegal drug examination;
3. That more or less 12:00 in the early morning of March 2, 2012, their office the PNP Crime Lab. Office 13 received a Request for Laboratory Examination involving one (1)

- over -

180-A

⁶ CA *rollo*, p. 49.

⁷ Id. at 48-50.

⁸ Id. at 51.

⁹ Records, pp. 69-71.

- sachet of suspected shabu with corresponding marking from Agent Cheryl Legaspi of the PDEA;
4. [That] thereafter he conducted laboratory examination of the specimen;
 5. That the specimen yielded positive presence of methamphetamine hydrochloride;
 6. That on the same occasion the accused volunteered her urine sample for drug test; [and]
 7. That the urine sample of the accused yielded a positive presence for methamphetamine hydrochloride[.]¹⁰

As regards DOJ representative Bedrijo, the September 7, 2015 Omnibus Order¹¹ of the RTC provided the following:

1. That he is an employee of the Office of the City Prosecutor of Butuan City;
2. That he is a duly designated representative of the [DOJ] in cases involving Violations of R.A. [No.] 9165;
3. That he was present during the conduct of inventory of the drug and none drug evidence at the PDEA, Regional Office 13, involving the accused in these cases;
4. That he signed the Certificate of Inventory; and
5. That during the conduct of inventory, some photographs were taken[.]¹²

The defense, however, added the stipulation that DOJ representative Bedrijo “has no personal knowledge as to the origin of the alleged sachet of *shabu* confiscated from the accused.”¹³

Version of the Defense

The defense presented accused-appellant as its lone witness. She denied the charges and testified that she was a resident of *Barangay Ampayon*, Butuan City. On March 1, 2012, she was at Montilla Street, San Ignacio, Butuan City, to visit her son. Around 10:00 p.m., she was playing *kulalong* at the house of her son’s neighbor when a man with a large built sat beside her and told her to give him her cellphone. After taking her cellphone, the man told another person to handcuff her. When she asked them what her violation was, they answered that she was selling *shabu*. Accused-appellant’s request for the presence of a *barangay kagawad* was ignored and she was instead dragged towards a vehicle outside. Inside

- over -

180-A

¹⁰ Id. at 70.

¹¹ Id. at 74-75.

¹² Id. at 74.

¹³ Id. at 74-75.

the vehicle, she was accused of selling *shabu* and was told to name a drug pusher in exchange for her liberty. She answered that she did not know of anyone, to which the apprehenders replied, “[h]ow come you don’t know anyone, what about this *shabu* that we bought from you?”¹⁴ One of the apprehenders then showed her an item brought out from his belt bag.¹⁵

The RTC Ruling

In its January 18, 2017 Omnibus Decision, the RTC found accused-appellant guilty of selling and using illegal drugs. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court finds:

In Criminal Case No. 15720, of violation of Section 5 (Selling) of Article II of Republic Act 9165 x x x, [accused-appellant], guilty beyond reasonable doubt and is hereby sentenced to suffer the extreme penalty of life imprisonment and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency.

[Accused-appellant] shall serve her sentence at the Correctional Institute for Women (Mindanao), Juan Acenas Sub-colony, Sto. Tomas, Davao del Norte.

x x x x

In Criminal Case No, 15721, for failure of [accused-appellant] to successfully rebut the finding of Exhibit “D” (Chemistry Report No. DT-042-2012 finding her urine sampling of prohibited drug, there is sufficient and substantial evidence that [accused-appellant] violated Section 15 of Article II of Republic Act 9165, is guilty beyond reasonable doubt of violation of Section 15 (using prohibited drug) of Article II of Republic Act 9165 x x x and is hereby sentenced to undergo rehabilitation for a period of six (6) months at a government accredited rehabilitation center. [Appellant] shall undergo rehabilitation after service of her sentence in Criminal Case No. 15720.

SO ORDERED.¹⁶

The RTC ruled that the prosecution was able to prove all the elements of the crimes charged. It rejected accused-appellant’s denial for being unsupported by strong and convincing evidence, and gave

- over -

180-A

¹⁴ CA *rollo*, p. 52.

¹⁵ Id. at 52.

¹⁶ Id. at 59-60.

that the alleged inconsistencies in the testimonies of the prosecution witnesses pertain to “peripheral matters” that do not “vitiating the essential integrity of the evidence in its material entirety nor reflect adversely on the credibility of witnesses.”²¹

As to the failure of the apprehending officers to strictly comply with the chain of custody rule, the CA held that deviation from the rule does not “automatically result in acquittal as long as it is shown that the identity and integrity of the seized drugs were preserved, as in the case at bar.”²² It explained:

The absence of a photograph of the seized item will not also render the arrest illegal or the item seized from her inadmissible as evidence. The absence of [IA1] Legaspi’s signature in the seized item is non-consequential, as it was clearly shown that she marked the same as “111”, to prevent mix-up. It should be noted [that] the night of the buy-bust operation on [accused-appellant], there was no other buy-bust operation, hence, a mix-up could not have been possible, especially so when it was clearly established by [IA1] Legaspi that she was in possession of the seized item from the time of the sale up until it was submitted to the PNP Crime Laboratory.

x x x x

To reiterate, after [accused-appellant] handed to [IA1] Legaspi the sachet containing white crystalline substance, [IA1] Legaspi gave her the buy-bust money as payment which she accepted. [IA1] Legaspi informed [accused-appellant] that she was being arrested for illegal sale of shabu. [IA1] Legaspi marked the seized item in front of [accused-appellant] and the other agents while still in the crime scene. While in transit on the way to the PDEA Office, she made sure that she was the only one in possession of the seized item to ensure its integrity. Upon arriving at the PDEA [O]ffice, an inventory of the seized item was conducted in the presence of [accused-appellant], other members of the buy-bust team, the DOJ representative and the media representative, as shown by the pictures. The seized item was then turned over to [P/SInsp. Signar] of the PNP Crime Laboratory Office 13 in Butuan by [IA1] Legaspi.²³

The CA declared as inconsequential the non-presentation of the buy-bust money in court during trial, since the fact of the sale was adequately proven and the seized drug subject of the transaction was presented before the RTC.²⁴

- over -

180-A

²¹ Id. at 9-13.

²² Id. at 13.

²³ Id. at 12-13.

²⁴ Id.

credence to the testimonies of the prosecution witnesses on the presumption that the officers had performed their duties in a regular manner in the absence of evidence suggesting ill motive.¹⁷

Accused-appellant appealed to the CA.

Accused-appellant argued that: (a) the prosecution failed to prove her guilt beyond reasonable doubt as the apprehending officers failed to comply with the rules on the chain of custody of the alleged seized drugs, *i.e.*, absence of an elected official during the inventory; (b) the prosecution failed to present the buy-bust money in court and further argued that inconsistencies in the testimonies of the prosecution witnesses casted doubt as to whether an inventory was indeed conducted; and (c) the result of the drug test cannot be used as evidence against her for being violative of her constitutional rights to privacy and against self-incrimination.¹⁸

The People, through the Office of the Solicitor General, maintained that the prosecution was able to establish accused-appellant's guilt of the offenses charged beyond reasonable doubt. It countered that there was sufficient compliance with the rules on the chain of custody to support accused-appellant's conviction and that the drug test was properly conducted pursuant to the provisions of R.A. No. 9165.¹⁹

The CA Ruling

In its June 29, 2018 Decision, the CA upheld accused-appellant's conviction, the *fallo* of which states:

WHEREFORE, the instant Appeal is hereby DENIED. The Omnibus Decision of the Regional Trial Court, Branch 4, Butuan City, dated January 18, 2017 is hereby AFFIRMED in toto.

SO ORDERED.²⁰

The CA agreed with the RTC that accused-appellant failed to disprove the presumption that the officers had properly discharged their duties and that the evidence had been preserved absent bad faith, ill will, or proof that the evidence had been tampered with. It ruled

- over -

180-A

¹⁷ Id. at 53-59.

¹⁸ Id. at 37-43.

¹⁹ Id. at 100-109.

²⁰ *Rollo*, p. 14.

Finally, the CA ruled that the result of the drug test was admissible in evidence considering that the drug test was conducted as a result of accused-appellant's apprehension for a drug-related offense.²⁵

On December 3, 2018, the Court directed the parties to file their respective supplemental briefs if they so desired. On April 10, 2019, the People manifested its adoption of the arguments in the brief for the plaintiff-appellee it filed before the CA.²⁶ Accused-appellant, on the other hand, filed a Supplemental Brief²⁷ dated April 17, 2019. She maintained that she should be acquitted of the charges as the prosecution failed to establish that the integrity and identity of the alleged seized drug were properly preserved.

The Court's Ruling

The appeal has merit.

*Noncompliance with
Sec. 21 of R.A. No. 9165*

To secure a conviction for illegal sale of dangerous drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. It is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the crime.²⁸ As such, the rule on chain of custody was enacted specifically to preserve the

- over -

180-A

²⁵ Id. at 13.

²⁶ Id. at 24-27.

²⁷ Id. at 31-36.

²⁸ *People v. Salenga*, G.R. No. 239903, September 11, 2019.

integrity and evidentiary value of the seized drugs.²⁹

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would be able to describe how and from whom it was received, where it was, and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then 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.³⁰

As part of the chain of custody procedure, the law requires that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the

- over -

180-A

²⁹ The rule is embodied in Section 21, Article II of R.A. No. 9165, the applicable law at time of the commission of the offense, which provides:

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[.] (emphasis supplied.)

Its Implementing Rules and Regulations further outline the procedure for the inventory and photograph of the seized drugs:

- (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[.]

³⁰ *People v. Havana*, 776 Phil. 462, 471-472 (2016).

same.³¹ The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain witnesses, namely: (a) if prior to the amendment of R.A. No. 9165 by R.A. No. 10640,³² a representative from the media **AND** the DOJ, and any elected public official;³³ or (b) if after the amendment of R.A. No. 9165 by R.A. No. 10640, an elected public official and a representative of the National Prosecution Service (*NPS*)³⁴ **OR** the media.³⁵ The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”³⁶

Here, the offenses charged were allegedly committed on March 1, 2012. Hence, the provisions of R.A. No. 9165 shall apply in the conduct of the inventory and taking of photographs, wherein the following witnesses must be present: (a) a representative from the media, (b) a representative of the DOJ, and (c) any elected public official. There have been several cases decided by the Court, which stated that if the “insulating witnesses” required by the law are not present during the physical inventory and photographing of the seized items, then it constitutes as noncompliance with the chain of custody rule.³⁷

- over -

180-A

³¹ *Matabilas v. People*, G.R. No. 243615, November 11, 2019.

³² 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.”

As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018) and *Matabilas v. People* (see G.R. No. 243615, November 11, 2019), R.A. No. 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” R.A. No. 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, *The Philippine Star Metro* section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; *World News* section, p. 6). Thus, R.A. No. 10640 have become effective on August 7, 2014.

³³ See Section 21(1) and (2) Article II of R.A. No. 9165 and its Implementing Rules and Regulations.

³⁴ Which falls under the DOJ, (see Section 1 of Presidential Decree No. 1275, entitled “Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, and Creating the National Prosecution Service,” [April 11, 1978] and Section 3 of R.A. No. 10071, entitled “An Act Strengthening and Rationalizing the National Prosecution Service,” otherwise known as the “Prosecution Service Act of 2010” [lapsed into law on April 8, 2010])

³⁵ See Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640.

³⁶ See *Matabilas v. People*, supra note 31.

³⁷ See *Tañamor v. People*, G.R. No. 228132, March 11, 2020; *People v. Pagsigan*, G.R. No. 232487, September 3, 2018; *Luna v. People*, G.R. No. 231902, June 30, 2021.

The Court finds that the prosecution failed to prove that it complied with the mandatory requirement of Sec. 21 of R.A. No. 9165 on the presence of required insulating witnesses during the inventory and taking of photographs. Particularly, no elected public official was present therein.

There is no dispute that the inventory was conducted at the PDEA Office and in the presence of only two out of the three necessary witnesses, the DOJ representative and media representative. Glaringly, there was no elected public official present during the inventory and taking of photographs of the seized item, even though the law expressly requires the presence of such witness. Pursuant to R.A. No. 9165, the attendance of all three necessary witnesses during the physical inventory and photograph of the seized item is *mandatory*. The rationale is simple, it is the presence of these witnesses that would insulate against police practices of planting evidence.³⁸

Saving clause is not applicable.

However, the law, in exceptional cases, also allows noncompliance with the rules where the following requisites are present: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. In these exceptional cases, the seizures and custody over the confiscated items shall not be rendered void and invalid.³⁹ The justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.⁴⁰

Whenever the first prong is not complied with, the prosecution shall not be allowed to invoke the saving clause to salvage its case. *Valencia v. People*⁴¹ underscored that the arresting officers are under obligation, should they be unable to comply with the procedures laid down under Sec. 21, to explain why the procedure was not followed and to prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that

- over -

180-A

³⁸ *People v. Salenga*, supra note 28.

³⁹ *People v. Abdulwahab*, G.R. No. 242165, September 11, 2019.

⁴⁰ *People v. Patacsil*, 838 Phil. 320, 332-333 (2018).

⁴¹ 725 Phil. 268, 286 (2014).

may or may not be disregarded by the arresting officers at their own convenience.⁴² Similarly, in *People v. Acub*,⁴³ the Court also did not apply the first prong of the saving clause because despite the blatant lapses, the prosecution did not explain the arresting officers' failure to comply with the requirements in Sec. 21.

It is established that the prosecution must “show that earnest efforts were employed in contacting the representatives enumerated under the law for ‘[a] sheer statement that representatives were unavailable—without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances—is to be regarded as a flimsy excuse’.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time, beginning from the moment they receive the information about the activities of the accused until the time of the latter's arrest, to prepare for a buy-bust operation and, consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Sec. 21 of R.A. No. 9165. As such, police officers are compelled not only to state reasons for their noncompliance but must, in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.”⁴⁴

In this case, the prosecution failed to provide a justifiable ground for the noncompliance with Sec. 21 particularly, the absence of an elected *barangay* official during the inventory and taking of photographs of the seized item. Both IO1 Balbada and IA1 Legaspi explained that the inventory was conducted at the PDEA office because “it was already midnight”⁴⁵ and due to the “gathering crowd.”⁴⁶ IA1 Legaspi added that “[s]ince there were already many people watching [them],” their team leader “wanted to preserve the identities of the other operatives as well as to secure the identities of the agents.”⁴⁷ However, when asked about the absence of an elected official during the inventory, IO1 Balbada answered that according to

- over -

180-A

⁴² Id.

⁴³ G.R. No. 220456, June 10, 2019.

⁴⁴ *People v. Salenga*, supra note 28.

⁴⁵ TSN, March 18, 2015, p. 12.

⁴⁶ Id.

⁴⁷ TSN, February 16, 2016, p. 11.

their team leader, “he was not able to contact the representatives, *barangay* elected officials at that time.”⁴⁸ She further surmised that “maybe the team leader [found] it hard to get the witnesses.”⁴⁹ On the other hand, IA1 Legaspi testified thus:

Q Can you explain why no *barangay* official appeared during the conduct of inventory despite exerted efforts made by your office?

A I think the designated team was not able to contact any *barangay* official.⁵⁰

x x x x

Q By the way, why you cannot remember the agent tasked to contact the *barangay* official who would attend the conduct of inventory?

A Since it was our Deputy OIC, Agent Silvan, who designated a member of the team to contact an elected official.

Q But, as far as you can remember, your team exerted efforts to contact *barangay* officials?

A Yes, Sir.⁵¹

Verily, the prosecution could not provide an acceptable reason for the noncompliance with the required insulating witnesses during the inventory and taking of photographs. Moreover, the buy-bust team had the whole day – from its receipt of the confidential information at 8:00 a.m., until the start of the operation at 10:30 p.m., within which to prepare and earnestly secure the presence of the necessary witnesses for the inventory. These circumstances clearly show the buy-bust team’s failure to comply with the rules and their lack of any justification for such failure.

The second prong of the saving clause was also not satisfied by the prosecution. It requires that the integrity and the evidentiary value of the seized items be properly preserved by the apprehending team. According to *People v. Adobar*,⁵² the integrity of the seized illegal drugs, despite non-compliance with Sec. 21, requires establishing the four links in the chain of custody: 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

- over -

180-A

⁴⁸ TSN, March 18, 2015, p. 35.

⁴⁹ Id. at 31.

⁵⁰ TSN, February 16, 2016, p. 18.

⁵¹ Id. at 28.

⁵² 832 Phil. 731, 763 (2018).

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.

First link

The first link refers to seizure and marking. “Marking” means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. The marking of the evidence 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 the criminal proceedings, thus, preventing switching, planting or contamination of evidence.⁵³ In *Barayuga v. People*,⁵⁴ it was ruled that the insulating presence of these witnesses during the seizure, marking, inventory, and photography of the dangerous drugs would prevent the evils of switching, planting, or contamination of the *corpus delicti*. Their presence at the time of seizure and confiscation would belie any doubt as to the source, identity, and integrity of the seized drug.

In this case, the first link was not established. During the marking of the seized item upon the arrest and seizure, there was absolutely no insulating witness present. When the members of the buy-bust team entered the premises and arrested accused-appellant, IA1 Legaspi marked the seized sachet with “111.” The testimonies of the prosecution are bereft of any explanation regarding the absence of the required witnesses during the marking. Further, as discussed earlier, even when the buy-bust team proceeded to the PDEA Office for the inventory and taking of photographs, not all of the required insulating witnesses were present.

Fourth link

In *People v. Pajarin*,⁵⁵ the Court ruled that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the precautionary steps required to preserve the integrity and evidentiary

- over -

180-A

⁵³ *People v. Omamos*, G.R. No. 223036, July 10, 2019.

⁵⁴ G.R. No. 248382, July 28, 2020.

⁵⁵ 654 Phil. 461, 466 (2011).

value of the seized item, thus: (a) that the forensic chemist received the seized article as marked, properly sealed, and intact; (b) that he resealed it after examination of the content; and (c) that he placed his own marking on the same to ensure that it could not be tampered with pending trial.⁵⁶

To recall, the parties dispensed with the testimony of P/SInsp. Signar. The stipulation of the parties is bereft of any account as to the manner the seized item was managed, stored, preserved, or handled at the crime laboratory after it was examined by P/SInsp. Signar and before it was delivered to the RTC for identification, as reflected in the RTC's March 18, 2015 Omnibus Order.⁵⁷ Further, the Chain of Custody Form⁵⁸ submitted by the prosecution is silent on the movement of the seized item from the point of its turnover to a certain PO1 Migullas for safekeeping. While it could be surmised from the records that P/SInsp. Signar submitted the seized item to the RTC on March 18, 2015,⁵⁹ this was not recorded in the chain of custody form.

The Court has consistently ruled that absent the required stipulations specified in *People v. Pajarin*,⁶⁰ the fourth link in the chain of custody could not be reasonably established.⁶¹ The lack of testimony regarding the precautions taken in the handling of the seized item, before and after the laboratory examination, puts in doubt that the item presented in court is the same as that allegedly confiscated from the accused; thus precipitating reasonable doubt.⁶²

In addition, it must be underscored that the seized item was only 0.0289 gram of purported *shabu*. While the minuscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Sec. 21. Trial courts should meticulously consider the factual intricacies of cases involving violations of R.A. No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving minuscule amounts of drugs. These can be readily planted and tampered with.⁶³

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180-A

⁵⁶ *People v. Cabuhay*, 836 Phil. 903, 918 (2018); cited also in *People v. Rivera*, G.R. No. 252886, March 15, 2021, and *People v. Ubungen*, 836 Phil. 888, 901 (2018).

⁵⁷ *Supra* note 9. See also TSN, March 18, 2015, pp. 41-43.

⁵⁸ Exhibit "L," Index of Exhibits, p. 13.

⁵⁹ TSN, March 18, 2015, p. 43.

⁶⁰ *Supra*, note 55.

⁶¹ *People v. Rivera*, *supra* note 56.

⁶² See *People v. Cabuhay*, *supra* note 56 at 918-919.

⁶³ *Lescano v. People*, 778 Phil. 460, 479 (2016).

The Court reiterates that compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Noncompliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused.⁶⁴

As a consequence of this finding, the conviction of accused-appellant for use of dangerous drugs should likewise be reversed. The result of accused-appellant's drug test cannot be used as evidence against her as it is an indirect result of her illegal apprehension due to the police officers' noncompliance with the procedure provided in Sec. 21. Stated differently, if accused-appellant was not arrested in the first place, she would not have been subjected to a drug test because Sec. 38⁶⁵ refers to "any person apprehended or arrested **for violating the provisions of this Act.**" As accused-appellant was not proved to have violated any of the provisions of R.A. No. 9165, then the drug test conducted on her has no leg to stand on.⁶⁶

WHEREFORE, the appeal is **GRANTED**. The June 29, 2018 Decision of the Court of Appeals, in CA-G.R. CR-HC No. 01675-MIN, affirming the January 18, 2017 Omnibus Decision of the Regional Trial Court of Butuan City, Branch 4, is **REVERSED** and **SET ASIDE**. Judith Collado y Dayot is hereby **ACQUITTED** of the charges of Illegal Sale and Use of Dangerous Drugs in Criminal Case Nos. 15720 and 15721 for failure of the prosecution to prove her guilt beyond reasonable doubt. Let entry of judgment be issued immediately.

The Superintendent of the Correctional Institution for Women (Mindanao), Juan Acenas Sub-colony, Sto. Tomas, Davao Del Norte, is **ORDERED** to **IMPLEMENT** this Resolution unless Judith

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180-A

⁶⁴ *People v. Salenga*, supra note 28.


⁶⁵ Sec. 38. *Laboratory Examination or Test on Apprehended/Arrested Offenders*. — Subject to Section 15 of this Act, any person apprehended or arrested for violating the provisions of this Act shall be subjected to screening laboratory examination or test within twenty-four (24) hours, if the apprehending or arresting officer has reasonable ground to believe that the person apprehended or arrested, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs. If found to be positive, the results of the screening laboratory examination or test shall be challenged within fifteen (15) days after receipt of the result through a confirmatory test conducted in any accredited analytical laboratory equipment with a gas chromatograph/mass spectrometry equipment or some such modern and accepted method, if confirmed the same shall be *prima facie* evidence that such person has used dangerous drugs, which is without prejudice for the prosecution for other violations of the provisions of this Act: *Provided*, That a positive screening laboratory test must be confirmed for it to be valid in a court of law.

⁶⁶ *People v. Angeles*, G.R. No. 237355, November 21, 2018.

Collado y Dayot is being lawfully held for some other reason, and **INFORM** the Court of the date of her actual release from confinement within five (5) days from receipt hereof.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *mls*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
180-A

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(CA-G.R. CR HC No. 01675-MIN)

The Hon. Presiding Judge
Regional Trial Court, Branch 4
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