



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **23 February 2022** which reads as follows:*

“G.R. No. 243935 (*People of the Philippines v. Antonio Cruz Alfonso and Harold Pido y Pinca*). — Challenged in this appeal¹ is the July 3, 2018 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09512 which affirmed the June 9, 2017 Decision³ of the Regional Trial Court (RTC), Branch 82, Quezon City, finding Antonio Cruz Alfonso (Alfonso) and Harold Pido y Pinca (Pido) (collectively, accused-appellants) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs under Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Antecedents:

Accused-appellants were charged with violation of Section 5, Article II of RA 9165 in Criminal Case No. Q-10-167213 in an Information⁵ that reads:

That on or about the 19th day of October 2010, in Quezon City, Philippines, that above-named accused, conspiring, confederating and mutually helping each other, without lawful authority, did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug to wit: One (1) unsealed cigarette box labeled Philip Morris Soft Pack with markings EXH A LPL 10-19-10 containing One (1) heat[-]sealed transparent plastic

¹ CA *rollo*, pp. 181-183.

² Id. at 157-173. Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Rosmari D. Carandang (now a retired Member of the Court) and Elihu A. Ybañez.

³ Records, pp. 203-215. Penned by Presiding Judge Lyn Eborra-Cacha.

⁴ Entitled “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: June 7, 2002.

⁵ Records, pp. 1-2.

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sachet containing TWO ZERO POINT THREE FIVE ZERO SEVEN (20.3507) grams of white crystalline substance, containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁶

Upon arraignment, accused-appellants entered pleas of not guilty.⁷ Thereafter, trial on the merits ensued. The prosecution presented the testimony of Intelligence Officer I Leverette Paloma Lopez (IO1 Lopez). On the other hand, the defense presented the testimonies of Alfonso and Pido.⁸

Both the prosecution and the defense stipulated on the testimony of Forensic Chemist Sheila M. Esguerra (FC Esguerra) of the Philippine Drug Enforcement Agency (PDEA) that: (a) she received a Request for Laboratory Examination⁹ and a brown envelope containing a Philip Morris cigarette box and a plastic sachet with white crystalline substance;¹⁰ (b) she conducted a laboratory examination and prepared Chemistry Report No. PDEA-DD010-418;¹¹ (c) she found the specimen positive of methamphetamine hydrochloride; and (d) she turned over the specimen to the evidence custodian and retrieved the same for the scheduled pre-trial.¹²

Version of the Prosecution:

On October 18, 2010, at around 7:00 p.m., IO1 Lopez received a text message from his team leader requiring him to report to the office for a possible buy-bust operation to be conducted against Alfonso.¹³ On October 19, 2010, IO1 Lopez attended the briefing for the buy-bust operation at the PDEA National Capital Region (NCR) Office in Quezon City. A buy-bust team was formed with IO1 Lopez designated as the poseur buyer. The operation would be conducted along Commonwealth Avenue, Quezon City against Alfonso. IO1 Lopez prepared two ₱500-bills buy-bust money to be used for the operation and marked them with his initials "LPL." He then placed the two ₱500-bills on top of boodle money composed of newspaper and bond paper cut outs.¹⁴ In addition, IO1 Nazaron Bongkinki prepared the Pre-Operation Report¹⁵ and Authority to Operate.¹⁶ The team also coordinated with the Tactical Operations Center – MMRO before the operation.¹⁷

⁶ Id. at 1.

⁷ Id. at 37.

⁸ *Rollo*, p. 3.

⁹ Records, p. 19.

¹⁰ *Rollo*, p. 3.

¹¹ Records, p. 18.

¹² Id. at 55.

¹³ TSN, December 3, 2012, pp. 3-4.

¹⁴ *Rollo*, p. 4.

¹⁵ Id. at 5.

¹⁶ Id.

¹⁷ TSN, December 3, 2012, pp. 4-9.

On the same day, at around 9:45 a.m., the team proceeded to Quezon City Police District Tactical Operations for coordination. At around 10:30 a.m., the team, together with the confidential informant, went to the target area in front of *Kristong Hari* Church located along Commonwealth Avenue, Quezon City. The team strategically positioned themselves, while IO1 Lopez and the confidential informant waited inside the vehicle. After some time, the confidential informant contacted Alfonso and informed him that they were already in the agreed meet-up place.¹⁸

At around 11:00 a.m., Alfonso arrived and parked his motorcycle behind the vehicle of IO1 Lopez and the confidential informant. The confidential informant then invited Alfonso to board the vehicle. While already inside the vehicle, the confidential informant introduced IO1 Lopez to Alfonso as the interested buyer of 25 grams of *shabu*. Alfonso asked IO1 Lopez if he had the money, but the latter asked to see the item first. Alfonso then called someone to bring the item. After a few minutes, a man later identified as Pido, arrived and boarded the vehicle. Pido handed to IO1 Lopez the cigarette pack. IO1 Lopez examined its contents and saw a plastic sachet with a white crystalline substance. Then, he placed it inside his sling bag and gave the buy-bust money to Alfonso.¹⁹

Thereafter, IO1 Lopez executed the pre-arranged signal by switching on the vehicle's hazard lights just when Pido was about to alight. The rest of the team immediately rushed to the vehicle and assisted IO1 Lopez in arresting Alfonso and Pido. The team apprised them of their constitutional rights.²⁰

In the course of the arrest, IO1 Lopez recovered from Alfonso the buy-bust money. However, because of heavy downpour and the presence of a number of people in the area, the team proceeded to their office located in Barangay (Bgy.) Pinyahan, Quezon City for the marking. The confiscated items were in the custody of IO1 Lopez from the time of their confiscation until their arrival in their office. IO1 Lopez marked the cigarette pack and the plastic sachet containing a white crystalline substance with his initials and date of seizure, *i.e.* "LPL 10-19-10."²¹

The team contacted a Department of Justice (DOJ) personnel, representative from the media, and an elected barangay official to witness the marking of the confiscated items and the inventory. However, only Bgy. Kagawad Jose Ruiz of Bgy. Pinyahan came to attend the marking and inventory. A Certificate of Coordination²² with the barangay and Inventory of Seized Property²³ were executed, and photographs²⁴ of the confiscated items were

¹⁸ Id. at 9-10.

¹⁹ Id. at 11-13.

²⁰ Id. at 13-15.

²¹ Id. at 15-18.

²² Records, p. 21.

²³ Id. at 13.

²⁴ Id. at 177-178.

taken.²⁵

Thereafter, IO1 Lopez and IO1 Joel Villorente brought the confiscated item to the PDEA Crime Laboratory for examination.²⁶ FC Esguerra received the confiscated item and conducted the laboratory examination which results yielded positive for methamphetamine hydrochloride. She then turned over the custody of the confiscated items to the evidence custodian and retrieved the same on the scheduled pre-trial.²⁷

Version of the Defense:

Alfonso testified that at around 7 a.m. to 8 a.m. of October 18, 2010, he was cruising along *Kristong Hari*, Quezon City to visit his sick grandmother in Zabarte, Quezon City. However, because of heavy downpour, he sought cover under the footbridge of Commonwealth Avenue near "*Sandigan*."²⁸

While waiting for the rain to subside, somebody suddenly held his hand and dragged him inside a parked Toyota Altis. He was brought in front of a restaurant along "Circle" where he was frisked. His money and cellular phone were taken. Thereafter, he was brought to the PDEA office and was asked to produce ₱500,000.00.²⁹

After an hour's stay inside a room, he was transferred to the main office where he saw Pido for the first time. They were forced to point to the table but Alfonso refused. The officers then punched Alfonso in his stomach and told him that he would be criminally charged together with Pido. Afterwards, they were brought to the Quezon City Hall for inquest proceedings.³⁰

He likewise averred that he was present during the inventory and underwent physical examination in Camp Crame.³¹ His drug test results yielded negative of methamphetamine hydrochloride.³² In addition, he alleged that he was not allowed to inform his family about his arrest or to request assistance of a lawyer during the inquest proceedings.³³ He attested that IO1 Lopez was not among those six persons in civilian clothes who arrested him.³⁴

On the other hand, Pido testified that on October 18, 2010, between 7 a.m. to 8 a.m., he was waiting for a bus along Commonwealth Avenue under the footbridge in front of "*Sandigan*" going to Sapang Palay, Bulacan.³⁵ Suddenly,

²⁵ TSN, December 3, 2012, pp. 18-21; TSN, November 4, 2013, p. 32.

²⁶ TSN, December 3, 2012, p. 21.

²⁷ Records, p. 55.

²⁸ TSN, March 2, 2017, pp. 41-42.

²⁹ Id. at 42-43.

³⁰ Id. at 43-45.

³¹ Id. at 48-49.

³² Id. at 49-50.

³³ Id. at 50.

³⁴ Id. at 45.

³⁵ TSN, May 29, 2017, pp. 55-56.

a white Revo vehicle stopped in front of him. Four men alighted from the vehicle and asked him "Ikaw ba si Pilay?" to which he answered in the negative.³⁶

The men invited him to board the vehicle to which he acceded. They went to the PDEA office in Bgy. Pinyahan, Quezon City where he met a group of individuals in civilian clothes, as well as Alfonso. He and Alfonso were instructed to go near a table and were shown a pack of cigarette containing a white item. They were asked to sign a paper and point at the cigarette pack.³⁷ He averred that he did not know of any reason why a case was filed against him.³⁸

Ruling of the Regional Trial Court:

On June 9, 2017, the RTC rendered a Decision³⁹ convicting accused-appellants of violation of Section 5, Article II of RA 9165. The *fallo* of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused **Antonio Cruz Alfonso** and **Harold Pido y Pinca** "Guilty" beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165.

Accordingly, this Court sentences both the accused **Antonio Cruz Alfonso** and **Harold Pido y Pinca** to suffer the penalty of *Life Imprisonment* and to each pay a Fine in the amount of Five Hundred Thousand (P500,000.00) Pesos without eligibility for parole in accordance with R.A. 9346.

The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject of this case for proper disposition and final disposal.

SO ORDERED.⁴⁰

Ruling of the Court of Appeals:

On July 3, 2018, the CA rendered its assailed Decision⁴¹ denying accused-appellant's appeal and affirming their conviction for violation of Section 5, Article II of RA 9165. The *fallo* of the CA Decision reads:

WHEREFORE, the instant appeal is hereby **DENIED**. The June 9, 2017 Decision of the Regional Trial Court, Branch 82, Quezon City in Criminal Case No. Q-10-167213 is **AFFIRMED** in toto.

SO ORDERED.⁴²

³⁶ Id. at 57.

³⁷ Id. at 57-59.

³⁸ Id. at 63.

³⁹ Records, pp. 203-215.

⁴⁰ Id. at 215.

⁴¹ CA *rollo*, pp. 157-173.

⁴² Id. at 172.

According to the CA, accused-appellants were estopped from questioning the legality of their arrest for failure to move to quash the Information filed against them before their arraignment. The CA also held that the prosecution witness sufficiently established the sequence of events during the buy-bust operation which satisfied the "objective test" laid down in *People v. Doria*.⁴³ Clearly, at the time of their apprehension, accused-appellants were committing an offense in the presence of the arresting officers, which makes their warrantless arrest lawful pursuant to Section 5(a), Rule 113 of the Rules of Court. Hence, the fruit of the poisonous tree doctrine finds no application in the case at bar.

Moreover, the CA found that all the elements of Illegal Sale of Dangerous Drugs were sufficiently proved by the prosecution. The crime was consummated from the moment IO1 Lopez, the poseur buyer, received the drugs from Alfonso and Pido, who delivered the cigarette pack containing one heat-sealed plastic sachet of *shabu*; and tendered the buy-bust money to them. The CA found the testimony of IO1 Lopez to be credible; he is presumed to have performed his duties in a regular manner unless there is evidence to the contrary. Alfonso's defense of frame-up would succeed only upon presentation of strong evidence convincing enough to rebut the presumption of regularity in the performance of duty accorded to law enforcers. Accused-appellants failed to substantiate their claim that they were separately apprehended on October 18, 2010 and not on October 19, 2010. No evidence was also adduced that the police officers were impelled by ill motive to testify against them.

Lastly, the CA held that the integrity and evidentiary value of the confiscated items were preserved. Although the seized items were not marked immediately at the place of incident, the CA ruled that the prosecution showed substantial compliance with Section 21, Article II of RA 9165 and its implementing rules and regulations. IO1 Lopez's failure to mark the confiscated items immediately at the place of incident was justified because of the heavy downpour and the presence of a number of people in the area. The absence of a DOJ personnel and media representative during the inventory was likewise explained by the prosecution. The CA held that despite the procedural lapses, the prosecution was able to prove that the integrity and evidentiary value of the confiscated items were duly preserved in an unbroken chain of custody from the time of confiscation until their presentation in court.

Issues

The issues raised for consideration of the Court are:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANTS ARE GUILTY OF THE OFFENSE CHARGED NOTWITHSTANDING

⁴³ 361 Phil. 595, 614 (1999).

THE PROSECUTION'S FAILURE TO PROVE THE LEGALITY OF THEIR ARREST.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANTS ARE GUILTY OF THE OFFENSE CHARGED BASED ON THE EVIDENCE OBTAINED BY VIRTUE OF AN INVALID WARRANTLESS ARREST.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANTS ARE GUILTY DESPITE THE PROSECUTION'S FAILURE TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE ALLEGEDLY SEIZED DANGEROUS DRUG.

IV

THE COURT A QUO GRAVELY ERRED IN RULING THAT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES APPLIES TO THE INSTANT CASE.⁴⁴

Arguments of the Defense:

Accused-appellants contend that it is quite improbable for them to sell illegal drugs boldly and unashamedly to total strangers especially when it involved a large amount. They argue that the prosecution failed to convincingly show that IO1 Lopez arrested them after an actual buy-bust operation. Although the legality of their arrest may no longer be questioned, the same is not true as to the admissibility of the evidence obtained thereby. Hence, the cigarette pack allegedly containing a plastic sachet with white crystalline substance should be rendered inadmissible in view of their illegal arrest.⁴⁵

Furthermore, accused-appellants argue that the prosecution failed to preserve the integrity and evidentiary value of the allegedly confiscated dangerous drugs. They alleged that the marking of the seized item should be made in the presence of the accused immediately upon arrest or confiscation or recovery of dangerous drugs or related items, as this operates to set apart such seized items as evidence from other material, which thereby forestalls switching, planting or contamination of evidence. However, in the present case, the marking was not done immediately upon seizure. Hence, the first link in the chain of custody was not established which jeopardized the identity of the *corpus delicti*.⁴⁶

In addition, they argue that the inventory receipt⁴⁷ was not executed in accordance with Section 21, Article II of RA 9165. The prosecution failed to show that the alleged confiscated item was photographed and inventoried in the

⁴⁴ CA rollo, pp. 88-89.

⁴⁵ Id. at 94.

⁴⁶ Id. at 95-96.

⁴⁷ Records, pp. 12-13.

presence of a representative from the media and the DOJ personnel. Also, IOI Lopez contradicted himself when he initially declared that they conducted the inventory at the place of arrest after apprising accused-appellants of their constitutional rights but later changed tack, and testified that the inventory was conducted at the PDEA office in Bgy. Pinyahan, Quezon City in the presence of accused-appellants and Bgy. Kagawad Ruiz. The prosecution also failed to narrate the manner by which the confiscated items were preserved and safeguarded after examination by the forensic chemist and pending their presentation in court.⁴⁸

Lastly, accused-appellants argue that the presumption of regularity in the performance of official duties does not apply in the present case as the police officers' performance were tainted with irregularities. Although no evidence is adduced showing any ill motive on the part of the police officers, the flagrant procedural lapses they committed in handling the alleged confiscated items effectively negate the presumption of regularity.⁴⁹

Arguments of the Prosecution:

On the other hand, the prosecution contends that accused-appellants were validly arrested during a legitimate buy-bust operation. As a form of entrapment, buy-bust operation has long been held as a legitimate method of apprehending offenders in the act of commission of offense. As provided in Section 5(a), Rule 113 of the Rules of Court, an arrest without warrant may be effected when a person has committed, is actually committing or is attempting to commit an offense. Accused-appellants were caught *in flagrante delicto* when they sold *shabu* to a police officer in a buy-bust operation. Thus, the police officers are not only authorized but duty bound to arrest them even without a warrant.⁵⁰

Furthermore, the People avers that all the elements of Illegal Sale of Dangerous Drugs were sufficiently established, *i.e.*, (a) the identities of the buyer and seller, the object and the consideration; and (b) the delivery of the thing sold and the payment therefor. Also, the conspiracy between accused-appellants was sufficiently established when Alfonso called Pido after the former was asked by IOI Lopez to produce the contraband. Then, Pido arrived, boarded the vehicle and handed the cigarette pack which contains *shabu* to IOI Lopez.⁵¹

The People also argues that there is no gap in the chain in the custody of the seized items. It contends that "immediate confiscation" has no exact definition. Hence, marking upon immediate confiscation may be interpreted to even include marking at the nearest police station or office of the apprehending team. In addition, what the law requires is only substantial compliance and not

⁴⁸ CA *rolle*, pp. 96-100.

⁴⁹ *Id.* at 100-101.

⁵⁰ *Id.* at 131-133.

⁵¹ *Id.* at 133-135.

necessarily perfect adherence for as long as the integrity and evidentiary value of the seized items are preserved.⁵²

Lastly, the People argues that testimony of IO1 Lopez deserves great respect and credence since a police officer enjoys a presumption of regularity in the performance of his duties. His testimony is duly supported by the documentary evidence such as Request for Laboratory Examination,⁵³ Chemistry Report,⁵⁴ Affidavit of Poseur Buyer,⁵⁵ Inventory Report,⁵⁶ Photographs,⁵⁷ Pre-operation Report,⁵⁸ Authority to Operate,⁵⁹ Certificate of Coordination,⁶⁰ buy-bust money and Affidavit of Arresting Officer.⁶¹ Hence, as opposed to accused-appellants' defenses of denial, frame-up and extortion that could easily be concocted, IO1 Lopez's testimony deserves full faith and credit especially when no evidence of ill motive was adduced against him.⁶²

Our Ruling

After due consideration, we resolve to acquit accused-appellants.

Accused-appellants assail the validity of the warrantless arrest made against them *via* a buy-bust operation conducted by the PDEA agents on October 19, 2010.

We are not persuaded.

The nature and legality of buy-bust operations have long been established by this Court in *People v. Bongalon*,⁶³ to wit:

A buy-bust operation is a form of entrapment that is resorted to for trapping and capturing felons in the execution of their criminal plan. The operation is sanctioned by law and has consistently proved to be an effective method of apprehending drug peddlers. Unless there is a clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.⁶⁴

⁵² Id. at 135-141.

⁵³ Records, p. 19.

⁵⁴ Id. at 20.

⁵⁵ Id. at 6-7.

⁵⁶ Id. at 12-13.

⁵⁷ Id. at 177-178.

⁵⁸ Id. at 23.

⁵⁹ Id. at 22.

⁶⁰ Id. at 21.

⁶¹ Id. at 8-9.

⁶² *CA rollo*, pp. 141-144.

⁶³ *People v. Bongalon*, 425 Phil. 96, 114 (2002), citing *People v. Johnson*, 401 Phil. 734, 750 (2000); *People v. Chua Uy*, 384 Phil. 70, 86 (2000).

⁶⁴ Id.

Furthermore, in *People v. Doria*,⁶⁵ which we reiterated in *People v. Agulay*,⁶⁶ this Court explained that an accused may be arrested without a warrant when he is apprehended *in flagrante delicto* as a result of a buy-bust operation:

We also hold that the warrantless arrest of accused-appellant Doria is not unlawful. Warrantless arrests are allowed in three instances as provided by Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure, to wit:

Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

x x x x x x x x x

Under Section 5 (a), as above-quoted, a person may be arrested without a warrant if he "has committed, is actually committing, or is attempting to commit an offense." Appellant Doria was caught in the act of committing an offense. **When an accused is apprehended in flagrante delicto as a result of a buy-bust operation, the police are not only authorized but duty-bound to arrest him even without a warrant.**⁶⁷ (Emphasis Ours.)

Contrary to accused-appellants' contention, the prosecution sufficiently proved the existence of the legitimate buy-bust operation which was well-coordinated and conducted by the PDEA agents against them. Prior to the operation, the PDEA agents coordinated with the Quezon City Police District, Southern Police District, Eastern Police District and Rizal Area of Responsibility that a buy-bust operation would be conducted against "@ANTHONY AND COHORTS," later identified as accused-appellants Alfonso and Pido, on October 19, 2010. Then, an Authority to Operate was issued by PDEA Metro Manila Regional Office to the buy-bust team headed by IA V Christian O. Frivaldo.

Lastly, the testimony of IO1 Lopez confirmed that he, together with the rest of the buy-bust team, conducted a legitimate buy-bust operation on October 19, 2010 against accused-appellants. As a result thereof, a heat-sealed plastic

⁶⁵ *People v. Doria*, supra note 43 at 626-627.

⁶⁶ 588 Phil. 247, 272 (2008).

⁶⁷ *People v. Doria*, supra.

sachet containing a white crystalline substance inside a cigarette pack was confiscated and yielded positive for methamphetamine hydrochloride. Accused-appellants' contention that it is highly improbable for them to sell such large amount of dangerous drugs, *i.e.* 25 grams, to a stranger, has no factual and legal basis. What is important in this case is that accused-appellants were caught selling dangerous drugs after a successful and legitimate buy-bust operation even when IO1 Lopez, the poseur-buyer, does not personally know or was familiar with the sellers, Alfonso and Pido.

Having established the validity of the buy-bust operation, the subsequent arrest of accused-appellants by the police was therefore lawful for having been caught *in flagrante delicto*. Thus, there is no truth to accused-appellants' defenses of frame-up and extortion, and the contention that they were separately arrested on October 18, 2010, as there is overwhelming evidence that they were validly arrested on October 19, 2010 through a buy-bust operation. The testimony of IO1 Lopez deserves full faith and credit absent any evidence that he was inspired by any improper motive or was not properly performing his duty.

Nonetheless, despite the finding of a valid warrantless arrest, we find that the prosecution failed to establish strict compliance with Section 21, paragraph 1, Article II of RA 9165, which deviation casts a doubt to the integrity and evidentiary value of the illegal drug confiscated from accused-appellants.

Section 21, paragraph 1, Article II of RA 9165 requires that:

(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.

Indeed, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.⁶⁸ It is of utmost importance in the prosecution of Illegal Sale and Possession of Dangerous Drugs that the *corpus delicti* or the body of the crime, *i.e.* the identity and integrity of confiscated illicit drugs, must be preserved. Hence, strict compliance of the procedure laid down under RA 9165 is required as the failure to adhere with the said rules raises a doubt on the integrity and evidentiary value of the confiscated items from the accused.

As held in *People v. Lim*:⁶⁹

⁶⁸ *People v. Kamad*, 624 Phil. 289, 301-302 (2010).

⁶⁹ 435 Phil. 640 (2002).

x x x [A]ny apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure and confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign copies of the inventory and be given a copy thereof. **The failure of the agents to comply with such a requirement raises a doubt whether what was submitted for laboratory examination and presented in court was actually recovered from the appellants. It negates the presumption that official duties have been regularly performed by the PAOC-TF agents.**⁷⁰ (Emphasis Ours.)

Nonetheless, Section 21(a), Article II of the Implementing Rules and Regulation (IRR) offers some flexibility in complying with the express requirements under paragraph 1, Section 21, Article II of RA 9165, thus:

(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 ours.)

This saving clause, however, applies only where the prosecution recognized the procedural lapses and thereafter explained the cited justifiable grounds, and when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.⁷¹

In the present case, IO1 Lopez failed to immediately mark the confiscated items at the place of arrest. A review of the testimony of IO1 Lopez shows that he placed the markings on the seized items upon their arrival in the PDEA office located in Bgy. Pinyahan, Quezon City, thus:

Q: Mr. Witness, you've mentioned that he handed to you a plastic sachet of suspected shabu?

A: Yes, sir.

Q: I am showing to you, Mr. Witness, a brown envelope and inside this brown envelope is a plastic sachet containing white crystalline substance, what is the relation of this plastic sachet of white crystalline substance to the one you purchased and received from Antonio Cruz Alfonso?

A: This is the same plastic sachet because I placed my markings LPL.

⁷⁰ Id. at 659-660.

⁷¹ *People v. Capuno*, 655 Phil. 226, 240-241 (2011).

Q: Witness pointing to Exhibit "B-2". In what place, Mr. Witness, did you affix your markings LPL?

A: I placed my markings at the office in Barangay Piñahan, Quezon City, sir.

Q: Why not in the target area?

A: At that time, sir, there were many people were (sic) pushing my teammates and it was raining hard, for our safety our team leader decided to proceed to the office.

x x x x

Q: I am showing to you an empty cigarette pack labeled Philip Moris, what is the relation of this cigarette pack to the Philip Moris cigarette pack you've just mentioned as the other packaged of the plastic sachet?

A: This is the same cigarette pack, sir.

Q: Why do you say that this is the same?

A: Because I placed my markings, sir, LPL.

x x x x

Q: From the time you left Kristong Hari up to the time that you arrived at NCR PDEA office, who was in possession of Exhibit "B-2"?

A: It was in my possession, sir.⁷²

"Marking means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized."⁷³ We cannot overemphasize the importance of immediate marking at the place of arrest, if practicable, as this is the "first and most crucial step in the chain of custody rule as it initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting evidence."⁷⁴ Thus, marking must be done immediately upon confiscation of the seized items in the presence of the accused or his or her representative to ensure the integrity of the seized items as it enters the chain of custody.⁷⁵

Although the marking at the PDEA office or police station does not *ipso facto* render the marking infirm, it must be done so under justifiable reasons:

The marking of the seized items at the police station, not at the place of incident, did not impair the chain of custody of the drug evidence. For one, the marking at the nearest police station is allowed whenever the same is availed of due to practical reason[s]. For another, the prosecution had explained the failure of the buy-bust team to immediately mark these items at the place where the buy-bust operation was conducted.⁷⁶ (Citations omitted)

⁷² TSN, December 3, 2012, pp. 16-18.

⁷³ *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

⁷⁴ *People v. Ramirez and Lachica*, 823 Phil. 1215, 1225 (2018).

⁷⁵ *Id.* at 1216, citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).

⁷⁶ *People v. Sahibil*, G.R. No. 228953, January 28, 2019.

In the case at bar, the marking of the seized items at the PDEA office rather than at the exact scene of the arrest and the seizure of evidence is not justified under the relevant attending circumstances of the case. We note that the buy-bust operation and the arrest indisputably took place and the items were seized near or inside a vehicle where all the actors, *i.e.* appellants, confidential informant and poseur-buyer IO1 Lopez, were aboard. The explanation offered by the prosecution as to why they failed to conduct the immediate marking of the seized items at the place of arrest, *i.e.* heavy rainfall and the presence of by-standers, is not acceptable especially when the PDEA agents were not impeded to do so. Even with the heavy rainfall, it would not hinder IO1 Lopez to mark the seized items immediately at the place of arrest as the confiscation thereof and the apprehension of the appellants mainly happened on board a vehicle. Neither was the presence of by-standers justified the non-immediate marking of the seized items at the place of arrest or on board the vehicle without any proof that these people impeded the arrest of appellants and the immediate marking of the seized items.

In addition, the inventory and taking of photographs of the seized items were conducted without the presence of representatives from the media and the DOJ, which under the law are required to sign copies of the inventory and be given a copy thereof. Only a barangay elected official was present during the conduct of the inventory. The prosecution, through the testimony of IO1 Lopez, simply stated that both the DOJ and media representatives failed to arrive during the physical inventory and taking of photographs, thus:

Q. And when you arrived at the office, Mr. Witness, what happened to Exhibit "B-2"?

A. All the items are in my possession including the buy bust money, sir.

Q. What did you do?

A. I was holding it, sir, and I called the Barangay Official for the conduct of the Inventory, sir.

Q. Who else did you summon, if any, for inventory purposes?

A. Actually, sir, our Team Leader instructed one member of our team to summon a Barangay elected Official and member of media representative, but luckily we have one only Barangay Elected Official in the person of Kagawad Ruiz from Barangay Piñahan, sir.⁷⁷

x x x x

Q. What about a representative from the media which also required by the Section 21 of Republic Act of 9165, you comply with it?

A. Actually, sir, the witness from DOJ and Prosecutor my team leader instructed one of the members of our team.

⁷⁷ TSN, December 3, 2012, pp. 18-19.

- Q. I'm not asking the explanation. Did you do that was there a representative from media?
- A. They were not able to arrive, sir.⁷⁸

Obviously, the PDEA agents had not strictly complied with the provisions of RA 9165 and its IRR. The prosecution must show that earnest efforts were employed in contacting the representatives under the law. Mere statements that the representatives are not available without any explanation on whether serious attempts were employed to look for other representative given the circumstances will not suffice and is unacceptable.⁷⁹ Thus, the prosecution must not only state the reasons for non-compliance but should also convince the court that it exerted earnest efforts to comply with the mandated procedure and that the actions of the police officers were reasonable under the given circumstance.⁸⁰ Verily, a mere statement from IO1 Lopez that the DOJ and media representatives failed to arrive is not adequate and convincing absent any proof that the prosecution employed earnest effort to contact these representatives and secure their presence.

It bears emphasizing that “ostensibly approximate compliance” does not suffice, there must be actual compliance with Section 21, Article II of RA 9165.⁸¹ The failure to do so is tantamount to a failure to establish *corpus delicti* which is a crucial element of the crime charged.⁸² In a prosecution for illegal sale of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti*.⁸³ Failure in such would render the evidence for the State as insufficient to prove guilt beyond reasonable doubt.⁸⁴

The procedure laid down under Section 21, Article II of RA 9165 is a matter of substantive law and cannot be simply brushed aside as a procedural technicality nor ignored as an impediment to the conviction of illegal drug suspects.⁸⁵ Hence, the CA erred when it affirmed the finding of the RTC that the prosecution sufficiently proved the *corpus delicti* despite the glaring irregularities made by the PDEA agents in complying with the rules of RA 9165 and its IRR without offering any justifiable grounds for non-compliance thereof.

Lastly, Sections 3 and 6, paragraph 8 of Dangerous Drugs Board (“DDB”) Resolution No. 2, Series of 2003, (*Implementing Rules and Regulations Governing Accreditation of Drug Testing Laboratories in the Philippines*) require laboratory personnel to document the chain of custody each time a

⁷⁸ TSN, November 4, 2013, p. 8.

⁷⁹ *People v. Umipang*, 686 Phil 1024, 1052 (2012).

⁸⁰ *People v. Cabrellos*, 837 Phil. 428, 444 (2018), citing *People v. Crispo*, 828 Phil. 416, 436 (2018).

⁸¹ *People v. Saragena*, 817 Phil. 117, 132 (2017), citing *People v. Holgado*, 741 Phil. 78, 94 (2014).

⁸² *Id.* citing *Lescano v. People*, 778 Phil. 460, 470 (2016).

⁸³ *People v. Cabrellos*, supra, citing *People v. Gamboa*, 833 Phil. 1055, 1072 (2018), citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

⁸⁴ *Id.*

⁸⁵ *Id.*, citing *People v. Macapundag*, 807 Phil. 234, 244 (2017); *People v. Umipang*, 686 Phil 1024, 1038 (2012).

specimen is handled or transferred until its disposal. The board regulation also requires identification of the individuals in this part of the chain. In this case, the defense admitted that: (1) FC Esguerra was the forensic chemist who received the items seized from IO1 Lopez on October 19, 2010; and (2) that after laboratory examination, she kept them in a secure and safe place in the laboratory office through the evidence custodian until they were retrieved by her and submitted to the court.

However, the prosecution failed to specifically name or identify the evidence custodian who had the custody of the seized items pending its presentation before the court. The identity of the evidence custodian is also crucial considering that the said officer handled the seized items which may engender doubt on the identity and integrity of the seized item. It bears stressing that the identity of all officers who had the custody of the drugs, even for momentary periods is essential⁸⁶ in order to prove an unbroken chain of custody from the time of its confiscation until its presentation before the court and its disposal. Hence, the failure of the prosecution to identify the identity of the evidence custodian in this case is fatal to its cause in addition to the other procedural lapses committed by the PDEA agents.

Clearly, the totality of the evidence shows that the prosecution had failed to duly prove that the integrity and evidentiary value of the *corpus delicti*, i.e. 1 heat sealed plastic sachet containing methamphetamine hydrochloride and 1 empty Philip Morris cigarette pack, were the same items confiscated from the accused-appellants. Evidently, the PDEA agents failed to strictly comply with Section 21, Article II of RA 9165, namely: (a) the marking of the seized items were done in the PDEA office and not at the place of arrest without any justifiable or practicable reason; (b) the inventory and taking of photographs were not attended by DOJ and media representatives without offering any justifiable explanation and employing earnest effort; and (c) the identity of the evidence custodian was not properly identified. These procedural lapses cast doubt on the integrity and evidentiary value of the seized items and leave a gaping hole in the chain of custody which thereby create a reasonable doubt on the guilt of the appellants.

Thus, in view of the foregoing, the acquittal of accused-appellants is warranted.

WHEREFORE, the appeal is **GRANTED**. The July 3, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09512 is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of accused-appellants Antonio Cruz Alfonso and Harold Pido y Pinca. They are hereby **ACQUITTED** of the crime charged against them and ordered immediately **RELEASED** from custody, unless they are being held for some other lawful cause.

⁸⁶ *People v. Hementiza*, 807 Phil. 1017, 1037 (2017).

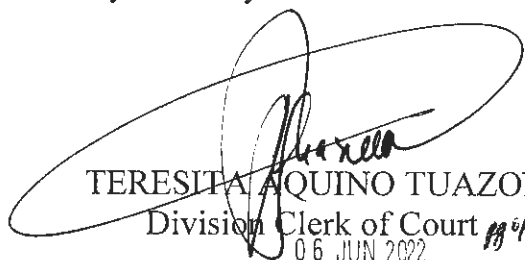
Let copies of this Resolution be furnished to the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation.

The Director General is **ORDERED** to immediately implement this Resolution and to inform this Court of the action he has taken thereon within five days from receipt thereof.

Let entry of judgment be issued immediately.

SO ORDERED.”

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court *ff/ck*
 06 JUN 2022

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Accused-Appellants
 c/o The Director
 Bureau of Corrections
 1770 Muntinlupa City

THE DIRECTOR (x)

Bureau of Corrections
 1770 Muntinlupa City

THE SUPERINTENDENT (x)

New Bilibid Prison
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)

Regional Trial Court, Branch 82
 Quezon City
 (Crim. Case No. Q-10-167213)

JUDGMENT DIVISION (x)

Supreme Court, Manila

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