



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Baguio City

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 27 April 2022 which reads as follows:*

**“G.R. No. 244257 (People of the Philippines v. Donalyn Dela Cruz Sewell @ “Donna” and John Rick Gemelo y Cunanan @ “Jerobo”).** — Challenged in this appeal<sup>1</sup> is the September 10, 2018 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09841, which affirmed the August 15, 2017 Decision<sup>3</sup> of the Regional Trial Court (RTC), Branch 4, Batangas City finding accused-appellants Donalyn Dela Cruz Sewell (Sewell) and John Rick Gemelo y Cunanan (Gemelo), guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

**The Antecedents**

Sewell and Gemelo were charged before the RTC with violation of Sections 5 and 11, Article II of RA 9165 in Criminal Case Nos. 17982, 17983, and 17984, in three separate Informations which read:

Criminal Case No. 17982 – Appellants Sewell and Gemelo

That on or about March 25, 2013 at around 9:50 in the evening at Brgy. Calicanto, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, not being authorized by law, did then and there knowingly, willfully, and criminally dispense or deliver one (1) transparent plastic sachet of Methamphetamine Hydrochloride, more commonly known as Shabu, a dangerous drug, weighing 1.12 grams, which is a clear violation of the above-cited law.

<sup>1</sup> CA rollo, pp. 123-125.

<sup>2</sup> Id. at 98-113. Penned by Associate Justice Jhosep Y. Lopez (now a Member of this Court) and concurred in by Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Rosmari D. Carandang (now a retired Member of this Court).

<sup>3</sup> Records, pp. 254-259. Penned by Presiding Judge Albert A. Kalalo.

CONTRARY TO LAW.<sup>4</sup>

Criminal Case No. 17983 – Appellant Sewell

That on or about March 25, 2013 at around 9:50 in the evening at Brgy. Calicanto, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully, and criminally possess or have under [her] custody and control one (1) transparent plastic sachet containing Methamphetamine Hydrochloride, more commonly known as Shabu, a dangerous drug, weighing 0.12 grams, which is a clear violation of the above-cited law.

CONTRARY TO LAW.<sup>5</sup>

Criminal Case No. 17984 – Appellant Gemelo

That on or about March 25, 2013 at around 9:50 in the evening at Brgy. Calicanto, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully, and criminally possess or have under his custody and control one (1) transparent plastic sachet containing Methamphetamine Hydrochloride, more commonly known as Shabu, a dangerous drug, weighing 0.08 grams, which is a clear violation of the above-cited law.

CONTRARY TO LAW.<sup>6</sup>

Upon arraignment, Sewell and Gemelo pleaded not guilty to the crimes charged.<sup>7</sup> Thereafter, trial on the merits ensued.

**Version of the Prosecution**

On March 25, 2013, at around 7:30 p.m., a confidential informant arrived at the Batangas City Police Station reporting that he had agreed to meet with a certain “Donna,” later identified as Sewell, to buy shabu worth ₱6,000.00 at Caedo Commercial Complex. During that time, Police Officer 2 Ponciano Villena Asilo (PO2 Asilo) and Police Officer 1 Ruther Bonsol Carandang (PO1 Carandang), members of Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF), were on duty. Consequently, a buy-bust operation was planned and coordinated with the Philippine Drug Enforcement Agency (PDEA). The buy-bust team consisted of PO2 Asilo, PO1 Carandang, Senior Police Officer (SPO1) Lindbergh Yap, and team leader, SPO1 Eric De Chavez (SPO1 De Chavez). Before departing from the station, SPO1 De Chavez frisked the members of the buy-bust team to ensure that they were not harboring any illegal items. The fact and circumstance of their departure were entered in the police blotter.<sup>8</sup>

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<sup>4</sup> Id. at 1.

<sup>5</sup> Id. at 19.

<sup>6</sup> Id. at 36.

<sup>7</sup> Id. at 64-65.

<sup>8</sup> Exhibit “A”, folder of exhibits, p. 7.

Afterwards, the buy-bust team went to the Barangay (Bgy.) Hall of Calicanto to coordinate their operation, and to record their arrival and purpose in the barangay blotter. Then, they proceeded to Caedo Commercial Complex and parked their vehicle in front of M. Lhuillier Pawnshop. PO1 Carandang and the confidential informant alighted from the vehicle and waited at the steps of the mall. On the other hand, PO2 Asilo alighted and positioned himself behind some parked vehicles.<sup>9</sup>

Thereafter, a woman identified by the confidential informant as Sewell, together with a certain man, later identified as Gemelo, approached the confidential informant. Sewell and the confidential informant talked for a while. Then, Sewell took out something from a brown purse which she gave to Gemelo who, in turn, handed it to the confidential informant. The confidential informant then gave it to PO1 Carandang, who upon seeing the transparent plastic sachet containing white crystalline substance, gave a signal to the buy-bust team.<sup>10</sup>

PO1 Carandang introduced himself as a police officer, and apprised Sewell and Gemelo of their constitutional rights. PO1 Carandang then marked the confiscated plastic sachet containing white crystalline substance with his initials "RBC 03-25-13". PO1 Carandang also confiscated Sewell's brown purse and another plastic sachet containing white crystalline substance found inside the purse, which he marked with "RBC" and "RBC-1 03-25-03," respectively. On the other hand, PO2 Asilo recovered from Gemelo's pocket a plastic sachet containing white crystalline substance which he marked with his initials "PVA." Thereafter, photographs of the marking of the confiscated items were taken at the place of arrest.<sup>11</sup>

Accused-appellants were then brought to the barangay office of Calicanto to record in the barangay blotter the fact of their arrest, and to conduct physical inventory of the seized items. The inventory was conducted in the presence of Bgy. Councilor Romeo Illustre (Bgy. Councilor Illustre), and Prosecutor Evelyn Jovellanos (Prosecutor Jovellanos). Then, accused-appellants were taken to the Batangas City Police Station for documentation. During that time, the confiscated items were under the custody of PO1 Carandang and PO2 Asilo, respectively, which they later turned over to SPO1 Pepito Adelantar (SPO1 Adelantar) while in the barangay hall, as shown in the Chain of Custody Form.<sup>12</sup>

Thereafter, accused-appellants and the seized items were taken to the police station. SPO1 Adelantar presented the seized items to the desk officer on duty, PO3 Carlos Llago, and prepared the request for laboratory examination of the seized items and physical examination of accused-appellants. Then, SPO1 Adelantar went to the Batangas Provincial Crime Laboratory and turned over the seized items to SPO3 JT Agustin (SPO3 Agustin), who handed them over to

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<sup>9</sup> *Rollo*, p. 6.

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

<sup>11</sup> *Id.*

<sup>12</sup> TSN, August 27, 2013, pp. 13-17.

Police Senior Inspector Herminia C. Llacuna (PSI Llacuna). The results of the examination conducted by PSI Llacuna on accused-appellants' urine samples and the seized items yielded positive for methamphetamine hydrochloride. Then, the seized items were kept under the custody of SPO3 Agustin, the evidence custodian, pending its presentation before the court.<sup>13</sup>

### Version of the Defense

Sewell and Gemelo averred that they were not arrested in a buy-bust operation on the night of March 25, 2013, but at around 3:00 p.m. of the same day under unlawful circumstances. Sewell testified that she was at her house near Lawas in Bgy. Calicanto about to close her food stall when a group of police officers, known to her as, Yap, Gonda, Asilo, and Carandang arrived. She averred that she knew them to be police officers as she used to regularly offer and sell them perfumes and gadgets payable in installments at the police station. When she saw them, she let them in and offered them food.<sup>14</sup>

Afterwards, Gonda approached her while she was standing behind the counter, while the others entered and searched her house. For about an hour, they picked random things, inspected them, and threw them away. She was not able to stop them because the police officers were holding her down. Eventually, they came out bringing with them various electronic gadgets and a wristwatch with an estimated worth of ₱200,000.00; and ₱10,000.00 cash. Yap and Carandang approached Gonda and showed them their haul, and told him that the search was "negative". Then, Gonda pulled out a plastic sachet from his pocket and declared "it is now positive."<sup>15</sup>

Afterwards, Sewell averred the police authorities forced her to go with them. At this point, she saw Gemelo, handcuffed, in front of her store. They were then boarded in motorcycles and brought to Batangas City Police Station.<sup>16</sup> Then, at around 10:00 p.m., police officers De Chavez, Carandang and Asilo brought Sewell and Gemelo to Caedo Commercial Center on board a jeepney. They were told to sit on the stairs and point at the plastic sachet placed on the steps. Thereafter, they were taken to the barangay hall.<sup>17</sup>

Gemelo corroborated Sewell's testimony when he testified that an individual in civilian clothes, whom he later identified as PO1 De Chavez, accosted him while he was walking on his way to Recto Road, Calicanto, Batangas City.<sup>18</sup> He was told to raise his hand and not to run. Then, he was pushed against a wall and handcuffed. He saw Sewell with four individuals going out of her store.<sup>19</sup> Gemelo and Sewell were boarded on motorcycles and

<sup>13</sup> TSN, January 29, 2014, pp. 9-13.

<sup>14</sup> TSN, February 11, 2016, pp. 7-9.

<sup>15</sup> Id. at 9-14.

<sup>16</sup> Id. at 15-16.

<sup>17</sup> Id. at 18-20.

<sup>18</sup> TSN, June 7, 2017, p. 4.

<sup>19</sup> Id.

brought to Batangas City Police Station.<sup>20</sup> At around 10:00 p.m., they were brought out of the police station and taken to Caedo Commercial Complex in Bgy. Calicanto by De Chavez, Asilo, and Carandang. They were ordered to sit on the steps of Jollibee and to point at the plastic sachets while being photographed. Then, they were brought to the barangay hall of Calicanto and told to do the same.<sup>21</sup>

### **Ruling of the Regional Trial Court**

On August 15, 2017, the RTC rendered its Decision<sup>22</sup> convicting Sewell and Gemelo of violation of Sections 5 and 11, Article II of RA 9165. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, this court hereby renders judgment as follows:

1. In Criminal Case No. 17982 for violation of Sec. 5, Article II of RA 9165, the court finds accused DONALYN DELA CRUZ SEWELL and JOHN RICK GEMELO GUILTY, and in the absence of any aggravating circumstance, hereby sentences them to LIFE IMPRISONMENT, and to pay a fine of five hundred thousand pesos (P500,000.00), without subsidiary imprisonment in case of insolvency.

2. In Criminal Case No. 17983 for violation of Sec. 11, Article II of RA 9165, the court finds accused DONALYN DELA CRUZ SEWELL GUILTY, and hereby sentences her with imprisonment of twelve years (12) and one (1) day to seventeen (17) years, and to pay a fine of three hundred thousand pesos (P300,000.00), without subsidiary imprisonment in case of insolvency.

3. In Criminal Case No. 17984 for violation of Sec. 11, Article II of RA 9165, the court finds accused JOHN RICK GEMELO GUILTY, and hereby sentences him with imprisonment of twelve years (12) and one (1) day to seventeen (17) years, and to pay a fine of three hundred thousand pesos (P300,000.00), without subsidiary imprisonment in case of insolvency.

Let a Commitment Order issue for the transfer of the accused from the Batangas City jail to the National Bilibid Prisons (John Rick Gemelo) and the Women's Correctional Facility in Mandaluyong (Donalyn Dela Cruz Sewell).

The plastic sachets (Exhibit "P", "Q" and "O") containing an aggregate of 1.32 gram of shabu, being illegal *per se*, are hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction.

SO ORDERED.<sup>23</sup>

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<sup>20</sup> Id. at 6.

<sup>21</sup> Id. at 6-7.

<sup>22</sup> Records, pp. 254-259.

<sup>23</sup> Id. at 258-259.

### **Ruling of the Court of Appeals**

On September 10, 2018, the CA rendered its assailed Decision<sup>24</sup> denying Sewell and Gemelo's appeal, and affirming the RTC's conviction for violation of Sections 5 and 11, Article II of RA 9165. The decretal portion of the CA Decision reads:

**WHEREFORE**, premises considered, the appeal is **DISMISSED**. The Decision dated August 15, 2017 of the Regional Trial Court of Batangas City, Branch 4 in Criminal Case Nos. 17982, 17983 and 17984 is **AFFIRMED**.

**SO ORDERED.**<sup>25</sup>

According to the appellate court, the prosecution was able to establish beyond reasonable doubt that accused-appellants sold and possessed shabu. The purported irregularities in the buy-bust operation, that is, the absence of a test-buy or a prior surveillance, did not affect the validity of the buy-bust operation. The police authorities were given a wide latitude to employ the most appropriate and effective means of apprehending drug dealers. Thus, it is immaterial that the police officers only knew their target person as "Donna." Before arraignment, Sewell did not object to the alias or nickname indicated in the Information filed against her. PO1 Carandang positively identified Sewell as the person who sold shabu.<sup>26</sup>

Furthermore, the appellate court found no break in the chain of custody of the seized items. The prosecution established that the integrity and evidentiary value of the seized items were duly preserved. The confiscated items were properly marked and identified in open court by PO1 Carandang and PO2 Asilo. The custody of the seized items was well accounted for by PO1 Carandang and PO2 Asilo, who turned over the seized items to SPO1 Adelantar. Thereafter, SPO1 Adelantar brought the seized items to the police station and presented the same to PO3 Carlos Llago, the desk officer on duty. Later, SPO1 Adelantar delivered the seized items to the Batangas Provincial Crime Laboratory for laboratory examination. The seized items were received by SPO3 Agustin who turned them over to PSI Llacuna. After the laboratory examination, PSI Llacuna handed them to the evidence custodian, SPO3 Agustin. Later, the seized items were retrieved, and positively identified by the prosecution witnesses in open court.<sup>27</sup>

### **Issues**

Both Sewell and Gemelo, and the appellee, adopted their respective briefs filed before the appellate court.<sup>28</sup> The issues raised for consideration of this Court are:

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<sup>24</sup> *CA rollo*, pp. 98-113.

<sup>25</sup> *Id.* at 113.

<sup>26</sup> *Rollo*, pp. 9-12.

<sup>27</sup> *Id.* at 12-17.

<sup>28</sup> *Id.* at 43-47 and 52-54.

## I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION OF THE INCIDENT LEADING TO THE ARREST OF THE ACCUSED-APPELLANTS AND IN THE COROLLARY ADMISSION OF THE ITEMS ALLEGEDLY SEIZED AS EVIDENCE AGAINST THEM.

## II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH THE PROCEDURAL SAFEGUARDS PRESCRIBED BY R.A. NO. 9165.

## III

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY SEIZED ILLEGAL DRUGS.<sup>29</sup>

### Arguments of the Defense

Accused-appellants argue that the police authorities failed to properly perform their duties. Thus, the presumption of regularity cannot be bestowed on their testimonies. They contend that PO1 Carandang and other police officers had no personal knowledge of the identity of Sewell. They merely relied on the information provided by the confidential informant. In addition, the police officers had even less knowledge on who initiated the illegal sale transaction. They contend that PO1 Carandang and PO2 Asilo were not aware that accused-appellants voluntarily agreed to meet at Caedo Commercial Center, and that they were engaged in the illegal sale of drugs. Also, the police officers failed to conduct a test buy or casing surveillance prior to the alleged buy-bust operation.<sup>30</sup>

Moreover, accused-appellants point out that the prosecution failed to establish that the integrity of the *corpus delicti* was preserved. The prosecution did not mention how it maintained safe custody of the alleged seized items while in transit from the place of arrest to the barangay hall, and then ultimately to the police station. They maintain that they were illegally arrested by the police officers as there was no evident overt act that could properly be attributed to them that would stir suspicion in the mind of the police officers. Thus, the alleged seized items cannot be made admissible against them having been obtained from an illegal arrest.<sup>31</sup>

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<sup>29</sup> CA *rollo*, p. 35.

<sup>30</sup> Id. at 41-45.

<sup>31</sup> Id. at 46-49.

Lastly, accused-appellants argue that the prescribed procedure laid down in Section 21, Article II of RA 9165 was not strictly complied. The prosecution failed to establish evidence as to how the police officers handled and preserved the integrity of the alleged seized items. Also, no media representative attended the inventory of the seized items. The photographs taken during the inventory do not firmly establish the identities of the signatories. No justifiable grounds were given to explain the said procedural lapses committed by the arresting officers.<sup>32</sup>

### **Arguments of the Prosecution**

On the other hand, appellee contends that all the elements of Illegal Sale and Possession of Dangerous Drugs under Sections 5 and 11, Article II of RA 9165, were established by the prosecution with moral certainty. The testimonies of PO1 Carandang and PO2 Asilo clearly prove all the elements of the crimes charged. In addition, SPO1 Adelantar corroborated the testimonies of PO1 Carandang and PO2 Asilo, who positively identified accused-appellants as the culprits who sold shabu in a buy-bust operation. Even without the exchange of money or a marked buy-bust money, the sale or delivery of prohibited drugs was consummated and sufficiently established. There is no rule that requires simultaneous exchange of money and dangerous drug between the poseur-buyer and the seller. The presentation of the buy-bust money is not indispensable in a prosecution of Illegal Sale of Dangerous Drugs. Consequently, the prosecution of Illegal Possession of Dangerous Drugs is, likewise, beyond question as the plastic sachets containing shabu were found in Sewell's and Gemelo's brown purse and pocket, respectively. Accused-appellants failed to discharge the burden that they have authority to possess these dangerous drugs.<sup>33</sup>

In addition, appellee maintains that there is no requirement that a prior surveillance should be conducted before a buy-bust operation. Hence, accused-appellants cannot replace the good judgment exercised by the apprehending officers in the conduct of their operations. Having sufficiently established the existence of a buy-bust operation, appellee contends that there is no more reason to discuss accused-appellants' allegations that the seized items cannot be used against them for being the fruit of a poisonous tree.<sup>34</sup>

Lastly, appellee argues that the integrity of the seized items was preserved, and the chain of custody was duly established. The items were confiscated by PO1 Carandang and PO2 Asilo and turned over to SPO1 Adelantar. Then, SPO1 Adelantar personally delivered the seized items to the laboratory for examination. SPO1 Adelantar positively identified in open court the three plastic sachets of shabu and a brown purse as the same ones recovered from accused-appellants. Absent any showing of ill motive or proof of tampering, the

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<sup>32</sup> Id.

<sup>33</sup> Id. at 79-86.

<sup>34</sup> Id. at 86-89.

burden is shifted to accused-appellants to prove that, indeed, the evidence was tampered or meddled with. Failing such, the presumption is that the police officers regularly performed and properly discharged their duties.<sup>35</sup>

### Our Ruling

After due consideration, We resolve to acquit Sewell and Gemelo from the charges of violation of Sections 5 and 11, Article II of RA 9165.

Sewell and Gemelo were charged with violation of Section 5, Article II of RA 9165, which punishes not only the sale, but also the mere act of delivering or distributing prohibited drugs.<sup>36</sup> In prosecutions for Illegal Sale or Delivery of Dangerous Drugs, what is material is proof that the transaction actually took place, and the presentation in court of the *corpus delicti* as evidence.<sup>37</sup> Accused-appellants' contention that the police officers had no knowledge of their identities prior to the buy-bust operation is untenable. It bears stressing that at the time of the transaction, PO1 Carandang was with the confidential informant who identified accused-appellants to be the persons whom he agreed to meet up with in Caedo Commercial Complex regarding the delivery of ₱6,000.00 worth of shabu. In fact, it was the confidential informant who first received the dangerous drugs from accused-appellants, which he immediately turned over to PO1 Carandang. Upon witnessing the transaction, and confirming that the plastic sachet contained white crystalline substance, PO1 Carandang arrested accused-appellants. Then, the rest of the buy-bust team approached and assisted in the arrest.

There is no basis, therefore, in accused-appellants' contention that there can be no legitimate buy-bust operation for failure of the prosecution to prove that the police officers personally knew their identities, and that they engaged in selling prohibited drugs. Besides, Sewell contradicted herself when she admitted that she recognized the police officers who apprehended her as she frequented the police station to offer and sell gadgets and perfumes on installment basis. The very nature of a buy-bust operation is to entrap and capture drug peddlers,<sup>38</sup> notwithstanding whether the police officers had prior personal knowledge of the identity of the accused, and whether they had conducted a prior surveillance before the operation, for as long as the actual transaction, which is prohibited by law, took place in their presence, and that the persons arrested committed the prohibited act. The police officers are not only authorized, but duty-bound to arrest them.

Moreover, this Court in *Quinicot v. People*<sup>39</sup> categorically stated that a prior surveillance or test buy is not required for a valid buy-bust operation, for as long as the operatives are accompanied by their informant, thus:

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<sup>35</sup> Id.

<sup>36</sup> See *People v. Domado*, 635 Phil. 74, 85 (2010), citing *People v. Concepcion*, 578 Phil. 957, 977 (2008).

<sup>37</sup> Id.

<sup>38</sup> See *People v. Bongalon*, 425 Phil. 96, 116 (2002).

<sup>39</sup> 608 Phil. 259 (2009).

Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. **A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment.** Flexibility is a trait of good police work. We have held that when time is of the essence, the police may dispense with the need for prior surveillance. In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen need not have conducted any prior surveillance before they undertook the buy-bust operation.<sup>40</sup> (Emphasis supplied)

The prosecution had sufficiently established the existence of the buy-bust operation. Ample evidence was adduced to show the events that transpired that led to the entrapment of accused-appellants, the actual transaction, and ultimately, their arrest, and seizure of the prohibited drugs. The testimonies of PO1 Carandang and PO2 Asilo are found to be credible that, indeed, a buy-bust operation was conducted, which resulted to the apprehension of accused-appellants. In fact, prior to the operation, the police officers coordinated with PDEA and Bgy. Calicanto; and recorded the purpose and circumstances of the operation in the police and barangay blotters.

Nonetheless, despite having settled the existence of a valid buy-bust operation, the prosecution must duly prove that the police officers strictly complied with the requirements under Section 21, Article II of RA 9165 to safeguard the integrity and evidentiary value of the *corpus delicti*, and to present an unbroken chain of custody, that is, the same items seized must be the same items presented as evidence before the court.

As to the contention that there were irregularities in handling the seized item from its confiscation until its presentation before the court, We agree that such irregularities tainted the integrity and evidentiary value of the *corpus delicti*, *i.e.*, the confiscated dangerous drug. 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."<sup>41</sup> It is of utmost importance in the prosecution

<sup>40</sup> *Id.* at 274-275.

<sup>41</sup> *People v. Kamad*, 624 Phil. 289, 301-302 (2010).

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*.<sup>42</sup>

[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.**<sup>43</sup> (Emphasis and underscoring supplied)

Nonetheless, Section 21 (a), Article II of the Implementing Rules and Regulation (IRR) of RA 9165 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.)

**The above 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.**<sup>44</sup> A perusal of the records show that the prosecution failed to offer any explanation why a representative from the media was not present during the inventory of the seized items, and the taking of photographs thereof. As shown in the records, only Prosecutor Jovellanos and Bgy. Councilor Illustre were present during the inventory and taking of photographs. The prosecution failed to duly establish that earnest efforts were employed by the police officers to contact and secure the presence of a media representative in the physical inventory and taking of

<sup>42</sup> *People v. Balibay*, 742 Phil. 746, 757-758 (2014), citing *People v. Lim*, 435 Phil. 640 (2002).

<sup>43</sup> *People v. Lim*, 435 Phil. 640, 659-660 (2002).

<sup>44</sup> See *People v. Capuno*, 655 Phil. 226, 240-241 (2011).

photograph. No evidence was offered to explain the absence of the media representative. Clearly, the police officers failed to recognize such procedural lapse, and justify their non-compliance thereof.

We are aware that the prosecution has duly presented an unbroken chain of custody of the seized items from the time of their confiscation from appellants, until the presentation thereof before the court. However, it must be borne in mind that the integrity and evidentiary value of the *corpus delicti* should be first established to ensure that the seized items were the very same items confiscated and handled in the chain of custody, and presented as evidence against the appellants. Thus, strict compliance of the procedure laid down under Section 21, Article II of RA 9165 and its IRR shall be observed, which the herein police officers failed to do.

Ostensibly approximate compliance does not suffice; there must be actual compliance with Section 21, Article II of RA 9165 and its IRR.<sup>45</sup> The failure to do so is tantamount to a failure to establish *corpus delicti*, which is a crucial element of the crimes charged.<sup>46</sup> In a prosecution for Illegal Sale and Possession 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*.<sup>47</sup> Failure in such would render the evidence for the State as insufficient to prove guilt beyond reasonable doubt.<sup>48</sup> 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.<sup>49</sup>

With the failure of the prosecution to sufficiently establish that the seized items were the very same items confiscated from accused-appellants, it leaves a gaping hole in the chain of custody as the *corpus delicti* itself is doubtful. To reiterate, the failure of the prosecution to justify or offer an explanation on the absence of a media representative in the physical inventory and taking of photograph, nor offer evidence that earnest effort was employed to secure his or her presence, shows an obvious flaw to the prosecution's cause. Thus, We are constrained to acquit Sewell and Gemelo from the charge of Illegal Sale and Possession of Dangerous Drugs based on reasonable doubt.

**WHEREFORE**, the appeal is **GRANTED**. The September 10, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09841, is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of accused-appellants Donalyn Dela Cruz Sewell and John Rick Gemelo y Cunanan. They are hereby **ACQUITTED** of the crimes charged against them, and ordered immediately **RELEASED** from

<sup>45</sup> *People v. Saragena*, 817 Phil. 117, 132 (2017), citing *People v. Holgado*, 741 Phil. 78, 94 (2014).

<sup>46</sup> *Id.*, citing *Lescano v. People*, 778 Phil. 460, 470 (2016).

<sup>47</sup> See *People v. Cabrellos*, 837 Phil. 428, 445 (2018), citing *People v. Gamboa*, 833 Phil. 1055, 1072 (2018), citing *People v. Umipang*, 686 Phil 1024, 1039-1040 (2012).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*, citing *People v. Macapundag*, 807 Phil. 234, 244 (2017); *People v. Umipang*, 686 Phil 1024, 1038 (2012).

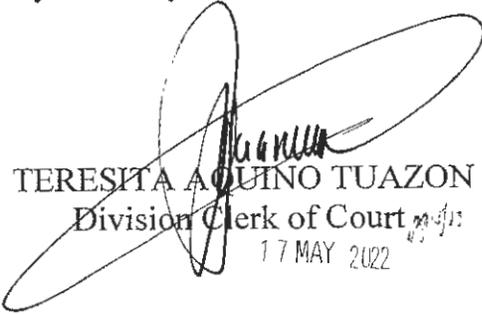
custody, unless they are being held for some other lawful cause.

Let a copy 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 inform this Court of the action taken hereon within five days from receipt of this Resolution.

Let an entry of judgment be issued immediately.

**SO ORDERED.”** (*Perlas-Bernabe, S.A.J., on official leave; Hernando, J.; Acting Chairperson per Special Order No. 2887 dated April 8, 2022.*)

By authority of the Court:

  
 TERESITA AQUINO TUAZON  
 Division Clerk of Court  
 17 MAY 2022

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 c/o The Superintendent  
 Correctional Institution for Women  
 1550 Mandaluyong City

JOHN RICK GEMELO y CUNANAN @ "JEROBO" (x)  
 Accused-Appellant  
 c/o The Director  
 Bureau of Corrections  
 1770 Muntinlupa City

THE DIRECTOR (x)  
 Bureau of Corrections  
 1770 Muntinlupa City

THE SUPERINTENDENT (x)  
 Correctional Institution for Women  
 1550 Mandaluyong City

HON. PRESIDING JUDGE (reg)  
 Regional Trial Court, Branch 4  
 Batangas City  
 (Crim. Case Nos. 17982, 17983 and 17984)

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 Supreme Court, Manila

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*Please notify the Court of any change in your address.*  
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