

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **September 7, 2022**, which reads as follows:

“G.R. No. 249719 (*People of the Philippines v. Gary Sanchez y Bidez*).
— In dangerous drugs cases, proof beyond reasonable doubt of the *corpus delicti*, *i.e.*, the identity of the illegal substance, is elemental. Without proper establishment of the *corpus delicti*, the illegal substance sold and/or possessed, an indispensable element of the crime, is not met. “Unwavering exactitude”¹ in the establishment of the identity of the dangerous drug is the bar on which a conviction for violation of the Comprehensive Dangerous Drugs Act stands.

Assailed in this appeal *via* Notice of Appeal² is the June 20, 2019 Decision³ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 11422 which affirmed the April 30, 2018 Decision⁴ of the Regional Trial Court (RTC), Branch 75, Valenzuela City in Criminal Case Nos. 66-V-12 and 67-V-12,⁵ finding accused-appellant Gary Sanchez y Bidez guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁶ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

Accused-appellant and his spouse, Mayla Sanchez, were arrested and charged following a buy-bust operation: accused-appellant for violation of Sections 5 and 11, Article II of RA 9165, Illegal Sale and Possession of

¹ See *People v. Remigio*, 700 Phil. 452, 465 (2012), citing *People v. Salonga*, 617 Phil. 997, 1010 (2009).

² *Rollo*, pp. 25-27.

³ CA *rollo*, pp. 101-122. Penned by Associate Justice (now Presiding Justice) Remedios A. Salazar-Fernando and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Gabriel T. Robeniol.

⁴ *Id.* at 55-63. Penned by Presiding Judge Lilia Mercedes Encarnacion A. Gepty.

⁵ Consolidated with Criminal Case No. 68-V-12.

⁶ 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 on June 7, 2002.

Dangerous Drugs, Mayla for violation of Section 12 or Illegal Possession of Drug Paraphernalia. The Informations respectively read:

Criminal case No. 66-V-12 (For violation of Section 5, Article II of RA 9165):

That on or about January 14, 2012 in Valenzuela City and within the jurisdiction of this Honorable Court, [accused-appellant GARY SANCHEZ], without any authority of law, did then and there willfully, unlawfully and feloniously sell to PO2 PAUL R. FABREAG who posed as buyer of zero point zero six (0.06) gram of Methamphetamine Hydrochloride (Shabu), knowing the same to be a dangerous drug.

CONTRARY TO LAW.⁷

Criminal Case No. 67-V-12 (For violation of Section 11, Article II of RA 9165):

That on or about January 14, 2012 in Valenzuela City and within the jurisdiction of this Honorable Court, [accused-appellant GARY SANCHEZ], without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control two (2) heat-sealed transparent plastic sachets containing zero point zero eight gram (0.08) and zero point forty gram (0.40) of white crystalline substance Methylamphetamine (sic) Hydrochloride (Shabu), knowing the same to be a dangerous drugs (sic).

CONTRARY TO LAW.⁸

Criminal Case No. 68-V-12 (For violation of Section 12, Article II of RA 9165):

That on or about January 14, 2012 in Valenzuela City and within the jurisdiction of this Honorable Court, [accused MAYLA SANCHEZ], without any authority of law, did then and there willfully, unlawfully and feloniously possess eight (8) aluminum foil strips, one (1) aluminum foil strip containing traces of white crystalline substance and one (1) disposable lighter, intended for administering/injecting or introducing Methamphetamine Hydrochloride (shabu), into the body, knowing the same to be a drug paraphernalia.

CONTRARY TO LAW.⁹

At the arraignment, both Gary and Mayla pleaded not guilty to the charges.¹⁰

After pre-trial where the parties stipulated on jurisdiction of the court, both over the offenses charged and the persons of the two accused, and their

⁷ CA *rollo*, pp. 102-103.

⁸ Id. at 103.

⁹ Id.

¹⁰ Id.

identities, trial ensued with the prosecution presenting four witness. Only two of the witnesses, Police Chief Inspector Mark Allain Ballesteros (PCI Ballesteros), Forensic Chemist at the Crime Laboratory of the Philippine National Police (PNP) Camp Crame, Quezon City; and Police Officer 2 Paul Fabreag (PO2 Fabreag),¹¹ poseur-buyer and arresting officer, testified before the trial court.¹² The other witnesses were: (1) Senior Police Officer 1 Armin Garcia, the investigating officer, and (2) *Barangay* Officer Rowena Dulap, the sole witness to the drug inventory, submitted their *Sinumpaang Salaysay*.¹³

Version of the Prosecution

The evidence for the prosecution sought to establish that on January 13, 2012, upon receiving information¹⁴ concerning Gary's drug peddling activities at Santos Compound in *Barangay* Malinta Bukid, Valenzuela City, Police Chief Inspector Allan Ruba (PCI Ruba), Chief of Station Anti-Illegal Drugs, Special Operation Task Group (SAID-SOTG), formed a team to confirm and act on the information. The buy-bust team was composed of Senior Police Officer 2 Carlo Espiritu, the team leader, PO2 Fabreag, Police Officer 2 Julius Congson, Police Officer 2 Ringo Recto, and Police Officer 2 Freddie Lim (PO2 Lim).¹⁵ During their surveillance of *Barangay* Malinta, PO2 Lim's confidential informant and other residents thereof confirmed the information received by PCI Ruba.¹⁶

Thereafter, as part of procedure, the buy-bust team conducted a briefing for their planned operation and coordinated with the Philippine Drug and Enforcement Agency (PDEA).¹⁷ PO2 Fabreag was given three marked ₱100.00 bills¹⁸ to purchase the illegal drugs, while the rest of the team members served as back up in the apprehension of Gary and Mayla.¹⁹

On January 14, 2012, the buy-bust team undertook their operation and went to the Santos Compound. As planned, at the doorstep of Gary's house, the confidential informant introduced PO2 Fabreag to Gary so he could initiate the sale transaction.²⁰ After informing Gary that he wanted to purchase ₱300.00 worth of *shabu*, PO2 Fabreag handed Gary the marked money. Gary took the money and placed it inside his pocket, pulled out three transparent sachets containing white crystalline substance, and handed PO2 Fabreag one of the three plastic sachets.²¹

¹¹ Referred to as PO3 Fabreag in some parts of the records.

¹² *CA rollo*, pp. 56-57.

¹³ *Id.* at 58.

¹⁴ A forwarded message via Short Message Service (SMS) from Chief of Police, Police Senior Superintendent Atty. Wilben Mayor.

¹⁵ *CA rollo*, p. 105

¹⁶ *Id.* at 57.

¹⁷ *Id.* at 106.

¹⁸ Marked as "PF1," "PF2," "PF3."

¹⁹ *CA rollo*, p. 106.

²⁰ *Id.*

²¹ *Id.*

Subsequent events leading to the arrest of Gary is lifted from the CA's narration of facts to depict the lower courts' factual findings, thus:

[A]fter receiving one of the plastic sachets, PO2 Fabreag uttered, "Kuha ko na![,]” which was the pre-arranged signal that the sale of drugs was consummated; the rest of the apprehending team immediately rushed to the area and arrested accused appellant Sanchez; accused-appellant Sanchez was frisked which yielded to the discovery of two (2) more plastic sachets of white crystalline substance; accused-appellant Sanchez was apprised of his constitutional rights; the three (3) plastic sachets were marked as "Gary-1[,]” "Gary-2[,]” and "Gary-3[,]” all dated "1/14/12” and signed by PO2 Fabreag; while being arrested, accused-appellant Sanchez shouted "Mayla, may parak!"; accused Mayla went out of the house and shouted invectives at the apprehending officers; SPO2 Espiritu ordered PO2 Recto to arrest accused Mayla; after arresting the two accused, they proceeded to the Barangay Hall of Barangay Malinta Bukid for the inventory of the seized items; they inventoried the said items in the presence of Barangay Kagawad Rowena Dulap x x x as evinced by Inventory of Seized Properties/Items; after the inventory, they brought accused-appellant Sanchez and accused Mayla to the hospital for medical verification, as shown by Medical Certificates; they headed back to the police station and the seized items were turned over to the investigator, SPO1 Garcia; and, after preparing the necessary requests, the entrapment team turned over accused-appellant Sanchez, accused Mayla and the seized items to the PNP Crime Laboratory, Camp Crame, Quezon City for drug test and laboratory examination.²²

To establish the contents of the seized items and the PNP Crime Laboratory's custody thereof, PCI Ballesteros testified as follows:

[O]n January 14, 2012, he was assigned as a Forensic Chemist at the Crime Laboratory, PNP Camp Crame, Quezon City; on even date, he received a Request for Drug Laboratory and a Request for Drug Test; said requests were recorded by their duty officer, PO1 Kinliyan, as shown by stamp receipts appearing on the said requests; he received the said requests together with the specimen from SPO1 Armin Garcia x x x; he received the following items: (a) evidence bags with markings "GARY SANCHEZ @ GARY-A” and "GARY SANCHEZ @ GARY - B[,]”(b) three (3) heat-sealed transparent plastic sachets containing white crystalline substance, (c) a brown envelope with markings "MAYLA-A” which contains nine (9) strips of aluminum foil marked as "MAYLA 2” to "MAYLA-10[,]” and a red disposable lighter; after receiving the said items, he subjected the same to qualitative examination; based on Chemistry Report No. D- 13-12, the three (3) heat-sealed transparent plastic sachets containing white crystalline substance and one (1) aluminum foil marked as "MAYLA-10” were found positive for the presence of methamphetamine hydrochloride; urine samples were collected from accused-appellant Sanchez and accused Mayla for drug test; as per Chemistry Report DT-(17 and 18)-12, only accused-appellant Sanchez was found positive for methamphetamine hydrochloride; and, he placed the confiscated items inside a

²² Id. at 106-107.

brown envelope and turned them over to their evidence custodian for safekeeping.²³

Version of the Defense

For their defense, Gary and Mayla testified and painted a completely different version of the facts occurring on January 14, 2012:

Mayla's testimony revealed as follows:

[A]t around x x x [5:00 p.m.] of January 14, 2012, she went to the house of her in-laws to deliver tikoy for snacks; while they were eating their snacks, four (4) armed [individuals] suddenly barged into the said house, accosted accused-appellant Sanchez and told him to lie down on the floor; two (2) of the armed [individuals] held accused-appellant Sanchez' arms while one of them stepped on the latter's back; the other armed [individual] took accused Mayla's wallet and put it inside his pocket; accused-appellant Sanchez was frisked; she and accused appellant Sanchez were handcuffed and were brought to the City Hall of Valenzuela City; an hour later, they were transferred to the [*Barangay*] Hall of [*Barangay*] Malinta Bukid; the armed [individuals] showed them strips of aluminum foil, a lighter, a pair of scissors, and shabu, and took their photographs; the armed [individuals] conducted an inventory of the said items in the presence of [*Barangay Kagawad*] Dulap; they were brought to the Crime Laboratory, Camp Crame, Quezon City and were asked to give urine samples for drug test; the drug test of her urine sample yielded a negative result for the presence of methamphetamine hydrochloride; and, she was not in possession of any drug paraphernalia at the time of the arrest.²⁴

On the other hand, Gary testified as follows:

[I]n the afternoon of January 14, 2012, he went to his father's house in [*Barangay*] Malinta Bukid, Valenzuela City; while in the said house, a group of [individuals] suddenly entered and forced him to lie down on the ground; they frisked him and his wife, accused Mayla; the said [individuals] did not find any illegal item or contraband in his person; he and accused Mayla were brought to a detention cell; he was asked to sit on top of a desk; PO2 Lim took a brown envelope from a drawer and scattered its contents on the desk; PO2 Lim was interrogating him about a certain plastic sachet of shabu of which he had no knowledge about; PO2 Recto took one (1) of the plastic sachets on the desk and brought it to the kitchen; the police officers forced him to hold the plastic sachets while being photographed; he saw PO2 Recto pour the contents of one (1) of the plastic sachets into a glass of water, stirred it and asked him to drink it; when he refused to drink the said water, PO2 Recto told him, "Ba't marunong ka pa?"; he eventually drank the said water; and, he and accused Mayla were brought to the PNP Crime Laboratory, Camp Crame, Quezon City.²⁵

²³ Id. at 104-105.

²⁴ Id. at 107-108.

²⁵ Id. at 108.

Gary and Mayla, denied that they were engaged in the sale of illegal drugs, specifically the charges against them of Illegal Sale and Illegal Possession of prohibited drugs and Illegal Possession of drug paraphernalia, respectively. They recounted that they were simply spending the afternoon at Gary's parents' house when a group of armed individuals barged in on them, pinned Gary to the floor and manhandled Mayla after she raised a ruckus, and finally brought the two to a detention cell where Gary was interrogated. During his interrogation, Gary was forced to admit to possession of plastic sachets containing white crystalline substance, one of which was eventually emptied and mixed onto a glass of water, the liquid forced down his throat.²⁶

Ruling of the Regional Trial Court

Weighing the totality of the evidence presented by both the prosecution and the defense, the trial court accorded more veracity to the prosecution's version that Gary was caught *in flagrante delicto* selling illegal drugs to a poseur-buyer during a buy bust operation.²⁷ According to the trial court, the prosecution proved beyond reasonable doubt the identity of the buyer in the buy bust operation and the seller, object and consideration, including the delivery of the *shabu* sold by Gary and the payment of the buy-bust money. However, as regards accused Mayla, the RTC found that the prosecution failed to present evidence, both testimonial and documentary, on her arrest, and her alleged illegal possession of drug paraphernalia. The trial court disposed of the cases, thus:

WHEREFORE, premises considered, in Criminal Case No. 66-V-12, accused GARY SANCHEZ Y BIDEZ @ GARY is hereby found GUILTY BEYOND REASONABLE DOUBT for the crime of sale of dangerous drugs under Section 5, Art. 2 of R.A. No. 9165, and is hereby sentenced to suffer life imprisonment without eligibility for parole, and to pay a fine of Php 500,000.00 plus costs.

In Criminal Case No. 67-V-12, accused GARY SANCHEZ Y BIDEZ @ GARY is hereby found GUILTY BEYOND REASONABLE DOUBT for the crime of illegal possession of dangerous drugs under Section 11, Art. 2 of R.A. No. 9165, and is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from twelve (12) years and one (1) day to 14 years and eight (8) months and a fine of Php 300,000.00.

In Criminal Case No. 68-V-12, accused MAYLA SANCHEZ Y SANTOS @ MAYLA is hereby ACQUITTED on the ground of reasonable doubt.

The object evidence subject of these cases are hereby forfeited in favor of the government to be destroyed in accordance with the rules governing the same. The Branch Clerk of Court is enjoined to see to it that the object evidence

²⁶ Id. at 107-108.

²⁷ Id. at 60-62.

confiscated and forfeited in these cases are properly turned over to the proper authorities for disposition.

SO ORDERED.²⁸

Adamant on his innocence, Gary appealed his conviction to the CA questioning the procedure followed by the police operatives in his arrest, and the seizure and custody of the evidence against him. In particular, Gary contended noncompliance by the police officers with Section 21, Article II of RA 9165 on the physical inventory of the seized illegal drugs, and failure by the prosecution to establish an unbroken chain of custody of the seized illegal drugs.²⁹

Ruling of the Court of Appeals

On June 20, 2019, the CA affirmed the RTC's judgment of conviction, disposing to wit:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed Decision dated April 30, 2018 of the RTC, Branch 75, Valenzuela City in Criminal Cases Nos. 66-V-12 and 67-V-12 is hereby **AFFIRMED**.

SO ORDERED.³⁰

Issues

Staunch in his claim of innocence, accused-appellant appeals to this Court adopting the same arguments raised before the CA:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT [GARY] GUILTY OF ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS DESPITE THE ARRESTING OFFICERS' FAILURE TO COMPLY WITH SECTION 21 OF REPUBLIC ACT NO. 9165.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT [GARY] GUILTY OF ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS DESPITE THE UNPROVEN CHAIN OF CUSTODY OVER THE ALLEGEDLY CONFISCATED ITEMS AND THE PROSECUTION'S FAILURE TO ESTABLISH THEIR IDENTITY AND INTEGRITY.³¹

²⁸ Id. at 62-63.

²⁹ Id. at 109.

³⁰ Id. at 122.

³¹ Id. at 35.

The appellate court accorded great weight to the trial court's factual findings anchored on the credibility of the testifying police officers and bolstered by the presumption of regularity in their performance of duty.³² As the trial court had done, the appellate court readily dismissed Gary's argument of the police's noncompliance with the procedures laid down in Section 21, Article II of RA 9165, and failure to establish an unbroken chain of custody of evidence. On the whole, the CA found that the police operatives substantially complied with Section 21, Article II of RA 9165 and sustained the integrity and evidentiary value of the seized items.

This appeal is moored on the contention about the break in the chain of custody, and the consequent failure of the prosecution to establish the *corpus delicti*. Accused-appellant makes much of the fact that the police did not follow the statutory requirements, *i.e.*, Section 21, Article II of RA 9165 in the chain of custody of the evidence, the seized dangerous drugs, from its confiscation up to its presentation in court.

Our Ruling

Accused-appellant's appeal is meritorious; his contentions are well-taken.

In order to successfully prosecute an offense of Illegal Sale of Dangerous Drugs, like shabu, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.³³

On the other hand, a case of Illegal Possession of Dangerous Drugs will prosper if the following elements are present: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.³⁴

In both cases of Illegal Sale and Illegal Possession of Dangerous Drugs, it is imperative for the prosecution to show the chain of custody over the dangerous drug in order to establish the *corpus delicti*.³⁵

Jurisprudence dictates that the dangerous drug itself constitutes the very *corpus delicti* of the offense, and the fact of its existence is vital to a judgment of conviction.³⁶ Consequently, the presentation in court of the *corpus delicti*

³² Id. at 114-116.

³³ See SECTION 5, ARTICLE II OF RA 9165; *People v. Castillo*, G.R. No. 238339, August 7, 2019 citing *People v. Unisa*, 647 Phil. 89, 108 (2011). Citations omitted.

³⁴ See SECTION 11, ARTICLE II OF RA 9165; *People v. Castillo*, supra.

³⁵ *People v. Asaytuno*, G.R. No. 245972, December 2, 2019.

³⁶ See *People v. Asaytuno*, id.; *People v. Dahil*, 750 Phil. 212, 226 (2015); *People v. Remigio*, supra note 1.

— the body or substance of the crime — establishes the fact that a crime has actually been committed.³⁷

We have long stressed, and had occasion to reiterate in recent jurisprudence, the imperative that in prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt.³⁸ To emphasize the importance of the *corpus delicti* in drug charges, We have held that it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit,³⁹ and that the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt.⁴⁰

Section 21 of RA 9165 on “Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs” fleshes out this rigorous requirement of the chain of custody specifically defined in the law’s implementing rules and regulations (IRR), Section 1(b) of Dangerous Drug Regulation No. 1, Series of 2002, to wit:

“Chain of Custody” is the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plants sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and destruction x x x.

Before the advent of RA 10640,⁴¹ Section 21 of RA 9165 reads in pertinent part:

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

³⁷ *People v. Asaytuno*, supra.

³⁸ See *People v. Del Rosario*, G.R. No. 235658, June 22, 2020; *People v. Asaytuno*, supra; *People v. Castillo*, supra; *People v. Tomawis*, 830 Phil. 385, 418 (2018); *People v. Lim*, 839 Phil. 598, 633 (2018); *People v. Sipin*, 833 Phil. 67, 80 (2018).

³⁹ *People v. Asaytuno*, supra; *People v. Remigio*, supra note 1.

⁴⁰ *People v. Remigio*, supra note 1.

⁴¹ Entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.’” Approved: July 15, 2017.

elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x

The implementing rule therefor amplifies the requirements in the physical inventory and photography of the seized drugs and lays down two provisos for: (a) the location where the inventory may be undertaken; and (b) noncompliance with Section 21 on justifiable grounds:

(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;

x x x x

Notably, the amending law impales the initial text of Section 21 (1) and the implementing rule containing the provisos, thus:

Section 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, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That noncompliance [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 and custody over said items.

x x x x

The amendment in Section 21 (1) of RA 10640 solidifies the statutory requirements in the custody and disposition of the seized dangerous drug and noncompliance thereto under specific and justifiable reasons.

Nowhere in the original text of Section 21(1) of RA 9165, the IRR therefor, and the subsequent amending law, RA 10640, can We glean an intention from the legislative to relax the specific requirements for compliance by police officers to the chain of custody. The establishment of each link in the chain of custody leads to certainty in the *corpus delicti* and its identification as that which was the object of the buy-bust transaction, seized, and examined by police officers, found positive to be a dangerous drug, until its presentation in court as evidence.⁴²

Neither can we refract a relaxation of the mandatory number⁴³ and identity of witnesses to the inventory, or the proper preservation of the integrity and evidentiary value of the seized items just by the expedient of incorporating the saving clause on noncompliance.⁴⁴ On the whole, the requirements under Section 21(1) of RA 9165, even as amended, is mandatory and ineluctable.⁴⁵

Undoubtedly, as of January 14, 2012 when the buy bust transaction was conducted and the alleged crime was committed, the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three witnesses, particularly: (1) the accused or the persons from whom such items were confiscated and seized or his/her representative or counsel, (2) any elected public official, and (3) a representative from the media and the Department of Justice (DOJ). The three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof. In this case, there were only the two accused and the *barangay kagawad* who witnessed the conduct of the inventory.

A review of the separate rulings of the lower courts reveals that the procedures outlined in Section 21, Article II of RA 9165 were not observed: (1) no photographs were taken; and (2) there were no third-party witnesses to Gary's and Mayla's apprehension with only one witness summoned during the inventory of the seized items.

⁴² *People v. Orcullo*, G.R. No. 229675, July 8, 2019; *People v. Lim*, supra note 38.

⁴³ Whether 3 or 2 witnesses under the prevailing law.

⁴⁴ *People v. Sipin*, supra note 38.

⁴⁵ See *People v. Asaytuno*, supra note 35, citing *People v. Tomawis*, supra note 38.



The RTC'S factual findings after the arrest of Gary and Mayla narrate that:

Thereafter, [the police officers] brought the spouses [Gary and Mayla Sanchez] to the [*Barangay*] Hall of Malinta for the conduct of the drug inventory x x x. From the place of arrest to the [*barangay*] hall, PO3 Fabreag was in possession of the object evidence he recovered from alias Gary. **After the marking of the recovered evidence, inventory thereof and presentation of alias Gary x x x and his wife, accused Mayla to an elected barangay official**, they proceeded to the hospital for the medical verification x x x of the two (2) accused. From the [*barangay*] hall to the hospital, the object evidence recovered by PO3 Fabreag were in the possession of the investigator on case. SPO3 Garcia, x x x.

After [the] medical examination of the two (2) accused, they proceeded to the SAID-SOTG office for the documentation of their arrest and recovery of the object evidence from them. SPO3 Garcia then prepared the Request for Laboratory Examination x x x and Request for Drug Test x x x afterwards, they brought the two (2) accused and the recovered evidence turned over to SPO3 Garcia to the NPD Crime Laboratory Office, Valenzuela City Satellite Office Crime Laboratory Office. The latter [SPO3 Garcia] handed over to the crime laboratory office the object evidence seized from the two (2) accused herein.⁴⁶ (Emphasis supplied)

Upon the foregoing, the appellate court upheld the trial court's ruling, relying on: (1) the latter's direct observation of the witnesses; (2) the credibility of the arresting officers who conducted the buy-bust operation; (3) the high respect and conclusive effect accorded to the trial court's factual findings; and (4) the presumption of regularity in the performance of official duty.

We limn the appellate court's dismissal of accused-appellant's arguments, and affirmance of the trial court's ruling that the police officers substantially complied with Section 21, Article II of RA 9165 and on the whole, the prosecution had established the guilt of appellant beyond reasonable doubt:

Upon a painstaking review of the records, this Court finds that the apprehending officers committed justified deviations from the procedure prescribed under Section 21 of Republic Act No. 9165.

It bears to note that the prosecution was able to justify the lack of a representative from the DOJ and/or the media when PO2 Fabreag, during his cross examination, reasoned that after the entrapment operation and during the inventory, no DOJ or media representative was available. PO2 Fabreag narrated:

Q: No photograph also was taken at the place of arrest, correct?

A: None, Ma'am.

⁴⁶ CA rollo, p. 58.

Q: There is no written explanation. . .(pause) there is no DOJ as well as, Media representative during that time, correct?

A: No (sic) available during that time, Ma'am.

Also, it may be well to point that the requirement for a justifying explanation need not be in the form of a tangible and written document. Section 21, Article II of Republic Act No. 9165 is silent as to the form of the explanation to be rendered in cases of deviation from the prescribed procedure in the inventory and custody of the confiscated drugs. Testimonial evidence sufficiently expressing a valid explanation would suffice. This being the case, the [defense's] assertion of lack of a written explanation must not be countenanced.

Moreover, this Court is persuaded that the integrity and evidentiary value of the confiscated items have been duly preserved.

The Supreme Court, in a long string of cases, has consistently held that “while the chain of custody should ideally be perfect, in reality it is not, as it is almost always impossible to obtain an unbroken chain.” **Since the law itself provided exceptions to its requirements, the non-compliance with Section 21 of the IRR is not fatal and does not make the items seized inadmissible. The most important factor is “the preservation of the integrity and the evidentiary value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused.”**

In the prosecution of drug-related cases, the primary consideration is to ensure that the identity and integrity of the seized drugs have been preserved from the time they were confiscated from the accused until their presentation as evidence court. The prosecution must establish with moral certainty that the specimen submitted to the crime laboratory and found positive for dangerous drugs, and finally introduced in evidence against the accused was the same illegal drug that was confiscated from him.

In view of the following factual circumstances, this Court is convinced that there was substantial compliance with Section 21 of Republic Act No. 9165 and that the chain of custody was not shown to have been broken: SAID-SOTG, Valenzuela City coordinated with the PDEA for the entrapment operation to be conducted as shown by a Coordination Form executed by PO1 Congson and a Pre-Operation Report dated January 14, 2012; during the buy bust operation, PO2 Fabreag confiscated the sachet of shabu which was the subject of the sale and the two (2) more sachets of shabu he discovered when he frisked accused-appellant Sanchez; at the Barangay Hall of Malinta Bukid, Valenzuela City, PO2 Fabreag marked the seized items using his initials, “PF1”, “PF2” and per Chain and Custody Form, said items were then turned over to the investigating officer, SPO1 Garcia, for recording; PO2 Fabreag executed the Inventory of Seized Properties/Items; said Inventory was signed by PO1 Recto, SPO1 Garcia and Barangay Kagawad Dulap; photographs were taken of the buy-bust money, the seized items and accused-appellant Sanchez in the presence of Barangay Kagawad Dulap; SPO1 Garcia brought the seized items to the PNP Crime Laboratory, Camp Crame, Quezon City for qualitative examination; these were received by PCI Ballesteros as can be gleaned in the Request for Laboratory Examination; said request was

recorded by PO1 Kinliyan; the laboratory examination yielded positive results for the presence of methamphetamine hydrochloride as indicated in Chemistry Report No. D-13-12; PCI Ballesteros placed the seized items in a brown envelope and turned them over to their evidence custodian; upon receiving a subpoena from the lower court, PCI Ballesteros presented the said items before the court; and, PO2 Fabreag identified the seized items in court through the markings he made on the specimen.⁴⁷ (Emphasis supplied)

Demonstrably, from the foregoing facts marshalled by both lower courts, several requirements listed in Section 21 of RA 9165 were admittedly not followed: (1) no photographs were taken of the seized items; (2) there was only one witness to the inventory. For the noncompliance, the prosecution did not proffer nor prove justifiable reasons. When asked at the witness stand on the presence of the other two witnesses as required by Section 21, PO2 Fabreag nonchalantly replied a simple “no[t] available during that time.”

Non-compliance with Section 21(1)’s requirements may be excused, provided that there are: (1) justifiable reasons, and (2) proof that the integrity and evidentiary value of the evidence were maintained.⁴⁸

Ahead of the appellate court’s June 20, 2019 Decision, this Court had already promulgated *People v. Lim*,⁴⁹ cited in Appellant’s Brief,⁵⁰ *People v. Sipin*,⁵¹ and *People v. Tomawis*⁵² on strict adherence to, and the mandatory policy to prove chain of custody under Section 21, Article II of RA 9165, as amended.

Contrary to the musing of the appellate court on the required form of a “justifiable explanation” for the absence of the required number of witnesses to the inventory, the *En Banc* ruling of *People v. Lim*,⁵³ citing *People v. Sipin*,⁵⁴ laid down parameters for the invocation of justifiable reasons:

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media

⁴⁷ Id. at 118-121.

⁴⁸ *People v. Asaytuno*, supra note 35.

⁴⁹ Supra note 38.

⁵⁰ CA *rollo*, pp. 34-54.

⁵¹ Supra note 38.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held 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 have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, 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.

x x x x

To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Section 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations directs:

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.

While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, the following should henceforth be enforced as a mandatory policy:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.

2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.⁵⁵ (Emphasis supplied)

While the appellate court cited the correct principles of invocation of “justifiable reasons” and the requirement to maintain the integrity and evidentiary value of the evidence, there was no proof therefor other than its bare conclusion that PO2 Fabreag’s succinct reply that no witness from the media and the DOJ were available suffices.⁵⁶

From the lower courts’ respective narrations and findings of fact, no photographs were taken of the inventory and thereafter, the accused were presented to the *barangay* official, Rowena Dulap, who attested to the inventory of the items allegedly seized from the two. No logical conclusion can be drawn therefrom, except the lower courts’ insistence that despite the foregoing red flags, the integrity and evidentiary value of the seized items were maintained.

Both the lower courts ruled that the guilt of accused-appellant was established beyond reasonable doubt, and that the police officers substantially complied with Section 21 without discussion on how the following defects of: (1) lack of photographing of the seized items; and (2) a lone witness to the inventory, had been justifiably explained.

Clearly, the trial court and the appellate court took the entirety of PO2 Fabreag’s testimony as gospel truth on what occurred during the buy-bust operation without referring to the checklist of requirements in Section 21 of RA 9165. Mere statements of unavailability, absent actual serious attempts to

⁵⁵ *People v. Lim*, supra note 38 at 621-625.

⁵⁶ See *rollo*, p. 118.

contact the required witnesses, are unacceptable as justified grounds for non-compliance.⁵⁷

Courts are repeatedly exhorted that “judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.”⁵⁸ The presumption only arises upon a showing that the apprehending officers/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered.⁵⁹ In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.

Apart from the non-observance of the third-party witnesses rule, there is a niggling doubt on whether the dangerous drug allegedly seized from the accused-appellant is the same substance subjected to laboratory examination and presented to the trial court, the fourth link in the chain of custody of evidence rule.

In this case, the lack of photographing of the conduct of inventory and the required number of witnesses speak volumes of a broken chain of custody. The drugs seized, without compliance to the photography of the inventory and number of witnesses, and establishment of all links in the chain of custody, preclude the telling of the actual story. It is indispensable for the prosecution to not just present the drug itself but establish its proper identity in court.

The two indispensables in the establishment of the *corpus delicti* in the words of *People v. Remigio*⁶⁰ remain. The illegal drug must be offered before the court as exhibit and that which is exhibited must be the very same substance recovered from the suspect. The necessity for both has been stressed on more than one occasion.⁶¹

Moreover, the absence of testimony by the evidence custodian, the person to whom the alleged seized prohibited drug was delivered after the laboratory examination, solidifies the serious uncertainty on the identity of the *corpus delicti* in view of the broken linkages in the chain of custody.

Once again, We find the lower courts’ discussion thereon wanting: the trial court only discussed the elements of the offenses of Illegal Sale and Illegal Possession of Dangerous Drugs without going into the statutory

⁵⁷ *People v. Del Rosario*, supra note 38, citing *People v. Gamboa*, 799 Phil. 584, 597 (2016), citations omitted.

⁵⁸ *People v. Sipin*, supra note 38.

⁵⁹ *People v. Orcullo*, supra note 42.

⁶⁰ Supra note 1.

⁶¹ *People v. Lorena*, 654 Phil. 131 (2011); *People v. Martinez*, 652 Phil. 347 (2010); *People v. Gutierrez*, 614 Phil. 285 (2009).



requirements of Section 21, while the appellate court was intent on upholding the integrity and evidentiary value of the seized items with nary an analysis of the police's noncompliance to Section 21.

We cannot overemphasize that the prosecution has the burden of proving each link in the chain of custody and each link must be the subject of strict scrutiny by the courts to effect the accused's right to presumption of innocence.⁶²

Proof beyond reasonable doubt requires moral certainty.⁶³ Absent any testimony regarding the management, storage, and preservation of the seized illegal drug after its qualitative examination, the fourth link in the chain of custody of the seized items is not accounted for. Perforce, the identity and integrity of the dangerous drug, *i.e.*, the *corpus delicti*, cannot be established with moral certainty and renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt.

It bears repetition that as a general rule, compliance with the chain of custody is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.⁶⁴ The safeguards in the law directly addresses potential police abuses which is not overcome by repeatedly applying the presumption of regularity in the performance of official duty.⁶⁵

We have scoured the records and transcripts and find no information on the fourth link in the chain of custody, from the time PCI Ballesteros, the forensic chemist, after his examination, turned over the seized items to the crime laboratory's evidence custodian for safekeeping until its presentation to the trial court. Even the appellate court concedes the gap of the fourth link in the chain of custody albeit it easily cited inapplicable jurisprudence to gloss over the breach.⁶⁶

*People v. Miranda*⁶⁷ reminded prosecutors of their positive duty to account for any lapses in the chain of custody considering the procedural requirements clearly set forth in the law. In the same vein, We repeat a similar exhortation to the lower courts that adherence to the procedural requirements of Section 21 and the chain of custody of the evidence is the rule and not the exception. The lower courts, especially the trial court, must make a finding of fact on how, considering the noncompliance to Section 21, the integrity and evidentiary value of the evidence proffered by the prosecution is maintained. Courts ought to thoroughly evaluate and differentiate those errors that

⁶² *People v. Asaytuno*, supra note 35; *People v. Castillo*, supra note 33; *People v. Orcullo*, supra note 42.

⁶³ See SECTION 2, RULE 133 OF THE 2019 REVISED RULES ON EVIDENCE.

⁶⁴ *People v. Ramos*, 826 Phil. 981, 997-998 (2018).

⁶⁵ *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

⁶⁶ See *rollo*, p. 121.

⁶⁷ 824 Phil. 1042, 1060 (2018).

constitute a simple procedural lapse from those that amount to a “gross, systematic or deliberate disregard of the safeguards drawn by the law.”⁶⁸

In this case, the proof of the police officers’ noncompliance to Section 21 of RA 9165 is so to speak in the pudding as they rode rough shod over accused Mayla’s rights. Mayla’s testimony on how she was hastily arrested by the police officers during appellant’s arrest, her eventually testing negative for dangerous drugs, and her subsequent acquittal by the trial court for utter lack of testimonial evidence, signals us to a clear-cut example of the cavalier attitude towards adherence to procedure and protection of the rights of the accused.

We hearken to *People v. Abdula*⁶⁹ and its pronouncement that “the presence of irregularity in carrying out the statutorily mandated procedure in the handling of dangerous drugs during buy-bust operations *automatically destroys* the presumption of regularity in the performance of duty.” Effectively, the burden of evidence shifts to the prosecution to justify the procedural lapses committed by law enforcers in the custodial handling of the seized dangerous drugs.⁷⁰

Our ruling in *People v. Asaytuno*⁷¹ debunking the lower courts’ uniform rulings of conviction despite palpable noncompliance by police officers to Section 21 of RA 9165 and a broken chain of custody resonates:

For miniscule amounts of drugs seized, on the basis of testimonies of law enforcers who are potentially illicit themselves, and without the assuring presence and testimonies of third-party witnesses, the Regional Trial Court and the Court of Appeals were quick to convict accused-appellants. The Regional Trial Court even referenced the supposed presumption of regularity in the performance of official duties. This presumption of regularity cannot avail here. To begin with, with the police officer’s manifest noncompliance, there is nothing “regular” to even consider. Worse, there are allegations of wrongdoing and countervailing indicators of irregularity. The Regional Trial Court was quick to dismiss the defense’s claims as independently not credible with hardly an explanation, other than a quick and sweeping reference to a presumption of regularity. This is a betrayal of the standard of proof beyond reasonable doubt. It failed to consider that it was the prosecution’s duty to prove its own case on its own merits, and not merely on the basis of imputed weaknesses of the defense. Ultimately, the prosecution remained grossly wanting in establishing accused-appellants’ guilt with moral certainty.⁷²

WHEREFORE, the appeal is **GRANTED**. The June 20, 2019 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 11422 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Gary Sanchez y Bidez is

⁶⁸ *People v. Abdula*, 843 Phil. 706, 730 (2018), citing *People v. Ancheta*, 687 Phil. 569, 578-579 (2012).

⁶⁹ *Supra*.

⁷⁰ See SECTION 1, RULE 131 OF THE 2019 REVISED RULES ON EVIDENCE.

⁷¹ *Supra* note 35.

⁷² *Id.*

hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless his continued confinement is warranted for some other cause or ground.

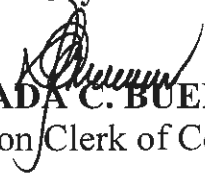
The Director General of the Bureau of Corrections, Muntinlupa City, is **ORDERED** to implement this Resolution and to inform this Court of the action taken hereon within five days from receipt of this Resolution.

Let entry of judgment be issued immediately.

The accused-appellant's manifestation in lieu of supplemental brief, pursuant to the Resolution dated November 27, 2019; and the Office of the Solicitor General's manifestation in lieu of supplemental brief, pursuant to the Resolution dated November 27, 2019, are both **NOTED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *2019*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

57-II
SEP 23 2022

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1229 Makati City

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(CA-G.R. CR-HC No. 11422)

The Director General (x)
Bureau of Corrections
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The Hon. Presiding Judge
Regional Trial Court, Branch 75
1440 Valenzuela City
(Crim. Case Nos. 66-V-12 & 67-V-12)

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