



Republic of the Philippines
Supreme Court
Bacolod City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 29, 2022, which reads as follows:

“G.R. No. 251477 (*People of the Philippines v. Alex Taghap Cualquera*). — Challenged in this appeal¹ is the September 19, 2019 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02066-MIN which affirmed the June 1, 2018 Decision³ of the Regional Trial Court (RTC), Branch 13, Davao City, which found Alex Taghap Cualquera (Alex) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165,⁴ otherwise known as the “*Comprehensive Dangerous Drugs Act of 2002*” in Criminal Case Nos. 73,064-12 and 73,065-12, respectively.

The Antecedents

Alex was charged with violation of Secs. 5 and 11, Art. II of Republic Act No. 9165 in two separate Informations which read:

Criminal Case No. 73,064-12

That on or about the September 12, 2012, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and knowingly sold, transferred and delivered to [poseur-buyer PO2 JONATHAN CADENAS], who acted as poseur buyer, one (1) heat sealed transparent plastic sachet containing Methamphetamine hydrochloride otherwise known as shabu, a

¹ *Rollo*, pp. 4-29.

² *Id.* at 4-26. Penned by Associate Justice Loida S. Posadas-Kahulugan and concurred in by Associate Justices Edgardo I. Lloren and Angelene Mary W. Quimpo-Sale.

³ Records, pp. 144-153. Penned by Presiding Judge Rowena Apao-Adlawan.

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.

dangerous drug, weighing 0.0379 gram placed in heat sealed plastic transparent sachet.

CONTRARY TO LAW.⁵

Criminal Case No. 73,065-12

That on or about September 12, 2012, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and knowingly had in his possession and control ten (10) heat-sealed transparent plastic sachets each containing Methamphetamine hydrochloride a dangerous drug, weighing 0.0182 gram, 0.0180 gram, 0.0190 gram, 0.0340 gram, 0.0285 gram, 0.0182 gram, 0.0602 gram, 0.0623 gram, 0.0862 gram and 0.0610 gram, with a total weight of 0.4056 gram.

CONTRARY TO LAW.⁶

Upon arraignment, appellant Alex pleaded not guilty to the crimes charged. During the pre-trial, the parties stipulated on the following:

1. The existence and due execution of the excerpts from the entry of the police blotter of the Sta. Ana Police Station, PSI;
2. That PSI April dela Rosa Fabian is an expert witness in the field of forensic chemistry;
3. That PSI Fabian examined the drug specimens consisting of eleven (11) heat-sealed plastic sachets indicated in Chemistry Report No. D-370-12, and after conducting the required qualitative examination it gave a positive result to the test for methamphetamine hydrochloride, a dangerous drug;
4. That PSI Fabian placed her markings on the drug specimens and therefore can identify the same;
5. That the receiving officer, the forensic chemist and the evidence custodian of the PNP Crime Laboratory have no personal knowledge on the arrest of the accused and do not know the accused personally;
6. That in the drug screening test accused tested negative for the THC-metabolites and methamphetamine as indicated in Chemistry Report No. DT-424-12;
7. That the desk officer has no personal knowledge of the actual arrest of the accused.⁷

Thereafter, trial on the merits ensued.

Evidence for the Prosecution

The prosecution presented the following version of events:

On September 12, 2012, Police Officer 2 Jonathan Cadenas (PO2 Cadenas) was on duty at the Sta. Ana Police Station when their confidential

⁵ Records, p. 1.

⁶ Id. at 160.

⁷ Id. at 48.

informant arrived and relayed to him that a certain “Alex” was selling shabu at Barangay 31-D, Quezon Boulevard, Davao City. He immediately informed their station commander, Police Superintendent Caesar Cabuhat (PS Cabuhat), and recorded the same in the police blotter. A buy-bust team was later formed composed of Police Senior Inspector Libera (PSI Libera), Senior Police Officer 3 Luminarias (SPO3 Luminarias), SPO1 Cameros, PO3 Arrubio, PO2 Arellano, and PO3 Donquilab⁸ as the immediate back-up, and PO2 Cadenas as the poseur-buyer. After the briefing, PSI Libera gave PO2 Cadenas a ₱500-bill with serial number QW847409 as buy-bust money which was marked by PO2 Cadenas with his initials “JCC.” Before proceeding to the target area, the team coordinated with the Philippine Drug Enforcement Agency (PDEA).⁹

At around 11:15 a.m. of September 12, 2012, the team arrived at the target area aboard an unmarked vehicle. PO2 Cadenas and the confidential informant then approached Alex who was standing outside a residential house. The confidential informant introduced PO2 Cadenas to Alex as his friend and a prospective buyer of shabu. Alex asked PO2 Cadenas how much he would be buying to which the latter replied ₱500-worth of shabu. Alex then took several sachets of suspected shabu from the right pocket of his short pants and asked PO2 Cadenas to choose one. Afterwards, PO2 Cadenas gave the marked ₱500-bill to Alex.¹⁰

Thereafter, PO2 Cadenas executed the pre-arranged signal that the transaction was consummated, arrested Alex, and introduced himself as a police officer. PO2 Cadenas then conducted a body search on Alex, and recovered from the latter’s pocket 10 sachets of suspected shabu and the marked ₱500-bill. He immediately marked the item subject of the sale transaction with “A” while the other confiscated items, namely: (a) the three confiscated small sachets with “B-1,” “B-2,” “B-3;” (b) the three medium-sized sachets with “C-1,” “C-2” and “C-3;” and (c) the four elongated sachets with “D-1,” “D-2,” “D-3” and “D-4” in the presence of Alex. Photographs of the marking were also taken by PO2 Arellano.¹¹

Afterwards, the team, together with Alex, went to the police station for recording. From the time of confiscation until arrival at the police station, PO2 Cadenas had custody of the confiscated items. Then, PO2 Cadenas turned over the confiscated items to the desk officer, PO2 Adnan Ahadain (PO2 Ahadain), who recorded the incident and placed his own markings on the items. Then, the police officers conducted an inventory in the presence of Alex and the representatives from the media, Angel de Vera, and the Department of Justice (DOJ), Noel Polito, and an elective public official Rommel Carig.

⁸ No first names of the foregoing officers were found in the records.

⁹ TSN, October 10, 2018, pp. 9-11.

¹⁰ Id. at 12-16.

¹¹ Id. at 16-18.

Photographs were also taken during the conduct of inventory.¹²

After inventory, SPO 1 Lendro Tutor (SPO1 Tutor) brought Alex and the confiscated items to the crime laboratory. The drug test conducted on Alex turned out negative of the presence of methamphetamine hydrochloride¹³ but the seized items tested positive of methamphetamine hydrochloride.¹⁴

On August 30, 2017, the parties stipulated on the testimonies of PO2 Ahadain and SPO1 Tutor, as follows:

PO2 Adnan Ahadain:

- a) That in his capacity as the Desk Officer of Sta. Ana Police Station, he received from Police Officer Cadenas the drug specimens, subject matter in these cases on September 12, 2012 at 11:47 AM with markings already on it as evidenced by the Chain of Custody Form of Sta. Ana Police Station marked as Exhibit "J" and "J-1" for the prosecution.
- b) That he can identify the drug specimens because he placed his markings thereon;
- c) That after placing his markings on the drug specimens he turned it over to Police Officer Tutor on even date at 12:15 in the afternoon as evidenced by the same Chain of custody form marked as Exhibit "J" and "J-1" for the prosecution;
- d) That he can identify the Chain of Custody Form marked as Exhibit "J" and "J-1" for the prosecution;

SPO1 Lendro Tutor

- a) That he received the drug specimens subject matter in these cases from Police Officer Adnan Ahadain on September 12, 2012 at 12:15 in the afternoon with markings already on it as evidenced by the Chain of Custody Form of Sta. Ana Police Station marked Exhibit "J" with submarkings for the prosecution;
- b) That he can identify the drug specimens because he placed his markings;
- c) That it was him who delivered the drug specimens to the PNP Crime Laboratory on September 12, 2012 at 3:00 o'clock on the afternoon which was duly received by Police Officer Bualan of the PNP Crime Laboratory as evidenced by the written request for laboratory examination of the drug specimens marked as Exhibit "A" as well as the Chain of Custody Form of Sta. Ana Police Station marked as Exhibit "J" and the Chain of Custody Form of the PNP Crime Laboratory marked as Exhibit "K" for the prosecution;

¹² Id. at 18-20.

¹³ TSN, February 20, 2017, pp. 41-42.

¹⁴ TSN, October 10, 2018, p. 21.

- d) That he can identify the written request for laboratory examination of the drug specimens marked as Exhibit "A" as well as the chain of Custody Form of Sta. Ana Police Station and that of the PNP Crime Laboratory marked as Exhibit "J" and "K", respectively;¹⁵
- e) That it was him who presented the items during the conduct of the inventory prior to him delivering the drug specimens to the PNP Crime Laboratory; That he has no personal knowledge on how the accused was arrested.
- f) He was the desk officer of duty on 12 September 2012 and when he received the subject specimen (sic) it already had some markings on it (sic) as shown by the Chain of Custody Report. He also placed his own marking on the specimen (sic) then turned over the same to APO1 Lendro Tutor at around 12:12 in the afternoon on the same day. He can identify the drug specimen because of his markings thereon as well as the Chain of Custody Form.¹⁶

On December 11, 2017, the parties also stipulated on the testimonies of SPO 1 Leonides Bualan (SPO1 Bualan), Police Chief Inspector April de la Rosa Fabian (PCI Fabian) and SPO 2 Antonio Alcozar (SPO2 Alcozar):

SPO1 Leonides Bualan

- 1) That he was the designated receiving officer of the Crime Laboratory who received from PO3 Tutor the following: the letter request for the laboratory examination, the drug specimens described in said letter request;
- 2) That when he received the drug specimens there were already markings on the same;
- 3) That he placed his own markings on the drug specimens;
- 4) That he weighed the drug specimens and placed his own markings;
- 5) That he forwarded the drug specimens to the duty Forensic chemist PSI April Dela (sic) Fabian; and
- 6) That he signed the Chain of Custody Form both of the Police Station as well as the Crime Laboratory.

PCI April Dela Rosa Fabian

- 1) That she received the drug specimen from PO3 Bualan on September 12, 2012;
- 2) That upon receipt there were already markings on the drug specimens;
- 3) That she placed her own markings on the same;
- 4) That after laboratory examination she sealed and marked the same and turned them over to the Evidence custodian of the PNP Crime Laboratory,

¹⁵ Records, p. 123.

¹⁶ Rollo, p. 11.

SPO2 Antonio Alcozar;

- 5) That she signed the chain of custody Form of the PNP Crime Laboratory to evidence receipt and turnover; and
- 6) That she can identify the drugs as well as the documents she prepared.

SPO2 Antonio Alcozar

- 1) That he was the evidence custodian of the PNP Crime Laboratory in 2012;
- 2) That he received from PSI April Dela Rosa Fabian the drug specimens already marked and sealed;
- 3) That the same remained in his custody until the Court directed for their presentation for the ocular inspection; and
- 4) That the drug specimens were of the same condition when Officer Alcozar presented the same to the Court.¹⁷

Version of the Defense

The defense presented the following version of events:

On September 12, 2012, five police officers alighted from the Sta. Ana Police patrol car which stopped directly in front of Alex's store. Alex went out of the store, and was standing between the store and their house when one of the police officers pointed a gun at him and informed him of his arrest. Alex asked for a warrant but the police officer handcuffed and told him that there was no need of the said warrant as they were conducting a buy-bust operation. Afterwards, the police officers frisked him while the other four law enforcers entered their store. Alex did not see what happened inside but he heard a commotion. During the said incident, Alex's family was inside their house. However, Alex did not ask any help from them nor his neighbors.¹⁸

When the police officers went out of the store, they brought Alex to a table beside the road and thereafter, boarded him to the police patrol car. Then, he was brought to and detained at the police station.¹⁹

Alex was interrogated and photographed in the presence of some media personnel. He denied that the seized items were confiscated from him. He asserted that his urine laboratory examination tested negative of methamphetamine hydrochloride.²⁰

¹⁷ Id. at 11-13.

¹⁸ TSN, April 18, 2018, pp. 48-49.

¹⁹ Id. at 50-51.

²⁰ Id. at 51-55.

Ruling of the Regional Trial Court

On June 1, 2018, the RTC rendered its Decision²¹ convicting appellant Alex of violation of Secs. 5 and 11, Art. II of Republic Act No. 9165. The dispositive portion of which reads:

WHEREFORE, as the prosecution sufficiently established the guilt of the accused, ALEX TAGHAP CUALQUERA, beyond reasonable doubt, judgment is hereby rendered as follows:

- a) In Criminal Case No. 73,064-12 for violation of Section 5, Article II of RA 9165, the accused is CONVICTED of the charge. He is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P500,000.00 as well as to pay the cost of the suit;
- b) In Criminal Case No. 73,065-12 for violation of Section 11, Article II of RA 9165, the accused is CONVICTED of the charge. He is hereby sentenced to suffer the indeterminate penalty of Twelve (12) Years and One (1) [day] as MINIMUM to Fourteen (14) years as MAXIMUM and to pay a fine of P300,000.00 as well as to pay the cost of the suit.

The accused is entitled to be credited in his favor the preventive imprisonment that he has undergone pursuant to Article 29 of the Revised Penal Code as amended by Republic Act No. 10592.

Pursuant to Section 21 (7) of RA No. 9165, the prosecution is hereby given a period of five (5) days from receipt of the copy of the decision to manifest before this Court whether or not its office will be needing the shabu subject matter in these cases. Otherwise, the Branch Clerk of Court is hereby directed to forward the same to PDEA, upon proper receipt, for disposition and destruction in accordance with the law.

SO ORDERED.²²

Ruling of the Court of Appeals

On September 19, 2019, the CA rendered its assailed Decision²³ denying Alex's appeal and affirming the RTC's conviction for violation of Secs. 5 and 11, Art. II of Republic Act No. 9165. The dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated 1 June 2018 of the RTC, Branch 13 of Davao City, finding Alex guilty beyond reasonable doubt in Criminal Case No. 73,064-12 and Criminal Case No. 73,065-12, for violation of Sections 5 and 11, Article II of Republic

²¹ Records, pp. 144-153.

²² Id. at 152-153.

²³ Rollo, pp. 4-26.

Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002, respectively, is hereby **AFFIRMED *in toto***.

In Criminal Case No. 73,064-12, accused-appellant Alex Cualquera is sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P500,000.00 as well as to pay the cost of the suit. In Criminal Case No. 73,065-12, the accused-appellant is sentenced to suffer the indeterminate penalty of Twelve (12) years, and One (1) day to Fourteen (14) years and to pay a fine of P300,000.00 as well as to pay the cost of the suit.

SO ORDERED.²⁴ (Emphasis in the original)

The appellate court found that there was a legitimate buy-bust operation. The prosecution established that PO2 Cadenas and the confidential informant went to the target area to buy shabu from Alex, and that the latter sold to PO2 Cadenas one sachet of shabu worth P500.00. Upon laboratory examination, the said sachet tested positive of methamphetamine hydrochloride. The appellate court gave credence on PO2 Cadenas' testimony as he had personal knowledge of the events that transpired and the actual sale of shabu. A surveillance prior to the buy-bust operation lacks legal basis and is not a requirement under the law.²⁵

In addition, the appellate court found that the integrity of the seized items were preserved. The prosecution had duly established an unbroken chain of custody from the time of confiscation until the presentation of the seized items before the court. First, PO2 Cadenas initially marked the seized items with his name, signature and date upon their confiscation from Alex. Second, upon arrival in the police station, PO2 Cadenas turned over the confiscated items to PO2 Ahadain. The inventory was witnessed by representatives from the media and an elected public official. Third, PO2 Ahadain marked the seized items and turned them over to SPO1 Tutor, who, in turn, delivered them to the PNP Crime Laboratory for examination. The seized items were received by SPO1 Bualan who likewise placed his own markings and delivered them to forensic chemist PCI Fabian. The results of the laboratory examination showed that the seized items tested positive of methamphetamine hydrochloride or shabu. Lastly, PCI Fabian sealed and marked the seized items, and turned them over to the evidence custodian SPO2 Alcozar who remained in custody of the seized items until their presentation before the court.²⁶

As to the charge of Illegal Possession of Dangerous Drugs, the appellate court likewise found that all its elements are present in the case at bar. Upon frisking of Alex, PO2 Cadenas found several sachets in his pockets. Alex failed to offer any evidence that he had the authority by law to possess the said

²⁴ Id. at 26.

²⁵ Id. at 16-21.

²⁶ Id. at 21-24.

dangerous drugs nor any justifiable reason why he had possession thereof.²⁷

Issues

Appellee adopted its respective brief filed before the appellate court²⁸ while appellant filed a Supplemental Brief²⁹ before this Court. The issues raised for consideration of this Court are:

I

The trial court gravely erred in finding that there was a buy bust operation against appellant[.]

II

The trial court gravely erred in finding that there was a complete chain of custody.³⁰

Appellant's Arguments

Appellant argues that the police officers failed to conduct a surveillance to verify the information given by the confidential informant. Although it is not one of the requirements of Republic Act No. 9165, surveillance is relevant when the confidential informant's report becomes the basis of the buy-bust operation. Appellant contends that the police officers must first verify or ascertain the truth of the reports. Otherwise, they would run the risk of harassing or entrapping an innocent person. Besides, the prosecution did not elaborate on why the confidential informant was considered reliable or credible. Thus, appellant maintains that the buy-bust operation was baseless as there was no convincing proof of his involvement in the illegal drug trade.³¹

Moreover, Alex argues that the testimony of PO2 Cadenas on the alleged buy-bust transaction was not credible. During the briefing, appellant contends that the confidential informant already arranged the place, time and consideration of the sale transaction. Thus, PO2 Cadenas' testimony that appellant made him choose among the several sachets contradicted the prior arrangement made by the confidential informant, *i.e.*, ₱500.00 worth of shabu.³²

Also, appellant insists that PO2 Cadenas testified that he recovered eight sachets from appellant's pocket. However, the blotter, inventory, request for laboratory examination, Chemistry Laboratory Report and Affidavit of Arrest

²⁷ Id. at 25-26.

²⁸ Id. at 3.

²⁹ Id. at 44-49.

³⁰ *CA rollo*, p. 30.

³¹ Id. at 37-38.

³² Id. at 38-40.

mention 10 sachets of shabu.³³

Furthermore, appellant, citing *People v. Sood*,³⁴ claims that the media personnel, DOJ representative, and elected public official were not present during the apprehension and seizure of drugs. No attempt was made by the police officers to contact these required witnesses during the buy-bust operation nor a justification was offered to explain their absence.³⁵

Lastly, appellant contends that there was no complete chain of custody. The marking was not done in the presence of the three required witnesses. Also, the apprehending team did not immediately conduct a physical inventory and photography in the presence of appellant, media personnel, DOJ representatives and elected public official. Almost three hours had lapsed from the time of confiscation until the conduct of the inventory and taking of photographs.³⁶

Appellee's Arguments

On the other hand, appellee contends that the prosecution has duly established with moral certainty that Alex committed the crime of Illegal Sale and Possession of Dangerous Drugs. The prosecution has adequately shown the details of the buy-bust operation and sufficiently proven all the elements of the crimes charged as per the testimony of PO2 Cadenas, the designated poseur-buyer.³⁷

Moreover, a prior surveillance is not an indispensable requirement before police officers can conduct a buy-bust operation, nor is it necessary to establish the credibility of police officers' version of events leading to the arrest of the accused caught *in flagrante delicto*. The testimony of PO2 Cadenas that he was made to choose from several sachets containing shabu does not run counter to his credibility to testify and to establish the existence of a legitimate buy-bust operation. A credible and positive testimony of a witness is sufficient to warrant a conviction. Also, the fact that PO2 Cadenas failed to correctly recall the number of sachets he recovered from appellant should not be taken against him as he was able to clarify in the latter part of his direct examination that he marked the confiscated items with "B-1" to "B-3," "C-1" to "C-3" and "D-1" to "D-4" which shows exactly the number of sachets he recovered from appellant.³⁸

³³ Id. at 40.

³⁴ G.R. No. 227394, June 6, 2018.

³⁵ CA *rollo*, pp. 40-41.

³⁶ Id. at 41-47.

³⁷ Id. at 78-83.

³⁸ Id. at 84-86.

Lastly, the prosecution was able to establish compliance with the procedure laid down in Sec. 21 of Republic Act No. 9165. The prosecution had duly proved every link in the chain of custody from the time of seizure until the same were offered as evidence in court. The prosecution has substantially complied with the provisions of Republic Act No. 9165 and its implementing rules and regulations with regard to marking, inventory, and taking of photographs, which showed an unbroken chain of custody. The testimony of PO2 Cadenas and the stipulated testimonies of PO2 Ahadain, SPO1 Tutor, SPO1 Bualan, PCI Fabian, and SPO2 Alcozar, together with the documentary evidence, sufficiently show adherence to the requirements of the law and the chain of custody rule.³⁹

Our Ruling

After due consideration, We resolve to acquit appellant.

In prosecutions for illegal sale of drugs, what is material is proof that the transaction actually took place and the presentation in court of the *corpus delicti* as evidence.⁴⁰ Appellant's contention that the police officers should verify the confidential informant's report prior to the buy-bust operation is untenable. It bears stressing that at the time of the transaction, PO2 Cadenas was with the confidential informant who identified appellant as the person illegally selling shabu. In fact, the confidential informant introduced appellant Alex to PO2 Cadenas as the buyer of *shabu*. Upon consummation of the transaction and confirmation that the plastic sachet contained white crystalline substance, PO2 Cadenas arrested appellant.

There is no basis, therefore, in appellant's contention that there can be no legitimate buy-bust operation for failure of the police officers to conduct a prior surveillance to verify the report of the confidential informant. The very nature of buy-bust operation is to entrap and capture drug peddlers,⁴¹ notwithstanding whether the police officers 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*⁴² 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:

³⁹ Id. at 88-99.

⁴⁰ *People v. Domado*, 635 Phil. 74, 85 (2010), citing *People v. Concepcion*, 578 Phil. 957, 977 (2008).

⁴¹ *People v. Bongalon*, 425 Phil. 96, 116 (2002).

⁴² 608 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 police [officers] need not have conducted any prior surveillance before they undertook the buy-bust operation.⁴³ (Emphasis supplied)

The prosecution had sufficiently established the existence of the buy-bust operation. Ample evidence was adduced to show the events that led to the entrapment of appellant, the actual transaction, and ultimately, the arrest of appellant and seizure of the prohibited drugs. The testimony of PO2 Cadenas indeed a buy-bust operation was conducted which resulted in the apprehension of appellant was found to be credible. In fact, prior to the operation, the police officers coordinated with PDEA⁴⁴ and recorded the events of the operation and appellant's arrest.⁴⁵

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 Sec. 21, Art. II of Republic Act No. 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.

We are constrained to acquit Alex due to the irregularities or deviations committed by the police officers *vis-a-vis* the requirements under Sec. 21, Art. II of Republic Act No. 9165, which tainted the integrity and evidentiary value of the *corpus delicti*, *i.e.*, the confiscated dangerous drugs. Sec. 21, paragraph 1, Art. II of Republic Act No. 9165 requires that:

a. The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation**, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis supplied)

Indeed, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not

⁴³ Id. at 274-275.

⁴⁴ Records, p. 19.

⁴⁵ Id. at 7-9.

readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.⁴⁶ 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 the law 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*.⁴⁷

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.**⁴⁸ (Emphasis supplied)

Nonetheless, Sec. 21 (a), Art. II of the Implementing Rules and Regulations (IRR) offers some flexibility in complying with the express requirements under paragraph 1, Sec. 21, Art. II of Republic Act No. 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 supplied)

In *People v. Adobar (Adobar)*,⁴⁹ the Court emphasized the time, witnesses, and proof of inventory needed to be observed in handling illegal drugs:

In sum, the applicable law mandates the following to be observed as

⁴⁶ *People v. Kamad*, 624 Phil. 289, 301-302 (2010).

⁴⁷ *People v. Balibay*, 742 Phil. 746, 757-758 (2014), citing *People v. Lim*, 435 Phil. 640, 659-660 (2002).

⁴⁸ *People v. Lim*, supra.

⁴⁹ 832 Phil. 731 (2018).

regards the time, witnesses and proof of inventory in the custody of seized dangerous illegal drugs:

1. The initial custody requirements must be done **immediately after seizure or confiscation**;
2. The **physical inventory and photographing** must be done in the presence of:
 - a. the **accused or his representative or counsel**;
 - b. a representative from the **media**;
 - c. a representative from the **DOJ; and**
 - d. any **elected public official**.
3. The conduct of the physical inventory and photograph shall be done at the:
 - a. **place where the search warrant is served**; or
 - b. **at the nearest police station**; or
 - c. **nearest office of the apprehending officer/team**, whichever is practicable, in case of warrantless seizure.⁵⁰

The law requires that the apprehending team must physically inventory and take photographs of the seized items immediately after seizure or confiscation.

The records show that the buy-bust operation transpired at around 11:15 a.m. of September 12, 2012. However, the seized items were inventoried in the afternoon, or three hours after their seizure. This is in utter violation of the Law which requires the conduct of inventory and photography immediately after seizure or confiscation. Moreover, We note that the prosecution failed to explain why the inventory and photograph taking were done at the police station and not at the place of arrest.

PO2 Cadenas' testimony clearly reveals that the conduct of the inventory was made in the afternoon of September 12, 2012 at their office, viz.:

Q: **You conducted an inventory of the seized items. When did you conduct that inventory?**

A: **In the afternoon, sir.**

Q: **In the afternoon. Where?**

A: **At our office, sir.**⁵¹

To stress, it has not escaped Our attention that although the buy-bust operation transpired at 11:15 a.m., the inventory was conducted in the afternoon or three hours late. This time gap was not satisfactorily explained by the prosecution. As such, it cannot be properly concluded that the

⁵⁰ Id. at 751-752.

⁵¹ TSN, October 10, 2014, p. 15.

conduct of the inventory was done immediately after the confiscation, as the law requires. Otherwise stated, this unexplained lapse created a doubt on the identity, integrity, and evidentiary value of the seized sachets.

Moreover, no justifiable reason was offered to show why the physical inventory and taking of photograph were done at the nearest police station and not immediately after seizure, *i.e.* at the place of arrest. Patently, the evidentiary value of the *corpus delicti* in this case was not preserved which warrants the acquittal of appellant.

WHEREFORE, the appeal is **GRANTED**. The September 19, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02066-MIN is **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of Alex Taghap Cualquera. Accordingly, accused-appellant Alex Taghap Cualquera is **ACQUITTED** of the crimes charged against him and ordered immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

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 thereof.

Let entry of judgment be issued immediately.

The Letter dated September 26, 2022 of C/Insp. Argie H. Adel, Deputy Chief, Inmate Documents and Processing Division, Bureau of Corrections, Muntinlupa City, requesting for a certified true copy of the entry of judgment to the instant case, is **NOTED**.

SO ORDERED.” *Marquez, J., on official business.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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DEC 15 2022

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CR-HC No. 02066-MIN)

The Hon. Presiding Judge
Regional Trial Court, Branch 13
8000 Davao City
(Crim. Case Nos. 73,064-12 & 73,065-12)

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The Superintendent
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