



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 22, 2023 which reads as follows:*

“**G.R. No. 254867 (People of the Philippines vs. Jestoni Ubas)**. — This is an Appeal<sup>1</sup> from the May 28, 2020 Decision<sup>2</sup> of the Court of Appeals, Cagayan de Oro City (CA) in CA-G.R. CR-HC No. 02118. The CA affirmed the January 19, 2018 Judgment<sup>3</sup> of the Regional Trial Court of Ipil, Zamboanga Sibugay, Branch 24 (RTC), finding Jestoni Ubas (*accused-appellant*) guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in Criminal Case No. I-5587.

**The Antecedents**

Accused-appellant was charged with Illegal Sale of Dangerous Drugs in an Information<sup>4</sup> dated June 26, 2014, as follows:

That on June 25, 2014, at 2 o'clock in the afternoon, more or less, at Barangay Ipil Heights, Ipil, Zamboanga Sibugay, and within the territorial jurisdiction of this Honorable Court, accused **JESTONI UBAS**, with deliberate intent to possess, sell, distribute, deliver and give away any dangerous drugs and not being authorized by law to possess, sell, distribute or give away any dangerous drugs to third persons, did, then, and there [willfully], intentionally and knowingly sell, trade, distribute, deliver and give away to a police officer disguised as a buyer **One (1) sachet of Methamphetamine Hydrochloride** or locally known as **Shabu** which is a dangerous drug, which was subsequently marked as **JU-06-25-14-01** and weighs **0.052 [gram]**.<sup>5</sup>

<sup>1</sup> *Rollo*, pp. 23-25.

<sup>2</sup> *Id.* at 5-22; penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Loida S. Posadas-Kahulugan and Richard D. Mordeno.

<sup>3</sup> *CA rollo*, pp. 37-46; penned by Presiding Judge Anthony D.T. Isaw, CPA.

<sup>4</sup> *Id.* at 37.

<sup>5</sup> *Id.*

Accused-appellant pleaded not guilty to the charge during the arraignment. Trial on the merits ensued after completion of the pre-trial conference.<sup>6</sup>

*Version of the Prosecution*

Senior Police Officer 1 Rindo Obdamin (*SPO1 Obdamin*) received a report on the evening of June 10, 2014 from his confidential informant (*CI*) that accused-appellant was selling dangerous drugs. To verify the report, SPO1 Obdamin and SPO3 Marlon Magbanua (*SPO3 Magbanua*) conducted surveillance in the afternoon and evening for 13 days thereafter. SPO1 Obdamin was able to verify the report on June 24, 2014, and immediately informed his commanding officer, Police Inspector Errie Samuel Bael (*PI Bael*). In turn, PI Bael organized the Municipal Anti-Illegal Drugs Special Operations Task Force to conduct a buy-bust operation.<sup>7</sup>

During the pre-operations briefing on the afternoon of June 25, 2014, SPO1 Obdamin was designated as poseur-buyer and arresting officer, while Police Officer 2 Gil Jungco (*PO2 Jungco*) was assigned to conduct the inventory. On the other hand, SPO3 Magbanua was assigned as backup, and PI Bael was tasked to secure the perimeter and monitor the operation. SPO1 Obdamin was provided with the marked ₱500.00 bill which was earlier registered with the fiscal's office.<sup>8</sup>

The CI and accused-appellant agreed to meet up near the *sari-sari* store located along the provincial road of Purok Corazon, Barangay Ipil Heights. At around 1:30 p.m., the buy-bust team went to the target area. The CI went ahead and SPO1 Obdamin later followed and went inside the store. The rest of the backup team positioned themselves at a distance.<sup>9</sup>

When accused-appellant arrived and parked his motorcycle, the CI approached and conversed with him. SPO1 Obdamin narrated that from his position, he could see the CI and accused-appellant, but he could not hear their conversation. The CI then called on SPO1 Obdamin and introduced him to accused-appellant as the buyer of *shabu*. SPO1 Obdamin asked accused-appellant if he had any, to which accused-appellant replied that he had ₱500.00 worth. SPO1 Obdamin then gave accused-appellant the marked money. Accused-appellant took out something wrapped in a small piece of paper from one of his pockets and handed it to SPO1 Obdamin, who in turn, unwrapped the paper which revealed a sachet containing white crystalline granules. SPO1 Obdamin then held accused-appellant, introduced himself as a

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<sup>6</sup> Id.

<sup>7</sup> *Rollo*, p. 7.

<sup>8</sup> Id. at 8.

<sup>9</sup> Id.

police officer, and announced the latter's arrest. SPO3 Magbanua and PO2 Jungco approached them and handcuffed accused-appellant. SPO1 Obdamin apprised accused-appellant of his constitutional rights.<sup>10</sup>

Thereafter, SPO3 Magbanua called for representatives from the Department of Justice (*DOJ*), the media, and the *barangay*. Nelson Wooton from the DOJ, Antonio Facas from the DXIR radio station, and Ipil Heights Barangay Captain Edgardo Alibutdan (*Brgy. Capt. Alibutdan*) arrived 20 minutes later. SPO1 Obdamin then proceeded with a body search on accused-appellant in the presence of the insulating witnesses. He was able to recover the ₱500.00 marked money, along with other personal items. He turned over said items to PO2 Jungco who recorded them in the Inventory Sheet.<sup>11</sup> Both marking and inventory were conducted at the place of arrest, in the presence of accused-appellant and the insulating witnesses. The media representative took photos of the proceedings.<sup>12</sup>

SPO1 Obdamin kept the sachet in his custody and marked the same with his initials "JU," the date followed by "01" ("06-25-14-01"), the time ("1:55 p.m."), and his signature. These were reflected on the inventory sheet which were signed by SPO1 Obdamin and the insulating witnesses.<sup>13</sup>

SPO1 Obdamin personally turned over the sachet to the forensic chemist, Police Senior Inspector Danilo Bustillo, Jr. (*PSI Bustillo*). The sachet tested positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>14</sup>

PSI Bustillo placed his markings on the sachet and turned it over to PO2 Michael Bate (*PO2 Bate*), the evidence custodian. PO2 Bate had sole access to the locker where the sachet was kept. PSI Bustillo retrieved the sachet from PO2 Bate and turned it over to the trial court. The former positively identified the sachet during his testimony.<sup>15</sup>

### *Version of the Defense*

Accused-appellant denied the charge against him. He countered that he went to the *barangay* hall of Ipil Heights on the afternoon of June 25, 2014 to look for passengers because he was a *habal-habal* driver. On his way, he was

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<sup>10</sup> Id. at 8-9.

<sup>11</sup> Records, p. 11.

<sup>12</sup> *Rollo*, p. 9.

<sup>13</sup> Id. at 9-10.

<sup>14</sup> Id. at 10.

<sup>15</sup> Id.

blocked by two motorcycles which had two passengers each, one of whom was SPO1 Obdamin. He was then arrested for allegedly selling *shabu*.<sup>16</sup>

The police operatives bodily searched accused-appellant and recovered a ₱100.00 bill and some loose coins. Accused-appellant averred that the operatives who arrested him had the sachet of *shabu* and the ₱500.00 marked bill with them, and that they were not recovered from him.<sup>17</sup>

The recovered items were placed on the pavement as they waited for the insulating witnesses to arrive. Upon the witnesses' arrival, SPO1 Obdamin checked accused-appellant's motorcycle utility box, but recovered nothing. Photos were taken in the presence of accused-appellant and the insulating witnesses.<sup>18</sup>

### Ruling of the RTC

On January 19, 2018, the RTC rendered judgment finding accused-appellant guilty beyond reasonable doubt of the offense of Illegal Sale of Dangerous Drugs under R.A. No. 9165, the dispositive portion reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding accused JESTONI UBAS "**GUILTY BEYOND REASONABLE DOUBT**" for the crime of selling [*shabu*] in violation of Section 5 of Republic Act 9165, this Court hereby sentences him to LIFE IMPRISONMENT and to pay a fine in the amount of 500,000.00 pesos.

The subject sachet of [*shabu*] recovered from the accused is confiscated in favor of the State and shall be disposed in accordance with law.

SO ORDERED.<sup>19</sup>

The RTC ruled that accused-appellant was caught *in flagrante delicto* through a valid buy-bust operation. The prosecution established the essential elements of the offense, namely: 1) the identity of SPO1 Obdamin as the buyer, and accused-appellant as the seller; 2) the object of the sale, a sachet of *shabu* which SPO1 Obdamin marked with "JU-06-25-14-01" immediately after arrest; and 3) the consideration, the ₱500.00 marked bill.<sup>20</sup> The RTC also found that the prosecution was able to successfully establish the actual

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<sup>16</sup> Id.

<sup>17</sup> Id. at 11.

<sup>18</sup> Id.

<sup>19</sup> CA rollo, p. 45.

<sup>20</sup> Id. at 42.

exchange of the alleged *shabu* and the buy-bust money,<sup>21</sup> while SPO1 Obdamin clearly and distinctly narrated the details of the transaction.<sup>22</sup>

Further, the RTC found SPO1 Obdamin's testimony as coherent and full of substantive details. On the other hand, accused-appellant failed to present clear and convincing evidence to overturn the presumption of regularity in the performance of duties in favor of SPO1 Obdamin.<sup>23</sup> Hence, in the absence of proof of motive to falsely impute such a serious crime against accused-appellant, credence should be given to the narration of the incident by the prosecution witnesses.<sup>24</sup>

Finally, the RTC found the certificate of inventory as the best corroborative evidence to support the fact of marking on the sachet of *shabu*. The inventory was made at the time and place of the arrest where the insulating witnesses were able to examine the accuracy of what were written therein.<sup>25</sup> Verily, the prosecution was able to establish the identity and integrity of the *corpus delicti* beyond reasonable doubt, as well as the chain of custody of the seized item which remained unbroken.<sup>26</sup>

### Ruling of the CA

On appeal, accused-appellant posited that the chain of custody was not preserved. He argued that the prosecution witnesses had conflicting testimonies as to who actually received the subject specimen at the crime laboratory. Moreover, evidence custodian PO2 Bate was not presented in court. Accused-appellant insisted that these gaps in the chain of custody cast doubt on the integrity and credibility of the seized drug.<sup>27</sup>

The prosecution, however, countered that the inconsistency in the testimonies as to who actually received the sachet was of no moment. PSI Bustillo had clearly and categorically testified that he was the one who received the sachet from SPO1 Obdamin. His testimony was corroborated by documentary and physical evidence which was, in fact, countersigned by SPO1 Obdamin.<sup>28</sup>

As regards the non-presentation of the evidence custodian, the prosecution maintained that presentation of all persons who came in contact with the seized drug is not necessary as long as the chain of custody was

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<sup>21</sup> *Id.* at 40.

<sup>22</sup> *Id.* at 41.

<sup>23</sup> *Id.* at 42.

<sup>24</sup> *Id.* at 43.

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

<sup>26</sup> *Id.* at 45.

<sup>27</sup> *Rollo*, p. 11.

<sup>28</sup> *Id.* at 12.

clearly established to have not been broken and the seized drug was properly identified in court.<sup>29</sup>

On May 28, 2020, the CA rendered a Decision denying the appeal and affirming the RTC, thus:

WHEREFORE, the appeal is DENIED. The Judgment rendered by the Regional Trial Court, 9<sup>th</sup> Judicial Region, Branch 24, Ipil, Zamboanga Sibugay, in Criminal Case No. I-5587 for violation of Section 5, Article II of R.A. 9165, dated January 19, 2018, is AFFIRMED.

SO ORDERED.<sup>30</sup>

The CA ruled that the prosecution was able to satisfactorily establish all the elements of Illegal Sale of Dangerous Drugs, and to account for every link in the chain.<sup>31</sup> The records showed the: (1) consummation of the illegal sale; (2) immediate marking, inventory, and photographing of the seized contraband after and at the place of arrest which was done in the presence of the required witnesses; (3) turnover of the marked money to the investigator; (4) custody of the seized drug by SPO1 Obdamin until its turnover to forensic chemist PSI Bustillo for laboratory examination; (5) turnover of the specimen by PSI Bustillo to the evidence custodian; and (6) turnover of the specimen to the court by PSI Bustillo on the day of his testimony.<sup>32</sup>

The CA also held that the non-presentation of the evidence custodian was of no moment, because the matter of presentation of witnesses by the prosecution is not for the court to decide.<sup>33</sup> It reiterated that it is not necessary that each and every person who came into possession of the drugs should take the witness stand.<sup>34</sup>

The CA, therefore, emphasized that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed.<sup>35</sup> Moreover, accused-appellant's defense of denial cannot prevail against the positive testimony of a prosecution witness. His unsupported and unsubstantiated denial becomes negative and self-serving, and cannot be given greater evidentiary value over the convincing, straightforward, and probable testimony of the prosecution witnesses on affirmative matters.<sup>36</sup>

Hence, the present appeal.

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<sup>29</sup> Id.

<sup>30</sup> Id. at 21.

<sup>31</sup> Id. at 18.

<sup>32</sup> Id. at 18-19.

<sup>33</sup> Id. at 20.

<sup>34</sup> Id., citing *People v. Alejandro*, 731 Phil. 662, 683 (2014).

<sup>35</sup> Id. at 21.

<sup>36</sup> Id.

### Issue

Whether or not accused-appellant's guilt for the offense of Illegal Sale of Dangerous Drugs was proven beyond reasonable doubt.

### Ruling of the Court

The appeal is meritorious.

Accused-appellant maintains that the conflicting testimonies of the prosecution witnesses as regards the person who actually received the seized sachet of *shabu* and the absence of testimonial or documentary evidence on how the sachet was kept while in the custody of the forensic chemist until its delivery to the court, cast doubt as to the identity and integrity of the *corpus delicti*. He likewise points to the non-presentation of the evidence custodian as fatal to the prosecution's cause.<sup>37</sup>

The Court has emphasized that the procedural safeguards embodied in Sec. 21 of R.A. No. 9165 and its Implementing Rules and Regulations (*IRR*) are material in the successful prosecution of drugs cases. Compliance with the procedural safeguards affects the *corpus delicti*, the dangerous drug itself. Hence, it is necessary that the apprehending officers preserve the identity and integrity of the prohibited drugs and other evidence seized from the offender.<sup>38</sup>

Sec. 21 of R.A. No. 9165, the applicable rule at the time the offense was committed,<sup>39</sup> states that:

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 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

<sup>37</sup> CA rollo, pp. 31-32.

<sup>38</sup> *People v. Taglucop*, G.R. No. 243577, March 15, 2022.

<sup>39</sup> On July 15, 2014, Republic Act No. 10640 was issued amending Section 21 of R.A. No. 9165. Since the present offense was committed prior to the said date, the amendment to Section 21 will not yet apply.

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[.]

On the other hand, Sec. 21 of the IRR of R.A. No. 9165 provides for the following:

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:

(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 [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 of and custody over said items[.]

Significantly, Sec. 21 of the IRR provides for the following salient parts: the conduct and the place of inventory and photograph of the seized items, and the saving clause which excuses the apprehending officers from compliance with the procedural safeguards under justifiable grounds.<sup>40</sup>

Sec. 21 instructs that the conduct of the inventory and photograph of the seized contraband be done immediately after seizure and confiscation, in the presence of the accused or his/her representative, and the three required witnesses – from the DOJ, the media, and any elected public official. Failure to immediately conduct an inventory and taking of photographs of the seized items shall constitute as noncompliance with Sec. 21 of R.A. No. 9165.<sup>41</sup>

<sup>40</sup> See *People v. Taglucop*, supra.

<sup>41</sup> *Id.*



Furthermore, Sec. 21 requires that the accused or his/her counsel be present during the inventory. The purpose of requiring the presence of the accused or his/her representative and the required witnesses during the physical inventory and photography, and the required witnesses' signatures on the inventory "is to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence which could considerably affect a case."<sup>42</sup>

On the other hand, the saving clause found in Sec. 21 of the IRR applies only (1) where the prosecution recognized the procedural lapses, and explained the proffered justifiable grounds, and (2) when the prosecution proved that the integrity and evidentiary value of the evidence seized had been preserved.<sup>43</sup>

As regards the first requirement, the noncompliance must be justified by the State's agents in such a way that during the proceedings before the trial court, they must acknowledge and justify any perceived deviations from the requirements of the law. If the prosecution fails to present any justification for the noncompliance with the procedure prescribed, the Court cannot allow the exception to apply.<sup>44</sup> In such instance, the prosecution shall not be allowed to invoke the saving clause to salvage its case.<sup>45</sup>

The second requirement refers to the duty of the apprehending officers to ensure that the seized evidence had been secured from any possible tampering, switching, or alteration. In this instance, the prosecution is tasked to establish that the chain of custody of the seized items remains unbroken.

Chain of custody is the duly recorded, authorized movements, and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.<sup>46</sup> The purpose of the law is to remove even the slightest doubt or uncertainty in the identity and integrity of the *corpus delicti*. The Court, in *People v. Del Rosario*,<sup>47</sup> reiterated the four crucial links in the chain of custody in a buy-bust operation that must be sufficiently established by the prosecution, *viz.*:

1. the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;
2. the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

<sup>42</sup> *People v. Vilas*, G.R. No. 224881, June 17, 2020.

<sup>43</sup> *Tumabini v. People*, G.R. No. 224495, February 19, 2020, 933 SCRA 60, 82.

<sup>44</sup> *People v. Carpio*, G.R. No. 233200, September 9, 2019, 918 SCRA 238, 251-252.

<sup>45</sup> *People v. Taglucop*, *supra*.

<sup>46</sup> *Id.*

<sup>47</sup> G.R. No. 235658, June 22, 2020, 939 SCRA 171.

3. the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and
4. the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.<sup>48</sup>

The first link refers to the seizure and marking of the illicit drug. “Marking” means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. The marking of the evidence serves to distinguish the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.<sup>49</sup> “Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.”<sup>50</sup> This means that marking is a crucial, if not the most important, stage in the chain of custody because it already separates and distinguishes the seized item from all others.

In the second link, the investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing.<sup>51</sup> In *Tumabini v. People*,<sup>52</sup> the Court elucidates, thus:

Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it is the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case.<sup>53</sup>

The third link covers the turnover of the seized drugs by the investigating officer to the forensic chemist for examination.<sup>54</sup> Once the seized drugs are received at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.<sup>55</sup>

Finally, the fourth link involves the submission of the seized illegal drug by the forensic chemist to the court.<sup>56</sup> Most often, the testimony of the forensic chemist is dispensed with during trial; with the parties merely stipulating on the facts the forensic chemist would testify on instead of actual

<sup>48</sup> *Id.* at 187-188, citing *People v. Dahil*, 750 Phil. 212, 231 (2015) and *People v. Kamad*, 624 Phil. 289, 304 (2010).

<sup>49</sup> *People v. Omamos*, G.R. No. 223036, July 10, 2019, 908 SCRA 367, 379.

<sup>50</sup> *People v. Alejandro*, 671 Phil. 33, 46 (2011). Emphasis omitted.

<sup>51</sup> *People v. Del Rosario*, *supra* at 188.

<sup>52</sup> *Supra*.

<sup>53</sup> *Id.* at 97.

<sup>54</sup> *People v. Estabillo*, G.R. No. 252902, June 16, 2021.

<sup>55</sup> *People v. Del Rosario*, *supra* at 189.

<sup>56</sup> *People v. Casilang*, G.R. No. 242159, February 5, 2020, 931 SCRA 401, 421.

appearance in court by the latter.<sup>57</sup> The stipulation should include the following information: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that the chemist resealed it after examination of the content; and (3) that the chemist placed his/her own marking on the same to ensure that it could not be tampered with pending trial.<sup>58</sup>

*The conduct of the inventory and photography failed to adhere to the requirements of Sec. 21.*

Herein records appear to show that the apprehending officers conducted an inventory and took photographs of the seized item after it was confiscated from accused-appellant at the place of his arrest. Despite seeming compliance with Sec. 21, the same still falls short of the exacting procedures required in buy-bust operations.

Moreover, there was no indication that the inventory was done in the presence of the accused or his representative. The prosecution even failed to provide clarification on whether accused-appellant was present during the purported inventory. To reiterate, it is mandatory under Sec. 21 of R.A. No. 9165 that the accused or his/her representative be present, and all of the insulating witnesses sign the copies of the inventory and be given a copy thereof.<sup>59</sup>

Also, the photograph requirement was not complied with. The photographs offered by the prosecution as Exhibits "A" and "A-1" did not show the items confiscated from accused-appellant, particularly the sachet of *shabu*. As testified by SPO1 Obdamin, the pictures only showed accused-appellant, SPO1 Obdamin, PO2 Jungco, and a community volunteer. Although SPO1 Obdamin explained that he was "arranging" and putting markings in one of the photographs, the subject articles were not visible. The law specifically requires a photograph of the seized item,<sup>60</sup> which was not clearly shown in this case.

*The saving clause does not apply in this case.*

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<sup>57</sup> *People v. Macaumbang*, 850 Phil. 1042, 1066-1067 (2019).

<sup>58</sup> *People v. Cabuhay*, 836 Phil. 903, 918 (2018), citing *People v. Pajarin*, 654 Phil. 461, 466 (2011).

<sup>59</sup> *People v. Rasos, Jr.*, G.R. No. 243639, September 18, 2019, 920 SCRA 420, 436.

<sup>60</sup> *People v. Dela Torre*, G.R. No. 225789, July 29, 2019, 911 SCRA 128, 144.

Noncompliance with the mandatory procedure in Sec. 21 triggers the operation of the saving clause enshrined in the IRR of R.A. No. 9165.<sup>61</sup> As earlier explained, the saving clause will only operate when the prosecution is able to satisfy the two requirements of (1) providing justifiable grounds for noncompliance with Sec. 21, and (2) preserving the integrity and evidentiary value of the seized items. Failure to show these two conditions renders void and invalid the seizure and custody of the seized illegal drugs.<sup>62</sup>

Unfortunately, the prosecution failed to acknowledge or explain the abovementioned lapses. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden to prove — with moral certainty — that the illegal drug presented in court is the same drug that was seized from the accused during his arrest.<sup>63</sup>

Even assuming that the prosecution had presented a justifiable reason for its deviation from the requirements of Sec. 21, it nonetheless failed to establish that the chain of custody of the seized item remained unbroken. The break in the chain already started in the first link which refers to the seizure and marking of the confiscated item, which includes its physical inventory and photograph in the presence of the required witnesses.<sup>64</sup>

As earlier discussed, the apprehending officers failed to observe the proper procedure in the inventory and photography of the seized evidence. This gap proves fatal in establishing the integrity and identity of the contraband allegedly seized from accused-appellant, most especially when the insulating witnesses arrived 20 minutes later. To recall, the witnesses only observed the body search conducted on accused-appellant, where the purported marked money and other personal items were retrieved, the conduct of the physical inventory, and the photography of the procedure. The prosecution failed to establish that within such waiting time, the evil of switching or planting of evidence that the law seeks to avoid, did not occur. No evidence was shown on how the seizing officer, who held onto the sachet of *shabu*, preserved the integrity of the subject sachet during the waiting time of 20 minutes.

While SPO1 Obdamin testified that he immediately marked the sachet of *shabu* he received from accused-appellant with “JU-06-25-14,”<sup>65</sup> the marking, by itself, did not ensure the integrity of the confiscated item as will be discussed later.

As regards the second link, it was undisputed that SPO1 Obdamin took custody of the sachet of *shabu* and turned over only the marked money and

<sup>61</sup> *People v. Luna*, 828 Phil. 671, 687 (2018).

<sup>62</sup> *People v. Casilang*, supra at 417.

<sup>63</sup> *Tumabini v. People*, supra note 43, at 82.

<sup>64</sup> *People v. Lacdan*, 859 Phil. 792, 801 (2019).

<sup>65</sup> TSN, June 9, 2015, p. 17.

other personal items to PO2 Jungco, the investigating officer. He did not provide any justification for keeping the sachet in his possession other than the claim of avoiding any switching of the *shabu*. Since SPO1 Obdamin unusually held onto the seized sachet, the least he could have done was to ensure preservation of the integrity of the subject sachet by keeping it in a sealed bag or receptacle rather than in its original state of packaging. His testimony was also bereft of any details on how he was able to ensure that the item that he turned over to the laboratory was the same item he received from accused-appellant during the buy-bust operation; and that it was not replaced, switched, or tampered with from its confiscation until its delivery to PSI Bustillo. SPO1 Obdamin simply kept the seized sachet in his custody, leaving out the investigating officer who must have possession of the illegal drugs to properly prepare the required documents.<sup>66</sup> This adds doubt to the integrity of the seized item.

Since the marked sachet of *shabu* was not turned over to the investigating officer, the third link in the chain of custody was likewise not observed because it was the apprehending officer, SPO1 Obdamin, who handed over the marked sachet to PSI Bustillo, the forensic chemist. Conflicting testimonies even surrounded the issue as to who actually received the seized item. PSI Bustillo testified receiving the letter request for examination of white crystalline substance at around 3:25 p.m. on June 25, 2014,<sup>67</sup> while SPO1 Obdamin claimed that PO1 Daryl Realiza received the sachet at 3:00 p.m. of the same date.<sup>68</sup>

To counter accused-appellant's claim of conflicting testimonies of the witnesses, the prosecution emphasized that PSI Bustillo's testimony as regards his receipt of the sachet of *shabu* was substantiated by both documentary and physical evidence. PSI Bustillo's signature on the receiving stamp of the Request [for the] Conduct of Laboratory Examination<sup>69</sup> dated June 25, 2014, which was countersigned by SPO1 Obdamin, categorically showed compliance with the third link in the chain of custody. However, even with the documentary evidence substantiating PSI Bustillo's claim of receipt of the sachet of *shabu*, the other lapses in the chain of custody links are undeniable.

Significantly, the testimony of SPO1 Obdamin, the inventory sheet<sup>70</sup> and the evidence logbook<sup>71</sup> showed that the purported confiscated *shabu* was marked with "JU-06-25-14-01." However, the request for laboratory examination, prepared by SPO1 Obdamin, described the seized item with the marking "JU-06-25-14-01" followed by an additional handwritten entry

<sup>66</sup> *People v. Dahil*, supra note 48, at 235.

<sup>67</sup> TSN, January 20, 2015, p. 3.

<sup>68</sup> Records, p. 8; TSN, June 9, 2015, p. 18.

<sup>69</sup> Exhibit "C," folder of exhibits.

<sup>70</sup> Exhibit "B," id.

<sup>71</sup> Exhibit "C-1," id.

which reads “1:55 pm with signature.”<sup>72</sup> The specimen that was tested by PSI Bustillo based on Chemistry Report No. D-045-2014<sup>73</sup> also carried the marking “JU-06-25-14-01 1:55 pm and signature.”

Indeed, the discrepancy between the markings appearing on the different documents were never explained, especially the handwritten marking which appeared to have been belatedly added on the request for laboratory examination. Ultimately, the dissimilarity on the markings stated on the documents, taken together with the belated arrival of the insulating witnesses, had undeniably rendered doubt on the identity and integrity of the contraband allegedly seized from accused-appellant.

Finally, the fourth link in the chain of custody intends to establish that the item seized at the time of the apprehension is the same item submitted to and presented in court. In this case, PSI Bustillo turned over the sachet to the evidence custodian for safekeeping, retrieved the same from the latter, and presented it to the court on the date of his testimony. However, the records failed to show evidence on the proper handling and custody of the marked sachet of *shabu*, particularly on the fact that the evidence custodian had sole access to the locker where the sachet was kept. There was even no stipulation of facts as regards the physical state of the sachet of *shabu* before it was kept that would at least validate that it was the same sachet that was kept and taken out of the locker and presented in court after almost seven months, on January 20, 2015, the date of PSI Bustillo’s testimony. Absent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized herein after its qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be established with reasonable certainty.<sup>74</sup> Taken altogether, these breaks in the chain of custody raised doubts as to the integrity of the *corpus delicti*.

In sum, the prosecution failed to observe the precautions and procedures necessary in preserving the integrity and identity of the *corpus delicti*. Even acts which approximate compliance but do not *strictly* comply with Sec. 21 have been considered insufficient.<sup>75</sup> The ultimate purpose of Sec. 21 of R.A. No. 9165 is to avoid the tampering, alteration, and substitution of the seized drugs, which are not readily identifiable, and to serve as a protection against abusive police officers.<sup>76</sup> Thus, the identity of the *corpus delicti* must, in itself, be proven with moral certainty. When the same is jeopardized by noncompliance with Sec. 21, crucial elements of the offense of Illegal Sale and Illegal Possession of Dangerous Drugs remain wanting. It

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<sup>72</sup> Exhibit “C,” *id.*

<sup>73</sup> Exhibit “D,” *id.*

<sup>74</sup> *People v. Ubungen*, 836 Phil. 888, 902 (2018).

<sup>75</sup> *People v. Que*, 824 Phil. 882, 901 (2018).

<sup>76</sup> *Tumabini v. People*, *supra* note 43, at 87.

follows then, that this noncompliance justifies an accused's acquittal.<sup>77</sup> The Court, in *People v. Que*,<sup>78</sup> stressed that:

**What is critical in drug cases is not the bare conduct of inventory, marking, and photographing. Instead, it is the certainty that the items allegedly taken from the accused retain their integrity, even as they make their way from the accused to an officer effecting the seizure, to an investigating officer, to a forensic chemist, and ultimately, to courts where they are introduced as evidence.** Hence, the four (4) links were underscored in *Nandi*: first, from the accused to the apprehending officers; second, from the apprehending officers to the investigating officers; third, from the investigating officers to the forensic chemists; and fourth, from the forensic chemists to the courts. The endpoints of each link (*e.g.*, the accused and the apprehending officer in the first link, the forensic chemist and the court in the fourth link) are preordained, their respective existences not being in question. What is prone to danger is not any of these end points but the intervening transitions or transfers from one point to another.

**Section 21(1)'s requirements are designed to make the first and second links foolproof.** Conducting the inventory and photographing immediately after seizure, exactly where the seizure was done, or at a location as practicably close to it, minimizes, if not eliminates, room for adulteration or the planting of evidence. The presence of the accused, or a representative, and of third-party witnesses, coupled with their attestations on the written inventory, ensures that the items delivered to the investigating officer are the items which have actually been inventoried.<sup>79</sup> (Emphases supplied)

Thus, for failure of the prosecution to prove without even the slightest doubt the identity of the *corpus delicti*, accused-appellant's acquittal based on reasonable doubt is in order.

**WHEREFORE**, the appeal is **GRANTED**. The May 28, 2020 Decision of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR-HC No. 02118 is **REVERSED** and **SET ASIDE**. Accused-appellant Jestoni Ubas is **ACQUITTED** of the crime charged against him for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to **IMMEDIATELY RELEASE** accused-appellant from detention, unless he is being lawfully held in custody for any other reason, and to **INFORM** the Court of the action hereon within five days from receipt of this Resolution.

Let entry of judgment be issued immediately.

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<sup>77</sup> *People v. Que*, supra at 898.

<sup>78</sup> Supra.

<sup>79</sup> Id. at 909.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *gksh*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

**224**

**MAR 08 2023**

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(CA-G.R. CR-HC No. 02118)

The Hon. Presiding Judge  
Regional Trial Court, Branch 24  
Ipil, 7001 Zamboanga Sibugay  
(Crim. Case No. I-5587)

The Director General (x)  
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