REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **February 6, 2023** *which reads as follows*:

"**G.R. No. 250604 (People of the Philippines,** Plaintiff-Appellee **v. Ceferino Cariño, Jr.** ***y*** **Ochoco and Joseph Dangalan** ***y*** **Versoza, Accused; Ceferino Cariño** ***y*** **Ochoco,** Accused-Appellant**).** — This Court resolves an Appeal[1] from the Decision[2] of the Court of Appeals (*CA*) finding accused-appellant Ceferino Cariño, Jr. *y* Ochoco (*Cariño*) guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of Republic Act No. 9165,[3] as amended, the dispositive portion of which reads:

> **WHEREFORE**, the appeal is **DENIED**. The joint decision issued by the Regional Trial Court of San Fernando City, La Union Branch 29 dated November 4, 2013 in Criminal Case No. 9614 and Criminal Case No. 9615 finding accused-appellants Ceferino Cariño and Joseph Dangalan guilty beyond reasonable doubt of the offenses charged against them in violation of RA 9165 is AFFIRMED with the following MODIFICATION: In Criminal Case No. 9614, accused-appellant Ceferino Cariño shall suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day to 14 years and to pay a fine of [PHP] 300,000.00. In Criminal Case No. 9615, both accused-appellants shall suffer the penalty of life imprisonment and a fine of [PHP] 500,000.00 each. The object evidence consisting of three (3) heat-sealed plastic sachets containing shabu are ordered confiscated and disposed of in accordance with law.
>
> **IT IS SO ORDERED.**[4] (Emphasis in the original)

In separate Informations,[5] Cariño and Joseph Dangalan *y* Versoza (*Dangalan*) were charged with violation of Sections 5 and 11, Article II of Republic Act No. 9165, as amended, which read:

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1 *Rollo*, p. 18-19.

2 *Id.* at 3–17. The October 12, 2018 Decision in CA-G.R. CR HC No. 06634 was penned by Associate Justice Myra V. Garcia-Fernandez, and concurred in by Associate Justices Victoria Isabel A. Paredes and Ronaldo Roberto B. Martin of the Special Tenth Division, Court of Appeals, Manila.

3 Otherwise known as the Dangerous Drugs Act of 2002.

4 *Rollo*, p. 16.

5 Records (Criminal Case No. 9614), pp. 1–2. Records (Criminal Case No. 9615), pp. 1–2.

Criminal Case No. 9614
(For Violation of Section 11, Article II of R.A. No. 9165)

That on or about the 7th day of August, 2012 in the City of San Fernando, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, conspiring, confederating and mutually helping one another, without authority of law and without first receiving the necessary permit, license or prescription from the proper government agency to possess the same, did then and there wilfully, [sic] unlawfully and feloniously have in their possession control and custody two (2) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as "Shabu", a dangerous drug, weighing ZERO POINT ZERO FIVE EIGHT TWO (0.0582) gram and ZERO POINT ZERO SIX ZERO NINE (0.0609) gram with a total weight of ZERO POINT ONE ONE NINE ONE (0.1191) gram.

CONTRARY TO LAW.[6]

Criminal Case No. 9615
(For violation of Section 5, Article II of R.A. No. 9165)

That on or about the 7th day of August 2022 in the City of San Fernando, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, conspiring, confederating and mutually helping one another, without authority of law and without first securing the necessary permit, license or prescription from the proper government agency, did then and there wilfully, [sic] unlawfully and feloniously sell, dispense and deliver one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as "Shabu", a dangerous drug, weighing ZERO POINT ZERO SIX THREE FIVE (0.0635) gram to IO1 Marlon A. Apolog who posed as a poseur buyer thereof using marked money two (2) pieces of Five Hundred peso bill bearing serial numbers ST034639 and BC993645.

CONTRARY TO LAW.[7] (Emphasis in the original)

Upon arraignment, Cariño pleaded not guilty to the charges against him. Pre-trial commenced, and thereafter, trial on the merits proceeded. The prosecution presented the following witnesses: (1) Intelligence Officer 1 Marlon Apolog (*IO1 Apolog*); (2) IO1 Leander Domatog (*IO1 Domatog*); and (3) Dominador Dacanay (*Dacanay*), a radio announcer of DZNL. The testimony of Forensic Chemist Lei-Yen Valdez was dispensed with by the parties.[8]

According to the prosecution witnesses, at about 12:00 p.m. on August 7, 2012, a confidential informant went to La Union Special Enforcement Team and informed IO1 Apolog that he could accompany any of their agents to a buy-bust operation at the residence of Cariño where the latter allegedly conducted pot sessions. IO1 Apolog verified that Cariño is

6 Records (Criminal Case No. 9614), pp. 1–2.
7 Records (Criminal Case No. 9615), pp. 1–2.
8 TSN, October 17, 2012, pp. 2–7; Records (Criminal Case No. 9614), pp. 43–44.

listed as a "3rd priority target" of the authorities for allegedly engaging in drug pushing. Thus, team leader Dexter Asayco (*Asayco*) organized a buy-bust operation where IO1 Apalog was designated as the poseur-buyer while IO1 Domatog would be the arresting officer.[9]

The buy-bust team proceeded to the residence of Cariño at about 1:30 p.m. There, IO1 Apolog and the confidential informant saw two male individuals sitting inside the house. The confidential informant instructed IO1 Apolog to bring out the marked money consisting of two PHP 500.00 bills with the initials "MAA." Thereafter, one of the male individuals inside, who was later identified as Joseph Dangalan (*Dangalan*), stood up and told IO1 Apolog to give him the money. IO1 Apolog handed the marked money to Dangalan and the latter placed it inside a wallet on top of a table. The other person inside the room, who was later identified as Cariño, handed IO1 Apolog one small elongated heat-sealed sachet containing white crystalline substance which the latter placed inside his pocket. This was later on marked as "MA-1 8-7-12." Subsequently, IO1 Apolog shouted "Pasok!", the pre-arranged signal for Domatog and other members of the buy-bust team to enter the house. Cariño and Dangalan were both arrested and informed of their rights. IO1 Apolog seized and marked with his initials several items found on top of the table inside the house of Cariño, such as: (1) a wallet containing the buy-bust money, (2) two other plastic sachets containing white crystalline substance marked as MA-2, 8-7-12 and MA-3, 8-7-12, (3) an empty plastic sachet, (4) aluminum foil, and (5) a lighter.[10]

A box was also retrieved from the floor with the following contents: (1) a plastic sachet containing aluminum foils; (2) a plastic sachet containing more plastic sachets; (3) two lighters; and (4) a pair of scissors.[11]

All markings were conducted at the place of apprehension in the presence of Kagawad Conrado Bula (*Bula*), media representative Dacanay, and Department of Justice (*DOJ*) representative Luciano Trinidad (*Trinidad*). The Certificate of Inventory[12] was prepared in front of them. Agent Cabarles took photographs of the seized items.[13]

Subsequently, the police officers brought Cariño and Dangalan to the Philippine Drug Enforcement Agency (*PDEA*) office in Carlatan. Team leader Asayco prepared the request for laboratory examination[14] and IO1 Apolog personally turned over four plastic sachets to Forensic Chemist Valdez.[15] Based on chemistry report No. PDEAROI-DD012-0020,[16] these tested positive for methamphetamine hydrochloride or *shabu*.[17]

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9 *Rollo*, pp. 6–7.
10 *Id.* at 5-7.
11 *Id.* at 8.
12 Records (Criminal Case No. 9614), pp. 10–12.
13 *Rollo*, p. 8.
14 Records (Criminal Case No. 9614), p. 13.
15 *Id.*; *Rollo*, pp. 8–9.

Cariño denied the allegations against him and maintained that he was framed up. He insisted that on the day of his arrest, he was at the shop of his brother, Mario, where he was repairing cellphones and appliances when he heard Dangalan looking for his brother. Cariño told Dangalan that Mario was not around but that he can repair his cellphone. He narrated that before Dangalan could even give his cellphone, individuals suddenly arrived, pointed their guns at them, and introduced themselves as agents of the PDEA. They allegedly dragged Cariño outside the shop and made him lie face-down. Dangalan was also made to lie face-down inside the room while the agents searched the house. After about 20 minutes, Cariño allegedly heard someone say "[*t*]*here is none, there is none, frisk them.*" Cariño and Dangalan were frisked and brought inside the room where the former saw IO1 Apolog sitting and placing two PHP 500.00 bills from his belt bag on the table. He also allegedly saw IO1 Apolog write on a piece of paper. Thereafter, the DOJ, media representatives, and kagawad signed the same piece of paper and left. When they were brought to the office of the Agency, Asayco allegedly asked Cariño why the barangay chairperson was mad at him. He explained that it was because his uncle ran against the barangay election.[18]

Then, the Regional Trial Court (*RTC*) rendered its Joint Decision,[19] the dispositive portion of which states:

> **WHEREFORE**, premises considered, the court herby [sic] renders judgment in Crim. Case no. 9614 finding the accused Ceferino Cari[ñ]o GUILTY beyond reasonable doubt for violation of Section 11, Article II of R.A. 9165 and sentences him to suffer 12 years and 1 day and to pay a fine of [PHP] 300,000 each. The accused Joseph Dangalan is Acquitted on the ground of reasonable doubt.
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> In Criminal Case no. 9615, the court finds both accused Ceferino Cari[ñ]o and Joseph Dangalan GUILTY beyond reasonable doubt for violation of Section 5 of Article II of R.A. 9165 and hereby sentences them to suffer the penalty of Life Imprisonment and to pay a fine of [PHP] 500,000 each.
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> The pieces of evidence consisting of 3 heat-sealed plastic sachets containing shabu are ordered confiscated in favor of the government to be disposed of in accordance with law.
>
> SO ORDERED.[20] (Emphasis in the original)

In Criminal Case No. 9614, the RTC found that the elements of illegal possession of dangerous drugs were proven beyond reasonable doubt.[21] It

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16 Records (Criminal Case No. 9614), p. 14.

17 *Id.*

18 *Rollo*, pp. 10–11.

19 CA *rollo*, pp. 16–20. The November 4, 2013 Joint Decision was penned by Presiding Judge Asuncion Fikingas-Mandia of Branch 29, Regional Trial Court, San Fernando City, La Union.

20 *Id.* at 20.

held that the two plastic sachets containing white crystalline substance, later confirmed to be *shabu*, were found on top of the table in the room of Cariño. However, Dangalan was acquitted because it was not proven that he is an occupant of the room.[22]

In Criminal Case No. 9615, the RTC convicted both Cariño and Dangalan of illegal sale of dangerous drugs. It was convinced that Dangalan received the buy-bust money consisting of two 500-peso bills from the poseur-buyer while Cariño handed the heat-sealed sachet containing a white crystalline substance.[23] The RTC ruled that the chain of custody of the seized drugs was sufficiently demonstrated and that its integrity was not compromised.[24]

The CA, in its Decision,[25] denied the appeal of Cariño, the dispositive portion of which states:

> **WHEREFORE**, the appeal is **DENIED**. The joint decision issued by the Regional Trial Court of San Fernando City, La Union Branch 29 dated November 4, 2013 in Criminal Case No. 9614 and Criminal Case No. 9615 finding accused-appellants Ceferino Cariño and Joseph Dangalan guilt beyond reasonable doubt of the offense charged against them in violation of RA 9165 is AFFIRMED with the following MODIFICATION: In Criminal Case No. 9614, accused-appellant Ceferino Cariño shall suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day to 14 years and to pay a fine of [PHP] 300,000.00. In Criminal Case No. 9615, both accused-appellants shall suffer the penalty of life imprisonment and a fine of [PHP] 500,000.00 each. The object evidence consisting of three (3) heat-sealed plastic sachets containing shabu are ordered confiscated and disposed of in accordance with law.
>
> **IT IS SO ORDERED.**[26] (Emphasis in the original)

In affirming Cariño's conviction in Criminal Case Nos. 9614 and 9615, the CA gave credence to the testimony of poseur-buyer IO1 Apolog, which was reinforced by the chemistry report confirming the presence of *shabu* in the seized sachets. It pointed out that the inventory was made in the place where the items were confiscated and the certificate was signed by the required witnesses.[27] The CA also noted that the police officers were able to take photographs and properly mark the confiscated items.[28]

The CA modified the penalty imposed on Cariño to imprisonment ranging from 12 years and one day to 14 years and to pay a fine of PHP

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21 *Id.* at 18–19.
22 *Id.*
23 *Id.* at 19.
24 *Id.* at 19–20.
25 *Rollo*, pp. 3–17.
26 *Id.* at 16.
27 *Id.* at 14–15.
28 *Id.* at 15.

300,000.00 in Criminal Case No. 9614. Meanwhile, in Criminal Case No. 9615, the penalty imposed on Cariño and Dangalan is life imprisonment and a fine of PHP 500,000.00 each.[29]

Hence, this Appeal.

The issue to be resolved in this case is whether the evidence of the prosecution was sufficient to convict Cariño of illegal sale and illegal possession of *shabu*, for violating Sections 5 and 11, respectively, of Republic Act No. 9165.

The Appeal is meritorious.

The integrity and evidentiary value of the dangerous drugs allegedly seized from the accused-appellant were not properly preserved in compliance with Section 21 of Republic Act No. 9165, as amended.

Cariño essentially assails that the evidence presented by the prosecution did not comply with Section 21 of Republic Act No. 9165 and that the integrity and evidentiary value of the seized items were not properly preserved. These matters are evidently factual because they require careful examination of the evidence on record. As a rule, the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal. However, this rule does not apply where facts of weight and substance have been overlooked, misapprehended, or misapplied in a case under appeal.[30]

After a judicious examination of the records, this Court found material facts and circumstances that the lower courts had overlooked or misappreciated which, if properly considered, would justify a different conclusion.

In cases involving illegal sale of dangerous drugs under Republic Act No. 9165, the identity of the dangerous drug must be established with moral certainty as the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[31] Failure to prove the integrity of the *corpus delicti* renders the drugs seized insufficient to prove the guilt of the accused beyond reasonable doubt, thus warranting an acquittal.

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29 *Id.* at 15–16.

30 *People v. Gonzales*, 850 Phil. 444, 452 (2019) [Per J. Carandang, First Division]. (Citation omitted).

31 *People v. Crispo*, 828 Phil. 416, 429 (2018) [Per J. Perlas-Bernabe, Third Division].

Notably, the alleged buy-bust operation transpired before Republic Act No. 10640[32] amended Republic Act No. 9165. Thus, the original provisions governing the chain of custody in drug cases found in Section 21 of Republic Act No. 9165 and its implementing rules and regulations shall apply. Section 21 of Republic Act No. 9165 states:

> 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 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[.][33] (Emphasis in the original)

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 provides:

> (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: 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.

Based on the foregoing, the presence of the following insulating witnesses is required during the conduct of physical inventory and photograph: (1) a representative from the media, (2) a representative from the DOJ, and (3) any elected public official. The presence of these witnesses during the marking of the seized items is critical in drug cases and the unjustified absence of any of these witnesses casts serious doubt on the integrity and evidentiary value of the seized items.

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[32] Republic Act No. 10640 took effect on August 7, 2014, as clarified in *People v. Gutierrez*, 842 Phil. 681 (2018) [Per J. Perlas-Bernabe, Second Division].

[33] Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002.

To establish the integrity and evidentiary value of the dangerous drug seized with moral certainty, the prosecution must sufficiently establish the following links:

> [*F*]*irst*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turn over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[34] (Emphasis in the original)

In the present case, the first link in the chain of custody was not sufficiently established.

In the case of *People v. Dela Cruz*,[35] this Court held that keeping narcotics in the pockets of the apprehending officer before these are turned over for examination "is a doubtful and suspicious way of ensuring the integrity of the items."[36] In the said case, the plastic sachets of suspected *shabu* confiscated by the apprehending officer who acted as poseur-buyer placed them immediately in his pocket without marking them and only conducted marking and inventory at the police station. This Court stressed that the police officer's "subsequent identification in open court of the items coming out of [their] own pockets is self-serving."[37]

In the recent case of *People v. Cabriole*,[38] this Court highlighted that the act of placing the seized sachet inside the pocket of the apprehending officer prior to handing it over for marking and inventory "calls into question the identity of the item that was later marked and inventoried."[39] This Court explained that:

> [T]he third-party witnesses would not have known whether the seized item delivered by PO1 Doño [the apprehending officer] being marked and inventoried in their presence was actually confiscated from accused-appellant. The belated marking adversely affected the integrity and evidentiary value of the seized drug subject of the sale[.][40]

Even assuming that the prosecution was able to prove that IO1 Apolog had sole custody of the seized items from the moment of confiscation until marking and inventory were conducted, this alone is

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34 *People v. Watamama*, 692 Phil. 102, 107 (2012) [Per J. Villarama, Jr., First Division], citing *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

35 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

36 *Id.* at 834.

37 *Id.*

38 G.R. No. 248418, May 5, 2021 [Per J. Caguioa, First Division].

39 *Id.* at 11. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

40 *Id.*

hardly sufficient to guarantee the integrity and evidentiary value of the seized items. In *People v. Sultan*,[41] this Court underscored that:

> [A]n officer's act of personally and bodily keeping allegedly seized items, without any clear indication of safeguards other than his or her mere possession, has been viewed as prejudicial to the integrity of the items.[42]

During cross-examination, IO1 Apolog confirmed placing one seized sachet in his pocket immediately after it was handed to him by Cariño, as revealed in the following exchange:

> Q You said that the sachet was given to you by Ceferino Cariño, is it not?
> A Yes sir.
>
> Q You kept it and what did you do with the sachet?
> A I put it inside my pocket, sir.
>
> Q How many sachet?
> A Only one[,] sir.
>
> Q Why did you put it in your pocket?
> A It might get lost that is why I pocketed it and there was already a commotion inside, sir.[43]

Here, this Court cannot simply disregard and ignore the possibility that the item seized may have been tampered with, altered, or substituted before marking and inventory were conducted.

In *People v. Tomawis* (*Tomawis*),[44] this Court declared that:

> To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[45]

In Dacanay's cross-examination, he explained to the trial court the timeline between the moment of apprehension and his arrival at the station to witness the marking, inventory, and taking of photographs, as shown in the following exchange:

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41 G.R. No. 225210, August 7, 2019 [Per J. Leonen, Third Division].
42 *Id.* at 12. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.
43 TSN, December 12, 2012, pp. 10–11.
44 830 Phil. 385 (2018) [Per J. Caguioa, Second Division].
45 *Id.* at 409.

Q Mr. Witness where is the DZNL Station located?
A Pagdalagan Norte.

Q From Pagdalagan how long will it take you to arrive at Barangay San Francisco, San Fernando City, La Union?
A It will depend on the traffic situation.

Q But during that time Mr. Witness how long did it take you to arrive at San Francisco?
A Maybe 10 minutes.

Q Mr. Witness *the alleged buy bust incident transpired on or about 1:45 in the afternoon* at what time did you arrive at the place?
A Because when I arrive at our station, the agents of the PDEA are already there at our station. When I arrive at our station, the PDEA agent are already there waiting for me? (*sic*)

Q What time did the PDEA agents arrived (*sic*) at your station Mr. Witness if you can still remember?
A I am not sure because they arrived there first before me.

Q According to you, it was your News Director who they contacted first.
A Yes.

Q *At what time did your news director tell you that you are going to San Francisco*?
A *Around 2:30.*[46] (Emphasis supplied)

Here, the media representative who must be at or near the place of apprehension was at least 55 minutes late. The incident transpired on or about 1:45 p.m. and he was only informed about the request for his presence to be at the place of apprehension, which was at least 10 minutes away without traffic, at 2:30 p.m. As such, he would have arrived there at around 2:55 p.m. or at least 55 minutes after the incident. This is not in keeping with the underlying immediacy and proximity factors that are crucial in requiring that insulating witnesses must be present "at or near" the place of apprehension. It is evident that the buy-bust team did not prepare or bring with them the required witnesses at or near the place of the buy-bust operation and the witnesses were a mere afterthought. To stress, in *Tomawis*, this Court explicitly stated that:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of

[46] TSN, April 17, 2013, pp. 9–10.

> the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[47] (Emphasis in the original; citations omitted)

The unavailability of the insulating witness at or near the place of arrest in order to determine whether the items being marked at the time the three required witnesses arrived at the place of apprehension were the same items seized by the buy-bust team from Cariño was highlighted in Dacanay's testimony quoted below:

> Q: When you proceeded at the site you saw other PDEA agents inside the place?
> A: Yes.
>
> Q: And they were already sorting out the alleged exhibits or items that were confiscated, is that correct?
> A: Yes.
>
> Q: You did not see Mr. Witness whether the items were taken from the place where the PDEA agent were? [sic]
> A: No.
>
> Q: You only saw when they were sorting out these items?
> A: Yes.
>
> Q: And after the sorting of the items, the marking of it?
> A: Yes.
>
> Q: Likewise also the inventory and placing it, written on this document?
> A: Yes.
>
> Q: So Mr. Witness, you do not know whether these items were really confiscated from the persons?
> A: Yes.
>
> Q: You were only asked to sign the document that allegedly containing the confiscated items from them?
> A: Yes sir[,] and witnessed the inventory of the alleged confiscated items.
>
> Q: But you did not see whether the same was confiscated or not?
> A: No[,] Your Honor.[48]

Thus, the media representative, the DOJ representative, and the kagawad who allegedly witnessed the marking and inventory of the seized items were in no position to be immediately available to witness the ensuing inventory. The fact that the police had to wait for a while for all the witnesses to arrive reveals that they were nowhere near the place of apprehension. The presence at or proximity of the insulating witnesses to the

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47 *People v. Tomawis*, *supra* note 44, at 408–409.

48 TSN, April 17, 2013, pp. 8–9.

place of apprehension becomes even more critical when there is an allegation that the items seized were not properly handled by the apprehending officers.[49] Here, this Court cannot disregard the possibility that the plastic sachet IO1 Apolog placed in his pocket is not the same item that Cariño gave him, and that the three other plastic sachets were not the same items found on top of the table inside the room where Cariño was apprehended.

In *People v. Arposeple*,[50] this Court emphasized the importance of the first link:

> The first link in the chain of custody was undoubtedly inherently weak which caused the other links to miserably fail. The first link, it is emphasized, primarily deals on the preservation of the identity and integrity of the confiscated items, the burden of which lies with the prosecution. The marking has a twin purpose: *viz*[.]: **first**, to give the succeeding handlers of the specimen a reference, and **second**, to separate the marked evidence from the corpus of all other similar or related evidence from the moment of seizure until their disposition at the end of criminal proceedings, thereby obviating switching, "planting," or contamination of evidence. Absent therefore the certainty that items that were marked, subjected to laboratory examination, and presented as evidence in court were exactly those that were allegedly seized from Arposeple, there would be no need to proceed to evaluate the succeeding links or to determine the existence of the other elements of the charges against appellants. Clearly, the cases for the prosecution had been irreversibly lost as a result of the weak first link irretrievably breaking away from the main chain.[51] (Emphasis in the original; citation omitted)

Since the first link in the chain of custody is unreliable, examining the subsequent links is no longer necessary. On this score alone, the charges against Cariño should be dismissed.

Nevertheless, even if the first link was sufficiently established, the prosecution still failed to present an unbroken chain of custody. Here, it is uncertain whether the drugs brought to court and identified by IO1 Albog are the same drugs purportedly turned over to the forensic chemist for confirmatory examination.

As a rule, the forensic chemist must testify to show compliance with the fourth link. However, in *People v. Pajarin*,[52] this Court recognized that:

> [A]s a rule, the police chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and

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49 CA *rollo*, p. 87.
50 821 Phil. 340 (2017) [Per J. Martires, Third Division].
51 *Id.* at 368–369.
52 654 Phil. 461 (2011) [Per J. Abad, Second Division].

> that he placed his own marking on the same to ensure that it could not be tampered pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned. Here, the record fails to show this.[53]

In order to properly dispense with the testimony of the forensic chemist, the following information must be included in the agreed stipulations by the parties: (1) [they] received the seized article as marked, properly sealed, and intact; (2) [they] resealed it after examination of the content; and (3) [they] placed [their] own marking on the same to ensure that it could not have tampered pending trial. In case any of the foregoing stipulations are lacking, the fourth link cannot be established and the accused must be acquitted.[54]

In the present case, the testimony of Forensic Chemist Lei-Yen Valdez was dispensed with and, in lieu thereof, the parties admitted the following stipulations:

1. That the brown envelope contains markings PDEARO1-DD012-0020 LCV;
2. That inside the brown envelope are four (4) plastic sachets with corresponding markings MA-1, 8-7-12 and a signature;
3. That the first sachet bears the markings MA-1, 8-7-12, PDEARO1-DD012-0020, A-1 and LCV;
4. That the second sachet bears the markings MA-2, 8-7-12 and a signature and on the masking tape with marking PDEARO1-DD012-0020, A-2, LCV and signature;
5. That the third plastic sachet bears the markings MA-3, 8-7-12 and a signature and PDEARO1-DD012-0020, LCV and A-3;
6. That the fourth sachet bears the markings MA-A, 8-7-12 and a signature and the marking on the masking tape PDEARO1-DD012-0020, A-4 and LCV;
7. That the four sachets marked as Exhibits "A", "B", "C" and "D" for the prosecution are the same items which were delivered by IO1 Marlon Apolog to the crime laboratory;
8. That at the time the sachets were submitted for laboratory examination, the specimens already contained the markings A-1, B-1, C-1 and D-1;
9. That these items marked as Exhibit "A" to "D" are the same items which were subjected to laboratory examination;
10. That Forensic Chemist Lei-Yen Valdez placed the markings on the four specimen which were marked as A-2, B-2, C-2, D-2, respectively;
11. That upon examination, the four specimen were found to be positive for the presence of methamphetamine hydrochloride;
12. The existence and due execution of Chemistry Report PDEARO1-DD012-0020 (Exh. "Q");
13. The laboratory examination was upon the request of IA3 Dexter Asayco as contained in Exhibit "B", the request for laboratory

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53 *Id.* at 466.

54 *People v. Leano*, G.R. No. 246461, July 28, 2020 [Per J. Lazaro-Javier, First Division] at 16. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website; *People v. Ubungen*, 836 Phil. 888, 901 (2018) [Per J. Martires, Third Division].

examination;
14. That the items, marked as Exhibits "A" to "D", for the prosecution were personally delivered by IO3 Marlon Apolog; and
15. That Forensic Chemist Lei-Yen Valdez was the one who personally received the items marked as Exhibits "A" to "D".[55]

Conspicuously lacking in the quoted stipulations is the information on the condition of the seized items, particularly whether they were properly sealed, resealed, and intact upon turnover. The quoted stipulations only mentioned that the items turned over bore markings on the masking tape attached to the plastic sachets. However, it is unclear whether these plastic sachets were safeguarded in such a manner that their integrity and evidentiary value are preserved. This information is crucial in addressing allegations that the alleged drugs seized were tampered with or compromised at any stage of the chain of custody. To this Court's mind, the prosecution failed to prove compliance with the stringent rules and requirements governing the chain of custody as the fourth link was not established with moral certainty. As such, Cariño must be acquitted of illegal sale and illegal possession of dangerous drugs punished under Sections 5 and 11, Article II of Republic Act No. 9165.

While Cariño's denial of the charges against him and his claim that he was framed up was uncorroborated by any convincing evidence, the apparent weakness of his defense does not add any strength nor can it help the prosecution's cause. If, in the first place, the prosecution cannot establish his guilt beyond reasonable doubt, the need for the defense to adduce evidence on its behalf never arises. However weak the defense evidence might be, the prosecution's whole case still falls. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[56]

This Court has acknowledged that "in some instances[,] law enforcers resort to the practice of planting evidence to extract information or even to harass civilians."[57] Thus, this Court must be extra vigilant in trying drug cases. The presumption of regularity in the performance of the arresting officer's duty cannot prevail over the constitutional presumption of innocence of the accused.[58] In this case, this Court finds that the integrity and evidentiary value of the dangerous drugs purportedly seized from Cariño were compromised, thus necessitating his acquittal.

Section 11, Rule 122 of the Rules of Court governs the effect of an appeal taken by one or more of several accused. The relevant portion states:

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55 TSN, September 12, 2012, pp. 6-7.
56 *People v. Sanchez*, 590 Phil. 214, 244 (2008) [Per J. Brion, Second Division].
57 *People v. Gonzales*, *supra* note 30, citing *People v. Bintaib*, 829 Phil. 13, 25-26 (2018) [Per J. Carandang, First Division].
58 *People v. Gonzales*, *id.*

SECTION 11. *Effect of appeal by any or several accused.* —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, **except insofar as the judgment of the appellate court is favorable and applicable to the latter.**[59] (Emphasis supplied)

The cited provision provides a general rule that an appeal taken by one of several accused shall not affect the appeal taken by a co-accused. The exception is when the judgment rendered by the appellate court is favorable and applicable to those who did not appeal, in which case, the judgment may be applied to those who did not appeal. This rule is supported by the fundamental principle of due process in criminal prosecution enshrined in Section 14, Article III of the 1987 Constitution.[60]

Considering that Cariño is acquitted due to the prosecution's failure to sufficiently establish the integrity and evidentiary value of the drugs seized, it follows that his co-accused in Criminal Case No. 9615, Dangalan, must also be acquitted even if he is not included in the appeal filed before this Court.

FOR THESE REASONS, the Appeal is **GRANTED.** The Decision of the Court of Appeals dated October 12, 2018 in CA G.R. CR HC No. 06634 is **REVERSED** and **SET ASIDE**. Accused-appellant Ceferino Cariño, Jr. *y* Ochoco is **ACQUITTED** in Criminal Case Nos. 9614 and 9615 for violation of Sections 11 and 5, Article II of Republic Act No. 9165. He is **ORDERED** to be **IMMEDIATELY RELEASED** from detention unless he is being held for some other valid or lawful cause.

Accused Joseph Dangalan *y* Versoza is **ACQUITTED** in Criminal Case No. 9615 for violation of Section 5, Article II of Republic Act No. 9165. He is **ORDERED** to be **IMMEDIATELY RELEASED** from detention unless he is being held for some other valid or lawful cause.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General of the Bureau of Corrections is **DIRECTED** to **REPORT** the action they have taken to this Court within five (5) days from receipt of this

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[59] Section 11, Rule 122 of the Rules of Court. (Emphasis supplied)

[60] Section 14, Article III of the 1987 Constitution states:
SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Resolution. Copies shall also be furnished to the Chief of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:

MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court
12 OCT 2023

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c/o The Director
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THE DIRECTOR (x)
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THE SUPERINTENDENT(x)
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Regional Trial Court, Branch 29
La Union
(Crim. Cases Nos. 9614 & 9615)

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