



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

MAY 25 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G. R. No. 234048

Present:

- versus -

VELASCO, JR., J., *Chairperson*,  
BERSAMIN,  
LEONEN,  
MARTIRES, and  
GESMUNDO, JJ.

MALOU ALVARADO y FLORES,  
ALVIN ALVAREZ y LONQUIAS  
and RAMIL DAL y MOLIANEDA,  
Accused-Appellants.

Promulgated:

April 23, 2018

*Wilfredo V. Lapitan*

X ----- X

DECISION

**GESMUNDO, J.:**

This is an appeal from the May 19, 2017 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 07568 which affirmed the March 1, 2015 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Parañaque City, finding accused-appellant Malou F. Alvarado (*Malou*) guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, while Alvin L. Alvarez (*Alvin*) and Ramil M. Dal (*Ramil*) [collectively referred to as appellants] were found guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165.

<sup>1</sup> *Rollo*, pp. 2-15; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ramon R. Garcia and Renato C. Francisco.

<sup>2</sup> *CA rollo*, pp. 54-65; penned by Judge Danilo V. Suarez.

*ML*

*The Antecedents*

In Criminal Case No. 11-0124, Malou was charged with Violation of Section 11, Article II of R.A. No. 9165. The accusatory portion of the Information states:

That on or about the 26<sup>th</sup> day of January 2011, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously have in her possession and under her control and custody four (4) pieces of small heat-sealed transparent plastic sachets containing white crystalline substance weighing 0.01 gram each or a total of 0.04 gram, marked as "RB-1" to "RB-4", which when tested was found to be positive for Methylamphetamine Hydrochloride, a dangerous drug.<sup>3</sup>

In a separate Information, docketed Criminal Case No. 11-0125, Malou, Alvin and Ramil were charged with Violation of Section 5, Article II of R.A. No. 9165, the accusatory portion of which states:

That on or about the 26<sup>th</sup> day of January 2011, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.01 gram, marked as "RB", to Police Poseur PO2 ROLLY BURGOS, which content of the said plastic sachet when tested was found to be positive for Methylamphetamine Hydrochloride, a dangerous drug.<sup>4</sup>

In another Information, docketed as Criminal Case No. 11-0123, Beata E. Lonquias (*Beata*) was also charged with violation of Section 12, Article II of R.A. No. 9165 or illegal possession of drug paraphernalia.

When arraigned, appellants pleaded not guilty. Trial ensued.

From the evidence presented at the trial court, the CA summarized the respective versions of the parties, as follows:

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<sup>3</sup> Records, p. 2.

<sup>4</sup> Id. at 3.

### Version of the Prosecution

The prosecution presented Forensic Chemist Police Inspector Richard Mangalip (P/Insp. Mangalip), PO3 Eric Sarino, PO2 Rolly Burgos, and PO3 Edwin Plopinio and from their testimonies, the following events were gathered:

On 26 January 2011, around 2:00 o'clock in the afternoon, an Informant reported to the Parañaque City Police Station Anti-Illegal Drug Special Operations Task Group (SAIDSOTG) about the illegal drug activity of certain [Betsy] and Malou at Sampaloc Site, Barangay BF Homes, Parañaque City. The police immediately formed a team, headed by Senior Inspector Roque Tome (P/Sr. Insp. Tome), to conduct a buy-bust operation against the suspects, with PO2 Rolly Burgos (PO2 Burgos) as *poseur* buyer and PO3 Eric Sarino (PO3 Sarino), and PO3 [Edwin] Plopinio as back-up. The Team Leader provided PO2 Burgos with [buy]-bust money consisting of 5 pieces of ₱100.00 bills, which were marked with "RB" on the upper left portion of the bills. After coordinating with the Philippine Drug Enforcement Agency (PDEA), the team, together with the Informant, proceeded to Sampaloc Site, Barangay BF Homes, Parañaque City to conduct a buy-bust operation. Upon reaching the target area, PO3 Sarino and PO3 Plopinio strategically positioned themselves as perimeter back-up officers while PO2 Burgos and the Informant went ahead and when they reached Chico Street, the Informant and PO2 Burgos spotted two men and a woman in blue blouse standing at the side of the street. The Informant identified the woman in blue blouse as Malou Alvarado, their target, while the two men were identified as Alvin Alvarez (the live-in partner of Malou) and Ramil Dan (Ramil), their runner. Ramil approached them and offered them *shabu* from Malou, who he boasted had ample supply (of drugs). PO2 Burgos handed the five ₱100.00 bills to Ramil to buy ₱500.00 worth of *shabu*. Ramil gave the money to Alvin and then approached Malou, who handed him a small plastic sachet, containing white crystalline substance suspected to be *shabu*, which he (Ramil) handed to PO2 Burgos, who immediately executed the pre-arranged signal of throwing his cigarette to alert the rest of the team that the transaction was consummated. PO2 Burgos introduced himself as a police officer and then arrested Ramil and Malou, from whom he confiscated a canister containing four (4) sachets of suspected *shabu*. Meanwhile, Alvin immediately ran away but PO3 Plopinio chased and apprehended him inside the house of Beata Lonquias *alias* Betty (the subject of the buy-bust operation and later identified as Alvin's mother). PO3 Plopinio recovered the buy-bust money from Alvin. Beata likewise ran and was chased and apprehended by PO3 Sarino, who confiscated from her a small plastic container containing numerous aluminum foil strips, which he did not bother to count. P/Sr. Insp. Tome contacted the barangay authorities and thus, in the presence of *Barangay Kagawad* Noel Azarcon and the four suspects, PO2 Burgos placed markings on the seized items at the scene of the arrest - RB on the plastic sachet subject of the sale, RB-5 on the white canister and RB-1 to RB-4 on the [four] 4 sachets inside said canister. Meanwhile, PO3 Sarino marked the plastic container of aluminum foils with ES and placed his initials thereon. While SPO2 Burgos was preparing the inventory of the seized item, PO2 Julaton took photographs of the arrested suspects and the seized items. Thereafter, the



team brought the accused-appellants to the police station for documentation and to submit the confiscated items to the PNP Crime Laboratory for examination.

After a request for laboratory examination was made by PO2 Julaton, PO2 Burgos personally brought the confiscated specimens to the PNP Crime Laboratory for examination. Forensic Chemist P/Insp. Richard Mangalip found the sachets (in the possession of Malou) and the sachets subject of the sale positive for *methamphetamine hydrochloride* or *shabu*. However, the aluminum foils inside the plastic canister seized from Beata E. Lonquias alias Betty were found negative of *shabu*.<sup>5</sup>

### **Version of the Accused**

Malou Alvarado and her common-law husband Alvin Alvarez were at their house at Chico Street, Sampaloc Site, Sucat, Parañaque City at around 3 o'clock in the afternoon of 26 January 2011. Alvin was watching television when PO2 Burgos kicked open their door and together with Police Officers Sarino and Plopinio entered and searched their house without any warrant and without their consent. PO2 Burgos poked a gun at Alvin and though the police found nothing, they proceeded to handcuff the accused-appellants and brought them outside. While outside, Malou saw her mother-in-law Beata and a man (Ramil) she did not know, who was also handcuffed. Then they saw PO2 Burgos brought out from a black bag small plastic sachets and money. Subsequently, their pictures were taken and they were forced to board a police mobile that brought them to Manila Memorial Park. The police officers then told them to alight from the vehicle and demanded ₱30,000.00 from each of them to settle their case. When they told them that they had no money, the police officers brought them to the police station. At the police station, they were ordered to call their relatives so that they could bring the money. When they were brought for inquest, they admitted that they did not tell the prosecutor that the police were extorting money from them. They claimed that they did not file any case against the police officers who apprehended them because they had no money.

Ramil, who testified on 18 December 2014, declared that he was on his way to a friend's house at Sampaloc Site, for possible employment in a construction project, when he met six men (who turned out to be police officers), one of whom (PO3 Plopinio) poked a gun at him and told him to face the wall. When he did not follow, he was hit on the stomach and handcuffed. Thereafter, he saw a man (Alvin), a woman (Malou) and an elderly woman (whom he later identified as Beata) coming from an alley. Then the four of them were gathered together and they were made to sign a document. He saw a police officer handed to PO2 Burgos several plastic sachets and five ₱100.00 bills from his small bag. Thereafter, they were photographed, accused of selling illegal drugs and made to board a vehicle. They were brought to Manila Memorial Park, where policemen asked them to produce ₱30,000.00 each but they were not able to give them any money. Consequently, the police brought them to the police station, where they were detained.

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<sup>5</sup> Rollo, pp. 4-6.



Beata testified that: on 26 January 2011, she was alone in her house when several men forcibly entered their house, searched it and then arrested her; the police did not have any warrant with them and she did not know why they arrested and detained her; Malou was just a neighbor.<sup>6</sup>

### **Ruling of the RTC**

On March 1, 2015, the RTC rendered its decision finding appellants guilty as charged. It, however, acquitted Beata based on reasonable doubt.

The RTC held that all the elements of the crimes of illegal possession and illegal sale of *shabu* were clearly established by the prosecution. It gave credence to the testimonies of police officers who composed the buy-bust team, particularly PO2 Burgos who testified on the conduct of the buy-bust operation that resulted in the arrest of the appellants. As to the failure of the arresting officers to strictly comply with the requirements under Section 21 of R.A. 9165, it was noted that a *barangay kagawad* was present during the inventory and hence there was substantial compliance with the law and that the integrity of the drugs seized from appellants was preserved.

On the other hand, the defenses of denial and frame-up failed to convince the RTC, which noted that none of the appellants filed a complaint against the police officers who allegedly arrested them on false charges and even tried extorting money from them.

However, the RTC ruled that the prosecution failed to establish its case against accused Beata who was not involved or present during the conduct of the buy-bust. Also, none of the 114 aluminum foils allegedly found in her possession was marked by PO3 Sarino who searched her person after he spotted her leaving the house of Malou.

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered the court renders judgement as follows:

1. In *Criminal Case No. 11-0123 for Violation of Sec. 12, Art. II, RA 9165*, the court finds accused BEATA ESCUADRA LONQUIAS is hereby ACQUITTED on ground of reasonable doubt;

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<sup>6</sup> Id. at 6-8; CA *rollo*, pp. 97-99.

2. In *Criminal Case No. 11-0124 for Violation of Sec. 11, Art. II, RA 9165*, the court finds accused MALOU FLORES ALVARADO, GUILTY beyond reasonable doubt and is hereby sentenced to Imprisonment of twelve (12) years and one (1) day as minimum to seventeen (17) years and four (4) months as maximum and to pay a fine of Php 300,000.00 and;

3. In *Criminal Case No. 11-0125 for Violation of Sec. 5, Art. II, RA 9165*, the Court finds accused MALOU FLORES ALVARADO, ALVIN LONQUIAS ALVAREZ and RAMIL MOLIANEDA DAL, GUILTY beyond reasonable doubt and are hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Php 500,000.00 each;

It appearing that the accused MALOU FLORES ALVARADO, ALVIN LONQUIAS ALVAREZ and RAMIL MOLIANEDA DAL are detained at the Parañaque City Jail and considering the penalty imposed, the OIC Branch Clerk of Court is directed to prepare the *Mittimus* for the immediate transfer of accused ALVIN LONQUIAS ALVAREZ and RAMIL MOLIANEDA DAL from the Parañaque City Jail to the New Bilibid Prisons, Muntinlupa City and the transfer of accused MALOU FLORES ALVARADO from the Parañaque City Jail to the Women's Correctional Facility in Mandaluyong City.

The bail bond posted by accused BEATA ESCUADRA LONQUIAS is hereby cancelled.

The specimens consisting of five (5) sachets of shabu marked "RB" to "RB-4" each weighing 0.01 gram for a total of 0.05 gram, as well as the one hundred fourteen (114) pieces of aluminum foil strips placed inside a plastic container marked as "ES", are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to immediately turn over the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Sec. 21 of RA 9165 and Supreme Court OCA Circular No. 51-2003.

SO ORDERED.<sup>7</sup>

### **Ruling of the CA**

On appeal, the CA affirmed the decision of the RTC. It held that based on the totality of the evidence, the prosecution was able to prove that the illegal sale of *shabu* took place, and that Malou then had in her possession *shabu* contained in four (4) heat-sealed transparent plastic sachets. The appellate court likewise concluded that there was compliance with the chain of custody rule which clearly showed that the drug specimens presented in court were the same items in the possession of Malou at the time of the buy-bust operation. On the other hand, appellants failed to show that the *shabu* seized from Malou, were tampered with, or switched before they were delivered to the PNP Crime Laboratory for examination.

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<sup>7</sup> CA rollo, pp. 64-65.

The appellate court observed that the appellants “repeatedly harped on the absence of [sic] the accused, media and DOJ representatives during the inventory of the seized items.” Citing *People v. Salvador*,<sup>8</sup> the CA ruled that failure to strictly comply with Section 21 of R.A. 9165 was not fatal.

As to appellants’ defense of denial, the CA said that aside from being self-serving, the same was unsupported and unsubstantiated by clear and convincing evidence. Even their testimonies regarding the incident were found conflicting.

Dissatisfied with the affirmance of the decision, the appellants filed this appeal before the Court.

In compliance with the Court’s Resolution,<sup>9</sup> the Public Attorney’s Office (*PAO*), on behalf of the appellants, filed a manifestation stating that they are adopting and re-pleading all the arguments raised in their appeal brief filed with the CA. A similar manifestation was filed by the Office of the Solicitor General (*OSG*).

### **Arguments of the Parties**

In their appeal brief, appellants assail the CA in upholding their conviction despite the police officers’ non-compliance with procedural safeguards prescribed by Section 21 of R.A. No. 9165. They assert that no evidence was presented showing that the inventory and photographing of the seized items were conducted in their presence and/or their representative, and representatives from the media and the DOJ. No justifiable ground could be found in the testimonies of prosecution witnesses that would excuse non-compliance with the said provision.

Appellants further contend that such failure of the arresting officers to show that they followed the required procedure in the chain of custody constitutes a deviation that destroys the presumption of regularity in the performance of duty. And although the defense of denial is weak, appellants assert that they should nonetheless, be acquitted. They stress that the presumption of innocence stands as a fundamental principle of both constitutional and criminal law, imposing a rule on evidence, a degree of proof that demands no less than total compliance.<sup>10</sup>

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<sup>8</sup> 726 Phil. 389 (2014).

<sup>9</sup> *Rollo*, pp. 24-25.

<sup>10</sup> *CA rollo*, pp. 44-50.

On the other hand, the OSG, as Peoples' counsel, maintains that appellants' guilt in the crimes they were convicted was proven beyond reasonable doubt. All the elements for both crimes of illegal sale and illegal possession of *shabu* have been sufficiently proven by the evidence presented. The drugs subject of the buy-bust sale and those seized from the possession of Malou were the same drugs presented and identified in the trial court. Contrary to appellants' assertion, there was substantial compliance with Section 21 (a) of R.A. No. 9165 and the chain of custody, as well as the presentation of the *corpus delicti* in court, had likewise been sufficiently established.

As to the alleged absence of appellants when the inventory was being conducted by the arresting officers, this issue was not raised before the trial court during the stipulations made by the parties regarding *Bgy. Kgd. Azarcon's* testimony. As shown by the transcript of stenographic notes, appellants admitted that the *barangay kagawad* was present during the inventory and apart from stipulating on Azarcon's lack of personal knowledge on the source of the specimen and the circumstances surrounding the arrest of the appellants, the latter did not stipulate nor make it of record that when the *barangay kagawad* was there to witness the inventory, appellants were not around at the time.

The OSG underscores the previous rulings of this Court that non-compliance by the apprehending/buy-bust team with Section 21 is not fatal for as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved. In particular, the absence of the representative from DOJ and media was already explained by the arresting officers. Thus, if despite their efforts it was only *Bgy. Kgd. Azarcon* who arrived at the scene to witness the photographing and inventory, this predicament is obviously beyond the control of the arresting team who had no choice but to proceed with the tasks at hand. What is essential was that the police officer had done all they could to safeguard the integrity and evidentiary value of the items involved.

On appellants' defense of denial, the OSG argues that such denial cannot overcome the positive assertions of the members of the buy-bust team. The well-entrenched principle is that, over and above the accused's denial, greater weight is given to the positive testimonies of the prosecution witnesses especially when these corroborate each other on material points, particularly the positive identification of the appellants as the ones who sold



and delivered the *shabu* to the poseur-buyer and that on the occasion of their arrest, more plastic sachets of *shabu* were recovered from one of them.<sup>11</sup>

### Issue

Whether or not the CA erred in affirming appellants' conviction for illegal sale and illegal possession of *shabu*.

### The Court's Ruling

The appeal is meritorious.

To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.<sup>12</sup>

In this case, the prosecution narrated that PO2 Burgos, the *poseur* buyer, accompanied by their informant, and the rest of the buy-bust team, went to the area where Malou and Betty (*Beata*) supposedly engaged in selling *shabu*. It was Ramil who approached PO2 Burgos and offered him *shabu*, and when PO2 Burgos gave the payment (in marked money) for ₱500.00 worth of *shabu*, Ramil handed the money to Alvin. Malou then gave Ramil one plastic sachet containing suspected *shabu*, which Ramil handed to PO2 Burgos.

With the sale consummated, PO2 Burgos threw his cigarette as pre-arranged signal for the rest of the buy-bust team. He then introduced himself as a police officer and arrested appellants with the aid of his back-up, PO3 Plopinio and PO3 Sarino. Four (4) more plastic sachets of *shabu* placed inside a plastic canister were recovered from Malou. Alvin tried to run towards their nearby house but he was chased by PO3 Plopinio. On the same day, the five plastic sachets containing white crystalline substance seized from appellants were submitted for chemical analysis to the PNP Crime

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<sup>11</sup> Id. at 79-84.

<sup>12</sup> *People v. Bautista*, 682 Phil. 487, 497-498 (2012), citing *People v. Naquita*, 582 Phil. 422, (2008); *People v. Del Monte*, 575 Phil. 576, 587 (2008); and *People v. Santiago*, 564 Phil. 181, 193 (2007).

Laboratory and the results confirmed the presence of *methylamphetamine-hydrochloride* or *shabu*, a dangerous drug. The *shabu* contained in one plastic sachet weighing 0.01 gram, marked “RB” sold by appellants to PO2 Burgos was duly identified and presented as evidence in court. The other four (4) plastic sachets containing *shabu*, which were seized from Malou on the same occasion marked as “RB-1”, “RB-2”, “RB-3” and “RB-4”, were likewise presented as evidence.

For illegal possession of a dangerous drug, like *shabu*, the elements are: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug.<sup>13</sup>

We have held that the confiscation of additional quantity of illegal drugs, other than those subject of the consummated sale, from the person of the accused during the buy-bust, was legally authorized after said accused had been lawfully arrested for committing drug pushing.<sup>14</sup>

Nonetheless, the Court has ruled that even when the illegal sale of a dangerous drug was proven by the prosecution, the latter is still burdened to prove the integrity of the *corpus delicti*. Thus, even if there was a sale, the *corpus delicti* is not proven if the chain of custody was defective.<sup>15</sup> The *corpus delicti* is the body of the crime that would establish that a crime was committed. In cases involving the sale of drugs, the *corpus delicti* is the confiscated illicit drug itself, the integrity of which must be preserved.<sup>16</sup>

Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*: every fact necessary to constitute the crime must be established. The chain of custody requirement performs this function in buy-bust operations as it ensures that doubts concerning the identity of the evidence are removed. In a long line of cases, we have considered it fatal for the prosecution to fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused.<sup>17</sup>

The preservation of the chain of custody is therefore essential in a successful prosecution for the illegal sale of dangerous drug. The adoption of a special rule in the handling of the dangerous drugs in particular is

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<sup>13</sup> *People v. Bautista*, supra at 498.

<sup>14</sup> Id.

<sup>15</sup> See *People v. Saragena*, G.R. No. 210677, August 23, 2017,

<sup>16</sup> *People v. Saragena*, supra; citing *People v. Pagaduan*, 641 Phil. 432, 447 (2010); *People v. Caiz*, 790 Phil. 183, 196 (2016).

<sup>17</sup> *People v. Sanchez*, 590 Phil. 214, 235 (2008).

necessitated by the nature of the dangerous drug itself which is likely to be tampered, altered, contaminated, or substituted.<sup>18</sup>

Section 1(b) of Dangerous Drug Board (DDB) Regulation No. 1, Series of 2002,<sup>19</sup> defines chain of custody as follows:

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition[.]

The apprehending team is required to "document the chain of custody each time a specimen is handled, transferred or presented in court until its disposal, and every individual in the chain of custody shall be identified following the laboratory control and chain of custody form."<sup>20</sup>

Section 21, paragraph 1 of R.A. No. 9165 provides for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Said provision has been amended by R.A. No. 10640.<sup>21</sup> Since the alleged offense was committed on January 26, 2011, the old law and its corresponding implementing rules and regulations shall be applied, being more favorable to the appellants. The original Section 21 reads as follows:

**SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.** - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically**

<sup>18</sup> *People v. Macud*, G.R. No. 219175, December 14, 2017, citing *Malillin v. People*, 576 Phil. 576 (2008).

<sup>19</sup> Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

<sup>20</sup> Guidelines on the Implementing Rules and Regulation (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.B.5.

<sup>21</sup> "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the Comprehensive Dangerous Drugs Act of 2002". Approved on July 14, 2014.

**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)**

This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* (IRR) of R.A. No. 9165, which reads:

(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 this case, after the plastic sachets containing white crystalline substance were seized by the arresting officers, they were marked by PO2 Burgos with his initials and brought to the nearby house of Malou. It is there where an inventory of the seized items was done in the presence of appellants and *Kgd. Azarcon*, as shown in the pictures taken by PO2 Julaton.<sup>22</sup> However, only a *barangay kagawad* was present during the inventory and photographing of the seized items.

Section 1(A.1.6) of the Chain of Custody Implementing Rules and Regulations states that “[a] representative of the [National Prosecution Service] is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected.” The presence of these three (3) persons required by law can be ensured in a planned operation such as a buy-bust operation.<sup>23</sup>

Here, the buy-bust operation was arranged and scheduled in advance. The police officers formed an apprehending team, coordinated with the

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<sup>22</sup> Exhs. H, I, P, Q, R, and S; records, pp. 359, 363-364.

<sup>23</sup> *People v. Saragena*, supra note 15.

Philippine Drug Enforcement Agency (*PDEA*), prepared the buy-bust money, and held a briefing. Yet, they failed to ensure that a DOJ representative and a media practitioner, would witness the inventory and photographing of the seized drugs.

Securing the presence of these persons is not impossible. Indeed, it is not enough for the apprehending officers to merely mark the seized pack of *shabu*; the buy-bust team must also conduct a physical inventory and take photographs of the confiscated item in the presence of these persons required by law.<sup>24</sup> Relevantly, under the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation,<sup>25</sup> on specific rules and procedures for planned operations such as a buy-bust operation, the designated Team Leader is required “to see to it that he has the contact numbers of representatives from the DOJ, Media and any Local Elected Official in the area for inventory purposes as required under Section 21, Article II of R.A. No. 9165.”<sup>26</sup>

The OSG suggests that the absence of the DOJ and media representative may be overlooked, explaining that “this predicament is obviously beyond the control of the arresting team who had no choice but to proceed with the tasks at hand.”

The Court cannot agree to such proposition.

In the recent case of *People v. Macud*,<sup>27</sup> we stressed the importance of this requirement, thus:

We cannot even declare that there was substantial compliance with the law in this case as the police officers invited no other person to witness the procedures that were done *after* the buy-bust operation, *i.e.*, the marking, inventory, and photography of the seized drugs. **There was no representative of the media or the DOJ** and no allegation that these people could similarly compromise the operation if they had been informed of and present before, during, and after the operation.

**The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody.** We have noted in several cases that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law

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<sup>24</sup> *Id.*; citing *Lescano v. People*, 778 Phil. 460, 469 (2016).

<sup>25</sup> Dated September 2014, incorporating the amendments introduced by RA 10640.

<sup>26</sup> Chapter 3, Sec. 3.1 (a)(2)(7).

<sup>27</sup> *Supra* note 18.

are strictly observed. In the present case, not only have the prescribed procedures not been followed, but also (and more importantly) the lapses not justifiably explained. In *People v. Dela Cruz* where there was a similar failure to comply with Section 21 of RA No. 9165, the Court declared:

**“xxx This inexcusable non-compliance effectively invalidates their seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same. We resolve the doubt in the integrity and identity of the *corpus delicti* in favor of appellant as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt. Considering that the prosecution failed to present the required quantum of evidence, appellants acquittal is in order.”**

As in *Dela Cruz*, and in view of the foregoing, the Court finds the acquittal of Macud in order. (emphasis supplied, citations omitted)

The Court has recognized the saving clause provided in the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165 such that failure to strictly comply with the said directive is not necessarily fatal to the prosecution's case. Strict compliance with the legal prescriptions of R.A. No. 9165 may not always be possible given the field conditions in which the police officers operate. However, the lapses in procedure must be recognized, addressed and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.<sup>28</sup>

In *People v. Cayas*,<sup>29</sup> the Court reiterated this rule:

While recent jurisprudence has subscribed to the provision in the Implementing Rules and Regulations (IRR) of R.A. 9165 providing that non-compliance with the prescribed procedure is not fatal to the prosecution's case, we find it proper to define and set the parameters on when strict compliance can be excused.

**As a rule, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.**

The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the proscribed procedures is not observed. **This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the**

<sup>28</sup> *People v. Martinez*, 652 Phil. 347, 382 (2010), citing *People v. Cervantes*, 600 Phil. 819, 843 (2009).

<sup>29</sup> 789 Phil. 70 (2009).

**integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.<sup>30</sup> (emphases supplied)

During his cross examination, PO2 Burgos was asked regarding the absence of the DOJ and media representative but he failed to give any justifiable reason. The pertinent portions of his testimony are herein reproduced:

xxx

xxx

xxx

Q: And you would agree, as stated in Section 21 of RA 9165, the actual inventory must be witnessed by an elected public official?

A: Yes, sir.

Q: And in this case, Kgd. Noel Azarcon was present?

A: Yes, sir.

Q: And aside from that, there must also be a witness coming from the DOJ and media?

A: Yes, sir.

Q: In these pictures, can you tell the court if a media man or DOJ representative was present during the inventory?

A: No representative from the media and DOJ.

Q: What was the reason why there were no representatives from the media and DOJ?

A: **It was our team leader who coordinated with the barangay and only Kgd. Azarcon together with the two barangay tanods arrived.**

Q: You would admit that your team leader contacted the barangay kagawad together with the barangay tanods during the actual inventory?

A: Yes, sir.

Q: **But he did not contact representatives from the DOJ and media?**

A: **I cannot remember, sir.**

xxx<sup>31</sup> (emphases supplied)

<sup>30</sup> Id. at 79-80.

<sup>31</sup> TSN, August 14, 2014, pp. 18-19; records, pp. 317-318.

In the recent case of *People v. Carlit*<sup>32</sup> there was a DOJ representative who witnessed the inventory but no media representative and an elected official present. We held that the prosecution failed to prove every link in the chain of custody:

In the case at bar, PO3 Carvajal testified that he marked the alleged shabu at the police station, instead of doing so immediately at the place where the arrest was effected as required by law. Moreover, the arresting officers failed to strictly observe Section 21 of R.A. 9165 that requires that "an elected public official and a representative of the National Prosecution Service or the media" be present during the inventory, and be given a copy of the report of the seized items. **Such failure of the police officers to secure the presence of a representative from the media or a barangay official raises serious doubts on whether the chain of custody was actually unbroken.**

Notably, PO3 Carvajal did not offer any explanation for these lapses. Rather, he admitted that they were no longer able to coordinate with the media and the local official because he was instructed by their team leader to immediately bring Carlit to the police station. To Our mind, this does not constitute justifiable ground for skirting the statutory requirements under Section 21 of R.A. 9165. We are therefore constrained to rule as We did in *Bartolini*, viz:

**"The failure to immediately mark the seized items, taken together with the absence of a representative from the media to witness the inventory, without any justifiable explanation, casts doubt on whether the chain of custody is truly unbroken.** Serious uncertainty is created on the identity of the *corpus delicti* in view of the broken linkages in the chain of custody. The prosecution has the burden of proving each link in the chain of custody - from the initial contact between buyer and seller, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug. The prosecution must prove with certainty each link in this chain of custody and each link must be the subject of strict scrutiny by the courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense."<sup>33</sup> (emphasis supplied)

Indeed, the prosecution's unjustified non-compliance with the safeguards of the chain of custody constitutes a fatal procedural flaw that destroys the reliability of the *corpus delicti*.<sup>34</sup>

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<sup>32</sup> G.R. No. 227309, August 16, 2017.

<sup>33</sup> *Id.*

<sup>34</sup> *Dela Riva v. People*, 769 Phil. 872, 894 (2015).



The CA clearly disregarded the operative phrase—that the prosecution must provide "justifiable grounds" for non-compliance, in addition to showing that the prosecution maintained the integrity of the seized item.<sup>35</sup>

The appellate court further failed to take note of Sections 1(A.1.9) and 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations, which provide:<sup>36</sup>

A.1.9. Noncompliance, **[a] under justifiable grounds**, with the requirements of Section 21 (1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items **[b] provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.**

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

The Implementing Rules and Regulations on the chain of custody thus require that the apprehending officers not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.<sup>37</sup> In this case, there was no justifiable ground given by the arresting officers for the absence of DOJ and media representatives in their *Pinagsamang Salaysay*.<sup>38</sup> PO2 Burgos' testimony in court further highlighted the lack of justifiable ground for the buy-bust team's failure to strictly comply with the requirements of Section 21.

The CA likewise erred in simply relying on the prosecution's claim that the integrity of the evidence was preserved in accordance with the chain of custody requirements for proper handling of the drug specimen. In *People v. Sanchez*,<sup>39</sup> the Court said:

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<sup>35</sup> Supra note 15.

<sup>36</sup> Id.

<sup>37</sup> Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.10.

<sup>38</sup> Exh. "D"; records, pp. 353-355.

<sup>39</sup> Supra note 17.

For greater specificity, “marking” means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized. If the physical inventory and photograph are made at the nearest police station or office as allowed by the rules, the inventory and photography of the seized items must be made in accordance with Sec. 2 of *Board Resolution No. 1, Series of 2002* but in every case, the apprehended violator or counsel must be present. Again, this is in keeping with the desired level of integrity that the handling process requires. **Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.**<sup>40</sup> (emphasis supplied)

PO2 Burgos had testified that after marking with his own initials the confiscated plastic sachets containing suspected *shabu*, they conducted the inventory and photographing of the seized items in front of Malou’s house. Thereafter, appellants were brought to their station for proper documentation and preparation of request for the PNP Crime Laboratory. From the crime scene, he, together with appellants, boarded the same car; all this time the seized items were in his possession.<sup>41</sup> However, no details were provided by PO2 Burgos as to how the seized items were carried or handled during the transfer to the police station.

While the small transparent plastic canister taken from Malou where the four plastic sachets of *shabu* were found has been marked as “RB-5”, there was no testimony as to whether all five sachets of the drug specimen (marked “RB” to “RB-4”) seized from her were actually placed inside the said canister and sealed during the transfer to the police station and submission to the PNP Crime Laboratory. Forensic Chemist P/Chief Insp. Richard Allan B. Mangalip testified that the small transparent plastic canister marked “RB-5” was received by their office together with the plastic sachets of the drug specimen, but when asked what the said canister contained, he answered none.<sup>42</sup> Describing the condition of the items submitted to him by their Desk Officer NUP Arthur Relos, PCI Mangalip stated that the Request for Laboratory Examination “described the specimen subject for examination and the Letter Request there was also an attached specimen.”<sup>43</sup> This confirms that the five plastic sachets of the drug specimen were not sealed and placed inside the transparent plastic canister when it was transported to the police station and submitted to the crime laboratory, as

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<sup>40</sup> Id. at 241-242.

<sup>41</sup> TSN, August 14, 2014, pp. 9-10; records, pp. 308-309.

<sup>42</sup> TSN, March 9, 2012, p. 13; records, p. 76.

<sup>43</sup> Id. at 5; records, p. 68.

similarly reflected in the Physical Science Report No. D-047-119 describing the items submitted by apprehending team.<sup>44</sup>

The above lapses cast doubt on the prosecution's claim of an unbroken chain of custody. Despite the submission of a duly accomplished Chain of Custody Form,<sup>45</sup> the prosecution failed to establish that the plastic sachets containing *shabu* were properly handled and sealed in a container or evidence bag during the transfer to the police station and until their submission to the crime laboratory.

The prosecution cannot rely on the presumption of regularity in the performance of official functions and weakness of the defense's evidence to bolster its case. Any doubt on the conduct of the police operations cannot be resolved in the prosecution's favor by relying on the presumption of regularity in the performance of official functions. The failure to observe the proper procedure negates the operation of the regularity accorded to police officers. Moreover, to allow the presumption to prevail notwithstanding clear lapses on the part of the police is to negate the safeguards precisely placed by the law to ensure that no abuse is committed.<sup>46</sup>

Under the current Section 21, non-compliance with the requirements shall not render void and invalid such seizures and custody over the seized items as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team. It must be stressed, however, that the non-compliance must be for "justifiable grounds." In this case, the arresting officers failed to convince the Court that they had justifiable reasons not to strictly comply with the provisions of the law requiring the presence of an elected official, DOJ and media representatives during the physical inventory and photographing of the seized *shabu*. Also fatal to the prosecution's case is the absence of testimony on how the plastic sachets containing white crystalline substance suspected to be *shabu* were handled from the time of arrest/seizure until their submission to the crime laboratory and to ensure that their evidentiary value is not compromised.

We have held that the buy-bust team "should have been more meticulous in complying with Section 21 of Republic Act No. 9165 to preserve the integrity of the seized *shabu*," most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with.<sup>47</sup> "Law enforcers should not trifle with the legal requirement

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<sup>44</sup> Records, p. 352.

<sup>45</sup> Exh. "O"; records, p. 362.

<sup>46</sup> *People v. Macud*, supra note 18, citing *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

<sup>47</sup> *People v. Saragena*, supra note 15; citing *People v. Casacop*, 755 Phil. 265 (2015).



to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused.”<sup>48</sup>

As a final word, the Court reiterates its ruling in *People v. Holgado, et al.*:<sup>49</sup>

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.<sup>50</sup>

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated May 19, 2017 of the Court of Appeals in CA-G.R. CR No. 07568 is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of accused-appellants Malou F. Alvarado, Alvin L. Alvarez and Ramil M. Dal. They are accordingly **ACQUITTED** of the crime(s) charged against them and ordered immediately **RELEASED** from custody, unless they are being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this decision and to inform this Court of the date of the actual release from confinement of the accused-appellants within five (5) days from receipt hereof.

**SO ORDERED.**


  
ALEXANDER G. GESMUNDO  
Associate Justice

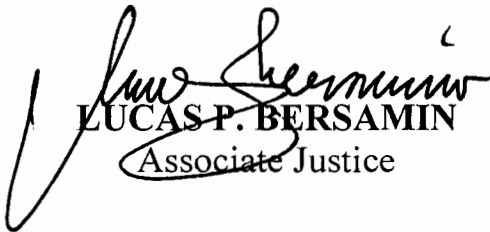
<sup>48</sup> *People v. Dela Cruz*, 744 Phil. 816, 820 (2014).

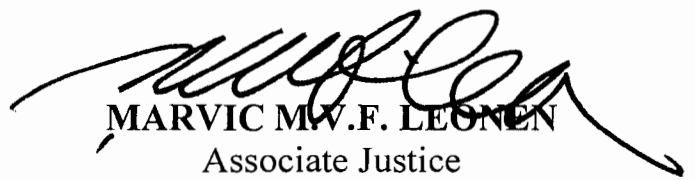
<sup>49</sup> 741 Phil. 78 (2014).

<sup>50</sup> *Id.* at 100.

WE CONCUR:

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson

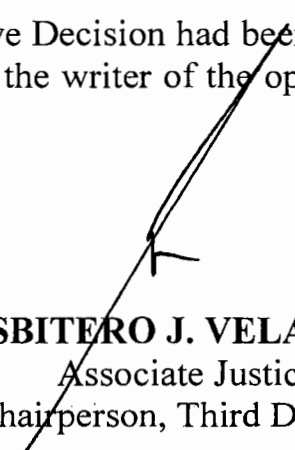
  
**LUCAS P. BERSAMIN**  
 Associate Justice

  
**MARVIC M.W.F. LEONEN**  
 Associate Justice

  
**SAMUEL R. MARTIRES**  
 Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson, Third Division

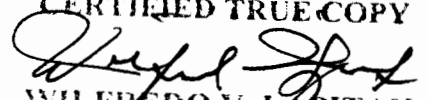


**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Acting Chief Justice

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

MAY 25 2018

