



Republic of the Philippines
 Supreme Court
 Baguio City

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

MA. CARMEN ROSARIO ABILLA,*
 Petitioner,

G.R. No. 227676

Present:

- versus -

CARPIO, J., *Chairperson*,
 PERLAS-BERNABE,
 CAGUIOA,
 J. REYES, JR.,* and
 LAZARO-JAVIER, JJ.

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

03 APR 2019
 [Signature]
 -----x

x-----

DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the 1997 Rules of Civil Procedure filed by Ma. Carmen Rosario Abilla (Abilla) assailing the Decision² dated October 29, 2015 and Resolution³ dated October 7, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01746, which affirmed the Decision⁴ dated September 12, 2013 of the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 36 (RTC) in Criminal Case Nos. 19840-19841, finding Abilla guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁵ otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, as amended.

The Facts

* Also referred to as alias "Chiky;" "Abilla" is sometimes spelled as "Abella" in some parts of the records.
 * On wellness leave.
 1 *Rollo*, pp. 10-70.
 2 *Id.* at 72-93. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap concurring.
 3 *Id.* at 95-97. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi concurring.
 4 *Id.* at 145-167. Penned by Presiding Judge Joseph A. Elmaco.
 5 AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, approved on June 7, 2002.

Abilla was charged with violation of Sections 5 and 11, Article II of RA 9165. The accusatory portion of each Information reads as follows:

Criminal Case No. 2010-19841

That on or about the 21st day of January 2010, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously sell and deliver to a PDEA poseur buyer, one (1) heat[-]sealed transparent plastic sachet containing white crystalline substance with an approximate weight of 0.31 gram of Methamphetamine Hydrochloride, commonly called “shabu”, a dangerous drug.

Contrary to Sec. 5, Art. II of R.A. 9165.⁶

Criminal Case No. 2010-19840

That on or about the 21st day of January 2010, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess one (1) heat-sealed transparent plastic sachet containing a total of 0.10 gram of Methamphetamine Hydrochloride, otherwise known as “SHABU”, a dangerous drug.

[That accused is found positive for use of Methamphetamine, as reflected in Chemistry Report No. CDT-006-10.⁷]

Contrary to Sec. 11, Art. II of R.A. 9165.⁸

Upon arraignment, Abilla pleaded not guilty to the crimes charged. Thereafter, trial ensued. The prosecution’s version, summarized by the Office of the Solicitor General (OSG) in its Appellee’s Brief, is as follows:

On January 21, 2010, around 9:00 in the evening, NBI [National Bureau of Investigation] Agent Miguel L. Dungog went to the PDEA Dumaguete City Office and informed SI Ferdinand Kintanar about the illegal drug activity of Chicky. NBI Agent Dungog suggested that they meet his confidential informant (informant) at Brgy. Piapi for a possible conduct of a buy-bust operation. Accordingly, NBI Agent Dungog and SI Kintanar, together with SPO3 Allen June Germodo and IO1 Bataan Coliflores, proceeded to Brgy. Piapi, Dumaguete City to meet the confidential informant. There, the informant assured the team that he could transact with Chicky for the purchase of shabu. Hence, NBI Agent Dungog contacted other members of Task Force 24. When the other members of the team arrived, SI Kintanar prepared the Php 500.00 bill buy-bust money while the informant contacted Chicky for the purchase of shabu. During their conversation, Chicky instructed the informant to meet her at Villa Fortuna[ta] in Brgy. Batinguel, Dumaguete City. After having been informed of Chicky’s instruction, the buy-bust team immediately

⁶ *Rollo*, p. 143.

⁷ *Id.* at 146.

⁸ *Id.* at 141.

proceeded to Brgy. Batinguel, particularly at Villa Fortuna[ta]. SI Kintanar and the informant rode on a motorcycle while the rest of the team rode an unmarked vehicle.

At Brgy. Batinguel, SI Kintanar and the informant positioned themselves near the sign Villa Fortunata, while the rest of the team positioned themselves respectively and strategically within ten (10) meters from their position. After thirty (30) minutes of waiting, Chicky arrived. The informant introduced SI Kintanar to Chicky and told her that they were interested to buy Php 1000.00 worth of shabu. She demanded for the money but SI Kintanar wanted to see the shabu first. So, Chicky showed him a sachet of shabu and handed it to SI Kintanar. After inspecting the sachet of shabu, SI Kintanar handed the Php 500.00 marked money to Chicky. Since they agreed to purchase Php 1000.00 worth of shabu, SI Kintanar pretended to get another Php 500.00 from his wallet, but in fact he executed the pre-arranged signal by making a miss call to NBI Agent Dungog's cellphone. Thereafter, NBI Agent Dungog and the rest of the team rushed to their location and assisted him in arresting Chicky. Because Chicky was still on the motorcycle with its engine on, SI Kintanar grabbed her and then NBI Agent Dungog, SPO3 Germodo and the rest of the team also got hold of her. NBI Agent Dungog handcuffed Chicky and then informed her of her constitutional rights. Thereafter, SI Kintanar inspected Chicky's black leather bag and found the marked money and another sachet of shabu inside the bag. To preserve the integrity of the pieces of evidence seized, SI Kintanar marked the sachet of shabu subject of the sale as "CA-BB" dated 1-21-2010 with his signature and the second sachet of shabu as "CA-01" dated 1-21-2010 with his signature.

After SI Kintanar marked the two (2) seized sachets of shabu, Brgy. Kagawad Harold Baroy arrived. Accordingly, SI Kintanar showed Kagawad Baroy the seized items. The team was about to conduct the inventory but it eventually decided to conduct the inventory at the NBI Office because the place of the incident was not well-lighted and there was already a commotion from the passing vehicles, and the people were already scared because the buy-bust team had guns. From the crime scene up to the NBI Office, SI Kintanar had in his custody all the seized items.

At the NBI Office, when all the required witnesses were already present, SI Kintanar immediately inventoried the seized items and prepared the Certificate of Inventory while NBI Agent Dungog prepared a request for laboratory examination. Also, SPO3 Germodo took photographs of the seized items, the Certificate of Inventory and the required witnesses with Chicky. After the inventory, all the confiscated items were in the custody of SI Kintanar. Because there was a brown-out when the inventory was conducted, IO1 Coliflores entered the incident in the PDEA blotter when the power was restored.

On January 22, 2010, SI Kintanar personally submitted the two (2) seized sachets of shabu to the PNP Crime Laboratory for laboratory examination. There, at 8:15 in the morning, PCI Josephine Llana received the seized items and thereafter immediately conducted the qualitative examination. Her examination of the specimens yielded positive results for the presence of Methamphetamine Hydrochloride, commonly known as shabu, a dangerous drug under R.A. 9165. She then prepared Chemistry Report No. D-011-10 to reflect her findings.



After the laboratory examination, PCI Llena re-sealed the sachets of shabu and placed her own markings on each specimen. Thereafter, she kept them in the crime laboratory's evidence room, where only she had access to [them], until these specimens were submitted by her to the RTC on February 17, 2010.⁹

On the other hand, the version of the defense, summarized by the RTC, is as follows:

Defense first witness was Jupiter Gabiligno, 23 years old, single, jobless and a resident of Umbac Subdivision, Calindagan, Dumaguete City. He testified to the foregoing facts:

That on January 21, 2010, he was the guard on duty of a vehicle at the compound of Mrs. Neri located at Villa Fortunata, Batinguel, Dumaguete City, from 7:00 P.M. to 6:00 A.M. together with one Arnel Vergara. The compound of Mrs. Neri was enclosed with iron grills.

That at about 9:00 in the evening, he saw a man and a woman talking near a lighted lamp post which is about fifteen (15) meters away from him. The woman was sitting on a motorcycle. He identified the woman inside the courtroom as Chicky Abilla, who is the accused in this case.

About four (4) minutes after, he saw the woman arrested by about nine (9) or ten (10) persons.

Arnel Vergara, 33 years old, basketball coach and a resident of Upper Lukewright, Dumaguete City. He testified to the foregoing:

That in the evening of January 21, 2010, he was at the apartment of Andos Neri, located at Villa Fortunata, Batinguel, Dumaguete City. He and Jupiter Gabiligno were the guards on duty during that time.

The rest of his testimony was corroborative with the testimony of Jupiter Gabiligno.

He further declared that after the woman was arrested, they all walked away. He did not see any inventory conducted at the scene of the arrest.

Benjamin Oira, 53 years old, married, BJMP Member, a resident of Candau-ay, Dumaguete City. He testified to the foregoing:

That he is the Jail Warden of the Dumaguete City District Jail.

That on January 21, 2010, at 9:00 o' clock in the evening more or less, he was on his way home on board his motorcycle, in a direction which is from East going to West. At the corner going to Villa Fortunata, he saw two (2) persons talking, one (1) male and one (1) female. Then

⁹ Id. at 74-76.

he saw a person running towards the direction of the man and the woman who were talking. He slowed down the motorcycle and he noticed Agent Dungog ran towards the three persons. Having in mind that it was a police operation, he proceeded his way home. He later on knew that the lady whom he saw that evening is the accused in this case, Ma. Carmen Rosario Abilla.

Maria Carmen Rosario L. Abilla alias "Chicky", 36 years old and a resident of No. 8, Talavera Street, Bais City, the accused herself was the last witness for the defense. She testified to the foregoing:

That at about 8:00 or 8:30 in the evening of January 21, 2010, she was in their rented apartment at Camanjac, Dumaguete City having dinner together with her live-in partner by the name of Mark Solon. Her former live-in partner by the name of Wedmark¹⁰ Merced called her up, who was in a sort of panic and told her that his mother threw him out from the house. He asked money from her in the amount of P2,000.00. She told Mark Solon who is her present live-in partner, that Wedmark Merced who was her former live-in partner, called her up and asked money from her. And told him if it is okay for him if she will give money to her former boyfriend. Her present live-in partner allowed her to go and give the money to her former live-in partner and advised her to come back immediately.

After eating, she called Wedmark Merced and told him to wait for her at Cuevas Apartment, which was their former rented place.

When she arrived at the agreed place on board her motorcycle, she saw Wedmark Merced on the side of the road, and she stopped in front of him. She was bringing along with her a black shoulder bag where she placed her wallet and her cell phone.

She and Wedmark Merced had a short conversation during that time. And Wedmark Merced told her that his cousin helped him with his problem, and at the same time looking towards the direction of a person sitting on a motorcycle, who was digiting on his cell phone, who later on went near them. She said "hello" and he immediately hugged her and held her tight. She tried to let go of herself, thinking it was a rape or a hold-up, she struggled so hard and shouted on the top of her lungs. She continued struggling and asked Wedmark what it was all about. Wedmark told her that he was arrested a while ago at Piapi, she will not be arrested, and advised her to tell them where Mark Solon is. Then she felt something hit on the nape of her neck then hit herself on the handle bar of her motorcycle. When she looked up, she saw Miguel Dungog. Knowing that Miguel Dungog was from the NBI, and who was [her] former suitor, she felt relieved and calmed down. She asked Miguel Dungog what it was all about, who

¹⁰ Also spelled as "Widmark" in some parts of the records.

answered her, that's what she get because she grabbed a husband. And she was handcuffed by Miguel Dungog. She noticed that somebody took her bag. Moments later, Doming Cimafranca arrived at the scene. She was advised by Miguel Dungog to tell Doming Cimafranca, where Mark (Solon) is. Later on, there was a brownout/power failure. Then she was brought to the NBI office. She saw the father of Mark Solon in the person of Fernando Solon arrived. (TSN pp. 22-23 Feb. 18, 2013). And had a talk with Doming Cimafranca. (TSN p. 34; 2/18/13)

The witness further declared that the accusation against her for selling "shabu" is a lie. Because at that time, she was working at Teletech. She was doing her completion duty as a nurse at Negros Oriental Provincial Hospital. She was with a man who had lots of money.

From the NBI office, she was brought to the police station, where she was detained. Michael Solon and Fernando Solon visited her in her detention cell. Fernando Solon offered her P200,000.00 even P400,000.00, if she will just tell where Mark Solon is. But she did not take the offer of Mr. Fernando Solon.¹¹

Ruling of the RTC

After trial on the merits, in its Decision¹² dated September 12, 2013 the RTC convicted Abilla of the crimes charged. The dispositive portion of the said Decision reads:

WHEREFORE, the prosecution having discharged the burden of proving the guilt of the accused beyond reasonable doubt, this court finds the accused **GUILTY** beyond reasonable doubt of the crimes of violation of Section 5 and 11 of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 for having sold dangerous drugs and possessed dangerous drugs without legal authority. Accordingly, she is sentenced for life imprisonment for the charge of violation of Section 5 for illegally selling dangerous drugs with an added penalty of fine in the amount of five hundred thousand pesos (P500,000.00). She is likewise, meted the penalty of from twelve (12) years and one (1) day to thirteen (13) years for the charge of violation of Section 11 of Republic Act 9165 for illegally possessing dangerous drugs and an added penalty of three hundred thousand pesos (P300,000.00) fine.

The drugs seized in connection with the two cases are ordered to be turned over to the Philippine Drugs Enforcement Agency (PDEA) and should be disposed of in accordance with law.

SO ORDERED.¹³

¹¹ *Rollo*, pp. 149-150.

¹² *Id.* at 145-167.

¹³ *Id.* at 167.

The RTC ruled that the evidence on record sufficiently established the presence of the elements of illegal sale and illegal possession of dangerous drugs.¹⁴ The RTC further held that the chain of custody of the two plastic sachets of *shabu* has never been broken.¹⁵ The prosecution was able to prove by clear and convincing evidence that the dangerous drugs seized from Abilla were the very same drugs that were taken into custody by SI Ferdinand Kintanar (SI Kintanar), submitted to the Philippine National Police Crime Laboratory, received by PCI Josephine Llena (PCI Llena) and submitted to the trial court.¹⁶ The RTC likewise noted that the procedural safeguards were observed by the police officers, including PCI Llena of the crime laboratory, in order to preserve the identity and integrity of the seized dangerous drugs.¹⁷

Aggrieved, Abilla appealed to the CA.

Ruling of the CA

In the questioned Decision¹⁸ dated October 29, 2015, the CA affirmed the RTC's conviction of Abilla, holding that the prosecution was able to prove the elements of the crimes charged.

The CA declared that there was substantial compliance in ensuring that the integrity of the drugs seized from Abilla was preserved.¹⁹ The CA explained:

x x x As previously mentioned, Kintanar was able to successfully buy from appellant one (1) plastic sachet containing shabu during the buy-bust operation. He also recovered from the possession of appellant one (1) sachet of shabu after her arrest. Immediately after confiscation, Kintanar, marked the illicit item that he bought from appellant and the other sachet he recovered from her possession with "CA-01 1-21-2010" and "CA-BB 1-21-2010" at the place of arrest. Kintanar remained in possession of the confiscated items from the time they were recovered in the possession of the appellant up to the time he, together with the other members of the buy-bust team and appellant reached the NBI Office in Dumaguete City. Physical inventory and photographs of the seized items were also taken in the presence of the appellant and the required witnesses at the NBI Office, Dumaguete City. Immediately thereafter, the confiscated items, with a letter of request for examination made by Agent Dungog, were personally submitted by Kintanar to the PNP Crime Laboratory for examination to determine the presence of any dangerous drug. Per Chemistry Report No. D-011-10 dated 22 January 2010, the specimen submitted contained [methamphetamine] hydrochloride, a dangerous drug. The examination was conducted by one Police Chief Inspector Josephine Suico Llena, a Forensic Chemist of the PNP Crime Laboratory of Negros Oriental. The

¹⁴ Id. at 164.

¹⁵ See id. at 166.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 72-93.

¹⁹ Id. at 87.

drugs seized from appellant and examined in the crime laboratory were subsequently offered as evidence in court where Kintanar positively identified and explained the markings placed thereon. These facts cogently proved that the two (2) sachets of *shabu* presented in court were the same items seized from the appellant during the buy-bust operation. Hence, the integrity and evidentiary value thereof were not [at] all compromised.²⁰

The CA also held that the arrest of Abilla was valid because a buy-bust operation is a form of entrapment, whereby ways and means are resorted to for the purpose of trapping and capturing violators of RA 9165.²¹ A search warrant or warrant of arrest was not needed because it was a buy-bust operation and Abilla was caught in *flagrante delicto* in possession of, and selling, dangerous drugs to SI Kintanar.²² Moreover, the CA noted that the records do not show that Abilla interposed any objection to the irregularity of her arrest prior to her arraignment.²³

As to the contention of Abilla regarding the purported inconsistencies in the testimonies of the prosecution's witnesses, the CA ruled that these were too trivial and only affect minor and collateral matters.²⁴ It is doctrinally settled in a long line of cases that minor discrepancies or inconsistencies do not impair the essential integrity of the prosecution's evidence.²⁵

The CA also emphasized that Abilla merely advanced the defenses of denial and frame up to prove that she did not commit the crimes charged.²⁶ Negative and self-serving denial deserves no weight in law when unsubstantiated by clear and convincing evidence.²⁷ Affirming the ruling of the RTC, the CA disposed as follows:

WHEREFORE, all premises considered, the instant appeal is **DENIED**.

Accordingly, the *Decision dated 12 September 2013* of the Regional Trial Court, Branch 36, Dumaguete City, in *Criminal Cases Nos. 19840 and 19841*, finding appellant Ma. Carmen Rosario Abilla alias "Chicky", guilty of violation of Sections 5 and 11, Article II of R.A. No. 9165, is hereby **AFFIRMED in toto**.

SO ORDERED.²⁸

Hence, the instant Petition.

Issue

²⁰ Id. at 87-88.

²¹ Id. at 88.

²² Id.

²³ Id.

²⁴ Id. at 89.

²⁵ *People v. Marcelino, Jr.*, 667 Phil. 495, 508 (2011).

²⁶ *Rollo*, p. 89.

²⁷ *People v. Honrado*, 683 Phil. 45, 54 (2012).

²⁸ *Rollo*, p. 92.



For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Abilla of the crimes charged.

The Court's Ruling

The Petition is meritorious. The Court acquits Abilla for failure of the prosecution to prove her guilt beyond reasonable doubt.

In this case, Abilla was charged with illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. To sustain a conviction for illegal possession of dangerous drugs the following elements must be established: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.²⁹ On the other hand, for a successful prosecution of the offense of illegal sale of drugs, the following elements must be proven: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and the seller were identified.³⁰

In both cases, the confiscated drug constitutes the very *corpus delicti* of the offense³¹ and the fact of its existence is vital to sustain a judgment of conviction.³² It is essential, therefore, that the identity and integrity of the seized drugs must be established with moral certainty.³³ The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime.³⁴ Each link to the chain of custody must be accounted for.³⁵

This resonates even more in buy-bust operations because “by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.”³⁶ Thus, while it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,³⁷ the law nevertheless requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded.

²⁹ *People v. Supat*, G.R. No. 217027, June 6, 2018, p. 6, citing *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 7.

³⁰ *Id.*, citing *People v. Bartolini*, 791 Phil. 626, 633-634 (2016).

³¹ *Id.*, citing *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

³² *Id.*, citing *Derilo v. People*, 784 Phil. 679, 686 (2016).

³³ *Id.* at 6-7, citing *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 6.

³⁴ *Id.* at 7.

³⁵ *Id.*, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

³⁶ *Id.*, citing *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 543-544.

³⁷ *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

In this connection, Section 21,³⁸ Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof; and (3) such conduct of the physical inventory and photograph shall be done at the (a) place where the search warrant is served; (b) nearest police station; or (c) nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.³⁹

Section 21 of RA 9165 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witness**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension.⁴⁰ It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.⁴¹ In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**.⁴² Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.⁴³

³⁸ The said section 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 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[.]

³⁹ *People v. Supat*, supra note 29, at 8-9.

⁴⁰ *Id.* at 9.

⁴¹ IRR of RA 9165, Art. II, Sec. 21(a).

⁴² *People v. Supat*, supra note 29, at 10.

⁴³ *Id.*

Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.⁴⁴ The reason is simple: it is at the time of arrest — or at the time of the drugs’ “seizure and confiscation” — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.⁴⁵

The buy-bust team failed to comply with the mandatory requirements under Section 21.

In the present case, the seized items were not inventoried immediately after seizure or confiscation. NBI Agent Dungog admitted, during his cross-examination, that there was no inventory conducted at the place of apprehension except for the markings made on the sachets of the seized items by SI Kintanar.⁴⁶

In the Joint Affidavit of Arrest⁴⁷ dated January 22, 2010, executed by the apprehending officers, it was stated that they decided to continue the inventory at the NBI Office “[d]ue to the difficulty of conducting the inventory at the scene.”⁴⁸ They also testified that “although the place was lighted, it was not considered sufficient for us to [do] the proper conduct of the inventory”⁴⁹ and given the “presence of so many people at that time.”⁵⁰

There were also no photographs of the seized drugs that were taken at the place of seizure. Photographs were taken only at the NBI Office.

Moreover, none of the three required witnesses was present at the time of seizure and apprehension. Although Brgy. Kagawad Harold Baroy (Baroy) arrived at the place of apprehension, it was already after the arrest of Abilla was executed. Baroy, during his direct examination, testified as follows:

- Q Can you still remember of any incident that happened past 10 P.M. of that day January 21, 2010?
- A At that time, there was an arrest that had been conducted.
- Q How did you know that there was an arrest that was conducted?
- A I was informed by one of the operatives requesting me to witness.
- Q What did you do when you were requested by this operative to witness something?

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ TSN, June 11, 2012, p. 23.

⁴⁷ *Rollo*, pp. 319-320.

⁴⁸ Id. at 320.

⁴⁹ TSN, April 16, 2012, p. 16.

⁵⁰ TSN, June 11, 2012, p. 23.

A Without any delay and since it was also our duty, I immediately went to the site where it happened.⁵¹

Such fact was reiterated during Baroy's cross-examination:

Q You will also agree with me, Mr. Witness, that from the crime scene, accused Abilla was immediately brought to the NBI Office, am I correct?

A When I arrived at the crime scene, she had already been arrested. What I only did was to check the inventory.

x x x x

Q What inventory are you referring to that was done at the crime scene, Mr. Witness?

A During the arrest, the confiscated items that were taken during the arrest were being arranged. That is what I mean about the informal inventory. The formal inventory was already conducted at the Office of the NBI.⁵²

As a matter of fact, SI Kintanar, part of the apprehending team, testified that Baroy indeed arrived after the arrest and that while Baroy was at the place of apprehension, no DOJ and media representatives were present:

Q After you have made the markings on these two (2) sachets that you confiscated, what happened next?

A When I already put the markings, the barangay officials of Barangay Batinguel arrived and I showed to him the drugs and other evidences which were seized from herein accused CHICKY ABILLA.

x x x x

Q But while you were still at Barangay Batinguel, was there any representative of the DOJ who arrived or a member of the media?

A They already contacted the said representatives, Sir, but we have not started the inventory because as I've said the team decided to have the inventory conducted at the NBI Office because the place was not well-lighted.⁵³

The presence of the other two witnesses at the NBI Office, namely Anthony Chilius Benlot (Benlot) as the DOJ representative and Neil Rio (Rio) as the media representative, did not provide the necessary insulation contemplated by the law. Notably, Benlot's testimony showed that when he arrived, the seized items were already arranged in the table while Rio's testimony, as corroborated by NBI Agent Dungog's statement, revealed that he arrived only after the

⁵¹ TSN, March 12, 2012, p. 13.

⁵² Id. at 17-18.

⁵³ TSN, April 16, 2012, pp. 16-18.

inventory and photography of the seized items had already been allegedly done, and he was merely asked to sign the inventory sheet.

Benlot's direct testimony is as follows:

Q And what transpired in that Office while you were there?

A I saw Ms. ABILLA being handcuffed, Sir.

Q You saw Ms. ABILLA being handcuffed?

A Yes, Sir.

Q What else?

A I also saw on the table the drugs confiscated, Sir.

Q Can you describe to us the items that you said are drugs confiscated?

A Sachet of shabu, Sir, a bag also, Sir, and I think a motorcycle, Sir.

Q And what did you do while you were there?

A Before I signed the inventory, Sir, I introduced myself first to Ms. ABILLA that what I'm doing here was just to witness the inventory and nothing else, Sir.

Q And what inventory was this that you said you signed?

A Certificate of Inventory, Sir.

Q Where was it when you signed it?

A On the table, Sir.

Q It was on the table, and you do you know who prepared that inventory?

A I cannot remember anymore, Sir.⁵⁴

Meanwhile, Rio's testimony is as follows:

Q- So when you arrived at the NBI Office, what transpired there?

A- When I arrived at the NBI, Dumaguete City, I saw the suspect, a certain Chicky Abilla and the alleged drugs and paraphernalia.

Q- Where were the alleged drugs and paraphernalia that you saw?

A- Placed on top of the table outside of the NBI Office.

Q- What did you do when you saw those things?

A- After that, I checked the evidence from the inventory receipt.

⁵⁴ TSN, February 20, 2012, pp. 4-5.

- Q- There was already an inventory receipt when you arrived?
- A- Yes, there was already an inventory receipt.
- Q- After you have checked, what did you do next?
- A- I signed at the inventory receipt.⁵⁵

NBI Agent Dungog's testimony is as follows:

- Q But you will recall that you said later on, media practitioner Neil Rio arrived?
- A Yes, Sir, he arrived at the place.
- Q When you said later, are you telling us that he arrived after the actual inventory was conducted?
- A He arrived when everything was written already in the inventory and pictures were already taken, Sir.⁵⁶

Evidently, the manner on how the buy-bust operation was conducted creates doubt as to the source, identity, and integrity of the seized drugs. The only insulating witness present at the place of apprehension was Baroy. It must be emphasized, however, that he arrived after the warrantless arrest of Abilla had already supposedly happened. Simply put, he was unable to witness how the alleged sachets of dangerous drugs were seized. Accordingly, his presence did not in any way prevent the possibility that a switching, planting or contamination of the evidence had transpired.

Nowhere in the records does it show that the apprehending officers had difficulty contacting the three required witnesses. In fact, it appears from the testimonies of these apprehending officers that they have the contact numbers of the insulating witnesses so that they could have easily been called before the conduct of the buy-bust operation. Thus, the Court cannot comprehend why these insulating witnesses were not requested to be present at the time or near the place of the warrantless arrest.

It bears emphasis that the presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,⁵⁷ the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

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*,⁵⁸ without the *insulating presence* of the representative from the media or the DOJ and any elected public official

⁵⁵ TSN, June 4, 2012, p. 4.

⁵⁶ TSN, June 11, 2012, p. 26.

⁵⁷ G.R. No. 228890, April 18, 2018.

⁵⁸ 736 Phil. 749, 764 (2014).



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 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.

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

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.”⁵⁹ (Additional emphasis supplied)

All told, the buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drugs — which thus created reasonable doubt as to the identity and integrity of the drugs and, consequently, reasonable doubt as to the guilt of Abilla.

The prosecution failed to prove any justifiable ground for non-compliance.

While there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items

⁵⁹ *People v. Tomawis*, supra note 57, at 11-12.

are properly preserved.⁶⁰ The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.⁶¹

As the Court held in *People v. De Guzman*,⁶² “[t]he justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.”⁶³ The prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance.

As the Court *en banc* unanimously held in the recent case of *People v. Lim*:⁶⁴

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

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.⁶⁵

In this case, the prosecution neither recognized, much less tried to justify, its deviation from the procedure contained in Section 21, RA 9165. The prosecution did not offer any plausible explanation as to why they did not contact the three required witnesses before the execution of the buy-bust operation. Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the

⁶⁰ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

⁶¹ *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Crispo*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Dionisio*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

⁶² 630 Phil. 637 (2010).

⁶³ *Id.* at 649.

⁶⁴ G.R. No. 231989, September 4, 2018.

⁶⁵ *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.⁶⁶ As the Court explained in *People v. Reyes*:⁶⁷

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal. x x x⁶⁸ (Emphasis supplied)

Likewise, the requisite inventory and photography were not done immediately after seizure and confiscation of the dangerous drugs and at the place of Abilla's arrest. While the law allows that the same may be done at the nearest police station or office of the apprehending team, the police officers must nevertheless provide justifiable grounds therefor in order for the saving clause to apply.⁶⁹ The apprehending officers failed to discharge that burden. The reasons that (a) the place of apprehension not being well-lighted; (b) existence of commotion from the passing vehicles, and (c) people being scared because the buy-bust team had guns, do not persuade the Court to be justifiable explanations to dispense with the conduct of the physical inventory and the photographing required by the law.

In *People v. Cornel*,⁷⁰ the Court already ruled that the buy-bust team's excuse of the existence of a commotion was not a justifiable reason for failing to conduct the inventory at the place of seizure. More so, it was not claimed that the safety of the police officers would have been prejudiced if the inventory and photography was done at the place of seizure.⁷¹ Therefore, the police officers were not justified in not following the procedure set in the law.

The presumption of regularity in the performance of official duties cannot apply where there is a clear violation of Section 21. In such case, the innocence of the accused, as presumed, must be upheld.

Considering the procedural lapses which the buy-bust team committed in handling the confiscated drugs, a presumption of regularity **cannot** arise

⁶⁶ See *People v. Sumili*, 753 Phil. 342, 350-352 (2015).

⁶⁷ 797 Phil. 671 (2016).

⁶⁸ Id. at 690.

⁶⁹ *People v. Geronimo*, G.R. No. G.R. No. 225500, September 11, 2017, 839 SCRA 336, 352.

⁷⁰ G.R. No. 229047, April 16, 2018.

⁷¹ See *People v. Lumaya*, supra note 61, at 11.

in the present case. This was settled in *People v. Kamad*,⁷² where the Court held that “[a] presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.”⁷³

Therefore, there is no such presumption that may arise in the present case. The presumption that regular duty was performed by the arresting officers simply cannot prevail over the presumption of innocence granted to the accused by the Constitution. It is incumbent upon the prosecution to prove that the accused is indeed guilty beyond reasonable doubt and overcome his presumed innocence.⁷⁴

This burden of the prosecution does not change even if the accused's defense is weak and uncorroborated.⁷⁵ Such weakness does not add strength to the prosecution's case as the evidence for the prosecution must stand or fall on its own weight.⁷⁶ It is settled that the conviction of an accused must rest not on the weakness of the defense but on the strength of the evidence of the prosecution.⁷⁷

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, Abilla must perforce be acquitted.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Decision dated October 29, 2015 of the Court of Appeals in CA-G.R. CR HC No. 01746 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Ma. Carmen Rosario Abilla is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action she has taken.

⁷² 624 Phil. 289 (2010).

⁷³ Id. at 311.

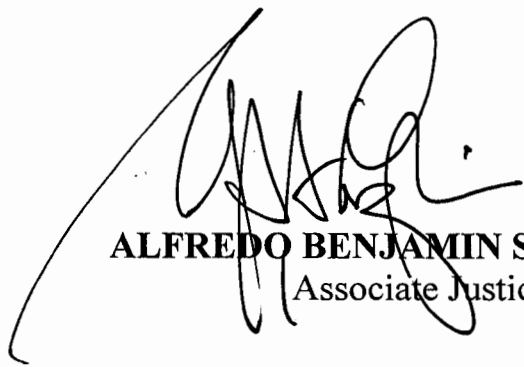
⁷⁴ *People v. Pagaura*, 334 Phil. 683, 690 (1997).

⁷⁵ *People v. De Vera*, G.R. No. 218914, July 30, 2018, p. 22.

⁷⁶ Id.

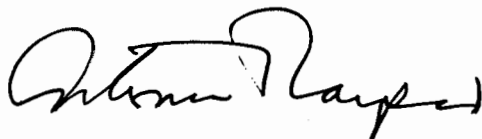
⁷⁷ Id., citing *Macayan, Jr. v. People*, 756 Phil. 202, 214 (2015).

SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice

(On wellness leave)
JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

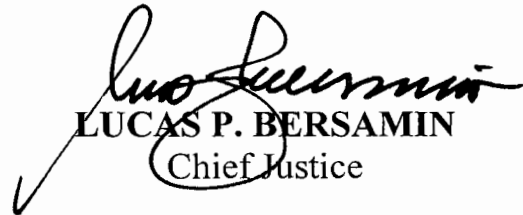
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.


LUCAS P. BERSAMIN
Chief Justice

