Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

- versus -

JOHN ORCULLO *y* SUSA,
Appellant.

G.R. No. 229675

Present:

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

Promulgated:
08 JUL 2019

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DECISION

CARPIO, *J.*:

The Case

G.R. No. 229675 is an appeal assailing the Decision[1] dated 9 February 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07174. The CA affirmed the Decision[2] dated 2 October 2014 of the Regional Trial Court of Quezon City, Branch 82 (RTC), in Criminal Case No. Q-10-167303, convicting John Orcullo *y* Susa (appellant) of violating Section 5, Article II of Republic Act No. 9165 (RA 9165).

The Facts

The RTC summarized the facts as follows:

> The accused John Susa Orcullo is charged with violation of Section 5, Article II of R.A. 9165. The Information reads in part:

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1 *Rollo*, pp. 2-17. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rodil V. Zalameda and Pedro B. Corales concurring.

2 CA *rollo*, pp. 47-53. Penned by Acting Presiding Judge Lily Ann M. Padaen.

That on or about the 29th day of October 2010 in Quezon City, accused, without lawful authority did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit: five (5) plastic sachet [sic] of white crystalline substance weighing 4.5402 grams; 4.4722 grams; 4.4134 grams; 4.4243 grams; and 4.3959 grams respectively containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.

On 09 November 2010, the accused thru counsel filed a Petition for Bail. In an Order dated 27 February 2012, the Court denied the Petition for Bail.

Upon arraignment on 01 December 2010, the accused John Susa Orcullo who was duly assisted by counsel entered a plea of not guilty. The case was then set for pre-trial conference and eventually for trial.

The Evidence for the Prosecution

The Testimony of IO1 Jake Million

IO1 Jake Edwin Million testified that on 29 October 2010 at around 7:00 in the morning, he was at the office when a regular confidential informant of Intelligence Agent 1 Liwanag Sandaan arrived at the office and reported the alleged drug trade activities of alias "Jen" in Quezon Avenue near the Lung Center. After receiving the report, IA1 Sandaan assisted the confidential informant to IO1 Betorin so that they would call alias "Jen". Alias "Jen" and IO1 Betorin talked over the cellphone and set a deal for 25 grams of *shabu* worth One Hundred Twenty-Five Thousand Pesos (₱125,000.00) to take place on October 29 at 9:00 am.

IA1 Sandaan designated IO1 Betorin as the *poseur-buyer*. IO1 Betorin withdrew the buy-bust money which consisted of two (2) genuine ₱500.00 bills and the rest of the amount was boodle money. They then prepared a Pre-Operation Report and authority to operate. Their team leader signed the Pre-Operation Report and they coordinated with the local police in Camp Karingal. The buy-bust team then proceeded to the area.

Upon arrival at the area at around 1:00 p.m., IO1 Million and the rest of the team positioned themselves strategically along Quezon Avenue while aboard three vehicles. At around 2:00 [p.m.], a man wearing a *sando* later identified as the accused John Susa Orcullo arrived. Accused Orcullo approached the *poseur-buyer* IO1 Betorin. Thereafter, IO1 Betorin made a call to IO1 Million to signify that the transaction was already consummated. IO1 Million and the other agents rushed to the scene and effected the arrest of accused Orcullo. IO1 Million recovered the buy-bust money from the accused and identified them in Court. The team noticed that there were people going around them so the team leader decided to leave the place and proceed to the office.

Upon arrival at PDEA, photographs were taken by IO1 Betorin and the inventory was conducted. [S]he executed an affidavit in connection with this case. [S]he also identified the accused in open court.

On cross-examination, IO1 Million testified that the female regular informant who came to their office was known only to IA1 Liwanag Sandaan. At first, it was the confidential informant who negotiated with the accused then it was IO1 Betorin. It was the confidential informant who made the agreement regarding the purchase of ₱125,000.00 worth of *shabu*. He did not have any participation regarding the agreement. They parked the vehicle along Quezon Avenue near Wild Life. They did not prepare the inventory at the place of arrest. There were no representatives from the DOJ and the media during the conduct of the inventory.

On re-direct, he testified that the reason why they did not conduct the inventory at the crime scene was because there were many people going around them which prompted their team leader to tell them to proceed to the office, otherwise somebody might get hurt.

The Testimony of IO1 Joanna Marie Betorin

IO1 Joanna Marie Betorin testified that on 29 October 2010 at around 9:00 in the morning, she was at the PDEA Office attending a briefing conducted by their team leader IA1 Liwanag Sandaan. The briefing was about the information given by the regular confidential informant regarding the illegal drug activity of alias "Jen" along Quezon Avenue near the Lung Center. IO1 Betorin was designated as the *poseur-buyer*.

After the briefing, IO1 Nazarion Bongkinki coordinated with the Quezon City Police in Camp Karingal using the Pre-Operation Report and the Coordination Form. After the coordination, IO1 Betorin and the informant went to the agreed place in front of Lung Center along Quezon Avenue.

Upon arrival at the agreed place at 2:00 [p.m.], they positioned themselves strategically and waited for alias "Jen." They used two (2) vehicles for the operation. After fifteen (15) to thirty (30) minutes, a man wearing *sando* and shorts strapped with a blue towel on his shoulder arrived and the informant told IO1 Betorin that the man was the delivery man of alias "Jen." The man delivered the *shabu* to IO1 Betorin. They agreed to buy 25 grams of *shabu* worth ₱125,000.00. When the man later identified as the accused John Susa Orcullo gave the *shabu*, IO1 Betorin handed the buy-bust money consisting of two (2) genuine ₱500.00 bills and the boodle money.

After handing the buy-bust money to accused John Susa Orcullo, IO1 Betorin executed the pre-arranged signal by making a missed call to IO1 Million who rushed to their place to arrest accused Orcullo. IO1 Million arrested accused Orcullo and informed the latter of his Constitutional rights. IO1 Betorin identified in Court the sachets she bought from accused Orcullo through the markings "JMB 10-29-10" which she placed on the said sachets. IO1 Betorin affixed the markings in the office and not at the crime scene because there were many people at the crime scene and their team leader ordered them to proceed to the office for their safety and security.

Upon arrival at the office, their photographer Charlie Magno took photographs while IO1 Betorin prepared the inventory. Kagawad Jose Ruiz Jr. of Barangay Pinyahan was present to witness the taking of photographs and to sign the inventory. There were no representatives from the media and the Department of Justice during the inventory. IO1 Betorin then brought the specimens to the crime laboratory for examination. The result was positive for *shabu*. She executed an affidavit in connection with this case. She identified the accused in open court.

On cross-examination, IO1 Betorin testified that it was IO1 Bongkinki who coordinated with the police by submitting an authority to operate at around 10:30 [a.m.]. Accused John Susa Orcullo was not the subject of their operation. IO1 Betorin did not place the initials of the person from whom she recovered the plastic sachets because she was familiar with her initials. IO1 Betorin did not mix the plastic sachets with those recovered from other people because those were secured in the laboratory. IO1 Betorin could not recall why there were no representatives from the Department of Justice and the media.

Sheila Esguerra

On 27 April 2011, upon stipulation between the prosecution and the defense it was admitted that Sheila Esguerra is a Forensic Chemist of the Philippine Drug Enforcement Agency and that her office received a Request for Laboratory Examination. Together with the said request a brown envelope which contained five (5) heat-sealed transparent plastic sachets with white crystalline substance inside [them] was submitted to her office. She conducted the requested laboratory examination and submitted a Chemistry Report. She found the specimen positive for Methylamphetamine Hydrochloride. Sheila Esguerra turned over the specimen to the evidence custodian and retrieved the same and brought it to Court.

The Evidence for the Defense

The Testimony of John Susa Orcullo

Accused John Susa Orcullo testified that on 29 October 2010 at around 2:00 in the afternoon, he was at home at No. 254 Ilang-Ilang Street making a dove cage. While in his house, he noticed people running outside the fence. He looked at them and went back to his work. After three (3) minutes, more or less three (3) persons entered the house. He asked them what he could do for them. They asked him if he saw a man wearing white shirt, maong pants and with red cap. He told them that he saw a man who ran inside the alley. They ran after the man while he stayed inside his house.

After a few minutes, the men went back to [his] house. They were inviting him to their office for an investigation. He told them that he could not go with them because he was alone in the house. They poked a gun at him and told him to go with them so he would not get hurt. He went with them and they walked along Quezon Avenue. He was boarded on a red vehicle and brought to the office of PDEA. He was brought inside a room and they showed him three (3) pictures of men. They asked him if he knew the persons. When he told them that he did not know the men, they covered his head with a plastic and forced him to admit that he knew the persons in

the pictures. One man placed three bullets in between his fingers. He pleaded with them to stop. He was then brought inside a room and told to sit down beside a long table. A person sat in front of him and got his personal circumstances. A lady later identified as Joanna Marie Betorin then arrived and sat in front of him and placed a plastic sachet on top of the table. She talked to her companions to take photographs. He was then brought to the comfort room and told to pee in a plastic sachet. He was brought for inquest on October 30 at around 9:00 am. He was not brought in front of the Fiscal and was just left outside the room. He denied the allegations of Betorin that she was able to buy *shabu* from him. He did not file any charges against the PDEA personnel who arrested him.

On cross-examination, accused John Susa Orcullo testified that when the three men entered his house, it did not occur to him to lock the door. When he was brought to the PDEA that was the first time he saw Betorin and Million. Prior to his arrest, he did not have any misunderstanding with any neighbor or law enforcers.[3]

The Ruling of the RTC

In a Decision dated 2 October 2014, the RTC convicted appellant of violating Section 5, Article II of RA 9165. The RTC was convinced that the prosecution was able to establish with moral certainty the elements of the crime in the present case, as well as the integrity of the *corpus delicti* and the unbroken chain of custody of the seized drug. Although the RTC recognized that the prosecution was not able to strictly comply with Section 21 of RA 9165, it declared that the non-compliance was not fatal to the case of the prosecution.

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused John Susa Orcullo Guilty of Violation of Section 5, Article II of R.A. No. 9165.

Accordingly, this Court sentences accused John Susa Orcullo to suffer the penalty of Life Imprisonment and to pay a Fine in the amount of Five [H]undred Thousand (Php500,000.00) Pesos without eligibility for parole in accordance with R.A. 9346.

The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject of this case for proper disposition and final disposal.

SO ORDERED.[4]

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3 Id. at 47-51.

4 Id. at 53.

The CA's Ruling

The CA affirmed the ruling of the RTC.

The CA found that the prosecution duly established the elements of the crime of illegal sale of drugs. There was identification of the buyer (IO1 Betorin) and seller (appellant); there was identification of the object of the sale (the sachets of shabu) and the consideration (₱125,000); and there was delivery of the thing sold upon payment as appellant was arrested *in flagrante delicto* of selling shabu.

The CA also declared that the failure of the police officers to mark the items seized from an accused in illegal drugs cases immediately upon their confiscation at the place of arrest does not automatically impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence. The CA justified the prosecution's failure to immediately conduct an inventory in this manner:

> Furthermore, the conduct of the inventory of the items seized from appellant at the scene of the crime would not be practical and was dangerous to the numbers [sic] of the buy-bust team as commotion already ensued after the arrest of appellant. Nonetheless, the integrity of the said items was not compromised as the marking and inventory were done in the presence of appellant and Barangay Kagawad Jose Y. Ruiz, Jr. The absence of a representative from the media and [the] Department of Justice is not fatal. Thus, the foregoing circumstances clearly indicate that there was substantial compliance with the mandates of RA N[o]. 9165 and its Implementing Rules. Too the prosecution was able to show that the plastic sachets of *shabu* confiscated from appellant were the very same items that were examined by the Crime Laboratory.[5]

The CA summarized:

> In sum, appellant failed to prove any improper motive on the part of the prosecution witnesses to falsely incriminate him. In the absence of evidence of such ill motive, none is presumed to exist.
>
> A buy-bust operation is a form of entrapment that is validly resorted to for trapping and capturing felons in the execution of their criminal plan. The operation is sanctioned by law and has consistently been proved to be an effective method of apprehending drug peddlers. Unless there is a clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, the testimonies of [the] police officers on the operation deserve full faith and credit.
>
> It is well settled that there is no rigid or textbook method of conducting buy-bust operations. It is of judicial notice that drug pushers sell their wares to any prospective customer, stranger or not, in both public or private place, with no regard for time. They have become increasingly

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5 *Rollo*, p. 13.

> daring and blatantly defiant of the law. Thus, the police must be flexible in their operations to keep up with the drug pushers.
>
> In the case at bar, the prosecution had indubitably proven all the elements of the offenses charged to support a judgment of conviction. The trial court had the unique opportunity of observing the witnesses firsthand as they testified, and it was, therefore, in the best position to assess whether they were telling the truth or not. The substance of their testimonies, as well as the other physical evidence on record[,] sufficiently support the trial court's findings. The defense evidence, on the other hand, failed to prove facts and circumstances of weight as would cast doubt on the trial court's evaluation of the credibility of the prosecution witnesses.[6]

The dispositive portion of the CA's Decision, promulgated on 9 February 2016, reads as follows:

> WHEREFORE, the appeal is hereby DENIED. ACCORDINGLY, the Decision dated October 2, 2014 of the Regional Trial Court (RTC) of Quezon City, Branch 82, is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[7]

The Public Attorney's Office (PAO) manifested appellant's intent to appeal in a Notice of Appeal[8] dated 3 March 2016.

The Office of the Solicitor General (OSG) filed a Manifestation and Motion (In Lieu of Supplemental Brief) on 6 June 2017[9] which stated that the appellee's brief filed before the CA adequately discussed its arguments on the merits of the case. The Special and Appealed Cases Service of the PAO also filed a Manifestation (In Lieu of Supplemental Brief) on behalf of appellant on 22 June 2017.[10] The PAO stated that it is adopting the Appellant's Brief that it submitted before the CA as it exhaustively discussed the assigned errors.

The Issues

The PAO assigned two errors in the brief for appellant it filed with the CA:

> I. THE COURT *A QUO* GRAVELY ERRED IN NOT RULING THAT THE BUY-BUST OPERATION WAS NOT VALID.

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6 Id. at 15-16.
7 Id. at 16.
8 CA *rollo*, pp. 143-145.
9 *Rollo*, pp. 25-29. Submitted under the name of Solicitor General Jose C. Calida, and signed by Assistant Solicitor General Anna Esperanza R. Solomon and Senior State Solicitor Arleen T. Reyes.
10 Id. at 30-34. Submitted under the name of Public Attorney IV Mariel D. Baja, Public Attorney IV Flordeliza G. Merelos, Public Attorney III Meizelle G. Antonio, and signed by Public Attorney II Amelia A. Calangi.

II. THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT NO. 9165 DESPITE THE PROSECUTION'S FAILURE TO PRESERVE THE CHAIN OF CUSTODY OF THE SUBJECT DANGEROUS DRUG.[11]

The Court's Ruling

We focus on the identity and integrity of the alleged seized shabu and acquit appellant based on reasonable doubt. The Decisions of the RTC and CA should be set aside.

In its brief for appellant filed before the CA, the PAO pointed out the following irregularities, thus:

> 34. In the instant case, the links in the chain are the following: (1) Seizure of the shabu from the accused-appellant by IO1 Betorin; (2) Receipt by the forensic chemist of the specimen, conduct of the examination, and preparation of the Chemistry Report; (3) Delivery of the specimen to the custodian of the crime laboratory after the conduct of examination; and (4) presentation of the specimen during trial.
>
> 35. In the instant case, there are significant breaks in the chain of custody.
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> 36. First, the Request for Laboratory Examination was delivered by IO1 Betorin to PCI Sheila Esguerra at 7:00 o'clock in the evening despite the fact that the confiscation was made at 2:00 o'clock in the afternoon. No explanation was given as to why the said request and the accompanying specimen [were] not immediately submitted.
>
> 37. Second, the evidence custodian, to whom the item was allegedly endorsed after laboratory examination, was not identified nor presented to complete the chain of custody. There was even no Chain of Custody of Evidence Form to facilitate the establishment of the links.
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> 38. Third, Forensic Chemist Sheila Esguerra who examined the said sachets for chemical analysis was not presented in court to establish the circumstances under which she handled the subject items. The prosecution and the defense merely stipulated that she is the Forensic Chemist of the PDEA; that her office received a request for Laboratory Examination; and that the specimen submitted were found positive for Methamphetamine Hydrochloride. There was no testimony or stipulation as to the manner by which items subject of examination were preserved and safeguarded. Thus, the chain of custody was not preserved from this end.
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> 39. Fourth, the person who supposedly turned over the specimen from the crime laboratory to the trial court was likewise not identified so as to complete the custodial link. Even if the seized item was identified by the prosecution witnesses, the chain of custody from the time the trial court received the same was not established.

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11 CA *rollo*, p. 26.

> 40. Evidently, there is doubt as to whether the substance seized from the accused-appellant was the same one subjected to laboratory examination and presented in court.
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> x x x x
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> 44. In the instant case, the physical inventory and the photograph were not made at the place of the arrest, but at the PDEA office. Moreover, there were no representatives from the DOJ and the media during the conduct of the inventory. Clearly, the buy-bust team deviated from the standard and normal procedure in the seizure and custody of drugs.
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> 45. Moreover, the trial court erred when it applied the case of *People v. Bis* in the instant case, where it was held that non-compliance with Section 21 of RA 9165 is not fatal to the case of the prosecution as long as the integrity of the confiscated items [was] preserved. The said ruling is not applicable to the instant case since the chain of custody was not established, thus, there is doubt as to whether the integrity of the confiscated items [was] preserved.
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> 46. In the case of *People v. Sanchez*, the Honorable Supreme Court held that non-compliance with Section 21 of RA 9165 must bewith [sic] justifiable grounds. In addition, the integrity and evidentiary value of the evidence seized must be shown to have been preserved.
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> 47. In the instant case, the justification given by IO1 Betorin and IO1 Million for non-compliance with the prescribed procedure is not a justifiable ground. The people going around them were unarmed; they were merely curiosity seekers. Thus, the buy-bust team's fear that somebody might get hurt is unfounded and without basis. Clearly, there was no imminent threat that would exempt them from complying with Sec. 21 of RA 9165.
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> 48. Moreover, no justification was given why there were no representatives from the media and DOJ.[12]

The factual circumstances of the case tell us that the alleged crime was committed on 29 October 2010. At the time, the effective law enumerating the requirements of the *chain of custody rule* was Section 21 of RA 9165 as well as its Implementing Rules. Contrary to the rulings of the RTC and the CA, the prosecution clearly failed to comply with the requirements of the *chain of custody rule*. Before its amendment by Republic Act No. 10640 (RA 10640) on 15 July 2014, Section 21 of RA 9165 reads:

> 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:

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12 Id. at 40-41, 43.

> (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;
>
> x x x x (Emphasis supplied)

The implementing rule for Section 21(1) of RA 9165 states:

x x x x

> (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;
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> x x x x

On 15 July 2014, RA 10640 amended Section 21 of RA 9165. RA 10640 now requires only two other witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items. The amended Section 21 now states:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or

> laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the **same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** 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, finally*, That noncompliance [with] these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.
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> x x x x (Emphasis supplied)

It is clear that as of 29 October 2010, when the alleged crime was committed, the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: **(1) the accused or the persons from whom such items were confiscated and seized or his/her representative or counsel, (2) any elected public official, and (3) a representative from the media and the Department of Justice. The three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof.** In this case, there were only the accused and the barangay kagawad, who witnessed the conduct of the inventory.

People v. Lim[13] enumerated this Court's **mandatory policy** to prove *chain of custody* under Section 21 of RA 9165, as amended:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of RA 9165, as amended, and its IRR.

2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

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

> 4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.

People v. Sipin[14] ruled what constitutes *justifiable reasons* for the absence of any of the three witnesses:

> (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[s] 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.

It is quite alarming how the necessity of the number and identity of the witnesses enumerated in the law can be glossed over and excused. The present case is a clear-cut example of the cavalier attitude towards adherence to procedure and protection of the rights of the accused. This is contrary to what is expected from our public servants and protectors. Not only was there non-observance of the three-witness rule, there was also no justifiable reason offered for its non-observance.

Apart from the non-observance of the three-witness rule, there is doubt as to whether the shabu allegedly seized from the appellant is the same shabu subjected to laboratory examination and presented in the RTC.

As we review the submissions of both the prosecution and the defense, we find that among the three people who came into direct contact with the alleged seized shabu, only IO1 Betorin actually testified to identify it. The testimony of the PDEA's forensic chemist was merely stipulated upon by the prosecution and defense. The prosecution did not present the evidence custodian, or the person to whom the alleged seized shabu was delivered after the laboratory examination. The evidence custodian could have testified on the circumstances under which he or she received the items, what he or she did with them during the time that the items were in his or her custody, or what happened during the time that the items were transferred to the trial court. The absence of the testimony of the evidence custodian likewise presents a break in the links in the chain of custody of the evidence.

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14 G.R. No. 224290, 11 June 2018.

> 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.[15]

It cannot be stressed enough that the burden of proving the guilt of the appellant lies on the strength of the evidence of the prosecution. Even if we presume that our law enforcers performed their assigned duties beyond reproach, we cannot allow the presumption of regularity in the conduct of police duty to overthrow the presumption of innocence of the accused in the absence of proof beyond reasonable doubt.

WHEREFORE, we **GRANT** the appeal. The 9 February 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07174, which affirmed the 2 October 2014 Decision of the Regional Trial Court of Quezon City, Branch 82 in Criminal Case No. Q-10-167303 finding appellant John Orcullo *y* Susa guilty of violating Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, appellant John Orcullo *y* Susa is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Bureau of Corrections in Muntinlupa 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 he has taken.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

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15 *People v. Bartolini*, 791 Phil. 626, 638 (2016). Citations omitted.

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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

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