

RECEIVED
JAN 21 2020

BY: YSA
TIME: 3:14 PM



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 229661

Present:

PERLAS-BERNABE, J.,
Chairperson,
REYES, A., JR.,
HERNANDO,*
INTING, and
ZALAMEDA,** JJ.

- versus -

NASSER LUMINDA y EDTO,
Accused-Appellant.

Promulgated:
20 NOV 2019

X-----X

RESOLUTION

INTING, J.:

The Court supports the serious efforts of the government in its campaign against the menace of prohibited drugs. The merchants of all prohibited drugs, from the rich and powerful syndicates to the individual street pushers, must be hounded relentlessly and punished to the full extent of the law. Even so, we must be watchful against the conviction of alleged drug-pushers on the basis of less than satisfactory evidence of their guilt. Such evidence may be the result only of an excess of zeal or lack of deference for constitutional rights. In such cases, the accused is entitled to be acquitted on the ground of reasonable doubt.¹

* On leave.
** Designated additional member per Special Order No. 2724 dated October 25, 2019.
¹ See *People v. Labarias*, 291 Phil. 511, 518 (1993) and *People v. Manalansan*, 267 Phil. 651, 658 (1990).

Nasser Luminda y Edto (appellant) was charged with violation of Section 5, Article II of Republic Act No. (RA) 9165 or the Illegal Sale of Dangerous Drugs as stated in the Information, *viz.*:

That on or about the 21st day of June 2011 in Quezon City, Philippines, the above-named accused, without any lawful authority, did then and there, willfully, unlawfully and knowingly sell, trade, administer, disperse, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, one (1) heat sealed plastic sachet containing zero point ten (0.10) grams of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.²

Appellant pleaded “not guilty” to the charge against him and trial on the merits ensued.

The prosecution anchored its case on the testimony of Police Officer II Zaldy Cabling (PO2 Cabling), summarized as follows:

On June 21, 2011, a confidential informant went to the District Anti-Illegal Drugs-Special Operations Task Group (DAID-SOTG) of the Quezon City Police District and informed Police Chief Inspector Richard Ian T. Ang (PCI Ang) about the illegal activities of a certain person in the area of Philcoa and Commonwealth, Quezon City.³ Acting on such information, PCI Ang formed a buy-bust team wherein PO2 Cabling was designated as the buyer and PO2 Benjamin Nepuscua (PO2 Nepuscua) as the back-up arresting officer. A ₱500.00-bill was also prepared as a marked money with the initials “ZC.”⁴

At around 9:20 p.m., the buy-bust team arrived at Jollibee, Philcoa, Quezon City. The confidential informant and PO2 Cabling proceeded in front of Jollibee, while PO2 Nepuscua went inside and posed as a customer. Later, the confidential informant approached the appellant, introduced PO2 Cabling, and whispered to him that the latter was going to buy ₱500.00 worth of *shabu*. The appellant took out something from his pocket and handed it to PO2 Cabling. On the other hand, PO2 Cabling, while handing to appellant the marked money,

² Records, p. 1.

³ *Rollo*, p. 3.

⁴ *Id.*

removed his cap, the pre-arranged signal. Immediately, the back-up police officers arrested the appellant. PO2 Nepuscua recovered from him the buy-bust money. As the rain was pouring heavily that night, the buy-bust team decided to proceed to their office and mark the evidence (seized item) thereat.⁵

At the office, the police officers marked the seized item in the presence of the investigator, PO1 Warlito P. Cagurangan (PO1 Cagurangan) and media representative, Rey Argana of Police Files Tonite. Appellant was also present during the conduct of the inventory, but he refused to sign the document. Meanwhile, PO2 Cabling turned over the seized item to PO1 Cagurangan and signed the Chain of Custody Form.⁶ PO1 Cagurangan prepared the Arrest and Booking Sheet,⁷ Request for Drug Test/Dependency Examination,⁸ Request for Laboratory Examination⁹ and Physical Examination.¹⁰ He also took a photograph¹¹ of appellant and the seized item. Thereafter, PO2 Cabling and PO1 Cagurangan brought the appellant and the seized item to the crime laboratory for examination. The result of the laboratory examination conducted by PCI Maridel Rodis Martinez, the Forensic Chemist, showed that the seized item of white crystalline substance was positive for the presence of *shabu*, an illegal drug.

For his defense, appellant recalled that on June 21, 2011, at around 9:00 a.m., he was in Kalayaan Plaza arranging his merchandise of compact discs (CDs) and wallets when three police officers in uniform approached and arrested him. They boarded him in a vehicle that later cruised around Quezon City Circle, and demanded the amount of ₱60,000.00 for his release. When he told them that he did not have such amount, they brought and detained him at the police station. There, the police officers instructed him to point at a plastic sachet containing *shabu* and a ₱500.00-bill placed on top of a table. He initially refused, but one of the police officers hit him with the head of a gun. Afterwards, he was again hit with the butt of an armalite on his right shoulder before going to the City Hall.¹²

⁵ *Id.* at 4.

⁶ Records, p. 169.

⁷ *Id.* at 171.

⁸ *Id.* at p. 176.

⁹ *Id.* at p. 177.

¹⁰ *Id.* at 178.

¹¹ *Id.* at 181.

¹² *Rollo*, p. 5.

On January 13, 2015, the RTC rendered its Judgment¹³ finding appellant guilty beyond reasonable doubt of the offense charged in the Information. The *fallo* of which reads:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered ordering the CONVICTION of accused NASSER LUMINDA y [EDTO] for the offense charged and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of P500,000.00.

As the accused is a detention prisoner, his period of detention shall be properly credited in his favor in strict conformity with the provision of the rules.

The dangerous drugs submitted as evidence in this case is hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA), for destruction and/or disposition in strict conformity with the provisions of our laws, rules and regulations on the matter.

Let the Mittimus and necessary documents be prepared for the immediate transfer of the custody of accused to the Bureau of Corrections, National Bilibid Prisons in Muntinlupa City, pursuant to OCA Circular No. 4-92-A.

SO ORDERED.¹⁴

On appeal, the CA affirmed *in toto* the Judgment of the RTC.

The Public Attorney's Office (PAO) manifested appellant's intent to appeal in a Notice of Appeal¹⁵ dated May 11, 2016.

The Office of the Solicitor General (OSG) filed a Manifestation (In Lieu of Supplemental Brief)¹⁶ on August 3, 2017 which stated that it will no longer submit a Supplemental Brief considering 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

¹³ CA rollo, pp. 55-65. Penned by Presiding Judge Fernando T. Sagun, Jr.

¹⁴ *Id.* at 64-65.

¹⁵ *Id.* at 114.-115.

¹⁶ Rollo, pp. 25-26.

PAO likewise filed a Manifestation (In Lieu of Supplemental Brief)¹⁷ on August 10, 2017 stating that it is also adopting the issues and arguments in the Appellant's Brief¹⁸ which was submitted before the CA.

In the Appellant's Brief filed with the CA, the PAO submitted three assignment of errors, to wit:

1. THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THAT THE POLICE CONDUCTED A VALID ENTRAPMENT OPERATION AGAINST HIM.
2. THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROCEDURAL LAPSES ON THE PART OF THE POLICE OFFICERS IN THE CUSTODY OF THE ALLEGEDLY SEIZED ILLEGAL DRUG.
3. THE COURT A QUO GRAVELY ERRED IN ADMITTING IN EVIDENCE THE ALLEGEDLY SEIZED ILLEGAL DRUG DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY.¹⁹

Further, the PAO pointed out in the Appellant's Brief the following irregularities: *first*, the seized illegal drug allegedly recovered from the appellant was not marked at the place of seizure but in Camp Karingal; and that the police officers cited the heavy rainfall in the area at that time and the possibility of commotion in Jollibee for their failure to immediately mark the evidence;²⁰ *second*, during the inventory of the item, only a representative from the media was present, while the other witnesses required by the law were absent.²¹

There is merit in the present appeal.

We focus on the identity and integrity of the drug allegedly seized from the appellant.

¹⁷ *Id.* at 28-29.

¹⁸ *CA rollo*, pp. 34-53.

¹⁹ *Id.* at 36.

²⁰ *Id.* at 48-49.

²¹ *Id.* at 49.

In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment.²² More so, to remove any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.²³

The factual circumstances of the case tell us that the buy-bust operation happened on June 21, 2011. At that time, the effective law enumerating the requirements of the chain of custody rule was Section 21, Article II of RA 9165. It states:

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; (Emphasis supplied; underscoring supplied.)

To supplement the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165 provides that:

²² *People v. Dela Torre*, G.R. No. 238519, June 26, 2019 citing *People v. Sumili*, 753 Phil. 342, 348 (2015).

²³ *People v. Dela Torre*, *supra*.

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.* – 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. (Emphasis supplied.)

Simply put, to ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody, to wit: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.²⁴

In addition, under the original provision of Section 21 and its IRR, the apprehending team was required to conduct a physical inventory and photographing of the seized items immediately after their seizure and confiscation in the presence of **no less than** three witnesses, namely: (1) a representative from the media; (2) a representative from the Department of Justice (DOJ); **and** (3) any elected public official. They must sign the inventory and be furnished with their own copy thereof.²⁵ It follows therefore that the so-called insulating witnesses should already be physically present at the time of apprehension, a requirement that

²⁴ *People v. Banding*, G.R. No. 233470, August 14, 2019 citing *People v. Nandi*, 639 Phil. 134 (2010).

²⁵ *People v. Refe*, G.R. No. 233697, July 10, 2019.

should easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.²⁶ And while non-compliance with the requirements is excusable, this only applies when the integrity and evidentiary value of the seized items were properly preserved. The prosecution must provide a credible justification for the arresting officers' failure to comply with the procedure outlined in Section 21, Article II of RA 9165.²⁷

Here, the prosecution witness PO2 Cabling narrated:

ACP FLOR

Q: You said that you were introduced by the confidential informant to alias Buboy, how did the confidential informant introduce you to him?

A: The confidential informant introduced me to alias Buboy that I am going to buy drugs worth Php500.00, sir.²⁸

x x x x

Q: What was the reply of alias Buboy?

A: After that alias Nasser glanced around and then he took something from his pocket and handed it to me, sir.

Q: What was it that alias Buboy took out from his pocket which he handed over to you?

A: He took the shabu worth Php500.00 and gave it to me, sir.

Q: After he gave it to you, what happened next?

A: After I gave him the Php500.00 and when it was being handed to alias Buboy, I then simultaneously executed the pre-arranged signal to the group, sir.

Q: What was the pre-arranged signal that you executed?

A: I removed my cap, sir.

Q: The Php500.00 that you were referring to was the same exhibit that we marked before, Mr. Witness?

A: Yes, sir.²⁹

²⁶ *People v. Manabat*, G.R. No: 242947, July 17, 2019.

²⁷ *People v. Refe*, *supra* note 25 citing *People v. Barte*, 806 Phil. 533, 544 (2017).

²⁸ TSN, March 22, 2012, p. 18.

x x x x

ACP FLOR: Submitted before this Honorable Court is a plastic sachet containing white crystalline substance, which was submitted by the Forensic Chemist. Your Honor, it appears that the plastic sachet is contained in a transparent plastic bag.

ATTY. LAURON: Yes, Your Honor, and we could see the contents of the small plastic bag, only one specimen.

COURT: With only one specimen inside?

ATTY, LAURON: Yes, Your Honor.

ACP FLOR: (to the witness)

Q: I'm showing you this plastic sachet, what is the relation of this plastic sachet to the sachet that you removed from the accused during the buy-bust operation?

A: That's the one I recovered, sir.

Q: Why did you say that this is the same plastic sachet?

A: I have my markings, sir.

Q: Where did you place these markings that you were referring to?

A: On the plastic sachet, sir.

Q: Can you read for the record what was the marking that you placed on this sachet?

A: ZC-NL-6-21-11, sir.³⁰

x x x x

Q: Where did you mark that plastic sachet, Mr. Witness?

A: We marked it at the Police Station because we were not able to mark in front of Jollibee due to heavy rain, sir.³¹ (Emphasis supplied.)

²⁹ TSN, March 22, 2012, pp. 19-20.

³⁰ *Id.* at 21-22.

³¹ *Id.* at 22.

x x x x

Q: Who recovered the buy-bust money?

A: PO2 Nepusca, sir

Q: From whom did you recover the buy-bust money?

A: From Nasser, sir.

Q: After the arrest of alias Buboy and the recovery of the items, what happened next?

A: After recovery, I conducted body search and informed him of his rights, sir.

Q: What happened next, Mr. Witness?

A: We were about to mark but the rain was pouring hard so we were forced to go to the station, sir.

Q: Who's in custody of the sachet from the place of arrest up to the station?

A: I, sir.³² (Emphasis supplied.)

Furthermore,

Q: You also testified that you could not make the markings because it was already raining?

A: Yes, sir.

Q: You could not make the findings inside the Jollibee where they have tables and other things?

A: We were trying to avoid any problem and we were also avoiding the commotion in Jollibee that's why we decided to proceed to our office, sir.

Q: What do you mean problem or commotion, what do you mean?

A: From what I know, in arrests being made, sometimes there are commotion that happen and the rain also started to fall heavily that's why we decided to go to our office, sir.

³² *Id.* at 24-25.

Q: Now, you could have easily made these markings inside the restaurant and you were cops. Are you telling us that you cannot control the people, the diners of Jollibee?

x x x x

A: When we make arrest, we consider primarily the security and welfare of everyone, sir.³³ (Emphasis supplied)

PO2 Nepuscuca also testified as a member of the buy-bust operation team:

ATTY. LAURON:

Q: Aside from not having an elected official and DOJ representative to witness the inventory taking, do you have any evidence whatsoever that could show this Ray Agana has any sort of certification that will prove that he is actually a media practitioner like a machine copy of his identification card. Do you have one?

A: I remember, sir that we secured the xerox copy of his ID.

Q: Where is it?

A: It's the Investigator sir that compiled all the documents.³⁴

Based on the foregoing testimonies, it is readily apparent that there are several breaches in the chain of custody.

First, the venue of the inventory was not properly complied with.

In *People v. Cañete*,³⁵ the Court interpreted the phrase "immediately after seizure and confiscation" to mean that both the physical inventory and photographing of the seized items must be conducted at the place of apprehension and in the presence of the required witnesses, who shall sign the copies of the inventory and be

³³ TSN, June 18, 2013, p. 77-79.

³⁴ TSN, March 18, 2014, p. 137.

³⁵ G.R. No. 242018, July 3, 2019 citing *People v. Musor*, G.R. No. 231843, November 7, 2018.

given a copy thereof. This also means that the required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items. Although the IRR allows alternative places for the conduct 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. Accordingly, it is at the time of arrest that their presence is most needed in order to guard against the police practice of planting evidence.³⁶

In the present case, both the marking and the inventory were conducted in Camp Karingal, without any explanation as to the distance from the nearest police station or nearest office of the apprehending team. The only explanation given was that the police officers were simply avoiding any unrest or disturbance in Jollibee. To the Court's mind, though, neither the heavy rainfall nor the possibility of commotion in the area will justify the deviation. Any untoward incident is, at best, speculative.³⁷ In fact, in one case, the Court considered as a hollow excuse the explanation of the apprehending officer who conducted the inventory at the nearest police station because he was the "only one" in the area and that "there were many persons there."³⁸ In the same way, in *People v. Sood*³⁹ and *People v. Cornel (Cornel)*,⁴⁰ the Court 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. In *Cornel*, especially, the Court pointed out that seven armed members of the buy-bust team could have easily contained any commotion; thus, they should have been able to conduct the marking and inventory at the place of seizure.

Second, both PO2 Cabling and PO2 Nepuscua admitted that there was neither a representative from the DOJ nor a barangay official during the conduct of the post-operation procedures. And yet, the prosecution was silent on why the required witnesses were unavailable. The prosecution could have easily asserted and proved that: (1) the media representatives were not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in remote areas; (2) the police operatives, with the same reason, failed to find an

³⁶ *Id.*

³⁷ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

³⁸ *People v. Mola*, G.R. No. 226481, April 18, 2018, 862 SCRA 112, 124.

³⁹ G.R. No. 227394, June 6, 2018, 865 SCRA 368.

⁴⁰ G.R. No. 229047, April 16, 2018, 861 SCRA 267.

available representative of the National Prosecution Service; or (3) the police operative, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125⁴¹ of the Revised Penal Code (RPC) in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21, Article II of RA 9165.⁴² In *People v. Sarip (Sarip)*,⁴³ the Court elaborated:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, 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 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.

Earnest effort to secure the attendance of the necessary witnesses must also be proven as held in *People v. Ramos*, thus:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that **the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without**

⁴¹ Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. – The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by Executive Order Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

⁴² *People v. Sarip*, G.R. No. 231917, July 8, 2019 citing *People v. Angelita Reyes, et al.*, G.R. No. 219953, April 23, 2018.

⁴³ G.R. No. 231917, July 8, 2019.

so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time—beginning from the moment they have received the information about the activities of the accused until the time of his arrest—to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in section 21 of RA 9165. As such, police officers are compelled not only to state the reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.⁴⁴ (Emphasis supplied. Citations omitted.)

The Court in *Sarip* acquitted the accused on the ground of the prosecution's non-observance of the three-witness rule coupled with its failure to provide justification therefor. The case at bar suffers from the same infirmity. An examination of the records reveals that the inventory⁴⁵ as well as the photographing of the seized item was made in the presence of only one witness, Rey Argaga of Police Files Tonite. While the arresting officer, PO2 Nepusca and seizing officer, PO2 Cabling were present, there were no elective official and a DOJ representative. Noticeably, the prosecution had failed to acknowledge this fact, much less provide a justification for it.

Third, as We review the submissions of the prosecution and the defense, the Court finds that among the people who came into direct contact with the seized drug item, only PO2 Cabling actually testified to identify it. The testimony of the forensic chemist PCI Martinez was dispensed with. In its Order⁴⁶ dated June 18, 2013, the RTC enumerated the stipulations agreed upon by the parties, *viz.*:

In order to abbreviate the proceedings, the counsels for the parties decided to enter into stipulation/admission of facts as regards the proposed testimony of Police Chief Inspector Maridel Rodis Martinez, and these are as follows:

⁴⁴ *Id.*

⁴⁵ See Receipt/Inventory of Property Seized, records, p. 170.

⁴⁶ *Id.* at 132-133.

1. That Police Chief Inspector Maridel Rodis Martinez was the duly designated Forensic Chemist in this instant case;
2. That she received the Request for Laboratory Examination dated June 21, 2011 together with the object evidence from PO1 Warlito Cagurungan on June 21, 2011;
3. That thereafter, she conducted forensic examination on the said object evidence that she received and thereafter came up with Initial Laboratory Report No. D-136-11 and Final Chemistry Report No. D-136-11;
4. The due execution, authenticity, as well as the contents of the Initial Laboratory Report and the Final Chemistry Report;
5. That she can identify the object evidence that she received and examined if shown to her at the witness stand.
6. That she was the one who personally turned over the custody of the object evidence to the Court;
7. That she was not one of the alleged seizing/arresting officer;
8. That she has no personal knowledge as to the alleged arrest and seizure;
9. That she has no personal knowledge as to the source or origin of the allegedly seized object evidence;
10. That she did not conduct quantitative examination on the alleged object evidence as shown in the records.

What is clear from the foregoing is the lack of stipulations required for the proper and effective dispensation of the testimony of the forensic chemist. In *People v. Pajarín, et al.*,⁴⁷ the Court reminded that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item. These steps include: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his

⁴⁷ 654 Phil. 461, 466 (2011).

own marking on the same to ensure that it could not be tampered pending trial.⁴⁸

Here, the stipulations between the prosecution and the defense did not cover the manner the specimen was handled before it came in the possession of PCI Martinez and after it left her possession. In fact, they only referred to the analytic results of the laboratory examination on the specimen without mentioning how it was handled. The prosecution also failed to present the investigator, PO1 Cagurangan, as well as the evidence custodian, or the person to whom the alleged seized *shabu* was delivered after the laboratory examination. The evidence custodian, in particular, could have testified on the circumstances under which he or she received the item, 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 obviously presents a break in the links in the chain of custody of the evidence.⁴⁹ Without the testimonies and stipulations stating the details on when and how the seized sachet of *shabu* was brought from the crime laboratory to the court, and the specifics on who actually delivered and received the same from the crime laboratory to the court, it cannot be ascertained whether the seized item presented in evidence was the same one confiscated from appellant upon his arrest.⁵⁰

Selling drugs is a vicious crime that often breeds other crimes. It is not what one might call a “contained” crime whose consequences are limited to that crime alone. Nevertheless, it is startling how the necessity of preserving the *corpus delicti* in this case and complying with the simple requirement with regard to the number and identity of the witnesses enumerated by the law can be glossed over and excused. 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, the Court 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.⁵¹

⁴⁸ *Id.* See also *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

⁴⁹ *People v. Orcullo*, G.R. No. 229675, July 8, 2019.

⁵⁰ *People v. Mola*, *supra* note 38.

⁵¹ *People v. Orcullo*, *supra*.


WHEREFORE, the Court **GRANTS** the appeal. The Decision dated April 15, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07402, which affirmed the Judgment dated January 13, 2015 of Branch 78, Regional Trial Court, Quezon City in Criminal Case No. Q-11-170890 finding Nasser Luminda y Edto guilty of violating Section 5, Article II of Republic Act No. 9165 is **REVERSED AND SET ASIDE**. Nasser Luminda y Edto is hereby **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 Resolution be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED** to **REPORT** the action he has taken to this Court within five days from receipt of this Resolution.

SO ORDERED.

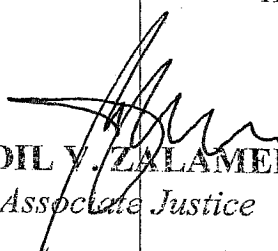

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. BERLAS-BERNABE
Senior Associate Justice
Chairperson



ANDRES B. REYES, JR.
Associate Justice

(On leave)
RAMON PAUL L. HERNANDO
Associate Justice


RODIL Y. ZALAMEDA
Associate Justice

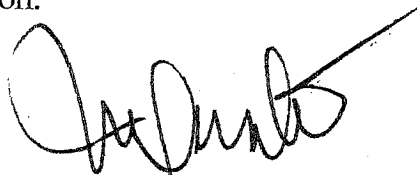
ATTESTATION

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


ESTELA M. PERLAS-BERNABE
Senior 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 Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Chief Justice