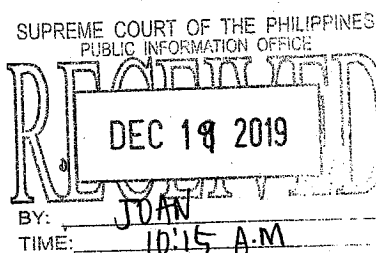




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:*

**“G.R. No. 235014 (*People of the Philippines v. Teresita Montalban y Llaneza*).** - On appeal is the Decision of the Court of Appeals (*CA*) promulgated on June 29, 2017, in CA-G.R. CR-HC No. 08321, which affirmed the March 9, 2016 Decision of the Regional Trial Court (*RTC*), Branch 31, San Pedro Laguna, in Criminal Case Nos. 13-8821-SPL and 13-8822-SPL, finding accused-appellant Teresita Montalban y Llaneza (*Montalban*) guilty of violating Sections 5 and 11, respectively, of Article II of Republic Act (*R.A.*) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

***The Facts***

Two (2) separate Informations were filed against accused-appellant Montalban.

In Criminal Case No. 13-8821-SPL for violation of Section 5 thereof:

That on or about February 15, 2013, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court the above-named accused, without legal authority, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to a police poseur-buyer for P400.00 one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride (*shabu*), a dangerous drug weighing 0.08 gram.

CONTRARY TO LAW.<sup>1</sup>

- over – seventeen (17) pages ...

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<sup>1</sup> Records, p. 1.

In Criminal Case No. 13-8822-SPL for violation of Section 11 thereof:

That on or about February 15, 2013, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of the law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control three (3) pieces of heat-sealed transparent plastic sachet containing methamphetamine hydrochloride, a dangerous drug weighing a total of 0.18 gram.

CONTRARY TO LAW.<sup>2</sup>

The cases were consolidated. When arraigned, Montalban pleaded not guilty<sup>3</sup> to the offenses charged in the Information. After the pre-trial conference, a joint trial ensued.<sup>4</sup>

The prosecution first presented expert witness Donna Villa Huelgas, a forensic chemist at the Philippine National Police (PNP), Regional Crime Laboratory Office, Region 4-A, Calamba City. In order to expedite the proceedings, the prosecution and the defense stipulated the following and dispensed with her testimony:

1. That the witness is a forensic chemist, an expert witness;
2. The existence, due execution and authenticity of the Request for Laboratory Examination [as] Exhibit "C";
3. The authenticity and due execution of Chemistry Report No. D-112-13 as Exhibit "E";
4. The existence of the object evidence consisting of four (4) heat-sealed transparent plastic sachet with markings "TM-B" as Exhibit "E-1", "TM-P1" as Exhibit "E-2", "TM-P2" as Exhibit "E-3", and "TM-P3" as Exhibit "E-4";
5. That she was the one who personally received the object evidence from the receiving clerk of the crime laboratory;
6. That after receiving, she was the one who personally examined the evidence subject of this case;
7. That after her examination, she put her markings on the items she examined;
8. That she was the one who turned over the object evidence to the evidence custodian of the crime laboratory; and
9. That she personally retrieved the evidence from the evidence custodian and she was the one who personally brought this evidence before [the Regional Trial Court].<sup>5</sup>

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<sup>2</sup> *Id.* at 1-A.

<sup>3</sup> Order dated June 11, 2013, Records [Criminal Case Nos. 13-8821-SPL, 13-8822-SPL], *id.* at 42.

<sup>4</sup> Order dated August 13, 2013, *id.* at 46.

<sup>5</sup> Records, p. 127.

In addition, the prosecution presented PO1 Emeterio Vergara (*PO1 Vergara*) and PO2 Alexander Gallega (*PO2 Gallega*) as its witnesses, and their testimonies tended to establish the following:<sup>6</sup>

At around 10:30 in the morning of February 15, 2013, PO2 Gallega received an information from the confidential informant regarding the sale of shabu by Montalban at J. Herrera Street, Barangay San Vicente, San Pedro, Laguna.

Upon the instructions of the Chief of Police P/Supt. Col. Bersaluna, a surveillance operation was conducted, which confirmed the report. Thus, a buy-bust team was formed, with PO2 Gallega and PO1 Vergara as members. PO2 Gallega was tasked to act as poseur-buyer and was given one (1) P200.00 bill with Serial No. H905753 and two (2) pieces of ₱100.00 bills with Serial Nos. JK378792 and FB014663. As a signal that the transaction had been carried out, it was agreed that PO2 Gallega will call the cellular phone of PO1 Vergara. Pursuant to their operation, the buy-bust team prepared and sent to the Philippine Drug Enforcement Agency (*PDEA*), a coordination and pre-operation report.

At around 4:30 in the afternoon of the same day, the buy-bust team arrived at the target area. PO1 Vergara positioned himself from afar, while PO2 Gallega and the confidential informant proceeded to the house of the appellant. Seeing Montalban sitting in front of her house, the confidential informant approached the former and said, "*Kuha kami halagang kuwatro lang.*" PO2 Gallega then handed the ₱400.00 marked money to Montalban; and in turn, the latter took a small plastic sachet from her pocket and handed it to PO2 Gallega. Afterwards, PO2 Gallega called PO1 Vergara, and the latter, together with the rest of the back-up team, moved to the place of transaction. PO2 Gallega then introduced himself as a police officer and arrested Montalban. The latter was ordered to empty her pockets; and it yielded three (3) plastic sachets containing white crystalline substance as well as the ₱400.00 marked money. PO2 Gallega had custody of the plastic sachet he bought from Montalban which he marked with "TM-B," while PO1 Vergara took the three (3) plastic sachets recovered from Montalban, which he marked with "TM-P1," "TM-P2," and "TM-P3." All the markings were made at the place of the arrest and in the presence of Montalban. Thereafter, PO1 Vergara handed the three (3) plastic sachets to PO2 Gallega and the latter had complete custody of all the seized items.

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

Afterwards, Montalban was taken to the police station.

At the police station, the seized items were inventoried and a certificate of inventory was prepared. In the presence of a representative from media and Montalban, the seized items were photographed. The buy-bust team then prepared a request for laboratory for the examination of the seized items, which yielded results showing that all specimens as positive for methamphetamine hydrochloride.

### *For the Defense*

On the other hand, Montalban denied the charges and raised the defense of frame-up. She narrated that at around 12:30 in the afternoon of February 15, 2013, she was inside her house with her daughter-in-law and nephew when two (2) male persons suddenly arrived and handcuffed her. She was first taken to Chowking, but they stayed there for only about five minutes. Next, she was brought to the police station where she was investigated. A picture on a cellular phone was shown to her and she identified him as Arnel Berroya. She told them she knew him, but he was already dead. Afterwards, she was brought to Canlubang, Calamba City. She identified a Counter-Affidavit which she submitted in order to protect her rights and interest. She did not know of any reason why the police officers would falsely accuse her aside from her being acquainted with Arnel Berroya.<sup>7</sup>

Geraldine Serrano, the daughter-in-law of Montalban testified that at around 12:30 in the afternoon of February 15, 2013, they were making sampaguita leis when two male persons wearing bonnets arrived. They handcuffed her monter-in-law, Montalban. Geraldine immediately called her husband Dennis and informed him of what happened. The men in bonnets boarded Montalban on a motorcycle and when they were about to leave, Dennis arrived. He blocked their path and asked them why they were bringing Montalban with them, but they poked a gun at him and left. Immediately after they left, Geraldine went to the *barangay* to have the incident entered into their blotter.<sup>8</sup>

On cross-examination, Geraldine admitted that there were four persons making sampaguita leis, but the men wearing bonnets only took Montalban with them.<sup>9</sup>

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<sup>7</sup> Records, p. 129.  
<sup>8</sup> *Id.* at 129-130.  
<sup>9</sup> *Id.* at 130.

After their testimonies, the defense offered the Counter-Affidavit of Montalban as its documentary evidence.<sup>10</sup> Upon its admission, the defense rested.

### *Ruling of the RTC*

In a Consolidated Judgment<sup>11</sup> dated March 9, 2016, the RTC convicted the accused-appellant of the crimes charged, the dispositive portion of which reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 13-8821-SPL, accused Teresita Montalban y Llaneza is found GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos without subsidiary imprisonment in case of insolvency.

The period of her preventive imprisonment should be given full credit.

2. In Criminal Case No. 13-8822-SPL, accused Teresita Montalban y Llaneza is hereby found GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act 9165 and is hereby sentenced to suffer imprisonment of twelve (12) years and one [(1)] day[,] as minimum[,] to fourteen (14) years and eight [(8)] months[,] as maximum[,] and to pay a fine of Three Hundred Thousand (P300,000.00) [P]esos without subsidiary imprisonment in case of insolvency.

The period of her preventive imprisonment should be given full credit.

Let the four plastic sachets of shabu subject matter of these cases be immediately forwarded to the Philippine Drug Enforcement Agency for its disposition as provided by law. The P400.00 buy-bust money is ordered forfeited in [favor] of the government and deposited to the account of the National Treasury through the Office of the Clerk of Court.

SO ORDERED.<sup>12</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> Per Judge Sonia T. Yu-Casano; *id.* at 126-132.

<sup>12</sup> *Id.* at 132.

The RTC found that the prosecution established all the elements of the crimes charged against Montalban. PO2 Gallega positively identified that it was Montalban to whom he bought the shabu worth ₱400.00 in the entrapment operation. Upon her arrest, three (3) more plastic sachets of shabu as well as the buy-bust money were recovered from her possession. According to the RTC, not only had the commission of the crime been proven, but also, the integrity and evidentiary value of the shabu sold by and found in the possession of Montalban have been preserved through an unbroken chain of custody.<sup>13</sup> The prosecution has established its movement from the accused-appellant, to the police poseur-buyer/arresting officer, to the laboratory receiving clerk, to the forensic chemist and finally to the court; from the testimonies of PO2 Gallega, PO1 Vergara and Forensic Chemist Huelgas, as well as the stipulations entered into between the parties.<sup>14</sup> The RTC gave credence to the testimonies of the prosecution witnesses. Their statements were consistent and supported by evidence. While PO2 Gallega and PO1 Vergara rendered a clear and direct narration of the details of the buy-bust operation that led to the arrest of Montalban, the latter can only offer the defense of denial and frame-up, which she did not substantiate with credible evidence. The denial of Montalban cannot be given weight and could not prevail over the positive testimonies of the prosecution witnesses.

Montalban filed her Notice of Appeal with the CA. After the parties had submitted their respective briefs, the case was submitted for decision.

### ***Ruling of the CA***

On June 29, 2017, the CA promulgated its Decision, the decretal portion of which reads:

WHEREFORE, the appeal is DISMISSED. The assailed Decision dated March 9, 2016 of the Regional Trial Court in Criminal Case No. 13-8821-SPL is hereby AFFIRMED.<sup>15</sup>

The CA found that the warrantless arrest was lawful. Hence, the plastic sachets seized from Montalban are admissible as evidence. Montalban waived her right to assail the irregularity of her arrest when she did not object to the alleged irregularity of her arrest, before

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<sup>13</sup> *Id.* at 130-131.

<sup>14</sup> *Id.*

<sup>15</sup> *Rollo*, pp. 13-14.

or during her arraignment.<sup>16</sup> Jurisprudence has settled that “the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after trial free from error.<sup>17</sup> Even if the warrantless arrest is illegal, it cannot render void all other proceeding, including those leading to the conviction of Montalban, nor the state be deprived of its right to convict the guilty when all the facts on record point to [her] culpability.”<sup>18</sup>

With regard to the issue on the warrantless search, the CA held that the search was lawful because it was a warrantless search incidental to a lawful arrest wherein Montalban was caught *in flagrante delicto* selling illegal drugs to an undercover police officer in a buy-bust-operation.<sup>19</sup> Her arrest falls within the purview of Section 5(a),<sup>20</sup> Rule 113 of the 1997 Rules of Court.

As regards the failure to comply with Section 21, Article II of Republic Act No. 9165, the CA ruled that substantial compliance is sufficient, as provided under Section 21(a) of the Implementing Rules and Regulations of R.A. 9165, to wit:

**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:

- (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

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<sup>16</sup> *Id.* at 8, citing *Sy v. People*, 671 Phil. 164, 174 (2011).

<sup>17</sup> *People v. Lara*, 692 Phil. 469, 477 (2012).

<sup>18</sup> *Id.*

<sup>19</sup> *Rollo*, p. 9.

<sup>20</sup> Sec. 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

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).

Montalban's contention that she must be acquitted because the police officers did not indicate the date and place of seizure on the plastic sachet fails on the ground that her legal contention has no legal basis because nowhere is it stated in the foregoing provision that this is an essential procedural requisite.<sup>21</sup> The records also reveal that the police officers complied with the process of preserving the integrity of the seized shabu. The chain of custody started when PO2 Gallega got hold of the plastic sachets, and he had custody of it while in transit and until arrival at the police station; until its submission to the crime laboratory; that at the police station, an inventory was made in the presence of the accused and a media representative, and photos were taken.

As regards the non-presentation of the forensic chemist, thereby rendering the possibility that the evidence may have been tampered, altered, and/or substituted as would affect its identity and integrity, the CA pointed out that Montalban agreed to dispense with the testimony of the forensic chemist, as stipulated in the Pre-Trial Order.<sup>22</sup> Montalban cannot contend that the non-presentation of the forensic chemist was fatal to the prosecution's case because the records of the instant case clearly reveal that the Pre-Trial Order dated August 13, 2013 issued by the RTC was regular on its face.<sup>23</sup> In addition, the non-presentation of the forensic chemist as witness during trial is not a crucial point as to the prosecution since the latter has the discretion as to how to present its case and the right to choose whom it wishes to present as witnesses.<sup>24</sup> Thus, the chain of custody of the seized substances were not broken.

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<sup>21</sup> *Rollo*, p. 11.

<sup>22</sup> *Id.* at 12.

<sup>23</sup> *Id.* at 12-13.

<sup>24</sup> *Id.* at 13.



Montalban filed her Notice of Appeal with us. We required the parties to simultaneously file their respective Supplemental Briefs if they so desire, and required the Correctional Institution for Women to confirm the confinement of Montalban.<sup>25</sup> Both parties filed their Manifestations that they are adopting their respective Briefs filed before the CA as their Supplemental Briefs.<sup>26</sup>

### *Issue*

Whether accused-appellant Montalban's guilt for violating Section 5, Article II of R.A. 9165 was proven beyond reasonable doubt.

### *The Court's Ruling*

The appeal is meritorious. The Court acquits accused-appellant Montalban for failure of the prosecution to prove her guilt beyond reasonable doubt.

Montalban was charged with illegal sale and illegal possession of dangerous drugs, under Sections 5 and 11, Article II of R.A. 9165, respectively.

The requisites to sustain a conviction in actions involving the illegal sale of dangerous drugs are: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* as evidence.<sup>27</sup>

On the other hand, the requisites to secure a conviction in actions involving illegal possession of a dangerous drug, has the following requisites: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; and (2) the possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.<sup>28</sup>

In both cases of illegal sale and illegal possession of dangerous drugs, the confiscated drugs constitute the very *corpus delicti* of the offense and the fact of its existence is essential to sustain a judgment

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<sup>25</sup> *Id.* at 21.

<sup>26</sup> *Id.* at 23-25, 29-31.

<sup>27</sup> *People v. Jordan Casaclang Dela Cruz*, G.R. No. 229053, July 17, 2019.

<sup>28</sup> *Id.*

of conviction.<sup>29</sup> 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.<sup>30</sup>

As regards the element of *corpus delicti*, Section 21, Article II of R.A. 9165, as amended by R.A. 10640, provides for the requirements for the custody and disposition of the dangerous drugs confiscated, seized, and/or surrendered:

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 person/s 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. x x x.

Supplementing Section 21 of R.A. 9165, as amended, is Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. 9165:

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

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<sup>29</sup> *People v. Nader Musor y Acmad*, G.R. No. 231843, November 7, 2018.

<sup>30</sup> *Id.*

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:

- (a) 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 person/s 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.**  
x x x (Emphasis supplied)

Section 21(1), Article II of R.A. 9165, and its IRR provide for the procedure that the buy-bust team must strictly follow to preserve the integrity of the confiscated drugs used as evidence. The law requires that immediately after seizure and confiscation, that the physical inventory, photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension.<sup>31</sup> It is only if it is not practicable that the inventory and photographing can be done at the nearest police station or the nearest office of the apprehending officer/team.<sup>32</sup> The law also requires that at least three (3) witnesses are present during the physical inventory and photographing of the seized items. The three-witness rule requires the presence of: (1) the accused or the person/s from whom such items were confiscated and/or seized, her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media. In terms of feasibility and convenience, since the buy-bust operation is in the nature of a planned activity, the three-witness rule can easily be complied with by the

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

buy-bust team.<sup>33</sup> In the said situation, the buy-bust team has enough time and opportunity to bring with them said witnesses.<sup>34</sup>

Aside from the wordings of the law and its IRR, jurisprudence has settled that there shall be at least three witnesses at the time of apprehension, physical inventory and photographing.<sup>35</sup> Otherwise, the absence of the persons required under Section 21, will not justify a conviction.<sup>36</sup> The reason for the requirement of three witnesses is because it is at the time of the 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.<sup>37</sup>

Both testimonies of PO2 Gallega and PO1 Vergara in their respective direct examination showed non-compliance of the three-witness rule.

For PO2 Gallega's testimony:

- Q. 39 What happened after you and PO1 Vergara made the markings?
- A. After we informed him of his rights, we brought him to the police station, sir.
- Q. 40 What about the items bought by you and the items that were recovered, what did you do with those items?
- A. After we arrived at the station, we prepared a request for laboratory examination, sir.
- Q. 41 Who was in possession of the items that you bought from Teresita from the place of arrest up to the police station?
- A. It was in my possession, sir.
- Q. 42 What about the items that were recovered by PO1 Vergara, from the place of arrest up to the police station?
- A. He gave it to me, sir.
- Q. 43 So all the items are in your possession?
- A. Yes, sir.

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<sup>33</sup> *People v. Nova De Leon y Weves*, G.R. No. 214472, November 28, 2018.

<sup>34</sup> *Id.*

<sup>35</sup> *People v. Jordan Casaclang Dela Cruz*, *supra* note 27; *People v. Joshua Que y Utuanis*, G.R. No. 212994, January 31, 2018; *Lescano v. People*, 778 Phil. 460, 475 (2016).

<sup>36</sup> *Id.*

<sup>37</sup> *People v. Nova De Leon y Weves*, *supra* note 33.

- Q. 44 You mentioned that you prepared the request for laboratory examination while you were at the office. I am showing to you **Exhibit "C"**, the Request for Laboratory Examination. Please go over this and tell us what is the relation of this document to the one that your office prepared?
- A. (After going over Exh. "C".) This is the same document, sir.
- Q. 45 **Aside from preparing this request, what else, if any, did you do at the office?**
- A. **We also prepared the Certificate of Inventory in the presence of media representative and pictures were taken, sir.**
- Q. 46 You mentioned that an inventory was made. I am showing **Exhibit "H"**, Certification of Inventory and **Exhibits "I and I-1"**, photographs. Please go over this and tells us what is the relation of those exhibits to the inventory that you are referring to?
- A. (After going over Exhibit "H, I and I-1"). This is the Certificate of Inventory and the photographs together with the media representative, sir.
- Q. 47 After the preparation of these documents, what else did you do?
- A. We brought Teresita Montalban and the items to the crime laboratory, sir.<sup>38</sup>

For PO1 Vergara's testimony:

- Q. 30 After the arrest of the accused, Mr. Witness what did you do, if any?
- A. We brought her to the police station, sir.
- Q. 31 The items bought and/or recovered from the accused, who was in possession of that from the place of arrest up to the police station?
- A. It was in the possession of PO2 Gallega, sir.
- Q. 32 How did you know that he was in possession of those items?
- A. The items I recovered I turned over it to him and through the Certificate of Inventory, sir.
- Q. 33 When you arrived at the police station, what did you do?
- A. We prepared the inventory and request for laboratory examination, sir.

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- Q. 34 All in all, how many items were recovered from the accused?
- A. Four, sir three in possession and I was able to recover and one the subject of the buy[-] bust.
- Q. 35 If you will see again the items that you recovered from the accused, will you be able to identify it those?
- A. Yes, sir.
- Q. 36 By what means?
- A. The markings I put, sir.
- Q. 37 What markings did you place?
- A. "TM" the initial of the accused, Teresita Montalban-Possession 1, 2 and 3, sir.
- Q. 38 How about the item that Gallega was able to buy from Teresita, can you identify it?
- A. Yes, sir her initial.
- Q. 39 What markings did Gallega place?
- A. "TM-B", sir.
- Q. 40 How did you know that he marked this "TM-B"?
- A. He put the markings in my presence, sir.
- Q. 41 **At the police station, what[,] if any[,] did you do?**
- A. **We prepare[d] the request for laboratory examination, the certificate of inventory, the request for drug test, photographs, together with the media representative, sir.**
- Q. 42 I am showing to you Exhibit "C", the request for laboratory examination; Exhibit "D", the request for drug test; Exhibits "I and I-1", please look at these exhibits and tell us what are the relation of these exhibits to the one you prepared?
- A. Yes, sir[,] these are the documents. (Witness is referring to Exhibits "C, D, I and I-1).
- Q. 43 What did you do next, Mr. Witness after you prepared all the necessary documents?
- A. We brought her to the crime laboratory, sir.<sup>39</sup>

Based on the testimonies of PO2 Gallega and PO1 Vergara, and other evidence admitted before the RTC, the three required witnesses were not present at the time the alleged plastic sachets containing shabu were seized from Montalban during the buy-bust operation.

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<sup>39</sup> TSN, September 2, 2014, pp. 5-7.

When she was apprehended, (1) the elective public official and (2) a representative of the National Prosecution Service or the media, were not present. It was only during the signing of the certificate of inventory of the seized items, and when the Montalban's photo was taken, when the media representative was present.

It must be emphasized that the required three witnesses must 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.<sup>40</sup> The absence of three witnesses, and of not bringing these witnesses to the intended place of arrest when the police operatives could easily do so, do not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.<sup>41</sup>

The Court has ruled that strict compliance with the requirements of Section 21 of R.A. 9165 may not always be possible due to varied field conditions. Both the law and the IRR provides that non-compliance with the requirements under Section 21, Article II of R.A. 9165 under justifiable grounds will not render void and invalid the seizure and custody over the seized items; provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.<sup>42</sup> The prosecution has the duty to prove the existence of justifiable ground for non-compliance with the rule and that the integrity and evidentiary value of the seized items are properly preserved.<sup>43</sup>

Here, the prosecution did not provide any reason why the inventory was not done at the place of apprehension; and regardless of the distance between the place of apprehension and the police station, the prosecution did not indicate whether it was the nearest police station from where the apprehension took place.

Since the prosecution did not provide a justifiable reason why the inventory was not done at the place of apprehension, and the three-witness rule required by Section 21, Article II of R.A. 9165 was not followed; non-compliance with the procedure laid down under R.A. 9165 "negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties."<sup>44</sup>

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<sup>40</sup> *People v. Nova De Leon y Weves*, *supra* note 33.

<sup>41</sup> *Id.*

<sup>42</sup> *People v. Danny Lumumba y Made*, G.R. No. 232354, August 29, 2018.

<sup>43</sup> *Id.*

<sup>44</sup> *People v. Nader Musor y Acmad*, *supra* note 29.

The negation of the said presumption of regularity yielded in a substantial gap in the chain of custody of the seized items, which compromised the integrity and evidentiary value of the seized items.<sup>45</sup> For this reason, accused-appellant Montalban must be acquitted of the crimes charged.

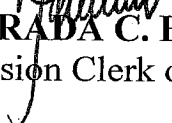
**WHEREFORE**, the Court of Appeals' June 29, 2017 promulgated Decision in CA-G.R. CR-HC No. 08321 is **REVERSED** and **SET ASIDE**. Accused-appellant Teresita Llaneza Montalban is **ACQUITTED** for the prosecution's failure to prove her guilt beyond reasonable doubt. She is immediately **RELEASED** from detention, unless she is confined for some other lawful cause.

Let a copy of this Decision be furnished to the Director of Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED** to **REPORT** to this Court the action he/she has taken within five (5) days from receipt of this Decision. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

**SO ORDERED."**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
**165-B**

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The Solicitor General  
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1229 Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 08321)

The Hon. Presiding Judge  
Regional Trial Court, Branch 31  
San Pedro, 4023 Laguna  
(Crim. Case Nos. 13-8821-SPL &  
13-8822-SPL)

The Director General  
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Accused-Appellant  
c/o The Superintendent  
Correctional Institution for Women  
1550 Mandaluyong City

The Superintendent  
Correctional Institution for Women  
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The Director General  
Bureau of Corrections  
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