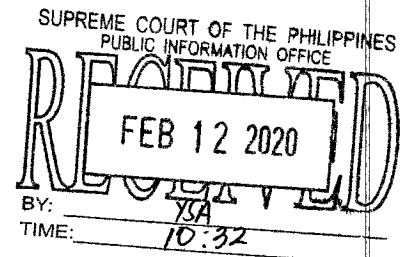




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila  
SECOND DIVISION



**NOTICE**

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **27 November 2019** which reads as follows:

**G.R. No. 243820 (Najer Rasangan y Saripada v. People of the Philippines)**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated March 15, 2018 and the Resolution<sup>3</sup> dated September 11, 2018 of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 09342, which affirmed with modification the Decision<sup>4</sup> dated February 15, 2017 of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 45 (RTC) in Criminal Case No. U-18031, finding petitioner Najer Rasangan y Saripada (Rasangan) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs penalized under Section 5, Article II of Republic Act No. (RA) 9165,<sup>5</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

**The Facts**

This case stemmed from an Information<sup>6</sup> filed before the RTC charging Rasangan with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. The prosecution alleged that at around 9:30 p.m. on March 14, 2012, the Philippine Drug Enforcement Agency (PDEA) in Barangay Bayaoas, Urdaneta City, Pangasinan successfully implemented a buy-bust operation against Rasangan, during which two (2) plastic sachets containing more or less 2.5 grams of white crystalline substance were recovered from him. After the buy-bust team arrested Rasangan and informed him of his rights, Investigation Officer 1 (IO1) Robert Orenca (IO1 Orenca), the poseur-buyer, recovered from Rasangan the buy-bust money and immediately marked the confiscated plastic sachets with his initials, the date of confiscation, and his signature at the place of arrest. However, considering that the place was not well-lit and that it was already late, the PDEA team leader, Agent Sharon Ominga (Agent Ominga) instructed IO1 Orenca and IO1 Beverly Peralta (IO1 Peralta) to continue the inventory of the other

<sup>1</sup> Rollo, pp. 29-46.

<sup>2</sup> Id. at 8-26. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos, concurring.

<sup>3</sup> Id. at 5-7. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Henri Jean Paul B. Inting (now a member of this Court) and Rafael Antonio M. Santos, concurring.

<sup>4</sup> Id. at 73-81. Penned by Presiding Judge Tita S. Obinario.

<sup>5</sup> Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972; AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

<sup>6</sup> Dated March 15, 2012; records, p. 1.

items were completed in the presence of Media Representative CJ Torida of GMA-Dagupan City (Media Representative Torida) and Barangay Kagawad Manuel Antolin (Barangay Kagawad Antolin), who then signed the Certificate of Inventory<sup>8</sup> as witnesses. Photos of Rasangan, the buy-bust money, the white crystalline substance, the motorcycle used by Rasangan, Media Representative Torida, and Barangay Kagawad Antolin were also taken.<sup>9</sup> The seized items were then brought to the crime laboratory, where, after qualitative examination,<sup>10</sup> the contents thereof yielded positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>11</sup>

In defense, Rasangan denied the charges against him, claiming instead that he was on his way to fetch his wife at 7:00 p.m. on March 14, 2012, when a man with a gun appeared in front of him and prodded him to open his tool box. Suddenly, someone hit his abdomen. Afterwards, the men accused him of selling *shabu*. He was forced to board the men's vehicle and was brought to their office in Barangay Bayaoas, where he was frisked. A man told him to settle his case for ₱100,000.00, but when he said that he had no money, he was brought to a table with some paper and money on top and was told to stand up while someone took photos of him.<sup>12</sup>

In a Decision<sup>13</sup> dated February 15, 2017, the RTC found Rasangan guilty beyond reasonable doubt of the crime of Illegal Sale of *shabu*, a dangerous drug, penalized under Section 5, Article II of RA 9165, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.<sup>14</sup> It ruled that the prosecution was able to establish all the elements of the crime of Illegal Sale of Dangerous Drugs, and that the integrity and evidentiary value of the seized items were preserved.<sup>15</sup> Aggrieved, Rasangan appealed<sup>16</sup> to the CA.

In a Decision<sup>17</sup> dated March 15, 2018, the CA affirmed the RTC ruling with modification, in that Rasangan shall not be eligible for parole in keeping with the Indeterminate Sentence Law.<sup>18</sup> It held that the presentation of an informant in open court is not a requisite in a prosecution for drugs cases and upheld the presumption of regularity in the performance of duty by the PDEA officers, considering that the latter were not shown to have been impelled by improper motive. Finally, it found that the integrity and evidentiary value of the confiscated plastic sachets containing *shabu* were properly preserved, as shown by the following links in the chain of custody,

<sup>8</sup> Records, p. 11.

<sup>9</sup> Rollo, pp. 11-12.

<sup>10</sup> See Initial Laboratory Report dated March 15, 2012; records, p. 10.

<sup>11</sup> Rollo, pp. 10-12.

<sup>12</sup> Id. at 13-14.

<sup>13</sup> Id. at 73-81. Penned by Presiding Judge Tita S. Obinario.

<sup>14</sup> Id. at 81.

<sup>15</sup> Id. at 78-80.

<sup>16</sup> See Appellant's Brief dated September 5, 2017; id. at 82-107.

<sup>17</sup> Id. at 8-26.

<sup>18</sup> Id. at 26.

namely: (a) IO1 Orenzia recovered from Rasangan two (2) plastic sachets containing *shabu*, which were marked at the crime scene right after Rasangan's arrest and subsequently inventoried in the presence of a media representative and a barangay officer in the PDEA office; (b) IO1 Orenzia had been in custody of the seized items from the time it was recovered from Rasangan up to the time it was delivered to Police Chief Inspector Emelda B. Roderos (PCI Roderos), the forensic chemist, for laboratory examination; (c) PCI Roderos personally received the items from IO1 Orenzia and marked the confiscated items before its turnover to Non-Uniformed Personnel Mercedita C. Velasco (NUP Velasco), the evidence custodian, for safekeeping; and (d) PCI Roderos retrieved the same specimen from NUP Velasco for presentation to court.<sup>19</sup>

Hence, this appeal seeking that Rasangan's conviction be overturned.

### The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>20</sup> it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>21</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.<sup>22</sup>

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>23</sup> As part of the chain of custody procedure, the law

<sup>19</sup> Id. at 16-25.

<sup>20</sup> The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 84, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

<sup>21</sup> See *People v. Crispo*, id.; *People v. Sanchez*, id.; *People v. Magsano*, id.; *People v. Manansala*, id.; *People v. Miranda*, id.; and *People v. Mamangon*, id. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

<sup>22</sup> See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

<sup>23</sup> See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 381, 389; *People v. Crispo*, supra note 20; *People v. Sanchez*, supra note 20; *People v. Magsano*, supra note 20; *People v. Manansala*,

requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that “[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”<sup>24</sup> Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.<sup>25</sup>

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,<sup>26</sup> “a representative from the media **and** the Department of Justice (DOJ), and any elected public official”;<sup>27</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, “an elected public official and a representative of the National Prosecution Service<sup>28</sup> **or** the media.”<sup>29</sup> The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”<sup>30</sup>

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded “not merely as a procedural technicality but as a matter of substantive law.”<sup>31</sup> This is because “[t]he law has been crafted by Congress as safety precautions to address potential

supra note 20; *People v. Miranda*, supra note 20; and *People v. Mamangon*, supra note 20. See also *People v. Viterbo*, supra note 21.

<sup>24</sup> *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

<sup>25</sup> See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

<sup>26</sup> Entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,’” As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018) RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; World News section, p. 6). Thus, **RA 10640 appears to have become effective on August 7, 2014.**

<sup>27</sup> Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

<sup>28</sup> Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of RA 10071, entitled “AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE” otherwise known as the “PROSECUTION SERVICE ACT OF 2010” [lapsed into law on April 8, 2010].)

<sup>29</sup> Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

<sup>30</sup> See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, supra note 20. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

<sup>31</sup> See *People v. Miranda*, *id.* See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, supra note 22, at 1038.

police abuses, especially considering that the penalty imposed may be life imprisonment.”<sup>32</sup>

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>33</sup> As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>34</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>35</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>36</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,<sup>37</sup> and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>38</sup>

Anent the witnesses requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>39</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>40</sup> 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 chain of custody rule.<sup>41</sup>

<sup>32</sup> See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, id.

<sup>33</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>34</sup> See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>35</sup> Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “*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[.]*”

<sup>36</sup> Section 1 of RA 10640 pertinently states: “*Provided, finally, That noncompliance of 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.*”

<sup>37</sup> *People v. Almorfe*, supra note 34.

<sup>38</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>39</sup> See *People v. Manansala*, supra note 20.

<sup>40</sup> See *People v. Gamboa*, supra note 22, citing *People v. Umipang*, supra note 22, at 1053.

<sup>41</sup> See *People v. Crispo*, supra note 20.

Notably, the Court, in *People v. Miranda*,<sup>42</sup> issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”<sup>43</sup>

In this case, there was a deviation from the witness requirement as the conduct of the inventory and photography was not witnessed by a DOJ representative. This may be gleaned from the Certificate of Inventory<sup>44</sup> which only shows the signatures of Media Representative Torida and Barangay Kagawad Antolin as witnesses. Such finding is confirmed by the testimony of the poseur-buyer, IO1 Orenca, on direct and cross-examination, to wit:

#### DIRECT EXAMINATION

[Prosecutor Leo Neal Y. Lazaro]: What do these photos depict?

[IO1 Orenca]: The photos depict: the upper left portion is the arrested person, the mug shots of the arrested person; and at the right side is the photograph of the confiscated evidence, and at the bottom left portion was the motorcycle used by the accused; and at the bottom right picture is the media representative signing the certificate of inventory, sir.

Q: And what’s the name of this media representative, if you know?

A: CJ Torida of GMA Dagupan, sir.

Q: Aside from CJ Torida, who else, if any, were present during the inventory?

A: Brgy. Official of Brgy. San Vicente, Urdaneta City, sir.

Q: Do you recall his name?

A: Yes, sir.

Q: What is his name?

A: Certain Kagawad Antolin.<sup>45</sup>

#### CROSS-EXAMINATION

[Atty. Christopher C. Castro]: Who is the media present?

[IO1 Orenca]: The GMA representative, CJ Torida, sir.

<sup>42</sup> Supra note 20.

<sup>43</sup> See id.

<sup>44</sup> Records, p. 11.

<sup>45</sup> TSN, November 27, 2012, pp. 10-11.

Q: How about Brgy. Officials?

A: Brgy. Kgd. of San Vicente, Kgd. Manuel Antolin, sir.

Q: How about members of National Prosecution Service?

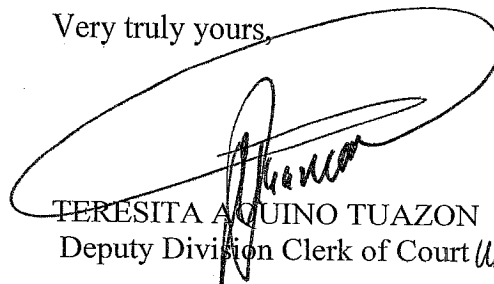
A: None, sir.<sup>46</sup>

As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, while IO1 Orenicia acknowledged the absence of a DOJ representative to witness the conduct of the inventory and photography of the seized items, he did not offer any justification for such absence, much less show whether the buy-bust team exerted genuine and sufficient efforts to secure the attendance of a DOJ representative therein. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the item purportedly seized from Rasangan was compromised, which consequently warrants his acquittal.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated March 15, 2018 and the Resolution dated September 11, 2018 of the Court of Appeals in CA-G.R. CR H.C. No. 09342 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Najer Rasangan y Saripada is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

**SO ORDERED.** (CARANDANG, *J.*, designated Additional Member *vice* INTING, *J.*, who recused himself from the case due to prior participation in the CA per Raffle dated November 27, 2019; ZALAMEDA, *J.*, designated Additional Member per Special Order No. 2727 dated October 25, 2019)"

Very truly yours,



TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *Urb. 26*

<sup>46</sup> TSN, September 5, 2013, p. 8.

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 c/o The Director  
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THE DIRECTOR (x)  
 Bureau of Corrections  
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
 Regional Trial Court, Branch 45  
 Urdaneta, Pangasinan  
 (Crim. Case No. U-18031)

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