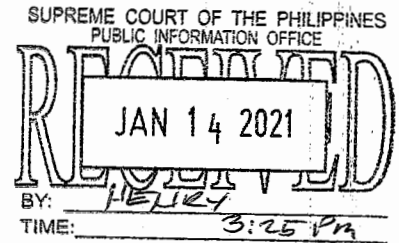




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated July 15, 2020, which reads as follows:*

“G.R. No. 243660 (*People of the Philippines v. Norbie Subangan y Sandag a.k.a. “Sanaya”*). – Before Us is an ordinary appeal<sup>1</sup> filed by accused-appellant Norbie Subangan y Sandag a.k.a. “Sanaya” (Subangan) of the Decision<sup>2</sup> dated April 20, 2018 and the Resolution<sup>3</sup> dated August 8, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09484. The CA affirmed the Decision<sup>4</sup> dated May 30, 2017 of the Regional Trial Court (RTC) of Manila, Branch 35 in Criminal Case Nos. 15-313-129 and 15-313130 but modified the penalty of imprisonment in Criminal Case No. 15-313130 to twenty (20) years and one (1) day, as minimum, to thirty (30) years, as maximum, and ordered Subangan to pay a fine of ₱400,000.00.<sup>5</sup> The dispositive portion of the Decision of the RTC originally provides:

**WHEREFORE**, in view of the foregoing, judgment is rendered as follows:

1. In Criminal Case No. 15-313129, the Court finds the accused **NORBIE SUBANGAN y SANDAG a.k.a. “SANAYA”** guilty of the charge for violation of Section 5, Article II, Republic Act No. 9165 and sentences her to suffer the penalty of life imprisonment without eligibility for parole and to pay a fine of Five Hundred Thousand (P500,000.00) pesos;
2. In Criminal Case No. 15-313130, the Court likewise finds the accused **NORBIE SUBANGAN y SANDAG a.k.a. “SANAYA”** guilty of the charge for violation of Section 11, Article II, Republic Act No. 9165 and sentences her to suffer the indeterminate sentence of Twelve (12) years and one (1) day as minimum to Fourteen (14) years

<sup>1</sup> Rollo, pp. 21-22.

<sup>2</sup> Penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Associate Justices Socorro B. Inting and Rafael Antonio M. Santos; id. at 2-20.

<sup>3</sup> CA rollo, pp. 153-154.

<sup>4</sup> Penned by Judge Maria Bernadita J. Santos; id. at 36-52.

<sup>5</sup> Rollo, p. 20.

and (1) day as maximum and to pay a fine of Three Hundred Thousand (P300,000.00) pesos;

The period during which the accused was under detention shall be considered in her favor pursuant to existing rules.

The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the evidence in the above entitled cases for said agency's appropriate disposition.

SO ORDERED.<sup>6</sup> (Emphasis in the original)

Subangan was charged with violation of Section 11, Article II of Republic Act No. (R.A.) 9165 in an Information dated January 13, 2015, which provides:<sup>7</sup>

That on or about **February 10, 2015**, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there wilfully, unlawfully, and knowingly have in her possession and under her custody and control **two (2) heat-sealed transparent plastic sachets marked as "NSS1" and "NSS2"**, respectively, containing white crystalline substance weighing

**THREE POINT SEVEN THREE SEVEN (3.737) grams**  
and  
**FOUR POINT FIVE SEVEN NINE (4.579) grams**

or with a total net weight of **EIGHT POINT THREE ONE SIX (8.316) grams** of Methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug.

Contrary to law.<sup>8</sup> (Emphasis in the original)

Subangan was also charged with violation of Section 5, Article II of R.A. 9165 in an Information dated February 13, 2015:<sup>9</sup>

That on or about **February 10, 2015**, in the City of Manila, Philippines, the said accused not having been authorized by law to sell, trade, deliver, transport or distribute any dangerous drug did then and there wilfully, unlawfully and knowingly sell or offer for sale **one (1) heat-sealed transparent plastic sachet marked as "NSS" containing ZERO POINT TWO TWO TWO (0.222) gram** of white crystalline substance containing

<sup>6</sup> CA rollo, pp. 50-51.

<sup>7</sup> Records, pp. 4-5.

<sup>8</sup> Id. at 4.

<sup>9</sup> Id. at 2.

Methamphetamine hydrochloride, commonly known as “shabu”, a dangerous drug.

Contrary to law.<sup>10</sup> (Emphasis in the original)

The witnesses for the prosecution testified that at around 4:00 p.m. on February 10, 2015, a male confidential informant (CI) came to the District Anti-Illegal Drugs (DAID) Section<sup>11</sup> of the Philippine National Police (PNP) Manila Police District (MPD) Headquarters<sup>12</sup> at U.N. Avenue, Manila. He informed the Chief of the DAID Section, Police Inspector Glenn Gonzales (P/Insp. Gonzales), of illegal drug activities<sup>13</sup> of a certain Sanaya,<sup>14</sup> who was later identified as Subangan,<sup>15</sup> at Gate 62, Parola, Binondo, Manila. P/Insp. Gonzales instructed<sup>16</sup> P/Insp. Randy Pasta Veran<sup>17</sup> (P/Insp. Veran) to form a group and plan a buy-bust operation. Police Officer 3 Jonathan Sosongco (PO3 Sosongco) prepared the authority to operate<sup>18</sup> and pre-operation report<sup>19</sup> for the operation. The operation was also coordinated with the Philippine Drug Enforcement Agency.<sup>20</sup>

Senior Police Officer 1 Jeffrey Baisa Delos Reyes (SPO1 Delos Reyes) was designated as the *poseur*-buyer. He marked a ₱500.00 bill with “JD” to be used as buy-bust money. It was agreed that he would light a cigarette to signify the consummation of the sale.<sup>21</sup>

At around 9:30 p.m., the buy-bust operation team and the CI positioned themselves outside Gate 62, Parola, Binondo, Manila. A man approached the CI and asked him if he wanted to buy *shabu*. In reply, the CI asked the man where Subangan was. The man then told him that she was inside the compound. The CI and SPO1 Delos Reyes proceeded to the compound where they met Subangan. The CI told her that SPO1 Delos Reyes was looking for other sources of illegal drugs. Subangan asked the CI how much *shabu* will they purchase.<sup>22</sup> SPO1 Delos Reyes told the CI ₱500.00, which was relayed by the CI to Subangan.<sup>23</sup> Subangan demanded payment and SPO1 Delos Reyes complied. After he handed her the buy-bust money, she gave him one small transparent plastic sachet containing white crystalline substance. He lit a cigarette to signify the consummation of the sale. The rest of the buy-bust team approached them while SPO1 Delos Reyes held on to Subangan.<sup>24</sup>

<sup>10</sup> Id.  
<sup>11</sup> *Rollo*, p. 5.  
<sup>12</sup> *CA rollo*, p. 37.  
<sup>13</sup> *Rollo*, p. 5.  
<sup>14</sup> *CA rollo*, p. 37.  
<sup>15</sup> Id. at 38.  
<sup>16</sup> *Rollo*, p. 5.  
<sup>17</sup> *CA rollo*, p. 37.  
<sup>18</sup> Records, p.11.  
<sup>19</sup> Id. at 12.  
<sup>20</sup> *Rollo*, p. 5.  
<sup>21</sup> Id.  
<sup>22</sup> Id. at 5-6.  
<sup>23</sup> TSN dated May 5, 2015, pp. 18-20.  
<sup>24</sup> *Rollo*, p. 6.

SPO1 Delos Reyes introduced himself as a police officer to Subangan and instructed her to empty her pocket. He recovered the buy-bust money from her and two heat-sealed plastic sachets. He placed these items in his pocket and informed her of her constitutional rights. Since people started to flock the area, P/Insp. Veran instructed the team to return to the MPD Headquarters at U.N. Avenue to avoid a commotion.<sup>25</sup>

At the MPD Headquarters, SPO1 Delos Reyes marked the sachet he purchased from Subangan as "NSS" while he marked the two other sachets he confiscated as "NSS1" and "NSS2." An inventory of the seized items was conducted in the presence of Subangan and media representative Crismon Heramis (Heramis).<sup>26</sup> PO3 Sosongco prepared the request for inquest, joint affidavit of apprehension,<sup>27</sup> booking sheet and arrest report,<sup>28</sup> and the request for laboratory examination. He also assisted in the preparation of the inventory of seized items and took photographs during the same.<sup>29</sup>

SPO1 Delos Reyes delivered the letter-request for laboratory examination together with the three seized drug specimens to the crime laboratory where it was received by Police Inspector Jeffrey Abergas Reyes (PI Reyes). PI Reyes conducted a laboratory examination on the specimens and they tested positive for the presence of methamphetamine hydrochloride, a dangerous drug.<sup>30</sup> The findings of PI Reyes are contained in Chemistry Report No. D-095-15.<sup>31</sup>

SPO1 Delos Reyes and PO3 Sosongco were presented as the prosecution's witnesses.<sup>32</sup> The parties stipulated that PO3 Sosongco: (1) was the assigned investigator in these cases; (2) prepared the pre-operation report, authority to operate, request for inquest, joint affidavit of apprehension, booking sheet and arrest report, and request for laboratory examination; (3) assisted in the preparation of the inventory of seized items and gave the chain of custody form to SPO1 Delos Reyes; (4) took photographs during the inventory in the presence of Heramis, Subangan, and SPO1 Delos Reyes but with no representative from the Department of Justice (DOJ) and took pictures of the evidence and the buy-bust money; (5) was not part of the arresting team; (6) did not see any markings on the plastic sachets other than "NSS," "NSS-1," and "NSS-2;" and (7) confirmed that the buy-bust money was not included in the inventory.<sup>33</sup> PO3 Sosongco further testified that: (1) he was the investigator of the case but was not part of the apprehending team; (2) he was present during the marking and inventory of the evidence and was able to read the markings placed by SPO1

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<sup>25</sup> Id.  
<sup>26</sup> Id.  
<sup>27</sup> Records, pp. 8-9.  
<sup>28</sup> Id. at 10.  
<sup>29</sup> CA rollo, p. 39.  
<sup>30</sup> Rollo, p. 7.  
<sup>31</sup> Records, p. 14.  
<sup>32</sup> Rollo, p. 4.  
<sup>33</sup> Records, p. 98.

Delos Reyes. Subangan's initials were part of the marking but without stating the time, date, or place of marking; (3) there was no witness from the DOJ or from the barangay, but the representative from the media was present during the marking of the evidence; (4) he took photographs during the inventory; (5) SPO1 Delos Reyes showed the evidence to him. The evidence was not inside an evidence bag; and (6) Subangan was not given a copy of the inventory receipt. She did not sign the inventory.<sup>34</sup>

The parties also stipulated on the testimonies of Heramis and PI Reyes. For Heramis, they agreed that: (1) he was a member of the MPD Press Corps; (2) he signed as a witness in the inventory of the seized evidence at the police station; (3) when he arrived at the police station, the evidence was being marked but he could not recall the exact markings; and (4) he saw three plastic sachets but no evidence bag.<sup>35</sup> As for PI Reyes, they stipulated that: (1) he was the assigned forensic chemist in these cases; (2) he received the request for laboratory examination dated February 10, 2015 from SPO1 Delos Reyes; (3) pursuant to the request, he examined the contents of three plastic sachets marked as "NSS," "NSS-1," and "NSS-2" submitted to him; (4) the examination yielded a positive result to the test for methamphetamine hydrochloride, as stated in Chemistry Report No. D-095-15, which he signed and was subscribed and sworn to before Administering Officer PCI Maritess Mariano-Tecson; (5) he has no personal knowledge of the source of the specimens submitted to him; and (6) there was no indication where the items were recovered apart from the markings. PI Reyes brought the specimens to court.<sup>36</sup>

Subangan pleaded not guilty to the charges against her.<sup>37</sup> Subangan admitted that she was previously charged with violation of Section 11 of R.A. 9165 but she was acquitted. She was engaged in lending business and some of her clients were suspected drug personalities.<sup>38</sup> Subangan claimed that she visited a friend in Manila City Jail past 1:00 p.m. on February 10, 2015. She left her identification card with the guard but did not write her name on the visitor's logbook. At around 5:00 p.m., she was about to exit the city jail when a group of men in civilian clothing called her. They pointed a gun at her and compelled her to board a car. She complied. They took her bag and brought her to the police headquarters at U.N. Avenue, Manila. The men who accosted her turned out to be police officers. She was brought to a room where the contents of her bag were inspected. They found a plastic sachet containing a powder-like substance inside her bag but she did not know about the item. The police officers took Subangan's ATM card and asked for the pin. They said that they would release her in exchange for ₱500,000.00. After she refused, they brought her to another room where they reduced their demand to ₱250,000.00.<sup>39</sup>

<sup>34</sup> TSN dated April 26, 2016, pp. 4-7.

<sup>35</sup> Records, p. 98.

<sup>36</sup> Id. at 97.

<sup>37</sup> CA *rollo*, p. 37.

<sup>38</sup> Id. at 41.

<sup>39</sup> *Rollo*, pp. 7-8.

Quennie Poras (Poras) also appeared as a witness for the defense. She was Subangan's *kumare* since 2013 and collector since 2014. Subangan would provide her the money to be loaned out to their clients. They used to keep track of their loans in a notebook but it was destroyed in a fire that gutted their area.<sup>40</sup>

On May 30, 2017, the RTC issued its Decision<sup>41</sup> finding Subangan guilty of all the charges against her and sentenced her as follows: (1) for violation of Section 5 of R.A.9165, penalty of life imprisonment without eligibility for parole and payment of a fine of ₱500,000.00; and (2) for violation of Section 11, penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and one (1) day as maximum, and payment of a fine of ₱300,000.00.<sup>42</sup> The RTC held that all the elements for Illegal Sale of Dangerous Drugs were established in this case. SPO1 Delos Reyes identified Subangan as the person from whom he purchased ₱500.00 worth of illegal drugs placed in a plastic sachet. It was irrelevant that the CI told Subangan the value of *shabu* that they would purchase because the latter was aware that SPO1 Delos Reyes was the buyer. With respect to the charge of illegal possession of dangerous drugs, the RTC likewise held that the prosecution was able to prove its elements. SPO1 Delos Reyes recovered two plastic sachets containing illegal drugs from Subangan after he asked her to empty her pockets. She did not present proof or justification that she was authorized to possess it. The mere fact of her possession constitutes *prima facie* evidence of her intent to possess the drug specimens.<sup>43</sup> Moreover, Subangan was unable to support her denial with sufficient evidence. She admitted not knowing why the police would arrest her. Notably, she also claimed that the police demanded money from her when she was previously arrested.<sup>44</sup>

The RTC further ruled that the integrity and evidentiary value of the seized drug specimens were duly proven. A complete chain of custody was established and Section 21 of R.A. 9165 was complied with. Based on SPO1 Delos Reyes' testimony, he seized the items from Subangan and delivered them to PI Reyes. These items were identified, marked, and formally offered in court.<sup>45</sup> The fact that only Herais was present to witness the inventory of the seized items was understandable because the operation occurred late in the evening. What matters is that the marking and the inventory of the items were immediately done at the MPD Headquarters and in the presence of Subangan.<sup>46</sup>

Subangan appealed to the CA. The CA, in its Decision<sup>47</sup> dated April 20, 2018, upheld Subangan's conviction but increased the penalty imposed

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<sup>40</sup> CA *rollo*, pp. 41-42.

<sup>41</sup> Id. at 36-52.

<sup>42</sup> Id. at 51.

<sup>43</sup> Id. at 42-44.

<sup>44</sup> Id. at 48-49.

<sup>45</sup> Id. at 47.

<sup>46</sup> Id. at 46.

<sup>47</sup> *Supra* note 2.

in Criminal Case No. 15-313130 from twenty (20) years and one (1) day, as minimum, to thirty (30) years, as maximum, and the fine to ₱400,000.00.<sup>48</sup> The CA applied paragraph 3, Section 11<sup>49</sup> of R.A. 9165 in imposing the penalty upon her but because the total weight of the drugs found in her possession was 8.316 grams, the CA ruled that paragraph 2<sup>50</sup> should be applied instead. Accordingly, the CA imposed the penalty under paragraph 2 of Section 11.<sup>51</sup>

The CA agreed with the RTC that all the elements of Illegal Sale of Dangerous Drugs were established in this case. SPO1 Delos Reyes' testimony made it clear that he was the buyer of the drug specimen. The CI merely facilitated the sale, and the presentation of the CI as a witness was not necessary.<sup>52</sup> The CA also agreed that Subangan was duly convicted of Illegal Possession of Dangerous Drugs. Two sachets containing *shabu* were found in her pockets. She failed to prove that she was authorized to possess it. Her mere possession is *prima facie* proof of *animus possidendi*. Subangan failed to explain the drugs found in her possession.<sup>53</sup>

The CA also held that there was substantial compliance with the requirements under Section 21 of R.A. 9165, and the marking and inventory of the seized items need not be done at the scene of the crime and may be done at the police station as held in several cases.<sup>54</sup> More importantly, SPO1 Delos Reyes, PO3 Sosongco, PI Reyes, and Herais were able to account for the whereabouts of the drugs from the time they were confiscated from Subangan until PI Reyes brought them to court. SPO1 Delos Reyes identified these items in court. Thus, the absence of a witness from the DOJ

<sup>48</sup> CA rollo, pp. 20.

<sup>49</sup> Section 11. Possession of Dangerous Drugs. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof: x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

<sup>50</sup> x x x (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and x x x

<sup>51</sup> Rollo, pp. 19-20.

<sup>52</sup> Id. at 11-12.

<sup>53</sup> Id. at 13-14.

<sup>54</sup> Id. at 16.

did not render the items inadmissible in court because their integrity and evidentiary value were preserved.<sup>55</sup>

While the CA agreed with the penalty imposed by the RTC for Subangan's violation of Section 5, it held that her penalty for violation of Section 11 should be corrected.<sup>56</sup> Paragraph 3, Section 11 of R.A. 9165, which imposes the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00, applies if the quantity of the drugs involved is less than five grams. If the quantity is five grams or more but less than 10 grams, then paragraph 2 shall apply. Paragraph 2, Section 11 of R.A. 9165 imposes the penalty of imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from ₱400,000.00 to ₱500,000.00. Since the total weight of the sachets confiscated was 8.316 grams, the CA applied paragraph 2 instead of paragraph 3 in determining Subangan's penalty.<sup>57</sup>

Subangan filed her motion for reconsideration, which was denied. Appealing to this Court, Subangan filed her supplemental brief<sup>58</sup> while plaintiff-appellee manifested that it is dispensing with the filing of its supplemental brief because it already discussed its arguments in its appellee's brief filed before the CA.<sup>59</sup>

Subangan argues that the chain of custody of the drugs allegedly seized from her was broken.<sup>60</sup> The items were not immediately marked at the place of arrest. Moreover, SPO1 Delos Reyes merely placed the confiscated items in his pockets. Thus, it is possible that the plastic sachet subject of the sale was mixed up with the plastic sachets subject of the case for illegal possession.<sup>61</sup> They also failed to mark the sachets with the time, date, and place of its confiscation as well as indicate their weight in the receipt/inventory of property/items seized and recovered and the chain of custody form, in violation of the 2014 PNP Manual on Anti-Illegal Drugs Operations.<sup>62</sup> Moreover, PO3 Sosongco did not state that SPO1 Delos Reyes turned over the confiscated items to him for proper investigation.<sup>63</sup> Further, PI Reyes did not testify as to how he handled the seized items. It is also unclear how the evidence custodian handled the items for safekeeping.<sup>64</sup> Subangan cited *People v. Sanchez*,<sup>65</sup> where the Court held that the stipulated testimony of the forensic chemist only covers the handling of the specimen and the analytical tools obtained but not the manner by which the specimen was handled before it came to the possession of the forensic chemist and

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<sup>55</sup> Id. at 16-18.  
<sup>56</sup> Id. at 19.  
<sup>57</sup> Id. at 18-20.  
<sup>58</sup> *Rollo*, pp. 48-65.  
<sup>59</sup> Id. at 27.  
<sup>60</sup> Id. at 49.  
<sup>61</sup> Id. at 50-51.  
<sup>62</sup> Id. at 52.  
<sup>63</sup> Id. at 53.  
<sup>64</sup> Id. at 55.  
<sup>65</sup> 590 Phil. 214 (2008).



after it left his or her possession.<sup>66</sup> The prosecution should have showed each link in the chain of custody, specifically who gave the evidence, what was its condition, and what were the precautions taken to preserve it before its custody was transferred to another person. The prosecution's failure to do so means that it did not prove beyond reasonable doubt the *corpus delicti* of the crime. Accordingly, the accused must be acquitted.<sup>67</sup>

Aside from the gaps in the chain of custody, Subangan also assailed the lack of a representative from the DOJ or an elected public official during the inventory. Plaintiff-appellee has not justified their absence or show that genuine and sufficient effort was exerted to secure their presence.<sup>68</sup> Lastly, Subangan claims that the prosecution's version of the events is incredible. She questions why SPO1 Delos Reyes did not respond directly to her when she asked how much he would buy if he was truly present during the transaction and chose to inform the CI. All told, the CA should have given more weight to her defense and consequently, acquitted her.<sup>69</sup>

Plaintiff-appellee argues that the testimony of SPO1 Delos Reyes duly established that he purchased a sachet of *shabu* from Subangan because he was an eyewitness to the transaction.<sup>70</sup> Further, plaintiff-appellee pointed out that Section 21 of R.A. 9165, as amended by R.A. 10640, permits the taking of the inventory and photographs of the seized items at the nearest police station.<sup>71</sup> As for the other lapses, such as the lack of an elected official and DOJ representative as witnesses, these are immaterial because a complete chain of custody of the seized drug specimens was proven in this case.<sup>72</sup> There is also no inconsistency between the testimonies of SPO1 Delos Reyes and PO3 Sosongco. When SPO1 Delos Reyes stated that PO3 Sosongco has not seen the seized items, it was in response to the question of whether PO3 Sosongco had time to examine the items. Examination implies an in-depth scrutiny of the items. What PO3 Sosongco said was that the items were shown to him. Showing refers to a "casual and superficial observation of the items."<sup>73</sup> All told, Subangan failed to show any material defect in the handling of the seized drug specimens.<sup>74</sup>

The sole issue is whether the CA erred in upholding the finding of guilt of Subangan.

We grant the appeal.

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<sup>66</sup> *Rollo*, pp. 54-55.

<sup>67</sup> *People v. Sanchez*, supra note 65 at 237-238.

<sup>68</sup> *Rollo*, p. 57.

<sup>69</sup> *Id.* at 60-62.

<sup>70</sup> *CA rollo*, pp. 95-97.

<sup>71</sup> *Id.* at 99-100.

<sup>72</sup> *Id.* at 101-103.

<sup>73</sup> *Id.* at 103-104.

<sup>74</sup> *Id.* at 104.

The *corpus delicti* of the crime of Illegal Sale of Dangerous Drugs under Section 5 of R.A. 9165 is the plastic sachet containing *shabu* marked as Exhibit C.<sup>75</sup> As for the crime of Illegal Possession of Dangerous Drugs under Section 11, it is the plastic sachets respectively marked as Exhibits C-1 and C-2.<sup>76</sup> In order to prove violation of these provisions, the identity and integrity of these seized drug specimens must be established. To do so, compliance with Section 21 of R.A. 9165, as amended by R.A. 10640, is imperative. After all, Section 21 “is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.”<sup>77</sup> Section 21 of R.A. 9165 states:

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

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance 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.

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The prosecution is duty bound to show compliance with Section 21, including acknowledging and justifying any perceived deviations from the

<sup>75</sup> Records, p. 55.

<sup>76</sup> Id. at 56-57.

<sup>77</sup> *People v. Miranda*, G.R. No. 229671, January 31, 2018.

requirements of the law.<sup>78</sup> These deviations may be excused provided: (1) there is a justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.<sup>79</sup> In addition, these lapses or deviations must be explained and its justification must be proven as a fact.<sup>80</sup> This was not done in this case.

*First*, SPO1 Delos Reyes said that he placed the sachet subject of the sale in his small pocket and the sachets he confiscated from Subangan in his big pocket.<sup>81</sup> In *People v. Dela Cruz*,<sup>82</sup> the Court held that “[k]eeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items.”<sup>83</sup> Thus, the manner in which SPO1 Delos Reyes handled the drug specimens is unacceptable.

*Second*, the police officers in this case did not perform the inventory of the seized items at the place of arrest but at the MPD Headquarters.<sup>84</sup> Section 21 of R.A. 9165, as amended, indeed allows the physical inventory of the seized items at the police station or office but it must be done at the nearest one. Neither SPO1 Delos Reyes nor PO3 Sosongco testified that the MPD Headquarters is the closest police station or office to the place of arrest in Binondo. Accordingly, the conduct of the inventory and the taking of the photographs at the MPD Headquarters is not compliant with Section 21 of R.A. 9165. Aside from this, the weight of the seized drug specimens was not recorded in the inventory and chain of custody form, as required under Section 2-6(a)(5) of the 2014 PNP Manual on Anti-Illegal Drugs Operations.<sup>85</sup>

*Third*, one of the substantive requirements under Section 21, as amended by R.A. 10640, is the presence of two witnesses, namely: (1) an elected public official; and (2) a representative from the media or from the DOJ. In this case, there were no witnesses when Subangan was apprehended and the items were confiscated from her.<sup>86</sup> Third-party witnesses must be present at the time of the apprehension so as to “believe any doubt as to the source, identity, and integrity of the seized drug.”<sup>87</sup> And during the inventory, only Heramis was present. There was no elected public official.<sup>88</sup>

<sup>78</sup> *People v. Lim*, G.R. No. 231989, September 4, 2018.

<sup>79</sup> *Limbo v. People*, G.R. No. 238299, July 1, 2019.

<sup>80</sup> *People v. Gamboa*, G.R. No. 233702, June 20, 2018.

<sup>81</sup> TSN dated May 5, 2015, pp. 39-40.

<sup>82</sup> 744 Phil. 816(2014)

<sup>83</sup> Id. at 834.

<sup>84</sup> TSN dated May 5, 2015, p. 29.

<sup>85</sup> Section 2-6 Handling, Custody and Disposition of Drug and Non-Drug Evidence x x x  
a. Drug Evidence. x x x

5) All the illegal drugs and/or CPECs [controlled precursors and essential chemicals] shall be properly marked for identification, weighed when possible or counted, sealed, packed and labeled. The exact weight of the illegal drugs seized or recovered should be recorded in the Inventory and Chain of Custody Forms or Evidence Vouchers. x x x

<sup>86</sup> TSN dated May 5, 2015, p. 54.

<sup>87</sup> *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019.

<sup>88</sup> TSN dated May 5, 2015, pp. 53-54.

Hence, even though the presence of a representative from the DOJ was unnecessary because of the presence of Herais, as the representative from the media sufficed, the required witnesses were still lacking in this case. The Court may excuse the absence of witnesses required under Section 21 if the apprehending officers exerted genuine and sufficient efforts to secure their presence.<sup>89</sup> The police officers here not only failed to justify the absence of the elected public official, they also failed to show that they made an effort to secure the presence of such official. Consequently, we cannot overlook this deviation from what is required under Section 21.

*Fourth*, there were inconsistencies between the testimonies of SPO1 Delos Reyes and PO3 Sosongco. SPO1 Delos Reyes claimed that he prepared the request for laboratory examination.<sup>90</sup> Nonetheless, the parties stipulated that PO3 Sosongco was the one who prepared said request.<sup>91</sup> In addition, when asked, SPO1 Delos Reyes said that PO3 Sosongco did not see the seized items because they were not presented to him.<sup>92</sup> However, PO3 Sosongco testified that the evidence was shown to him.<sup>93</sup> Besides these inconsistencies, plaintiff-appellee's averments of what transpired on the day of the incident is by itself questionable. The Court is baffled why SPO1 Delos Reyes verbally relayed his answer to the CI instead of directly addressing Subangan when they were all together anyway. That the parties would engage in a circuitous transaction is unusual. Thus, it is doubtful if the buy-bust actually took place.

Further, due to plaintiff-appellee's failure to provide justifiable grounds for the non-compliance of the requirements of Section 21 of R.A. 9165, as amended, the integrity and identity of the *corpus delicti* are compromised.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated April 20, 2018 and the Resolution dated August 8, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09484 are **REVERSED** and **SET ASIDE**. Accused-appellant Norbie Subangan y Sandag a.k.a. "Sanaya" is **ACQUITTED** of the crimes charged against her and is **ORDERED** to be **IMMEDIATELY RELEASED**, unless she is being lawfully held in custody for any other reason. The Director of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

<sup>89</sup> *Limbo v. People*, supra note 79.

<sup>90</sup> TSN dated May 5, 2015, p. 33.

<sup>91</sup> Records, p. 98.

<sup>92</sup> TSN dated May 5, 2015, pp. 57-58.

<sup>93</sup> TSN dated April 26, 2016, p. 6.

**SO ORDERED.”**

By authority of the Court:

*Mis ADC Batt*  
**MISAE L DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
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18121

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