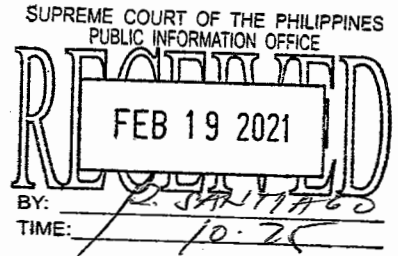




Republic of the Philippines  
**Supreme Court**  
Manila  
**THIRD DIVISION**



**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated September 2, 2020, which reads as follows:*

**“G.R No. 243795 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. HARLENE SABANAL y RAMIREZ, *accused-appellant*).** — Section 21 of the Comprehensive Dangerous Drugs Act, as amended, requires the presence of mandatory third-party witnesses during the arrest of an accused, not just during the inventory and photographing of the seized dangerous drugs. The witnesses’ insulating presence prevents the planting or tampering of evidence and ensures the identity and integrity of the drugs.

This Court resolves an appeal from the Court of Appeals Decision<sup>1</sup> affirming the Regional Trial Court’s Joint Judgment<sup>2</sup> convicting Harlene Sabanal y Ramirez (Sabanal) of illegal sale and illegal possession of dangerous drugs.

On August 18, 2015,<sup>3</sup> Sabanal was charged with illegally selling shabu in an Information docketed as Criminal Case No. 2015-23097, which reads:

That on or about the 10th day of August, 2015, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, HARLENE SABANAL y RAMIREZ, without authority of law and legal justification, did, then and there willfully, unlawfully and feloniously sell, deliver and give to a poseur buyer one [1] heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.02 gram which substance after examination

<sup>1</sup> *Rollo*, pp. 4–17. The September 28, 2018 Decision docketed as CA-G.R. CR-HC No. 02626 was penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Louis P. Acosta and Dorothy P. Montejo-Gonzaga of the Special Nineteenth Division, Court of Appeals, Manila.

<sup>2</sup> *CA rollo*, pp. 8–24. The May 15, 2017 Joint Judgment in Criminal Case Nos. 2015-23097 and 2015-23098 was penned by Judge Rafael Crescencio C. Tan, Jr. of Regional Trial Court, Dumaguete City, Branch 30.

<sup>3</sup> *Id.* at 8.

conducted on specimen was found positive to the test of Methamphetamine Hydrochloride, also known as shabu, a dangerous drug, in violation of Republic Act No. 9165.

That the accused was found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-217-15.

Contrary to Sec 5, Article II of Republic Act No. 9165.<sup>4</sup>  
(Emphasis in the original)

Sabanal was also charged with illegal possession of shabu in an Information docketed as Criminal Case No. 2015-23098, which reads:

That on or about the 10th day of August, 2015, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused HARLENE SABANAL y RAMIREZ, without authority of law and legal justification, did, then and there willfully, unlawfully and feloniously possess or have under his (sic) custody and control six [6] pieces transparent plastic sachets containing white crystalline substance weighing 0.03, 0.02, 0.02, 0.02, 0.14 and 0.16 with an aggregate total weight of 0.39 which substances after examination conducted on specimen (sic) were found positive to the test of Methamphetamine Hydrochloride, also known as shabu, a dangerous drug, in violation of Republic Act No. 9165.

That the accused was found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-217-15.

Contrary to Section 11 Article II of Republic Act No. 9165.<sup>5</sup>  
(Emphasis in the original)

Sabanal pleaded not guilty to both charges against her. The two cases were then consolidated and jointly tried.<sup>6</sup>

The prosecution evidence showed that on the first week of August 2015, Intelligence Officer 1 Francisfil Tangeres (IO1 Tangeres) of the Philippine Drug Enforcement Agency received information that Sabanal, alias Cacai, was selling illegal drugs at Zone 4, Barangay Looc, Dumaguete City. IO1 Tangeres conducted a background investigation on Sabanal and found out that she was part of the agency's watchlist, having been previously arrested, though later acquitted, for selling illegal drugs. IO1 Tangeres reported this to the agency's provincial officer, IAI Ivy Claire Oledan, who then ordered him and IO1 Julia Amatong (IO1 Amatong) to conduct a surveillance operation on Sabanal.<sup>7</sup>

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<sup>4</sup> Id.

<sup>5</sup> Id. at 9.

<sup>6</sup> Id.

<sup>7</sup> Id.

While monitoring Sabanal, IO1 Tangerang and IO1 Amatong witnessed her selling illegal drugs from her house. When they relayed this finding, IAI Oledan formed a team to conduct a buy-bust operation against Sabanal.<sup>8</sup>

On August 10, 2015, at 5:30 p.m., IAI Oledan briefed the buy-bust team and assigned IO1 Tangerang to be the poseur-buyer with IO1 Amatong as his back-up. IO1 Tangerang was given a ₱500.00 bill as buy-bust money, which he marked with his initials "FAT" and photocopied.<sup>9</sup> IAI Oledan instructed IO1 Tangerang to make a missed call to signal that the sale had been completed. The team also coordinated with the Philippine Drug Enforcement Agency Regional Office.<sup>10</sup>

Right after the briefing, IO1 Tangerang and IO1 Amatong rode a motorcycle to Zone 4, Barangay Looc, followed by the rest of the team.<sup>11</sup>

After parking near a basketball court, IO1 Tangerang and IO1 Amatong, pretending to be a couple, walked hand in hand toward Sabanal's house, while the other team members stood nearby.<sup>12</sup> Eventually, the two officers saw Sabanal standing outside her house. When they approached her, she asked them if they were interested in buying shabu. IO1 Tangerang replied that he wanted to buy ₱500.00 worth of shabu and showed her the marked bill. Sabanal took out a plastic sachet from a plastic container she was carrying and handed him the sachet.<sup>13</sup>

At this, IO1 Tangerang sent a missed call to IAI Oledan while pretending to inspect the sachet. When he saw his team members approaching, he grabbed Sabanal's hand, arrested her, and informed her of her constitutional rights in Visayan, while IO1 Amatong handcuffed and searched Sabanal. IO1 Tangerang then marked the bought sachet with "HRS/BB/8-10-15" and his signature.<sup>14</sup>

Upon a body search, IO1 Amatong confiscated the plastic container Sabanal was holding, which contained six more heat-sealed plastic sachets with white crystalline substance. She also confiscated two disposable lighters, the marked ₱500.00 bill, and cash worth ₱260.00, all of which she placed in a transparent plastic sachet. The team leader then instructed the team to return to their office because a novena prayer was about to begin at the house of Sabanal's neighbor.<sup>15</sup>

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<sup>8</sup> Id. at 10.

<sup>9</sup> Id. The bill has serial no. R407414.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id. at 10-11.

<sup>15</sup> Id. at 11.

At the office, IO1 Amatong marked the six heat-sealed plastic sachets with “HRS-P1 8/10/15” to “HRS-P6 8/10/15,” respectively, and signed them. She also signed and marked the plastic container and two lighters with “HRS-P7 8/10/15” and HRS-P8 8/10/15,” respectively.<sup>16</sup> She then conducted the inventory, including the one that IO1 Tangerang had bought.<sup>17</sup>

IO1 Amatong then prepared a certificate of inventory, which was then signed by Department of Justice representative Anthony Chilius Benlot, media practitioner Juancho Gallarde, and Barangay Looc Kagawad Dandy Catada.<sup>18</sup> IO1 Tangerang took photographs of the items and the signing of the certificate of inventory.<sup>19</sup>

Afterward, IO1 Amatong wrote a letter request for laboratory examination and drug test. She then placed the sachets in a green envelope, which she sealed and then signed.<sup>20</sup>

At 8:56 p.m., IO1 Amatong proceeded to the crime laboratory and endorsed the envelope to PO3 Edilmar Manaban, who opened the envelope to check if the contents tallied with the letter request. After confirming the contents, he resealed the envelope and kept it inside his locker. At 5:00 p.m. the following day, he gave the envelope to the forensic chemist, Police Chief Inspector Josephine Llana (PCI Llana).<sup>21</sup>

Upon examination, PCI Llana found that the specimens were all positive for shabu. She also tested Sabanal’s urine sample and likewise found it positive for shabu.<sup>22</sup> She kept the specimens in an evidence vault and eventually submitted them to the Regional Trial Court.<sup>23</sup>

The defense, in turn, presented Sabanal as its only witness.<sup>24</sup>

Sabanal testified that at 4:30 p.m. on August 10, 2014, she and her two children had just come home from school when she saw five men and one woman waiting outside her house. The woman asked if she was Cacaí, and when she confirmed that she was, another person asked her for “one kilo.” Sabanal did not understand what the person was asking for, but they threatened to bring her to the police office if she did not cooperate. They

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<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. at 12.

<sup>21</sup> Id.

<sup>22</sup> Id. at 13.

<sup>23</sup> Id.

<sup>24</sup> Id.

then made her board a motorcycle and brought her to the local Philippine Drug Enforcement Agency office.<sup>25</sup>

There, Sabanal was accused of selling shabu. She denied this, claiming that she was merely standing outside her house when she was arrested.<sup>26</sup>

On May 15, 2017, the Regional Trial Court convicted<sup>27</sup> Sabanal. It held that the prosecution proved the elements of illegal sale and delivery of shabu, based on the officers' testimonies<sup>28</sup> as corroborated by the physical evidence.<sup>29</sup> It likewise found that the prosecution proved its charges of illegal possession beyond reasonable doubt, as IO1 Amatong clearly testified that she conducted a body search on Sabanal upon arrest and found the six sachets in a plastic container held by Sabanal.<sup>30</sup>

The Regional Trial Court then stated that the purported illegality of Sabanal's arrest was not timely raised. Nonetheless, as the subject of a buy-bust operation, Sabanal was caught *in flagrante delicto* selling shabu, making her warrantless arrest valid.<sup>31</sup>

Finally, the Regional Trial Court pointed out that Sabanal's defenses of denial and frame-up were unconvincing in light of the positive and credible testimonies of the prosecution witnesses. Further, Sabanal's failure to file administrative charges against the arresting officers belied her allegation of frame-up.<sup>32</sup>

The dispositive portion of the Joint Judgment reads:

**WHEREFORE**, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 2015-23097, the accused HARLENE SABANAL y RAMIREZ is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale and delivery of 0.02 gram of *shabu* in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

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<sup>25</sup> Id. at 13–14.

<sup>26</sup> Id. at 14.

<sup>27</sup> Id. at 8–24.

<sup>28</sup> Id. at 15.

<sup>29</sup> Id. at 18.

<sup>30</sup> Id. at 19.

<sup>31</sup> Id. at 19–20.

<sup>32</sup> Id. at 21–22.

The one (1) heat-sealed transparent plastic sachet with markings “HRS/BB/8-10-15” with signature containing 0.02 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 2015-23098, the accused HARLENE SABANAL y RAMIREZ is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.39 gram of *shabu* in violation of Section 11, Article II of RA 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The six (6) heat-sealed transparent plastic sachets with markings “HRS-P1 8/10/15” to “HRS-P6 8/10//15,” respectively, containing an aggregate total weight of 0.39 gram of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused HARLENE SABANAL y RAMIREZ shall be credited with the full time during which she has undergone preventive imprisonment, provided she agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.<sup>33</sup> (Emphasis in the original)

Sabanal appealed to the Court of Appeals. However, on September 28, 2018, the Court of Appeals denied<sup>34</sup> Sabanal’s appeal.

The Court of Appeals upheld the Regional Trial Court’s findings that the prosecution established the crimes charged beyond reasonable doubt. It found that the sale indeed took place, and that IO1 Tangere positively identified the dangerous drug sold to him.<sup>35</sup> It also found that the prosecution successfully proved all the elements of illegal possession of dangerous drugs.<sup>36</sup> Meanwhile, it set aside Sabanal’s defense of alibi for being self-serving, stating that her bare denials cannot prevail over the positive testimony of the arresting officers who enjoy the presumption of regularity in the performance of their official duties.<sup>37</sup>

Additionally, the Court of Appeals stressed the legality of the buy-bust operation conducted against Sabanal. Nonetheless, it maintains that even if her warrantless arrest were illegal, she had already waived her right to question the arrest when she did so only on appeal.<sup>38</sup>

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<sup>33</sup> Id. at 23.

<sup>34</sup> *Rollo*, pp. 4–17.

<sup>35</sup> Id. at 11.

<sup>36</sup> Id. at 11–12.

<sup>37</sup> Id. at 13–14.

<sup>38</sup> Id. at 12–13.

Finally, the Court of Appeals emphasized that the prosecution preserved the identity and integrity of the seized items, as it showed an unbroken chain of custody from the time the dangerous drugs were seized until their presentation in court.<sup>39</sup>

The dispositive portion of the Decision reads:

WHEREFORE, the appeal is hereby DENIED. The Joint Judgment of the RTC, Branch 30, Dumaguete City, dated May 15, 2017, in Criminal Case Nos. 2015-23097 and 2015-23098, is hereby AFFIRMED in toto.

SO ORDERED.<sup>40</sup>

On October 26, 2018, Sabanal filed a Notice of Appeal,<sup>41</sup> which the Court of Appeals gave due course to.<sup>42</sup>

This Court informed<sup>43</sup> the parties that they may file their supplemental briefs. However, the Office of the Solicitor General, for plaintiff-appellee People of the Philippines, and accused-appellant both manifested<sup>44</sup> that they would be adopting the arguments they raised before the Court of Appeals.

In her Brief,<sup>45</sup> accused-appellant insists that her warrantless arrest was not valid because she was not committing a crime when she was accosted. She insists that she was just walking home with her two children when officers from the Philippine Drug Enforcement Agency blocked her way and forced her to go with them to their office. Because of the invalid arrest, she asserts that the alleged search on her could not have been valid.<sup>46</sup>

Accused-appellant then argues against the validity of the buy-bust operation against her as the prosecution failed to present any documentation showing that a buy-bust operation was mounted by the police officers.<sup>47</sup>

Even if she were arrested through a valid buy-bust, accused-appellant asserts that IO1 Amatong failed to strictly comply with Section 21 of Republic Act No. 9165. As accused-appellant notes, the officer did not

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<sup>39</sup> Id. at 16.

<sup>40</sup> Id. at 17.

<sup>41</sup> Id. at 18–20.

<sup>42</sup> CA *rollo*, pp. 107–108.

<sup>43</sup> *Rollo*, pp. 26–27.

<sup>44</sup> Id. at 29–33 and 34–36.

<sup>45</sup> CA *rollo*, pp. 31–47.

<sup>46</sup> Id. at 39.

<sup>47</sup> Id. at 40–41.

immediately mark the sachets allegedly recovered, only marking them at the police office.<sup>48</sup>

On the other hand, plaintiff-appellee maintains in its Brief<sup>49</sup> that it proved beyond reasonable doubt the charges of illegal sale and delivery<sup>50</sup> and illegal possession of illegal drugs.<sup>51</sup>

The sole issue for this Court's resolution is whether or not the prosecution proved the guilt of accused-appellant Harlene Sabanal y Ramirez beyond reasonable doubt despite the arresting officers' failure to strictly comply with Section 21 of the Comprehensive Dangerous Drugs Act, as amended.

To sustain a conviction for illegal sale and illegal possession of dangerous drugs, *People v. Morales*<sup>52</sup> states:

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

On the other hand, in prosecutions for illegal possession of dangerous drugs, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.<sup>53</sup>

The *corpus delicti* is "the body or substance of the crime and, in its primary sense, refers to the fact that a crime was actually committed."<sup>54</sup> In charges for illegal sale and possession of dangerous drugs, the *corpus delicti* is the dangerous drug itself. Thus, Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, imposes several requirements for the custody and disposition of seized drugs to ensure their identity and integrity:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals,*

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<sup>48</sup> Id. at 43–45.

<sup>49</sup> Id. at 65–78.

<sup>50</sup> Id. at 72.

<sup>51</sup> Id. at 72–73.

<sup>52</sup> 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

<sup>53</sup> Id. at 228 citing *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883 (2009) [Per J. Del Castillo, Second Division].

<sup>54</sup> *People v. Calates*, 829 Phil. 262, 269 (2018) [Per J. Bersamin, Third Division].



*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[;]
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

*Veriño v. People*<sup>55</sup> states that the chain of custody rule in Section 21 is a means to authenticate the dangerous drugs presented before the court as evidence and guarantee their identity and integrity. This Court emphasized

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<sup>55</sup> G.R. No. 225710, June 19, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65375>> [Per J. Leonen, Third Division]

that the established precautions are necessary as “narcotic substances are not easily identifiable and are prone to alteration or tampering.”<sup>56</sup>

This Court has repeatedly stated that to guarantee the identity and integrity of the seized dangerous drugs, nothing less than strict compliance is expected of the handling officers.<sup>57</sup> Hence, acts that “approximate compliance but do not strictly comply with Section 21 have been considered insufficient.”<sup>58</sup>

Nonetheless, while the expected standard is strict compliance, the Comprehensive Dangerous Drugs Act’s Implementing Rules and Regulations introduced a saving clause, which was eventually incorporated into Section 21 when the law was amended. The saving clause reads:

*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>59</sup>

For the saving clause to be appreciated in its favor, the prosecution must prove that the officers’ failure to strictly comply with Section 21 was justified and that they preserved the integrity and evidentiary value of the seized dangerous drug.<sup>60</sup> In *People v. Umipang*.<sup>61</sup>

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were “recognized and explained in terms of [] justifiable grounds.” There must also be a showing “that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason.” However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to

<sup>56</sup> Id. citing *People v. Jaafar*, 803 Phil. 582 (2017) [Per J. Leonen, Second Division].

<sup>57</sup> *People v. Que*, 824 Phil. 882 (2018) [Per J. Leonen, Third Division]; *People v. Gonzales*, 708 Phil. 121 (2013) [Per J. Bersamin, First Division]; and *People v. Carin*, 645 Phil. 560 (2010) [Per J. Carpio Morales, Third Division].

<sup>58</sup> *People v. Que*, 824 Phil. 882, 901 (2018) [Per J. Leonen, Third Division].

<sup>59</sup> Republic Act No. 10640 (2014), sec. 21(1).

<sup>60</sup> *People v. Almorfe*, 631 Phil. 51, 60 (2010) [Per J. Carpio Morales, First Division] citing *People v. Garcia*, 599 Phil. 416 (2009) [Per J. Brion, Second Division].

<sup>61</sup> 686 Phil. 1024 (2012) [Per J. Sereno, Second Division].

fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.<sup>62</sup> (Citations omitted)

Here, the arresting officers only called in the mandatory third-party witnesses after the buy-bust operation to witness the inventory and photographing of the seized dangerous drugs.<sup>63</sup> Moreover, the third-party witnesses testified that they did not see the actual buy-bust operation and that when they arrived at the police station, the plastic sachets were already marked and lined up on a table. The inventory form was likewise already filled out, and they only needed to sign their names on it.<sup>64</sup>

This Court has repeatedly stated that only “calling in” the mandatory third-party witnesses during the inventory and photographing of the seized dangerous drugs is not what the law intends. Instead, these witnesses must be present during the actual buy-bust operation, as their insulating presence ensures the regularity of the buy-bust operation.<sup>65</sup>

*People v. Tomawis*<sup>66</sup> explained that the mandatory third-party witnesses must be present at the time of arrest to prevent the planting or tampering of evidence by unscrupulous police officers:

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. In addition, the inventory must be done **in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official**, who shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

<sup>62</sup> Id. at 1053–1054.

<sup>63</sup> CA *rollo*, p. 20.

<sup>64</sup> Id. at 37–38.

<sup>65</sup> *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65936>> [Per J. Leonen, Third Division]; *People v. Retada*, G.R. No. 239331, July 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65466>> [Per J. Caguioa, Second Division]; and *People v. Tomawis*, 830 Phil. 385 (2018) [Per J. Caguioa, Second Division].

<sup>66</sup> 830 Phil. 385 (2018) [Per J. Caguioa, Second Division].

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The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.<sup>67</sup> (Emphasis in the original)

In *People v. Jaafar*,<sup>68</sup> the police officers received a tip from an informant at 8:00 a.m., formed a buy-bust team that same day, and conducted the operation at 1:45 a.m. the following day.<sup>69</sup> This Court ruled in *Jaafar* that a day's worth of preparation was more than enough time for the police officers to secure the mandatory third-party witnesses' presence during the buy-bust operation.<sup>70</sup>

Here, after receiving a tip, the police officers surveilled accused-appellant on the first week of August 2015 and, after confirming that she was sellingshabu from her house, set up a buy-bust operation on August 10, 2015.<sup>71</sup> Several days ahead of the buy-bust, the police officers had ample time and opportunity to secure the presence of the mandatory third-party witnesses.

Moreover, the prosecution failed to justify their absence during the buy-bust operation. It also failed to explain why the inventory was already concluded by the time the third-party witnesses arrived, instead of being done in front of them and accused-appellant.

These lapses form major breaks in the chain of custody, casting doubt on the identity of the dangerous drugs supposedly seized from accused-appellant. With the prosecution's failure to establish the *corpus delicti* beyond reasonable doubt, accused-appellant must be acquitted of the charges against her.

**WHEREFORE**, the Court of Appeals' September 28, 2018 Decision in CA-G.R. CR-HC. No. 02626 is **REVERSED AND SET ASIDE**. Accused-appellant Harlene Sabanal y Ramirez is **ACQUITTED** for the prosecution's failure to prove her guilt beyond reasonable doubt. She is

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<sup>67</sup> Id. at 404-409.

<sup>68</sup> 803 Phil. 582, 594 (2017) [Per J. Leonen, Second Division].

<sup>69</sup> Id. at 585.

<sup>70</sup> Id. at 594.

<sup>71</sup> CA *rollo*, p. 10.

ordered **IMMEDIATELY RELEASED** from detention, unless she is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Superintendent of the Correctional Institution for Women for immediate implementation. She is directed to report to this Court, within five days from receipt of this Resolution, the action she has taken. 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.

The Regional Trial Court is directed to turn over the drugs involved in this case to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of final judgment be issued immediately.

**SO ORDERED.”**

By authority of the Court:

*Mis-DCBatt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

Atty. Mercy Joy C. Miral  
Regional Special & Appealed Cases Unit  
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CA G.R. CEB CR HC No. 02626-CEB  
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134 Amorsolo Street  
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The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 30, 6200 Dumaguete City  
(Crim. Case No. 2015-23097)

The Director General  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Superintendent  
CORRECTIONAL INSTITUTION FOR WOMEN  
1550 Mandaluyong City

Ms. Harlene R. Sabanal  
c/o The Superintendent  
CORRECTIONAL INSTITUTION FOR WOMEN  
1550 Mandaluyong City

The Director General  
PHILIPPINE NATIONAL POLICE  
National Headquarters  
Camp Crame, Quezon City

The Director General  
PHILIPPINE DRUG ENFORCEMENT AGENCY  
PDEA Bldg., NIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

The Chairman  
DANGEROUS DRUGS BOARD  
3<sup>rd</sup> Floor DDB-PDEA Bldg.,  
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