REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **20 January 2021** *which reads as follows*:

"G.R. No. 241521 ***(Arnold Tolentino y Calma alias "Barok" v. People of the Philippines).*** – This is an appeal by *certiorari* seeking to reverse and set aside the May 29, 2018 Decision[1] and August 14, 2018 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR No. 39881, which affirmed with modification the April 18, 2017 Decision[3] of the Regional Trial Court of Manila, Branch 28 *(RTC)* in Crim. Case No. 16-324576. The RTC found Arnold Tolentino *y* Calma alias "*Barok*" *(accused-appellant)* guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act *(R.A.)* No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

Antecedents

Accused-appellant was charged with violation of Sec. 11, Art. II of R.A. No. 9165 under the following Information:

> That on or about April 4, 2016, in the City of Manila, Philippines, the said accused, not having been authorized by law to possess any dangerous drug, did then and there wilfully, unlawfully and knowingly have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet with marking 'AAT' containing (0.061g) ZERO POINT ZERO SIX ONE GRAM of white crystalline substance containing Methamphetamine Hydrochloride, commonly known as '*Shabu*,' a dangerous drug.
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> Contrary to law.[4]

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[1] *Rollo*, pp. 32-44; penned by Associate Justice Renato C. Francisco with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda (now a Member of this Court), concurring.
[2] Id. at 46-47.
[3] Id. at 72-83; penned by Presiding Judge Jean Marie A. Bacorro-Villena.
[4] Id. at 33.

During his arraignment, accused-appellant pleaded not guilty to the crime charged. Pre-trial then proceeded. Thereafter, trial on the merits ensued.[5]

The CA summarized the evidence for the prosecution and the defense as follows:

Version of the prosecution

The prosecution presented the testimony of PO2 Jimmy Cawaling *(PO2 Cawaling)*:

PO2 Cawaling narrated that he was on duty at the Pandacan Police Station 10 on 03 April 2016. At around 11:30 p.m., they conducted Oplan Galugad along the area of Kahilum II. While on board a motorcycle, PO2 Cawaling saw someone creating disturbance in the place. He heard the man shouting, "*Hoy, mga putang-ina ninyo, magsi-labas kayo kung talagang matapang kayo!.*" PO2 Cawaling and his companion alighted from the motorcycle and approached the man, who was later on identified as [accused-appellant]. They were then supposed to arrest him for breach of peace, an offense defined and penalized under Section 844 of the Manila City Ordinance. PO2 Cawaling held [accused-appellant] at the back of the waist and grabbed his shorts. PO2 Cawaling felt a hard object resembling a gun or a bladed weapon so he was alarmed. He immediately lifted [accused-appellant's] clothes and saw the handle of a gun known as *paltik*. PO2 Cawaling took the gun and asked [accused-appellant] to empty his pockets to check if there are other ammunitions or bladed weapons with him. Upon complying with the order of PO2 Cawaling, one small heat-sealed plastic sachet containing crystalline substance was discovered from [accused-appellant]. Afterwards, PO2 Cawaling effected the arrest of [accused-appellant] and informed him of his constitutional rights.

PO2 Cawaling recalled that he took custody of the seized plastic sachet by placing it in his pocket. To protect [accused- appellant] from his neighbors who were mad at him, PO2 Cawaling immediately brought him to the police station. Therein, PO2 Cawaling conducted the inventory. He marked the small heat-sealed transparent plastic sachet with "AAT" in the presence of [accused-appellant] and the investigator. Thereafter, he prepared the request for laboratory examination and turned over the plastic sachet seized from [accused-appellant] to Police Inspector Jeffrey Reyes *(PI Reyes)* of the crime laboratory. Based on Chemistry Report No. D-312-16 by PI Reyes, qualitative examination conducted on the heat-sealed transparent plastic sachet with marking "AAT" containing 0.061 gram of white crystalline substance yielded positive result for the presence of methamphetamine hydrochloride.

[5] Id.

On cross-examination, PO2 Cawaling admitted that no media representative or barangay official was present during marking. Although he wanted to mark the seized plastic sachet at the place of arrest and recovery, he decided to do it at the police station since the barangay hall was closed at that time.

Version of the defense

[Accused-appellant], in denying the accusations against him, testified that on 03 April 2016, at around [11:00 p.m.], he was in Kahilum II, Pandacan, Manila, when six police officers approached him. They asked if he knows two men, the names he already forgot. [Accused-appellant] denied having known these two men. He was then invited to the police station for verification. [Accused-appellant], who was scared because he was dealing with police officers, went with them. At the police station, the police officers brought out a gun and a plastic sachet and put those items in a table. [Accused-appellant] was then photographed with the gun and plastic sachet. He was detained thereafter. He only learned that a case involving illegal drugs was filed against him when he was brought to the fiscal's office for inquest.[6]

RTC Ruling

In its April 18, 2017 Decision, the RTC found accused-appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of the decision reads:

WHEREFORE, with the foregoing, the court finds the accused Arnold Tolentino *y* Calma alias "Barok," **GUILTY** beyond reasonable doubt of the crime charged. He is hereby **SENTENCED** to suffer the indeterminate penalty of 12 years and 1 day as minimum penalty, to 15 years as maximum penalty. He is also **ORDERED** to pay a fine of ₱300,000.00, subject to the prevailing rate of interest *per annum* from the finality of this decision until its full satisfaction.

SO ORDERED.[7]

The RTC placed premium on the testimony of PO2 Cawaling over that of accused-appellant. It held that PO2 Cawaling's performance of official duty enjoys the presumption of regularity. It also declared as legal the warrantless arrest effected on accused-appellant as he was seen shouting and breaking the peace, hence his arrest was *in flagrante delicto*. The RTC concluded that all the elements for violation of Sec. 11, Art. II were

[6] Id. at 33-35.
[7] Id. at 82.

established. It also held that the failure to comply with Sec. 21, Art. II of R.A. No. 9165 is not fatal because the integrity of the evidence was preserved.[8]

Unsatisfied, accused-appellant filed an appeal before the CA.

CA Ruling

In its May 29, 2018 Decision, the CA denied the appeal and affirmed with modification the RTC decision. The *fallo* of the CA decision reads:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated 18 April 2017 of Branch 28, Regional Trial Court of Manila in Criminal Case No. 16-324576 is **AFFIRMED with MODIFICATION**. Accused-appellant Arnold Tolentino *y* Calma alias "Barok" is **SENTENCED** to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum.
>
> **SO ORDERED.**[9]

The CA held that accused-appellant's guilt was established beyond reasonable doubt. It declared that PO2 Cawaling's failure to immediately mark the seized item after discovery thereof is not fatal because the integrity and evidentiary value of the seized *shabu* was preserved. It echoed the RTC's statement that the testimony of PO2 Cawaling carries with it the presumption of regularity in the performance of official functions. It also found unmeritorious accused-appellant's defense of denial. Finally, it declared accused-appellant's warrantless arrest as valid because any defect therein was waived by accused-appellant when he failed to question the same prior to entering his plea on arraignment.[10]

Petitioner filed a motion for reconsideration, which the CA denied in its August 14, 2018 Resolution.[11]

Issues

Accused-appellant ascribes the following errors on the part of the CA:

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[8] Id. at 76-82.
[9] Id. at 43-44.
[10] Id. at 36-42.
[11] Id. at 46-47.

I.

THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE [ACCUSED-APPELLANT'S] CONVICTION DESPITE THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM.

II.

THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING [ACCUSED-APPELLANT'S] CONVICTION DESPITE THE PROSECUTION'S UTTER FAILURE TO ESTABLISH THE *CORPUS DELICTI* AND TO SUFFICIENTLY SHOW THAT AN UNBROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY SEIZED DRUGS WAS ESTABLISHED.[12]

First, accused-appellant posits that while only questions of law may be raised in an appeal by *certiorari*, two (2) of the exceptions to this general rule apply herein. He avers that the judgment of the CA is premised on a misapprehension of facts and that the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion. Hence, a review of the facts is allowed.[13]

Second, accused-appellant asseverates that his failure to assail his illegal arrest before arraignment cannot affect the inadmissibility of the evidence against him. He cites the ruling in *People v. Racho*[14] in support of his argument. Further, he takes exception to the CA's pronouncement that he was caught *in flagrante delicto*. Citing *Martinez v. People (Martinez),*[15] the circumstances surrounding his arrest could not have engendered a well-founded belief that he committed any breach of the peace as he was merely shouting. In fact, he points out that no one from the crowd lodged a complaint against him. Even the arresting officer himself did not file a complaint against him for violation of the said ordinance. Since his arrest was illegal, the police officers had no right to search him and seize any items found on his person.[16]

Third, accused-appellant insists that the CA seriously erred in sustaining the integrity of the drug evidence considering the failure of the prosecution to prove an unbroken chain of custody. He points to the absolute lack of any of the mandatory witnesses in the conduct of the inventory and photograph-taking. He argues that, with the failure of the prosecution to

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[12] Id. at 16-17.
[13] Id. at 15-16.
[14] 640 Phil. 669 (2010).
[15] 703 Phil. 609 (2013).
[16] *Rollo,* pp. 17-20.

proffer any explanation for the absence of all the required witnesses, the affirmation of his conviction is seriously misplaced. His defense of denial and frame-up should not be disregarded outright.[17]

In its January 20, 2020 Comment,[18] the State averred that the instant petition must be dismissed outright because it raises questions of fact.[19] The State also argues that accused-appellant's warrantless arrest was valid as he was arrested while committing an offense for disturbing the peace. At any rate, the illegal arrest of an accused is not sufficient cause to set aside a valid judgment rendered upon a sufficient complaint after a trial free from error.[20] The State further avers that the chain of custody is unbroken as detailed by the CA in its decision.[21] Finally, it asserts that the arresting officers enjoy the presumption of regularity in the performance of their official duties. This presumption has not been overcome by accused-appellant.[22]

In his October 26, 2018[23] Reply,[24] accused-appellant insists that, contrary to the State's assertion, his illegal arrest is sufficient cause to set aside his conviction as it was during said illegal arrest that the sachet of *shabu* was allegedly retrieved by PO2 Cawaling. Said piece of evidence is inadmissible because it is the product of a warrantless search subsequent to an invalid arrest.[25] Further, accused-appellant maintains that the State failed to establish an unbroken chain of custody. PO2 Cawaling's failure to immediately mark the evidence at the place of arrest and his failure to describe how he preserved the same in any evidence bag or container of similar import establishes a weak first link. Further, the absolute lack of any of the mandatory witnesses in the conduct of the inventory and photography of the drug evidence necessarily compromised the integrity and evidentiary value of the drug seized.[26] Lastly, accused-appellant avers that the State cannot rely on the presumption of regularity despite the odious lapses of the police officers who had disregarded the requisites of Sec. 21. The presumption of regularity cannot overcome accused-appellant's presumption of innocence. As such, the State failed to establish the *corpus delicti* of the crime.[27]

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[17] Id. at 21-24.
[18] Id. at 118-131.
[19] Id. at 123.
[20] Id. at 125.
[21] Id. at 126-129.
[22] Id. at 129.
[23] This appears to be a typographical error as the Reply was stamped received by the Court on October 26, 2020.
[24] *Rollo*, pp. 141-151.
[25] Id. at 141-143.
[26] Id. at 143-146.
[27] Id. at 146-149.

Our Ruling

The petition is meritorious.

Accused-appellant should be acquitted because the *corpus delicti* in the instant case was not established.

While only questions of law may be raised in an appeal by certiorari, there are exceptions which avail in this case

It is well-established that only questions of law may be raised in an appeal by *certiorari* brought under Rule 45 of the Rules of Court. This is because the Court is not a trier of facts. It is not the function of the Court to review the evidence all over again. Furthermore, the factual findings of the trial court, especially when upheld by the Court of Appeals, are generally given great weight considering the trial court's unique position to directly observe a witness' demeanor on the stand.[28]

Nevertheless, the Court has consistently recognized exceptions to this general rule when: "(1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties."[29]

In the instant case, two of the recognized exceptions are present. The judgment is based on a misapprehension of facts and the CA manifestly overlooked certain relevant and undisputed facts that would justify a different conclusion. The foregoing will be extent in the discussion of the errors raised by accused-appellant. Accordingly, due to the presence of these exceptions, the Court may entertain the issues of fact raised in the instant appeal.

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[28] *Villasana v. People*, G.R. No. 209078, September 4, 2019.
[29] *Ramos v. People*, 826 Phil. 663, 675 (2018).

The seized sachet of drugs is admissible in evidence as it was seized from accused-appellant during a warrantless search incidental to a valid arrest

The right against illegal searches and seizures is enshrined in Sec. 2, Art. III of the 1987 Constitution. It provides:

> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Any evidence obtained from such illegal search or seizure is inadmissible, pursuant to Sec. 3(2), Art. III of the 1987 Constitution:

> SECTION 3. x x x
>
> x x x x
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

The Court has consistently held that: "[t]he general rule is that a search may be conducted by law enforcers only on the strength of a valid search warrant. Nevertheless, the Constitutional proscription against warrantless searches and seizures admits of certain exceptions, such as: 1) warrantless searches incidental to a lawful arrest; 2) seizures of evidence in plain view; 3) searches of a moving vehicle; 4) consented warrantless searches; 5) customs searches; 6) stop and frisk searches; and 7) searches under exigent and emergency circumstances."[30]

Admittedly, the evidence against accused-appellant in the instant case, a sachet of *shabu*, was seized on the occasion of a warrantless search. The State asserts that such warrantless search was incidental to a lawful arrest while accused-appellant insists that it was an invalid arrest.

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[30] *People v. Milado*, 462 Phil. 411, 416 (2003).

The Court agrees with the State.

A valid warrantless arrest which justifies a subsequent search is one that is carried out under the parameters of Sec. 5(a), Rule 113 of the Rules of Court. Said provision requires that the apprehending officer must have been spurred by probable cause to arrest a person caught *in flagrante delicto*. The term "probable cause" has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged. With respect to arrests, it is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested.[31]

Herein, accused-appellant was arrested by PO2 Cawaling on the basis of an alleged violation of Sec. 844 of the Manila City Ordinance, which provides:

> Sec. 844. Breaches of the Peace. – No person shall make, and, countenance, or assist in making any riot, affray, disorder, disturbance, or breach of the peace; or assault, beat or use personal violence upon another without just cause in any public place; or utter any slanderous, threatening or abusive language or expression or exhibit or display any emblem, transparency, representation, motto, language, device, instrument, or thing; or do any act, in any public place, meeting or procession, tending to disturb the peace or excite a riot, or collect with other persons in a body or crowd for any unlawful purpose; or disturbance or disquiet any congregation engaged in any lawfully assembly.
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> PENALTY: Imprisonment of not more than six (6) months and/or fine not more than Two Hundred pesos (PHP 200.00)

The Court held in *Martinez*[32] that Sec. 844 "penalizes the following acts: (1) making, countenancing, or assisting in making any riot, affray, disorder, disturbance, or breach of the peace; (2) assaulting, beating or using personal violence upon another without just cause in any public place; (3) uttering any slanderous threatening or abusive language or expression or exhibiting or displaying any emblem, transparency, representation, motto, language, device, instrument, or thing; and (4) doing any act, in any public place, meeting or procession, tending to disturb the peace or excite a riot, or collect with other persons in a body or crowd for any unlawfully purpose, or disturbance or disquiet any congregation engaged in any lawful assembly.

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[31] *Martinez v. People*, supra note 15, at 617-618; citations omitted.
[32] Id.

Evidently, the gravamen of these offenses is the disruption of communal tranquillity. Thus, to justify a warrantless arrest based on the same, it must be established that the apprehension was effected after a reasonable assessment by the police officer that a public disturbance is being committed."[33]

In the instant case, PO2 Cawaling testified as follows during his direct testimony:

Q : Mr. Witness, as a police officer, can you tell us where were you on April 3, 2016?
A : Sir, *duty po ako nyan sa* Pandacan Police Station 10.

Q : At around 11:30 p.m., do you remember where you were?
A : Yes, sir.

Q : Tell us where.
A : That time we apprehended the suspect, Arnold Tolentino.

Q : Prior to the apprehension of that person that you mentioned, do you remember how it came about?
A : We are riding our owned motorcycle conducting OPLAN GALUGAD.

Q : Yes, you were conducting OPLAN GALUGAD where? Where were you conducting the said OPLAN GALUGAD?
A : At the area of Kahilum II.

Q : While on board, you said, your owned motorcycle and conducting OPLAN GALUGAD along that area, what did you [observe], if any, at around that time?
A : We were riding in our motorcycle when we were about to cross the railway, we saw someone "*nagwawala.*"

Q : You said, you observed someone while passing that place "*nagwawala.*" What give you the impression that said person was being unruly, *"nagwawala"*?
A : *"Sigaw po siya ng sigaw, nag-mumura po siya."*

Q : What exactly was he shouting?
A : Ang naalala ko po ang sinabi niya, *"HOY, MGA PUTANG-INA NINYO, MAGSI-LABAS KAYO KUNG TALAGANG MATAPANG KAYO."*[34]

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[33] Id. at 618-619; emphasis supplied.
[34] TSN dated November 3, 2016, pp. 6-8.

Meanwhile, during his cross-examination, PO2 Cawaling stated the following:

Q : While you were at Kahilum Street, the area of Kahilum, you mentioned that you were able to observe a person "na nagwawala," correct?
A : Yes, Sir.

Q : And, this Kahilum Street, Mr. Witness, where was it located?
A : Located in the area of Pandacan, Sir.

Q : And this Kahilum Street, Mr. Witness, is highly populated, correct? Pandacan eh.
A : Yes, Sir.

Q : And, at that time, you were able to observe the suspect "na nagwawala," were there many people at the time?
A : Yes, Sir.

Q : In your estimate, how many?
A : Lots of people, Sir, but at the [place] of incident nobody wanted to get near him because they were afraid of him.

Q : How far were these people from the suspect?
A : When I parked my vehicle, [Sir], that [time] is three (3) to five (5) meters away from him and the people nearby five (5) to ten (10) meters away from him, Sir.

Q : According to you, this person was shouting, correct?
A : Yes, Sir.

Q : And since he was shouting, since you mentioned that the people were about ten (10) meters away from him, just by looking at the suspect, would you be able to determine to whom was he shouting to?
A : Nakatapat lang po kasi sya sa iskinita na madilim.

Q : So, wala? Wala siyang sinisigawan?
A : I didn't see anyone. I just saw him standing and shouting at the dark alley.

Q : Could you recall what the accused shouting at that time was?
A : And sinasabi lang nya, "mga putang-ina ninyo, magsilabas kayo dyan kung talagang matapang kayo."

Q : At the time you approached the suspect or at the time you were able to observe the suspect shouting, first time, how far were you?
A : About three (3) to five (5) meters, Sir.

Q : Three (3) to five (5) meters, and, during that time, was the suspect facing at you?
A : No, Sir. He was facing the alley. I came from his back.[35]

To the mind of the Court, there was probable cause on the part of PO2 Cawaling to arrest accused-appellant due to his utterances, coupled with his behavior at that time and the location where he was found being a nuisance. The testimony of PO2 Cawaling revealed that accused-appellant yelled "*Hoy, mga putang-ina ninyo, magsi-labas kayo kung talagang matapang kayo!*" at 11:30 in the evening. Consistent with human experience, it being so late at night, accused-appellant's shouting would have definitely constituted a disturbance or breach of the peace. It would have disrupted the communal tranquillity. Further, the nature of the words uttered, "*x x x magsi-labas kayo kung talagang matapang kayo!,*" necessarily reveals the intent to cause some kind of commotion. Accused-appellant's utterances and comportment that evening were done to disturb the peace in the locality.

Accused-appellant insists that the ruling in *Martinez* should apply in his favor.

The Court disagrees.

The factual circumstances in *Martinez* are not present in the instant case. In *Martinez*, the Court noted that at the time of the incident, "*Balingkit* Street was still teeming with people and alive with activity."[36] Thus, it held that the act of shouting in a thickly populated place, with several people conversing with each other on the street, cannot constitute any of the acts punishable under Sec. 844. Further, the words uttered by the accused in said case, "*Putang ina mo! Limang daan na ba ito?*" could not be characterized as slanderous, threatening, or abusive as to disturb the peace or excite a riot.

Admittedly, PO2 Cawaling testified during his cross-examination that Kahilum Street, Pandacan is a highly populated area and that there were people at the time of the incident. Nonetheless, there is no assertion herein that Kahilum Street was still bursting with human activities at the time accused-appellant was misbehaving. On the contrary, it appears that people had been drawn out of their homes due to accused-appellant's actuations. Further, the utterances made by accused-appellant were threatening and abusive enough to disturb the peace. All told, the factual circumstances in *Martinez* are not present in the instant case.

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[35] TSN dated February 13, 2017, pp. 11-13.
[36] Supra note 15, at 621.

Based on the foregoing, there was probable cause for PO2 Cawaling to effect a warrantless arrest on accused-appellant. The search conducted on accused-appellant was also valid, as it was incidental to a valid warrantless arrest. The seized sachet of *shabu* is admissible in evidence.

Nonetheless, the acquittal of accused-appellant remains in order due to the police officers' noncompliance with the mandatory requirements of Sec. 21, Art. II of R.A. No. 9165 and failure to establish the *corpus delicti*.

The prosecution failed to establish the corpus delicti

The Court has previously held that "[i]n drug-related prosecutions, the State bears the burden not only of proving the elements of the offenses of sale and possession of *shabu* under Republic Act No. 9165, but also of proving the *corpus delicti*, the body of the crime. *Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged. The *corpus delicti* is a compound fact made up of two (2) things, *viz.*: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result. **The dangerous drug is itself the *very corpus delicti* of the violation of the law prohibiting the possession of the dangerous drug.**[37] Consequently, the State does not comply with the indispensable requirement of proving *corpus delicti* when the drug is missing, and when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented in court."[38]

R.A. No. 9165, as amended by R.A. No. 10640[39] which took effect on August 7, 2014, provides for the custody and disposition of confiscated drugs, thus:

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[37] *People v. Bautista*, 682 Phil. 487, 499-500 (2012); citations omitted; emphasis supplied.
[38] Id. at 500.
[39] 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.'"

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the 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.
>
> x x x x (emphasis supplied)

Plainly, Sec. 21, as amended, requires that two (2) witnesses – an elected public official and a representative of the National Prosecution Service or the media – be present during the physical inventory and photograph of the seized items. Aside from being present during the physical inventory and photography of the seized items, they must also receive a copy of the inventory.

In the instant case, neither of the two mandatory witnesses were present during the physical inventory and photography of the seized items.

At this point, it is important to note that, per the RTC Decision, a certain Danny Garrendola *(Garrendola)* appeared as witness. The prosecution and the defense dispensed with his testimony because he did not have personal knowledge of the circumstances of the case. Nonetheless, they stipulated that he is a media practitioner from *Saksi Bomba*, a tabloid; that he

signed the Inventory of Seized Properties; and that he was present during the marking of the evidence but was not captured in the photo.[40]

During the continuation of his direct testimony on February 13, 2017, PO2 Cawaling testified that Garrendola was present as witness during the marking:

> Q : The markings, you said you were the one who made the markings. Can you tell us who were else present when you made the markings?
> A : Me, [Sir], the suspect, and Mr. Garrendola, a mediaman, and the investigator, Sir.[41]

However, during his cross-examination on the same date, PO2 Cawaling contradicted himself despite the opportunity for him to clarify:

> Q : And, in the police station, Mr. Witness, who were present aside from you and the suspect, and the other police officers?
> A : The investigator, Sir.
>
> Q : Aside from the police investigator?
> A : Our De Mesa Sir.
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> Q : Who is this De Mesa?
> A : Our desk officer, Sir, in the information.
>
> Q : I am showing you Mr. Witness the photograph earlier identified by you and marked as Exhibit "I," was this the only photograph that was taken at the police station 10?
>
> THE COURT CLERK:
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> The witness is going over the photograph.
>
> THE WITNESS:
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> A : Yes, Sir, this is the only one taken.
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> Q : In this Exhibit "I," tell us, who were present, this man, the accused?
> A : The accused, [Sir].

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[40] *Rollo*, pp. 74-75.
[41] TSN dated February 13, 2017, p. 6.

THE COURT CLERK:

The witness pointed to the man standing in the picture, as the accused.

Q : This picture was taken during the marking?
A : Yes, Sir.

Q : How about during the inventory, wala nang picture? Marking lang eh, dalawa lang kayo?
A : Opo, pag mark ko yan ng baril.

Q : How about the marking on the plastic sachet walang picture?
A : Meron po.

Q : Nasaan?

THE COURT CLERK:

The witness pointed to the second picture of Exhibit "I".

x x x x

Q : At the time, during the inventory, this was the only picture that was taken? Ito lang? Dalawa lang[?]
A : Ang alam ko po may kinunan pa po na papel na ginawa ko po na...

Q : And, during the marking as well as the inventory, aside from the suspect, you and the arresting officers were there representative from the media? Wala?
A : None, [Sir].

Q : Kayong dalawa lang?
A : Kami lang po.[42]

Due to PO2 Cawaling's contradicting testimony, both the RTC and the CA did not give any weight to the stipulations concerning Garrendola's presence during the marking of the evidence. Even the prosecution appears to have given up on this point as there was no mention of Garrendola's presence in its Comment before the Court.

Notably, the State failed to secure the presence of the two mandatory witnesses during the physical inventory and photography of the seized items pursuant to Sec. 21, as amended.

[42] Id. at 16-18.

It should be emphasized that the absence of these mandatory witnesses may be excused provided that there are (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained.[43] Hence, the prosecution must allege and prove the presence of a justifiable ground in failing to secure the presence of the mandatory witnesses, thus:

> It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> **(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**
>
> Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:
>
> > It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of [R.A. No. 9165] must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse. "Verily, mere statements of unavailability absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. 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

[43] *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019.

> time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of [R.A. No. 9165]. As such, police officers are compelled not only to state reasons for their noncompliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[44] (emphases supplied)

Unfortunately, there was neither allegation nor proof of any justifiable ground to excuse the police from securing the presence of the two mandatory witnesses during inventory and photography of the seized item. There was also no indication that the police exerted earnest efforts to secure the presence of these representatives. Clearly, the police utterly failed to comply with the requirements of Sec. 21. Such nonchalant attitude towards the rules cannot be countenanced. It must be remembered that:

> The significance of complying with Section 21's requirements cannot be overemphasized. **Noncompliance is tantamount to failure in establishing identity of *corpus delicti,*** an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. **By failing to establish an element of these offenses, noncompliance will, thus, engender the acquittal of an accused.**[45] (emphases supplied)

Aside from the failure to comply with the requirements of Sec. 21, the Court also harbors serious concerns over the integrity and evidentiary value of the seized items.

It is settled rule that the integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established. The links to be established in the chain of custody are as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[46]

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[44] *People v. Lim*, G.R. No. 231989, September 4, 2018.
[45] *People v. Dela Cruz*, 744 Phil. 816, 827 (2014).
[46] *People v. Muhammad*, G.R. No. 218803, July 10, 2019; *People v. Salvador*, 726 Phil. 389, 405 (2014).

The first link in the chain of custody of the seized sachet of *shabu* is weak. The seized sachet of *shabu* was not properly secured upon confiscation.

"Aside from marking, the seized items should be placed in an envelope or an evidence bag unless the type and quantity of these items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody. The purpose of placing the seized item in an envelope or an evidence bag is to ensure that the item is secured from tampering, especially when the seized item is susceptible to alteration or damage."[47]

In *Ramos v. People*,[48] the Court noted that one of the apprehending officers only placed the seized items in his pocket on their way to the police station.[49] The Court held that the seized items had not been properly secured in such instance.

Herein, PO2 Cawaling took custody of the seized plastic sachet by placing it in his pocket.[50] This is not the proper procedure in handling suspected drugs. Again, a more exacting standard is required of law enforcers when only a miniscule amount of dangerous drugs are alleged to have been seized from the accused.[51]

The second, third, and fourth links were also not established. There was no turnover of the illegal drug seized by PO2 Cawaling to PO3 Philip Delos Santos *(PO3 Delos Santos),* the investigating officer.[52] Instead, PO2 Cawaling testified that he prepared the request for laboratory examination and turned over the plastic sachet seized from accused-appellant to Police Inspector Jeffrey Abergas Reyes *(PI Reyes)* of the crime laboratory.[53] Even assuming that PO2 Cawaling had indeed handled the seized contraband until it was turned over to PI Reyes, still, testimony to establish the fourth link was wanting.

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[47] *Ramos v. People*, supra note 29, at 683-684.
[48] Supra note 29.
[49] Id. at 684.
[50] *Rollo*, p. 34.
[51] *Ramos v. People*, supra note 29, at 685.
[52] *Rollo*, p. 74.
[53] Id. at 75.

The Court held in *People v. Pajarin*[54] that "as a rule, the police chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned."[55]

Admittedly, the parties stipulated on the intended testimony of PI Reyes as follows: qualification and competence of PI Reyes as a forensic chemist; and the genuineness and due execution of the letter request for laboratory examination, the stamped receipt, the Chemistry Report No. D-312-16, its findings and conclusions and the signatures appearing thereon; and the chain of custody and its signatures.[56]

However, there was no stipulation that PI Reyes received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered pending trial. Clearly, there is an absolute lack of testimony concerning the fourth link in the chain. Thus, the fourth link was not established.

From the foregoing, it is apparent that the prosecution failed to establish the chain of custody. Hence, the identity of the seized drug brought to the Court cannot be relied upon.

Due to the serious defects in the physical inventory and photography of the seized evidence, as well as the substantive flaws in the chain of custody of the seized *shabu*, the identity of the seized evidence presented before the Court is highly uncertain. The prosecution failed to prove the *corpus delicti* of the crime charged, thus, casting reasonable doubt on whether accused-appellant indeed committed the serious crime ascribed to him by the State. As such, the Court must acquit accused-appellant on the basis of reasonable doubt.

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[54] 654 Phil. 461 (2011).
[55] Id. at 466.
[56] Records, pp. 19-20.

WHEREFORE, premises considered, the Court **GRANTS** the appeal; **REVERSES** and **SETS ASIDE** the May 29, 2018 Decision and August 14, 2018 Resolution of the Court of Appeals in CA-G.R. CR No. 39881, **ACQUITS** accused-appellant Arnold Tolentino *y* Calma alias *"Barok"* and **ORDERS** his immediate release from detention, unless he is being lawfully held for another cause.

The Director of the Bureau of Corrections is **DIRECTED** to cause the **IMMEDIATE RELEASE** of accused-appellant and to **INFORM** the Court of the date of his release, or the ground for his continued confinement, within ten (10) days from receipt hereof.

SO ORDERED. (Rosario, *J.*, designated additional member per Special Order No. 2797 dated November 5, 2020; on official leave)"

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
01 MAR 2021

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(Crim. Case No. 16-324576)

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(181)URES(a)