



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 12, 2021** which reads as follows:*

“G.R. No. 247875 (*Percival Catimbang y Bitong v. People of the Philippines*). – This is a Motion for Reconsideration¹ from the Resolution² dated January 15, 2020 of this Court denying the Petition for Review on *Certiorari*³ of petitioner Percival Catimbang y Bitong (Catimbang) for failure to sufficiently show that the Court of Appeals (CA) committed any reversible error in its Decision⁴ dated October 29, 2018 and Resolution⁵ dated June 17, 2019 in CA-G.R. CR No. 39894 to warrant the exercise of the Court’s discretionary appellate jurisdiction.⁶

Antecedents

Catimbang was charged with violation of Sections 11 and 12, Article II of Republic Act No. (R.A) 9165 in two separate Information, which respectively read as follows:

Criminal Case No. 14973
(For Violation of Section 11, Article II of RA 9165)

That on or about the 1st day of June 2007, at about 4:30 o’clock in the afternoon, at Barangay San Francisco, Municipality of Bauan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there

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¹ *Rollo*, pp. 139-148.

² *Id.* at 138.

³ *Id.* at 10-27.

⁴ Penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Ramon A. Cruz; *id.* at 33-44.

⁵ *Id.* at 46-47.

⁶ *Id.*

willfully and unlawfully have in his possession, custody and control three (3) heat-sealed transparent plastic sachets containing methamphetamine hydrochloride, commonly known as shabu, having a total weight of 0.48 gram, referred to as specimens A (PCB 1-060107), B1 (PCB 2A 060107) and B2 (PCB 2B 060107) in Chemistry Report No. BD-055-07, a dangerous drug.

CONTRARY TO LAW.⁷

Criminal Case No. 14972

(For Violation of Section 12, Article II of RA 9165)

That on or about the 1st day of June, 2007, at about 4:30 o'clock in the afternoon, at Barangay San Francisco, Municipality of Bauan, Province of Batangas Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully have in his possession, custody and control four (4) pieces of used aluminum foil with shabu residue, referred to as Specimen C in Chemistry Report No. BD-055-07, three (3) pieces of disposable lighter, and one (1) roll of aluminum foil, drug paraphernalia fit or intended to be used for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body.

CONTRARY TO LAW.⁸

The prosecution presented two witnesses – PO3 Adi D. Madlangbayan (PO3 Madlangbayan)⁹ and PO3 Edilberto A. Eje (PO3 Eje).¹⁰ According to their testimonies, on May 28, 2007, due to the complaint of Catimbang's wife that he was selling illegal drugs, PO2 Joey Manalo (PO2 Manalo) and a police asset conducted a test-buy operation. They were able to buy from Catimbang a substance which tested positive for methamphetamine hydrochloride or *shabu*.¹¹ Thereafter, PO2 Manalo applied for a search warrant¹² before Judge Ruben A. Galvez (Judge Galvez) of the Regional Trial Court (RTC) of Batangas City, Branch 3. The purpose of the application was to conduct a search for an undetermined quantity of *shabu* and paraphernalia in the person of Catimbang and/or his house located in

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⁷ Id. at 11-12; records (Criminal Case No. 14973), pp. 1-2.

⁸ Records (Criminal Case No. 14972), pp. 1-2.

⁹ TSN dated August 16, 2010, pp. 1-15; TSN dated November 3, 2010, pp. 1-15.

¹⁰ TSN dated May 23, 2011, pp. 1-47; TSN dated February 22, 2016, pp. 1-6.

¹¹ TSN dated August 16, 2010, pp. 7-8.

¹² Records (Criminal Case No. 14972), pp. 9-10.

San Francisco, Bauan, Batangas. On the same day, Judge Galvez issued Search Warrant No. 3-07 against Catimbang after finding that there was good and sufficient reason to believe that he was in possession of *shabu* and drug paraphernalia at his residence.¹³

At around 4:30 p.m. on June 1, 2007, a team of police officers which included P/Insp. Jose S. Marasigan (P/Insp. Marasigan), PO3 Madlangbayan, PO3 Eje, PO2 Manalo, and media representative Renz Belda (Belda) went to the house of Catimbang to serve the search warrant. When the team arrived, they found Catimbang's door open and saw a man running away. The police officers chased and caught the man who turned out to be Catimbang. P/Insp. Marasigan then called Barangay Kagawad Herminia Castor (Kgd. Castor) to serve as an impartial witness to the search and seizure.¹⁴

The police officers searched Catimbang's house and found the following items inside the cabinet located in the room of Catimbang: (a) one empty plastic sachet with suspected drug residue; (b) two small sachets of white crystalline substance; (c) four pieces of used aluminum foil with suspected drug residue; (d) three disposable lighters; and (e) one roll of aluminum foil. After the police officers informed Catimbang of his rights and the charges against him, PO3 Eje marked the seized items in the presence of Catimbang, his wife, Belda, and Kgd. Castor as follows: (a) "PCB-1," "PCB-2," and "PCB-3" on the three plastic sachets; (b) "PCB-3A," "PCB-3B," "PCB-3C," and "PCB-3D" on the four pieces of aluminum foil; (c) "PCB-4A," "PCB-4B," and "PCB-4C," on the three lighters; and (d) "PCB-5" on the roll of aluminum foil. PO3 Eje took pictures of the seized items and prepared an inventory of the same, as evidenced by a *resibo/inbentaryo* witnessed by Kgd. Castor and Belda.¹⁵

Catimbang was then brought to the police station for investigation. PO3 Eje, who took custody of the seized items after confiscation, brought the same to the Philippine National Police Crime Laboratory for examination together with a request for laboratory examination prepared by P/Insp. Marasigan.¹⁶ Forensic Chemical Officer Jupri Caballegan Delantar (S/Insp. Delantar) examined the items and determined that the crystalline substance and the residue in the pieces of aluminum foil seized all tested positive for

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¹³ Id. at 11.

¹⁴ *Rollo*, p. 35.

¹⁵ Records (Criminal Case No. 14972), p. 16.

¹⁶ Id. at 585-585-A.

methamphetamine hydrochloride, as evidenced by Chemistry Report No. BD-055-07.¹⁷

The defense presented two witnesses, Catimbang¹⁸ and his brother Licerio Catimbang (Licerio).¹⁹ Catimbang denied the allegations against him. He maintained that he was arrested on May 29, 2007 and not June 1, 2007.²⁰ Catimbang insisted that 10 armed men in plain clothes stormed his house and forced him to give information about a certain "Jericho" who frequented his eatery and was allegedly engaged in selling illegal drugs. The men searched his house, made him sign documents, and suspected him of being an accomplice of Jericho. Catimbang alleged that the men did not find anything other than a roll of aluminum foil being used in the eatery.²¹ Catimbang claimed that when he was brought to the police provincial office, the men asked him to admit owning a big plastic sachet containing *shabu*. Then, he was brought back to his house where he saw Kgd. Castor and was asked to sign another set of papers.²² He was taken to the house of a certain Jericho where police officers conducted a search. They went to Batangas Regional Hospital but he was not brought inside.²³ He was then asked by the police to settle the case with their chief. Thereafter, P/Insp. Marasigan told Licerio to settle the case of Catimbang for ₱350,000.00, which was later reduced to ₱150,000.00. As they did not have the amount, Catimbang was charged with violation of Sections 11 and 12 of R.A 9165.²⁴

Ruling of the Regional Trial Court

On August 11, 2016, the RTC rendered its Joint Decision²⁵, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered:

(1) In Criminal Case No. 14973, finding accused PERCIVAL CATIMBANG y BITONG GUILTY beyond reasonable doubt of illegal possession of methamphetamine hydrochloride, having an aggregate weight of 0.48 gram in violation of

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¹⁷ Id. at 17.

¹⁸ TSN dated February 8, 2015, pp. 1-26; TSN dated June 8, 2015, pp. 1-9; TSN dated May 23, 2016, pp. 1-5.

¹⁹ TSN dated August 10, 2015, pp. 1-9; TSN dated September 9, 2015, pp. 1-7.

²⁰ TSN dated February 9, 2015, p. 4.

²¹ Id. at 5-8; records (Criminal Case No. 14972), p. 786.

²² TSN dated February 9, 2015, pp. 11-13

²³ Id. at 16-19.

²⁴ Id. at 787-799; TSN dated February 9, 2015, p. 23; TSN dated June 8, 2015, p. 6.

²⁵ Penned by Presiding Judge Aida C. Santos; *rollo*, pp. 70-89.

Section 11, Article II of R.A. No. 9165. He is hereby sentenced to suffer imprisonment of twelve (12) years and one (1) day to fourteen (14) years and to pay a fine of three hundred thousand pesos (P300,000.00), without subsidiary imprisonment in case of insolvency;

(2) In Criminal Case No. 14972, finding accused PERCIVAL CATIMBANG y BITONG GUILTY beyond reasonable doubt of illegal possession of drug paraphernalia in violation of Section 12, Article II of RA No. 9165. He is hereby sentenced to suffer imprisonment of six (6) months and one (1) day up to two (2) years and to pay a fine of twenty thousand pesos (P20,000.00).

The penalties imposed upon the accused shall be served successively, beginning with the more severe penalty.

The plastic sachets of methamphetamine hydrochloride subject-matter of these cases are hereby ordered **CONFISCATED and FORFEITED** in favor of the government to be disposed of in accordance with the provisions of **Section 21** of the same Act.

In view of the conviction of the accused in **Criminal Case Nos. 14972 and 14973**, the Jail Warden of the Batangas Provincial Jail is hereby ordered to immediately **TAKE CUSTODY** of the accused for the purpose of his delivery to the National Bilibid Prison in Muntinlupa City, Metro Manila for the service of his sentences, which he shall serve successively, beginning with the more severe penalty.

SO ORDERED.²⁶ (Emphasis in the original, citation omitted)

In convicting Catimbang, the RTC was convinced that the elements of Sections 11 and 12 of R.A. 9165 were established by the prosecution.²⁷ The RTC narrated the sequence of events comprising the unbroken chain of custody and concluded that the prosecution's evidence outweighed the bare denial of Catimbang.²⁸ The prosecution's evidence established that PO3 Madlangbayan and PO3 Eje, accompanied by Kgd. Castor and Belda, and in the presence of

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²⁶ Id. at 88-89.

²⁷ Id. at 81-83.

²⁸ Id. at 85-88.

Catimbang and his wife, searched Catimbang's house and found an open big plastic sachet with *shabu* residue from the cabinet, two sealed plastic sachet containing suspected *shabu*, four used aluminum foil strips, three disposable lighters, and a roll of aluminum. PO3 Eje placed his markings "PCB-1," "PCB-2A," and "PCB-2B" on the three plastic sachets; "PCB-3A," "PCB-3-B," "PCB-3C," and "PCB-3D" on the four small folded pieces of aluminum foil; "PCB-4A," "PCB-4B," and "PCB-4C," on the three lighters; and "PCB-4B" on the roll of aluminum foil.²⁹ PO3 Eje prepared the *Resibo/Imbentaryo*³⁰ that was signed by Catimbang, his wife, Castor, and Belda. PO3 Eje kept custody of the items from the moment they were seized until turned over to their office. At the police station, PO3 Eje prepared the requests for laboratory examination of the items. PO3 Eje personally brought the items to the Batangas Provincial Crime Laboratory Office (Crime Laboratory) for examination at 11:45 p.m. of June 1, 2007 and received by PO2 Enriquez. Chemistry Report No. BD-055-7³¹ prepared by S/Insp. Delantar confirmed that the white crystalline substance in the plastic bags marked as "PCB-1," "PCB-2A," and "PCB-2B" all tested positive for the presence of methamphetamine hydrochloride weighing 0.12 grams, 0.35 grams, and 0.01 grams, respectively. The specimens were submitted to the RTC on March 12, 2012.³² The RTC also held that the accusation of Catimbang that the police officers framed him up so that they could extort money was not substantiated by clear and convincing evidence.³³

On appeal, Catimbang impugned the findings of the RTC and raised the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSES CHARGED, BASED ON THE INCONSISTENT AND IMPROBABLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 11 AND 12,

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²⁹ Id. at 85-86.

³⁰ Records (Criminal Case No. 14972), p. 16.

³¹ Id. at 584.

³² *Rollo*, pp. 86-87.

³³ Id. at 87.

ARTICLE II OF R.A. NO. 9165,
NOTWITHSTANDING THE PROSECUTION'S
FAILURE TO PROVE THE ELEMENTS
THEREOF BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT GRAVELY ERRED IN
CONVICTING THE ACCUSED-APPELLANT OF
VIOLATION OF SECTIONS 11 AND 12,
ARTICLE II OF R.A. NO. 9165, DESPITE THE
POLICE OFFICERS' FAILURE TO FAITHFULLY
COMPLY WITH THE PERTINENT DRUG
ENFORCEMENT RULES AND REGULATIONS,
AND THE CHAIN OF CUSTODY
REQUIREMENT.³⁴

Ruling of the Court of Appeals

In a Decision³⁵ dated October 29, 2018, the appeal of Catimbang was denied.³⁶ The CA held that the prosecution successfully proved the elements of illegal possession of dangerous drugs. The three plastic sachets containing white crystalline substance which tested positive for *shabu* was found inside his residence and he had no legal authority to possess them.³⁷ The CA also found that the prosecution convincingly established Catimbang's possession of drug paraphernalia, particularly, used aluminum foil with *shabu* residue and lighters.³⁸

With regard to the claim of Catimbang that the prosecution failed to present an unbroken chain of custody, the CA ruled that integrity and evidentiary value of the seized articles were duly preserved. After discovery and seizure of the illegal drugs and paraphernalia, PO3 Eje immediately marked the seized items in the presence of Catimbang, his wife, Belda, and Kgd. Castor. After marking, an inventory was prepared. PO3 Eje then turned over the seized items to S/Insp. Delantar for examination. The CA also explained that non-presentation of the forensic chemist is not fatal to the cause of the prosecution. The CA declared that Chemistry Report No. BD-055-07 enjoys the presumption of regularity in its preparation and is *prima facie* evidence of the facts stated therein.³⁹

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³⁴ Id. at 50-51.
³⁵ Supra note 4.
³⁶ *Rollo*, p. 43.
³⁷ Id. at 39.
³⁸ Id. at 40.
³⁹ Id. at 40-42.

In the Resolution⁴⁰ dated June 17, 2019, the CA denied the Motion for Reconsideration of Catimbang.⁴¹

In the present petition,⁴² Catimbang insists that the evidence presented by the prosecution and the testimonies of the apprehending officers do not corroborate each other on material points.⁴³ He raises the following inconsistencies: (1) The search warrant was issued on May 29, 2007 yet it was only implemented on June 1, 2007;⁴⁴ (2) PO3 Madlangbayan and PO2 Eje claimed that they conducted a test-buy on Catimbang on May 28, 2007 but PO2 Eje admitted during his direct examination that they were only able to identify Catimbang as the subject of their operation after the latter's wife identified him at the time of his arrest;⁴⁵ (3) PO2 Eje erroneously identified Kgd. Castor as a male;⁴⁶ (4) When PO3 Madlangbayan testified, he enumerated all items allegedly seized from the house of Catimbang except the supposed three pieces of plastic sachets containing *shabu* but did not have trouble recalling the same in other instances;⁴⁷ and (5) PO3 Madlangbayan appears to be inconsistent in identifying the three marked lighters confiscated from Catimbang.⁴⁸ He maintains that the prosecution failed to present the case investigator and establish an unbroken chain of custody pursuant to Section 21 or R.A. 9165.⁴⁹ He alleges that the prosecution also did not submit any chain of custody form to prove faithful compliance with the chain of custody requirement.⁵⁰ Catimbang points out that PO2 Eje admitted that inventory was not conducted in the presence of Catimbang's counsel or of any representative from Department of Justice (DOJ). Pictures of the seized items were not presented in evidence. Belda and Kgd. Castor were not presented as witnesses either.⁵¹

In a Resolution⁵² dated January 15, 2020 of the Court resolved to deny the petition of Catimbang for failure to sufficiently show that the CA committed any reversible error in its Decision dated October 29, 2018 and Resolution dated June 17, 2019 in CA-G.R. CR No.

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⁴⁰ Supra note 5.
⁴¹ *Rollo*, p. 47.
⁴² Id. at 10-27.
⁴³ Id. at 19-21.
⁴⁴ Id. at 19.
⁴⁵ Id.
⁴⁶ Id. at 20.
⁴⁷ Id.
⁴⁸ Id.
⁴⁹ Id. at 21-22, 25.
⁵⁰ Id. at 22-24.
⁵¹ Id. at 24.
⁵² Id. at 138.

39894 to warrant the exercise of the Court's discretionary appellate jurisdiction.⁵³

In his Motion for Reconsideration,⁵⁴ Catimbang reiterated his arguments in his petition and pointed out irregularities during the search and seizure that he claims to be fatal in establishing an unbroken chain of custody of the items allegedly seized from him.⁵⁵

Issues

The issues to be resolved are:

- (1) whether it was irregular for the search warrant to be implemented two days after it was issued; and
- (2) whether the CA erred in affirming the conviction of Catimbang for Section 11 (illegal possession of dangerous drugs) and Section 12 (illegal possession of drug paraphernalia) under R.A. 9165.

Ruling of the Court

The Motion for Reconsideration of Catimbang is meritorious.

There is no irregularity in implementing a search warrant two days after it was issued

At the outset, it must be clarified that there is no irregularity in implementing a search warrant two days after it was issued. Section 10, Rule 126 of the Rules of Court (Rules) states:

Section 10. Validity of search warrant – A search warrant shall be valid for ten (10) days from its date. Thereafter, it shall be void.

The Rules specifically state that the validity period of a search warrant is 10 days from its date of issuance. Therefore, the police officers who secured the search warrant may carry out the search on any date within said period.

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⁵³ Id.

⁵⁴ Id. at 139-148.

⁵⁵ Id. at 146.

The integrity and evidentiary value of the items seized from Catimbang were not properly preserved in compliance with Section 21 of R.A. 9165.

Catimbang essentially assails that the evidence presented by the prosecution did not comply with Section 21 of R.A. 9165 and the integrity and evidentiary value of the seized items were not properly preserved. The questions posited are evidently factual because they require careful examination of the evidence on record.

As a rule, the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal. However, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.⁵⁶ After a judicious examination of the records, this Court found material facts and circumstances that the lower courts had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived by the lower courts.

In cases involving dangerous drugs under R.A. 9165, the identity of the dangerous drug must be established with moral certainty as it forms an integral part of the *corpus delicti* of the crime.⁵⁷ Failure to prove the integrity of the *corpus delicti* renders the drugs seized insufficient to prove the guilt of the accused beyond reasonable doubt, thus warranting an acquittal. Pursuant to Section 21 of R.A. 9165, the provision governing chain of custody in drugs cases prior to its amendment in R.A. 10640,⁵⁸ the following must be observed:

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

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⁵⁶ *People v. Gonzales*, G.R. No. 233544, March 25, 2019, citing *People v. Robles*, 604 Phil 536, 543 (2009).

⁵⁷ *People v. Crispo*, 828 Phil. 416, 429 (2018).

⁵⁸ R.A. 10640 took effect on July 23, 2014; see OCA Circular No. 77-2015 dated April 23, 2015.

and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a **representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof; (Emphasis supplied)

Based on the foregoing, the presence of the following witnesses are required during the physical inventory: (a) a representative from the media and the DOJ; and (2) any elected public official. The presence of these witnesses during the marking of the seized items is an integral aspect of the physical inventory and the absence of these witnesses cast doubt on the integrity and evidentiary value of the seized items.

In *Tumabini v. People*,⁵⁹ the Court clarified that:

Section 21 of R.A. No. 9165 applies whether the drugs were seized either in a buy-bust operation or pursuant to a search warrant. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. To ensure the establishment of the chain of custody, Sec. 21 (1) of R.A. No. 9165 specifies that:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after **seizure and confiscation**, physically inventory and

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⁵⁹ G.R. No. 224495, February 19, 2020.

photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory and photograph the same in the presence of (1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media and (3) the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

A plain reading of the law shows that it applies as long as there has been a seizure and confiscation of drugs. There is nothing in the statutory provision which states that it is only applicable when there is a warrantless seizure in a buy-bust operation. Thus, it should be applied in every situation when an apprehending team seizes and confiscates drugs from an accused, whether through a buy-bust operation or through a search warrant.⁶⁰ (Emphasis supplied; citation omitted)

Accordingly, the stringent rules governing chain of custody in Section 21 of R.A. 9165 should be applied not only to buy-bust operations but also in searches and seizure conducted pursuant to a search warrant, as in this case. The evidentiary value of items seized in searches carried out through a warrant hinge on the compliance of law enforcers with these rules.

While Section 8, Rule 126 of the Rules only require two witnesses to be present during the implementation of the search, the witness requirement in Section 21 of R.A. 9165, which is a special provision that specifically applies to the seizure and confiscation of dangerous drugs, prevails.⁶¹ As the Court ruled in *Tumambini*,⁶² in case of conflict between a general law and a special law, the latter

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⁶⁰ Id.

⁶¹ Id.

⁶² Id.

must prevail regardless of the dates of their enactment. Section 8, Rule 126 is not even a substantive law but a remedial provision.⁶³

In the present case, the apprehending officers failed to comply with the witness requirement in Section 21 of R.A. 9165. PO2 Eje admitted that he did not inventory the seized items in the presence of any representative from the DOJ as revealed in the following exchange:

Q: What did you do with the said plastic sachet of shabu or that plastic sachet containing shabu residue?

A: In the presence of Barangay Official and the media representative, I placed the markings of the initial name of Percival Catimbang, sir.⁶⁴

Moreover, notwithstanding PO2 Eje's testimony that pictures of the seized items were taken right after the search and seizure operation, these were not presented due to the unsubstantiated and self-serving claim that the person in custody thereof, PO2 Manalo, already stopped reporting for work.⁶⁵

Although strict compliance with the chain of custody procedure may not always be possible, the lapses should be reasonably justified. In *Limbo v. People*,⁶⁶ the Court explained that:

x x x [N]on-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, **mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.** These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest

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⁶³ Id.

⁶⁴ TSN dated May 23, 2011, p. 13.

⁶⁵ Id. at 40.

⁶⁶ G.R. No. 238299, July 1, 2019.

— to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.⁶⁷ (Citations omitted; emphasis supplied)

Here, the apprehending officers offered no explanation why no representative from the DOJ was present to witness the actual inventory and marking as revealed in the following exchange:

Q: Likewise you were asked that there is a signature of accused Percival Catimbang in this Resibo/Inbentaryo and it was signed without the assistance of counsel, may we know why he was not assisted by counsel at the time the Resibo/ Intbentaryo was signed by Percival Catimbang?

A: That day sir before we left our office, our team leader try to contact at the Prosecutor's Office but I don't know if he was able to contact somebody, sir.⁶⁸

It must be noted that the search warrant issued on May 29, 2007 was only implemented on June 1, 2007. The law enforcers had ample time to secure the presence of the required witnesses. In addition, even with the prosecution's claim that the media representative Belda and Kgd. Castor witnessed the inventory of the seized articles, they were never presented to support the prosecution's version of facts.

It must also be pointed out that PO3 Eje was inconsistent in identifying Kgd. Castor. In his direct examination, he unequivocally confirmed that Kgd. Castor is a male.⁶⁹ However, a review of the records, including the transcript of the testimonies of all witnesses, reveals that Kgd. Castor had been consistently referred to as a female based on the pronouns "she" and "her" used to identify her. A plain reading of Kgd. Castor's first name, Herminia, suggests that she is a female. The failure of PO3 Eje to accurately identify one of the purported witnesses to the marking and inventory of the items seized from Catimbang through such basic information raises doubt as to the truthfulness of his statements and the reliability of his recollection of the events that transpired during the implementation of the search warrant.

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⁶⁷ Id.

⁶⁸ TSN dated May 23, 2011, p. 41.

⁶⁹ TSN dated May 23, 2011, p. 9.

To establish the identity of the dangerous drug seized with moral certainty, the following links in the chain of custody must be established:

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 by the forensic chemist to the court.⁷⁰

In *People v. Arposeple*,⁷¹ the Court emphasized the importance of the first link:

The first link in the chain of custody was undoubtedly inherently weak which caused the other links to miserably fail. The first link, it is emphasized, primarily deals on the preservation of the identity and integrity of the confiscated items, the burden of which lies with the prosecution. The marking has a twin purpose: viz: first, **to give the succeeding handlers of the specimen a reference**, and second, **to separate the marked evidence from the corpus of all other similar or related evidence from the moment of seizure until their disposition at the end of criminal proceedings, thereby obviating switching, "planting," or contamination of evidence.** Absent therefore the certainty that items that were marked, subjected to laboratory examination, and presented as evidence in court were exactly those that were allegedly seized from Arposeple, there would be no need to proceed to evaluate the succeeding links or to determine the existence of the other elements of the charges against appellants. Clearly, the cases for the prosecution had been irreversibly lost as a result of the weak first link irretrievably breaking away from the main chain.⁷² (Emphasis supplied)

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⁷⁰ *People v. Siaton*, 789 Phil. 87 (2016).

⁷¹ 821 Phil. 340 (2017).

⁷² *Id.*

Noticeably, in this case, the Chain of Custody Form was not submitted in evidence to prove faithful compliance with the chain of custody requirement. The first link in the chain of custody, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer, was not sufficiently established due to the absence of the required witnesses during the actual inventory and marking. Considering that the first link in the chain of custody is unreliable, there is no more need to discuss the subsequent links. Accordingly, the prosecution failed to demonstrate an unbroken chain of custody over the seized items and the integrity and evidentiary value of the evidence against Catimbang was not preserved.

Nonetheless, even if there has been compliance with the witness requirement in Section 21 of R.A. 9165, Catimbang should still be acquitted. In *People v. Pajarin*,⁷³ the Court held that:

x x x [A]s 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.⁷⁴

Moreover, it is settled that in the absence of any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized after its qualitative examination, the fourth link in the chain of custody could not be reasonably established.⁷⁵

In the present case, the forensic chemist who examined the seized articles was not presented during trial nor did the parties make the necessary stipulations to dispense with the testimony of the forensic chemist. Though S/Insp. Delantar appeared several times in court when he was subpoenaed, the prosecution never presented him to testify on his findings in Chemistry Report No. BD-055-07. In the letter dated February 3, 2010 of S/Insp. Delantar to the trial court, he stated:

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⁷³ 654 Phil. 461 (2011).

⁷⁴ Id. at 466.

⁷⁵ *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

x x x [T]he original copy of chemistry report no. **BD-055-07**, letter request for laboratory examination and the specimen subject of the examination and request were already turned-over to the **Prosecution office**. Request stipulation.⁷⁶
(Emphasis in the original; underscoring supplied)

However, there is no record of any stipulation between the parties sufficient to properly dispense with the testimony of the forensic chemist, thus, the third and fourth links are missing.

Here, the prosecution failed to establish who brought the seized items to the trial court. PO3 Madlangbayan simply mentioned the existence of the seized items which were attached to the chemistry report he identified during his direct examination, as revealed in the following exchange:

THE FISCAL:

Q: What was the result of the request for laboratory examination Mr. Witness?

A: Positive, sir.

Q: What do you mean by the word positive sir.

A: It was shabu, sir.

Q: Do you have a copy of the laboratory result of the said item which was brought to the laboratory for examination, do you have a copy of the laboratory examination result?

A: Yes sir.

Q: May we request the good counsel to compare the document produced by this witness to the document attached to our record and marked as Exhibit "F" for the prosecution.

ATTY. HERNANDEZ, JR.:

This is not a faithful reproduction of the original your Honor. This has no signature of Mariano Aguila Liwag, this is not a faithful reproduction, your Honor.

THE FISCAL:

Q: In that copy Mr. Witness there is no signature of Mariano Aguila Liwag, whereas in the photocopy of the prosecutor there was a signature of Mariano Aguila Liwag, are you in a position to tell before this Hon. Court that

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⁷⁶ Records (Criminal Case No. 14972), p. 399.

this document is the same chemistry report on the examination of the shabu which was delivered and brought to the crime laboratory by PO3 Manalo on May 28, 2007?

A: Yes sir.⁷⁷

Chemistry Report No. BD-055-07 was not properly authenticated and is thus hearsay evidence because PO3 Madlangbayan had no personal knowledge of the circumstances surrounding its preparation. He did not personally deliver the seized articles to the forensic chemist nor was he present during the physical examination. It was not even clear who obtained the chemistry report from S/Insp. Delantar. Therefore, Chemistry Report No. BD-055-07 is inadmissible to prove that the seized articles are dangerous drugs.

While Catimbang's denial of the charges against him and his claim that he was framed-up was uncorroborated by any convincing evidence, the apparent weakness of his defense does not add any strength nor can it help the prosecution's cause. If the prosecution cannot establish, in the first place, Catimbang's guilt beyond reasonable doubt, the need for the defense to adduce evidence in its behalf never arises. However weak the defense evidence might be, the prosecution's whole case still falls. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.⁷⁸ To Our mind, the prosecution failed to prove compliance with the stringent rules and requirements governing chain of custody.

The Court has acknowledged that "in some instances[,] law enforcers resort to the practice of planting evidence to extract information or even to harass civilians."⁷⁹ Thus, the Court must be extra vigilant in trying drugs cases. The presumption that the regular duty was performed by the arresting officer cannot prevail over the constitutional presumption of innocence of the accused.⁸⁰ In this case, We find that the integrity and evidentiary value of the *shabu* and drug paraphernalia purportedly seized from Catimbang were compromised, thus necessitating his acquittal.

In view of the foregoing, We no longer deem it necessary to discuss the other issues raised by Catimbang in his Motion for Reconsideration.

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⁷⁷ TSN dated August 16, 2019, pp. 8-9.

⁷⁸ *People v. Sanchez*, 590 Phil. 214, 244 (2008).

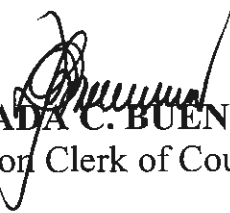
⁷⁹ *People v. Gonzales*, G.R. No. 233544, March 25, 2019, citing *People v. Bintaib*, 829 Phil. 13, 25-26 (2018).

⁸⁰ *Id.*

WHEREFORE, the Motion for Reconsideration is **GRANTED**. The Resolution dated January 15, 2020 of the Court is **REVERSED** and **SET ASIDE**. Petitioner Percival Catimbang y Bitong is **ACQUITTED** in Criminal Case Nos. 14972 and 14973 for failure to prove his guilt beyond reasonable doubt, and is **ORDERED** to be **IMMEDIATELY RELEASED** unless he is being held for some other valid or lawful cause. The Director of Prisons is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *off 2/19*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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