



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **May 5, 2021**, which reads as follows:*

“G.R. No. 243665 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. ALI AÑONUEVO y FLORES, *accused-appellant*). — This Court resolves the appeal assailing the Court of Appeals Decision,¹ which affirmed the conviction² of Ali Añonuevo y Flores (Añonuevo) for violations of Sections 5,³ 11,⁴ and 12⁵ of Republic Act No. 9165, otherwise

¹ *Rollo*, pp. 2–20. The Decision was penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court), and concurred in by Associate Justices Fernanda Lampas Peralta and Ma. Luisa C. Quijano-Padilla of the Fifth Division, Court of Appeals, Manila.

² *CA rollo*, pp. 59–67. The Decision was penned by Presiding Judge Iuminado M. Dela Peña of the Regional Trial Court of Santa Cruz, Laguna, Branch 28.

³ Republic Act No. 9165 (2002), sec. 5 provides:

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section. Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another,

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The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

⁴ Republic Act No. 9165 (2002), sec. 11 provides:

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

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

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

- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
- (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and
- (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

⁵ Republic Act No. 9165 (2002), sec. 12 provides:

known as the Comprehensive Dangerous Drugs Act of 2002.

Añonuevo was charged with these crimes in three separate Informations, which read:

CRIMINAL CASE NO. SC-17048

That on or about March 27, 2014, in the Municipality of Lumban, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized and permitted by law, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur-buyer, one (1) heat-sealed transparent plastic sachet containing 0.34 gram of Methamphetamine Hydrochloride, otherwise known as shabu, in consideration of FIVE HUNDRED (P500.00) PESOS in violation of the aforementioned law.

CONTRARY TO LAW.

CRIMINAL CASE NO. SC-17049

That on or about March 27, 2014, in the Municipality of Lumban, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized and permitted by law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody three (3) heat-sealed transparent plastic sachet containing a total net weight of 0.84 gram of Methamphetamine Hydrochloride, otherwise known as Shabu, a dangerous drug.

CONTRARY TO LAW.

CRIMINAL CASE NO. SC-17050

That on or about March 27, 2014, in the Municipality of Lumban, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized and permitted by law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody drug paraphernalia such as six (6) pcs of empty transparent plastic sachet, four (4) pcs of aluminum foil strips, five (5) pcs of disposable lighter and one (1) pc of scissor[s], fit or intended for use of dangerous drugs, in violation of the aforementioned law.

Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs. - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be prima facie evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

CONTRARY TO LAW.⁶

When arraigned, Añonuevo pleaded not guilty to the charges. Trial then ensued.⁷

Police Officer 3 Dustin Gomez (PO3 Gomez) and PO2 Henor Lagunias (PO2 Lagunias) testified for the prosecution. They recounted that on March 26, 2014, they received a tip that Añonuevo was peddling illegal drugs on Magano Street, Brgy. Maytalang, Lumbang, Laguna. A buy-bust team was then formed with PO3 Gomez as poseur-buyer and PO2 Lagunias and PO2 Joel Agao as back-up. PO2 Lagunias prepared a pre-operation report and coordinated their operations with the Philippine Drug Enforcement Agency. PO3 Gomez prepared a ₱500.00 bill, marked with initials “DDG,” to serve as buy-bust money. They claimed to have called for a media representative, although no one came. When their preparations were done, the buy-bust team proceeded to the place where Añonuevo was allegedly peddling drugs, but he was not there.⁸

The buy-bust team returned the following day. By then, they found Añonuevo standing outside his house. The informant approached Añonuevo and introduced PO3 Gomez as an interested shabu buyer. The informant added that they were buying ₱500.00 worth of shabu. Añonuevo produced an apparent sachet of shabu and handed it to PO3 Gomez. In turn, the informant handed the marked bill to Añonuevo.⁹

At this, PO3 Gomez held Añonuevo’s hands, introduced himself as a police officer, and marked the plastic sachet “DDG”. Upon further search on Añonuevo, PO3 Gomez obtained from him three sachets apparently containing shabu, six empty plastic sachets, four aluminum foils, five lighters, a pair of scissors, and the marked money. Before leaving, the items were inventoried.¹⁰

At the police station, pictures of the seized items were taken. PO3 Gomez prepared a request for laboratory examination. He and PO2 Lagunias submitted the sachets for examination, bringing Añonuevo with them. The sachets’ contents would eventually test positive for shabu.¹¹

For the defense, Añonuevo denied the charges against him. He recalled that at noon on March 27, 2014, while he was standing outside his friend Bren Matienzo’s house, two men arrived in search of a certain

⁶ *Rollo*, pp. 3–4.

⁷ *Id.* at 4.

⁸ *Id.* at 4–5.

⁹ *Id.* at 5.

¹⁰ *Id.* at 5–6.

¹¹ *Id.* at 6.

“Tubo.” He denied knowing such a person. At this, he was forced to lie on the ground. He was then handcuffed, made to ride a motorcycle, and taken to the police station. There, he was detained without being informed of the reason for his detention. A certain Rex offered that he tender ₱100,000.00 in exchange for his freedom. As he was unable to satisfy this amount, he was made to face the charges filed against him.¹²

Lending credence to the prosecution’s version of events, the Regional Trial Court rendered its December 8, 2016 Decision¹³ finding Añonuevo guilty beyond reasonable doubt on all charges. The dispositive portion of this Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. SC-17048, finding accused ALI AÑONUEVO y FLORES @ DULAT GUILTY BEYOND REASONABLE DOUBT of Violation of Section 5, Article II, R.A. 9165 and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred [Thousand] Pesos (P500,000.00);
2. In Criminal Case No. SC-17049, finding accused ALI AÑONUEVO y FLORES @ DULAT GUILTY BEYOND REASONABLE DOUBT of Violation of Section 11, Article II, R.A. 9165 and sentencing him to suffer imprisonment for an indeterminate term of twelve (12) years and one (1) day, as minimum to fourteen (14) years and eight (8) months as maximum and to pay a fine of Three Hundred Thousand Pesos (P300,000.00); and
3. In Criminal Case No. SC-17050, finding accused ALI AÑONUEVO y FLORES @ DULAT GUILTY BEYOND REASONABLE DOUBT of Violation of Section 12, Article II, R.A. 9165 and sentencing him to suffer the penalty of imprisonment for an indeterminate term of six (6) months and one (1) day as minimum to two (2) years and seven months as maximum and to pay a fine of Ten Thousand Pesos (P10,000.00).

The four (4) plastic sachets of shabu, with a total weight of 1.18 grams, and the drug paraphernalia are ordered confiscated in favor of the government and the Branch Clerk of Court is hereby ordered to transmit the same to the appropriate government agency for proper disposition.

SO ORDERED.¹⁴

¹² Id. at 7.

¹³ CA *rollo*, pp. 59–67.

¹⁴ Id. at 67.

In its assailed July 26, 2018 Decision,¹⁵ the Court of Appeals affirmed the Regional Trial Court Decision *in toto*. It noted that, lapses notwithstanding, the police officers “substantially complied”¹⁶ with the Comprehensive Dangerous Drugs Act’s chain of custody requirements.

Thus, Añonuevo filed his Notice of Appeal.¹⁷

For this Court’s resolution is the issue of whether or not accused-appellant Ali Añonuevo y Flores is guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs and other paraphernalia, as penalized in Sections 5, 11, and 12 of the Comprehensive Dangerous Drugs Act.

Accused-appellant must be acquitted. The buy-bust operation is tainted with violations of the Comprehensive Dangerous Drugs Act’s mandatory chain of custody requirements under its Section 21. Although exceptions may be entertained, the prosecution has the duty to plead and prove justifiable grounds. Its failure to do so in this case is fatal to its cause.

The elements that must be established to secure convictions for violations of Sections 5, 11, and 12 of the Comprehensive Dangerous Drugs Act are settled. In each of these offenses, the integrity of the *corpus delicti* is crucial:¹⁸

Case law states that in every prosecution for Illegal Sale of Dangerous Drugs, the following elements must be proven with moral certainty: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the necessary elements thereof, to wit: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. And finally, to properly secure the conviction of an accused charged with Illegal Possession of Drug Paraphernalia, the prosecution must show: (a) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (b) such possession is not authorized by law.

In all these instances, it is essential that the identity of the prohibited drugs and/or drug paraphernalia be established beyond reasonable doubt, considering that the prohibited drug and/or drug paraphernalia form an integral part of the *corpus delicti* of the crime/s. The prosecution has to show an unbroken chain of custody over the dangerous drugs and/or drug paraphernalia. Thus, in order to obviate any

¹⁵ *Rollo*, pp. 2–20.

¹⁶ *Id.* at 14.

¹⁷ *Id.* at 21–23.

¹⁸ 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

unnecessary doubts on the identity of the dangerous drugs and/or drug paraphernalia on account of switching, “planting,” or contamination of evidence, the prosecution must be able to account for each link of the chain from the moment of seizure up to presentation in court as evidence of the *corpus delicti*.¹⁹ (Citations omitted)

Section 21 of the Comprehensive Dangerous Drugs Act addresses the matter of the integrity of *corpus delicti* by mandating chain of custody requirements concerning allegedly confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21 has since been amended by Republic Act No. 10640, which took effect on August 7, 2014. However, since this case’s incidents occurred in March 2014, Section 21’s original formulation governs.

Section 21(1), as originally worded, states in part:

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

- (1) The apprehending team having initial custody and control of the 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[.]

Here, not even one of the three witnesses required by Section 21(1) to be present during the actual arrest and seizure, as well as the subsequent marking, inventory, and taking of photographs, was present in any of these stages.

This Court has been definite on the need for all of these three witnesses to be present as early as during the actual arrest and seizure. In *People v. Tomawis*:²⁰

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of

¹⁹ *People v. Lumaya*, 827 Phil. 473, 484–485 (2018) [Per J. Perlas-Bernabe, Second Division].

²⁰ 830 Phil. 385 (2018) [Per J. Caguioa, Second Division].

the Court in *People v. Mendoza*, without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.

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.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”²¹ (Citations omitted)

Granted, there are exceptional cases when deviations from Section 21’s chain of custody requirements may be countenanced and a conviction obtained. Nevertheless, “the prosecution bears the burden of first acknowledging procedural lapses and specifically plead justifiable grounds for these lapses. It must also plead specific safety measures taken in view of the deviations made from the chain of custody requirements.”²²

Particularly for missing mandatory witnesses, “it must be alleged and demonstrated that earnest efforts were undertaken to secure their attendance.”²³ This Court was quite particular with this in *People v. Lim*,²⁴ where this Court, speaking through then Chief Justice Diosdado M. Peralta,

²¹ Id. at 408–409.

²² *People v. Castillo*, G.R. No. 238339, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>> [Per J. Leonen, Third Division] citing *People v. Sanchez*, 590 Phil. 214, 234 (2008) [Per J. Brion, Second Division].

²³ Id.

²⁴ G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400/>> [Per J. Peralta, En banc].

decried “justifications [that were] unacceptable as there was no genuine and sufficient attempt to comply with the law”:

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 RA 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 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 — 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 RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, 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.

In this case, IO1 Orellan testified that no members of the media and barangay officials arrived at the crime scene because it was late at night and it was raining, making it unsafe for them to wait at Lim's house. IO2 Orcales similarly declared that the inventory was made in the PDEA office considering that it was late in the evening and there were no available media representative and barangay officials despite their effort to contact them. He admitted that there are times when they do not inform the barangay officials prior to their operation as they might leak the confidential information. *We are of the view that these justifications are unacceptable as there was no genuine and sufficient attempt to comply with the law.*²⁵ (Emphasis supplied, citations omitted)

As it was in *Lim*, this Court finds here that the prosecution failed to justify the utter absence of the required witnesses.

²⁵ Id.

The best that the prosecution could do was note that on March 26, 2014, the day prior to accused-appellant's actual arrest, the police officers "called for a media representative but no one came."²⁶ This fails to impress. Making a cursory effort to call for a mandatory witness hardly qualifies as the "earnest efforts"²⁷ necessary to excuse noncompliance.

Besides, this effort was made the day prior to the actual arrest and seizure. The police officers failed to account for whatever efforts they undertook on the actual day of the buy-bust operation. That their effort to arrest accused-appellant spanned two days should have enabled them to more diligently conduct their operation on the second day, when they finally arrested accused-appellant. If on the first day, or the first attempt to entrap accused-appellant, they were unable to secure the presence of mandatory witnesses, by the second day, they should have been more prepared. That they remained ill-equipped only points to an overarching disregard for the Comprehensive Dangerous Drugs Act's chain of custody requirements.

Further, though marking, inventory, and taking of photographs were conducted, the precise manner by which PO3 Gomez handled the items allegedly obtained from accused-appellant remains unaccounted for. The Court of Appeals summarized the stages when PO3 Gomez had custody of these items, as follows:

First. Upon confiscation of subject items from appellant, PO3 Gomez immediately marked them and made an inventory thereof in the presence of appellant himself and the buy bust team.

Second. From the time the seized items were confiscated from appellant, the same had remained in PO3 Gomez's possession until the latter arrived at the police station where he showed them to PO3 Nacor the investigator on duty. At the police station, PO3 Gomez took pictures of them, prepared a request for laboratory examination, and, thereafter, brought the specimens to the crime laboratory for testing.²⁸ (Citations omitted)

This narrative leaves a significant gap as to how exactly PO3 Gomez maintained custody of the allegedly seized items. It leaves no guarantee of the items' identity and integrity other than the PO3 Gomez's own assertions.

This Court has not been impressed by police officers' self-serving guarantees of allegedly seized items' integrity. In *People v. Sultan*,²⁹ this Court saw as an inadequate guarantee a police officer's keeping allegedly

²⁶ Rollo, p. 5.

²⁷ *People v. Castillo*, G.R. No. 238339, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>> [Per J. Leonen, Third Division].

²⁸ Rollo, p. 14.

²⁹ G.R. No. 225210, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65518>> [Per J. Leonen, Third Division].

seized items in his pocket. Citing *People v. Dela Cruz*,³⁰ which similarly involved a police officer's maintaining custody by keeping items in his pocket, this Court discussed the futility of such a guarantee:

Here, the prosecution established that from the place of seizure to the barangay hall, PO2 Hechanova had sole custody of the supposedly confiscated items. But this alone cannot be taken as a guarantee of the items' integrity. On the contrary, an officer's act of personally and bodily keeping allegedly seized items, without any clear indication of safeguards other than his or her mere possession, has been viewed as prejudicial to the integrity of the items.

In *People v. Dela Cruz*, this Court reprehended the act of a police officer who, having custody of the sachets seized from a buy-bust operation, recklessly kept them in his pockets until they were supposedly turned over for examination:

The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.

Section 21, paragraph 1, of the Comprehensive Dangerous Drugs Act of 2002, includes a proviso to the effect that "noncompliance of (sic) these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved

³⁰ 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.” Plainly, the prosecution has not shown that — on September 14, 2004, when dela Cruz was arrested and the sachets supposedly seized and marked — there were “justifiable grounds” for dispensing with compliance with Section 21. All that the prosecution has done is insist on its self-serving assertion that the integrity of the seized sachets has, despite all its lapses, nevertheless been preserved.

In *Dela Cruz*, this Court did not approve of the incautious keeping of allegedly seized narcotics even as the prosecution averred separating them in different pockets as a supposed measure to preserve integrity. With greater reason should this Court, in this case, reject PO2 Hechanova's claim. The bare assertion that PO2 Hechanova had possession of the items, without so much as a simulation of safekeeping measures such as the segregation in *Dela Cruz*, is a blatant gap in the chain of custody. The dearth of specific and detailed descriptions of how the allegedly seized items had been preserved while in transit amounts to a broken, unreliable chain of custody. This is fatal to the prosecution's case.³¹ (Citation omitted)

This gap is precisely what could have been addressed by the presence of Section 21(1)'s required witnesses. Had they been present, the prosecution could rely on the recollection of these disinterested witnesses from the commencement of the buy-bust operation all the way to the marking, inventorying, and photographing. Their absence leaves the prosecution with nothing to rely on but inadequate, self-serving guarantees.

The Regional Trial Court and the Court of Appeals were satisfied with what the latter described as the police officers' substantial compliance with the chain of custody requirements. This is most unfortunate. It is not for courts to fill the gaps in compliance with mandatory statutory requirements, especially in criminal cases where an individual's liberty is at stake, and where proof beyond reasonable doubt is imperative. To repeat, exceptional circumstances may be countenanced, but the burden lies on the prosecution to satisfy the court on the exceptionality of its case.

The inclination to view law enforcers' deficient conduct as sufficiently satisfactory, despite a lack of justification, is akin to a reliance on presumption of regularity in the performance of official duty. However, this Court has been definite in how this presumption cannot stand in the face of irregularities in how law enforcers conducted their operations.³² In *Lim*:

Even the customary presumption of regularity in the performance of official duties cannot suffice. *People v. Kamad* explained that the

³¹ *People v. Sultan*, G.R. No. 225210, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65518>> [Per J. Leonen, Third Division].

³² 299 Phil. 849, 854 (2014) [Per J. Puno, Second Division].

presumption of regularity applies only when officers have shown compliance with “the standard conduct of official duty required by law[.]” It is not a justification for dispensing with such compliance:

Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined shabu and that formally offered in court cannot but lead to serious doubts regarding the origins of the shabu presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the corpus delicti without which the accused must be acquitted.

From the constitutional law point of view, the prosecution's failure to establish with moral certainty all the elements of the crime and to identify the accused as the perpetrator signify that it failed to overturn the constitutional presumption of innocence that every accused enjoys in a criminal prosecution. When this happens, as in this case, the courts need not even consider the case for the defense in deciding the case; a ruling for acquittal must forthwith issue.

Jurisprudence has thus been definite on the consequence of non-compliance. This Court has categorically stated that whatever presumption there is concerning the regularity of the manner by which officers gained and maintained custody of the seized items is “negate[d]”:

In *People v. Orteza*, the Court did not hesitate to strike down the conviction of the therein accused for failure of the police officers to observe the procedure laid down under the Comprehensive Dangerous Drugs Law, thus:

First, there appears nothing in the records showing that police officers complied with the proper procedure in the custody of seized drugs as specified in *People v. Lim*, i.e., any apprehending team having initial control of said drugs and/or paraphernalia should, immediately after

seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with the requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from appellant. It negates the presumption that official duties have been regularly performed by the police officers.

....

IN FINE, the unjustified failure of the police officers to show that the integrity of the object evidence-shabu was properly preserved negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties.

The Comprehensive Dangerous Drugs Act requires nothing less than strict compliance. Otherwise, the *raison d'être* of the chain of custody requirement is compromised. Precisely, deviations from it leave open the door for tampering, substitution and planting of evidence.

Even the performance of acts which approximate compliance but do not strictly comply with the Section 21 has been considered insufficient. *People v. Magat*, for example, emphasized the inadequacy of merely marking the items supposedly seized: "Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165"³³ (Citations omitted)

The unjustified deviations from the Comprehensive Dangerous Drugs Act's chain of custody requirements cast reasonable doubt on the integrity of the items purportedly seized from accused-appellant. Ultimately, these cast reasonable doubt on his guilt for each of the offenses raised against him. As such, this Court is constrained to acquit accused-appellant.

WHEREFORE, the July 26, 2018 Decision of the Court of Appeals in CA-G.R. CR HC No. 09331, which affirmed *in toto* the December 8, 2016 Decision of the Regional Trial Court of Santa Cruz, Laguna, Branch 28, is **REVERSED** and **SET ASIDE**. Accused-appellant Ali Añonuevo y Flores is **ACQUITTED** of the charges of violating Sections 5, 11, and 12 of the Comprehensive Dangerous Drugs Act. He is ordered **RELEASED** from confinement unless he is being held for some other legal grounds.

³³ *People v. Lim*, G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400/>> [Per J. Peralta, En Banc].

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General is directed to report the action he has taken to this Court within five days from receipt of this Resolution. For their information, copies shall also be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.

The Regional Trial Court is directed to turn over the seized sachets of shabu to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

SO ORDERED.”

By authority of the Court:

Mis-DC Batt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
GER
6/21/21

Special & Appealed Cases Service
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The Presiding Judge
REGIONAL TRIAL COURT
Branch 28, Sta. Cruz
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(Crim. Case Nos. SC-17048, SC-17049 &
SC-17050)

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1770 Muntinlupa City

The Superintendent
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