



**Republic of the Philippines  
Supreme Court  
Manila**

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,** **G.R. No. 234052**

Plaintiff-Appellee, Present:

- versus -

CARPIO, *J.*, Chairperson,  
PERALTA,  
PERLAS-BERNABE,  
CAGUIOA, and  
REYES, JR., *JJ.*

**MARICEL PATACSIL y**  
**MORENO,**

Accused-Appellant. Promulgated:

06 AUG 2018

*Harcabala Perfecto*

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**DECISION**

**PERLAS-BERNABE, *J.*:**

Before the Court is an ordinary appeal<sup>1</sup> filed by accused-appellant Maricel Patacsil y Moreno (Patacsil) assailing the Decision<sup>2</sup> dated March 30, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07298, which affirmed the Joint Decision<sup>3</sup> dated February 5, 2015 of the Regional Trial Court of Dagupan City, Branch 44 (RTC) in Crim. Case Nos. 2012-0497-D and 2012-0498-D, finding Patacsil guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

<sup>1</sup> See Notice of Appeal dated April 20, 2017; *rollo*, pp. 17-18.

<sup>2</sup> *Id.* at 2-16. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Ramon R. Garcia and Henri Jean Paul B. Inting concurring.

<sup>3</sup> *CA Rollo*, pp. 48-56. Penned by Judge Genoveva Coching-Maramba.

<sup>4</sup> Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

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### The Facts

This case stemmed from two (2) Informations<sup>5</sup> filed before the RTC charging Patacsil with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, the accusatory portions of which state:

#### Criminal Case No. 2012-0497-D

That on or about the 28<sup>th</sup> of September 2012, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **MARICEL PATACSIL [y] MORENO**, did then and there, willfully, unlawfully and criminally, have in her possession, custody and control Methamphetamine Hydrochloride (*Shabu*) contained in five (5) sealed plastic sachets, all weighing .357 gram, without authority to possess the same.

Contrary to Article II, Section 11, R.A. 9165.<sup>6</sup>

#### Criminal Case No. 2012-0498-D

That on or about the 28<sup>th</sup> day of September 2012, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **MARICEL PATACSIL [y] MORENO**, did then and there, willfully, unlawfully and criminally, sell and deliver to a poseur-buyer Methamphetamine Hydrochloride (*Shabu*) contained in one (1) heat-sealed plastic sachet, weighing more or less 0.033 gram, in exchange for P300.00, without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.<sup>7</sup>

The prosecution alleged that at around two (2) o'clock in the afternoon of September 28, 2012 and acting upon a tip of an asset regarding Patacsil's purported illegal drug activities at Torio's Compound, Sitio Silungan, Bonuan, Binloc, Dagupan City, the police officers of the Dagupan Police Station organized a buy-bust operation with PO3 Francisco S. Meniano, Jr. (PO3 Meniano) acting as the poseur-buyer. Upon arriving at the target area, the asset introduced PO3 Meniano to Patacsil as someone who wanted to buy *shabu*. When PO3 Meniano handed over the marked money to Patacsil, the latter took out one (1) plastic sachet containing suspected *shabu* from her cellphone pouch and gave the same to PO3 Meniano. As soon as PO3 Meniano ascertained the plastic sachet's contents, he performed the pre-arranged signal, prompting the buy-bust team to rush in and arrest Patacsil. During the arrest, the police officers inspected Patacsil's cellphone pouch and recovered five (5) more plastic sachets containing white crystalline substance therefrom. The buy-bust team then took Patacsil and the seized plastic sachets, first to the hospital for medical

<sup>5</sup> Both dated September 29, 2012. Records (Crim. Case 2012-0497-D), pp. 1-2; and records (Crim. Case No. 2012-0498-D), pp. 1-2.

<sup>6</sup> Records (Crim. Case 2012-0497-D), p. 1.

<sup>7</sup> Records (Crim. 2012-0498-D), p. 1.

examination, and thereafter, to the police station for marking and inventory procedures. Finally, the seized plastic sachets were taken to the PNP Crime Laboratory where it was confirmed that they indeed contain methamphetamine hydrochloride or *shabu*,<sup>8</sup> a dangerous drug.<sup>9</sup>

In her defense, Patacsil pleaded not guilty to the charges against her and offered her version of the events. She narrated that on the day she was arrested, she just arrived home after visiting her live-in partner in jail, when suddenly, six (6) men in civilian clothes appeared in front of her house, with two of them putting their hands around her shoulder, and at a gun point, told her to kneel down in front of her house. After the men briefly searched her abode, she was then taken to the police station where she was forbidden to talk to her relatives. She was then taken to a hospital for medical reasons, and subsequently charged with the aforesaid crimes.<sup>10</sup>

### The RTC Ruling

In a Joint Decision<sup>11</sup> dated February 5, 2015, the RTC found Patacsil guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced her as follows: (a) in Criminal Case No. 2012-0497-D, to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day to twenty (20) years, and to pay a fine in the amount of ₱300,000.00; and (b) in Criminal Case No. 2012-498-D to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.<sup>12</sup>

The RTC held that the prosecution was able to establish all the elements of the crimes charged as it was shown that Patacsil sold to PO3 Meniano one (1) plastic sachet of *shabu*, and that after her arrest, five (5) more plastic sachets of *shabu* were found in her possession. It found that Patacsil's bare denial cannot overcome the positive testimony of the police officers who conducted the buy bust operation. It likewise observed that Patacsil failed to advance ill motives on the part of the police officers to impute such grave crimes against her, as she even admitted during cross examination that she came to know PO3 Meniano only when the latter testified during trial.<sup>13</sup>

Aggrieved, Patacsil appealed<sup>14</sup> to the CA.

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<sup>8</sup> See Chemistry Report No. D-143-12L dated September 29, 2012; records (Crim. Case 2012-0497-D), p. 54.

<sup>9</sup> See *rollo*, pp. 3-5. See also CA *rollo*, pp. 50-52.

<sup>10</sup> See *rollo*, pp. 3 and 5-6. See also CA *rollo*, pp. 52-53.

<sup>11</sup> CA *rollo*, pp. 48-56.

<sup>12</sup> *Id.* at 56.

<sup>13</sup> See *id.* at 53-55.

<sup>14</sup> See Notice of Appeal dated February 9, 2015; records (Crim. Case 2012-0497-D), pp. 139-140.

### The CA Ruling

In a Decision<sup>15</sup> dated March 30, 2017, the CA affirmed the RTC ruling *in toto*.<sup>16</sup> It upheld Patacsil's conviction, holding that the prosecution had established beyond reasonable doubt all the elements of the crimes charged. It further ruled that PO3 Meniano's failure to immediately mark the seized items and to let the witnesses sign the confiscation receipt does not *ipso facto* result in unlawful arrest nor in the inadmissibility of evidence, as long as the integrity and evidentiary value of the seized items were preserved.<sup>17</sup> It found that contrary to Patacsil's claim, she was validly arrested *in flagrante delicto*, thereby, making the seized items admissible.<sup>18</sup>

Hence, this appeal.

### The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Patacsil's conviction for the crimes charged.

### The Court's Ruling

The appeal has merit.

Preliminarily, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.<sup>19</sup> "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."<sup>20</sup>

Here, Patacsil was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (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.<sup>21</sup> Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish

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<sup>15</sup> *Rollo*, pp. 2-16.

<sup>16</sup> *Id.* at 15.

<sup>17</sup> *See id.* at 8-13.

<sup>18</sup> *See id.* at 13-15.

<sup>19</sup> *See People v. Dahil*, 750 Phil. 212, 225 (2015).

<sup>20</sup> *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

<sup>21</sup> *People v. Sumili*, 753 Phil. 342, 348 (2015).

the following elements to warrant his conviction: (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.<sup>22</sup>

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>23</sup>

In this relation, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.<sup>24</sup> Under the said section, prior to its amendment by RA 10640,<sup>25</sup> the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same,** and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.<sup>26</sup> In the case of *People v. Mendoza*,<sup>27</sup> the Court stressed that “**[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized 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 [said drugs] that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody.”<sup>28</sup>

<sup>22</sup> *People v. Bio*, 753 Phil. 730, 736 (2015).

<sup>23</sup> See *People v. Manansala*, G.R. No. 229092, February 21, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alivio*, 664 Phil. 565, 576-580 (2011) and *People v. Deniman*, 612 Phil. 1165, 1175 (2009).

<sup>24</sup> See *People v. Sumili*, supra note 21, at 349-350.

<sup>25</sup> 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,’” approved on July 15, 2014. The crime subject of this case was allegedly committed before the enactment of RA 10640, or on September 28, 2012.

<sup>26</sup> See Section 21 (1) and (2), Article II of RA 9165.

<sup>27</sup> 736 Phil. 749 (2014).

<sup>28</sup> *Id.* at 764; emphases and underscoring supplied.

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The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.<sup>29</sup> In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640<sup>30</sup> – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**<sup>31</sup> In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>32</sup> In *People v. Almorfe*,<sup>33</sup> **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**<sup>34</sup> Also, in *People v. De Guzman*,<sup>35</sup> it was

<sup>29</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>30</sup> Section 1 of RA 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”, is hereby amended to read as follows:

“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”

<sup>31</sup> See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

<sup>32</sup> See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

<sup>33</sup> 631 Phil. 51 (2010).

<sup>34</sup> *Id.* at 60.

<sup>35</sup> 630 Phil. 637 (2010).

emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**<sup>36</sup>

After a judicious study of the case, the Court finds that the arresting officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Patacsil.

Here, a plain examination of PO3 Meniano's handwritten Confiscation Receipt<sup>37</sup> dated September 28, 2012 – which stood as the inventory receipt – shows that while PO3 Meniano claims that representatives from the media witnessed the conduct of inventory, no such representatives signed the document. Further, it also appears that no public elected official was present when such inventory was made. When asked about these procedural deviations by both the prosecution and defense lawyers, PO3 Meniano testified as follows:

[Prosecutor Ann Karen Go]: This confiscation receipt states the serial nos. as well as number of sachets that you were able to buy and confiscate from Maricel Patacsil, it also states that the witnesses are media representatives, **who were the media representatives because they are not named in this confiscation receipt?**

**[PO3 Meniano]: There are two (2) media representatives present but I could no longer remember, they are from GMA and ABS-CBN.**

**Q: Can you tell this Honorable Court the reason why they did not sign this confiscation receipt, Mr. Witness?**

**A: Because I was in a hurry in submitting the confiscation receipt, I forgot to let them sign.**

x x x x

**[Atty. Sylvania Vinoya-Gonzales]: Mr. Witness, you forgot to invite barangay officials and you forgot to ask the media representatives to sign as witnesses. Why, how many were you during that time, where was the Investigator?**

**[PO3 Meniano]: I did not forget to call them. They were not around.**

**Q: Who were not around?**

**A: The barangay officials.**

**Q: What about the media representatives?**

**A: It is because the *shabu* was asked to be submitted so, we forgot to let the media representatives to sign.**<sup>38</sup> (Emphases and underscoring supplied)

<sup>36</sup> Id. at 649.

<sup>37</sup> Records (Crim. Case No. 2012-0497-D), p. 112.

<sup>38</sup> TSN, February 24, 2014, pp. 11 and 18.

At this point, it is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible.<sup>39</sup> However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced.<sup>40</sup> Mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.<sup>41</sup> 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, Article II of RA 9165.<sup>42</sup>

In this case, PO3 Meniano himself admitted that no public elected official, *e.g.*, barangay officials, was present during the inventory because “they were not around” and that he simply forgot to let the media representatives sign the inventory receipt because he “forgot” to do so. Verily, these flimsy excuses do not justify a deviation from the required witnesses rule, hence, the Court is impelled to conclude that the integrity and evidentiary value of the items purportedly seized from Patacsil – which constitute the *corpus delicti* of the crimes charged – have been compromised.<sup>43</sup> It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.<sup>44</sup> As such, since the prosecution failed to provide justifiable grounds for non-compliance with the aforesaid procedure, Patacsil’s acquittal is performe in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

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<sup>39</sup> *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

<sup>40</sup> See *id.* at 1052-1053.

<sup>41</sup> See *id.* at 1053.

<sup>42</sup> See *People v. Crispo*, G.R. No. 230065, March 14, 2018.

<sup>43</sup> See *People v. Sumili*, *supra* note 21, at 352.

<sup>44</sup> See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 39, at 1038 (2012).

✓

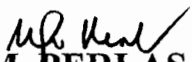


Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. x x x.<sup>45</sup>


“In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.** Since compliance with the procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court’s bounden duty to acquit the accused, and perforce, overturn a conviction.”<sup>46</sup>

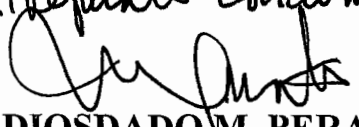
**WHEREFORE**, the appeal is **GRANTED**. The Decision dated March 30, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07298 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Maricel Patacsil y Moreno is **ACQUITTED** from the crimes charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

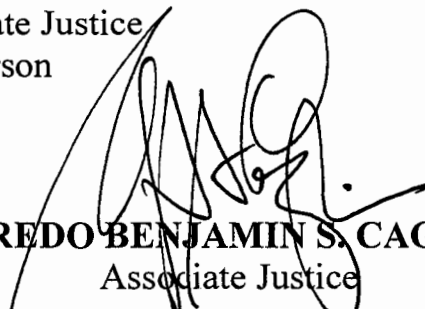
**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
 Senior Associate Justice  
 Chairperson

*per separate concurring opinion*  
  
**DIOSDADO M. PERALTA**  
 Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

<sup>45</sup> See *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

<sup>46</sup> See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

*Reyes*  
**ANDRES B. REYES, JR.**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, Republic Act No. 296,  
The Judiciary Act of 1948, as amended)

G.R. No. 234052 (*People of the Philippines v. Maricel Patacsil y Moreno*).

Promulgated:

06 AUG 2018

x ----- *Maricel Patacsil y Moreno* ----- x

### SEPARATE CONCURRING OPINION

**PERALTA, J.:**

I concur with the *ponencia* in acquitting accused-appellant Maricel Patacsil y Moreno of the charges of illegal sale and illegal possession of dangerous drugs or violation of Sections 5 and 11, Article II of Republic Act No. (R.A. No.) 9165,<sup>1</sup> respectively. The *ponencia* duly noted that while the police officer testified that representatives from the media witnessed the conduct of the inventory, no such representatives signed the confiscation receipt, and no elected public official was also present when such inventory was made. Moreover, the excuses that the *barangay* officials were not present during the inventory because “they were not around,” and that the media representatives failed to sign the inventory receipt because they “forgot” to do so, hardly constitute justifiable reasons for the non-observance of Section 21<sup>2</sup> of R.A. No. 9165. Be that as it may, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:<sup>3</sup>

(a) The apprehending officer/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

<sup>1</sup> “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES”

<sup>2</sup> 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 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;

<sup>3</sup> *People v. Ramirez*, G.R. No. 225690, January 17, 2018. (Emphasis ours)

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: *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, further, that non-compliance with 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 of and custody over said items.***

It bears emphasis that R.A. No. 10640,<sup>4</sup> which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that “while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government’s campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts.”<sup>5</sup> Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that “compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law.”<sup>6</sup>

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and judges on Section 21 of R.A. No. 9165, there is a need for “certain adjustments so that we can plug the loopholes in our existing law” and ensure [its] standard implementation.”<sup>7</sup> Senator Sotto explained why the said provision should be amended:

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<sup>4</sup> “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” Approved on July 15, 2014.

<sup>5</sup> Senate Journal, Session No. 80, 16<sup>th</sup> Congress, 1<sup>st</sup> Regular Session, June 4, 2014, p. 348.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*



Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of the seized illegal drugs.

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Section 21(a) of RA 9165 need to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.<sup>8</sup>

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the

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<sup>8</sup> *Id.* at 349-350.

apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”<sup>9</sup>

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.<sup>10</sup> Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.<sup>11</sup> Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule to prevent incidents of planting, tampering or alteration of evidence.<sup>12</sup> Here, the prosecution failed to discharge its burden.

With respect to the presence of all the required witnesses under Section 21 of R.A. No. 9165, the prosecution never alleged and proved any of the following reasons, 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<sup>13</sup> 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.**

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant’s conviction.

<sup>9</sup> *People v. Sagana*, G.R. No. 208471, August 2, 2017.

<sup>10</sup> *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz*, G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

<sup>11</sup> *People v. Saragena*, G.R. No. 210677, August 23, 2017.

<sup>12</sup> *Id.*

<sup>13</sup> Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.<sup>14</sup> The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.<sup>15</sup>

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*<sup>16</sup> that “if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution’s case but rather to the weight of evidence presented for each particular case.” As aptly pointed out by Justice Leonardo-De Castro, the Court’s power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

I further submit that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165, to wit:**

Section 29. *Criminal Liability for Planting of Evidence.* – Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

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<sup>14</sup> *People v. Ramirez*, *supra* note 3.

<sup>15</sup> *People v. Gajo*, G.R. No. 217026, January 22, 2018.

<sup>16</sup> G.R. No. 202206, March 5, 2018.



Section 32. *Liability to a Person Violating Any Regulation Issued by the Board.* – 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 found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.



**DIOSDADO M. PERALTA**  
Associate Justice