

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 225210

Present:

-versus-

PERALTA, J., Chairperson,  
LEONEN,  
REYES, A., JR.,  
HERNANDO, and  
INTING, JJ.

LARRY SULTAN y ALMADA,  
Accused-Appellant.

Promulgated:  
August 7, 2019  
MisPDCBatt

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DECISION

LEONEN, J.:

Unless an unbroken chain of custody over items allegedly seized during drug operations is established, the constitutional right to be presumed innocent prevails. Ultimately, doubt in the *corpus delicti*—the drugs and drug paraphernalia that were the alleged objects of a drug offense—impels the acquittal of an accused.

For this Court's resolution is an appeal challenging the Decision<sup>1</sup> of the Court of Appeals. The Court of Appeals affirmed *in toto* the Decision<sup>2</sup> of

<sup>1</sup> *Rollo*, pp. 5–13. The Decision dated October 20, 2015 in CA-G.R. CEB-CR HC No. 01776 was penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez of the Twentieth Division, Court of Appeals, Cebu City.

<sup>2</sup> *CA rollo*, pp. 88–102. The Decision dated November 27, 2013 was penned by Presiding Judge Raymond Joseph G. Javier of Branch 52, Regional Trial Court, Bacolod City.

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the Regional Trial Court, finding accused-appellant Larry Sultan y Almadar (Sultan) guilty beyond reasonable doubt of violating Article II, Sections 5 and 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Two (2) separate Informations were filed against Sultan for violating the Comprehensive Dangerous Drugs Act of 2002. The charge for violation of Section 5, for the illegal sale of dangerous drugs, read:

Criminal Case Nos. 12-37189

That on or about the 6<sup>th</sup> day of December, 2012, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully and feloniously sell, deliver or give away One (1) small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride, also known as Shabu, a dangerous drug, with a weight of 0.080 gram of white crystalline substance, with marking "LAS-A" to the CAID-SOTG, BCPO, Bacolod City poseur-buyer PO2 Tony D. Hechanova in a buy-bust operation in exchange on One (1) piece One Thousand peso bill bearing Serial No. QJ921640 with SYR marking, in violation of aforementioned law.<sup>3</sup>

Meanwhile, the charge for violation of Section 11, for the illegal possession of dangerous drugs, read:

Criminal Case Nos. 12-37188

That on or about the 6<sup>th</sup> day of December, 2012, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control, THREE (3) big heat-sealed plastic sachets with the following weights and markings:

1)	"LAS B-1"	2.982
2)	"LAS B-2"	3.256
3)	"LAS B-3"	<u>2.572</u>
TOTAL WEIGHT		8.810

containing white crystalline substance with a total weight of 8.810 grams, containing Methamphetamine Hydrochloride, a dangerous drug, without the corresponding license or prescription therefore (*sic*), in violation of aforementioned law.<sup>4</sup>

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<sup>3</sup> *Rollo*, pp. 5-6.

<sup>4</sup> *Id.* at 6.

When arraigned on December 18, 2012, Sultan pleaded not guilty to the crimes charged. Trial then followed.<sup>5</sup>

The prosecution presented three (3) witnesses: (1) Police Superintendent Santiago Y. Rapiz (Superintendent Rapiz); (2) Police Officer 2 Tony D. Hechanova (PO2 Hechanova); and (3) Police Chief Inspector Paul Jerome S. Puentespina (Chief Inspector Puentespina). For the defense, Sultan and Marian M. Batungara (Batungara) took the witness stand.<sup>6</sup>

According to the prosecution, at around 2:00 p.m. on December 6, 2012, Superintendent Rapiz was informed that a certain Larry Sultan was engaging in the illegal trade of shabu. Accordingly, he assembled a buy-bust team, designating PO2 Hechanova as the poseur-buyer. PO2 Hechanova received a marked ₱1,000.00 bill for the transaction.<sup>7</sup>

Later that day, PO2 Hechanova and the confidential asset rode a jeep to the Sea Breeze Hotel on San Juan Street, Bacolod City.<sup>8</sup>

Upon arrival, they approached Sultan, who was standing at the hotel's main door. The confidential asset inquired if Sultan has ₱1,000.00 worth of shabu. Confirming that he had it, Sultan handed PO2 Hechanova an elongated sachet containing white crystalline substance in exchange for the marked money. As soon as the transaction occurred, the asset placed a missed call to the team, which then rushed to the scene. Meanwhile, PO2 Hechanova introduced himself as a police officer and arrested Sultan.<sup>9</sup>

Upon frisking Sultan, PO2 Hechanova recovered three (3) plastic sachets of suspected shabu in his left pocket. He then informed Sultan of the nature and cause of his arrest and apprised him of his constitutional rights.<sup>10</sup>

Sultan was then brought to the barangay hall of Barangay 12, Bacolod City where PO2 Hechanova marked the plastic sachets. The inventory and photographing of the seized items were made in the presence of Punong Barangay Demapanag and Kagawad Gomez.<sup>11</sup>

Subsequently, PO2 Hechanova requested a laboratory examination of the seized sachets' contents at the Philippine National Police Crime Laboratory Office Six, Camp Montelibano, Bacolod City.<sup>12</sup> PO2 Edwin

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<sup>5</sup> CA *rollo*, p. 89.

<sup>6</sup> *Rollo*, p. 6.

<sup>7</sup> *Id.* at 6-7.

<sup>8</sup> *Id.* at 7.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> CA *rollo*, p. 92.

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

Albarico (PO2 Albarico) received the specimen,<sup>13</sup> after which he gave it to Chief Inspector Puentespina who examined the seized items, which tested positive for shabu.<sup>14</sup>

Testifying in his defense, Sultan denied possessing and selling shabu. He claimed that at around 2:00 p.m. on December 6, 2012, he was booking a room with Batungara at the Sea Breeze Hotel when he received a call from a friend, Erwin Elibaldo (Elibaldo). When Elibaldo allegedly expressed his desire to pay his debt, Sultan arranged for their meeting in the hotel. A few minutes later, Elibaldo arrived with two (2) strangers, whom Sultan later came to know as police officers. They approached Sultan, took his sling bag, and arrested him.<sup>15</sup>

Then, the officers brought him to Superintendent Rapiz's office at a certain JMP Building.<sup>16</sup> Superintendent Rapiz allegedly talked about bargaining, but it did not make sense to Sultan. Afterwards, he was brought to a barangay hall, where the police officers opened his sling bag and marked its contents, which, according to Sultan, did not include shabu.<sup>17</sup>

Batungara corroborated Sultan's testimony.<sup>18</sup>

In its November 27, 2013 Decision,<sup>19</sup> the Regional Trial Court found Sultan guilty beyond reasonable doubt of violating Section 5, for the illegal sale of dangerous drugs, and Section 11, for the illegal possession of dangerous drugs, under Article II of the Comprehensive Dangerous Drugs Act.<sup>20</sup>

The Regional Trial Court ruled that the prosecution established all the elements of the crimes and satisfactorily proved the identity of the dangerous drugs. It found PO2 Hechanova's "candid and straightforward testimony"<sup>21</sup> deserving of full faith and credit, finding no ill motive on his part.<sup>22</sup> The dispositive portion of the Decision read:

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

(a) In Criminal Case No. 12-37189, finding Accused-Defendant LARRY SULTAN y ALMADA **GUILTY**, beyond reasonable doubt, of

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<sup>13</sup> Id. at 80 and 99.

<sup>14</sup> *Rollo*, p. 7.

<sup>15</sup> Id. at 7-8 and *CA rollo*, p. 92.

<sup>16</sup> *CA rollo*, p. 76.

<sup>17</sup> *Rollo*, p. 8.

<sup>18</sup> *CA rollo*, p. 76.

<sup>19</sup> Id. at 88-102.

<sup>20</sup> Id. at 102.

<sup>21</sup> Id. at 94.

<sup>22</sup> Id. at 94-98.

Section 5, Article II, Comprehensive Dangerous Drug Act of 2002. He is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00);

(b) In Criminal Case No. 12-37188, finding Accused-Defendant LARRY SULTAN y ALMADA **GUILTY**, beyond reasonable doubt, of Section 11, Article II, Comprehensive Dangerous Drug Act of 2002. He is hereby sentenced to suffer the penalty of twenty (20) years and one (1) day and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

(c) The dangerous drug subject matter of these cases (Exhibits “C” to “F”) are hereby confiscated in favor of the government pursuant to Section 20, R.A. No. 9165 and ordered to be turned-over to the Philippine Drug Enforcement Agency (PDEA), Regional Office Six (6) for destruction;

(d) The Jail Warden of the Bureau of Jail Management and Penology, Male Dormitory, Barangay Taculing, Bacolod City is hereby **ORDERED** to **IMMEDIATELY TRANSFER** Accused-Defendant LARRY SULTAN y ALMADA to the National Bilibid Prison, Muntinlupa City, Metro Manila, for the service of his sentence pursuant to OCA Circular No. 40-2013; and,

[e] No pronouncement as to cost.

**SO ORDERED.**<sup>23</sup> (Emphasis in the original)

In its October 20, 2015 Decision,<sup>24</sup> the Court of Appeals affirmed Sultan’s conviction *in toto*. It dismissed as trivial the prosecution’s failure to identify who had custody of the seized evidence at all times.<sup>25</sup> Maintaining that what is important is the preservation of the seized items’ integrity, the Court of Appeals held that “the testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain.”<sup>26</sup> The dispositive portion of its Decision read:

**WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The 27 November 2013 Decision of the Regional Trial Court of Bacolod City, Branch 52 finding Larry Sultan y Almada guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of R.A. No. 9165, in Criminal Case Nos. 12-37188 and 12-37189 is **AFFIRMED** *in toto*.

**SO ORDERED.**<sup>27</sup> (Emphasis in the original)

Thus, Sultan filed his Notice of Appeal.<sup>28</sup> Giving due course to his appeal per its April 22, 2016 Resolution,<sup>29</sup> the Court of Appeals elevated<sup>30</sup>

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<sup>23</sup> Id. at 102.

<sup>24</sup> *Rollo*, pp. 5–13.

<sup>25</sup> Id. at 11.

<sup>26</sup> Id.

<sup>27</sup> Id. at 12.

<sup>28</sup> Id. at 14–16.

<sup>29</sup> Id. at 17.

the case records to this Court.

In its August 10, 2016 Resolution,<sup>31</sup> this Court noted the case records and informed the parties that they may file their supplemental briefs.

On November 13, 2018, accused-appellant filed his Supplemental Brief.<sup>32</sup> For its part, the Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines, manifested that it would no longer file a supplemental brief.<sup>33</sup>

In his Brief,<sup>34</sup> accused-appellant asserts that the Court of Appeals erred in affirming his conviction despite the prosecution's failure to prove an unbroken chain of custody. He assails the police officer's unjustified marking of the seized items at the barangay hall instead of at the place of confiscation.<sup>35</sup> He argues that the non-presentation of PO2 Albarico, the police officer who allegedly received the specimen for examination, casts doubt on the identity and integrity of the seized items.<sup>36</sup>

On the other hand, the Office of the Solicitor General maintains in its Brief<sup>37</sup> that the prosecution duly established all the elements of the crimes of illegal sale and illegal possession of dangerous drugs. It further avers that the chain of custody was properly established.<sup>38</sup>

For this Court's resolution is the lone issue of whether or not accused-appellant Larry Sultan y Almada is guilty beyond reasonable doubt of violating Article II, Sections 5 and 11 of the Comprehensive Dangerous Drugs Act.

This Court grants the appeal and acquits accused-appellant.

## I

Settled are the elements required to sustain convictions for violation of Section 5, for the illegal sale of dangerous drugs, and Section 11, for the

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<sup>30</sup> Id. at 1.

<sup>31</sup> Id. at 20–21.

<sup>32</sup> Id. at 63–69.

<sup>33</sup> Id. at 22–26.

<sup>34</sup> *CA rollo*, pp. 69–87.

<sup>35</sup> Id. at 77–79.

<sup>36</sup> Id. at 80–82.

<sup>37</sup> Id. at 115–139.

<sup>38</sup> Id. at 123–136.

illegal possession of dangerous drugs, of the Comprehensive Dangerous Drugs Act. These are enumerated in *People v. Que*:<sup>39</sup>

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

On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.<sup>40</sup>

In both cases, the *corpus delicti* is the illicit drug seized from the accused.<sup>41</sup> In *People v. Sagana*:<sup>42</sup>

“[I]t is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt.” Its identity and integrity must be proven to have been safeguarded. Aside from proving the elements of the charges, “the fact that the substance illegally possessed and sold [was] the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.” The chain of custody carries out this purpose “as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”<sup>43</sup>

Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, outlines the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia:

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

<sup>39</sup> G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per J. Leonen, Third Division].

<sup>40</sup> Id. at 500–501 citing *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division]; *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division]; and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per J. Tinga, Second Division].

<sup>41</sup> *People v. Sagana*, 815 Phil. 356, 367 (2017) [Per J. Leonen, Second Division] citing *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

<sup>42</sup> *People v. Sagana*, 815 Phil. 356 (2017) [Per J. Leonen, Second Division].

<sup>43</sup> Id. at 367–368 citing *Lopez v. People*, 725 Phil. 499, 507 (2014) [Per J. Perez, Second Division]; *People v. Lagahit*, 746 Phil. 896, 908 (2014) [Per J. Perez, First Division]; and *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: ***Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items[;]***
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.] (Emphasis supplied)

Noncompliance with Section 21 engenders doubt on the integrity of the *corpus delicti*. When the *corpus delicti* is cast in doubt, an accused's guilt is also cast in doubt—warranting acquittal.<sup>44</sup>

*Que* explained how Republic Act No. 10640, in amending Republic Act No. 9165, relaxed what Section 21(1) required:

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<sup>44</sup> *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].





It was relaxed with respect to the persons required to be present during the physical inventory and photographing of the seized items. Originally under Republic Act No. 9165, the use of the conjunctive “and” indicated that Section 21 required the presence of all of the following, in addition to “the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel”:

First, a representative from the media;

Second, a representative from the Department of Justice; and

Third, any elected public official.

As amended by Republic Act No. 10640, Section 21 (1) uses the disjunctive “or,” *i.e.*, “with an elected public official and a representative of the National Prosecution Service *or* the media.” Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other.<sup>45</sup> (Emphasis in the original, citations omitted)

Because the buy-bust operation occurred in 2012, prior to Section 21’s amendment, the original text of the law applies. Yet, operating under either version still leads this Court to the same ruling in this case: the prosecution failed to show the police officers’ strict compliance with Section 21. Two (2) barangay officials witnessed the marking, inventorying, and photographing of the seized items. Beyond that, no representatives from both the media and the Department of Justice were present.

The required witnesses must not only be present during the inventorying and photographing, but as early as the seizure of items.<sup>46</sup> *People v. Mendoza*<sup>47</sup> underscores the danger that follows when these required third-party witnesses are absent in securing the custody of the seized items:

Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 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 sachets of shabu that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.<sup>48</sup>

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<sup>45</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 514 [Per J. Leonen, Third Division].

<sup>46</sup> *Id.* at 520–521.

<sup>47</sup> 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

<sup>48</sup> *Id.* at 764.

Moreover, Section 21 mandates the conduct of inventory and taking of photographs “immediately after seizure and confiscation,” which means that these must be done *at the place of the arrest*. *Que* explained:

What is critical in drug cases is not the bare conduct of inventory, marking, and photographing. Instead, it is the certainty that the items allegedly taken from the accused retain their integrity, even as they make their way from the accused to an officer effecting the seizure, to an investigating officer, to a forensic chemist, and ultimately, to courts where they are introduced as evidence. . . .

Section 21 (1)’s requirements are designed to make the first and second links foolproof. Conducting the inventory and photographing immediately after seizure, exactly where the seizure was done, or at a location as practicably close to it, *minimizes, if not eliminates, room for adulteration or the planting of evidence*[.]<sup>49</sup> (Emphasis supplied)

Under the Implementing Rules and Regulations of the Comprehensive Dangerous Drugs Act, the physical inventory and photographing of the seized items may be done “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.” Evidently, the barangay hall, as in this case, is not an alternative.

While deviations may be condoned under justifiable grounds, the prosecution must plead and prove that justifiable ground.<sup>50</sup> This Court has decried sweeping, unsubstantiated references to exceptions from Section 21’s requirements in *Sagana*:<sup>51</sup>

[T]he prosecution cannot simply rely on the saving clause provided for under the Implementing Rules and Regulations of Republic Act No. 9165. While non-conformity with the strict directive of Section 21 is not essentially prejudicial to its claim, the lapses committed by the police officers “must be recognized and explained in terms of their **justifiable grounds** and the **integrity and evidentiary value** of the evidence seized must be shown to have been preserved.”<sup>52</sup> (Emphasis in the original, citation omitted)

*People v. Lim*<sup>53</sup> considered excusable situations:

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<sup>49</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 489–490 [Per J. Leonen, Third Division].

<sup>50</sup> *People v. Holgado*, 741 Phil. 78, 98 (2014) [Per J. Leonen, Third Division].

<sup>51</sup> 815 Phil. 356 (2017) [Per J. Leonen, Second Division].

<sup>52</sup> *Id.* at 376.

<sup>53</sup> G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/64400>> [Per J. Peralta, En Banc].

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It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.<sup>54</sup> (Citation omitted)

Here, the prosecution has never bothered to prove, let alone plead, any situation akin to those contemplated in *Lim* to excuse the police enforcers' deviation from the law's simple requirements. This casts doubt on the integrity of the items supposedly seized and, ultimately, on the commission of the crimes.

## II

The chain of custody rule removes unnecessary doubts on the identity of the dangerous drugs presented in court.<sup>55</sup> Officers who come into possession of seized drugs must show how they handled and preserved the integrity of the seized drugs while in their custody.<sup>56</sup> In *Mallillin v. People*:<sup>57</sup>

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about *every link in the chain*, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition

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<sup>54</sup> Id.

<sup>55</sup> *People v. Sagana*, 815 Phil. 356, 368 (2017) citing *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

<sup>56</sup> Id. at 368–369.

<sup>57</sup> 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

of the item and no opportunity for someone not in the chain to have possession of the same.<sup>58</sup> (Emphasis supplied, citation omitted)

*People v. Nandi*<sup>59</sup> identified four (4) links which should be established in the chain of custody of the confiscated item:

[F]irst, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>60</sup>

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 safeguard other than his or her mere possession, has been viewed as prejudicial to the integrity of the items.

In *People v. Dela Cruz*,<sup>61</sup> 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

<sup>58</sup> Id. at 587.

<sup>59</sup> 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

<sup>60</sup> Id. at 144-145 citing *People v. Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

<sup>61</sup> 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

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 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 *de la 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.<sup>62</sup>

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.

Moreover, the prosecution failed to present as witness PO2 Albarico, the police officer who personally received the specimen and the request for laboratory examination.

In *Sagana*, this Court acquitted the accused-appellant when it found that the prosecution did not proffer the testimonies of persons who handled the seized items without ample explanation.<sup>63</sup> This Court explained:

The prosecution has the “burden of establishing the identity of the seized items.” Considering the sequence of the people who have dealt with the confiscated articles, the prosecution failed to justify why three (3) other significant persons were not presented as witnesses. These persons were the desk officer who supposedly recorded the incident in the police blotter, the investigator who prepared the request for examination, and *the police officer who received the articles in the laboratory*. “In effect, there is no reasonable guaranty as to the integrity of the exhibits inasmuch as it failed to rule out the possibility of substitution of the exhibits, which cannot but inure to its own detriment.”<sup>64</sup> (Emphasis supplied, citations

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<sup>62</sup> Id. at 834–835.

<sup>63</sup> *People v. Sagana*, 815 Phil. 356 (2017) [Per J. Leonen, Second Division].

<sup>64</sup> Id. at 376.

omitted)

Here, Chief Inspector Puentespina recalled that PO2 Hechanova turned the seized items over to PO2 Albarico, who placed them in his personal drawer for safekeeping.<sup>65</sup> However, his testimony is mere hearsay and inadmissible in evidence. The testimony on matters of which only PO2 Albarico has personal knowledge cannot be admitted or given probative value.<sup>66</sup>

Without PO2 Albarico's testimony, this Court finds a fatal gap in that juncture involving PO2 Hechanova, the designated poseur-buyer, and Chief Inspector Puentespina, the forensic chemical officer. This—together with the absence of the required third-party witnesses, the police officers' lack of a sense of immediacy to mark, inventory, and photograph the items at the place of the arrest, and the unsound manner of transporting whatever items were supposedly seized from accused-appellant—reveals a seriously compromised chain of custody. These put in serious suspicion the identity of the objects of the offenses attributed to accused-appellant, leaving reasonable doubt on his guilt. His constitutional right to be presumed innocent<sup>67</sup> prevails:

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.<sup>68</sup> (Citations omitted)

This Court is, thus, constrained to acquit accused-appellant.

Finally, this Court reiterates our pronouncement in *People v. Holgado*,<sup>69</sup> where we espoused heightened scrutiny in evaluating prosecution evidence in drug cases where what was allegedly seized

<sup>65</sup> CA rollo, p. 80.

<sup>66</sup> RULES OF COURT, Rule 130, sec. 36 provides:

SECTION 36. Testimony generally confined to personal knowledge; hearsay excluded. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

<sup>67</sup> CONST., art. III, sec. 14(2) provides:

(2) in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

<sup>68</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 507–508 [Per J. Leonen, Third Division].

<sup>69</sup> 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

involved a minuscule amount of narcotics:

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered. Also, doubt normally follows in cases where an accused has been discharged from other simultaneous offenses due to mishandling of evidence. Had the Regional Trial Court and the Court of Appeals been so judicious in this case, a speedier resolution would have been handed to Holgado and Misarez whose guilt beyond reasonable doubt was not established.

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial “big fish.” We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of *shabu* under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.<sup>70</sup>

**WHEREFORE**, the Court of Appeals’ October 20, 2015 Decision in CA-G.R. CEB-CR HC No. 01776 is **REVERSED and SET ASIDE**. Accused-appellant Larry Sultan y Almada is **ACQUITTED** for the prosecution’s failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.


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<sup>70</sup> Id. at 100.


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


Let entry of final judgment be immediately issued.

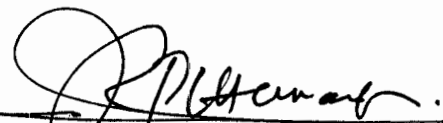
**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

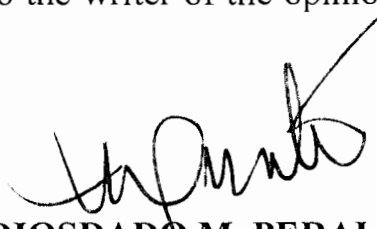
  
**ANDRES B. REYES, JR.**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

**ATTESTATION**

I attest 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.

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



LUCAS P. BERSAMIN  
Chief Justice