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*Wilfredo V. Lapitan*  
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JUL 22 2019



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,     G.R. No. 220456  
Plaintiff-Appellee,

Present:

-versus-

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

GAJIR ACUB Y ARAKANI a.k.a.  
"ASAW,"  
Accused-Appellant.

Promulgated:  
June 10, 2019

*Wilfredo V. Lapitan*

X-----X

DECISION

LEONEN, J.:

State agents must strictly comply with the legal safeguards established in Section 21 of Republic Act No. 9165, as amended, for the custody and disposition of seized illegal drugs, to ensure that the evidence was not tampered with, substituted, or planted. For the saving clause in Section 21 to apply, the prosecution must prove beyond reasonable doubt that noncompliance was justified and that the integrity and evidentiary value of the seized item were preserved.

This Court reviews the March 16, 2015 Decision<sup>1</sup> of the Court of Appeals in CA-G.R. CR HC No. 01003-MIN, affirming the conviction of accused-appellant Gajir Acub y Arakani a.k.a. "Asaw" (Acub) for violation of Section 5 of the Comprehensive Dangerous Drugs Act.

<sup>1</sup> CA rollo, pp. 86-93. The Decision was penned by Associate Justice Oscar V. Badelles, and concurred in by Associate Justices Romulo V. Borja and Maria Filomena D. Singh of the Twenty-First Division, Court of Appeals, Cagayan De Oro City.

In an Information dated February 11, 2005, Acub was charged with selling a dangerous drug to an undercover police officer during a buy-bust operation:

That on or about February 10, 2005, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there willfully and unlawfully, sell and deliver to PO2 Ronald Canete Cordero, member of the PNP, Anti-Illegal Drugs Special Operation Task Force (AIDSOTF), who acted as poseur buyer, one (1) pc. heat sealed transparent plastic sachet containing white crystalline substance weighing 0.0188 gram, which when subjected to qualitative examination gave positive result to the test for the presence of METHAMPHETAMINE HYDROCHLORIDE (shabu), accused knowing the same to be a dangerous drug, in flagrant violation of the above-mentioned law.

CONTRARY TO LAW.<sup>2</sup>

Upon arraignment, Acub pleaded not guilty to the charge against him. Trial on the merits ensued, with the prosecution presenting three (3) police officers as its witnesses and the defense presenting Acub and his wife, Intan Acub (Intan), as its witnesses.<sup>3</sup>

The prosecution evidence established that at about 1:00 p.m. on February 10, 2005, a confidential informant tipped Senior Police Officer 1 Amado Mirasol (SPO1 Mirasol) of the Zamboanga City Police Station that a certain Asaw, later identified as Acub, had been selling illegal drugs at Ayer Village. SPO1 Mirasol informed Chief Police Inspector Ibrahim Jambiran (Chief Inspector Jambiran) of the tip, and the latter planned a buy-bust operation against Asaw.<sup>4</sup>

Chief Inspector Jambiran directed PO2 Ronald Cordero (PO2 Cordero) to act as the poseur-buyer, with PO3 Ajuji as back-up.<sup>5</sup> Chief Inspector Jambiran gave PO2 Cordero a ₱500.00 bill, which the latter then marked with his initials.<sup>6</sup>

The informant and PO2 Cordero then rode a motorcycle to Ayer Village. PO3 Ajuji followed on another motorcycle, while the rest of the police officers rode a white service van.<sup>7</sup>

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<sup>2</sup> Id. at 86–87.

<sup>3</sup> Id. at 20–24. Intan was sometimes spelled “Intad” in the *rollo*.

<sup>4</sup> Id. at 87.

<sup>5</sup> Id. P03 Ajuji was also referred to as P01 Ajuji in the *rollo*.

<sup>6</sup> Id. at 21.

<sup>7</sup> Id. at 22.

Upon arriving at Ayer Village, PO2 Cordero and the informant walked toward a small alley, where they then saw Asaw. The informant talked to Asaw and pointed to PO2 Cordero as a buyer. When Asaw asked for the money, PO2 Cordero gave him the marked ₱500.00 bill.<sup>8</sup>

With the payment in hand, Asaw went into a house and came out a few minutes later with a plastic sachet containing white crystalline substance, which he handed over to PO2 Cordero. The police officer examined the plastic sachet, after which he folded his lower shirt sleeve—the pre-arranged signal that the sale had been consummated.<sup>9</sup>

As PO2 Cordero grabbed Asaw's arm and introduced himself as a police officer, PO3 Ajuji rushed to the scene and searched Asaw for weapons and the marked bill. He then informed Asaw of his constitutional rights in the Tausug dialect, before bringing him to the police station.<sup>10</sup>

At the police station, PO2 Cordero marked the seized sachet with his initials before turning it and Asaw over to PO3 Arlan Delumpines (PO3 Delumpines).<sup>11</sup>

PO3 Delumpines then marked the sachet with his own initials, prepared a request for laboratory examination, and delivered the request and the seized sachet to the Regional Crime Laboratory Office.<sup>12</sup> At about 8:20 p.m., PO1 Joel Bentican received the request with the sachet, and turned them over to Police Inspector Melvin Ledesma Manuel (Inspector Manuel) at 2:00 a.m. the following day.<sup>13</sup>

Later, at around 6:00 a.m., Inspector Manuel examined the specimen and found it positive for methamphetamine hydrochloride or shabu. He summarized his findings in a Chemistry Report.<sup>14</sup>

In his defense, Acub, a pedicab driver, testified that on February 10, 2005, he was at home resting after he and his wife, Intan, had gone to the pawnshop earlier that morning to pawn her earrings. Later, at around 1:00 p.m., he went outside to buy food. On his way back, Acub was suddenly stopped by two (2) men and one (1) woman. One (1) of the men restrained

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<sup>8</sup> Id. at 87.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. at 90.

<sup>12</sup> Id. at 87–88.

<sup>13</sup> Id. at 20–21. Inspector Manuel was sometimes referred to as Police Senior Inspector Manuel.

<sup>14</sup> Id. at 21.

him, while the other poked a gun at him and asked if he had money. After Acub denied having money, they all brought him to his house.<sup>15</sup>

Inside his house, Acub saw his wife crying while three (3) other persons searched his house for shabu. When they found nothing, all six (6) strangers then brought Acub to the police station.<sup>16</sup>

Intan corroborated her husband's testimony. She testified that while her husband was outside buying food, three (3) police officers in civilian clothes suddenly entered and searched their house without a search warrant. They left after finding nothing, but soon returned with more police officers and Acub, who had his hand cuffed and was beaten up by the police officers.<sup>17</sup>

The police officers then asked Intan to produce the shabu, but she denied having any. When they asked her to just give them money instead, she also denied having it.<sup>18</sup>

Intan later visited Acub at the police station, where she was told that she had to pay ₱50,000.00 for her husband's release. She told the officer that she did not have the money for her husband's freedom.<sup>19</sup>

The Regional Trial Court, in its Decision promulgated on November 4, 2011,<sup>20</sup> found Acub guilty of the crime of illegal sale of dangerous drugs.

Upholding the presumption of regularity in the police officers' official actions, the trial court pointed out that it was "out of sync with human nature"<sup>21</sup> for a team of police officers to prey on an impoverished pedicab driver. It also highlighted Acub's admission that prior to the buy-bust operation, he had no misunderstanding with the arresting officers, striking a blow to his frame-up allegations.<sup>22</sup>

The trial court likewise brushed aside the lack of an inventory, as the chain of custody of evidence remained unbroken and the evidence was properly identified in court.<sup>23</sup>

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<sup>15</sup> Id. at 22–23 and 88.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. at 41–49. The Decision docketed as Crim. Case No. 5658 (21352) was penned by Presiding Judge Eric D. Elumba of Branch 13, Regional Trial Court, Zamboanga City.

<sup>21</sup> Id. at 48.

<sup>22</sup> Id.

<sup>23</sup> Id.

Acub was sentenced to life imprisonment and to pay a penalty of ₱500,000.00. The dispositive portion of the Regional Trial Court Decision read:

**WHEREFORE**, in the light of all the foregoing, this Court finds accused GADJIR ACUB Y ARAKANI, a.k.a. "ASAW" **GUILTY** beyond reasonable doubt for violating Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000) without subsidiary imprisonment in case of insolvency.

SO ORDERED.<sup>24</sup> (Emphasis in the original)

Acub filed a Notice of Appeal.<sup>25</sup> In its May 3, 2012 Resolution,<sup>26</sup> the Court of Appeals directed Acub to file his appellant's brief and the Office of the Solicitor General to file its corresponding appellee's brief upon receipt of the appellant's brief. Both parties complied and filed their respective briefs.<sup>27</sup>

In its March 16, 2015 Decision,<sup>28</sup> the Court of Appeals affirmed the Regional Trial Court Decision convicting Acub.

The Court of Appeals upheld the Regional Trial Court's findings that the prosecution successfully established all the elements of the illegal sale of a dangerous drug. Furthermore, it affirmed that there were no gaps in the chain of custody.<sup>29</sup>

The Court of Appeals opined that the police officers' failure to strictly comply with Article II, Section 21 of the Comprehensive Dangerous Drugs Act was immaterial as the integrity and evidentiary value of the seized shabu were properly preserved.<sup>30</sup>

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 04 November 2011 rendered by the Regional Trial Court of Zamboanga City, Branch 13, in *Crim. Case No. 5658 (21352)*, which declares accused-appellant guilty of violation of Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (RA 9165) is hereby AFFIRMED with the MODIFICATION, in that the accused-appellant shall not be eligible for parole.

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<sup>24</sup> Id. at 49.

<sup>25</sup> Id. at 8.

<sup>26</sup> Id. at 9.

<sup>27</sup> Id. at 16–40, Acub's Brief, and 56–83, Office of the Solicitor General's Brief.

<sup>28</sup> Id. at 86–93.

<sup>29</sup> Id. at 89–91.

<sup>30</sup> Id. at 91–92.

SO ORDERED.<sup>31</sup> (Emphasis in the original)

Thus, Acub filed a Notice of Appeal,<sup>32</sup> which was given due course by the Court of Appeals in its July 14, 2015 Resolution.<sup>33</sup>

In its November 25, 2015 Resolution,<sup>34</sup> this Court notified the parties that they may file their respective supplemental briefs. However, as noted in this Court's April 6, 2016 Resolution,<sup>35</sup> both parties manifested<sup>36</sup> that they were dispensing with the filing of a supplemental brief. Instead, they would adopt their Briefs filed before the Court of Appeals.

Accused-appellant alleges that the prosecution failed to show strict compliance with Section 21 of the Comprehensive Dangerous Drugs Act. The police officers have not marked, inventoried, and photographed the sachet of shabu upon seizure and in the presence of the required representatives.<sup>37</sup> Furthermore, accused-appellant notes that the prosecution failed to offer a justifiable ground for the officers' noncompliance with Section 21.<sup>38</sup>

Additionally, accused-appellant claims that the prosecution failed to substantiate its allegation of a planned buy-bust operation. He points out that the lack of a pre-operation report or blotter in the records raises doubt on whether the buy-bust money was marked, and whether the police officers participated in the supposed operation.<sup>39</sup>

Stressing that the prosecution failed to establish an unbroken chain of custody, accused-appellant points out that no other testimony aside from PO2 Cordero's, the poseur-buyer, was presented to prove the alleged sale. Moreover, he states that the prosecution failed to present the confidential informant who supposedly tipped off the police officers. This, he points out, could have shed light on the transaction.<sup>40</sup>

Accused-appellant argues that another gap in the chain was created after Inspector Manuel, the forensic chemist, admitted that he did not personally receive the laboratory request with the specimen. He points out that the Chemistry Report Inspector Manuel identified did not bear his name, but that of a certain Nur-in Moderika y Sawadjaan. He insists that all of these

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<sup>31</sup> Id. at 93.

<sup>32</sup> Id. at 99–101.

<sup>33</sup> Id. at 108.

<sup>34</sup> *Rollo*, p. 17.

<sup>35</sup> Id. at 34–35.

<sup>36</sup> Id. at 19–21 and 28–30.

<sup>37</sup> *CA rollo*, pp. 24–26.

<sup>38</sup> Id. at 28.

<sup>39</sup> Id.

<sup>40</sup> Id. at 31–32.



circumstances created doubt on the integrity and identity of the sachet of shabu that he supposedly sold to PO2 Cordero.<sup>41</sup>

For its part, plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, claims that it was able to prove all the elements of illegal sale of dangerous drugs. It explains that the identities of the buyer and seller, consideration, and object of the sale were established.<sup>42</sup> Denying accused-appellant's assertion that the failure to present the marked money was fatal to its case, it argues that in buy-bust operations, the marked money is not an indispensable requirement, but is merely corroborative.<sup>43</sup>

Plaintiff-appellee, likewise, denies that noncompliance with Section 21 was fatal to its case since the integrity and evidentiary value of the seized sachet were preserved by the apprehending officers, as shown by the unbroken chain of custody.<sup>44</sup>

Finally, plaintiff-appellee maintains that accused-appellant failed to present clear and convincing evidence to overturn the presumption of regularity in the arresting officers' performance of their duties.<sup>45</sup>

The sole issue for this Court's resolution is whether or not accused-appellant Gajir Acub y Arakani's guilt was proven beyond reasonable doubt despite noncompliance with the required procedure under Section 21 of the Comprehensive Dangerous Drugs Act, as amended.

Accused-appellant must be acquitted.

To sustain a conviction for the illegal sale of dangerous drugs, it must be proven that a transaction took place and the *corpus delicti* or the illicit drug must be presented into evidence.<sup>46</sup>

Although not easily identifiable, the identity of the illicit drug must be clearly established since its very existence is essential to convict an accused. *People v. Jaafar*<sup>47</sup> explained:

In all prosecutions for violations of Republic Act No. 9165, the *corpus delicti* is the dangerous drug itself. Its existence is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be

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<sup>41</sup> Id. at 34–35.

<sup>42</sup> Id. at 65–69.

<sup>43</sup> Id. at 69–70.

<sup>44</sup> Id. at 77–79.

<sup>45</sup> Id. at 79–80.

<sup>46</sup> *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division] citing *People v. Darisan*, 597 Phil. 479 (2009) [Per J. Corona, First Division].

<sup>47</sup> 803 Phil. 582 (2017) [Per J. Leonen, Second Division].

clearly established.

Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.<sup>48</sup>

Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, provides the manner of custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21, as amended, imposes the following requirements when it comes to custody of drugs or drug paraphernalia prior to the filing of a criminal case:

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 person/s 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

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<sup>48</sup> Id. at 591 citing *People v. Simbahan*, 449 Phil. 74 (2003) [Per J. Ynares-Santiago, First Division]; *People v. Laxa*, 414 Phil. 156 (2001) [Per J. Mendoza, Second Division]; and *Mallillin v. People*, 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

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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[.]

This Court has repeatedly emphasized that strict compliance<sup>49</sup> is the expected standard when it comes to the custody and disposition of seized illegal drugs, to prevent tampering and planting of evidence. *People v. Que*<sup>50</sup> stressed:

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 the door open for tampering, substitution, and planting of evidence.

Even acts which approximate compliance but do not strictly comply with Section 21 have been considered insufficient.<sup>51</sup>

Strict compliance with Section 21 is in keeping with the doctrine that penal laws are strictly construed against the government and its agents. In *People v. Gonzales*:<sup>52</sup>

These provisions obviously demand strict compliance, for only by such strict compliance may be eliminated the grave mischiefs of planting or substitution of evidence and the unlawful and malicious prosecution of the weak and unwary that they are intended to prevent. Such strict compliance is also consistent with the doctrine that penal laws shall be construed strictly against the Government and liberally in favor of the accused.<sup>53</sup>

Nonetheless, the Comprehensive Dangerous Drugs Act recognizes that strict compliance with its provisions may not always be possible. Hence, a saving clause was introduced, first in the Implementing Rules and

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<sup>49</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63900>> [Per J. Leonen, Third Division]; *People v. Gonzales*, 708 Phil. 121, 129 (2013) [Per J. Bersamin, First Division]; and *People v. Carin*, 645 Phil 560, 566 (2010) [Per J. Carpio Morales, Third Division].

<sup>50</sup> G.R. No. 212994, January 31, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63900>> [Per J. Leonen, Third Division].

<sup>51</sup> Id.

<sup>52</sup> 708 Phil. 121 (2013) [Per J. Bersamin, First Division].

<sup>53</sup> Id. at 129 citing *People v. Denoman*, 612 Phil. 1165 (2009) [Per J. Brion, Second Division].

Regulations, before being eventually inserted in the amended law. The saving clause states:

[P]rovided, finally, 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.

The law is clear that for the saving clause to apply, the twin requirements must be met: (1) the noncompliance was justifiable; and (2) the integrity and evidentiary value of the seized item were preserved. Not only must the prosecution explain why the requirements were not strictly complied with,<sup>54</sup> it must also prove during trial the justifiable grounds for noncompliance.<sup>55</sup> *People v. Umipang*<sup>56</sup> instructed:

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were “recognized and explained in terms of [] justifiable grounds.” There must also be a showing “that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason.” However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.<sup>57</sup> (Citations omitted)

Here, both the trial court<sup>58</sup> and the Court of Appeals<sup>59</sup> acknowledged that the prosecution failed to prove strict compliance with Section 21. However, they both brushed this failure aside by reasoning that the integrity and evidentiary value of the seized shabu were nevertheless preserved. The Court of Appeals held:

Section 21, Article II of RA 9165 clearly outlines the post-seizure procedure for the custody and disposition of seized drugs. The law mandates that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory of the same and take a photograph thereof in the presence of the accused, of

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<sup>54</sup> *People v. Almorfe*, 631 Phil. 51, 60 (2010) [Per J. Carpio Morales, First Division] citing *People v. Garcia*, 599 Phil. 416 (2009) [Per J. Brion, Second Division].

<sup>55</sup> *People v. De Guzman*, 630 Phil. 637, 648–649 (2010) [Per J. Nachura, Third Division].

<sup>56</sup> 686 Phil. 1024 (2012) [Per J. Sereno, Second Division].

<sup>57</sup> *Id.* at 1053–1054.

<sup>58</sup> CA *rollo*, p. 48.

<sup>59</sup> *Id.* at 91–92.

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.

However, the Implementing Rules and Regulations of the said law provide a saving clause whenever the procedures laid down in the law are not strictly complied with, thus:

... 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.

As gleaned from the foregoing, the most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused. As long as the evidentiary value and integrity of the illegal drug are properly preserved, strict compliance of the requisites under Section 21 of RA 9165 may be disregarded. Further, slight infractions or nominal deviations by the police from the prescribed method of handling the *corpus delicti* should not exculpate an otherwise guilty defendant.<sup>60</sup> (Citations omitted)

The Court of Appeals is mistaken.

It has not escaped this Court's attention that the seized sachet only contained 0.0188 gram of shabu,<sup>61</sup> a minuscule amount that is practically just a grain of rice. This magnifies the danger of tampering with or planting evidence. Hence, the lower courts should have been on guard instead of easily resorting to the presumption of regularity enjoyed by police officers in the performance of their official acts. In *People v. Holgado*:<sup>62</sup>

While the minuscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In [*Mallillin*] v. *People*, this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives."<sup>63</sup>

It is disconcerting how quickly the lower courts downplayed the legal safeguards in Section 21 by immediately resorting to the saving clause and embracing the presumption of regularity accorded to State agents.

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<sup>60</sup> Id. at 91–92.

<sup>61</sup> Id. at 86.

<sup>62</sup> 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

<sup>63</sup> Id. at 99 citing *Mallillin v. People*, 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

The prosecution failed to prove that an inventory of the seized sachet was prepared and that it was photographed in the presence of accused-appellant, an elected public official, and representatives from the National Prosecution Service or the media. Despite the blatant lapses, the prosecution did not explain the arresting officers' failure to comply with the requirements in Section 21. Nonetheless, despite the prosecution's indifference to the established legal safeguards, both the lower courts still found accused-appellant guilty of the charge against him.

Contrary to what the lower courts may believe, the saving clause, as an exception to the rule of strict compliance, is not a talisman that the prosecution may invoke at will. Instead, it may only be appreciated in the prosecution's favor if the latter shows a valid reason for not observing the procedure laid out in Section 21.

The unjustified lapses or noncompliance with Section 21 is tantamount to a substantial gap in the chain of custody. In *Mariñas v. People*:<sup>64</sup>

There is no question that the prosecution miserably failed to provide justifiable grounds for the arresting officers' non-compliance with Section 21 of R.A. No. 9165, as well as the IRR. *The unjustified absence of an elected public official and DOJ representative during the inventory of the seized item constitutes a substantial gap in the chain of custody.* There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the corpus delicti. As such, the petitioner must be acquitted.<sup>65</sup> (Emphasis supplied)

In his separate concurring opinion in *Mariñas*, Associate Justice Diosdado Peralta expounded that the prosecution, in accordance with the Rules on Evidence, has the burden of proving a justifiable cause for noncompliance with Section 21.<sup>66</sup> He then listed some of the possible justifiable reasons for noncompliance with Section 21:

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for 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[s] 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

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<sup>64</sup> G.R. No. 232891, July 23, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64388>> [Per J. Reyes, Jr., Second Division].

<sup>65</sup> Id.

<sup>66</sup> J. Peralta, Concurring Opinion in *Mariñas v. People*, G.R. No. 232891, July 23, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64388>> [Per J. Reyes, Jr., Second Division].

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>67</sup> (Citation omitted)

The prosecution utterly failed to provide any justifiable ground for the arresting officers' failure to inventory and photograph the seized sachet in the presence of accused-appellant, an elected public official, and representatives from the National Prosecution Service or the media. Worse, the prosecution remained silent as to the noncompliance with Section 21.

This noncompliance created a huge gap in the chain of custody that not even the presumption of regularity in the performance of official duties may remedy, as the lapses themselves are undeniable evidence of irregularity.<sup>68</sup>

**WHEREFORE**, the March 16, 2015 Decision of the Court of Appeals in CA-G.R. CR HC No. 01003-MIN is **REVERSED and SET ASIDE**. Accused-appellant Gajir Acub y Arakani a.k.a. "Asaw" 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 any other lawful cause.

Let a copy of this Decision be furnished to the Penal Institute Superintendent of the Bureau of Corrections San Ramon Prison and Penal Farm, Zamboanga City, for immediate implementation. The Penal Institute Superintendent is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

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

**SO ORDERED.**

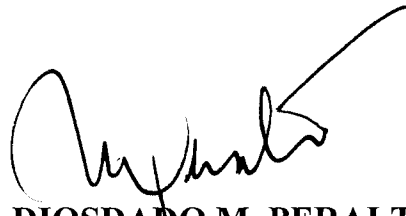
  
MARVIC M.V.F. LEONEN  
Associate Justice

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<sup>67</sup> Id.

<sup>68</sup> *People v. Ramirez*, G.R. No. 225690, January 17, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63896>> [Per J. Martires, Third Division] citing *People v. Mendoza*, 736 Phil 749, 769–770 (2014) [Per J. Bersamin, First Division].

WE CONCUR:



**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

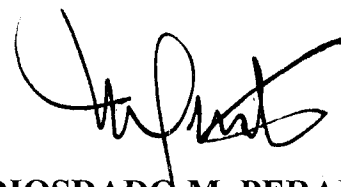
*Reyes*  
**ANDRES B. REYES, JR.**  
Associate Justice

  
**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

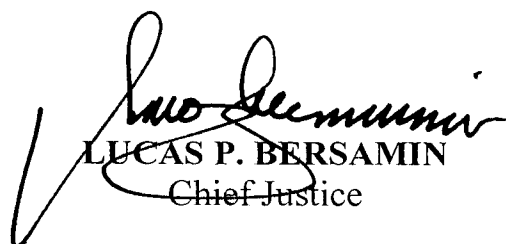
**CERTIFICATION**

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.

CERTIFIED TRUE COPY

**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

JUL 22 2019

  
**LUCAS P. BERSAMIN**  
Chief Justice