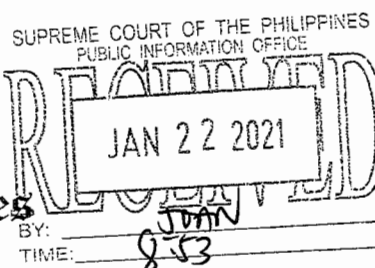




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 248333
Plaintiff-Appellee,

Present:

- versus -

PERALTA, *Chairperson*,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ*.

KHALED FIRDAUS ABBAS y
TIANGCO,
Accused-Appellant.

Promulgated:

SEP 08 2020

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DECISION

REYES, J. JR., *J.*:

This resolves the appeal from the March 14, 2018 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08396, which sustained the conviction of Khaled Firdaus Abbas y Tiangco (appellant) for violation of Section (Sec.) 5,² Article (Art.) II of Republic Act (R.A.) No. 9165 or "*The Comprehensive Dangerous Drugs Act of 2002*."

The appeal stems from an Information³ charging appellant and worded as follows:

That on or about the 29th day of December 2013 in Quezon City, Philippines, the above-named accused without lawful authority did then

¹ Penned by Associate Justice Elihu A. Ybanez, with Associate Justices Rosmari D. Carandang (now a member of this Court) and Pedro B. Corales, concurring; *rollo*, pp. 3-28.

² Illegal Sale of Dangerous Drugs.

³ *Rollo*, p. 4.

and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit twenty four point forty six (24.46) grams of white crystalline substance containing Methamphetamine Hydrochloride otherwise known as "SHABU" a dangerous drug.

CONTRARY TO LAW.⁴

The evidence for the prosecution tends to establish that on December 28, 2013, SPO1 Leonardo Dulay (SPO1 Dulay) was on duty at Camp Karingal, Quezon City, when a confidential informant reported to the station's chief at around 1:00 p.m., about the illegal drug activity of a certain "JR" in *Barangay Socorro*, Quezon City. SPO1 Dulay was instructed to verify the report and a buy-bust team was formed. SPO1 Dulay was designated as the poseur-buyer, for which he was given two marked Five Hundred Peso (₱500.00) bills and boodle money representing Sixty-Five Thousand Pesos (₱65,000.00). A Coordination Form and Pre-Operation Report were also prepared. SPO1 Dulay, through the informant, ordered 25g of *shabu* worth ₱65,000.00 from the said "JR."⁵

On December 29, 2013, SPO1 Dulay and the informant rode a Toyota Altis with plate number CAA 518 towards the agreed meeting place at General Roxas Street, Cubao, Quezon City. They arrived at around 7:00 p.m. When the appellant arrived at around 7:30 p.m., the informant called out to him to get into the car. Inside the car, the informant introduced SPO1 Dulay to appellant and inquired about the order for 25g of *shabu*, which appellant handed over to SPO1 Dulay, who then gave appellant the buy-bust money with bogus money enclosed in a brown envelope. SPO1 Dulay turned on the car's hazard light, which was the pre-arranged signal that the drug deal was consummated. The rest of the team rushed over and SPO1 Dulay introduced himself as a police officer to appellant. PO3 Rolando Alieger, Jr. (PO3 Alieger) assisted SPO1 Dulay in frisking appellant, although it was SPO1 Dulay who recovered the buy-bust and boodle money from appellant. They informed appellant of his constitutional rights. SPO1 Dulay then marked the sachet of substance sold to him by appellant with "KFTA-LD-12/29/13." They prepared the Inventory Receipt and contacted media and *barangay* representatives, but no one came. They proceeded to the office. All the while, SPO1 Dulay kept in his possession the *shabu* he purchased until they arrived at the office.⁶

Upon arrival, SPO1 Dulay turned over the seized evidence to PO3 Nilo Duazo (PO3 Duazo), the police investigator on duty. PO3 Duazo prepared the Chain of Custody Form, Request for Laboratory Examination,

⁴ Id.

⁵ CA *rollo*, p. 46.

⁶ Id. at 47.

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Request for Drug Test Examination, Inventory of Seized/Confiscated Item/Property, Arrest and Booking Sheet, and took photographs of appellant and the evidence. Rey Argana of Police Files Tonite and one BPSO Rolando Paronia, a *barangay* representative who was not an elected official, signed the Inventory Receipt.⁷

PCI Maridel Rodis-Martinez (PCI Martinez), forensic chemist of the PNP Crime Laboratory, received the Request for Laboratory Examination and the heat-sealed transparent plastic sachet containing white crystalline substance marked as “KFTA-LD-12/29/13” from SPO1 Dulay on December 30, 2013. PCI Martinez immediately conducted a qualitative examination on the specimen received, which tested positive for methamphetamine hydrochloride, commonly known as *shabu*. Afterwards, PCI Martinez sealed the specimen and turned it over to PO1 Junia Tuccad, the evidence custodian, and issued Initial Laboratory Report No. D-486-13, as well as Chemistry Report No. D-486-13 to reflect her findings. Upon subpoena by the court, PCI Martinez retrieved the specimen from the evidence custodian on June 3, 2014.⁸

Appellant, on the other hand, denied the charge and testified that on December 28, 2013, at around 4:00 p.m., he was in Cubao, Quezon City, when two men blocked his path, introduced themselves as police officers and arrested him. They forced him to board their car, where two men were already seated. The officers took his mobile phone, grocery items, and employment identification at a call center. PO3 Alieger pointed a gun to his head and told him to keep his head down as they took appellant to a nipa hut where SPO1 Dulay and PO3 Alieger told him that they knew his father and sister, and that they wanted his father to settle the case with them. Afterwards, appellant was brought to Camp Karingal where he was detained for two hours, then brought to the District Anti-Illegal Drugs office, where he saw documents and a white crystalline substance on top of a table. PO3 Alieger instructed appellant to sign a blank piece of paper, but he initially refused until PO3 Alieger insisted and told him it was only for safekeeping. Appellant further narrated that he was unable to report his arrest to his father because his mobile phone was never returned to him, so his family found out about the arrest after a few days. According to appellant, for his own safety, his father has not yet filed a case against the officers who arrested him, but intend to do so when the case is over.⁹

On June 10, 2016, the Regional Trial Court (RTC) of Quezon City, Branch 79, rendered Judgment¹⁰ in favor of the prosecution, as follows:

⁷ Id. at 47-48.

⁸ Id. at 46.

⁹ Id. at 48.

¹⁰ Penned by Presiding Judge Nadine Jessica Corazon J. Pama; id. at 45-53.

WHEREFORE, judgment is hereby rendered finding accused **KHALED FIRDAUS ABBAS y TIANGCO, GUILTY BEYOND REASONABLE DOUBT** of violation of [Sec.] 5, Art. II, of [R.A. No.] 9165, and he is hereby sentenced to suffer life imprisonment, and to pay a fine of five hundred thousand pesos (P500,000.00).

The Branch Clerk of Court is directed to immediately turn over to the Chief of PDEA Crime Laboratory, the subject drugs covered by Chemistry Report No. D-486-13, to be disposed of in strict conformity with the provisions of R.A. [No.] 9165 and its implementing rules and regulations on the matter.

SO ORDERED.¹¹

On appeal, the CA upheld the RTC's Judgment¹² through the currently assailed Decision,¹³ disposing:

FOR THESE REASONS, the instant appeal is hereby ordered **DISMISSED**, and the appealed Judgment dated 10 June 2016 rendered by Branch 79 of the National Capital Judicial Region of the Regional Trial Court of Quezon City in Criminal Case No. R-QZN-13-02726-CR is **AFFIRMED in toto**.

SO ORDERED.¹⁴

Both appellant and the Office of the Solicitor General manifested¹⁵ that no supplemental briefs are forthcoming, given that they've exhaustively argued their respective positions in their appeal briefs before the CA. In the issues¹⁶ raised before the CA, appellant argued that the trial court gravely erred:

I.

x x x IN FINDING THAT [APPELLANT] IS GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THE LEGALITY OF HIS ARREST;

II.

xxx IN FINDING THAT [APPELLANT] IS GUILTY OF THE CRIME CHARGED BASED ON THE EVIDENCE OBTAINED BY VIRTUE OF AN INVALID WARRANTLESS ARREST;

III.

x x x IN FINDING THAT [APPELLANT] IS GUILTY DESPITE THE PROSECUTION'S FAILURE TO PRESERVE THE INTEGRITY AND

¹¹ Id. at 53.

¹² Supra note 10.

¹³ Supra note 1.

¹⁴ *Rollo*, p. 27

¹⁵ Id. at 36-38 and 43-45.

¹⁶ Id. at 9-10.

EVIDENTIARY VALUE OF THE ALLEGEDLY SEIZED
DANGEROUS DRUGS; and

IV.

x x x IN RULING THAT THE PRESUMPTION OF REGULARITY IN
THE PERFORMANCE OF OFFICIAL DUTIES APPLIES IN THE
INSTANT CASE.¹⁷

In sum, we are tasked to revisit whether or not the lower courts correctly ruled that the prosecution established beyond reasonable doubt appellant's guilt for violation of Sec. 5, Art. II of R.A. No. 9165, given that an appeal in criminal cases opens the entire case for review.¹⁸

There is merit in the appeal.

"The right to question the validity of an arrest may be waived if the accused, assisted by counsel, fails to object to its validity before arraignment."¹⁹ This holds true in this case, where the issue on the legality of appellant's arrest is already foreclosed by appellant's participation during trial after entering a plea of not guilty. That said, the arresting officers' non-compliance with Sec. 21(1),²⁰ Art. II of R.A. No. 9165, nonetheless, leave unresolved doubts relative to the circumstances of appellant's arrest.

"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."²¹ Considering that the object of the illegal sale is the seized drug, we have emphasized time and again that "the seized drug is the *corpus delicti* of the crime itself."²² For this reason, "[i]ts existence must be proved beyond reasonable doubt."²³ Thus, to successfully establish that appellant had sold an illegal drug to the officer

¹⁷ Id.

¹⁸ *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

¹⁹ *Lapi v. People*, G.R. No. 210731, February 13, 2019.

²⁰ 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[.]** (Emphasis supplied)

²¹ Supra note 18.

²² *People v. Tomawis*, G.R. No. 228890, April 18, 2018.

²³ *People v. Ameril*, G.R. No. 222192, March 13, 2019.

posing as a buyer and triggering an *in flagrante delicto* arrest, it was incumbent on the arresting officers to have followed procedural safeguards provided in Sec. 21 (1), Art. II of R.A. No. 9165, the applicable law at that time, to remove any doubt on the existence of the object of the illegal sale.

SPO1 Dulay's initial testimony and appellant's version fixes the date of arrest on December 28, 2013, only to be amended²⁴ by SPO1 Dulay on cross-examination as having taken place on December 29, 2013, which is the date stated in the Information.²⁵ Going by the prosecution's version, the buy-bust operation was triggered by a tip-off regarding a certain "JR." The records, however, do not disclose that this alias or nickname refer to appellant, as the subject of the supposedly verified report and the planned buy-bust operation. Any inconsistency in the arresting officers' timeline, from the tip off and planning stage to the execution stage, would certainly seem minor, had there been compliance with the requisite witnesses at the time of arrest and seizure.

In *People v. Luna*,²⁶ the Court said:

To recapitulate, the presence of the three (3) insulating witnesses must be secured and complied with at the time of the warrantless arrest, such that they are required to be at or at least near the intended place of the arrest, and accordingly be ready to witness the inventory and photographing of the seized items "immediately after seizure and confiscation." This is the necessary interpretation of Section 21 if the purpose of the law, which is to insulate the accused from abuse, is to be achieved.

We note that the buy-bust team had time to secure the presence of required witnesses, given that it was not some random sale and they even had to place an order ahead of time, for 25 grams of the contraband. As made clear in *People v. Manabat*:²⁷

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be done in the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made **immediately after, or at the place of apprehension**. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending

²⁴ CA rollo, p. 47.

²⁵ Supra note 3.

²⁶ G.R. No. 219164, March 21, 2018.

²⁷ G.R. No. 242947, July 17, 2019; emphasis and underscoring in the original.

officer/team. In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension - a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.²⁸

The lower courts should not have given any weight on the explanation given by SPO1 Dulay that he contacted media and *barangay* representatives immediately after the arrest, but none came. The required witnesses could not ordinarily be expected to appear on short notice. Compliance should not be an afterthought, but made part of the planning stage as far as it is practicable. To do otherwise is to leave more questions than answers, as in this case.

Scouring through the records, no attempt was made by the prosecution to show any effort to obtain the presence of the required witnesses at the point of sale, given that the buy-bust transaction was supposedly scheduled the day before the arrest. Relative to this, we have “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.”²⁹

In *Luna*,³⁰ the Court explained:

Concededly, Section 21 of the IRR of RA 9165 provides 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.” For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.

According to SPO1 Dulay, he could not complete the marking and inventory at the place of arrest because there was a growing crowd of onlookers. This is no justification for the deviation because it was not shown that the said crowd was interfering in any way with the arrest or inventory. Furthermore, the marking, physical inventory, and photographing of the evidence at the initial stage were never intended to be conducted in secrecy or absolute privacy. It is also strange that, in this age of camera phones, none of the arresting officers photographed the marked sachet of *shabu* at the place of arrest, to establish that it was indeed the object of the sale.

Given the arresting officers’ lapses in observing proper procedure as we pointed out, the presumption of regularity in the performance of official duty cannot be accorded them. In any case, we remind that “[t]he

²⁸ Id.

²⁹ Supra note 18; emphasis and underscoring in the original.

³⁰ Supra note 26.

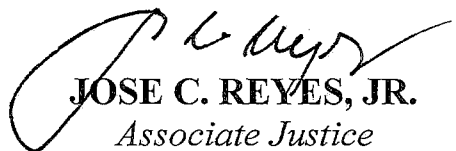
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presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.³¹

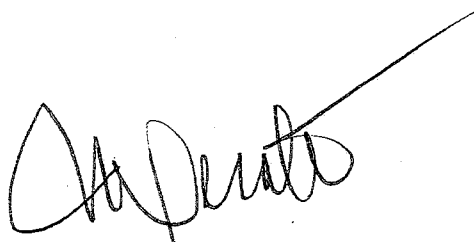
In sum, we cannot sustain the lower courts' conclusion upholding the integrity and evidentiary value of the sachet of *shabu* allegedly sold by appellant, despite the fact that neither an elected official nor a representative from the Department of Justice witnessed the inventory of the seized evidence at the police station, falling short of what the law requires. There was also no justification as why the inventory could not be completed where the arrest took place. Even if we were to view the inventory at the police station as called for by circumstances, it was only witnessed by a media representative who had no personal knowledge as to the source of the sachet of *shabu* presented in evidence. For these reasons, the prosecution failed to convincingly establish that appellant sold the sachet of *shabu* to SPO1 Dulay. It is serious error to conclude that the prosecution sufficiently discharged its burden of proving that the illegal transaction took place.

WHEREFORE, the present appeal is **GRANTED**. The Decision dated March 14, 2018 of the Court of Appeals in CA-G.R. CR-HC No 08396 is hereby **REVERSED and SET ASIDE**. Accordingly, appellant Khaled Firdaus Abbas y Tiangco is **ACQUITTED** of the crime charged on the ground of reasonable doubt. Consequently, appellant's **IMMEDIATE RELEASE** is in order, unless appellant is confined for any other lawful cause.

SO ORDERED.

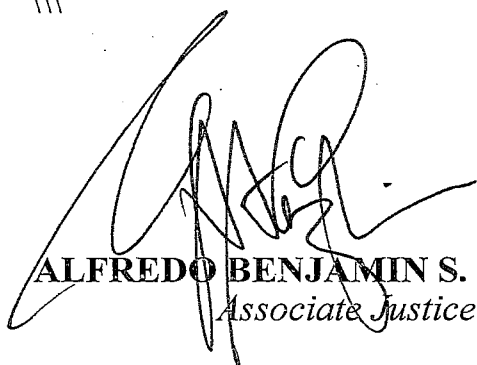

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

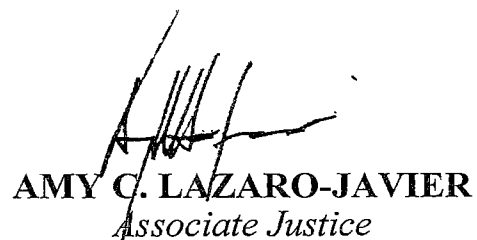

DIOSDADO M. PERALTA
Chief Justice
Chairperson

³¹ Supra note 27.

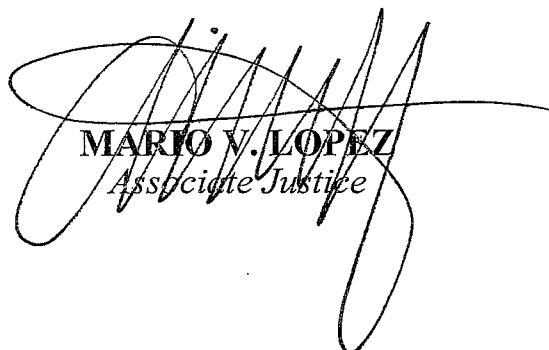
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ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



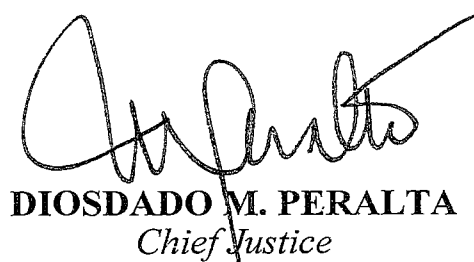
AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
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.



DIOSDADO M. PERALTA
Chief Justice

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