Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 252154**
	Present:
- versus -	PERALTA, *C.J., Chairperson,* CAGUIOA, CARANDANG, ZALAMEDA, and GAERLAN, *JJ.*
TAMIL SELVI VELOO and N. CHANDRAR NADARAJAN,* Accused-Appellants.	**Promulgated:** MAR 24 2021

x - x

DECISION

PERALTA, ***C.J.:***

Numerous times this Court did not hesitate to acquit the accused for unjustified failure of law enforcement officers to strictly comply with Section 21 of Republic Act (*R.A.*) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*. However, just as compliance therewith will not automatically result in conviction, failure to strictly comply therewith will not automatically result in acquittal, for as long as the saving clause in the law's Implementing Rules and Regulations (*IRR*) is triggered.

We resolve an appeal from the Decision[1] of the Court of Appeals dated December 13, 2018 in CA-G.R. CR-H.C. No. 09033, affirming the Joint Decision[2] dated September 15, 2015 of the Regional Trial Court (*RTC*) of Pasay City finding accused-appellants Tamil Selvi Veloo (*Veloo*) and N.

* Malaysian Passport No. 19128801 states "NADARAJAN," instead of "NADERAJAN."

1 Penned by Associate Justice Stephen C. Cruz, with Associate Justices Pedro B. Corales and Geraldine C. Fiel-Macaraig, concurring; *rollo*, pp. 3-21.

2 Penned by Presiding Judge Divina Gracia Lopez Pelino; records, pp. 467-477.

Chandrar Nadarajan (*Nadarajan*) guilty beyond reasonable doubt of violating Section 5 of R.A. No. 9165.

Both accused were charged in two (2) separate Informations as follows:

CRIMINAL CASE NO. R-PSY-12-05297-CR

The undersigned Assistant City Prosecutor accuses TAMIL SELVI VELOO and N. CHANDRAR NAD[A]RAJAN, of VIOLATION OF SECTION 5, ARTICLE II, REPUBLIC ACT 9165, committed as follows:

That on or about the 16th day of June 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court the above named accused, without authority of law, conspiring and confederating together and mutually helping one another, did then and there, willfully, unlawfully and feloniously transport the following:

A-1- One (1) heat-sealed transparent plastic bag with marking EXH "A-1" CBB 6-16-2012 300 grams and with signature containing white crystalline substance with a net weight of 312.26 grams.

A-2- One (1) heat[-]sealed transparent plastic bag with markings EXH "A-2" CBB 6-16-2012 500 grams and with signature containing white crystalline substance with a net weight of 497.66 grams.

A-3- One (1) heat[-]sealed transparent plastic bag with markings EXH "A-3" CBB 6-16-2012 500 grams and with signature containing white crystalline substance with a net weight of 504.14 grams.

A-4 One (1) heat[-]sealed transparent plastic bag with markings EXH "A-4" CBB 6-16-2012 500 grams and with signature containing white crystalline substance with a net weight of 491.69 grams.

A-5 One (1) heat[-]sealed transparent plastic bag with markings EXH "A-5" CBB 6-16-2012 300 grams and with signature containing white crystalline substance with a net weight of 296.64 grams.

A-6 One (1) heat[-]sealed transparent plastic bag with markings EXH "A-6" CBB 6-16-2012 300 grams and with signature containing white crystalline substance with a net weight of 309.89 grams.

A-7 One (1) heat[-]sealed transparent plastic bag with markings EXH "A-7" CBB 6-16-2012 500 grams and with signature containing white crystalline substance with a net weight of 499.80 grams.

A-8 One (1) heat[-]sealed transparent plastic bag with markings EXH "A-8" CBB 6-16-2012 500 grams and

with signature containing white crystalline substance with a net weight of 494.44 grams.

A-9 One (1) heat[-]sealed transparent plastic bag with markings EXH "A-9" CBB 6-16-2012 100 grams and with signature containing white crystalline substance with a net weight of 115.76 grams.

A-10 One (1) heat[-]sealed transparent plastic bag with markings EXH "A-10" CBB 6-16-2012 500 grams and with signatures containing white crystalline substance with a net weight of 495.75 grams.

with a total weight of 4018.03 grams of METHAMPHETAMINE HYDROCHLORIDE (Shabu) a dangerous drugs (sic).

CONTRARY TO LAW.[3]

CRIMINAL CASE NO. R-PSY-12-05298-CR

The undersigned Assistant City Prosecutor accuses N. CHANDRAR NAD[A]RAJAN and TAMIL SELVI VELOO, of VIOLATION OF SECTION 5, ARTICLE II, REPUBLIC ACT 9165, committed as follows:

That on or about the 16th day of June 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, conspiring and confederating together and mutually helping one another, did then and there, willfully, unlawfully and feloniously transport the following:

One (1) heat[-]sealed plastic containing suspected white crystalline substance with markings EXH "B-1" CBB 6-16-2012 with signature and 500 grams.

One (1) heat[-]sealed plastic containing suspected white crystalline substance with markings EXH "B-2" CBB 6-16-2012 with signature and 500 grams.

One (1) heat[-]sealed plastic containing suspected white crystalline substance with markings EXH "B-3" CBB 6-16-2012 with signature and 700 grams.

One (1) heat[-]sealed plastic containing suspected white crystalline substance with markings EXH "B-4" CBB 6-16-2012 with signature and 100 grams.

One (1) heat[-]sealed plastic containing suspected white crystalline substance with marking EXH "B-5" CBB 6-16-2012 with signature and 100 grams.

One (1) heat[-]sealed plastic containing suspected white crystalline substance with marking EXH "B-6" CBB 6-16-2012 with signature and 100 grams.

---

3 Records, pp. 1-2.

with a total weight of 2000 grams of METHAMPHETAMINE HYDROCHLORIDE (shabu), a dangerous drug.

CONTRARY TO LAW.[4]

Upon their plea of *not guilty*, a joint pre-trial and trial ensued.

The facts, as culled from the testimonies and exhibits of the prosecution and defense witnesses, are as follows:

On June 16, 2012 at around 3:30 p.m., Veloo and Nadarajan, both Malaysian nationals and seated beside each other in Philippine Airlines Flight PR 319 from Hong Kong, arrived at the Ninoy Aquino International Airport (NAIA) Terminal 2. At the conveyor belt, Veloo took a black Dibola luggage, allegedly thinking that it was hers, while Nadarajan took a black Phoenix bag. Afterwards, they queued at adjacent lanes at the Customs Area of the airport.

A. Facts in relation to Veloo's apprehension

According to Customs Examiner Carol B. Buenconsejo, she was on duty on June 16, 2012 at around 4:00 p.m. when accused Veloo queued at her lane. After receiving her Customs Declaration Form and noticing that Veloo indicated that she had nothing to declare, Buenconsejo asked her for her purpose in coming to the Philippines. Veloo replied "*We are on a honeymoon*," which made Buenconsejo become suspicious because Veloo did not appear to have a companion. She became even more suspicious upon seeing her carrying a big luggage, so she asked Veloo to open the same. Upon removing some of the contents thereof, Buenconsejo noticed that there were many peanut brittles and asked Veloo what she was going to do with all of them, to which Veloo replied, "*That's what we're going to eat during our honeymoon here.*"[5] (Veloo, however, testified that when the luggage was opened, there were men's clothes and a lot of peanuts inside so she told Buenconsejo that it is not her luggage and that the luggage tag is under Nadarajan's name.)[6] This prompted Buenconsejo to search the false bottom of the luggage where she felt a bulging hard rough object. She then opened the zipper at the bottom, yielding a small clear plastic pack containing crystallized granules. At that time, her superior, Elizabeth Pableo, co-examiner Nerissa Alveza, and customs police SAII Antonio Punzalan were present. After seeing the plastic pack, Veloo pointed to Nadarajan who was about to come out of the adjacent lane, saying "*my husband, my husband.*"[7] Punzalan then instructed Special Agents Alona De

4 *Id.* at 47-48.
5 TSN, February 18, 2014, p. 7.
6 TSN, April 30, 2015, pp. 5-6.
7 TSN, February 18, 2014, pp. 7-9.

Guzman and Edmund Mozo to apprehend Nadarajan who was already outside the Customs Exit Gate, and instructed Buenconsejo to close the bag and bring Veloo and the bag to the Exclusion Room for further examination. It was there that Buenconsejo found more clear plastic packs inside the bag, totaling ten (10) packs and weighing four (4) kilos. The field test conducted thereon by SAII Ernie Pracale of the Customs Task Force yielded positive for the presence of methamphetamine hydrochloride.

B. Facts in relation to Nadarajan's apprehension

Nadarajan was apprehended near the Customs exit gate after being pointed to by Veloo. Punzalan testified that Nadarajan entered the exclusion room without his luggage.[8] Punzalan then asked him whether he was the husband of Veloo. Nadarajan replied that he was not, that he just met her on the plane,[9] and that he does not know why Veloo claims that he is her husband.[10] Punzalan then instructed his men to inquire at the Philippine Airlines counter as to whether Nadarajan had a luggage. After verifying that he had a luggage and upon Punzalan's instructions, Special Agents De Guzman and Mozo went to retrieve the suit case which was allegedly with a hotel representative. Nadarajan testified that when the bag finally arrived in the room more than an hour later, it was already opened, and it was at that point that he was accused of carrying illegal drugs.[11] Upon examining said bag, Buenconsejo observed that it was a black bag like Veloo's but smaller. It also contained clothes, peanuts, and a false bottom from which Buenconsejo was able to retrieve six (6) clear plastic packs filled with crystallized granules, which were bigger than the packs in the Dibola bag, weighing a total of two (2) kilos.

Thereafter, the photographing and inventory of the seized items were done in the presence of the accused, SAII Punzalan, *Kagawad* Jaime Abasola, and ABS-CBN/DWIZ Media Reporter Raoul Esperas. Buenconsejo then turned the bags over to IO2 Julie Lucero of the Philippine Drug Enforcement Agency (*PDEA*) who, subsequently, delivered the same to Forensic Chemist Arlene Arcos for analysis before turning them over to the trial court.

After trial, the RTC promulgated the assailed Joint Decision dated September 15, 2015 finding accused-appellants GUILTY beyond reasonable doubt of the crimes separately charged, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding both accused, **TAMIL SELVI VELOO** and **N. CHANDRAR NAD[A]RAJAN**, ***guilty***

8 TSN, December 6, 2012, p. 24.
9 Judicial Affidavit of Nadarajan dated November 18, 2014, p. 2, *rollo*, pp. 430-432.
10 TSN, December 9, 2014, p. 7.
11 Judicial Affidavit of Nadarajan dated November 18, 2014, p. 3, *rollo*, pp. 430-432.

> ***beyond reasonable doubt*** of both charges of Violation of Section 5, Article II of R.A. 9165 (Transportation of Dangerous Drugs) in Criminal Case Nos. R-PSY-12-05297-98-CR and are both hereby sentenced to suffer the penalty of life imprisonment and each to pay a fine of eight hundred thousand pesos (Php800,000.00) in each case.
>
> **SO ORDERED**.[12]

In its Decision dated December 13, 2018, the Court of Appeals affirmed the Joint Decision of the RTC *in toto*.[13] It, likewise, denied accused-appellant Nadarajan's Motion for Reconsideration.[14]

Coming before this Court, accused-appellants, in their respective Briefs originally filed with the Court of Appeals, impute grave error on the trial court for convicting them despite alleged failure of the prosecution to prove the elements of the crime charged and notwithstanding the apprehending officers' failure to faithfully comply with the chain of custody requirement, particularly the absence of a DOJ representative during the inventory of the drugs, in violation of Section 21 of R.A. No. 9165.

Section 5, Article II of R.A. No. 9165 punishes the transportation of prohibited drugs as follows:

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

The essential element for the crime of illegal transportation of dangerous drugs is the movement of said drugs from one place to another.[15] To establish the accused's guilt, it must be proven that: (1) the transportation of illegal drugs was committed; and (2) the prohibited drug exists.[16]

Concomitantly, the prosecution must prove not only the act of transporting the drugs, but also the identity and integrity thereof. In the prosecution of drug-related cases, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of

---

12 *Rollo*, pp. 98-108.
13 *Id.* at 3-20.
14 *Id.* at 301-305.
15 *People v. Asislo*, 778 Phil. 509 (2016).
16 *People v. Watamama*, 692 Phil. 102, 106 (2012).

the crime.[17] Since the confiscated drug is the very *corpus delicti* of the crime, its preservation must be shown to the satisfaction of the court, from the seizure and marking thereof until its submission to the court. In other words, compliance with the chain of custody rule must be demonstrated in order to obviate unnecessary doubts concerning the identity of the evidence.[18]

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure or confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[19] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.[20]

Section 21 of R.A. No. 9165 provides the standard for the custody and disposition of confiscated, seized, and/or surrendered drugs as follows:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the 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;
>
> (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 under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided,

---

17 *People v. Guzon*, 719 Phil. 441, 450-451 (2013).
18 *People v. Señeres*, G.R. No. 231008, November 05, 2018.
19 *People v. Miranda*, G.R. No. 205639, January 18, 2016.
20 *People v. Padua*, G.R. No. 239781, February 5, 2020.

> That when the volume of the 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 on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;
>
> x x x

In relation to the above procedure, Section 21(a), Article II of the IRR of R.A. No. 9165, provides:

> (a) The apprehending officer/team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the 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: x x x 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. (Emphases supplied.)

Section 21 of R.A. No. 9165 and its IRR require that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.[21]

As to the chain of custody, the Court has consistently ruled that the following links must be established: *first*, 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.[22]

---

21 *People v. Tubera*, G.R. No. 216941, June 10, 2019.

22 *People v. Plaza*, G.R. No. 235467, August 20, 2018.

Considering that there are two pieces of luggage containing prohibited drugs in this case, observance of the chain of custody rule must be determined in relation to the contents of each individual luggage.

First Link: Seizure and Marking

It is undisputed that Buenconsejo weighed the drug specimens from the first examined bag (*Dibola bag*) and indicated the weights thereof and her markings on the plastic packs, and that the photographing and inventory thereof were done in the presence of the accused, SAII Punzalan, *Kagawad* Abasola, and media reporter Esperas. While the Court notes the absence of a DOJ representative, the same is not necessarily fatal as will be discussed later.

Veloo's testimony that Buenconsejo made the report at around 9:00 p.m. is consistent with the Inventory Report dated June 16, 2012 stating that the inventory was conducted on even date at 9:00 p.m. While the defense argues that the inventory and marking took place only the next day as shown by the photographs dated "6.17.2012," the Booking Sheets/Arrest Reports signed by each of the accused indicate that the inventory and marking were indeed made on June 16. Taken together with the Inventory Report itself and Veloo's testimony, we find the date June 16, 2012 more credible.

As regards the second examined bag (*Phoenix bag*), the Court observes that while both Veloo and Nadarajan claim said bag, it was not in their possession when it was seized. The fact that it was retrieved by Punzalan's men from a hotel representative outside the airport after more or less one (1) hour, as testified by both prosecution and defense witnesses, without so much as an explanation as to why it took that long, engenders doubt in the Court's mind as to the integrity of the contents thereof, especially since it was already opened when it arrived at the Exclusion Room. The prosecution did not even present the hotel representative who allegedly had actual custody of the bag or the customs police who took the bag from said hotel representative. Since the very seizure of the Phoenix bag containing the drugs is questionable, it would no longer matter that said drugs were properly turned over to the PDEA investigating officer, then to the forensic chemist, then finally, to the court.

While the customs police are presumed to have regularly performed their duties, We held in *People v. Sipin*[23] that judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity. The presumption may only arise when there is a showing that the apprehending

---

23 G.R. No. 224290, June 11, 2018

officers/team followed the requirements of Section 21 of R.A. No. 9165, or when the saving clause in the IRR is successfully triggered.

We find, therefore, that while the first link was untarnished as to the contents of the Dibola bag, the prosecution failed to show that it was preserved as to the contents of the Phoenix bag.

Second Link: Turnover from Apprehending Officer to Investigating Officer

As confirmed by the Turn-Over Receipt[24] dated June 16, 2012, also prepared by Buenconsejo and witnessed by Punzalan, Abasola and Esperas, the two bags containing the marked heat-sealed plastic containers as well as both accused were turned over by Buenconsejo to IO2 Lucero of the PDEA.

Third Link: Turnover from Investigating Officer to Forensic Chemist

As indicated in the Acknowledgment Receipt[25] and Chemistry Report,[26] both dated June 17, 2012, and confirmed by the stipulation of the parties,[27] forensic chemist Arlene Arcos received the luggage containing the specimens from IO2 Lucero at 6:50 a.m. on June 17, 2012 after checking the consistency of the markings with those indicated in the Request for Laboratory Examination.[28]

Fourth Link: Turnover from Forensic Chemist to the Court

As stipulated by the parties, the specimens examined by the forensic chemist are the same specimens submitted to the trial court.[29] In fact, during the presentation of Buenconsejo's testimony in court, it was the forensic chemist who opened the two bags which she had previously sealed.

As regards the level of strictness in the application of the chain of custody rule, We held in *Mallillin v. People*[30] that the same is dictated by the exhibit's level of susceptibility to fungibility, alteration or tampering. We observed that "the likelihood of tampering, loss or mistake with respect to an

---

24 Exhibits "I" to "I-2," *rollo*, pp. 23-24.
25 Exhibit "E," *id.* at 30.
26 *Rollo*, p. 14.
27 Order dated December 6, 2012, p. 1; *id.* at 192.
28 Exhibits "J" to "J-1;" *id.* at 12-13.
29 RTC Decision dated September 15, 2015, p. 10; *id.* at 107.
30 576 Phil. 576, 588 (2008).

exhibit is greatest when the exhibit is small." In *People v. Holgado, et al.*,[31] we ruled that "[w]hile the miniscule 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 other words, as long as the integrity of the drug specimens is preserved, the application of the chain of custody rule for considerable amounts of drugs need not necessarily be of the same level of strictness as that applied to miniscule amounts which are more prone to tampering, loss or mistake.

In the present case, we note that the total amount of drugs recovered from the Dibola bag alone, *i.e.*, four (4) kilos, is hardly miniscule and that the drugs were found packed in heat-sealed containers, thus minimizing the risk of tampering, loss or mistake.

From the foregoing facts, the Court is convinced that only the integrity of the drug specimens from the Dibola bag was preserved. The question now is whether both accused-appellants are guilty of illegal transportation thereof.

It is undisputed that upon her entry into the Philippines from Hong Kong, Veloo was caught in possession of prohibited drugs found inside the Dibola bag. While Veloo claimed that she mistook said bag as hers and that the same belongs to Nadarajan, the Court is not persuaded considering that as testified by the prosecution witnesses and as seen from one of the pictures taken during the inventory, one of the bags is visibly smaller than the other. Veloo even confirmed on cross-examination that while they were of similar height, they looked different. While it is not impossible for one to accidentally take a bag that is not his or hers from the conveyor, it is contrary to human experience for a traveler not to check whether a bag is indeed his or hers, especially in this case where both bags are of different brands, look different, and bear different baggage tags. The fact that she disclaimed ownership thereof only after it was opened in front of the customs officer leads this Court to believe that, at the very least, she intended to possess the same. In *People v. Burton,*[32] we held that an explanation, standing by itself, which is too trite and hackneyed to be accepted at its face value, since it is obviously contrary to human experience, is insufficient to overcome *prima facie* evidence that accused had knowledge of his or her possession of prohibited drugs.

In the transport of illegal drugs, intent and proof of ownership of the prohibited substances, much less of the receptacles thereof, are not essential elements of the crime.[33] The crime is complete when it is shown that a person brings into the Philippines a regulated drug without legal authority. The crime of transporting illegal drugs being *malum prohibitum*, the accused's intent, motive, or knowledge thereof need not be shown.

---

31 741 Phil. 78, 99 (2014).
32 335 Phil. 1003, 1026 (1997).
33 *People v. Noah*, G.R. No. 228880, March 6, 2019.

Under the Rules of Evidence (Sec. 3[j], Rule 131, Rules of Court), "things which a person possesses, or exercises acts of ownership over, are owned by him or her." Such disputable presumption is based upon the principle that direct proof of facts of this nature is rarely available, except in cases of confession.[34] In several cases, the Court has held that possession of a considerable quantity of marijuana cannot indicate anything except the intention of the accused to sell, distribute and deliver said prohibited drug.[35]

If we were to give credence to Veloo's accidental taking of Nadarajan's Dibola bag, this would also mean that Nadarajan accidentally took Veloo's Phoenix bag which he, in fact, claimed to be his. For both of them to take each other's bag despite the above-mentioned differences only shows that they did so on purpose. This concerted effort is further revealed by the fact that their respective e-ticket receipts bore glaring similarities, such as the same reservation code, issuing agent, issuance date, and consecutive ticket number pattern, which can only lead to the conclusion that they were simultaneously booked. Curiously, their respective Booking Sheets/Arrest Reports, which they signed, also indicate a common relative with a common address.

While the testimonies of the prosecution witnesses were not free from inconsistencies, the same are minor compared to the glaring differences in the testimonies of each of the accused. For instance, while Veloo claimed that Nadarajan was her husband at the airport customs area, she left the field "No. of Accompanying Family Members" in her Customs Declaration Form blank and later claimed in her direct testimony that she did not arrive with any companion. Even Nadarajan testified that he does not know why Veloo claimed that he is her husband. He also averred that he met her for the first time on the plane and does not know why Veloo knows his name, which contradicts Veloo's claim that they asked for each other's names while they were seated beside each other during the flight. Nadarajan would not have taken pains to deny any relation with Veloo had Veloo not claimed so.

The foregoing circumstances lead the Court to conclude that regardless of whether they are related, they intended to travel together to the Philippines, which would explain why it did not seem to matter to them that they had switched bags at the conveyor. Moreover, Nadarajan did not even deny ownership of the Dibola bag despite Veloo's claim that it belongs to him as indicated by the label on said bag. In *People v. Tang Wai Lan*,[36] we held that since the luggage tag bore the name of the accused, he is presumed to be the owner thereof unless proven otherwise. Hence, even disregarding the Phoenix bag for doubt as to the integrity of the drug specimens found therein, both Veloo and Nadarajan are accountable for the transport of the drug specimens found in the Dibola bag.

---

34 *People v. Burton, supra* note 32, at 1024.

35 *People v. Claudio*, 243 Phil. 795, 803 (1988) and *People v. Toledo*, 224 Phil. 395, 402-403 (1985).

36 341 Phil. 831, 842 (1997).

As regards the absence of the DOJ representative, the Court of Appeals gave credence to the reasoning of the prosecution that "law enforcement authorities operate under varied conditions, many of them far from the ideal, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence."

We observe, however, that this reason was proffered for the first time on appeal. Worse, it was not elicited from any of the prosecution witnesses but merely quoted from the case of *People v. Sanchez.* The mere invocation of said platitude will not excuse non-compliance with Section 21 of R.A. No. 9165. In *Sanchez*, We premised such reasoning on the fact that strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions, and continued as follows:

> For this reason, the last sentence of the implementing rules provides 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."* Thus, **non-compliance** with the strict directive of Section 21 of R.A. No. 9165 is **not necessarily fatal** to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case. These lapses, however, 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.**[37]

From the foregoing, it is clear that in order for non-compliance to be excusable, two requirements must be met: (1) there must be justifiable ground for non-compliance, and (2) the integrity and evidentiary value of the evidence seized must be shown to have been preserved.

While the prosecution had duly proven that the integrity and evidentiary value of the evidence seized from the Dibola bag had been preserved, the records are bereft of any testimony showing that the customs officials attempted to secure the presence of a DOJ representative, nor of any justifiable reason for their failure to do so. It contented itself with citing jurisprudence on the matter, which is not the explanation that the law requires. The statement in the Booking Sheets/Arrest Reports of the accused that the "DOJ representative serving as witness was not available but was logged" is hardly a justifiable ground. In *People v. Umipang*,[38] we held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "[a] sheer statement that representatives were unavailable — without so much as an explanation on

---

37 Emphases ours.

38 686 Phil. 1024 (2012).

whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse."

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence because the Court cannot presume what these grounds are or that they even exist.[39]

Nevertheless, We have also ruled that failure to strictly comply with Section 21 does not necessarily render the seized items inadmissible as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team. Our pronouncement in *People v. Campomanes, et al.*[40] is instructive:

> Although Section 21(1) of R.A. No. 9165 mandates that the apprehending team must immediately conduct a physical inventory of the seized items and photograph them, non-compliance with said section 21 is not fatal as long as there is a justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team. Thus, the prosecution must demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.
>
> We note that nowhere in the prosecution evidence does it show the "justifiable ground" which may excuse the police operatives involved in the buy-bust operation in the case at bar from complying with Section 21 of Republic Act No. 9165, particularly the making of the inventory and the photographing of the drugs and drug paraphernalia confiscated and/or seized. **However, such omission shall not render accused-appellant's arrest illegal or the items seized/ confiscated from him as inadmissible in evidence.** In *People v. Naelga,* We have explained that **what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items** because the same will be utilized in ascertaining the guilt or innocence of the accused.
>
> x x x.

In *People v. Lim*,[41] we emphasized that "the rule that strict adherence to the mandatory requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR may be excused as long as the integrity and the evidentiary value of the confiscated items are properly preserved applies not just on arrest and/or seizure by reason of a legitimate buy-bust operation but

---

39 *People v. De Guzman*, 630 Phil. 637, 649 (2010).
40 641 Phil. 610, 622-623 (2010). (Emphases ours).
41 G.R. No. 231989, September 4, 2018.

also on those lawfully made in **air** or sea **port**, detention cell or national penitentiary, checkpoint, moving vehicle, local or international package/parcel/mail, or those by virtue of a consented search, stop and frisk (Terry search), search incident to a lawful arrest, or application of plain view doctrine where time is of the essence and the arrest and/or seizure is/are not planned, arranged or scheduled in advance."

In the case at bar, the absence of a DOJ representative during the inventory and photographing of the seized drugs in an airport environment is strange considering that it is of common knowledge that officers of the Bureau of Immigration (*BI*)—a government agency under the jurisdiction of the DOJ—are assigned and present at the international terminals of the NAIA such as the terminal where appellants were apprehended. We stress that R.A. No. 9165 does not require that the DOJ representative be from the DOJ itself but may come from any of its attached agencies, including the BI. Nonetheless, while the Bureau of Customs is no longer an attached agency of the DOJ, the presence of its officers, who are likewise State agents comparable to members of the DOJ, during the seizure of the drugs involved in this case can be deemed sufficient to take the place of the DOJ representative.

Further, as point out by Associate Justice Alfredo Benjamin S. Caguioa in *De Villa v. People*,[42] where the accused was caught *in flagrante delicto* during a mere routine checkpoint operation, a slight deviation from the requirements under Section 21 may be justified. An airport customs check is one such routine checkpoint operation.

While the totality of circumstances in this case did not render the absence of a DOJ representative fatal to the prosecution's case, we remind law enforcement agents that the same has not always been the case and that the Court will not hesitate to enjoin strict compliance, as it has done many times in the past, should the circumstances so warrant. It bears stressing that the chain of custody procedure is not merely a procedural technicality but a matter of substantive law. This is because the law has been "crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[43] This rings true despite the amendment of Section 21 of R.A. No. 9165 by R.A. No. 10640 in 2014 requiring a fewer number of witnesses.

On a final note, while the RTC sentenced both accused to each pay a fine of Eight Hundred Thousand Pesos (₱800,000.00) **in each case**, *i.e.*, Criminal Cases Nos. R-PSY-12-05297-CR and R-PSY-12-05298-CR, since the guilt of both accused was not proven beyond reasonable doubt in the latter case involving the Phoenix bag, both accused are only liable to pay their respective fines pertaining to the first case involving the Dibola bag.

---

42 G.R. No. 224039, September 11, 2019.

43 *People v. Gabunada*, G.R. No. 242827, September 9, 2019.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated December 13, 2018 in CA-G.R. CR-H.C. No. 09033 is **AFFIRMED with MODIFICATION**. Accused-appellants Tamil Selvi Veloo and N. Chandrar Nadarajan are found **GUILTY** of violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. R-PSY-12-05297-CR and are hereby sentenced to suffer the penalty of life imprisonment and to each pay a fine of Eight Hundred Thousand (₱800,000.00). However, they are **ACQUITTED** in Criminal Case No. R-PSY-12-05298-CR for failure of the prosecution to prove their guilt beyond reasonable doubt.

SO ORDERED.

DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:

Pls. see concurring opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
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