

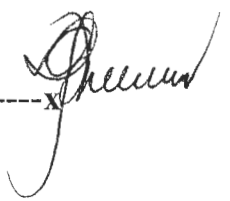
EN BANC

G.R. No. 254208 – PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*,
v. MA. DEL PILAR ROSARIO C. CASA A.K.A. “MARFY
CALUMPANG,” “MADAM,” “MAH’MAH,” *accused-appellant*.

Promulgated:

August 16, 2022

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SEPARATE OPINION

LEONEN, J.:

I concur with the *ponencia*. Accused-appellant Ma. Del Pilar Rosario C. Casa (Casa) must be acquitted for failure of the prosecution to establish her guilt beyond reasonable doubt.

The chain of custody rule under Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, demands strict compliance. Particularly, the provision provides for the location where the inventory and photographing of the seized items must be done.

If a search warrant was served, the physical inventory and photographing must be done at the exact same place where the search warrant was served.¹ In cases of warrantless seizure, the inventory and taking of photographs generally must be conducted at the place of seizure.² As an exception, it may be done at the nearest police station or office of the apprehending team or officer when circumstances are not practicable.³ However, the defense of impracticability is subject to the following considerations: (a) the extent of planning and preparation that went into organizing the buy-bust operation;⁴ (b) the amount of prohibited drugs confiscated;⁵ and (c) the position of the accused in the organizational hierarchy of illicit drug trade.⁶



¹ *People v. Dela Cruz*, G.R. No. 229053, July 17, 2019 [Per J. Leonen, Third Division], *citing Lescano v. People*, 778 Phil. 460, 475 (2016) [Per J. Leonen, Second Division].

² *Ponencia*, p.17.

³ Republic Act No. 9165 (2002), sec. 21, as amended by Republic Act No. 10640 (2014).

⁴ *See Pagal v. People*, G.R. No. 251894, March 2, 2022 [Per J. Leonen, Third Division].

⁵ *See People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

⁶ *Id.*

I

The Constitution is clear: in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven.⁷ This right to be presumed innocent is integral to the right to due process—another constitutional principle that protects citizens from unlawful deprivation of life, liberty, or property.⁸ Thus, the burden is with the State to prove beyond reasonable doubt the presence of “each and every element of the crime charged in the information to warrant a finding of guilt.”⁹

As pointed out by the *ponencia*, the following elements must be established in prosecuting a case of illegal sale of dangerous drugs: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.¹⁰ In buy-bust operations, the sale is consummated upon the “delivery of the contraband to the poseur[]buyer and the receipt of the marked money [by the accused].”¹¹

Considering the quantum of evidence required, the uncorroborated testimony given by the poseur buyer in an alleged buy-bust operation is manifestly insufficient to warrant a finding of guilt. As previously stated:

[C]ourts should not accept hook line and sinker, the testimony of the alleged poseur-buyer that he was able to buy the prohibited drug from the accused. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroine can be planted in pockets or hands of unsuspecting provincial hicks and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.¹² (Citation omitted)

With entrapment operations being planned and executed in teams, the inability to corroborate the testimony of the poseur buyer casts doubt on whether the illegal sale was even conducted in the first place. In *People v. Escalona*,¹³ this Court acquitted the accused due to the “prosecution’s failure to present the other members of the alleged buy-bust team.”¹⁴ In *People v. Santos, Jr.*,¹⁵ this Court emphasized that the prosecution’s failure to present the other police officers who allegedly formed part of the backup team reduced the unsubstantiated testimony of the poseur buyer into a “self-serving

⁷ CONST., art. III, sec. 14(2).

⁸ CONST., art. III, sec. 1.

⁹ *People v. Belocura*, 693 Phil. 476, 503–504 (2012) [Per J. Bersamin, First Division], citing *Patula v. People*, 685 Phil. 376, 388 (2012) [Per J. Bersamin, First Division].

¹⁰ *People v. Santos, Jr.*, 562 Phil. 458, 469–470 (2007) [Per J. Tinga, Second Division].

¹¹ *Id.* at 470.

¹² *People v. Honrada*, 281 Phil. 951, 959 (1991) [Per J. Medialdea, First Division].

¹³ 298 Phil. 88 (1993) [Per J. Griño-Aquino, First Division].

¹⁴ *Id.* at 91.

¹⁵ 562 Phil. 458 (2007) [Per J. Tinga, Second Division].

assertion.”¹⁶ Similarly, in *People v. Ordiz*,¹⁷ this Court noted that the testimonies of the other members of the buy-bust team revealed that they did not witness the alleged sale between the accused and the poseur buyer due to their distance from the area where the transaction took place, making their testimonies “unreliable in establishing the elements of illegal sale.”¹⁸

Applying these in the present case, the Regional Trial Court and the Court of Appeals erred in giving credence to the uncorroborated testimony of the poseur buyer, Police Officer I Darelle Jed Delbo (PO1 Delbo). Based on his testimony, only he and the confidential informant were present during the transaction. The backup team was positioned approximately 10 to 15 meters away until PO1 Delbo gave the prearranged signal, prompting the team to run towards the vicinity.¹⁹ In fact, the other police officers admitted to not having personally witnessed the transaction. Hence, the Regional Trial Court and the Court of Appeals wrongfully convicted Casa of illegal sale of dangerous drugs on the basis of an uncorroborated testimony that is unclear and lacking in details.²⁰

On the other hand, in illegal possession of dangerous drugs, the prosecution must establish the presence of the following elements: (1) the accused is in possession of an item or object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.²¹ The actual or constructive possession of the dangerous drugs is controlling:

[T]he prosecution must prove that the accused had the intent to possess (*animus possidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary.²² (Citations omitted)

Here, possession was not sufficiently established. To recall, Casa was charged with illegal possession of 10.99 grams of *shabu* packed in 11 heat-sealed plastic sachets.²³ According to PO1 Delbo’s testimony, the sachets were inside a plastic container which he confiscated after arresting Casa.²⁴

¹⁶ Id. at 470.

¹⁷ G.R. No. 206767, September 11, 2019 [Per J. Caguioa, Second Division].

¹⁸ Id. at 6. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

¹⁹ *Ponencia*, pp. 3–4, 10.

²⁰ Id. at 10.

²¹ *Pagal v. People*, G.R. No. 251894, March 2, 2022 [Per J. Leonen, Third Division], p. 10, citing *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division]. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

²² *People v. Tira*, 474 Phil. 152, 173 (2004) [Per J. Callejo, Sr., *En Banc*].

²³ *Ponencia*, p. 2.

²⁴ Id. at 4.

However, as pointed out by the *ponencia*, it is contrary to human logic for accused-appellant to hold the plastic container in the open after being made aware that she was in the presence of a police officer.²⁵ It is also highly irregular for PO1 Delbo to have already known that there were more sachets of *shabu* inside the plastic container even before opening it.²⁶ Lastly, the officer who conducted a search on accused-appellant after the arrest even confirmed that she “did not confiscate anything from the body of [Casa].”²⁷

All in all, the prosecution’s narration of the events during the confiscation of the prohibited drugs was highly doubtful, improbable, and inconsistent. Consequently, when the credibility of the transaction itself is put into question, the allegation of illegal possession of dangerous drugs is negated. Thus, the Court has no other option but to uphold the presumption of innocence in favor of the accused.

II

In addition to establishing the requisite elements, common to drugs cases is the necessity of presenting the *corpus delicti* before the court.²⁸ In order to satisfy the standard of proof beyond reasonable doubt, the identity and integrity of the dangerous drug must be established with moral certainty. This means that “the prosecution must be able to account for each link [in] the chain of custody from the moment the drugs are seized up to their presentation in court.”²⁹

Hence, Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, comprehensively outlines the rules governing the custody and disposition of dangerous drugs:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of 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

²⁵ Id. at 11–12.

²⁶ Id. at 12.

²⁷ Id.

²⁸ *People v. Abdulwahab*, G.R. No. 242165, September 11, 2019 [Per J. Jardeleza, First Division], p. 5. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

²⁹ Id., citing *Limbo v. People*, G.R. No. 238299, July 1, 2019 [Per J. Perlas-Bernabe, Second Division].

of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items;

- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

To prevent “tampering, substitution, and planting of evidence,”³⁰ strict adherence with Section 21 of Republic Act No. 9165, as amended, is necessary. Partial or approximate compliance is insufficient.³¹ This has been the consistent direction of the Court in dealing with the noncompliance of the chain of custody rule.³²

In particular, from 2010 to 2020, the Court has observed an increase in acquittals on the grounds of noncompliance with Section 21 from 22 to 290 cases.³³ Such a strict application of the rule is only appropriate due to the fungible nature of the *corpus delicti* in drugs cases.

In *Mallillin v. People*,³⁴ this Court stressed that:

Indeed, 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

³⁰ *People v. Que*, 824 Phil. 882, 901 (2018) [Per J. Leonen, Third Division].

³¹ *Id.*

³² *Comparative Analysis of Supreme Court Caseload Statistics for Appealed Drugs Cases* (2022), 4–5.

³³ *Id.* at 5.

³⁴ *Mallillin v. People*, 576 Phil. 576 (2008) [Per J. Tinga, Second Division],

characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.³⁵

Further, this Court highlights strict compliance with the chain of custody rule when the amount of dangerous drugs involved is minuscule.³⁶ For example, in *People v. Holgado*,³⁷ this Court was confronted with an appeal from a conviction for the illegal sale of 0.05 gram of *shabu*. The Court said:

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. *Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving min[u]scule amounts of drugs.* These can be readily planted and tampered.³⁸ (Emphasis supplied)

Though the small amount of confiscated drugs is not in itself a “badge of innocence or a point justifying acquittal,”³⁹ this Court still stressed that law enforcers cannot feign ignorance of the exacting standards under Section 21 of Republic Act No. 9165, as amended, for they are required to know the laws they are charged to execute.⁴⁰ Further, failure to comply with the chain of custody rule is equivalent to failure to establish the *corpus delicti*, and therefore, failure to prove that the crime was indeed committed.⁴¹

Additionally, a survey⁴² of the drugs cases that reach this Court reveals that most of them involve small quantities⁴³ of *shabu*.⁴⁴ In particular, from 2010 to 2021, 1,348 appealed cases involve *shabu* while only 140 cases involve marijuana and 254 involve other or unspecified dangerous drugs.⁴⁵ Of the appealed cases for illegal sale and illegal possession of *shabu*, the median quantities involved are less than 1 gram.⁴⁶

A table of summary of the median amounts for the quantity of *shabu* in appealed drugs cases disposed from 2010 to 2021 are as follows:⁴⁷

³⁵ *Id.* at 588, citing *Graham v. State*, 255 N.E2d 652, 655.

³⁶ *See Mallillin v. People*, 576 Phil. 576, 588 (2008) [Per J. Tinga, Second Division]; *People v. Dela Cruz*, 744 Phil. 816, 820 (2014) [Per J. Leonen, Second Division]; *People v. Sipin*, 833 Phil. 67 (2018) [Per J. Peralta, Second Division]; *People v. Malazo*, G.R. No. 223713, January 7, 2019 [Per J. Carpio, Second Division]; *People v. Ternida*, G.R. No. 212626, June 3, 2019 [Per J. Leonen, Third Division]; *Casilag v. People*, G.R. No. 213523, March 18, 2021 [Per J. Caguioa, First Division]; *People v. Pagaspas*, G.R. No. 252029, November 15, 2021 [Per J. Leonen, Third Division]; and *People v. Ortega*, G.R. No. 240224, February 23, 2022 [Per J. Hernando, Second Division].

³⁷ 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

³⁸ *Id.* at 100.

³⁹ *People v. Que*, 824 Phil. 882, 914 (2018) [Per J. Leonen, Third Division].

⁴⁰ *People v. Saragena*, 817 Phil. 117 (2017) [Per J. Leonen, Third Division].

⁴¹ *Id.* at 145.

⁴² *Comparative Analysis of Supreme Court Caseload Statistics for Appealed Drugs Cases* (2022), 4–5.

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.*

⁴⁶ *Id.* at 8.

⁴⁷ *Id.*

Median	<i>Shabu</i>		
	Sale	Possession	Delivery/Transport
2021	0.0935	0.29	4.62
2020	0.078785	0.2092	0.19715
2019	0.07	0.18	18.4349
2018	0.04	0.07965	0.13
2017	0.0708	0.13	0.11
2016	0.05	0.15745	56.03055
2015	0.0635	0.15	0.03
2014	0.1	0.15	251840.15
2013	0.07	0.08	171.7
2012	0.1	0.23	
2011	0.06	0.24	504.906
2010	0.12	0.17	0.1211

The same survey⁴⁸ has also summarized the amount in pesos of appealed drugs cases that reach the Supreme Court where the drugs involved were measured in price as follows:⁴⁹

Year	Number of cases where drugs involved were counted in PHP	Median amount in PHP	Average amount in PHP
2021	9	500.00	28653.33
2020	8	500.00	825.00
2019	6	300.00	316.70
2018	5	1000.00	2000.00
2017	5	100.00	200.00
2016	9	200.00	1288.89
2015	-	-	-
2014	6	200.00	283.33
2013	6	250.00	250.00
2012	-	-	-
2011	4	300.00	300.00
2010	1	200.00	266.67

From the foregoing, the data would collectively show that drug cases that reach the Supreme Court deal with minuscule amounts of *shabu*, both in weight and in price. This would readily show that prosecutions on drug cases over the past 10 years have been skewed against the end-users and seldom against those who are running drug syndicates and proverbial masterminds. Prosecution is thereby prejudicial against the vulnerable and the poor, while the “big fish”⁵⁰ get away. Ultimately then, prosecution fails to address the drug problem at its root.

⁴⁸ Id. at 8–9.

⁴⁹ Id. at 9.

⁵⁰ *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

The Court is not blind. The Judiciary, as guardians of the people's rights, cannot be instruments, even incidentally, to the reckless disregard of the rights of the underprivileged who are often victims of unjust and partial prosecution. This cannot be tolerated. Allowing anything less than strict compliance with the chain of custody rule would compromise their rights.

To illustrate, the presence of the insulating witnesses during the seizure, inventory, and photographing of the contraband would guarantee that the "items delivered to the investigating officer are the items which have actually been inventoried."⁵¹ The law provides that these witnesses be required to sign the copies of the inventory and be given a copy thereof.⁵² This requirement seeks to "avoid frame ups or wrongful arrests of persons suspected to be violators of the law."⁵³

There is no reason for police officers not to secure the presence of the insulating witnesses prior to seizure and confiscation of the contraband in cases of arrests pursuant to a search warrant since there is sufficient interval between the issuance of the search warrant and its execution. In cases of warrantless arrests, there is likewise an ample amount of time between the planning of a buy-bust operation and its implementation for them to comply with the required witnesses.

Further, while the amendment in Section 21 reduced the number of insulating witnesses from three to two,⁵⁴ this does not mean that their presence during seizure and inventory may be dispensed with. Had it been the intention of the amendatory law, Republic Act No. 10640, the requirement could have easily been deleted from the enumeration. Hence, the Court is bound to strictly comply with the letter of the law.

By extension, Section 21 also requires that the witnesses sign the inventory and be given copies. In the present case, however, the Inventory/Receipt of Property Seized lacked the signature of accused-appellant.⁵⁵ She was also missing from the photographs taken during the inventory.

The prosecution witnesses gave conflicting reasons for this matter. PO1 Delbo claimed that accused-appellant was not in the photographs "because she was avoiding the police officers,"⁵⁶ while PO1 Archimedes Olasiman (PO1 Olasiman) recounted that accused-appellant was "crying during the

⁵¹ *People v. Que*, 824 Phil. 882, 909 (2018) [Per J. Leonen, Third Division].

⁵² Republic Act No. 9165 (2002), sec. 21, as amended by Republic Act No. 10640 (2014).

⁵³ *People v. Baluyot*, G.R. No. 243390, October 5, 2020 [Per J. Hernando, Second Division], p. 10. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website

⁵⁴ Section 21, Republic Act No. 9165, as amended by Republic Act No. 10640, only requires two witnesses: (1) an elected public official, and (2) a representative from the National Prosecution Service or the media.

⁵⁵ *Ponencia*, pp. 15–16.

⁵⁶ *Id.* at 33.

inventory and did not want to be seated with the insulating witnesses.”⁵⁷ In addition to their conflicting testimonies, they failed to account for the reason why her signature was not in the inventory sheet.⁵⁸ As noted by the *ponencia*, even if accused-appellant refused to give her signature, the police officers could have easily indicated this, along with the reason thereof, in the inventory sheet.

Likewise, the requisite that the physical inventory and taking of photographs must be done immediately after the seizure and confiscation serves to account for the time frame within which custody of the contraband transfers from the accused to the apprehending officer.⁵⁹ As the *ponencia* aptly puts it, when this interval increases, the exhibit gathered becomes susceptible to contamination or tampering. It thus follows that the requirement must be accomplished in the place of seizure to satisfy the element of “immediacy.”

As an exception, Section 21 adds that in case of warrantless arrests, inventory and photographing may be done at the nearest police station or office of the apprehending officer when circumstances are not practicable. Such impracticability must be justified by the police officers.

In *People v. Taglucop*,⁶⁰ this Court stated that police officers must be able to show that: “(1) [i]t is not practicable to conduct the same at the place of seizure; or (2) [t]he items seized are threatened by immediate or extreme danger at the place of seizure,”⁶¹ to trigger the exception. Hollow excuses such as “the crowd [was] getting bigger,”⁶² the area was “quite dangerous,”⁶³ or that “the buy-bust team felt unsafe”⁶⁴ do not justify the transfer of venue.

Moreover, the manner by which courts may allow concessions in light of an alleged impracticability of conducting the inventory and photographing at the place of arrest should always be hinged on at least three considerations: (a) the extent of planning and preparation that went into organizing the buy-bust operation;⁶⁵ (b) the amount of prohibited drugs confiscated;⁶⁶ and (c) the position of the accused in the organizational hierarchy of illicit drug trade.⁶⁷ Regarding the last consideration, emphasis is given to those who are higher in the hierarchy in order to effectively cripple the system of illicit drug trade in

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ *People v. Banding*, 859 Phil. 837, 853–854 (2019) [Per J. Leonen, Third Division] citing *People v. Que*, 824 Phil. 882 (2018) [Per J. Leonen, Third Division].

⁶⁰ G.R. No. 243577, March 15, 2022 [Per J. Gesmundo, First Division].

⁶¹ Id. at 14. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

⁶² *People v. Salenga*, G.R. No. 239903, September 11, 2019 [Per J. Jardeleza, First Division], p. 10. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

⁶³ *People v. Dumanjug*, G.R. No. 235468, July 1, 2019 [Per J. Caguioa, Second Division], p. 13. This refers to the pinpoint citation of the copy of the Decision uploaded in the Supreme Court website.

⁶⁴ *People v. Lim*, 839 Phil. 598, 624 (2018) [Per J. Peralta, *En Banc*].

⁶⁵ See *Pagal v. People*, G.R. No. 251894, March 2, 2022 [Per J. Leonen, Third Division].

⁶⁶ See *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

⁶⁷ Id.

the country. As this Court previously stated, “small retailers are but low-lying fruits in an exceedingly vast network of drug cartels.”⁶⁸

In the present case, there is a glaring lack of justification for the transfer of venue of the inventory and photographing. According to the prosecution, the buy-bust team decided to conduct it at the police station citing “security purposes.”⁶⁹ In addition, the prosecution failed to establish that the transfer of venue was even necessary. PO1 Delbo and PO1 Olasiman offered conflicting reasons: PO1 Delbo testified that the team recently lost a member, but failed to explain how this was connected to the buy-bust operation in question⁷⁰ while PO1 Olasiman testified that there were already “a lot of people in the area.”⁷¹ These deserve scant consideration as the exception in Section 21 cannot be predicated on baseless and inconsistent excuses.

III

Deviations from the chain of custody rule are also not sanctioned by the saving clause under Section 21(1). The provision states that the saving clause applies only when the following requisites are shown: (1) justifiable grounds for noncompliance; and (2) preservation of the integrity of the exhibit. None of these were established by the prosecution. Not only did the prosecution fail to validly give a justifiable ground for noncompliance, there were also numerous gaps in the chain of custody that casted doubt on the integrity of the contraband seized.

To prove that the integrity of the seized item has been preserved:

[T]he following links should be established in the chain of custody of the confiscated item: 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.⁷² (Citation omitted)

First, PO1 Delbo irregularly marked the seized items. Marking involves the “placing by the apprehending officer or the poseur[] buyer of [their] initials and signature on the items seized.”⁷³ In this case, the initials of the seizing officer were absent in the markings.⁷⁴ Additionally, as noted by the *ponencia*,

⁶⁸ Id.

⁶⁹ *Ponencia*, p. 34.

⁷⁰ Id.

⁷¹ Id.

⁷² *People v. Nandi*, 639 Phil. 134, 144–145 (2010) [Per J. Mendoza, Second Division], citing *People v. Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

⁷³ *People v. Dahil*, 750 Phil. 212, 232 (2015) [Per J. Mendoza, Second Division].

⁷⁴ *Ponencia*, p. 35.

the time and place of the buy-bust operation were also not indicated which is contrary to the rules of procedure of the Philippine National Police.⁷⁵

Second, the circumstances surrounding the turnover of the seized item from the apprehending officer to the investigating officer and the subsequent turnover to the forensic chemist are also unclear. According to the prosecution, PO1 Delbo gave the items to PO3 Edilmar Manaban (PO3 Manaban) in a brown envelope.⁷⁶ PO3 Manaban then stored the envelope in his locker after checking the contents of the envelope and then resealed it. The next day, he submitted the envelope to Police Chief Inspector Josephine Llana (PC/Insp. Llana), the forensic chemist.⁷⁷ However, PO3 Manaban and PC/Insp. Llana, who have firsthand knowledge of what transpired during this interval, were not among the witnesses presented by the prosecution. Stipulations were only made as regards the transfer and handling of the seized items.

Though the parties are permitted to make stipulations to dispense with the forensic chemist's testimony, the stipulations made by the parties lack the vital information required in *People v. Cabuhay*:⁷⁸ "(1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he [or she] resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial."⁷⁹ Absent these information, there is no assurance that the integrity of the exhibits has been preserved while they were in the custody of PC/Insp. Llana.

IV

The presumption of regularity in the performance of duties does not excuse noncompliance with Section 21. The premium placed by the Constitution on the right to be presumed innocent cannot be trumped by merely invoking the evidentiary rule of presumption of regularity.⁸⁰ When the evidence against the accused does not meet the standard of proof required in criminal cases, in no case can law enforcers seek shelter on the presumption to determine the guilt of the accused.⁸¹ Therefore, noncompliance with Section 21, as amended, is a direct negation of the presumption of regularity.⁸²

⁷⁵ Id. at 19–20.

⁷⁶ Id. at 4.

⁷⁷ Id. at 4–5.

⁷⁸ 836 Phil. 903 (2018) [Per J. Martires, Third Division].

⁷⁹ Id. at 918, citing *People v. Pajarin*, 654 Phil. 461, 466 (2011) [Per J. Abad, Second Division].

⁸⁰ *People v. Ordiz*, G.R. No. 206767, September 11, 2019 [Per J. Caguioa, Second Division], p. 12. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website; *People v. Andaya*, 745 Phil. 237, 250–251 (2014) [Per J. Bersamin, First Division]; *People v. Catalan*, 699 Phil. 603, 621 (2012) [Per J. Bersamin, First Division].

⁸¹ *People v. Catalan*, 699 Phil. 603, 621 (2012) [Per J. Bersamin, First Division].

⁸² *People v. Navarrete*, 665 Phil. 738, 748 (2011) [Per J. Carpio Morales, Third Division]; *People v. Ulat*, 674 Phil. 484, 500 (2011) [Per J. Leonardo-De Castro, First Division]; *People v. Ambrosio*, 471 Phil. 241, 250 (2004) [Per J. Austria-Martinez, Second Division]; and *People v. Tan*, 432 Phil. 171, 197 (2002)

The right of the accused to be presumed innocent constrains the courts to carefully weigh the evidence presented by the prosecution. Self-serving assurances and unjustified deviations from the chain of custody rule cast doubt as to the “origins of the [seized paraphernalia]”⁸³ which would warrant the acquittal of the accused.

With so many cases involving alleged violations of Republic Act No. 9165, it is regrettable that most cases that reach the Supreme Court are those of “small-time drug users and retailers.”⁸⁴ Though these individuals form part of the drug problem, law enforcers and prosecutors are reminded that the law also aims to aid in the rehabilitation and re-integration of “individuals who have fallen victims to drug abuse or dangerous drug dependence.”⁸⁵ With this in mind, I enjoin prosecutors to direct their efforts in uncovering the bigger persons behind the drug cartels plaguing our country.⁸⁶ Otherwise, our efforts in resolving these cases will be for naught.

Accordingly, I vote that the November 29, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02574, affirming the March 28, 2017 Joint Judgment of the Regional Trial Court in Criminal Case Nos. 2015-23066 & 2015-23067, be **REVERSED and SET ASIDE**. Accused-appellant Ma. Del Pilar Rosario C. Casa must be **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.



MARVIC M.V.F. LEONEN
Senior Associate Justice

[Per J. Ynares-Santiago, First Division].

⁸³ *People v. Holgado*, 741 Phil. 78, 91 (2014) [Per J. Leonen, Third Division], citing *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per J. Mendoza, Second Division].

⁸⁴ *Id.* at 100.

⁸⁵ Republic Act No. 9165 (2002), sec. 2, par. 3.

⁸⁶ *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].