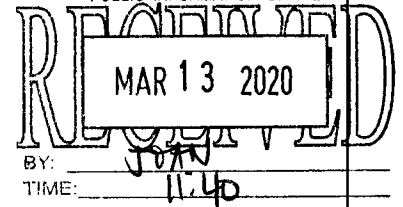




Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 10, 2019** which reads as follows:*

**“G.R. No. 212524 – *People of the Philippines v. Elmon Esarol y Kamsa, Allan Casan y Dipatuan and Alibol Casim y Mana***

Assailed in this appeal is the Decision<sup>1</sup> dated December 17, 2013 of the Court of Appeals, which affirmed the Joint Decision<sup>2</sup> dated May 25, 2010, issued by the Regional Trial Court (RTC), Branch 16, Manila in Criminal Case Nos. 02-209191, 02-209192, 02-209193, 02-209194 and 02-209195, finding accused-appellants Elmon Esarol y Kamsa (Esarol), Allan Casan y Dipatuan (Casan) and Alibol Casim y Mana (Casim) guilty beyond reasonable doubt of the crime of violation of Sections 11 and 12 of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, promulgated by the Court of Appeals (CA) in CA-G.R. CR HC No. 05080.

The accusatory portions of the Informations read:

In Crim Case No. 02-209191 (Section 5, R.A. No. 9165) against Esarol, Casan and Casim:

That on or about October 4, 2002, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, not having been authorized by law to sell, dispense, deliver, transport, or distribute any dangerous drug, did then and there willfully, unlawfully and knowingly and jointly sell or offer for sale, one (1) heat sealed transparent plastic sachet containing ONE POINT ONE SEVEN THREE (1.173) GRAM of white crystalline substance known as “shabu”

- over – eighteen (18) pages ...

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<sup>1</sup> Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justice Manuel M. Barrios and Associate Justice Socorro B. Inting, concurring; *rollo*, pp. 2-18.

<sup>2</sup> Penned by Presiding Judge Carmelita S. Manahan, *CA rollo*, pp. 30-44.

containing methylamphetamine hydrochloride, which is a dangerous drug.

Contrary to law.<sup>3</sup>

In Crim Case No. 02-209192 (Section 11, R.A. No. 9165)  
against Esarol:

That on or about October 4, 2002, in the City of Manila, Philippines, the said accused not being authorized by law to possess any dangerous drug did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control with the following markings and net weights to wit:

E-“SOG-1” - 23.901 (TWENTY THREE POINT NINE ZERO ONE) GRAMS

F-“SOG-2” - 22.888 (TWENTY TWO POINT EIGHT EIGHT EIGHT) GRAMS

G-“SOG-3” - 24.010 (TWENTY FOUR POINT ZERO ONE ZERO) GRAMS

H-“SOG-4” - 18.220 (EIGHTEEN POINT TWO TWO ZERO) GRAMS

I-“SOG-5” - 23.393 (TWENTY THREE POINT THREE NINE THREE) GRAMS

each placed in five (5) heat sealed transparent plastic sachets or all with a total weight of ONE HUNDRED TWELVE POINT FOUR ONE TWO (112.412) GRAMS containing white crystalline substance known as “shabu” containing methylamphetamine hydrochloride, a dangerous drug.

Contrary to law.<sup>4</sup>

In Crim Case No. 02-209193 (Section 11, R.A. No. 9165)  
against Casan:

That on or about October 4, 2002, in the City of Manila, Philippines, the said accused not being authorized by law to possess any dangerous drug did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control with the following markings and net weights to wit:

J-“SOG-6”- 23.703 (TWENTY THREE POINT SEVEN ZERO THREE) GRAMS

K-“SOG-7”- 23.632 (TWENTY THREE POINT SIX THREE TWO) GRAMS

L-“SOG-8”- 23.532 (TWENTY THREE POINT FIVE THREE TWO) GRAMS

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<sup>3</sup> CA rollo, p. 31.

<sup>4</sup> Id. at 12.

M-“SOG-9”- 4.469 (FOUR POINT FOUR SIX NINE) GRAMS  
N-“SOG-10”- 4.438 (FOUR POINT FOUR THREE EIGHT)  
GRAMS

each placed in five (5) heat sealed transparent plastic sachets or all with a total weight of SEVENTY NINE POINT SEVEN SEVEN THREE (79.773) GRAMS containing white crystalline substance known as “shabu” containing methylamphetamine hydrochloride, a dangerous drug.

Contrary to law.<sup>5</sup>

In Crim Case No. 02-209194 (Section 11, R.A. No. 9165)  
against Casim:

That on or about October 4, 2002, in the City of Manila, Philippines, the said accused not being authorized by law to possess any dangerous drug did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control with the following markings and net weights to wit:

O-“SOG-11”- 4.300 (FOUR POINT THREE ZERO ZERO)  
GRAMS

P-“SOG-12”- 19.416 (NINETEEN POINT FOUR ONE SIX)  
GRAMS

Q-“SOG-13”- 2.940 (TWO POINT NINE FOUR ZERO) GRAMS

R-“SOG-14”- 4.208 (FOUR POINT TWO ZERO EIGHT)  
GRAMS

S-“SOG-15”- 3.508 (THREE POINT FIVE ZERO EIGHT)  
GRAMS

each placed in five (5) heat sealed transparent plastic sachets or all with a total weight of THIRTY FOUR POINT THREE SEVEN TWO (34.372) GRAMS containing white crystalline substance known as “shabu” containing methylamphetamine hydrochloride, a dangerous drug.

Contrary to law.<sup>6</sup>

In Crim Case No. 02-209195 (Section 12, R.A. No. 9165)  
against Esarol, Casan and Casim:

That on or about October 4, 2002, in the City of Manila, Philippines, the said accused, jointly acting together not being

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<sup>5</sup> Id. at 13.

<sup>6</sup> Id. at 15.

authorized by law to possess or to have under their possession and under their custody and control equipment, instrument, apparatus, and other paraphernalias fit or intended for injecting, consuming, or introducing any dangerous drug into the body, did then and there willfully, unlawfully and knowingly possess, and have under their control and custody the following: several pieces of transparent plastic sachets, one (1) digital weighing scale, one (1) improvised tooter and one (1) improvised wok, which the accused had intended to use, for consuming or sniffing “shabu” a dangerous drug in a company of at least two (2) persons.

Contrary to law.<sup>7</sup>

At the arraignment, appellants pleaded not guilty.<sup>8</sup>

### **Version of the Prosecution**

On October 4, 2002, at around 6:45 in the morning, a team of 21 police officers, headed by P/Insp. Cesar Teneros (P/Insp. Teneros) conducted a buy-bust operation and implemented a Search Warrant against a certain Allan Mangula-mas, who was later identified as herein appellant Casan at Room No. 7, Muslimin Apartment, 221 Elizondo Street, Quiapo, Manila (Muslimin Apartment), with PO3 Ramiro Estacio (PO3 Estacio) acting as poseur buyer while the rest of the team serving as back-up. It was decided that a missed call from PO3 Estacio would serve as the pre-arranged signal that the transaction has been consummated. They coordinated with Kagawad Solaiman D. Casan (Kag. Casan), Sonny “Boy” Ali (Kag. Ali) and Elmon Almen (Kag. Almen) of Barangay 284, Zone 237 to accompany them during the operation.<sup>9</sup>

The team proceeded to the target area where PO3 Estacio and the confidential informant entered the Muslimin Apartment. Eventually, P/Insp. Teneros received a missed call from PO3 Estacio and the former ordered his team to proceed to Room No. 7 of the second floor of the apartment.

Upon arriving, they detained three occupants, later identified as Casan, Esarol and Casim, and recovered 16 plastic sachets containing white crystalline substance from their possession. They also recovered several drug paraphernalia consisting of improvised burner, glass tooter, weighing scale, improvised “wok” and empty plastic sheets.

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<sup>7</sup> Id. at 17.

<sup>8</sup> Records, pp. 68-69.

<sup>9</sup> TSN, June 22, 2005, p. 16.

P/Insp. Teneros then went to the ground floor of the Muslimin Apartment and marked all the seized items recovered from accused-appellants in front of the whole community. He also prepared the Inventory of Seized Items and Affidavit of Orderly Search and on the basis thereof, placed the accused-appellants under arrest. They were then brought to the police station for processing and the seized items were turned over to the investigator for laboratory examination. An examination conducted on the white crystalline substance contained in the 16 sachets seized from accused-appellants yielded a positive result for the presence of methylamphetamine hydrochloride, a dangerous drug.

After admission of its exhibits, the prosecution rested its case.<sup>10</sup>

### **Version of the Defense**

Esarol testified that he went to Manila in January 2002, to wait for the arrival of his wife, coming from abroad. He worked as an electrician in Quiapo, Manila and stayed with his relatives in Globo de Oro. On October 4, 2002, he checked in at Muslimin Apartment because the house of his relatives was too small. While resting, he was awakened by someone banging on his door and upon checking, two men wearing black shirts entered the room and held him at gunpoint. He was then handcuffed and lined up with several men along the corridor. Eventually, they were brought to the Special Operations Group (SOG) station and were made to call their relatives. It was only at the station where he learned that he was being charged with illegal possession of dangerous drugs and illegal possession of firearms, which he denied.

Casan meanwhile testified that on October 4, 2002, he checked in at the 2<sup>nd</sup> floor of the Muslimin Apartment while waiting for his cousin, Alex Sumandal, who is arriving from Cotabato City. Around 5:00 a.m., he was awakened by someone shouting "police, police!" When he went to check what was happening, he was immediately arrested and handcuffed by police officers and ordered to line up along the corridor together with 10 men. Thereafter, they were brought to the SOG office where they were detained and charged with illegal sale and possession of drugs. He also claims that a police officer demanded ₱30,000.00 from him in exchange for his freedom.

For his part, Casim testified that on October 4, 2002, he checked in at the Muslimin Apartment to avoid his angry sister. While

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<sup>10</sup> Records, pp. 196-A-197-B.

he was sleeping, he was awakened by a noise caused by the destruction of a plywood door in another room. When he went out to check what was happening, he was ordered to sit with 10 male persons along the hallway. Afterwards, they were brought to the SOG office where one of the police officers asked for ₱30,000.00 in exchange for his freedom. He insisted that he was innocent of any crime and refused to give any money to the police officer. He claimed that the first time he saw both co-accused was while they were in jail, and the seized items was during the trial.

The defense rested its case and the same was submitted for decision.<sup>11</sup>

### **Ruling of the RTC**

On May 25, 2010, the RTC, Branch 16, Manila rendered its Decision finding appellants guilty as follows:

WHEREFORE, prosecution having failed to prove the guilt of the accused beyond reasonable doubt, **ELMON ESAROL y KAMSA, ALLAN CASAN y DIPATUAN AND ALIBOL CASIM y MANA** are hereby **ACQUITTED** in **Criminal Case No. 02-209191** (Violation of Section 5, RA 9165).

In **Criminal Case No. 02-209192**, (Violation of Section 11 of R.A. 9165) prosecution having proved the guilt of accused beyond reasonable doubt, **ELMON ESAROL y KAMSA** is hereby **CONVICTED**. Accused is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

In **Criminal Case No. 02-209193**, (Violation of Section 11 of R.A. 9165) prosecution having proved the guilt of accused beyond reasonable doubt, **ALLAN CASAN y DIPATUAN** is hereby **CONVICTED**. Accused is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

In **Criminal Case No. 02-209194**, (Violation of Section 11 of R.A. 9165) prosecution having proved the guilt of accused beyond reasonable doubt, **ALIBOL CASIM y MANA** is hereby **CONVICTED**. Accused is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

In **Criminal Case No. 02-209195**, (Violation of Section 12 of RA 9165) prosecution having proved the guilt of the three (3) accused beyond reasonable doubt, **ELMON ESAROL y KAMSA,**

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<sup>11</sup> Id. at 226-227.

**ALLAN CASAN y DIPATUAN AND ALIBOL CASIM y MANA** are hereby **CONVICTED**. Each of the accused is hereby sentenced to suffer the penalty of imprisonment of six (6) months and one (1) day to two (2) years and to pay a fine of Ten Thousand Pesos (P10,000.00).

The Branch Clerk, Atty. Rechie N. Ramos-Malabanan is ordered to turn over fifteen (15) heat-sealed transparent plastic sachets containing white crystalline substance known as shabu, one (1) Improvised (sic) electronic digital weighing scale, one (1) improvised tooter, one (1) improvised wok, and one black bag to the Philippine Drug Enforcement Agency for proper disposition.

Let mittimus be issued against the three (3) accused in Criminal Case Nos. 02-209192, 02-209193, 02-209194 and 02-209195.

SO ORDERED.<sup>12</sup>

The RTC ruled that while the prosecution failed to establish the guilt of accused-appellants in Criminal Case No. 02-209191 involving the charge of illegal sale of dangerous drugs, the prosecution however was able to establish the elements of illegal possession of dangerous drugs with moral certainty through the testimonies of its three witnesses: P/Insp. Teneros, SPO1 Intal and PO3 Sibal.

The lower court opined that although the testimonies of the prosecution witnesses were not consistent, they were neither scripted nor rehearsed. As long as they could identify the faces of the accused-appellants, the prosecution witnesses are not required to know or remember their names.

The RTC also stated that the categorical statements of the prosecution witnesses cannot be overturned by mere denials, alibis and claims of extortion or "*hulidap*" by accused-appellants.

Not contented with the ruling of the lower court, herein accused-appellants seasonably filed their respective appeals with the CA.

### **Ruling of the CA**

On December 17, 2013, the CA issued the now assailed Decision denying the appeal of accused-appellants and affirming the dispositions made by the lower court. To quote:

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<sup>12</sup> CA rollo, pp. 43-44.

WHEREFORE, the appeal is **DENIED** and the *Joint Decision* dated May 25, 2010 of the RTC, Branch 16, Manila, in Criminal Case Nos. 02-209192, 02-209193, 02-209194, and 02-209195, is **AFFIRMED**.

SO ORDERED.<sup>13</sup>

The CA ruled that accused-appellants cannot impugn the validity of their arrest or the search made against them belatedly. Any objection against an arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused should be made at or before the arraignment; otherwise, the objection is deemed waived.

The appellate court also opined that there is sufficient evidence to prove the charge of illegal possession of dangerous drugs and equipment, instrument, apparatus and other paraphernalia for dangerous drugs, based on the testimony of the prosecution witnesses. Furthermore, upon examination by the forensic chemist, Maritess F. Mariano (Mariano) of the Western Police District, of the 16 plastic sachets containing white crystalline substance and various drugs paraphernalias confiscated from accused-appellants, it yielded positive results for the presence of methamphetamine hydrochloride or *shabu*.

The CA did not give credence to accused-appellants' defense of alibi and dismissed their claim that there was no compliance by the police officers with the procedures in Section 21, Article II of the Implementing Rules and Regulations of R.A. No. 9165. The CA decided that the testimony of P/Insp. Teneros, coupled with the documentary and object evidence adequately supported not only the findings that a valid buy-bust operation took place but accounted for an unbroken chain of custody of the seized evidence.

On July 21, 2014, the Court issued a Resolution noting the records forwarded by the CA which gave course to accused-appellants' notice of appeal in accordance with Sec. 13(c), Rule 124 of the Revised Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC.<sup>14</sup> After the parties submitted their respective manifestations, the case was submitted for resolution.<sup>15</sup>

### **The Court's Ruling**

The appeal is meritorious.

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<sup>13</sup> *Rollo*, p. 18.

<sup>14</sup> *Id.* at 24.

<sup>15</sup> *Id.* at p. 40.



After a thorough review of the records of the instant case, we find that the accused-appellants should be acquitted of the charges against them for failure of the prosecution to prove that the integrity and identity of the seized items were preserved as required under Section 21, Article II of the Implementing Rules and Regulations of R.A. No. 9165.

The unique characteristics of illegal drugs render it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise.<sup>16</sup> Thus, it is imperative to establish that the drugs presented in court as evidence are the very same drugs recovered from the accused.<sup>17</sup>

Under Section 11 of R.A. No. 9165, the prosecution of illegal possession of dangerous drugs necessitates the following facts to be proved: a) the accused is in possession of dangerous drugs; b) such possession is not authorized by law, and; c) the accused freely and consciously aware of being in possession of dangerous drugs.<sup>18</sup> In order to establish the identity of the dangerous drugs or the *corpus delicti* allegedly possessed by the accused-appellants, it must be shown and proven beyond reasonable doubt, that the dangerous drugs being presented before the court are the exact same ones that were confiscated or seized from the accused-appellants at the time of their apprehension.

As for the prosecution of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, the law requires the establishment of the following elements: 1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body; and, 2) such possession is not authorized by law.<sup>19</sup>

The buy-bust operation mounted against accused-appellants resulted from information given by a confidential informant.<sup>20</sup> Such an operation was susceptible to police abuse, the most notorious of which is its use as a tool for extortion, and the possibility of that abuse is great.<sup>21</sup> The susceptibility to abuse of the operation led to the

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<sup>16</sup> *People v. Alcuizar*, 662 Phil. 794, 801 (2011).

<sup>17</sup> *People v. Jagdon*, G.R. No. 234648, March 27, 2019.

<sup>18</sup> *People v. Sembrano*, 642 Phil. 476, 490-491 (2010).

<sup>19</sup> *Zalameda v. People*, 614 Phil. 710, 727 (2009).

<sup>20</sup> TSN, June 22, 2005, p. 17.

<sup>21</sup> *People v. Garcia*, 599 Phil. 416, 427 (2009), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

institution of several procedural safeguards by R.A. No. 9165, mainly to guide law enforcers. Thus, the State must show a faithful compliance with such safeguards during the prosecution of every drug-related offense.<sup>22</sup>

To ensure that unnecessary doubts on the identity of the evidence are removed, the chain of custody is observed.<sup>23</sup> Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction.<sup>24</sup> Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.<sup>25</sup>

It is well-established that the following links must be present in order to comply with the requirements of the chain of custody under the law: 1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; 2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, 4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>26</sup>

Furthermore, the requirements under Section 21 of R.A. No. 9165 reinforce the first two links of the chain to make them foolproof against adulteration or planting of evidence.<sup>27</sup>

To further ensure that the establishment of the chain of custody and the preservation of the integrity and identity of the items seized and confiscated from the accused-appellants, Section 21(1) of R.A. No. 9165 requires that:

- (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

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<sup>22</sup> Id.

<sup>23</sup> *People v. Gayoso*, 808 Phil. 19, 30 (2017).

<sup>24</sup> Id.

<sup>25</sup> Supra note 15.

<sup>26</sup> *People v. Kamad*, 624 Phil. 289, 304 (2010).

<sup>27</sup> *People v. Que*, G.R. No. 212994, January 31, 2018.

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”

In addition, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 elucidated the requirement enshrined in Section 21(1), to wit:

(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: 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, 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[.] x x x

The rule requires that the marking of the seized items should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones obtained in evidence.<sup>28</sup>

“Marking” means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized.<sup>29</sup>

Marking after seizure is the starting point in the custodial link, thus it is vital that the seized in contraband is immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed at the end of criminal proceedings, obviating switching, “planting” or contamination of evidence.<sup>30</sup>

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<sup>28</sup> *People v. Sanchez*, 590 Phil. 214, 241 (2008).

<sup>29</sup> *People v. Hementiza*, 807 Phil. 1017, 1030 (2017).

<sup>30</sup> *People v. Guzon*, 719 Phil. 441, 454 (2013); *People v. Salonga*, 717 Phil. 117, 127 (2013), citing *People v. Coreche*, 612 Phil. 1238, 1245 (2009).

According to P/Insp. Teneros, all the seized items were marked only by the investigator at the police station and not immediately after accused-appellants were apprehended at the Muslimin Apartment, to wit:

Q: After you and that six (6) police officers snoop down to said apartment[,] what happened next?

A: We apprehended the suspect which (sic) was at the second floor, Room No. 7. PO3 Estacio was also there and pointed the three (3) suspects who are now arrested. I also prepared an inventory for all the items recovered from them, sir.

Q: That inventory receipt that you were referring to, is that the same Exhibit "B" that you identified a while ago?

A: Yes sir.

x x x x

Q: Mr. Witness, what happened after that?

A: After that sir[,] we prepared the Affidavit of Orderly Search for all the seized items and that was witnessed by the three (3) kagawads of Barangay 284 and they also affixed their signatures. Then, we proceeded to our office for further investigation sir.

Q: In the office, what happened?

A: At the office, we get their names and also we turned them over properly to the investigator. We also executed our Affidavit, the Request for Laboratory Examination of all the items recovered sir.

Q: What does (sic) the investigator do when you turned over the seized items?

A: **The investigator, in my presence put the markings on the evidence recovered**, also the buy bust money, also the booking sheet and arrest report, the letter for the inquest Prosecutor, the affidavit of apprehension (sic) and all pertinent evidence relative to these cases sir. x x x<sup>31</sup> (Emphasis supplied)

There are occasions when the chain of custody rule is relaxed such as when the marking of the seized items is allowed to be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of an accused in illegal drugs cases.<sup>32</sup> However, such exception does not remove the rule that it should be the apprehending officers, having the initial custody and control of the items seized from the accused-appellants, who should mark the same

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<sup>31</sup> TSN, June 22, 2005, pp. 24-27.

<sup>32</sup> *People v. Resurreccion*, 618 Phil. 520, 531-532 (2009).

immediately upon confiscation. The prosecution even failed to show who had initial control and custody of the seized items upon their confiscation and while it was in transit to the police station. Furthermore, there was not even a categorical statement that the seized items were marked in front of the accused-appellants by the investigator at the police station.

We have consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties. Failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt.<sup>33</sup> During his cross-examination, in an apparent attempt to retract the statements he made during his direct testimony, P/Insp. Teneros made several confusing and conflicting statements to “clarify” his earlier testimony and thereafter claimed that it was him who marked the items seized from the appellants, which altogether makes its veracity to be more doubtful and unconvincing.<sup>34</sup> The fact that the supposed marking of the items seized from accused-appellants were not in the initials of any of the apprehending officers present during the buy-bust operation or the alleged poseur-buyer further poses doubt on the credibility of P/Insp. Teneros’ testimony regarding who marked the items seized and when it was done, which no presumption of regularity in the performance of his duties can ever cure.

A substantial gap in the chain of custody was also evident from the failure of the prosecution to identify who turned over the seized items from the investigator to the forensic chemist for laboratory examination.<sup>35</sup>

Aside from the failure of the apprehending officers to mark the items seized from the accused-appellants immediately at the place where the accused-appellants were apprehended, they also noticeably failed to present in evidence any photographs of the same. This Court notes that aside from the marked money used by the apprehending officers during the alleged buy-bust operation, there is nothing in the records which would show that the latter had taken or bothered to take photographs of the seized items from herein appellants. Even the

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<sup>33</sup> *People v. Umipang*, 686 Phil. 1024, 1049-1050 (2012).

<sup>34</sup> TSN, September 14, 2005, pp. 32-39.

<sup>35</sup> See testimony of P/Insp. Teneros, TSN, June 22, 2005, pp. 37-38.

Resolution<sup>36</sup> dated December 3, 2002, issued by the Inquest Prosecutor would show that the documents submitted in evidence by the apprehending officers on October 5, 2001,<sup>37</sup> were merely the Booking Sheet & Arrest Reports of the Accused,<sup>38</sup> Joint Affidavit of Apprehension,<sup>39</sup> Xerox Copy of Mark[ed] Money,<sup>40</sup> Result of the Crime Laboratory Examinations<sup>41</sup> and Xerox Copy of Search Warrant No. 023117 issued by Hon. Judge Enrico A. Lazanas, RTC Ex. Judge Br. 7, Mla.<sup>42</sup> It is also notable that the supposed Inventory of Seized Items and Certification of Orderly Search prepared by P/Insp. Teneros and supposedly signed by Kagawad Casan and Kagawad Ali beforehand were not included among the evidence submitted before the Inquest Prosecutor, based on the Resolution alone.

The lack of signatures of the accused-appellants or their counsel in the inventory, and the absence of any photographs over the items seized from them was admitted by P/Insp. Teneros in his cross-examination, thus:

Q: Do you know the provision of RA 9165 which says that the inventory must be signed by the accused or by the counsel?

A: I know that sir but during that time that law, RA 9165 is not impose yet. (sic)

Q: Why?

A: As far as I know sir, there is no policy or guidelines coming from the PDEA during that time. Only the barangay elected official who signed the Certificate of Orderly Search. (sic)

Q: You did not also take photograph of the alleged seized items?

A: No sir.<sup>43</sup>

The lack of signature of the appellants in the inventory and the lack of photographs of the seized items as required by law could very well be held to mean that no dangerous drug had been seized from herein accused-appellants on that occasion. This is true since the testimony of the poseur-buyer, PO3 Estacio, was not presented before the courts to testify on the alleged transaction between him and the accused-appellants. The irregular presentation, if any, of the supposed Inventory of Seized Items to the Inquest Prosecutor further dissuades this Court to rule in favor of the prosecution.

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<sup>36</sup> Records, pp. 4-9.

<sup>37</sup> Id. at 10.

<sup>38</sup> Id. at 11-16.

<sup>39</sup> Id. at 17-18.

<sup>40</sup> Id. at 25.

<sup>41</sup> Id. at 21.

<sup>42</sup> Id. at 23-24.

<sup>43</sup> TSN, August 10, 2005, p. 16.

There was a noticeable amount of illegal drugs in this case and not a single photograph of the same was taken and submitted before the inquest prosecutor, let alone the lower court. This Court is in a quandary how the RTC and the CA swallowed hook, line and sinker the proposition of the prosecution that it had established the identity of the seized items without the inventory and photographs of the same, and found the guilt of herein accused-appellants beyond reasonable doubt of the charges against them on the basis thereof.

Section 21(1) of R.A. No. 9165 and its IRR requires the presence of witnesses in the inventory of the seized drugs in a buy-bust operation.<sup>44</sup> Compliance with the third-party witness requirement is vital as its non-observance necessarily casts doubt on the integrity of the drugs seized, and, in turn, creates reasonable doubt in the conviction of the accused.<sup>45</sup>

Kag. Casan executed a *Sinumpaang Salaysay*<sup>46</sup> dated October 18, 2002, wherein he denied the veracity of the statements made by the police in their Joint-Affidavit of Apprehension<sup>47</sup> dated October 4, 2002, and instead interposed the following statements: 1) **that he was not present during the alleged actual conduct of the buy-bust operation made against the accused-appellants**; 2) that upon arriving at area of operation, he saw people, including accused-appellants, already lined up outside of their respective rooms and eventually moved near the counter; 3) that he saw police officers enter every room on that floor and brought out various things which they handed over to P/Insp. Teneros, who was carrying a large plastic bag; 4) that there were eleven people that the police detained and brought to the police precinct; 5) that he asked P/Insp. Teneros why was Casan arrested when there was nothing illegal found in his possession but the former just assured him that they would only be filing a weak case against Casan so that he could post bail; 6) that SPO2 Amador Jareno (SPO2 Jareno) told him that accused-appellants may be released without charge if he could pay Five Hundred Thousand Pesos (₱500,000.00); 7) that the Search Warrant<sup>48</sup> dated October 3, 2002, was implemented irregularly by the police because: a) the subject thereof, Allan T. Mangula-Mas, was already dead, as evidenced by his Death Certificate,<sup>49</sup> after the latter was shot in the head and his chest, and that Kagawad Casan was one of the people who rushed him to the

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<sup>44</sup> *People v. Sagana*, 815 Phil. 356, 372-373 (2017).

<sup>45</sup> *People v. Cabuhay*, G.R. No. 225590, July 23, 2018.

<sup>46</sup> Records, pp. 26-28.

<sup>47</sup> Id. at 17-18.

<sup>48</sup> Supra note 42.

<sup>49</sup> Id. at 44.

hospital; and, b) the place indicated in the said warrant was only “MUSLIMIN APARTMENT, ELIZONDO STREET, 2<sup>ND</sup> FLOOR, RM. NO. 7 NEAR COR. GLOBO DE ORO STREET, QUIAPO, MANILA,” however, the police entered all of the rooms in the second floor, including Room No. 7 thereat; and, 8) that he was made to sign a partially concealed Certification of Orderly Search.<sup>50</sup>

This was further corroborated by Kag. Ali, in his own *Sinumpaang Salaysay*<sup>51</sup> dated November 2002.

Moreover, this fact was admitted by P/Insp. Teneros himself, during his cross-examination, to wit:

Q: During your direct testimony[,] you referred to an inventory. When you snoop down to the second floor of Muslim[in] Apartment[,] were there elected public officials with you?

A: Before we snoop down to the second floor of the Muslim[in] Apartment[,] there is (sic) no public officials sir. We did not make any search without the barangay officials. When the barangay officials arrived then that’s the time we conducted our search.

Q: So you were saying that when you snoop down to the second floor of the Muslim[in] Apartment[,] there is (sic) no any barangay officer with you then?

A: Yes sir.<sup>52</sup>

The apprehending officers in this case had more than ample time to comply with the requirements established by law and they miserably failed to do so. The presence of the required witnesses, albeit only an elected public official, after the supposed conduct of the buy-bust operation and during the alleged search on the target area serves as a mere afterthought, and does not suffice to comply with the requirements laid down in Section 21 of R.A. No. 9165.

The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.<sup>53</sup>

The prosecution did not even attempt to adequately explain why they failed to follow the mandated procedure and P/Insp. Teneros

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<sup>50</sup> Id. at 49.

<sup>51</sup> Id. at 37-38.

<sup>52</sup> TSN, August 10, 2005, pp. 13-14.

<sup>53</sup> *People v. Saragena*, 817 Phil. 117, 144 (2017).



merely tried to justify the same by claiming that R.A. No. 9165 was not yet “strictly implemented” at that time and that there were no guidelines that were issued for them to follow.<sup>54</sup> This Court, in the strongest sense, reminds every police officer in drugs cases that ignorance of the law excuses no one from compliance therewith.<sup>55</sup> Such flimsy excuse cannot be countenanced and we will never tolerate such belligerent behavior from those who are mandated by law to implement the same.

In closing, let it be remembered that the hammer of justice must strike true and fair against the blade of punishment and should be rightfully tempered first at the anvil of innocence. There is nothing more sinister and malevolent than an unbridled exercise of power over the lives and property of an individual that is left unchecked by a flawed system of indifference and inconsequence by the corrupt and the unprincipled.

**WHEREFORE**, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated December 17, 2013, of the Court of Appeals in CA-G.R. CR HC No. 05080 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants **ELMON ESAROL y KAMSA, ALLAN CASAN y DIPATUAN** and **ALIBOL CASIM y MANA** are **ACQUITTED** of violations of Sections 11 and 12, Article II of Republic Act No. 9165 on the ground of reasonable doubt, and are **ORDERED** to be immediately released from detention unless they are being lawfully held for another cause.

Let a copy of this Resolution be furnished the Chief Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Chief Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he/she has taken.

Further, the National Police Commission is hereby **DIRECTED** to **CONDUCT AN INVESTIGATION** on the police officers involved in the buy-bust operation conducted on this case.

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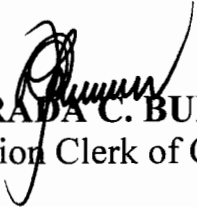
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<sup>54</sup> TSN, August 10, 2005, p. 16; TSN, September 14, 2005, pp. 44-45.

<sup>55</sup> CIVIL CODE OF THE PHILIPPINES, Article 3.

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
**248-B**

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1229 Makati City

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Manila  
(CA-G.R. CR HC No. 05080)

The Hon. Presiding Judge  
Regional Trial Court, Branch 16  
1000 Manila  
(Crim. Case Nos. 02-209191 to 95)

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