

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **04 December 2019** which reads as follows:

“G.R. No. 237774 (People of the Philippines v. Abdir Khalil Said y Aradji). – Selling drugs is a vicious crime that often breeds other crimes. It is not what one might call a “contained” crime whose consequences are limited to that crime alone. It is startling, nevertheless, how the necessity of preserving the corpus delicti and complying with the simple requirement with regard to the number and identity of the witnesses enumerated by the law can be glossed over and excused. The burden of proving the guilt of the appellant lies on the strength of the evidence of the prosecution. Even if we presume that our law enforcers performed their assigned duties beyond reproach, the Court cannot allow the presumption of regularity in the conduct of police duty to overthrow the presumption of innocence of the accused in the absence of proof beyond reasonable doubt.¹

In the assailed Decision² dated October 23, 2017 the Court of Appeals (CA) convicted the accused-appellant Abdir Khalil Said y Aradji (accused-appellant) with violation of Section 5, Article II of Republic Act (R.A.) No. 9165 in CA-G.R. CR-H.C. No. 08796. Through this appeal, the accused-appellant vigorously asserts his innocence and asks for the reversal of his conviction. The People say otherwise.

Version of the Prosecution

Around 10:30 a.m. of May 15, 2011, a regular confidential informant went to Police Station 5, Fairview, Quezon City and reported that a certain alias “Khalil,” later identified as herein accused-appellant, was selling illegal drugs along Dhalia Street, *Barangay* Fairview in Quezon City. Acting on the information, Police Inspector (P/Insp.)

¹ *People of the Philippines v. John Orcullo y Susa*, G.R. No. 229675, July 8, 2019.

² *Rollo*, pp. 2-19; penned by Associate Justice Priscilla J. Baltazar-Padilla and with Associate Justices Eduardo B. Peralta and Nina G. Antonio-Valenzuela, concurring.

Abeladro P. Aquino, Chief of Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG), formed a buy-bust operation team to apprehend the accused-appellant. He designated Police Officer II Joey Macaballug (PO2 Macaballug) as the *poseur*-buyer, prepared a ₱1,000.00 bill with serial number FU929383³ as buy-bust money marked with PO2 Macaballug's initials "JM", and tasked PO2 Richard S. Mabazza (PO2 Mabazza) to coordinate with the Philippine Drug Enforcement Agency (PDEA) to secure the necessary pre-operation and coordination report.

After going to the PDEA, PO2 Mabazza returned empty-handed due to the alleged unavailability of the persons who will sign the documents.⁴

Later that day, the buy-bust team composed of PO2 Macaballug, PO2 Eleuterio Frias, Senior Police Officer Gerardo Quimson (SPO1 Quimson), and SPO1 Cariño proceeded to Dhalia Street. The police officers saw the accused-appellant sitting on a parked motorcycle in front of an apartelle talking with a certain Radzmil Waliyol y Saham (Waliyol) and Radzmir Tulawie y Bao (Tulawie). The confidential informant and PO2 Macaballug alighted from the vehicle and approached them. The confidential informant introduced PO2 Macaballug to the accused-appellant as the interested buyer of "*shabu*." Then, PO2 Macaballug gave the marked money to the accused-appellant, while the latter handed to him a transparent plastic sachet of white crystalline substance. Immediately, PO2 Macaballug executed the pre-arranged signal (removing his baseball cap) and identified himself as a police officer. After recovering the buy-bust money from the accused-appellant's right hand, PO2 Macaballug placed the accused-appellant under arrest.⁵

In the meantime, PO2 Frias got hold of the accused-appellant's companions and frisked them. He recovered one transparent plastic sachet of crystalline substance from Waliyol's front pocket. SPO1 Quimson, on the other hand, arrested Tulawie but did not recover anything illegal in his possession. Thenceforth, PO2 Macaballug marked the evidence recovered from the accused-appellant with "JM-ASA 5-15-11", while PO2 Frias marked the item seized from Waliyol with "EF-RWS-5-15-11". Police Investigator PO2 Mabazza, who was summoned to the buy-bust operation area, accomplished the Chain of Custody

³ Records, Criminal Case No. Q-11-170287, p. 275.

⁴ *Rollo*, p. 5.

⁵ *Id.* at 5-6.

Form.⁶ Thereafter, police officers turned over the confiscated items to him.⁷

The police officers brought the accused-appellant and his companions to the *barangay* hall of West Fairview, Quezon City. There, PO2 Mabazza took photographs⁸ of them, Executive Officer Romeo Tapia, and *Barangay Kagawad* Emil Lagco while signing the Inventory of Seized Properties/Items.⁹ Subsequently, the police officers brought the accused-appellant, Waliyol, and Tulawie, as well as the plastic sachets with white crystalline substance, to the Philippine National Police (PNP) Crime Laboratory for examination. When the tests gave positive results for the presence of methylamphetamine hydrochloride, the three were brought for inquest. The Inquest Prosecutor charged only the accused-appellant and Waliyol with violation of R.A. No. 9165, the Dangerous Drugs Law.¹⁰

Version of the Defense

For his defense, the accused-appellant denied committing the offense. He testified that at the time of his arrest on May 10, 2011, Tulawie invited him for a drinking session in an *apartelle* where the latter's friend was waiting. A few minutes after entering the room, somebody knocked at the door. Without any warning, four persons in civilian clothes went inside and introduced themselves as police officers. The accused-appellant jumped over the bed and introduced himself as a member of the Philippine Air Force, but the operatives ignored him. He resisted initially but the buy-bust team succeeded in restraining him. He was then handcuffed and brought to Police Station 5.¹¹

At the police station, the police officers alleged that the accused-appellant and his companions are involved in illegal drugs. It turned out that one of the persons was a police asset who pointed to Tulawie as a drug courier. While Tulawie and his friend talked outside the station, the accused-appellant and Waliyol were put behind bars. The next morning, accused-appellant's sister arrived at the police station. While they were having a conversation, his sister discreetly filmed PO2 Mabazza and SPO1 Quimson extorting money from the accused-appellant and Waliyol. When SPO1 Quimson noticed the video recording, he got mad. Later, his sister filed a complaint against the police officers before the

⁶ Records, Criminal Case No. Q-11-170287, p. 268.

⁷ *Id.* at 6.

⁸ *Id.* at 265-266.

⁹ *Id.* at 267.

¹⁰ *Rollo*, pp. 6-7.

¹¹ *Id.* at 7-8.

People's Law Enforcement Board (PLEB) using the recorded video as evidence.¹²

The following day, the police officers made them sign two documents and brought them to the *barangay* hall. Only accused-appellant and Waliyol were photographed and subjected to drug examination in Camp Crame.¹³

On May 17, 2011, in the Branch 78, Regional Trial Court (RTC), Quezon City, accused-appellant was charged with the Illegal Sale of Dangerous Drugs, in violation of Section 5, Article II of R.A. 9165. The Information¹⁴ against him states:

CRIMINAL CASE NO. Q-11-170287

That on or about the **15th day of May, 2011** in Quezon City, Philippines, the said accused, without lawful authority, did then and there, willfully, unlawfully sell, deliver, transport, distribute or act as broker in the said transaction **One (1) heat-sealed transparent plastic sachet containing zero point zero two (0.02) gram** of white crystalline substance containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.¹⁵

On the other hand, an Information for violation of Section 11, Article II of R.A. 9165 was filed against Waliyol in Criminal Case No. Q-11-170288.

During their arraignment, both accused-appellant¹⁶ and Waliyol¹⁷ pleaded not guilty to the respective charges against them. At the pre-trial, the parties stipulated on the identities of the two accused as the persons named in the Informations as well as the jurisdiction of the court.¹⁸ Joint trial ensued, but in the course of the proceedings, Waliyol repeatedly failed to appear in court; thus prompting it to order that he be tried in *absentia*.

¹² *Rollo*, p. 8.

¹³ *Id.*

¹⁴ *Rollo*, p. 2.

¹⁵ *Id.* at 2-3.

¹⁶ *CA rollo*, p. 59.

¹⁷ *Id.* at 64.

¹⁸ *Id.* at 79.

Ruling of the RTC

The RTC on November 9, 2016, rendered its Joint Judgment¹⁹ finding accused-appellant guilty beyond reasonable doubt of the offense charged in the Information, but dismissed the case as against Waliyol. The dispositive portion of the Decision reads as follows:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. Q-11-170287, the Court finds accused **ABDIR KHALIL SAID y ARADJI, GUILTY BEYOND REASONABLE DOUBT** of violation of Section 5, Article II, Republic Act 9165, and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00), Philippine Currency plus the costs of the suit. That since the said accused **ABDIR KHALIL SAID y ARADJI is a detention prisoner, his period of preventive imprisonment shall be properly credited in his favor in strict conformity with our existing laws, rules and regulations; while in,**

2. In Criminal Case No. Q-11-170288, the Court finds accused **RADZMIL WALIYOL y SAHAM, NOT GUILTY** and is hereby acquitted of the charge of Violation of Sec. 11, Art. II, R.A. 9165, and said case ordered **DISMISSED**. No pronouncement as to costs.

The dangerous drugs submitted in these cases is hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA), for destruction and/or disposition in strict conformity with the provisions of our laws, rules and regulations on the matter.

Let the Mittimus and necessary documents be prepared for the immediate transfer of the custody of accused Abdir Khalil Said y Aradji to the Bureau of Corrections, National Bilibid Prisons in Muntinlupa City, pursuant to OCA Circular No. 4-92-A.

SO ORDERED.²⁰

Accused-appellant filed his appeal with the CA. However, it dismissed the appeal on October 23, 2017 and affirmed the decision of the RTC; thus:

WHEREFORE, the present appeal is **DISMISSED**. The Decision dated November 9, 2016 of the Regional Trial Court, Branch 78 of Quezon City finding appellant Abdir Khalil Said y

¹⁹ *Id.* at 56-68; Rendered by Presiding Judge Fernando T. Sagun Jr.

²⁰ *Id.* at 68.

Aradji guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" in Criminal Case No. Q-11-170287, is hereby **AFFIRMED**.

SO ORDERED.²¹

Unperturbed, the Public Attorney's Office (PAO) filed a Notice of Appeal²² dated November 10, 2016.

On September 14, 2018, the Office of the Solicitor General (OSG) filed a Manifestation In Lieu of Supplemental Brief²³ stating that it will no longer submit a Supplemental Brief considering that there are no transactions, occurrences or events that happened since the filing of its Appellee's Brief on August 3, 2017. On September 21, 2018, the Special and Appealed Cases Service of the PAO filed the Supplemental Brief²⁴ for accused-appellant signifying that only a *barangay* elected official was present during the conduct of inventory of seized items, while the other witnesses required by the law were absent.²⁵

The Court now resolves whether the guilt of accused-appellant was proven beyond reasonable doubt. Central to this issue is the determination of whether the integrity and evidentiary value of the evidence were duly preserved.

The appeal is meritorious.

I. Elements of Illegal Sale of Drugs The Chain of Custody Rule.

In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove (1) the identity of the buyer and the seller, the object, and the consideration, and (2) the delivery of the thing sold and the payment.²⁶ Furthermore, to

²¹ *Rollo*, p.18.

²² *CA rollo*, p. 127.

²³ *Rollo*, pp. 27-29. Submitted under the name of Solicitor General Jose C. Calida, and signed by Assistant Solicitor General Derek R. Puertollano and Associate Solicitor Yvette Marie I. Sola on September 14, 2018.

²⁴ *Id.* at 31-40. Submitted under the name of Chief Public Attorney Persida V. Rueda-Acosta, Public Attorney IV Mariel D. Baja, Public Attorney IV Flordeliza G. Merelos, Public Attorney III Geoanne Christi D. Battad and Public Attorney I Ramon Felipe T. Bernardino.

²⁵ *Id.* at 33.

²⁶ *People the Philippines v. Desiree Dela Torre y Arbillon*, G.R. No. 238519, June 26, 2019 citing *People v. Sumili*, 753 Phil. 342, 348 (2015).

remove any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.²⁷

The factual circumstances of the case tell us that the alleged offense was committed on May 15, 2011. At that time, the effective law enumerating the requirements of the chain of custody rule was Section 12 of R.A. No. 9165. It states:

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 drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;** (Emphasis and underlining supplied)

To supplement the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides that:

(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,**

²⁷ *Id.* citing *People v. Viterbo, et al.*, 739 Phil. 593, 601 (2014).

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.

xxx xxx xxx (Emphasis supplied)

Under the original provision of Section 21 and its IRR, the apprehending team was required to immediately conduct a physical inventory and photograph of the seized items after seizure and confiscation in the presence no less than three witnesses, namely: (1) a representative from the media; (2) a representative from the Department of Justice (DOJ); and (3) any elected public official. They must also sign the inventory and be furnished with their own copy thereof.²⁸ It follows, therefore, that the three so-called insulating witnesses should already be physically present at the time of apprehension, a requirement that should easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.²⁹ And although non-compliance with the requirements is excusable, this only applies when the integrity and evidentiary value of the seized items were properly preserved. In fact, the prosecution must provide a credible justification for the arresting officers' failure to comply with the procedure outlined in Section 21 of R.A. No. 9165.³⁰

Records reveal that the arresting officers did not strictly observe the statutory requirements for the chain of custody.

II. Marking in the presence of the apprehended violator; Physical inventory and taking of photograph must be done immediately.

Marking is the placing by the arresting officer or the *poseur*-buyer of his/her initials and signature on the items after they have been seized. This is the starting point in the custodial link and is vital in the chain of custody rule since the succeeding handlers of the seized drugs will use

²⁸ *People of the Philippines v. Arnello Refe y Gonzales*, G.R. No. 233697, July 10, 2019.

²⁹ *People of the Philippines v. Mario Manabat y Dumagay*, G.R. No. 242947, July 17, 2019.

³⁰ *People of the Philippines v. Arnello Refe y Gonzales*, *supra* note 27, citing *People v. Barte*, 806 Phil. 533, 544 (2017).

the markings as reference. The rule requires that the marking of the contraband be done both in the presence of the apprehended violator and immediately upon confiscation.³¹

In the present case, there is no showing that the seized sachets were marked in the presence of the accused-appellant or that he refused to sign the inventory receipt. All that was established from the testimonies of the witnesses is that PO2 Macaballug marked the evidence recovered from accused-appellant with "JM-ASA 5-15-11", while PO2 Frias marked the item seized from Waliyol with "EF-RWS-5-15-11." The other details are left out for the Court to speculate. To the Court's mind, the presence of the accused is necessary at the time the marking is done in order to assure that the identity and integrity of the drugs are properly preserved.³²

What is more, the physical inventory and photographing of the seized items were not executed immediately at the place of apprehension and seizure. The witnesses admitted that they conducted the physical inventory and taking of photograph of the seized illegal drugs in the *barangay* hall of West Fairview, Quezon City. True, the conduct of the physical inventory and photographing are not limited to the place of apprehension as substantial compliance may be allowed if attended with good and sufficient reason. Noticeably, such condition was not met in this case since the apprehending team did not show that the immediate physical inventory and photographing posed a threat on the safety and security of the police officers, or of the confiscated articles. Nor did they offer any acceptable reason for not complying strictly with the requirement of immediate inventory and photographing at the place of arrest.³³ Absent any justifiable reason, the apprehending team should have immediately conducted the inventory upon seizure and confiscation of the items.

Even if we consider the conduct of the inventory and photographing at the *barangay* hall acceptable, the apprehending team veered away as well from the three-witness rule required by Section 21.

³¹ *People of the Philippines v. Mark Andrew Faz y Rocaford*, G.R. No. 233466, August 7, 2019 citing *People v. Alejandro*, 671 Phil. 33, 46-47 (2011).

³² *People of the Philippines v. Allan Bermejo y De Guzman*, G.R. No. 199813, June 26, 2019.

³³ *People of the Philippines v. Editha Tampan*, G.R. No. 222648, February 13, 2019.

III. Absence of representatives from the DOJ and the media is readily apparent in the inventory seized properties/items.

The physical inventory and the taking of the photographs of the seized items were witnessed by Executive Officer Romeo Tapia (EO Tapia) and *Barangay Kagawad* Emil Lagco (*Barangay Kagawad* Lagco). Considerably, however, they were merely called-in and eventually arrived at the *barangay* hall only after accused-appellant was already apprehended.

In *People v. Tomawis*,³⁴ this Court reminded that the presence of the three witnesses must be secured not only during the inventory but, more importantly, at the time of the warrantless arrest. It is at this point in which their presence is most needed. The practice of the police operatives of not bringing to the intended place of arrest the three witnesses and calling them in to the place of inventory to witness the inventory and photographing of the drugs does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. Indeed, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of arrest so that they can be ready to witness the inventory and photographing of the seized drugs immediately after their seizure and confiscation.

It bears stressing too that the Certificate of Inventory that was produced by the prosecution was irregularly executed.

First, as stated, the Certificate of Inventory itself reveals that the document was not signed by the accused-appellant or by his counsel or representative. The prosecution did not even acknowledge such defect. Nor did it provide any explanation whatsoever as to why accused-appellant was not able to sign the form.

Second, the presence of EO Tapia and *Barangay Kagawad* Lagco cannot be considered substantial compliance of the law as there were no representatives from the media and the DOJ.

³⁴ G.R. No. 228890, April 18, 2018, 862 SCRA 131, 150.

In *People of the Philippines v. Augusto N. Maganon*,³⁵ the Court acquitted the accused after the records indicated that only the *barangay* captain was present during the physical inventory and photographing of the seized items at the *barangay* hall of *Barangay Ugong*, Pasig City.

Similarly, in *People of the Philippines v. Babylyn Manansala y Cruz*,³⁶ the Court observed that only one of the three required witnesses was present at the time of seizure and apprehension. It noted that the prosecution made no effort at all to explain or justify why two of the three required witnesses, a representative from the DOJ and an elected public official, were not present during the buy-bust operation against the accused-appellant therein. Worse, it was not shown that earnest efforts were in fact exerted to secure or obtain their presence or attendance thereat. The Court said:

Regrettably, in this case the prosecution made no effort at all to explain or justify why two of the three required witnesses — a representative from the DOJ and an elected public official — were not present during the buy-bust operation against appellant, nor did it show that earnest efforts were in fact exerted to secure or obtain their presence or attendance thereat.

This Court, in *People v. Malana*, took the view that a buy-bust team can easily gather the three required witnesses, considering that its operation is, by its nature, a planned activity. Here, the apprehending team had more than enough time to comply with the requirements under RA 9165. PO3 Taruc himself testified that they received the tip from their confidential informant in the morning of December 8, 2011. Then, they immediately made preparations for the buy-bust operation which took place later that day at 6:00 p.m. Therefore, **it is safe to say that the buy-bust team had ample time to comply with the requirements of the law had they exerted the slightest of efforts. Needless to say, this failure is not helped by the fact that during the trial, the prosecution utterly failed to offer any explanation for non-compliance with the law.**

The Court, in a plethora of cases, has repeatedly stressed that the presence of the required insulating witnesses at the time of the inventory is mandatory, and that their presence thereat serves both a crucial and a critical purpose. Indeed, under the law, **the presence of the so-called insulating witnesses is a high prerogative requirement, the non-fulfillment of which casts serious doubts upon the integrity of the *corpus delicti* itself** — the very prohibited substance itself — and for that reason imperils and jeopardizes the prosecution's case.³⁷ (Emphasis supplied; citations omitted)

³⁵ G.R. No. 234040, June 26, 2019.

³⁶ G.R. No. 229509, July 3, 2019.

³⁷ *Id.*

The last paragraph of Section 21(a) contains a saving *proviso* to the effect that non-compliance with these requirements under justifiable grounds shall not render void and invalid the seizures of and custody of the items so long as the integrity and evidentiary value thereof are properly preserved. Withal, for the saving *proviso* to apply, the prosecution must first recognize and explain the lapse or lapses in the procedure committed by the arresting lawmen. Lamentably, it did not happen in this case because the prosecution neither recognized nor explained the lapses.³⁸

The prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in the law. It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the 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. The law further requires that the apprehending officers do not simply mention a justifiable ground. Rather, they must 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. A stricter adherence to Section 21 is required where, as in this case, the quantity of illegal drugs seized is minuscule since it is highly susceptible to planting, tampering or alteration.³⁹ Hence:

It is not enough for the apprehending officers to merely mark the seized sachets of *shabu*; the buy-bust team must also conduct a physical inventory and take photographs of the confiscated item in the presence of the persons required by law. **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 whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse."** It was held that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and, consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of R.A. No. 9165. As such, **law enforcement officers are compelled not only to state the reasons for their non-compliance, but must, in fact, also convince the Court that they**

³⁸ *People of the Philippines v. Allan Bermejo y De Guzman*, *supra* note 31 citing *People v. Zakaria*, 699 Phil. 367, 382 (2012).

³⁹ *People of the Philippines v. Ansari Sarip y Bantog*, G.R. No. 231917, July 8, 2019.

exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.⁴⁰ (Emphasis supplied; citations omitted.)

Given the fact that no representatives from the media and the DOJ were present during the physical inventory and the photographing of the seized items, the evils of switching of, planting or contamination of the evidence already create serious lingering doubts as to the identity of the purported *corpus delicti*.⁴¹

IV. The stipulation does not cover the manner as to how the specimen was handled before after it came to the possession of the forensic chemist.

Apart from the non-observance of the three-witness rule, there is likewise doubt as to whether the *shabu* allegedly seized from the accused-appellant is the same *shabu* subjected to laboratory examination and presented in the RTC.

A review of the submissions of both the prosecution and the defense shows that among the four persons who came into direct contact with the alleged seized *shabu*, only PO2 Mabazza and Forensic Chemist P/Insp. Sandra D. Go signed the Chain of Custody Form.⁴² Both PO2 Macaballug and PO2 Frias, who marked their respective evidence, did not sign the form for no justifiable reason. In his cross-examination, PO2 Mabazza admitted:

ATTY. CASTAÑEDA:

Q- Now, you mentioned that you were the one who prepared the Chain of Custody and you will agree with me that the Chain of Custody is a document which contains the description of the seized articles and the authorized movement thereof from the time it was seized until the same is delivered in court, you will agree with me, Mr. Witness?

A- Correct, sir.

Q: Now, in the Chain of Custody that you prepared which was previously marked before this Honorable Court as exhibit "J", you will agree with me that the seized item in this particular case was

⁴⁰ *People of the Philippines v. Mark Andrew Paz y Rocaford*, *supra* note 30.

⁴¹ *People of the Philippines v. Orly Visperas y Acoba*, G.R. No. 231010, June 26, 2019.

⁴² Records, Criminal Case No. Q-11-170287, p. 268.

turned over by you and received by the PNP Crime Laboratory, am I correct, Mr. Witness?

A- Correct, sir.

Q: And who turned over this seized item to you then?

A- It was PO3 Joel Macaballug, sir.

xxxx

Q: And in this particular case, you will agree with me that the alleged drug item was seized from the accused Abdir Khalil Said, am I correct, Mr. Witness?

A- Correct, sir.

Q: And again, who is the officer who seized the item from the accused?

A- It was PO2 Joey Macaballug, sir.

xxxx

Q: Now, in the Chain of Custody that you prepared previously marked as Exhibit "J", can you please point to us where in this Chain of Custody can you find the name of PO2 Macaballug as the one who turned over to you the alleged drug evidence seized from the accused?

A: Sir, I noticed from this document, I am sorry to tell you that I forgot to write the name of PO2 Macaballug who turned over to me the confiscated items from the accused, sir.⁴³

Additionally, the testimony of the forensic chemist, who supposedly turned over the evidence to the court, was merely stipulated upon by the prosecution and the defense.

In its Order⁴⁴ dated October 2, 2012, the RTC dispensed with the testimony of PCI Go and enumerated the stipulations agreed upon by the parties which were made the bases of the Order, to wit:

Assistant City Prosecutor Conrado C. Rosario and the counsel for the accused opted to enter into stipulation/admission of facts as regards the proposed testimony of the Forensic Chemist Police Chief Inspector Sandra Decena Go in order to abbreviate the proceedings, and these are as follows:

1. That Police Chief Inspector Sandra Decena Go was the duly designated Forensic Chemist in the instant case;

⁴³ TSN, January 30, 2012, pp. 22-25.

⁴⁴ Records, Criminal Case No. Q-11-170287, p. 122.

2. That she received the Request for Laboratory Examination together with the object evidence subject matter of case from PO2 Richard Mabazza;
3. That thereafter, she conducted forensic examination on the object evidence that she received and later came out with Initial Laboratory Report No. D-103-11 and Final Chemistry Report No. D-103-11;
4. That as proof of her receipt of the object evidence, she also signed a Chain of Custody Form;
5. That due execution, authenticity, as well as the contents of the Initial Laboratory Report and the Final Chemistry Report No. D-103-11;
6. That she could identify the object evidence that she received and she examined if shown to her at the witness stand;
7. That she was the one who was assigned to conduct the drug test of the accused;
8. That she received the Request for Drug Test, as well as the persons of the accused from PO2 Richard Mabazza;
9. That she was the one who personally turned over the object evidence to the Court;
10. **That she was not one of the seizing/arresting officers;**
11. **That she has no personal knowledge as to the incidents of the arrest and seizure; and**
12. **That she has no personal knowledge as to the source or origin of the object evidence.** (Emphasis supplied)

In *People v. Pajarin*,⁴⁵ the Court emphasized that, as a rule, the police chemist who examined the seized substance should testify that: (1) he received the seized article as marked, properly sealed and intact; (2) that he 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 pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned.

From the foregoing, the lack of the stipulations required for the proper and effective dispensation of the testimony of the forensic is obvious. The stipulations of the parties merely referred to the fact of receiving the specimens from PO2 Mabazza and the analytical results obtained after the examination. They do not cover the manner the specimens were handled before they came into the possession of the forensic chemist for examination and thereafter.⁴⁶ Being the custodian of the seized items both during their examination and before their

⁴⁵ *People v. Pajarin*, 654 Phil. 461, 466 (2011).

⁴⁶ *People of the Philippines v. Marciano Ubungen y Pulido*, G.R. No. 225497, July 23, 2018 citing *People v. Sanchez*, 590 Phil. 214, 237-238 (2008).

presentation in court, the forensic chemist should have testified on the circumstances under which she received them, what he or she did with them during the time that the items were in her custody, or what happened during the time the items were transferred to the trial court. The absence of such testimony undoubtedly presents a break in the links in the chain of custody evidence.⁴⁷

Under the circumstances, absent any testimony regarding the management, storage, and preservation of the illegal drug purportedly seized herein after the qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be reasonably established.⁴⁸

In these lights, the police officers cannot rely on the presumption of regularity in the performance of their duties. It must be borne in mind that the presumption only applies when there is nothing to suggest that the police officers deviated from the standard conduct of official duty required by law. It does not apply when the arresting officers failed to comply with the mandatory language of Section 21 of R.A. 9165. In the same manner, it cannot serve to cure the lapses and deficiencies on the part of the arresting officers. The presumption of regularity in the performance of official duty cannot prevail over the presumption of innocence. Part of the prosecution's duty in overturning this presumption of innocence is to establish that the requirements under Section 21 of RA 9165 were strictly observed. The rule on the chain of custody is a matter of substantive law which cannot be simply ignored as a procedural technicality.⁴⁹

WHEREFORE, the Court **GRANTS** the appeal. The October 23, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08796, which affirmed the November 9, 2016 Joint Judgment of the Branch 78, Regional Trial Court, Quezon City in Criminal Case No. Q-11-170287 finding accused-appellant Abdir Khalil Said y Aradji guilty of violating Section 5, Article II of Republic Act No. 9165 is **REVERSED AND SET ASIDE**. Accused-appellant Abdir Khalil Said y Aradji is hereby **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Director of the New Bilibid Prison, Bureau of Corrections in Muntinlupa City for immediate

⁴⁷ *People of the Philippines v. John Orcullo y Susa*, supra note 1.

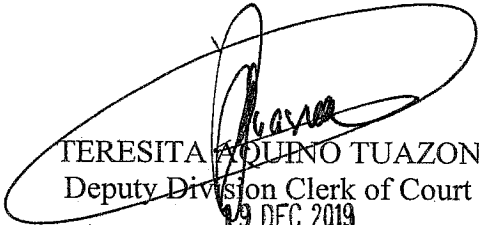
⁴⁸ *People of the Philippines v. Marciano Ubungen y Pulido*, supra note 45.

⁴⁹ *People of the Philippines v. Arnello Reje y Gonzales*, supra note 27.

implementation. The said Superintendent is ORDERED to REPORT to this Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED." (Bernabe, *J.*, on official business; Zalameda, *J.*, designated additional member per Special Order No. 2724 dated October 25, 2019, on official leave).

Very truly yours,


 TERESITA AQUINO TUAZON
 Deputy Division Clerk of Court *with* 12/19
 19 DEC 2019

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*ABDIR KHALIL A. SAID (x)

Accused-Appellant
 c/o The Director
 Bureau of Corrections
 1770 Muntinlupa City

THE DIRECTOR (x)

Bureau of Corrections
 1770 Muntinlupa City

THE SUPERINTENDENT (x)

New Bilibid Prison
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)

Regional Trial Court, Branch 78
 1100 Quezon City
 (Crim. Case No. Q-11-170287)

JUDGMENT DIVISION (x)

Supreme Court, Manila

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CA-G.R. CR-H.C. No. 08796

*with copy of CA Decision dated 23 October 2017

Please notify the Court of any change in your address.
 GR237774. 12/04/2019B(158)URES(a)