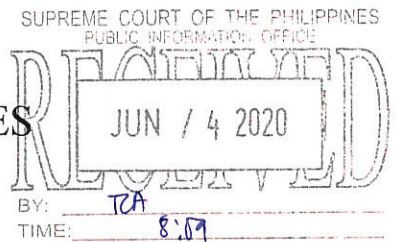




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila



SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **29 January 2020** which reads as follows:*

“G.R. No. 224207 (*People of the Philippines v. Rafael Ali y Abbas*). – This is an appeal¹ from the Court of Appeals (CA) Decision² dated April 29, 2015 in CA-G.R. CR-HC No. 05579 which affirmed the Decision³ dated January 26, 2012 of Branch 53, Regional Trial Court (RTC), Manila in Criminal Case No. 04-225639 finding Rafael Ali y Abbas (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The accused-appellant was charged with Illegal Sale of Dangerous Drugs, as follows:

That on or about April 5, 2004, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale and/or attempt to sell one (1) heat-sealed transparent plastic sachet containing TEN POINT ZERO FIFTY (10.050) GRAM of white crystalline substance known as “shabu” containing methylamphetamine hydrochloride, which is a dangerous drugs.

Contrary to law.⁴

¹ *Rollo*, pp. 12-13.

² *Id.* at 2-11; penned by Associate Justice Pedro B. Corales with Associate Justices Sesonando E. Villon and Rodil V. Zalameda (now a member of the Court), concurring.

³ *CA rollo*, pp. 14-18; penned by Judge Reynaldo A. Alhambra.

⁴ Records, p. 1.

During the arraignment on April 1, 2005, the accused-appellant entered a plea of not guilty to the offense charged.⁵ After the termination of the pre-trial, trial on the merits ensued.

Version of the Prosecution

On April 5, 2004, at around 2:00 p.m., a confidential informant arrived at the Philippine National Police (PNP) District Anti-Illegal Drugs-Special Operations Task Force (DAID-SOTF) Office at U.N. Avenue, Ermita, Manila and informed Police Inspector Arnulfo Ibañez (P/Insp. Ibañez) that the accused-appellant is engaged in selling illegal drugs along Norzagaray, Quiapo, Manila. In no time, P/Insp. Ibañez formed a team for the purpose of conducting a buy-bust operation against accused-appellant.⁶ During the briefing, P/Insp. Ibañez tasked PO2 Roman Jimenez (PO2 Jimenez) as the *poseur*-buyer.⁷ PO2 Jimenez then prepared the necessary pre-operation report⁸ and sent it to the Philippine Drugs Enforcement Agency (PDEA) for coordination. After the coordination, P/Insp. Ibañez gave PO2 Jimenez 12 pieces of ₱1,000-bill or a total of ₱12,000.00 to be used as buy-bust money. PO2 Jimenez marked the buy-bust money with “MM” on the upper portion of the serial numbers.⁹

At around 7:00 p.m., after the police officers prepared the marked money and assembled the buy-bust team, they proceeded to the target area. Upon arrival thereat, the team parked their vehicle near Greenwich Fastfood located along Globo de Oro Street. When the confidential informant met the accused-appellant, the former introduced PO2 Jimenez to the accused-appellant as an interested buyer of 10 grams of *shabu*. The accused-appellant immediately asked PO2 Jimenez if he had the money; the latter responded in the positive. After which, the accused-appellant instructed them to proceed in front of Noralyn Hotel. Upon arrival in front of the hotel, the accused-appellant told PO2 Jimenez and the confidential informant to wait for a while as he would get some stuff from a certain “Alex.” After 15 minutes the accused-appellant returned, PO2 Jimenez asked the accused-appellant if the *shabu* was genuine and the latter replied in the affirmative. When the accused-appellant handed over the sachet containing white crystalline substance to PO2 Jimenez, someone shouted, “*Raffy, may kalaban!*” Before PO2 Jimenez could hand to the accused-appellant the buy-bust

⁵ *Id.* at 15.

⁶ *Rollo*, p. 3.

⁷ *Id.*

⁸ Records, p. 122

⁹ *Rollo*, p. 4.

money, the accused-appellant tried to run inside Noralyn Hotel. However, PO2 Jimenez was able to hold the accused-appellant's hand and prevent him from escaping. The back-up team rushed to the area and assisted PO2 Jimenez in arresting the accused-appellant.¹⁰

Thereafter, the buy-bust team brought the accused-appellant to the DAID-SOTF.¹¹ The seized plastic sachet of *shabu* was turned over to the investigator, PO2 Federico Casuple (PO2 Casuple).¹² The police officers were not able to conduct the inventory at the place of arrest because many people were already gathering thereat. At the DAID-SOTF Office, the law enforcers marked the evidence. In no time, PO2 Casuple forwarded the seized drugs to the crime laboratory.¹³ The specimen tested positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.¹⁴

Version of the Defense

The accused-appellant interposed the defense of denial and frame-up.¹⁵ He insisted that no buy-bust operation took place and that he is not involved in selling *shabu*. The accused-appellant testified that in the afternoon of April 5, 2004, he was on his way to the Muslim Center in Quiapo, but he stopped in front of Noralyn Hotel to buy food. Suddenly, he was grabbed by two men who pointed a gun at him and forcibly brought him to a white vehicle. Later, he was transferred to a Toyota Revo, where two unidentified men and a woman interrogated him. The woman produced a sachet of *shabu* and asked the accused-appellant if he can pinpoint persons engaged in selling illegal drugs similar to what she was holding. The accused-appellant replied that he does not know anyone selling drugs to which the woman uttered, "*wala palang silbi ito, tuluyan na natin.*" Based on the accused-appellant's understanding, the woman's statement meant that charges will be filed against him. Thereafter, he was brought to the police station where he was detained.¹⁶

¹⁰ *Id.*

¹¹ DAID-SOG in some parts of the *Rollo*.

¹² *Rollo*, p. 4.

¹³ *Id.* at 5.

¹⁴ Records, p. 3.

¹⁵ *Rollo*, p. 5.

¹⁶ *Id.*

Ruling of the RTC

The RTC found the accused-appellant guilty beyond reasonable doubt of Illegal Sale of *shabu* and sentenced him to suffer life imprisonment, plus a fine of ₱500,000.00. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused RAFAEL ALI GUILTY beyond reasonable doubt of the crime of Violation of Sec. 5, Republic Act [No.] 9165 and is hereby sentenced to suffer Life Imprisonment and to pay fine in the amount of P500,000.00.

Cost against the accused.

SO ORDERED.¹⁷

The RTC found the prosecution's version credible and worthy of belief as it was sufficiently buttressed with evidence. Likewise, it ruled that all the elements of illegal sale of *shabu* were present.

Aggrieved, the accused-appellant appealed to the CA.

The accused-appellant argued that no buy-bust operation took place. He insisted that what happened was an instigation as the confidential informant had already negotiated with the accused-appellant the ₱12,000.00 worth of *shabu* will be bought from him. He also pointed out that the law enforcers did not conduct a physical inventory and photography of the seized specimen. Accordingly, the accused-appellant must be acquitted.¹⁸

The Office of the Solicitor General (OSG) asserted that all the elements of illegal sale of *shabu* were present. The OSG stressed that the accused-appellant was caught red-handed selling *shabu* in front of Noralyn Hotel. It noted that the operation was a valid entrapment and not an instigation as claimed by the accused-appellant. The OSG asserted that it was the accused-appellant who initiated the transaction involving the seized drugs. Moreover, it highlighted that the integrity and evidentiary value of the seized *shabu* was preserved as there was no evidence that it was tampered with or switched before it was delivered and examined by the forensic chemist.¹⁹

¹⁷ CA rollo, p. 18.

¹⁸ *Id.* at 42-50.

¹⁹ *Id.* at 74-81.

Ruling of the CA

On April 29, 2015, the CA dismissed the appeal²⁰ for lack of merit. The CA ratiocinated that even though the prosecution failed to submit in evidence the physical inventory and photograph of the seized drugs, it will not render the accused-appellant's arrest illegal or the *shabu* seized from him inadmissible. According to the CA, what is important is the preservation of the integrity and evidentiary value of the seized item.²¹ The CA disposed the case as follows:

WHEREFORE, the instant appeal is hereby DENIED and the January 26, 2012 Decision of the Regional Trial Court, Branch 53, Manila in Criminal Case No. 04-225639 is AFFIRMED *in toto*.

SO ORDERED.²²

Hence, the appeal.²³

The parties adopted their respective Appellant's²⁴ and Appellee's²⁵ Briefs filed before the CA as their supplemental briefs before the Court.²⁶

Our Ruling

The Court grants the appeal.

The main issue in this case hinges on the determination of whether or not the elements of illegal sale of dangerous drugs were all satisfied and whether the integrity and evidentiary value of the sachet containing *shabu* were duly preserved by complying with the requirements provided under Section 21, Article II of RA 9165.

The accused-appellant was charged under Section 5, Article II of RA 9165. In any criminal prosecution, the accused is entitled to a right to be presumed innocent unless proven guilty beyond reasonable doubt. No less than our Constitution under Section 14, paragraph 2, of Article III mandates that the accused shall be presumed innocent until the

²⁰ Records, p. 161.

²¹ *Rollo*, pp. 7-9.

²² *Id.* at 11.

²³ *Id.* at 12-13

²⁴ *CA rollo*, pp. 37-51.

²⁵ *Id.* at 69-82.

²⁶ *Rollo*, pp. 19-22 and 24-31.

contrary is proved. In addition, Section 2, Rule 133 of the Rules of Court specifically provides that “[i]n a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt.”

In resolving a criminal case, the burden of proof rests with the prosecution which must rely on the strength of its case rather on the weakness of the case for the defense.²⁷ Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment is indispensable to overcome the constitutional presumption of innocence.²⁸

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.²⁹

In *People v. Guerrero*,³⁰ this Court cautioned:

“[B]y 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 heroin 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.” Thus, while it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires *strict* compliance with procedures laid down by it to ensure that rights are safeguarded. (Italics supplied.)

To successfully prosecute a case for illegal sale of dangerous drugs the following elements must be proven beyond reasonable doubt: (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 thereof.³¹ The delivery of the illicit drugs to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction.³² What is material, therefore, is the proof that the

²⁷ *People v. Battung*, G.R. No. 230717, June 20, 2018, citing *People v. T/Sgt. Angus Jr.*, 640 Phil. 552, 566 (2010).

²⁸ *People v. Abdula*, G.R. No. 212192, November 21, 2018, citing *Franco v. People*, 780 Phil. 36, 43 (2016).

²⁹ *People v. Malabanan*, G.R. No. 249150, April 10, 2019, citing *People v. Suan*, 627 Phil. 174-188 (2010).

³⁰ G.R. No. 228881, February 06, 2019.

³¹ *People v. Yagao*, G.R. No. 216725, February 18, 2019.

³² *People v. Sipin*, G.R. No. 224290, June 11, 2018, 866 SCRA 73, 84.

transaction transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.³³

In cases involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti*, thus, its identity and integrity must be shown by the State to have been preserved.³⁴ Consequently, the prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it is presented in court as proof of *corpus delicti*.³⁵ Hence, the necessity of observing the chain of custody requirement under Section 21, Article II of RA 9165, and its Implementing Rules and Regulations (IRR). These specific procedural requirements must be followed by the law enforcers and the prosecution must adduce evidence that they have been observed in proving the elements of the defined offense. The intention of the law is to prevent abuse by the law enforcers who have all the power and control during an operation.

Section 1 (b) of Dangerous Drugs Board Regulation No. 1, series of 2002 which implements RA 9165, defines chain of custody as follows:

Section 1. Definition of Terms – x x x.

x x x x.

(b) “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. Such records of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and the time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.” (Italics supplied.)

The purpose of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.³⁶ To avoid any doubt, the prosecution must show the continuous whereabouts of the exhibit at least between the time it came

³³ *Id.*

³⁴ *Casona v. People*, 818 Phil. 76, 85 (2017).

³⁵ *Id.*

³⁶ See *People v. Alboka*, G.R. No. 212195, February 21, 2018, 856 SCRA 252, 270, citing *People v. Ismael*, 806 Phil. 21, 29 (2017) and *People v. Andrada*, G.R. No. 232299, June 20, 2018, 867 SCRA 484, 497.

into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.³⁷ This includes testimony on every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.³⁸ These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.³⁹

In *People v. Sipin*⁴⁰ the Court reiterated the links that must be established in the chain of custody in a buy-bust operation, to wit:

The links that must be established in the chain of custody in a buy-bust situation, are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officers; (2) the turn-over of the illegal drug seized to the investigating officer; (3) the turn-over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turn-over and submission of the illegal drug from the forensic chemist to the court.

To ensure the establishment of the chain of custody, Section 21 (1), Article II of RA 9165 specifies that:

Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - x x x.

(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.

³⁷ *People v. Belmonte*, G.R. No. 224588, July 4, 2018, 871 SCRA 17, 42-43.

³⁸ *Mallillin v. People*, 576 Phil. 576, 587 (2008).

³⁹ *Id.*

⁴⁰ *Supra* note 32 at 73.

Complementing the foregoing rule, Section 21 (a), Article II of the IRR of RA 9165 provides:

Sec. 21 Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - x x x.

(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. (Italics supplied.)

On August 07, 2014, RA 10640⁴¹ became effective amending RA 9165 as follows:

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. - x x x.

(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 of the accused or the person/s 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

⁴¹ An Act to Further Strengthen the Anti-drug Campaign of the Government Amending for the Purpose Section 21 of the Republic Act No. 9165, Otherwise Known as the Comprehensive Dangerous Drugs Act of 2002.

conducted against the accused-appellant and that a sachet of *shabu* was confiscated from him. This lapse can be apparently gleaned from Formal Offer of Evidence⁴⁶ dated July 11, 2008. Likewise, there is no statement from the testimonies of the members of the buy-bust team that an inventory and photography was conducted in the presence of the required witnesses. Worse, the prosecution did not even bother to explain why an inventory and photography of the seized evidence was not made. Indeed, the very identity of the subject *shabu* cannot be established with certainty by the testimony alone of the members of the buy-bust team. Otherwise, the prosecution of drug cases will entirely depend on the self-serving statements of the law enforcers, creating dangerous implications to the enforcement of RA 9165. Clearly, there is no evidence that indeed a sachet of *shabu* was confiscated from the accused-appellant. The prosecution utterly failed to prove the first link in the chain of custody. Evidently, the element of the identity of the drugs as object of the illegal sale was put into serious doubt.

By failing to follow even the simplest inventory and photography requirement under Section 21, Article II of RA 9165, the police officers cannot be presumed to have regularly exercised their duties during the buy-bust operation. The blatant violations committed by these agents of law cannot be countenanced. Otherwise, the Court will be giving these law enforcers a license to abuse their power and authority, defeating the purpose of the law, destroying human rights, and eroding the justice system in this country.

The evidence of the accused-appellant may be weak and uncorroborated, nevertheless, this cannot be used to advance the cause of the prosecution as its evidence must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.⁴⁷ Well-entrenched is the rule that where the circumstances shown to exist yield two or more inferences, one of which is consistent with the presumption of innocence while the other or others may be compatible with the finding of guilt, the Court must acquit the accused for the evidence does not then fulfill the test of moral certainty and is insufficient to support a judgment of conviction.⁴⁸

All told, considering that no inventory and photography was ever conducted and that the prosecution's evidence utterly failed to overcome

⁴⁶ Records, pp. 118-119.

⁴⁷ *People v. Santos, Jr.*, 562 Phil. 458, 473 (2007).

⁴⁸ *Id.*

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: x x x. (Italics supplied)
x x x x.

From the foregoing rules, it is clear that as part of the chain of custody, the law requires that the marking, physical inventory, and photography of the confiscated drugs must be conducted immediately after seizure, although jurisprudence recognized that “marking upon immediate confiscation contemplated even marking at the nearest police station or office of the apprehending team.”⁴²

Moreover, the law directs that the inventory and photography be done in the presence of the accused from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative from the media *and* the Department of Justice (DOJ), *and* any elected public official;⁴³ or (b) if *after* the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media.⁴⁴ Evidently, before the amendment of RA 9165, three witnesses are required to be present during inventory and photography of the seized items. After such amendment, only two witnesses are required to be present, it could either be an elected public official and representative of the NPS or a representative from the media. The presence of these witnesses is intended to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.⁴⁵

Here, the prosecution utterly failed to prove the *corpus delicti* of the offense charged. The law enforcers ignored the requirements provided under Section 21, Article II of RA 9165. They violated the chain of custody by failing to conduct an inventory and photography of the seized drugs as required by the law. Not a single document was presented by the prosecution showing that the buy-bust team conducted an inventory and photography of the illegal drugs allegedly confiscated from the accused-appellant. No certificate of inventory was presented to prove that the buy-bust team complied with Section 21, Article II of RA 9165 and to avoid any suspicion whether an actual buy-bust was ever

⁴² *People v. Alconde*, G.R. No. 238117, February 4, 2019.

⁴³ Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

⁴⁴ Section 21 (1), Article II of RA 9165, as amended by RA 10640.

⁴⁵ *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 318.

the presumption of innocence of the accused-appellant, the Court cannot, but acquit him on the ground of reasonable doubt.

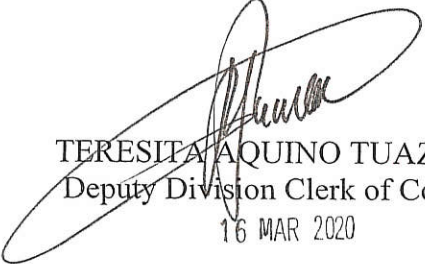
WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals dated April 29, 2015 in CA-G.R. CR-HC No. 05579 is **REVERSED** and **SET ASIDE**. Accused-appellant Rafael Ali y Abbas is hereby **ACQUITTED**.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Rafael Ali y Abbas, unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

SO ORDERED." (REYES, A., JR., J., on official leave; HERNANDO, J., on official leave).

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Utch 3/13*
16 MAR 2020

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 53
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(Crim. Case No. 04-225639)

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