Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

LORETO TABINGO *y* BALLOCANAG, Petitioner,	**G.R. No. 241610**
	Present:
- *versus* –	PERALTA, *C.J.*, *Chairperson*, LEONEN,* CAGUIOA, CARANDANG,and GAERLAN, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	**Promulgated:** FEB 01 2021

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DECISION

PERALTA, *C.J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision[1] of the Court of Appeals (*CA*) dated May 30, 2018 and the Resolution[2] dated August 16, 2018 in CA-G.R. CR No. 39371. The assailed Decision affirmed the Decision[3] dated November 17, 2016 of the Regional Trial Court (*RTC*) Branch 51 of Tayug, Pangasinan, while the assailed Resolution denied petitioner's Motion for Reconsideration.

The facts are as follows:

For the prosecution, it was alleged that, on December 6, 2013, at around 6:30 a.m., Police Officer III Gina T. Aromin (*PO3 Aromin*) and Police Officer II Esteban C. Fernandez III (*PO2 Fernandez*), together with other police

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* Designated additional member in lieu of Associate Justice Rodil V. Zalameda per Raffle dated December 14, 2020.

1 Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rodil V. Zalameda (now a member of this Court) and Renato C. Francisco concurring; *rollo*, pp. 40-55.

2 *Id.* at 57-58.

3 Penned by Presiding Judge Rusty M. Naya; *id.* at 82-99.

officers, implemented Search Warrant No. 2013-115 against the petitioner Loreto Tabingo (*Tabingo*) at his residence in Sitio Baracca, *Barangay* A, Tayug, Pangasinan. During the search, PO3 Aromin and PO2 Fernandez, in the presence of *Barangay Kagawads* Mariano P. Baybayan, Mandy P. Joaquin and Freddie Bocobo (*brgy. kagawads*) found Rose Cabanilla (*Cabanilla)* hiding under the bed in one of the rooms in the house of Tabingo. The police officers ordered her to step out of the room and stay at the main door of the house where Tabingo was. The search yielded a glass tooter, a glass pipe, an improvised burner, and six (6) opened transparent plastic sachets containing suspected *shabu* residue. Afterwards, the seized items were marked and inventoried in the presence of the *brgy. kagawads*. Tambingo was then arrested and brought to the Tayug Police Station.

On even date, Police Inspector Roberto M. Gulla (*P/Insp. Gulla*) prepared the pertinent documents and directed PO2 Fernandez to bring the same, together with the seized items to the Pangasinan Provincial Crime Laboratory Office in Lingayen, Pangasinan. The seized items were received by Police Officer I Frias (*PO1 Frias*) who, in turn, submitted the same to the forensic Chemist, Police Chief Inspector Imelda B. Roderos (*PC/Insp. Roderos*). After qualitative examination, PC/Insp. Roderos issued Chemistry Report No. D-241-2013L, finding the specimens positive for the presence of Methamphetamine Hydrochloride.

On December 9, 2013, Tabingo was charged with violation of Sections 11 and 12, Article II of Republic Act (*R.A.*) No. 9165, also known as the *Comprehensive Dangerous Drug Act of 2002*, in two (2) separate Informations which state:

Criminal Case No. T-5714

> That at about 6:30 o'clock in the morning of December 6, 2013, at Sitio Baraca, Brgy. "A, (*sic*) [M]unicipality of Tayug, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, after the implementation of [s]earch [w]arrant with [S]earch [W]arrant [N]o. 2013-115 issued by Acting Executive Judge Renato D. Pinlac of RTC-Branch 57, San Carlos City, Pangasinan, the above-named accused, did then and there willfully, unlawfully and feloniously found to have in his possession, control and custody six (6) opened transparent plastic sachets marked as "3ECF', "4ECF1", "4ECF2", "4ECF3", "4ECF4", and "5ECF" containing Methamphetamine or shabu residue, a dangerous drug.
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> Contrary to Sec. 11, Art. 2 of Republic Act 9165 otherwise known as "Comprehensive Dangerous Drugs Act".[4]

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[4] Records, (Criminal Case No. T-5714), p. 1.

Criminal Case No. T-5715

> That at about 6:30 o'clock in the morning of December 6, 2013, at Sitio Baraca, Brgy. "A, (sic) [M]unicipality of Tayug, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, after the implementation of [s]earch [w]arrant with [S]earch [W]arrant [N]o. 2013-115 issued by Acting Executive Judge Renato D. Pinlac of RTC-Branch 57, San Carlos City, Pangasinan, the above-named accused, did then and there willfully, unlawfully and feloniously found to have in his possession, control and custody one (1) improvised glass tooter marked as "1ECF" and one (1) glass pipe marked as "6ECF", both with Methamphetamine Hydrochloride or shabu residue, a dangerous drug; and one (1) improvised burner marked as "2ECF" which are equipments, apparatus or paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing drug into the body, and said accused is not authorized by law to possess the same.
>
> Contrary to Sec. 12, Art. 2 of Republic Act 9165, otherwise known as "Comprehensive Dangerous Drugs Act".[5]

Upon arraignment, Tabingo pleaded not guilty to the offenses charged.

The prosecution presented a total of three (3) witnesses, namely, PO3 Aromin, PO2 Fernandez and PC/Insp. Roderos.

On the other hand, Tabingo contended that on December 6, 2013, at around 6:30 a.m., he was not in his house in Sitio Baracca, *Barangay* A, Tayug, Pangasinan. Police Officer 2 Allan A. Dilan (*PO2 Dilan*) had to look for him, and later found him in his daughter's house, which is about one hundred (100) meters away from his house. PO2 Dilan informed Tabingo that their team leader P/Insp. Gulla was looking for him in his house. Upon arrival at his house, P/Insp. Gulla informed him that they have a search warrant against him. Thereafter, Tabingo complied and opened the door of his house. After which, three (3) police officers and two (2) *barangay kagawads* entered therein. However, when Tabingo was about to enter, he was ordered to stay at the main door of his house. The police officers then started the search at the kitchen, and later on, went to the rooms. Since the rooms were locked, the police officers ordered Tabingo to open the doors. Afterwards, he was again ordered to return to the main door of his house. During the search of the rooms, the police officers summoned Tabingo to take a look at the plastic sachets of *shabu* that they allegedly found. Later on, Tabingo was arrested and brought to the police station.

The defense for its part presented the lone testimony of petitioner Tabingo.

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[5] Records, (Crim. Case No. T-5715), p. 1.

On November 17, 2016, the trial court rendered a Decision[6] finding Tabingo guilty beyond reasonable doubt of the offenses charged. The dispositive portion of the Decision reads as follows:

> IN VIEW OF THE FOREGOING DISQUISITION, the Court finds accused GUILTY on both charges and is hereby sentenced to an indeterminate prison term of Twelve (12) years and One (1) day, as minimum, to Fourteen (14) years and Eight (8) months, as maximum[,] and a fine of PhP300,000.00 for Illegal Possession of Dangerous Drugs in Criminal Case No. T-5714 and another indeterminate prison term of Six (6) months and One (1) day, as minimum, to Two (2) years, as maximum[,] and to pay a fine of PhP50,000.00, for Illegal Possession of Drug Paraphernalia in Criminal Case No. T-5715.
>
> Additionally, the seized items subjects of these cases are forfeited in favor of the Government and shall be disposed of in accordance with law.
>
> SO ORDERED.[7]

Aggrieved, the petitioner filed an appeal to the CA raising the following issues claiming that the court *a quo* erred in convicting Tabingo of the offenses charged despite the fact that: (1) the police officers failed to comply with the mandatory provisions of Section 8, Rule 126 of the Rules of Court in their implementation of the Search Warrant 2013-115; (2) the police officers failed to issue a detailed receipt of the seized articles to the lawful occupant, in violation of Section 11, Rule 126 of the Rules of Court; (3) the police officers failed to turn over the seized articles to the court which issued Search Warrant 2013-115, in violation of Section 12, Rule 126 of the Rules of Court; (4) the prosecution's failure to prove the integrity and identity of the allegedly seized items; and (5) the prosecution's tainted evidence being the proverbial fruit of the poisonous tree.

On May 30, 2018, the CA affirmed the ruling of the RTC, the dispositive portion which provides:

> WHEREFORE, the appeal is DISMISSED. The Decision dated November 17, 2016 of the RTC of Tayug, Pangasinan, Branch 51, in Criminal Case No. T-5714 and Criminal Case No. T-5715 finding accused-appellant Loreto Tabingo y Ballocanag guilty beyond reasonable doubt of violating Sections 11 and 12, Article II of Republic Act No. 9165, is hereby AFFIRMED.
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> SO ORDERED.[8]

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6 Rollo, pp. 82-99.
7 *Id.* at 99.
8 *Id.* at 54-55. (Citation omitted)

Unfazed, the petitioner filed a Motion for Reconsideration[9] on June 22, 2018, to which the Office of the Solicitor General (*OSG*) filed a Manifestation and Motion.[10] On August 16, 2018, the CA denied the petitioner's Motion for Reconsideration.

Hence, this Petition.

The petitioner relied on the following grounds:

> I. WHETHER THE CA GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER DESPITE THE FACT THAT THE POLICE OFFICERS FAILED TO COMPLY WITH THE MANDATORY PROVISIONS OF SECTION 8, RULE 126 OF THE RULES OF COURT IN THEIR IMPLEMENTATION OF SEARCH WARRANT 2013-115.
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> II. WHETHER THE CA GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER DESPITE THE FACT THAT THE POLICE OFFICERS FAILED TO ISSUE A DETAILED RECEIPT OF THE SEIZED ARTICLES TO THE LAWFUL OCCUPANT, IN VIOLATION OF SECTION 11, RULE 126 OF THE RULES OF COURT.
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> III. WHETHER THE CA GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER DESPITE THE FACT THAT THE POLICE OFFICERS FAILED TO TURN OVER THE SEIZED ARTICLES TO THE COURT, WHICH ISSUED SEARCH WARRANT 2013-115, IN VIOLATION OF SECTION 12, RULE 126 OF THE RULES OF COURT.
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> IV. WHETHER THE CA GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER DESPITE THE PROSECUTION'S FAILURE TO PROVE THE INTEGRITY AND IDENTITY OF THE ALLEGEDLY SEIZED ITEMS.
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> V. WHETHER THE CA GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER ON THE BASIS OF THE PROSECUTION'S TAINTED EVIDENCE BEING THE PROVERBIAL FRUIT OF THE POISONOUS TREE.

Petitioner insists that the CA gravely erred in affirming his conviction despite the fact that the defense has proffered factual basis and legal arguments sufficient to negate his guilt beyond reasonable doubt. Thus, he claimed that the Decision and Resolution sought to be reviewed, if not corrected, will certainly cause great injustice to his meritorious case.

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[9] *Id.* at 126-132.

[10] *Id.* at 134-136.

The OSG, in its Comment[11] dated May 14, 2019, argues that the petition must fail as it raises questions of fact. It also avers that contrary to the petitioner's claim, the CA correctly affirmed the trial court's finding that the elements of the crime of illegal possession of dangerous drugs and drug paraphernalia were duly established. Further, the OSG argues that the petitioner miserably failed to submit any plausible ground to disturb the findings of the trial court and the CA.

The Court finds the appeal meritorious.

Under Rule 45, Section 1 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari*:

> Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

As an exception to the rule, questions of fact may be raised in a Rule 45 petition if any of the following is present:

> (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[12]

A question of fact exists "when the doubt or difference arises as to the truth or the falsehood of alleged facts." On the other hand, a question of law exists "when the doubt or difference arises as to what the law is on a certain state of facts."[13]

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[11] *Id.* at 148-166.

[12] *Alburo v. People*, 792 Phil. 876, 889 (2016).

[13] *Id.*

It is admitted by the petitioner that the present petition involves mixed questions of facts and law. However, this Court still deems it proper to consider this petition as the factual findings of the lower courts do not conform to the evidence on record.

To begin with, prosecution for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Therefore, it is essential that the identity of the prohibited drug be established beyond doubt. This requirement necessarily arises from the unique characteristic of the illegal drugs that renders them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession under R.A. No. 9165 fails.[14]

In the present case, to ascertain the integrity of the items seized, the Court must look at the manner of implementation of Search Warrant 2013-115. Section 8 of the Revised Rules of Criminal Procedure states:

> SECTION 8. *Search of House, Room, or Premises to Be Made in Presence of Two Witnesses.* — No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Under this provision, a search under the strength of a warrant is required to be witnessed by the lawful occupant of the premises sought to be searched. It must be stressed that it is only upon their absence that their presence may be replaced by two (2) persons of sufficient age and discretion residing in the same locality. In *People v. Go*,[15] the Court held that a departure from the said mandatory rule — by preventing the lawful occupant or a member of his family from actually witnessing the search and choosing two (2) other witnesses observe the search — violates the spirit and letter of the law, and thus, taints the search with the vice of unreasonableness, rendering the seized articles inadmissible due to the application of the exclusionary rule, *viz.*:

> As pointed out earlier, the members of the raiding team categorically admitted that the search of the upper floor, which allegedly resulted in the

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14 *People of the Philippines v. Rogelio Yagao y Llaban*, G.R. No. 216725, February 18, 2019.

15 457 Phil. 885 (2003).

recovery of the plastic bag containing the *shabu*, did not take place in the presence of either the lawful occupant of the premises, i.e., appellant (who was out), or his son Jack Go (who was handcuffed to a chair on the ground floor). Such a procedure, whereby the witnesses prescribed by law are prevented from actually observing and monitoring the search of the premises, violates both the spirit and letter of the law:

x x x x

That the raiding party summoned two barangay kagawads to witness the search at the second floor is of no moment. The Rules of Court clearly and explicitly establishes a hierarchy among the witnesses in whose presence the search of the premises must be conducted. Thus, Section 8, Rule 126 provides that the search should be witnessed by "two witnesses of sufficient age and discretion residing in the same locality" only in the absence of either the lawful occupant of the premises or any member of his family. Thus, the search of appellant's residence clearly should have been witnessed by his son Jack Go who was present at the time. The police officers were without discretion to substitute their choice of witnesses for those prescribed by the law.

x x x x

The raiding team's departure from the procedure mandated by Section 8, Rule 126 of the Rules of Court, taken together with the numerous other irregularities attending the search of appellant's residence, tainted the search with the vice of unreasonableness, thus compelling this Court to apply the exclusionary rule and declare the seized articles inadmissible in evidence. This must necessarily be so since it is this Court's solemn duty to be ever watchful for the constitutional rights of the people, and against any stealthy encroachments thereon. In the oft-quoted language of Judge Learned Hand:

> As we understand it, the reason for the exclusion of evidence competent as such, which has been unlawfully acquired, is that exclusion is the only practical way of enforcing the constitutional privilege. In earlier times the action of trespass against the offending official may have been protection enough; but that is true no longer. Only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will that wrong be repressed.[16]

In *People v. Del Castillo*,[17] the Court similarly held that the search of the premises must be witnessed by the lawful occupant or the family members; otherwise, the search becomes unreasonable, thus rendering the seized items inadmissible under the exclusionary rule.

In this case, a judicious perusal of the records would reveal that the policemen involved in the search of Tabingo's residence did not conduct the

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16 *Id.* at 914-917, citing *Bulauitan y Mauayan* v. People, 795 Phil. 468, 477-478 (2016).

17 482 Phil. 828 (2004).

search in accordance with Section 8, Rule 126 of the Revised Rules of Criminal Procedure.

Here, although the petitioner was in his house, he did not witness the actual search because he was ordered to stay at the main door while the search in his bedroom was on-going. It is as if the search was conducted without his presence. We do not agree with the ruling of the CA that the petitioner, while at the main door, had an unobstructed view of the entire interior of the bungalow house when the police officers were searching the house. Evidently, the bedroom of the petitioner had walls and a door. Records show that the police officers even requested him to open the bedroom's door for them. Thus, Tabingo was effectively precluded from witnessing the search conducted by the police officers in his bedroom where the illegal drugs and paraphernalia were allegedly found.

Accordingly, the search conducted in the petitioner's residence by the search team fell way below the standard mandated by Section 8, Rule 126 of the Revised Rules of Criminal Procedure. This fact alone, without further discussion of the other alleged violation of Rule 126, will be deemed unreasonable within the purview of the exclusionary rule of the 1987 Constitution.

Further, the prosecution failed to establish the chain of custody of the seized *shabu* residue and paraphernalia from the time they were recovered from the petitioner up to the time they were presented in court. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[18] which implements the Comprehensive Dangerous Drugs Act of 2002, defines chain of custody as follows:

> 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 record 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 time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team, to wit:

> (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

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[18] *Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.*

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[.]

And Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: 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[.]

R.A. No. 10640[19] amended Section 21 of R.A. No. 9165 and incorporated the saving clause contained in the IRR, and requires that the conduct of the physical inventory and taking of photograph of the seized items be done in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media.

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[19] Took effect on July 23, 2014.
Section 1 of Republic Act No. 10640 provides:
Section 1. x x x. —
"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
"(1) The apprehending team having initial custody and control of the 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 copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided*, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

Since the alleged crime was committed in 2013, the old provisions of Section 21 of R.A. No. 9165 and its IRR are applicable which provide that after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physical inventory and photograph the seized items in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media and (3) from the Department of Justice (DOJ); and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these persons will guarantee "against planting of evidence and frame-up, [*i.e.*, they are] necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[20]

In the present case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thus, putting into question the integrity and evidentiary value of the dangerous drugs and paraphernalia allegedly seized from the petitioner.

The required witnesses were not present at the time of apprehension. The physical inventory of the allegedly seized items was done only in the presence of the two (2) *Barangay Kagawads*. Furthermore, the physical inventory of the seized articles was not witnessed by the petitioner or his representative or counsel, by a representative from the media, and a representative from the DOJ. Hence, the mandate of Section 21(1) of R.A. 9165 was not complied. The prosecution did not even bother to explain the non-compliance with the required number of witnesses. Verily, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165. 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. A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering, or alteration.[21] It must be noted in this case that the quantity of the amount of the drug seized was only a residue of *shabu.*

Accordingly, this Court finds it necessary to acquit Tabingo for failure of the prosecution to prove his guilt beyond reasonable doubt. *First*, the non-compliance of Section 8, Rule 126 of the Revised Rules of Criminal Procedure tainted the search from the very beginning rendering the seized items inadmissible in evidence for being the proverbial fruit of the poisonous tree.

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20 *Jesus Edangalino y Dionisio v. People*, G.R. No. 235110, January 8, 2020.

21 *People v. Jowie Allingag y Torres, et al.*, G.R. No. 233477, July 30, 2018, 874 SCRA 573, 593.

Second, the prosecution's unjustified non-compliance with the required procedures under Section 21 of R.A. No. 9165 resulted in a substantial gap in the chain of custody of the seized items from Tabingo; thus, the integrity and evidentiary value of the drugs and paraphernalia seized are put in question.

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED**. The Decision dated May 30, 2018 and the Resolution dated August 16, 2018 of the Court of Appeals in CA-G.R. CR No. 39371 are hereby **REVERSED and SET ASIDE**. Petitioner Loreto Tabingo y Ballocanag is accordingly **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to **IMMEDIATELY** cause the release of petitioner from detention, unless he is being held for some other lawful cause, and to inform this Court his action hereon within five (5) days from receipt of this Decision.

SO ORDERED.

DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice