Republic of the Philippines
Supreme Court
Manila

EN BANC

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,*	**G.R. No. 254208**
	Present:
- versus -	GESMUNDO, *C.J.*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M.,* GAERLAN, ROSARIO, LOPEZ, J., DIMAAMPAO, MARQUEZ, KHO, JR., and SINGH, *JJ.***
MA. DEL PILAR ROSARIO C. CASA a.k.a. "MARFY CALUMPANG," "MADAM," and "MAH-MAH," *Accused-Appellant.*	Promulgated: August 16, 2022

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DECISION

GESMUNDO, *C.J.*:

This is an appeal from the November 29, 2018 Decision[1] of the Court of Appeals, Cebu City *(CA)* in CA-G.R. CR-HC No. 02574. The CA affirmed the March 28, 2017 Joint Judgment[2] of the Regional Trial Court of

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* On leave.
** On leave.
[1] *Rollo*, pp. 7-21; penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Louis P. Acosta and Emily R. Aliño-Geluz.
[2] CA *rollo*, pp. 8-23; penned by Judge Rafael Crescencio C. Tan, Jr.

Dumaguete City, Negros Oriental, Branch 30 *(RTC)* in Crim. Case Nos. 2015-23066 and 2015-23067, finding Ma. Del Pilar Rosario C. Casa a.k.a. "Marfy Calumpang," "Madam," and "Mah-mah" *(accused-appellant)* guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act *(R.A.)* No. 9165, otherwise known as the Dangerous Drugs Act of 2002, as amended by R.A. No. 10640.[3]

Antecedents

Accused-appellant was charged with violation of Secs. 5 and 11, Art. II of R.A. No. 9165, as amended, in two separate amended informations which read:

[Criminal Case No. 2015-23066]

> That on or about the 21st day of July 2015, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law, did, then and there willfully, unlawfully and criminally sell and/or deliver to a poseur-buyer one (1) heat-sealed transparent plastic sachet containing 0.13 gram of Methamphetamine Hydrochloride, commonly called "shabu", a dangerous drug.
>
> That the accused has been found positive for the use of Methamphetamine [Hydrochloride], a dangerous drug, as reflected in Chemistry Report No. DT-205-15.
>
> CONTRARY TO LAW.[4]

[Criminal Case No. 2015-23067]

> That on or about the 21st day of July 2015, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and criminally keep and possess eleven (11) heat-sealed transparent plastic sachets containing an approximate aggregate weight of 10.99 grams of Methamphetamine Hydrochloride, commonly called "shabu", a dangerous drug.
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> That the accused has been found positive for the use of Methamphetamine [Hydrochloride], a dangerous drug, as reflected in Chemistry Report No. DT-205-15.

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[3] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

[4] CA *rollo*, p. 8.

CONTRARY TO LAW.[5]

During arraignment on July 31, 2015, accused-appellant pleaded not guilty to the crime charged.[6] Thereafter, trial on the merits ensued.

Version of the Prosecution

Police Officer I Darelle Jed Delbo[7] *(PO1 Delbo)* testified that sometime in the last week of June 2015, the Special Operations Group *(SOG)* of the Negros Oriental Police Provincial Office received information from a confidential informant *(CI)* that a certain "Mah-mah" a.k.a "Madam," who was later identified as accused-appellant, was engaged in the illegal drug trade in *Barangay* Cadawinonan Housing Project. Thereafter, Senior Police Officer IV Allen Jude Germodo *(SPO4 Germodo)*, team leader, instructed PO1 Delbo to verify this information through a brief casing and surveillance operation. PO1 Delbo confirmed that accused-appellant was engaged in illegal drugs activities. He found out that accused-appellant was not a resident of Cadawinonan Housing Project and that she would just go to the area to sell illegal drugs.[8]

On July 21, 2015 at around 3:00 p.m., SPO4 Germodo conducted a briefing for the buy-bust operation against accused-appellant. During the briefing, PO1 Delbo was designated as the poseur-buyer while Police Officer I Archimedes Olasiman[9] *(PO1 Olasiman)* was designated as the immediate backup. Police Officer III Rulymar Laquinon *(PO3 Laquinon)* prepared the buy-bust money consisting of five ₱100.00 bills.[10] The pre-arranged signal after the consummation of the transaction was for PO1 Delbo to place a call to the cellular phone of SPO4 Germodo. At around 3:50 p.m., the buy-bust team proceeded to the Cadawinonan Housing Project. PO1 Delbo and the CI proceeded to the target area on board a motorcycle while the rest of the team followed on board a Nissan Frontier vehicle. When PO1 Delbo and the CI arrived at the target area, they parked their motorcycle and started walking towards the inner portion of the housing project. The rest of the buy-bust team strategically positioned themselves in the target area.[11]

While walking, PO1 Delbo and the CI saw accused-appellant sitting on a chair along a narrow street in the area. Accused-appellant approached them

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[5] Id. at 9.
[6] *Rollo*, p. 10.
[7] Also referred to as "PO2 Delbo" in some parts of the *rollo* (see *rollo*, p. 10).
[8] *Rollo*, p. 10.
[9] Also referred to as "PO2 Olasiman" in some parts of the *rollo* (see CA *rollo*, p. 80).
[10] CA *rollo*, p. 10.
[11] *Rollo*, pp. 10-11.

and asked if they wanted to buy *shabu* and how much they would buy. PO1 Delbo replied that they wanted to buy "*kinye*" meaning ₱500.00 worth of *shabu*. Accused-appellant asked for the money and PO1 Delbo gave her the ₱500.00 buy-bust money. Accused-appellant then gave PO1 Delbo one heat-sealed transparent plastic sachet containing white crystalline substance. PO1 Delbo examined the plastic sachet and, upon confirmation that what he received was *shabu*, he immediately placed a call to SPO4 Germodo. Upon seeing the backup team running towards them, he immediately announced in Visayan dialect his authority, and arrested accused-appellant and informed her of her constitutional rights.[12]

Thereafter, PO1 Delbo placed a masking tape on the sachet of *shabu* that he had bought from accused-appellant and marked it with the initials "MC-BB 7/21/15." After marking the sachet, PO1 Delbo confiscated a plastic container which contained 11 sachets of white crystalline substance. PO1 Delbo marked the 11 sachets with the initials "MC-P1 7/21/15" to "MC-P11 7/21/15," respectively. He also marked the plastic container and the cellular phone he recovered.[13]

After placing the markings, SPO4 Germodo decided to conduct the inventory at the SOG office for security reasons. PO1 Delbo had custody of all the items seized from accused-appellant. At the SOG office, PO1 Delbo conducted an inventory in the presence of accused-appellant and the required witnesses who just arrived in the office. PO3 Laquinon wrote the entries in the Inventory/Receipt of Property Seized[14] which was signed by PO1 Delbo, SPO4 Germodo, PO1 Olasiman, Department of Justice *(DOJ)* representative Anthony Chilius Benlot *(Benlot)*, media representative Glenn Serion *(Serion)*, and Cadawinonan *Barangay* Captain Gilieta Josy Binondo *(Barangay Captain Binondo)*. PO1 Delbo prepared a memorandum request for laboratory examination and drug test addressed to the Provincial Chief of the Philippine National Police *(PNP)* Crime Laboratory in Dumaguete City.[15]

Subsequently, PO1 Delbo brought accused-appellant to Negros Oriental Provincial Hospital for physical examination. After the examination, they proceeded to the crime laboratory. Police Officer III Edilmar Manaban *(PO3 Manaban)* received the seized items contained in a tape-sealed brown envelope from PO1 Delbo. After checking the contents, PO3 Manaban resealed the envelope and kept it in his locker. The next day, he submitted the sealed brown envelope to Police Chief Inspector Josephine Llena *(PCI Llena)*,

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[12] Id. at 11.
[13] CA *rollo*, p. 11.
[14] Records, p. 22.
[15] CA *rollo*, pp. 11-12.

forensic chemist, who conducted the laboratory examination.[16] The examination revealed that the seized items yielded positive results for the presence of metamphetamine hydrochloride.[17] The urine sample taken from accused-appellant also yielded positive results for the presence of metamphetamine hydrochloride. PCI Llena stipulated that she kept the evidence in the vault of the crime laboratory to which only she had access.[18]

Version of the Defense

Accused-appellant testified that on July 21, 2015, she was on her way to her mother's house in Balayagmanok, Valencia, Negros Oriental on board a scooter driven by a certain "Benjie." They stopped at Cadawinonan Housing Project area to buy gas for the scooter. Accused-appellant was sitting along the inner portion of one of the alleys at the housing project when two male persons dragged her to the main road and told her that they bought drugs from her. Accused-appellant tried to resist and told them that she would only cooperate as long as they allow her to contact her lawyer. Thereafter, she was forced to board a white pick-up where three other police officers were inside. Accused-appellant later found out that the male persons who dragged her from the alley were PO1 Delbo and SPO4 Germodo.[19]

Accused-appellant denied the charges filed against her. She claimed that she was not doing anything illegal when she was arrested and that she saw the drugs for the first time at the SOG office. She believed that the police officers accused her of selling illegal drugs because her husband, Aurelio Casa, Jr., from whom she has been estranged for six years, was engaged in selling illegal drugs. Accused-appellant wanted to file a case against the police officers, but she was advised not to push through with it so as to keep herself from more trouble.[20]

The RTC Ruling

In its March 28, 2017 Decision, the RTC found accused-appellant guilty of illegal sale and illegal possession of dangerous drugs. The dispositive portion of the said decision reads:

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[16] Id. at 12.
[17] Id. at 13.
[18] Id.
[19] Id. at 14.
[20] Id.

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 2015-23066, the accused MA. DEL PILAR ROSARIO C. CASA a.k.a "Marfy Calumpang," "Madam," "Mah-mah" is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale and delivery of 0.13 gram of *shabu* in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet with markings "MC-BB 7/21/15" containing 0.13 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 2015-23067, the accused MA. DEL PILAR ROSARIO C. CASA a.k.a "Marfy Calumpang," "Madam," "Mah-mah" is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 10.99 grams of *shabu* in violation of Section 11, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The eleven (11) heat-sealed transparent plastic sachets with markings "MC-P1 7/21/15" to "MC-P11 7/21/15," respectively, containing an approximate aggregate weight of 10.99 grams of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused MA. DEL PILAR ROSARIO C. CASA a.k.a "Marfy Calumpang," "Madam," "Mah-mah" shall be credited with the full time during which she has undergone preventive imprisonment, provided she agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[21]

The RTC gave credence to PO1 Delbo's testimony over accused-appellant's defenses of denial and frame-up. It held that the prosecution was able to establish the elements of illegal sale and illegal possession of dangerous drugs under Secs. 5 and 11, Art. II of R.A. No. 9165, as amended. It explained that the arresting officers followed the required procedure and that the integrity of the seized drugs was properly preserved. The RTC opined that the police officers regularly performed their duties and their narration of what transpired during the buy-bust operation credible.

[21] Id. at 22-23.

The CA Ruling

In its November 29, 2018 Decision, the CA affirmed accused-appellant's conviction. The *fallo* of the decision states:

> **WHEREFORE**, the Joint Judgment of the Regional Trial Court (RTC), Branch 30, Dumaguete City dated March 28, 2017 convicting Ma. Del Pilar Rosario C. Casa a.k.a "Marfy Calumpang," "Madam," "Mah-mah" of Violations of Section 5 and Section 11, Article II of RA 9165 or the Comprehensive Dangerous Drugs Act is **AFFIRMED**.
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> Costs against the accused-appellant.
>
> **SO ORDERED**.[22]

The CA held that accused-appellant was caught *in flagrante delicto* in a legitimate entrapment operation while selling illegal drugs in the presence of PO1 Delbo. It also sustained the RTC's findings that the prosecution was able to establish all the elements of illegal sale and illegal possession of dangerous drugs. The CA likewise held that the police officers were able to preserve the integrity and evidentiary value of the seized items from the moment the items were taken from accused-appellant until they were presented in court as evidence. The CA affirmed that the police officers regularly performed their duties and that accused-appellant's defenses of denial and frame-up cannot prevail over the positive testimony of the prosecution witnesses.

Hence, this appeal.

Issues

Accused-appellant raises the following errors:

> I.
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> [THE TRIAL COURT ERRED] IN GIVING CREDENCE TO THE UNCORROBORATED TESTIMONY OF [PO1 DELBO] WHICH IS INCREDIBLE, INCONSISTENT AND ALSO CONTRARY TO NORMAL HUMAN EXPERIENCE AND BEHAVIOR.

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[22] *Rollo*, p. 20.

II.

[THE TRIAL COURT ERRED] IN FINDING THAT THE PROSECUTION ESTABLISHED COMPLIANCE WITH THE REQUISITES OF [SEC. 21 OF R.A. NO. 9165].

III.

[THE TRIAL COURT ERRED] IN FINDING THAT THE PROSECUTION'S EVIDENCE IS SUFFICIENT TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.[23]

In her Appellant's Brief[24] before the CA, accused-appellant insists that the trial court should not have given credence to the testimony of PO1 Delbo as it was incredible and uncorroborated by the testimonies of the other prosecution witnesses. Accused-appellant claims that none of the prosecution witnesses corroborated the testimony of PO1 Delbo that an actual buy-bust operation had taken place. Accused-appellant also avers that no photograph of her was taken by the police officers and that she was not present during the inventory of the seized items. She claims that the police officers' noncompliance with the requirements laid down in Sec. 21 of R.A. No. 9165 justifies her acquittal.

In its Appellee's Brief[25] before the CA, the Office of the Solicitor General *(OSG)* urges this Court to affirm the challenged decision of the RTC because the prosecution duly proved all the elements of illegal sale and illegal possession of dangerous drugs. The OSG argues that the sole testimony of PO1 Delbo is sufficient to prove that a buy-bust operation actually transpired. It also insists that the chain of custody rule was complied with and that the arresting officers were able to preserve the integrity and evidentiary value of the seized items. The OSG also claims that accused-appellant was included in the photographs taken during the inventory as testified by PO1 Olasiman, the designated photographer. It also alleges that the DOJ representative testified that accused-appellant was present during the conduct of inventory.

The Court's Ruling

The Court finds the appeal meritorious.

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[23] CA *rollo*, pp. 32-33.
[24] Id. at 25-49.
[25] Id. at 62-88.

There is reasonable doubt as to the elements of the crimes of illegal sale and illegal possession of dangerous drugs.

To sustain a conviction for the offense of illegal sale of dangerous drugs, the necessary elements are: (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] It is essential that a transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of the *corpus delicti*. [27] The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself and its offer as evidence.

On the other hand, to successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[28]

In both cases, it is essential that the identity of the seized drugs be established with moral certainty, and it must be proven with exactitude that the substance bought/recovered during the buy-bust operation is exactly the same substance offered in evidence before the court.[29] This requirement is known as the chain of custody rule under R.A. No. 9165, created to safeguard against doubts concerning the identity of the seized drugs.[30]

In proving the existence of the elements of the crime charged, the prosecution has the heavy burden of establishing the same. The prosecution must rely on the strength of its own evidence and not on the weakness of the defense. [31] In accordance with these principles, the Court has held that, considering the gravity of the penalty for the offense charged, courts should be careful in receiving and weighing the probative value of the testimony of an alleged poseur-buyer especially when it is not corroborated by any of his teammates in the alleged buy-bust operation.[32]

In the instant case, the Court is not convinced that the elements of the crimes charged are present. The prosecution relied on the testimonies of its

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[26] *People v. Roble*, 663 Phil. 147, 157 (2011).
[27] Id.
[28] *People v. Climaco*, 687 Phil. 593, 603 (2012).
[29] *People v. Alon-Alon*, G.R. No. 237803, November 27, 2019, 926 SCRA 256, 263-264.
[30] *People v. Climaco*, supra at 604, citing *Mallillin v. People*, 576 Phil. 576, 586 (2008).
[31] *People v. Ordiz*, G.R. No. 206767, September 11, 2019, 919 SCRA 149, 163.
[32] Id.

seven witnesses: PO1 Delbo, PO1 Olasiman, Philippine Drug Enforcement Agency *(PDEA)* Agent Carlito Mascardo, Jr., PO3 Laquinon, PDEA Intelligence Officer I Ivy Claire Oledan *(IO1 Oledan)*, DOJ representative Benlot and SPO4 Germodo.

With respect to the charge of illegal sale of dangerous drugs, a closer look at the testimonies of the witnesses other than PO1 Delbo reveals that they did not actually see the alleged sale of illegal drugs between accused-appellant and PO1 Delbo. The members of the buy-bust team were positioned only 10 to 15 meters away from the area where PO1 Delbo purportedly transacted with accused-appellant. However, they admitted that they did not see the transaction. It is highly improbable that none of the backup officers present at the crime scene would not notice the sale that allegedly transpired when in fact they should be surreptitiously watching accused-appellant. Clearly, the RTC and the CA merely relied on the uncorroborated testimony of PO1 Delbo.

Thus, the existence of the alleged transaction hinged solely on the testimony of the poseur-buyer because all the other witnesses presented by the prosecution admitted not seeing the transaction. There was no other witness presented to corroborate the testimony of PO1 Delbo, the poseur-buyer.

In *People v. Ordiz*,[33] the Court held that:

> It is an ancient principle of our penal system that no one shall be found guilty of crime except upon proof beyond reasonable doubt. Thus, in proving the existence of the aforesaid elements of the crime charged, the prosecution has the heavy burden of establishing the same. The prosecution must rely on the strength of its own evidence and not on the weakness of the defense.
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> In accordance with these principles, the Court has held that, considering the gravity of the penalty for the offense charged, **courts should be careful in receiving and weighing the probative value of the testimony of an alleged poseur-buyer especially when it is not corroborated by any of his teammates in the alleged buy-bust operation. Sheer reliance on the lone testimony of an alleged poseur-buyer in convicting the accused does not satisfy the quantum of evidence required in criminal cases, that is, proof beyond reasonable doubt.**[34] (Emphasis supplied)

Here, the prosecution's case regarding the alleged transaction involving dangerous drugs relied mostly on the uncorroborated testimony of the supposed poseur-buyer. As will be discussed *infra*, some parts of PO1 Delbo's

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[33] Supra.
[34] Id. at 163.

testimony are either lacking in detail or unclear. To reiterate, sheer reliance on the sole testimony of an alleged poseur-buyer fails to satisfy the quantum of evidence of proof beyond reasonable doubt.[35]

With respect to the charge of illegal possession of dangerous drugs, the Court finds that the circumstances regarding the alleged possession are also doubtful and unclear. According to PO1 Delbo, accused-appellant approached them and asked if they wanted to buy *shabu* and how much they were going to buy. PO1 Delbo replied that they wanted to buy "*kinye*" meaning ₱500.00 worth of *shabu*. Accused-appellant asked for the money and PO1 Delbo gave her the ₱500.00 buy-bust money. According to PO1 Delbo, accused-appellant "picked a plastic container at the left front pocket,"[36] and then "picked one (1) [sachet] and gave it to [him.]"[37] PO1 Delbo examined the plastic sachet and upon confirmation that what he received was *shabu*, he immediately placed a call to SPO4 Germodo. Upon seeing the backup team running towards them, he immediately announced in Visayan dialect his authority, and arrested accused-appellant and informed her of her constitutional rights.[38] Thereafter, PO1 Delbo placed a masking tape on the sachet of *shabu* that he had bought from accused-appellant and marked it with the initials "MC-BB 7/21/15."

After all these events – from the time he called the backup team, the arrest of accused-appellant, and up to the marking of the seized items from the transaction – PO1 Delbo claims that accused-appellant was still holding the purported plastic container, from which the plastic sachet came from:

> Q How did you arrest her?
> A I informed the nature of her arrest and her constitutional rights, sir, in the dialect known to her.
>
> Q Did you ask if she understood what you have informed her?
> A Yes, sir. I asked her, sir, if she understood. She answered affirmatively, sir.
>
> Q What do you mean affirmatively?
> A She nodded her head, sir.
>
> Q So after you have arrested the accused and informed her of her constitutional rights, what did you do next?

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[35] Id.
[36] TSN, January 30, 2017, p. 6.
[37] Id.
[38] Id. at 9.

A I marked first the shabu that I bought from her, sir, because at that time, sir, she was holding another container that had shabu inside, sir.[39] (Emphasis supplied)

Indeed, it was quite incredible that accused-appellant was holding a plastic container, supposedly containing dangerous drugs, in the open and in plain view of PO1 Delbo for an extended period of time. Glaringly, as demonstrated by the testimony of PO1 Delbo, he claims that he already knew that the plastic container allegedly held by accused-appellant contained dangerous drugs even if he had not yet examined said plastic container. It is highly suspicious that PO1 Delbo was already aware that the plastic container contained *shabu* despite the fact that he had not yet seen the contents of the container since he was still busy marking the purported drugs he bought from accused-appellant.

Further, despite presenting several witnesses who were involved in the buy-bust operation, none of them testified on PO1 Delbo's act of recovering the other sachets of purported *shabu* from the plastic container that accused-appellant was supposedly holding during the entire period of the operation. Curiously, IO1 Oledan, who was designated to search accused-appellant after the arrest, testified that she never recovered any contraband from accused-appellant:

Q What did you do upon arriving at the area?
A My initial assignment was to secure the perimeter. And then after which, since the suspect was a female, I was asked by Police Germodo to conduct a body search on the arrested person.

Q Did you conduct a body search on the arrested person?
A Yes, sir.

Q What was the result of your search?
A I did not recover or confiscate anything from the body of Marfy Calumpang, sir.[40] (Emphasis supplied)

Based on the foregoing, the Court is not convinced that the prosecution proved that a transaction involving dangerous drugs had taken place. Similarly, the prosecution failed to establish that accused-appellant indeed possessed dangerous drugs due to the uncertainty on how these items were seized from her.

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[39] Id. at 8.
[40] TSN, February 2, 2017, p. 5.

Chain of custody

Even on the basis of the chain of custody rule, the Court finds that the guilt of accused-appellant of the crimes charged was not proven. Chain of custody means the duly recorded, authorized movements, and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination until its presentation in court.[41]

Notably, Sec. 21 of R.A. No. 9165 was amended by R.A. No. 10640, which became effective on August 7, 2014. Since the alleged offense was committed on July 21, 2015, or after its amendment, the provisions of R.A. No. 10640 shall apply.

Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640, 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.* — 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

[41] Dangerous Drugs Board Regulation No. 1 (2002), Section 1(b).

> apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

Dissecting Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640 shows that it consists of three parts.

First part of Sec. 21(1) of R.A. No. 9165, as amended

The first part of Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640 provides that:

> (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**. x x x (Emphasis supplied)

Aside from immediately taking the inventory and photographs of the seized items, the law requires that these must be conducted 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 *(NPS)* or the media. In several cases, the Court held that failure to immediately conduct any inventory and taking of photographs of the seized items shall constitute noncompliance with Sec. 21 of R.A. No. 9165.[42]

R.A. No. 9165, as amended by R.A. No. 10640, now only requires, aside from the accused or his/her representative, two witnesses to be present during the physical inventory and photographing of the seized items: (1) an elected public official; and (2) either a representative from the NPS or the media.[43] There have been several cases decided by the Court, which stated that if the "insulating witnesses" required by the law are not present during

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[42] *People v. Paran*, G.R. No. 220447, November 25, 2019, 925 SCRA 781, 788-789; *People v. Casacop*, 755 Phil. 265, 283 (2015); *People v. De la Cruz*, 666 Phil. 593, 610 (2011).
[43] *People v. Maganon*, 855 Phil. 364, 372-373 (2019), citing *People v. Lim*, 839 Phil. 598, 617 (2018).

the physical inventory and photographing of the seized items, then it constitutes as noncompliance with the chain of custody rule.[44]

Also, the law expressly states that the apprehending team shall "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**."[45] The law only requires the accused, or his or her representative or counsel, or the insulating witnesses to be present during the inventory. However, the accused, or his or her representative or counsel, is not required to sign the copies of the inventory or the seized items. Only the signatures of the insulating witnesses are mandatory in the inventory report. In *People v. Lim*[46] *(Lim)*, the Court provided the following guidelines:

> 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR.
> 2. In case of nonobservance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
> 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non)existence of probable cause.
> 4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[47]

Further to the above guidelines, the accused shall not be required to affix his signature in the seized item and the inventory report. Instead, the apprehending officers shall state in their inventory report that it was conducted in the presence of the accused, or his or her representative or counsel, and the insulating witnesses. Again, only the signatures of the insulating witnesses are mandatory in the inventory report. Further, the inventory report should be attached to the sworn statements/affidavits of the apprehending officers to ensure its genuineness and due execution.

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[44] *Luna v. People*, G.R. No. 231902, June 30, 2021; *Tañamor v. People*, G.R. No. 228132, March 11, 2020; *People v. Pagsigan*, 839 Phil. 466, 472-473 (2018).
[45] See Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640.
[46] Supra note 43.
[47] Id. at 625.

Second part of Sec. 21(1) of R.A. No. 9165, as amended

The second part of Sec. 21(1), or its first *proviso,* would be the location where the inventory and taking of photographs of the seized items should take place. It provides that:

> *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.

In *Tumabini v. People*,[48] it was explained that the difference between a search warrant and a warrantless search with regard to a buy-bust operation is the venue of the conduct of the physical inventory and taking of photographs. When the drugs are seized pursuant to a search warrant, then the physical inventory and taking of photographs shall be conducted at the place where the said search warrant was served.[49]

On the other hand, when the seizure is pursuant to a warrantless search, such as a buy-bust operation, then the inventory and taking of photographs may be conducted at the nearest police station or at the nearest office of the apprehending officer/team. The operative phrase in that provision is "**whichever is practicable**." It indicates that, in a warrantless search, the police or apprehending officers have an option to conduct the inventory and taking of photographs of the seized items at the nearest police station or at the office of the apprehending officer/team provided that it is practicable. Failure to comply with such requirement regarding a warrantless search shall constitute as noncompliance with the chain of custody rule.

However, recent jurisprudence clarified that even in a warrantless seizure, the general rule remains that inventory and taking of photographs must be conducted at the place of seizure.

In *People v. Musor*,[50] it was declared by the Court that the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It adds that **only when the same is not practicable** does the law allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or

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[48] G.R. No. 224495, February 19, 2020, 933 SCRA 60.
[49] Id. at 81.
[50] 842 Phil. 1159 (2018).

at the office of the apprehending officer/team. The Court added that the explanation provided therein regarding the transfer of inventory and taking of photographs elsewhere, as people were already starting to gather, was insufficient to justify such transfer.

Similarly, in *People v. Tubera*,[51] the prosecution did not even attempt to explain why it was impracticable to conduct the inventory and taking of photographs at the place of seizure, which lead to the Court acquitting the accused. In *People v. Dumanjug*,[52] the Court rejected the buy-bust team's argument that it failed to conduct the marking, inventory, and photography of the seized drug immediately at the place of arrest because a crowd of 200 people had gathered, thus, creating a dangerous environment.

Likewise, in *Lim*,[53] the Court reiterated the general rule that the inventory and taking of photographs in case of warrantless seizures must be conducted at the place of seizure **unless** there is a threat of immediate or extreme danger; in which case, the inventory and taking of photographs can be conducted at the nearest police station, to wit:

> We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are **threatened by immediate or extreme danger** such as retaliatory action of those who have the resources and capability to mount a counter-assault.[54] (Emphasis supplied)

The pronouncement in *Lim* was likewise applied in *People v. Salenga*[55] *(Salenga)*, where the police officers simply gave a flimsy excuse that the crowd was getting bigger at the place of seizure; hence, it was treated by the Court as an invalid reason for them to conduct the inventory at the nearest police station.

In the recent ruling in *People v. Taglucop*[56] *(Taglucop)*, the Court settled the place of the conduct of the inventory and taking of photographs under Sec. 21(1) of R.A. No. 9165, as amended. In that case, there was a warrantless search conducted pursuant to a buy-bust operation. The inventory and taking of photographs of the seized items were conducted at the nearest police station, and not at the place of seizure. It was ruled therein that the prosecution established that it was practicable to conduct the inventory and

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[51] 853 Phil. 142 (2019).
[52] 855 Phil. 645 (2019).
[53] Supra note 43.
[54] Id. at 620.
[55] G.R. No. 239903, September 11, 2019, 919 SCRA 342.
[56] G.R. No. 243577, March 15, 2022.

taking of photographs of the seized items at the nearest police station because of several reasons, such as the gathering crowd, it was already raining, and the place was unsafe. These justifications were consistently included in the judicial affidavits immediately executed by the police after the buy-bust operation. It was underscored that the police officers had the expertise to decide whether it was practicable to conduct the inventory and taking of photographs of the seized items in a warrantless search at the place of seizure or at the nearest police station. The Court held:

> The foregoing testimony of SPO2 Gilbuena was likewise corroborated by P/Insp. Lacana in his testimony as to the marking of the seized drugs at the place of arrest and the inventory conducted at the police station. P/Insp. Lacana testified that they had to transfer to the police station since the place was unsafe. Evidently, the prosecution presented three justifications to conduct the inventory and taking of photographs at the nearest police station:
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> 1. There was a crowd gathering in the place;
> 2. It was already raining; and
> 3. The place of seizure was unsafe at that time.
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> Unlike in the previous cases of *Musor* and *Salenga*, where the prosecution simply gave flimsy excuses for not conducting the procedures at the place of seizure, the present case provides a different scenario. To the judgment of the police officers conducting the operation, the gathering crowd and the ongoing rain could jeopardize the seized items. Considering that the seized items were crystallized substances, such are susceptible to contamination from water or rain. Accordingly, it was understandable for the police officers to conduct the inventory and taking of photographs at the nearest police station, where the complete insulating witnesses were present.
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> Notably, the explanation provided by the police officers were indicated in the judicial affidavits of SPO2 Gilbuena and P/Insp. Lacana, which were both executed on July 3, 2016, or **merely a day after the conduct of the buy-bust operation** on July 2, 2016. Evidently, their justifications provided for the inventory and taking of photographs at the nearest police station were still fresh in the minds of the police officers and were not just concocted excuses. The said affidavits clearly established in detail how the transaction with accused-appellant happened, from the moment the CI introduced SPO2 Gilbuena to accused-appellant as someone interested in buying *shabu* to the consummation of the sale. Their testimonies likewise detailed who marked and how the markings were made, and the subsequent transfer to the police station for the inventory and photography.
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> Indeed, upon the arrival of the representatives from the media and the DOJ at the police station, said witnesses checked the pieces of evidence recovered from accused-appellant and conducted the inventory thereof. Thus, the required three witnesses under Sec. 21 of R.A. No. 9165 were all present during the conduct of the inventory. The prosecution was able to establish that the inventory of the seized items was done at the police station

> and in the presence of the required witnesses under Sec. 21: accused-appellant, elected *barangay* officials Hermosada, Villahermosa, and Antipolda, DOJ representative Indonto, and media representative Cloribel. Said insulating witnesses then signed the Certificate of Inventory of the seized items. Photographs of accused-appellant, together with the evidence, were likewise taken.[57] (Emphases in the original; citations omitted)

As current jurisprudence stand, in case of warrantless seizures, the inventory and taking of photographs generally must be conducted at the place of seizure.[58] The exception to this rule where the physical inventory and taking of photographs of the seized item may be conducted at the nearest police station or at the nearest office of the apprehending officer or team is when the police officers provide justification that:

1. It is not practicable to conduct the same at the place of seizure; or

2. The items seized are threatened by immediate or extreme danger at the place of seizure.[59]

Nevertheless, in *People v. Pacnisen*,[60] the Court reminded that "[i]n buy-bust situations, or warrantless arrests, the *physical inventory and photographing* are allowed to be done at the nearest police station or at the office of the apprehending officer/team, whichever is practicable. But even in these alternative places, such inventory and photographing are still required to be done in the presence of the accused and the [insulating] witnesses."[61]

Notably, the Revised Philippine National Police Operational Procedures dated September 2021 *(2021 PNP Manual)* is in accordance with this interpretation of the second part of Sec. 21(1) of R.A. No. 9165, as amended, regarding warrantless seizures, to wit:

> 2.8 Rules on Anti-Illegal Drugs Operations
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> x x x x
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> 1) Drug Evidence
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> a) Upon seizure or confiscation of dangerous drugs or CPECs, laboratory equipment, apparatus and paraphernalia, the operating unit's

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[57] *People v. Taglucop*, supra.
[58] Id.
[59] Id.
[60] 842 Phil. 1185 (2018).
[61] Id. at 1197.

seizing officer/inventory officer must conduct the photographing, marking and physical inventory in the place of operation in the presence of:

(1) The suspect/s 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) Representative from the National Prosecution Service (NPS) or media, who shall affix their signatures and who shall be given copies of the inventory. The Chain of Custody Form for Drug Evidence, Non-Drug Evidence and for Laboratory (Annex "T", "U" and "V"), whichever is applicable, shall also be accomplished together with the Certificate of Inventory of Seized Items (Annex "W").

b) For seized or recovered drugs covered by search warrants, the photographing, marking and inventory must be done in the place where the search warrant was served.

c) **For warrantless seizures like buy-bust operations, the photographing, markings, and physical inventory must be done at the place of apprehension, unless for justifiable reasons, the photographing, markings, and physical inventory may be made at the nearest police station or office of the apprehending officer or team, ensuring that the integrity and evidentiary value of the seized items remain intact and preserved**. Such justification or explanation as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items shall be clearly stated in a sworn affidavit of justification/explanation of the apprehending/ seizing officers.[62] (Emphasis supplied)

The alternative interpretation of the second part of Sec. 21(1) of R.A. No. 9165, as amended, is not warranted

During the deliberations of this case before the Court, there was an alternative proposition in interpreting Sec. 21(1) of R.A. No. 9165, as amended. The alternative proposition materially states that in a warrantless seizure involving dangerous drugs, such as a buy-bust operation, the police officers do not need to provide any reason whatsoever before they may

[62] Revised Philippine National Police Operational Procedures (2021), Chapter 3, pp. 65-66.

conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team.[63]

However, after thoughtful and meaningful discussions, the Court finds that this alternative proposition in interpreting the second part or first *proviso* of Sec. 21(1) of R.A. No. 9165, as amended, is not warranted for the following reasons:

First, the law itself recognizes that the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team is not absolute, unbridled, and unrestrained because of the phrase "**whichever is practicable**." Verily, a plain reading of the provision shows that this phrase is a qualifier when the police officers may conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team. It demonstrates the plain meaning of the statute that only when the police officers offer a "practicable" reason for the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team shall the law allow a deviation on the location of the inventory. Absent such "practicable" reason, then the police officers should instead conduct the inventory and taking of photographs of the seized items at the place of seizure.

In *Philippine Amusement and Gaming Corp. v. Philippine Gaming Jurisdiction, Inc.*,[64] the Court explained the importance of reading the plain meaning of a statute, thus:

> The plain meaning rule or *verba legis*, derived from the maxim *index animi sermo est* (speech is the index of intention), rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will, and preclude the court from construing it differently. For the legislature is presumed to know the meaning of the words, to have used them advisedly, and to have expressed the intent by use of such words as are found in the statute. *Verba legis non est recedendum.* From the words of a statute there should be no departure.[65]

Second, while Senators Grace Poe and Vicente Sotto III *(Senator Sotto)* made sponsorship speeches for Senate Bill No. (SB) 2273, which eventually became R.A. No. 10640, expressing that they propose to make the conduct of the inventory "not difficult" for the law enforcement agencies,[66] such purported change of policy is not reflected in the text of the contested *proviso* regarding the place of inventory. When Sec. 21 of R.A. No. 9165 was

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[63] See Concurring Opinion of Associate Justice Mario V. Lopez, p. 4, and Concurring and Dissenting Opinion of Associate Justice Antonio T. Kho, Jr., pp. 8-9.
[64] 604 Phil. 547 (2009).
[65] Id. at 553.
[66] See Concurring and Dissenting Opinion of Justice Kho, pp. 8-9.

amended by R.A. No. 10640, it still kept and unequivocally sustained the phrase "**whichever is practicable**." Indeed, it retains the provision of the law that the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team is not absolute, unbridled, and unrestrained.

It is axiomatic in legal hermeneutics that statutes should be construed as a whole and not as series of disconnected articles and phrases. In the absence of a clear contrary intention, words and phrases in statutes should not be interpreted in isolation from one another. A word or phrase in a statute is always used in association with other words or phrases and its meaning may, thus, be modified or restricted by the latter.[67]

If R.A. No. 9165, as amended by R.A. No. 10640, deleted that phrase "**whichever is practicable**," the Court would not have a difficulty in accepting the alternative proposition that the police officers have uninhibited and complete discretion to conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team. However, the existing law is clear as daylight. The phrase "**whichever is practicable**" is still retained under Sec. 21 of R.A. No. 9165, as amended. Necessarily, the Court must conduct its constitutional duty to recognize each and every word and phrase in the statute. It cannot just conveniently turn a blind eye to that particular phrase in law, which was purposely adopted by Congress, just for the sake of making the duty of the police officers "not difficult."

As the Court explained in *Malaria Employees and Workers Association of the Philippines, Inc. v. Romulo*:[68]

> It is a basic canon of statutory construction that in interpreting a statute, care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. The rule is that a construction that would render a provision inoperative should be avoided; instead, apparently inconsistent provisions should be reconciled whenever possible as parts of a coordinated and harmonious whole.[69]

Third, the alternative proposition is that even though the law contains the phrase "**whichever is practicable**," the police officers may still – as a general rule in warrantless seizure – conduct the inventory and taking of photographs at the nearest police station or at the nearest office of the

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[67] *Meridian Assurance Corp. v. Dayrit*, 262 Phil. 880, 883-884 (1990), citing *Reformina v. Tomol, Jr.*, 223 Phil. 472, 479 (1985).
[68] 555 Phil. 629 (2007).
[69] Id. at 639.

apprehending officer/team, without giving any explanation whatsoever. But as an exception, the police officers may conduct the said inventory at the place of seizure if they so desire.[70]

However, this alternative proposition will render the phrase "**whichever is practicable**" under Sec. 21(1) of R.A. No. 9165, as amended, nugatory, inoperable, and virtually non-existent. Without the stringent compulsion of the law, no police officer will genuinely conduct the inventory at the place of seizure simply because they have the uninhibited discretion to undertake the inventory at the nearest police station or nearest office of the apprehending officer/team.

For example, a buy-bust operation was conducted in broad daylight in a remote area where the quantity of the illegal drug seized is less than one gram, the most common quantity in buy-bust operations that the Court encounters in appealed cases. As a buy-bust operation is a pre-planned activity, the police were able to secure the attendance of all the required witnesses at the exact time and place of seizure. The police officers also have all the necessary equipment to conduct the inventory and taking of photographs of the seized items at the place of seizure. Likewise, there is no threat to the safety of the law enforcement agencies at the place of seizure. However, the nearest police station or the nearest office of the apprehending officer/team is 30 kilometers away.

Based on the alternative proposition, the police officers, without any rhyme or reason, can just conduct the inventory 30 kilometers away at the nearest police station, even though it could have been logically, feasibly and "practicably" be conducted at the place of seizure. Worse, the police officers will not be castigated, reproached or rebuked for their specious and capricious actions of conducting the inventory 30 kilometers away at the nearest police station; instead at the place of seizure. Frankly, this is not the interpretation contemplated by Sec. 21(1) of R.A. No. 9165, as amended.

Senior Associate Justice Marvic M.V.F. Leonen *(SAJ Leonen)* thoughtfully adds that "the requisite that the physical inventory and taking of photographs must be done immediately after the seizure and confiscation of the contraband serves to account for the time frame within which custody of the contraband transfers from the accused to the apprehending officer. x x x [W]hen this interval increases, the exhibit gathered becomes susceptible to

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[70] See Concurring and Dissenting Opinion of Justice Kho, p. 8.

contamination or tampering. It thus follows that the requirement be accomplished in the place of seizure to satisfy the element of immediacy."[71]

As brilliantly expounded by Associate Justice Alfredo Benjamin S. Caguioa in his Separate Concurring Opinion, "x x x strict compliance with the immediate inventory and photographing requirement offers to the Court an independent and impartial source of evidence on the very facts of the case upon which the elements of the crime would be based, reinforced with a guarantee that there was little to no time for any pernicious interference to taint the chain."[72] "Verily, the element of immediacy is grounded on this reality: as the time gap from the seizure of the dangerous drugs or paraphernalia to its inventory and photographing widens, the greater its vulnerability to contamination or to abuse becomes."[73]

Fourth, there may be some apprehension that requiring the police officers, as general rule in warrantless seizure, to conduct the inventory at the place of seizure may be too "difficult." However, such concern is more apparent than real.

In *Taglucop*, the inventory and taking of photographs of the seized items were conducted at the nearest police station, and not at the place of seizure. Notably, the prosecution established that it was practicable to conduct the inventory and taking of photographs of the seized items at the nearest police station because of several reasons, such as the gathering crowd, it was already raining, and the place was unsafe.

When the police officers are able to provide a sensible reason, which is practicable, consistent, and not merely generic or afterthought excuses, then the courts will recognize that the police officers indeed may conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team. Such reason must be indicated in the affidavits of the police officers who participated in the buy-bust operation, pursuant to the guidelines provided in the case of *Lim*.[74]

Further, it was underscored in *Taglucop* that the police officers had the expertise to decide whether it was practicable to conduct the inventory and taking of photographs of the seized items in a warrantless search at the place of seizure or at the nearest police station. They are in the best position to verify and determine the relevant circumstance in each particular buy-bust operation

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[71] Concurring Opinion of SAJ Leonen, p. 7.
[72] Concurring Opinion of Justice Caguioa, p. 9.
[73] Id.
[74] *People v. Lim*, supra note 43 at 624.

whether it is not anymore practicable to conduct the inventory at the place of seizure. Indeed, the Court recognizes the specialized training and knowledge of the police officers to recognize that it is more practicable to conduct the inventory and taking of photographs of the seized items at the nearest police station or at the nearest office of the apprehending officer/team, to wit:

> The apprehending team deemed it unsafe to remain at the scene since the surrounding circumstances would have a direct impact on the conduct of the inventory of the seized items. The rain could even destroy the seized drugs if the apprehending team would remain at the place of seizure. The police officers were in the best position to determine whether the surrounding circumstances could compromise the safety of the buy-bust team, as well as the witnesses, and even the drugs seized from accused-appellant.
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> The police officers considered that the inventory at the nearest police station would better provide effective measures to ensure the integrity of the seized drugs since a safe location makes it more probable for the inventory and photography of the seized drugs to be done properly. This is in contrast to the public place where the buy-bust operation was done, considering the gathering crowd and the rain, rendering the place unsafe.[75]

Accordingly, the fear that the police officers would not be able to provide a practicable reason for the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team is utterly unfounded. Instead, as stated in *Taglucop*, Sec. 21(1) regarding the venue of the conduct of the inventory is neither difficult nor impossible to implement. On the contrary, this provision is completely and entirely reasonable for the police officers due to their expertise in handling buy-bust operations, to wit:

> Verily, if the Court would require absolute, undeniable, perfect, and unfathomable evidence from the prosecution to justify the change of venue of the inventory and taking of photographs, then the provision of Sec. 21(1), which allows the conduct of the same at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, would practically be unachievable and shall never see the light of day in actual police operations. *Lex non cognit ad impossibilia*. The law does not require the impossible.
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> In the Court's view, it is the police officers who have the expertise to decide whether it is practicable to conduct the inventory and taking of photographs of the seized items in a warrantless search at the place of seizure or at the nearest police station. As long as the police officers provide

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[75] *People v. Taglucop*, supra note 56.

> a sufficient reason for the change of venue for the conduct of the inventory and taking of photographs, then, it must be allowed.
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> Accordingly, the Court finds that the prosecution had proven compliance with the first and second parts of Sec. 21(1) of R.A. No. 9165, as amended. The mandatory requirements provided by law under the chain of custody rule were satisfactorily fulfilled.[76]

Indeed, the courts recognize the proficiency and skill of the police officers to determine whether it is clearly not practicable to conduct the inventory at the place of seizure during a warrantless seizure. In other words, the police officers merely need to provide a practicable reason to the court in order to justify the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team. It is not something that the law asks too much from them.

Only when the police officers fail to comply with such modest and straightforward task of providing a practicable reason for the conduct of the inventory, not at the place of seizure, but at the nearest police station or at the nearest office of the apprehending officer/team, shall it result into a deviation from the chain of custody rule. The failure to observe this requirement of the law was demonstrated in the cases of *People v. Tubera*,[77] *People v. Dumanjug*,[78] *People v. Musor*,[79] and *Salenga*,[80] which led to the noncompliance with Sec. 21 of R.A. No. 9165, as discussed above.

Further, as highlighted by Justice Caguioa, a buy-bust operation is a pre-planned operation, thus, "the enforcement authorities would easily have enough time and opportunity to make the necessary preparations to conduct the inventory and photographing 'without moving or altering [the] original position' of the seized items, that is, at the place of apprehension. Thus, the buy-bust team should not simply be sanctioned to choose, at their convenience, to conduct the inventory at the nearest police station or at the nearest office of the apprehending officer or team."[81]

Likewise, it was emphasized in the sponsorship speech of Senator Sotto that "the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself [may be] threatened by an

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[76] Id.
[77] Supra note 51.
[78] Supra note 52.
[79] Supra note 50.
[80] Supra note 55.
[81] Concurring Opinion of Justice Caguioa, p. 12.

immediate retaliatory action of drug syndicates at the place of seizure."[82] This concern is addressed by the interpretation provided by the Court in this case because when "the items seized are threatened by immediate or extreme danger at the place of seizure,"[83] such would be a valid justification to conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team.

Finally, when all is said and done, the Court must return to the purpose and intent of the chain of custody rule under Sec. 21 of R.A. No. 9165, as amended. "In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. Consequently, compliance with the rule on chain of custody over the seized illegal drugs is crucial in any prosecution that follows a buy-bust operation. The rule is imperative, as it is essential that the prohibited drug recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt."[84]

As judiciously explained by SAJ Leonen, "[t]o prevent tampering, substitution, and planting of evidence, strict adherence with Section 21 is necessary. Partial or approximate compliance is insufficient. Such a rigid application of the rule is only appropriate due to the fungible nature of the *corpus delicti* in drugs cases. This is especially so when the amount involved is miniscule."[85] Indeed, the purpose of the chain of custody rule is to guarantee that the item seized from the accused would be the very same item presented in court. This will prevent the planting or tampering of evidence. Accordingly, Sec. 21 of R.A. No. 9165, as amended, was placed as safeguard to those accused in drug offenses in accordance with the presumption of innocence under the Constitution.

The interpretation of Sec. 21(1) of R.A. No. 9165, as amended, as approved by the Court is in accordance with the intent and purpose of the chain of custody rule. It strikes a harmonious balance between the intent of the law in protecting the accused against the evils of planting and switching of dangerous drugs immediately after the purported seizure, and the equally significant intent to efficiently facilitate the conduct of the inventory of the seized dangerous drugs at the place of seizure, unless for practicable and safety reasons provided by the law enforcement agencies, the inventory should be conducted at the nearest police station or at the nearest office of the apprehending officer/team.

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[82] *People v. Lim*, supra note 43 at 619.
[83] *Ponencia*, p. 19.
[84] *Palencia v. People*, G.R. No. 219560, July 1, 2020, citation omitted.
[85] Concurring Opinion of SAJ Leonen, p. 5.

The alternative proposition – that the police officers in warrantless seizure have the unfettered discretion to conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team; and not at the place of seizure – is not in accordance with the spirit and intent of the chain of custody rule in ensuring that integrity and evidentiary value of the dangerous drug are maintained at the very exact moment of seizure.

In any case, even if the police officers do not absolutely and perfectly comply with the requirements of Sec. 21 under R.A. No. 9165, as amended, particularly, as to the proper place of the conduct of the inventory, they still have opportunity to apply the saving clause, which will be discussed *infra*.

Last part of Sec. 21(1) of R.A. No. 9165, as amended

The third and final portion of Sec. 21(1) refers to the saving clause. It states that:

> *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.

This portion was initially found in the IRR of R.A. No. 9165. However, in the advent of R.A. No 10640, it is now included in the text of the law. While the chain of custody has been a critical issue leading to acquittals in drug cases, the Court has nevertheless held that noncompliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow.[86] The last portion of Sec. 21(1), provides a saving mechanism to ensure that not every case of noncompliance will irretrievably prejudice the prosecution's case.[87]

In *People v. Luna*,[88] the Court laid down the requisites to apply the saving clause:

> As a rule, strict compliance with the foregoing requirements is mandatory. However, following the IRR of RA 9165, the courts may allow a deviation from these requirements if the following requisites are availing: **(1) the existence of "justifiable grounds" allowing departure from the**

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[86] See *People v. Denoman*, 612 Phil. 1165, 1178 (2009).
[87] Id.
[88] 828 Phil. 671 (2018).

> **rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.** If these two elements concur, the seizure and custody over the confiscated items shall not be rendered void and invalid; *ergo*, the integrity of the *corpus delicti* remains untarnished. x x x
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> x x x x
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> Following a plain reading of the law, it is now settled that [noncompliance] with the mandatory procedure in Section 21 triggers the operation of the saving clause enshrined in the IRR of RA 9165. *Verbal egis non est recedendum* — from the words of a statute there should be no departure. Stated otherwise,, in order not to render void and invalid the seizure and custody over the evidence obtained, the prosecution must, as a matter of law, establish that such [noncompliance] was based on justifiable grounds and that the integrity and the evidentiary value of the seized items were preserved. Hence, before the prosecution can rely on this saving mechanism, they (the apprehending team) must first recognize lapses, and, if any are found to exist, they must justify the same accordingly.[89] (Emphasis supplied)

Accordingly, before the prosecution can invoke the saving clause, they must satisfy the two requisites:

1. The existence of "justifiable grounds" allowing departure from the rule on strict compliance; and

2. The integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

Whenever the first prong is not complied with, the prosecution shall not be allowed to invoke the saving clause to salvage its case. In *Valencia v. People*,[90] it was underscored that the arresting officers are under obligation, should they be unable to comply with the procedures laid down under Sec. 21, Art. II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.[91] Similarly, in *People v. Acub*,[92] the Court also did not apply the first prong of the saving clause because, despite the blatant lapses, the prosecution did not explain the arresting officers' failure to comply with the requirements in Sec. 21.

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[89] Id. at 686-687.
[90] 725 Phil. 268 (2014).
[91] Id. at 286.
[92] 853 Phil. 171 (2019).

On the other hand, the second prong requires that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. According to *People v. Adobar*,[93] the integrity of the seized illegal drugs, despite noncompliance with Sec. 21, requires establishing the four links in the chain of custody: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[94]

The first link refers to seizure and marking. "Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.[95]

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing. Thus, the investigating officer's possession of the seized drugs must be documented and established.[96]

The third link in the chain of custody is the delivery by the investigating officer of the illegal drugs to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, the laboratory technician will test and verify the nature of the substance.[97]

The fourth link refers to the turnover and submission of the dangerous drug from the forensic chemist to the court. In drug-related cases, it is of paramount necessity that the forensic chemist testifies on the details pertaining to the handling and analysis of the dangerous drug submitted for examination, *i.e.*, when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in. Further, the forensic chemist must also

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[93] 832 Phil. 731 (2018).
[94] Id. at 763.
[95] *People v. Omamos*, G.R. No. 223036, July 10, 2019, 908 SCRA 367, 379.
[96] *People v. Bangcola*, 849 Phil. 742, 759 (2019).
[97] *People v. Dahil*, 750 Phil. 212, 236 (2015).

identify the name and method of analysis used in determining the chemical composition of the subject specimen.[98]

Evidently, when the prosecution fails to prove its compliance with the mandatory requirements under the first and second parts of Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640, its only recourse is to invoke the saving clause. However, the saving clause, as an exception to the rule of strict compliance, is not a *talisman* that the prosecution may invoke at will.[99] Indeed, it is the burden of the prosecution in the application of the saving clause to prove that the integrity and evidentiary value of the seized items were preserved in all the four links in the chain of custody. This is the heavy burden placed on the prosecution, not only due to the presumption of innocence of the accused, but also as a consequence for not complying with the mandatory requirements provided by the first and second parts of Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640.

The prosecution failed to prove compliance under Sec. 21 of R.A. No. 9165, as amended.

Applying the foregoing, the prosecution failed to prove that it had complied with Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640. As stated earlier, the law requires that the physical inventory and photographing of the seized items be conducted in the presence of the accused or his/her representative or counsel; and that the following insulating witnesses must be present: (1) an elected public official; and (2) either a representative from the NPS or the media. In addition, the law expressly states that the insulating witnesses shall be required to sign the copies of the inventory and be given a copy thereof.[100]

In this case, the Inventory/Receipt of Property Seized[101] was signed by PO1 Delbo, SPO4 Germodo, PO1 Olasiman, DOJ representative Benlot, media representative Serion, and *Barangay* Captain Binondo. Verily, both the required insulating witnesses were present. However, the said inventory is missing a very crucial information – that the inventory was done in the presence of the accused, or his or her representative or counsel. Indeed, the law requires the fact that the accused, or his or her representative or counsel,

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[98] *People v. Omamos*, supra at 382.
[99] *People v. Acub*, supra note 92 at 426.
[100] See Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640.
[101] Records, p. 24.

was present at the conduct of the inventory and taking of photographs must be stated in the inventory.[102]

As discussed earlier, the accused shall not be required to affix his or her signature in the seized item and the inventory report. Instead, the apprehending officers shall state in their inventory report that it was conducted in the presence of the accused, or his or her representative or counsel, and the insulating witnesses. The inventory report should be attached to the sworn statements/affidavits of the apprehending officers to ensure its genuineness and due execution.

Another defect in the conduct of the inventory and taking of photographs would be the place of their conduct. As discussed earlier, as a general rule, the inventory and taking of photographs must be conducted at the place of seizure. Only when the same is not practicable does the law allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the office of the apprehending officer/team.

Here, the Joint Affidavit[103] of PO1 Delbo and PO1 Olasiman states that the team leader decided to conduct the inventory at the police station "for security purposes."[104] Manifestly, the mere general invocation of "security purposes," without any explanation or detail, is not sufficient to justify that it was actually not practicable to conduct the inventory at the place of seizure, which would necessitate a change of venue to the nearest police station.

In *Salenga*,[105] the police officers simply gave a flimsy excuse that the crowd was getting bigger at the place of seizure in justifying the transfer of venue to the nearest police station. However, the Court explained that such general excuse was an invalid reason to conduct the inventory at the nearest police station because it was not proven that it was indeed not practicable to conduct the inventory at the place of seizure.

Accordingly, the prosecution definitely failed to prove its compliance with Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640.

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[102] Republic Act No. 10640, Sec. 21(1).
[103] Records, pp. 20-21.
[104] Id. at 21.
[105] Supra note 55.

Saving clause

A. First requisite

Nevertheless, while the chain of custody has been a critical issue leading to acquittals in drug cases, the Court has nevertheless held that noncompliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow.[106] Accordingly, before the prosecution can invoke the saving clause, they must satisfy the two requisites: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[107]

In this case, the first requisite of the saving clause was not complied with. As stated earlier, the inventory/receipt of property seized was signed only by the insulating witnesses. It was not signed by accused-appellant, even though required by the law.

When questioned regarding the circumstances surrounding the inventory/receipt of property seized, the prosecution witnesses focused instead on explaining the absence of accused-appellant in the pictures during the conduct of the inventory. PO1 Delbo insists that accused-appellant was present during the inventory, but she did not appear in the photographs because she was avoiding the police officers.[108] On the other hand, PO1 Olasiman testified that accused-appellant was crying during the inventory and did not want to be seated with the insulating witnesses.[109]

However, the prosecution witnesses were so focused in justifying the absence of accused-appellant in the photographs that they forgot to explain why there was no statement in the inventory report whether accused-appellant was present during the conduct of the inventory. Again, this is a requirement under Sec. 21 of R.A. No. 9165, as amended.

Assuming that accused-appellant was indeed present at the inventory but expressly refused to sign the inventory report, the police officers could have indicated such fact in the inventory report. Under the Guidelines of the IRR of R.A. No. 9165, as amended, if the accused, his or her representative, or any of the insulating witnesses refused to sign the inventory, the police

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[106] See *People v. Denoman*, supra note 86 at 1178.
[107] *People v. Claudel*, 851 Phil. 64, 80 (2019).
[108] TSN, January 30, 2017, p. 12.
[109] TSN, January 31, 2017, p. 7.

officers may state in the inventory report that such person "refused to sign."[110] However, the police officers failed to do so. The inventory/receipt of the property seized only contained accused-appellant's bare name; it did not expressly state that accused-appellant was indeed present during the conduct of the inventory, as required by law. This engenders doubt that the dangerous drugs allegedly seized from accused-appellant were the same drugs presented in court.

Further, the inventory and taking of photographs of the seized items were not conducted at the place of seizure; rather, it was conducted at the police station. The Joint Affidavit[111] of PO1 Delbo and PO1 Olasiman merely gave a general invocation of "security purposes" for the said transfer of venue.

Glaringly, when the prosecution was given an opportunity during trial to explain the reason for the change of venue in the conduct of the inventory and taking of photographs of the seized item, the prosecution witnesses gave conflicting justifications. PO1 Delbo stated that the team leader decided to transfer venue for security purposes because, at that time, they recently lost a team member.[112] However, the connection of that incident with the current buy-bust operation conducted against accused-appellant was not explained. Verily, PO1 Delbo did not expound on whether there was existing danger at the same place or vicinity, or against the same group, where the buy-bust operation was being conducted. Such general excuse of "security purposes" is indeed not sufficient to establish that the place of seizure is not a practicable place to conduct the inventory and photography of the seized items.

On the other hand, PO1 Olasiman gave a different explanation. He said that the team leader instructed them to transfer venue because there was already a lot of people in the area.[113] Again, in *Salenga*, the Court held that the mere fact that the crowd was getting bigger at the place of seizure is not sufficient to justify the transfer of venue to the nearest police station.

Evidently, the explanations provided by PO1 Delbo and PO1 Olasiman are conflicting, insufficient, and do not salvage the general invocation of "security purposes" to establish that it was practicable to change venue to the nearest police station. This present situation is different from *Taglucop*

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[110] Guidelines on the IRR of R.A. No. 9165, as amended, Section 1, A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.

[111] Records, pp. 20-21.

[112] TSN, January 30, 2017, p. 10.

[113] TSN, January 31, 2017, p. 4.

because in this case, the prosecution failed to substantiate that it was practicable to change the venue of the conduct of the inventory and taking of photographs of the seized items, and the police officers gave conflicting statements to justify such change of venue.

Accordingly, the first requisite of the saving clause was not proven by the prosecution. It failed to establish that the apprehending team recognized the lapses under Sec. 21 of R.A. No. 9165, as amended, and also failed miserably to justify the said lapses.

B. Second requisite

Even the second requisite of the saving clause was not proven by the prosecution because the integrity and evidentiary value of the illegal drugs seized were not preserved; particularly, there were breaks in the first and fourth links in the chain of custody.

As to the first link, the marking of the plastic sachets allegedly recovered from accused-appellant was irregularly done. It was not compliant with paragraph 2.35, Sec. 2-6 of the 2014 Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation *(2014 PNP Manual)*, which provides:

> 2.35. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found/recovered or seized.[114]

Based on the testimonies of the prosecution witnesses, particularly PO1 Delbo, only the initials of accused-appellant and the date were inscribed on the specimens, omitting the initials of the seizing officer, time, and place of the buy-bust operation, in clear contravention of the PNP's own set of procedures for the conduct of its operations. PO1 Delbo marked the sachets with the following initials: "MC-BB 7/21/15," "MC-P1 7/21/15" to "MC-P11 7/21/15." The initials "MC" refers to Marfy Calumpang, "BB" refers to the buy-bust operation, "P" refers to possession of illegal drugs, while the 7/21/15 refers to the date of the incident. Clearly, there were no initials of the seizing officer, time, and place of the buy-bust operation.

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[114] Revised PNP Manual on Anti-Illegal Drugs Operation and Investigation (2014); This provision has been retained in the 2021 Revised Philippine National Police Operational Procedures, Chapter 3, p. 65, which states that:

> The seizing officer must mark all the evidence seized with his/her initials and signature as well as the date when the evidence was found/recovered or seized, numbered consecutively.

As discussed by our esteemed colleague Justice Caguioa in his Concurring Opinion, the Court has repeatedly stressed that a buy-bust is a planned operation, and given that the 2014 PNP Manual itself expressly provides its application to all PNP members and its Anti-Illegal Drugs Units in all levels on procedures that must be observed in the course of anti-illegal drugs operations and investigation, it strains credulity why the buy-bust team could not have at least marked the seized items according to the procedures in their own operations manual.[115]

Indeed, while PNP Manuals are not the absolute and controlling requirement for the conduct of the first link under Sec. 21(1) of R.A. No. 9165, as amended, noncompliance thereof still contributes to the uncertainties on whether the marking was properly done by the police officers involved. Evidently, such uncertainties thicken the cloud of doubt surrounding the integrity and evidentiary value of the seized items.

On the other hand, the fourth link refers to the turnover and submission of the dangerous drug from the forensic chemist to the court. In drug-related cases, it is of paramount necessity that the forensic chemist testifies as to details pertinent to the handling and analysis of the dangerous drug submitted for examination, *i.e.*, when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in, as the case may be.[116] Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimens.[117]

In this case, PCI Llena did not testify in court. Instead, the parties merely entered into general stipulations on her testimony. While stipulations regarding prosecution witnesses are allowed, these stipulations must be complete and must establish that the integrity and evidentiary value of the seized items were preserved. At the very least, the stipulations must state that the laboratory personnel documented the chain of custody each time a specimen is handled or transferred until the specimen is disposed. The stipulations must also specify how the seized items were handled, stored, and safeguarded pending its presentation in court.[118]

In his Concurring Opinion, Justice Caguioa pointed out that in *People v. Ubungen*,[119] the Court has laid down the minimum stipulations before the

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[115] Concurring Opinion of Justice Caguioa, p. 12.
[116] *People v. Nocum*, G.R. No. 239905, January 20, 2021.
[117] Dangerous Drugs Board Regulation No. 1 (2002), entitled, "Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment."
[118] See *People v. Plaza*, 839 Phil. 198, 217 (2018).
[119] 836 Phil. 888 (2018).

testimony of the forensic chemist may be dispensed with, *i.e.*, that it "should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist 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."[120] In addition, the stipulations as to the testimony of the forensic chemist should include "the management, storage, and preservation of the illegal drug allegedly seized after its qualitative examination."[121]

However, the stipulations in the present case are bereft of information regarding the condition of the seized items while in PCI Llena's custody and the precautions she undertook to preserve their integrity. Absent any testimony on the management, storage, and preservation after the qualitative examination of the illegal drugs allegedly seized, this again adds doubt whether the fourth link was duly complied with.[122] This unquestionably contributes to doubts on the identity and the integrity of the *corpus delicti*.

In *Mallillin v. People*,[123] the Court explained:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about 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. 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.[124]

Similarly, in *People v. Plaza*,[125] the Court held:

> However, even if the first three (3) links may have been substantially complied with, the fourth link is where the Court takes issue.

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[120] Concurring Opinion of Justice Caguioa, p. 12.
[121] Id. at 13.
[122] *People v. Ubungen*, supra at 902.
[123] Supra note 30.
[124] Id. at 587.
[125] Supra.

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It has been held that there is a gap or break in the fourth link of the chain of custody where there is absence of evidence to show how the seized *shabu* was handled, stored, and safeguarded pending its presentation in court. In some instances, when the stipulation failed to identify who received the *shabu* at the crime laboratory and who exercised custody and possession before and after it was examined, the Court similarly considered that there was a gap in the chain of custody. The instant case has stark similarities with the case of *People v. Prudencio*, where the Court noted:

As mentioned previously, PO1 Magora's testimony never touched upon the details on how the seized drugs were turned over to the investigating officer, nor on how it was turned over to the forensic chemist, P/Sr. Insp. Sta. Maria, for laboratory examination. The only pieces of evidence representing the third link in the chain consisted of the letter-requests for laboratory examination and for drug test, and the corresponding chemistry reports issued by P/Sr. Insp. Sta. Maria.

As to the fourth link, when P/Sr. Insp. Sta. Maria was called to the witness stand, the prosecution and the defense decided to enter into a stipulation regarding what P/Sr. Insp. Sta. Maria would be testifying on if he were presented. Yet, all they stipulated was that he would identify the request for laboratory examination, request for drug test, the subject sachets of *shabu*, and the chemistry reports.

These pieces of evidence failed to identify the person who personally brought the seized *shabu* to the Bulacan Provincial Crime Laboratory Office. It also failed to identify who received the *shabu* at the crime laboratory and who exercised custody and possession before and after it was examined. Neither was there evidence to show how the seized *shabu* were handled, stored, and safeguarded pending its presentation in court.

Notably, Section 6, paragraph 8 of Dangerous Drugs Board Regulation No. 2, Series of 2003 requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until the specimen is disposed; it also requires the identification of the individuals participating in the chain. The records are silent regarding compliance with this regulation.

Simply put, serious lapses in the handling of the seized *shabu* as well as the evidentiary gaps or breaks in the chain of custody are fatal to the prosecution's cause. In effect,

> the prosecution failed to fully prove the elements of the crimes charged, creating a reasonable doubt on the criminal liability of the accused.
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> x x x x
>
> Even a painstaking review of the records and transcripts yields no results as to information on the chain of custody between the time PDEA Agent Subang confiscated the subject sachet of drugs up to the time it was presented in court. Though the Chain of Custody Document was presented during PSInsp. Signar's testimony, the same was not identified by any witness. While the document contains the signatures of a certain PO1 Randy Dispo and another recipient of the sachet for "safekeeping," the Court is left to surmise on whether the proper procedure was followed during this intervening period. Clearly, there was no identification of all persons who handled the sachet nor was there testimony as to every relevant link in the chain, nor a showing that all possible safeguards were done by the law enforcement agents to protect the integrity of the evidence, as mandated by law and jurisprudence. This goes against the settled doctrines of this Court requiring these pieces of evidence in the prosecution of drug cases.[126] (Citation omitted)

Clearly, the utter lack of details on the condition and handling of the seized drugs from the period after its examination until the same were brought to the trial court results in a gap in the chain of custody of the seized drugs, thereby casting serious doubt on the identity and integrity of the *corpus delicti*.

In sum, accused-appellant must be acquitted because the elements of the crime of sale and possession of dangerous drugs were not established. In addition, the chain of custody rule was not properly complied with because the inventory and taking of photographs of the seized items did not follow Sec. 21(1) of R.A. No. 9165, as amended. The prosecution likewise cannot benefit from the saving clause under the same law because it failed to establish justifiable reason for the noncompliance with Sec. 21(1), and failed to prove that the integrity and evidentiary value of the seized items were preserved due to doubts over the first and fourth links in the chain of custody.

In convicting accused-appellant, both the RTC and the CA relied so much on the presumption of regularity in the performance of duty of the police officers and the weak defense offered by accused-appellant. However, the presumption of regularity in the conduct of police officers cannot trump the constitutional right to be presumed innocent until proven guilty.[127] Verily, the unjustified procedural lapses committed by the arresting officers in this case militate against a finding of guilt beyond reasonable doubt against accused-

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[126] *People v. Plaza*, supra note 118 at 217-219.
[127] See *People v. Ordiz*, supra note 31 at 174.

appellant, as there is no sufficient safeguard that the integrity and evidentiary value of the *corpus delicti* had not been compromised.[128] Thus, accused-appellant's acquittal is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 29, 2018 of the Court of Appeals, Cebu City in CA-G.R. CR-HC No. 02574, which affirmed the Joint Judgment dated March 28, 2017 of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 30 in Crim. Case Nos. 2015-23066 and 2015-23067, is **REVERSED** and **SET ASIDE**. Accused-appellant Ma. Del Pilar Rosario C. Casa a.k.a. "Marfy Calumpang," "Madam," and "Mah-mah" is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.

The Superintendent of the Correctional Institution for Women, Mandaluyong City is **ORDERED** to **IMMEDIATELY RELEASE** accused-appellant from detention, unless she is being lawfully held in custody for any other reason, and to **INFORM** the Court of the action hereon within five (5) days from receipt of this Decision.

Let entry of judgment be issued immediately.

SO ORDERED.

ALEXANDER G. GESMUNDO
Chief Justice

[128] *People v. Crispo*, 828 Phil. 416, 436 (2018).

WE CONCUR:

See separate opinion

MARVIC M.V.F. LEONEN
Senior Associate Justice

See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

BUT LEFT HIS VOTE
SEE CONCURRING OPINION

RODIL V. ZALAMEDA
Associate Justice

(On Leave)
MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

See separate concurring and dissenting opinion

ANTONIO T. KHO, JR.
Associate Justice

BUT LEFT HER VOTE
(On Leave)
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby 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.

ALEXANDER G. GESMUNDO
Chief Justice