



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 233470

Present:

-versus-

PERALTA, J., *Chairperson*,  
LEONEN,  
REYES, A., JR.,  
HERNANDO, and  
INTING, JJ.

ALAN BANDING y ULAMA,  
Accused-Appellant.

Promulgated:  
August 14, 2019  
*MisD C Batt*

X-----X

DECISION

LEONEN, J.:

The constitutional rights of those who stand to be deprived of life, liberty, and property in a criminal charge involving illegal drugs demand fidelity to the chain of custody rule. To this end, no conviction may ensue where there is reasonable doubt on the confiscated drugs' identity.

This Court resolves an appeal<sup>1</sup> assailing the Court of Appeals Decision.<sup>2</sup> The Court of Appeals upheld the Regional Trial Court Decision<sup>3</sup> finding Alan Banding y Ulama (Banding) guilty beyond reasonable doubt of

<sup>1</sup> *Rollo*, pp. 14–16.

<sup>2</sup> *Id.* at 2–13-A. The Decision dated February 17, 2017 in CA-G.R. CR-HC No. 07900 was penned by Associate Justice Rodil V. Zalameda (now a member of this Court) and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales of the Eleventh Division, Court of Appeals, Manila.

<sup>3</sup> *CA rollo*, pp. 64–75. The Decision dated October 22, 2015 in Criminal Case No. Q-10-166398 was penned by Presiding Judge Felino Z. Elefante of Branch 103, Regional Trial Court, Quezon City.

violating Article II, Section 5 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

An Information was filed before the Regional Trial Court, charging Banding with violation of Article II, Section 5 of Republic Act No. 9165, for the illegal sale of dangerous drugs. It read:

That on or about the 20<sup>th</sup> day of September, 2010, in Quezon City, Philippines, the said accused, without lawful authority did then and there wilfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit: 4.35 (four point thirty five) grams of white crystalline substance containing Methamphetamine Hydrochloride also known as “shabu”, a dangerous drug.

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

On arraignment, Banding pleaded not guilty to the crime charged. Trial then ensued.<sup>5</sup>

The prosecution presented four (4) witnesses: (1) Police Officer 2 Ofelia Inway (PO2 Inway); (2) Senior Police Officer 4 Jose Fernandez (SPO4 Fernandez); (3) PO3 Wilfredo Corona (PO3 Corona); and (4) Police Chief Inspector Maridel Rodis (Chief Inspector Rodis).<sup>6</sup>

According to the prosecution, at around 1:00 p.m. on September 19, 2010, a confidential informant apprised PO2 Inway about the illegal drug activities of a certain “Al.” Acting on the tip, police officers formed a buy-bust team designating PO2 Inway as the poseur-buyer, SPO4 Fernandez as the arresting officer, and PO3 Blanco, PO2 Valdez, and PO3 Palimar as backup. PO2 Inway received ₱27,000.00 as boodle money and, as buy-bust money, two (2) pieces of ₱500.00 bills, on which she placed her initials “OI.”<sup>7</sup>

In the morning of September 20, 2010, the team headed to a Mercury Drug Store branch in Barangay Lagro, Quezon City, where the informant was supposed to meet “Al.” Soon after, a man whom they later identified as Banding arrived. The confidential informant introduced PO2 Inway as a prospective buyer of shabu. PO2 Inway handed the boodle money to Banding and in exchange, Banding gave her a transparent plastic sachet containing white crystalline substance.<sup>8</sup>

---

<sup>4</sup> Id. at 64.

<sup>5</sup> *Rollo*, p. 4.

<sup>6</sup> Id.

<sup>7</sup> Id. at 4 and *CA rollo*, pp. 64–65.

<sup>8</sup> Id. at 5.

Upon receipt of the sachet, PO2 Inway executed the pre-arranged signal, prompting SPO4 Fernandez to arrest Banding. In the same place, PO2 Inway then marked the seized item, “AB-20-09-10.”<sup>9</sup>

To step away from the commotion in the area, the team proceeded to their station in Camp Karingal, Quezon City for the physical inventory. While in transit, PO2 Inway took custody of the seized item.<sup>10</sup>

At the police station, PO2 Inway and SPO4 Fernandez immediately turned over the seized item and the buy-bust money to PO3 Corona. PO3 Corona conducted the physical inventory of the seized item in the presence of Banding, the rest of the buy-bust team, and a media personnel.<sup>11</sup> He also took photographs of Banding, the seized item, and the buy-bust money.<sup>12</sup> He prepared the inventory receipt for “one small heat-sealed transparent plastic sachet containing undetermined quantity of alleged marijuana fruiting tops with marking JS 20-09-10[.] (*sic*)”<sup>13</sup>

PO2 Inway then submitted the seized item, along with requests for laboratory examination and drug tests, to Engineer Leonard M. Jabonillo (Engr. Jabonillo) of the Quezon City Police District Crime Laboratory Station Office 10 in Kamuning, Quezon City.<sup>14</sup>

Engr. Jabonillo’s Chemistry Report No. D-346-2010 indicated that the seized item with marking “AB 20-09-10” yielded positive results for shabu.<sup>15</sup> This was confirmed by Chief Inspector Rodis, the forensic chemist who testified that she reexamined the same specimen upon Engr. Jabonillo’s death.<sup>16</sup> Their reports referred to “one (1) heat-sealed transparent plastic sachet with markings AB 20-09-10 containing 4.35 gms. of white crystalline substance[.] (*sic*)”<sup>17</sup>

Banding testified in his defense. He recalled that in the morning of September 19, 2010, he was waiting for a ride to his sister’s house when a vehicle stopped near him, from which five (5) armed persons alighted. These strangers poked their guns at him and forced him to board their vehicle, accusing him of selling illegal drugs. He was brought to a Mercury Drug Store branch in Lagro, Quezon City, and later to a vacant lot in Novaliches, where they demanded ₱50,000.00 from him.<sup>18</sup>

---

<sup>9</sup> Id. at 5 and CA rollo, p. 65.

<sup>10</sup> Id.

<sup>11</sup> CA rollo, p. 65. PO3 Corona testified that despite his prior request for an elected public official’s presence, no one came to witness the inventory and photographing of the seized drugs.

<sup>12</sup> Rollo, p. 5.

<sup>13</sup> CA rollo, p. 66.

<sup>14</sup> Rollo, pp. 5–6.

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

<sup>16</sup> CA rollo, p. 68.

<sup>17</sup> Rollo, pp. 6 and 10.

<sup>18</sup> CA rollo, pp. 68–69.

Since Banding could not produce the amount, the police officers brought him to Camp Karingal. A police officer, later identified as PO3 Corona, took a photo of him as he was forced to point to a plastic sachet on top of a table. Banding claimed that he complied with the police officers' order out of fear.<sup>19</sup>

In its October 22, 2015 Decision,<sup>20</sup> the Regional Trial Court found Banding guilty of illegal sale of dangerous drugs:

**ACCORDINGLY**, in view of the foregoing, judgment is hereby rendered finding the accused Alan Banding y Ulama @ "Al" **GUILTY** beyond reasonable doubt of the offense charged, and he is hereby sentenced to suffer a jail term of life imprisonment and ordered to pay a fine of Five Hundred Thousand (P 500,000.00) Pesos.

The Branch Clerk of Court is hereby ordered to turn over the subject specimen covered by Chemistry Report No. RD-04-11 to the PDEA Crime Laboratory in order that they be included in its next scheduled date of burning and destruction.

So Ordered.<sup>21</sup> (Emphasis in the original)

Giving credence to the prosecution witnesses' testimonies, the trial court ruled that the prosecution was able to establish that a valid buy-bust operation took place and that the integrity and evidentiary value of the seized item were properly preserved.<sup>22</sup> Among others, it held that a clerical error—particularly, writing marijuana instead of shabu—in the inventory receipt does not tarnish the police officers' credibility.<sup>23</sup> It also found that though the police officers inventoried and photographed the evidence without an elected official and a Department of Justice representative, such lapse was justified since the "illegal drug was never altered or tampered."<sup>24</sup>

On appeal, the Court of Appeals, in its February 17, 2017 Decision,<sup>25</sup> affirmed the Regional Trial Court Decision. It held that "[t]he integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with."<sup>26</sup> Sustaining the presumption of regularity of the police officers, it found that Banding failed to show that they did not properly discharge their duties.<sup>27</sup>

---

<sup>19</sup> Id. at 69.

<sup>20</sup> Id. at 64–75.

<sup>21</sup> Id. at 74–75.

<sup>22</sup> Id. at 74.

<sup>23</sup> Id. at 72.

<sup>24</sup> Id. at 74.

<sup>25</sup> *Rollo*, pp. 2–13-A.

<sup>26</sup> Id. at 11.

<sup>27</sup> Id.

The Court of Appeals modified the penalty:

**WHEREFORE**, premises considered, the instant Appeal is **DENIED** and the Decision dated 22 October 2015 rendered by Branch 103, Regional Trial Court of the Quezon City, is hereby **AFFIRMED with MODIFICATION**, to read as follows:

“X x x

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered finding the accused Alan Banding y Ulama @ “Al” GUILTY beyond reasonable doubt of the offense charged, and he is hereby sentenced to suffer a jail term of life imprisonment and ordered to pay a fine of Five Hundred Thousand (P500,000.00) Pesos **without eligibility for parole.**

X x x”

**SO ORDERED.**<sup>28</sup> (Emphasis in the original)

Thus, Banding filed a Notice of Appeal.<sup>29</sup> The Court of Appeals gave due course to it in an April 24, 2017 Resolution.<sup>30</sup>

On October 9, 2017, this Court required the parties to file their respective supplemental briefs.<sup>31</sup>

Both the Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines,<sup>32</sup> and accused-appellant<sup>33</sup> manifested that they would no longer file supplemental briefs. These were noted by this Court in its February 19, 2018 Resolution.<sup>34</sup>

In his Brief,<sup>35</sup> accused-appellant argues that the police officers should have conducted the inventory and photographing at the place of the arrest. He asserts that although the rules permit flexibility, allowing for the inventory to be done at the nearest police station or the arresting team’s nearest office, the prosecution did not show that Camp Karingal was the nearest police station from where the item was allegedly seized.<sup>36</sup> Moreover, he points out that only a media representative was present with him to witness the inventorying and photographing.<sup>37</sup>

---

<sup>28</sup> Id. at 13.

<sup>29</sup> Id. at 14–16.

<sup>30</sup> Id. at 17.

<sup>31</sup> Id. at 19–20.

<sup>32</sup> Id. at 23–27.

<sup>33</sup> Id. at 28–32.

<sup>34</sup> Id. at 33–34.

<sup>35</sup> CA *rollo*, pp. 41–63.

<sup>36</sup> Id. at 51.

<sup>37</sup> Id. at 52.

Accused-appellant also stresses that Chief Inspector Rodis reexamined the seized item and issued the required certification seven (7) months after the supposed buy-bust operation. He argues that the lack of explanation as to how the seized item was stored and preserved during that period shows “a clear and unexplained break in the chain of custody.”<sup>38</sup>

Finally, accused-appellant claims that the glaring discrepancies between the inventory receipt and the chemistry reports impair the integrity and evidentiary value of the seized item.<sup>39</sup> Since there are nagging doubts on the seized drug’s identity, accused-appellant maintains that his conviction cannot be sustained.<sup>40</sup>

On the other hand, the Office of the Solicitor General counters in its Brief<sup>41</sup> that since the chain of custody was sufficiently established, the integrity and evidentiary value of the seized item were preserved.<sup>42</sup> It maintains that absent clear and convincing evidence of bad faith or ill will, the police officers are presumed to have acted in a regular manner, and their testimonies must be given full faith and credit.<sup>43</sup>

The Office of the Solicitor General underscores that the police officers requested the presence of an elected official, but “due to circumstances not within their control, the police officers were unable to strictly adhere to the said procedure.”<sup>44</sup> Nevertheless, it argues that jurisprudence had sanctioned failure to strictly comply with the requirements under Section 21 of the Comprehensive Dangerous Drugs Act under varied conditions.<sup>45</sup>

As to the discrepancy in the inventory receipt and the chemistry reports, the Office of the Solicitor General asserts that the police officers amply explained that it was a mere clerical error.<sup>46</sup>

For this Court’s resolution is the lone issue of whether or not the discrepancy in the inventory receipt and chemistry reports, as well as the absence of an elective official and a representative from the Department of Justice during the buy-bust operation, warrants accused-appellant Alan Banding y Ulama’s acquittal.

---

<sup>38</sup> Id. at 54.

<sup>39</sup> Id. at 56.

<sup>40</sup> Id. at 59.

<sup>41</sup> Id. at 87–102.

<sup>42</sup> Id. at 95.

<sup>43</sup> Id. at 93.

<sup>44</sup> Id. at 97.

<sup>45</sup> Id.

<sup>46</sup> Id. at 96–97.

This Court grants the appeal and acquits accused-appellant of the charge.

## I

Proof beyond reasonable doubt is required to support a conviction in criminal cases.<sup>47</sup> The prosecution bears the burden of proving beyond reasonable doubt that an accused is guilty of the offense charged. Should it fail, the presumption of innocence prevails and, ultimately, the accused shall be acquitted. Requiring proof beyond reasonable doubt is consistent with our constitutionally guaranteed rights:

This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be “presumed innocent until the contrary is proved.” “Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution.” Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:

We ruled in *People v. Ganguso*:

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction *except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged*. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. *The burden is on the prosecution to prove guilt beyond*

---

<sup>47</sup> RULES OF COURT, Rule 133, sec. 2 provides:

SECTION 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

*reasonable doubt, not on the accused to prove his innocence.*<sup>48</sup> (Emphasis supplied)

To sustain an accused's conviction for the illegal sale of dangerous drugs, the following elements must be established: "(1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence."<sup>49</sup>

On the element of *corpus delicti*, Section 21 of Republic Act No. 9165 establishes the procedural requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia:

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

- (1) The apprehending team having initial custody and control of the drugs shall, *immediately after seizure and confiscation*, physically inventory and photograph the same *in the presence of the accused* or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, *a representative from the media and the Department of Justice (DOJ), and any elected public official* who shall be required to sign the copies of the inventory and be given a copy thereof;
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, *shall be issued within twenty-four (24) hours after the receipt of the subject item/s*: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same *within the next twenty-four (24) hours*[.] (Emphasis supplied)

---

<sup>48</sup> *Macayan, Jr. v. People*, 756 Phil. 202, 213–214 (2015) [Per J. Leonen, Second Division] citing *Basilio v. People of the Philippines*, 591 Phil. 508, 548 (2008) [Per J. Velasco, Jr., Second Division].

<sup>49</sup> *People v. Royol*, G.R. No. 224297, February 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005>> [Per J. Leonen, Third Division] citing *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division].



The exactitude that Section 21 of Republic Act No. 9165 requires was later relaxed through the amendments that Republic Act No. 10640 introduced, particularly as to the required third-party witnesses during the seizure, inventory, and photographing.<sup>50</sup> *Lescano v. People*<sup>51</sup> summarized the present rule:

Moreover, Section 21 (1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (*i.e.*, the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.<sup>52</sup>

Despite such amendment, Section 21 remains couched in a specific, mandatory language that commands strict compliance. The accuracy it requires goes into the covertness of buy-bust operations and the very nature of narcotic substances. In *Mallillin v. People*:<sup>53</sup>

A unique characteristic of narcotic substances is that *they are not readily identifiable* as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, ***a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.***<sup>54</sup> (Emphasis supplied)

Strict compliance with Section 21 ensures observance of the four (4) links in the confiscated item's chain of custody, as enumerated in *People v. Nandi*:<sup>55</sup>

Thus, the following links should be established in the chain of custody of the confiscated item: *first*, the seizure and marking, if

<sup>50</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 520–521 [Per J. Leonen, Third Division].

<sup>51</sup> 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

<sup>52</sup> *Id.* at 475.

<sup>53</sup> 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

<sup>54</sup> *Id.* at 588–589.

<sup>55</sup> 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

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.<sup>56</sup> (Emphasis in the original)

The prosecution must establish these links. Any deviation would cast serious doubts on the identity of the seized item and its “actual connection with the transaction involved and with the parties thereto.”<sup>57</sup>

Accordingly, this Court has ruled in a catena of cases<sup>58</sup> that noncompliance with Section 21’s requirements and the chain of custody rule, without any justifiable reason, is tantamount to a failure to preserve the *corpus delicti*’s integrity and evidentiary value. Without the *corpus delicti*, there is no offense of illegal sale of dangerous drug committed.

## II

Here, the arrest having been effected on September 20, 2010, the applicable law is Republic Act No. 9165, as originally worded.

From the language of Section 21, the mandate to conduct inventory and take photographs “immediately after seizure and confiscation” necessarily means that these shall be accomplished *at the place of arrest*. When this is impracticable, the Implementing Rules and Regulations of Republic Act No. 9165 allows for two (2) other options:

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[.]<sup>59</sup> (Emphasis supplied)

To sanction noncompliance, the prosecution must prove that the inventory was conducted in either practicable place.

Here, the prosecution witnesses testified that the physical inventory and the taking of photographs were conducted in their office<sup>60</sup> in Camp

<sup>56</sup> Id. at 144–145 citing *People v. Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

<sup>57</sup> *People v. Belocura*, 693 Phil. 476, 496 (2012) [Per J. Bersamin, First Division].

<sup>58</sup> See *People v. Belocura*, 693 Phil. 476 (2012) [Per J. Bersamin, First Division]; *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division]; *People v. Caiz*, 790 Phil. 183 (2016) [Per J. Leonen, Second Division]; and *People v. Royol*, G.R. No. 224297, February 13, 2019, <<http://sc.judiciary.gov.ph/2658/5>> [Per J. Leonen, Third Division].

<sup>59</sup> Implementing Rules and Regulations of Republic Act No. 9165 (2002), sec. 21(a).

<sup>60</sup> *CA rollo*, p. 51.

Karingal.<sup>61</sup> They opted to go there for two (2) reasons: (1) because accused-appellant “is a notorious drug pusher”;<sup>62</sup> and (2) because a commotion was brewing at the place of the arrest.<sup>63</sup>

However, there was no showing that Camp Karingal was the nearest police station or office from the Mercury Drug Store branch in Barangay Lagro, where the prohibited drug was allegedly confiscated—much less that it was practical. This Court takes judicial notice that Camp Karingal is *more than a 17-kilometer car ride away* from the place of arrest and seizure.<sup>64</sup> *People v. Que*<sup>65</sup> underscored the immediacy requirement:

What is critical in drug cases is not the bare conduct of inventory, marking, and photographing. Instead, it is the certainty that the items allegedly taken from the accused retain their integrity, even as they make their way from the accused to an officer effecting the seizure, to an investigating officer, to a forensic chemist, and ultimately, to courts where they are introduced as evidence. . . .

Section 21 (1)’s requirements are designed to make the first and second links foolproof. Conducting the inventory and photographing immediately after seizure, exactly where the seizure was done, or at a location as practicably close to it, *minimizes, if not eliminates, room for adulteration or the planting of evidence.*<sup>66</sup> (Emphasis supplied)

Furthermore, the prosecution witnesses testified that only a media representative was present during the physical inventory and the taking of photographs. Although they requested the presence of a barangay official, their invitation was allegedly unheeded.<sup>67</sup> They invoke substantial compliance with the rule, as there was an effort to secure the attendance of an elected official.<sup>68</sup>

Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 sanctions noncompliance when there are justifiable grounds:

Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team,

<sup>61</sup> Id. at 65.

<sup>62</sup> Id. at 67.

<sup>63</sup> Id. at 66.

<sup>64</sup> See Google Maps, Distance from “Mercury Drug - Lagro Hilltop Branch, Quirino Hwy, Novaliches, Quezon City, Metro Manila” to Camp Karingal, <[<sup>65</sup> \*People v. Que\*, G.R. No. 212994, January 31, 2018, 853 SCRA 487 \[Per J. Leonen, Third Division\].](https://www.google.com/maps/dir/Mercury+Drug++Lagro+Hilltop+Branch,+Quirino+Hwy,+Novaliches,+Quezon+City,+Metro+Manila/Camp+Caringal,+Makadios,+Diliman,+Quezon+City,+Metro+Manila/@14.6650505,121.0133635,12.38z/data=!4m13!4m12!1m5!1m1!1s0x3397b071c9a9bd8d:0x2bb8b5b87b3eeacc!2m2!1d121.069924!2d14.7355884!1m5!1m1!1s0x3397b79dc59944ab:0xeb3c459ee2a42dc3!2m2!1d121.0631857!2d14.638139>.”</a></p>
</div>
<div data-bbox=)

<sup>66</sup> Id. at 518–519.

<sup>67</sup> *Rollo*, p. 5.

<sup>68</sup> *CA rollo*, p. 97.

shall not render void and invalid such seizures of and custody over said items[.]

From these, the prosecution must establish two (2) requisites: “first, the prosecution must specifically allege, identify, and prove ‘justifiable grounds’; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved.”<sup>69</sup>

*People v. Lim*<sup>70</sup> enumerates some justifiable grounds:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) *earnest efforts* to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.<sup>71</sup> (Emphasis supplied, citation omitted)

While the list in *Lim* is not exclusive, it illustrates excusable instances. To justify the arresting officers’ deviation from Section 21’s requirements, the prosecution must prove that they exerted *earnest efforts* to comply.

This Court underscores that this was not a spontaneous arrest, but rather, a pre-planned and organized buy-bust operation. Yet, even the arresting team’s supposed attempt to secure the presence of a barangay official remained *unsubstantiated* at this stage. Self-serving guarantees that they exerted effort shall not be sanctioned. There was also no such effort to secure a Department of Justice representative at all.

Additionally, the prosecution itself admitted that accused-appellant did not sign the inventory receipt.<sup>72</sup> This casts doubt that the dangerous drug allegedly seized from accused-appellant was the same drug delivered to PO3 Corona for documentation.

---

<sup>69</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 523 [Per J. Leonen, Third Division].

<sup>70</sup> G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>> [Per J. Peralta, En Banc].

<sup>71</sup> *Id.*

<sup>72</sup> *CA rollo*, p. 66.

Further destroying the prosecution's case is the lack of proof as to how the prosecution handled the seized item for *seven (7) months after confiscation*. It is not for this Court to speculate on how the law enforcers dealt with the seized item during this appreciable amount of time until Chief Inspector Rodis reexamined it.

We cannot dismiss as mere "clerical error" the discrepancies between the inventory receipt and chemistry reports. The inventory receipt labeled the seized item as marijuana, while the chemistry reports indicate it was shabu. Irregularities are also glaring in the marking and the weight of the seized item—all of which are utterly inexcusable and cast serious doubts on the origin of the item supposedly confiscated from accused-appellant.

To recall, the inventory receipt indicated that the officers seized "*one (1) pc of small heat sealed transparent plastic sachet containing undetermined quantity of alleged dried marijuana fruiting tops, with JS 20-09-1 marking[,] (sic)*"<sup>73</sup> while the chemistry reports refer to "*one (1) heat-sealed transparent plastic sachet with markings AB 20-09-10 containing 4.35 gms. of white crystalline substance[,] (sic)*"<sup>74</sup>

SPO4 Fernandez attempted to defend these fatal infirmities when he testified: "*Nagkamali po yung investigator sir. Nagkasabay kami sa paggawa ng papeles sa crime lab kaya yung word na shabu siguro sa computer naisulat na marijuana.*"<sup>75</sup> There was no word on the different markings. He even admitted signing the documents presented by PO3 Corona without reading them.<sup>76</sup>

The prosecution's contention that all of these are mere clerical errors, along with its insistence on the presumption of regularity,<sup>77</sup> is patently unmeritorious and deserves scant consideration. The discrepancies are blatant irregularities that cast serious doubts on the seized items' identity. They completely defeat the police officers' self-serving assertions that the integrity and evidentiary value of the seized drug were preserved.

Gross irregularities like these cannot be downplayed as mere clerical errors. Nor can the prosecution find solace in a blanket invocation of the presumption of regularity in the conduct of the officers' duties. As elucidated in *People v. Kamad*:<sup>78</sup>

Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of

---

<sup>73</sup> *Rollo*, p. 10.

<sup>74</sup> *Id.*

<sup>75</sup> *CA rollo*, p. 67.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 97.

<sup>78</sup> 624 Phil. 289 (2010) [Per J. Brion, Second Division].

its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. *The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.* In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined *shabu* and that formally offered in court cannot but lead to serious doubts regarding the origins of the *shabu* presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the *corpus delicti* without which the accused must be acquitted.<sup>79</sup> (Emphasis supplied, citation omitted)

This Court, as the last bastion of civil liberties, cannot sanction gross violations of the law's requirements. We reiterate that the burden rests on the prosecution to prove an accused's guilt beyond reasonable doubt, not on the accused to prove his or her innocence. Here, absent proof of accused-appellant's guilt beyond reasonable doubt, acquittal ensues.

**WHEREFORE**, the Court of Appeals' February 17, 2017 Decision in CA-G.R. CR-HC No. 07900 is **REVERSED** and **SET ASIDE**. Accused-appellant Alan Banding y Ulama is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action he has taken within five (5) days from receipt of this Decision. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

**SO ORDERED.**

  
MARVIC M.V.F. LEONEN  
Associate Justice

---

<sup>79</sup> Id. at 311.

WE CONCUR:



**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

*Reyes*  
**ANDRES B. REYES, JR.**  
Associate Justice



**RAMON PAUL L. HERNANDO**  
Associate Justice

*Inting*  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

**CERTIFICATION**

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

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
Chief Justice