



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 221457  
Plaintiff-appellee,

Present:

-versus-

LEONEN, J., *Chairperson*,  
GISMUNDO,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

GILBERT SEBILLEN y  
CASABAR, Accused-appellant.

Promulgated:  
January 13, 2020  
Mi s-PDC B-ff

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DECISION

LEONEN, J.:

Just because a community outside of Mindanao is predominantly Muslim does not mean that it should be considered presumptively “notorious.” It is this type of misguided, unfortunately uneducated, cultural stereotype that has caused internal conflict and inhumane treatment of Filipinos of a different faith from the majority.

Conviction in cases involving dangerous drugs cannot be sustained if there is persistent doubt on the drug’s identity.<sup>1</sup> This Court will not be a party to using a worn out prejudice to justify noncompliance with Section 21 of Republic Act No. 9165.

We acquit.

<sup>1</sup> *People v. Lorenzo*, 633 Phil. 393 (2010) [Per J. Perez, Second Division].

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For this Court's resolution is an appeal challenging the Decision<sup>2</sup> of the Court of Appeals, which affirmed *in toto* the Decision<sup>3</sup> of the Regional Trial Court. The courts found accused-appellant Gilbert Sebilleno y Casabar (Sebilleno) guilty beyond reasonable doubt of violating Article II, Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Two (2) separate Informations for violating the Comprehensive Dangerous Drugs Act of 2002 were filed against Sebilleno and Kyle Enrique y Damba (Enrique).

The charge for the illegal sale of dangerous drugs against Sebilleno, read:

That on or about *the 4<sup>th</sup> day of June, 2008*, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully and unlawfully sell, trade, deliver and give away to another Methylamphetamine [sic] Hydrochloride, a dangerous drug, weighing **0.16 gram**, contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.<sup>4</sup> (Emphasis in the original)

The charge for the illegal possession of dangerous drugs against Enrique, read:

That on or about the *4<sup>th</sup> day of June, 2008*, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully have in his possession, custody and control Methylamphetamine[sic] Hydrochloride, a dangerous drug, weighing **0.07 gram**, contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.<sup>5</sup>

When arraigned on June 27, 2008, Sebilleno and Enrique pleaded not guilty to the crimes charged.<sup>6</sup> During the February 12, 2010 pre-trial conference, the following were admitted:

1. The identity of the accused Gilbert Sebillano [sic] y Casabar as the same person charged in criminal case no. 08-399;

<sup>2</sup> *Rollo*, pp. 2–20. The January 26, 2015 Decision was penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela of the Eighth Division, Court of Appeals, Manila.

<sup>3</sup> *CA rollo*, pp. 59–74. The September 30, 2013 Decision was penned by Presiding Judge Juanita T. Guerrero of the Regional Trial Court of Muntinlupa, Branch 204.

<sup>4</sup> *Rollo*, p. 6.

<sup>5</sup> *Id.*

<sup>6</sup> *CA rollo*, pp. 60.

2. That this Court has jurisdiction over the persons of the accused and over this case;
3. That P/Chief Insp. Maridel Cuadra Rodis is the Forensic Chemist connected with the PNP Crime Laboratory, Camp Crame, Quezon City as of June 04, 2008 and that she is an expert in Forensic Chemistry;
4. That pursuant to the Request for Laboratory Examination she conducted the same on the accompanying specimens which consist of two (2) heat-sealed transparent plastic sachets with markings "GSC" and "KE" containing yellowish substance suspected as shabu;
5. The existence and due execution of the Request for Laboratory Examination and of the Physical Science Report No. D-228-08.<sup>7</sup>

Joint trial then ensued.<sup>8</sup>

The prosecution presented two (2) witnesses, namely: (1) Police Officer 1 Domingo Julaton III (PO1 Julaton), and (2) Police Officer 1 Elbert Ocampo (PO1 Ocampo).<sup>9</sup> For the defense, Sebilleno and his son, Gilbert Nano Sebilleno, Jr., took the witness stand.<sup>10</sup>

According to the prosecution, at around 9:00 a.m. on June 4, 2008, Police Superintendent Alfredo Valdez (P/Supt. Valdez) instructed PO1 Ocampo and PO1 Julaton to conduct a surveillance against a certain "Boy Trolly," who was reported to be selling illegal drugs in Purok 7-C, Kalentong, Barangay Alabang, Muntinlupa City.<sup>11</sup>

Police Senior Inspector Ariel Sanchez (PSI Sanchez), designated poseur-buyer PO1 Julaton, and back-up PO1 Ocampo, formed a team to conduct a buy-bust operation. The team, together with the confidential informant, arrived at the target site at around 2:15 p.m.<sup>12</sup>

PO1 Julaton and the confidential informant proceeded to a nearby alley. The informant pointed at "Boy Trolly," later identified as Sebilleno, who was then talking to Enrique in front of a store.<sup>13</sup>

When PO1 Julaton and the informant reached the store, the informant greeted Sebilleno<sup>14</sup> and introduced PO1 Julaton as a "*balikbayan*" friend who wanted to buy shabu.<sup>15</sup> Sebilleno replied, "[*t*]amang-tama at may

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<sup>7</sup> Id. at 60-61.

<sup>8</sup> Id. at 61.

<sup>9</sup> Id. The Court of Appeals Decision incorrectly wrote "Police Officer 2" for Ocampo and Julaton, see *rollo*, p. 3.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id. at 4.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> CA *rollo*, p. 62.

*natira pa akong isang 'kasang shabu' dito na tag limang daan at nakuha na rin nitong si Kyle yong isa pang kasa."*<sup>16</sup>

PO1 Julaton passed the marked ₱500.00 bill with serial number JX777664 to Sebilleno, who, in exchange, gave him a small plastic sachet containing white crystalline substance. Upon receipt of the sachet, PO1 Julaton performed the pre-arranged signal for the team by scratching his head.<sup>17</sup>

PO1 Julaton then grabbed Sebilleno's right hand, which held the marked money, and arrested him.<sup>18</sup> PO1 Ocampo arrested Enrique and recovered from him a plastic sachet that he previously purchased from Sebilleno.<sup>19</sup> The officers apprised Sebilleno and Enrique of their constitutional rights. Afterwards, PO1 Julaton marked the sachet Sebilleno handed to him with the latter's initials, "GSC," while the sachet seized from Enrique was marked "KE."<sup>20</sup>

PO1 Julaton kept the sachet bought from Sebilleno, while PO1 Ocampo retained the sachet seized from Enrique.<sup>21</sup> Sebilleno and Enrique were brought to the police station, where PO1 Julaton conducted the inventory and took photographs of the seized items. Raquel L. Dilao, a local government employee, witnessed the inventory and taking of photographs.<sup>22</sup> PO1 Julaton prepared the Request for Laboratory Examination of the sachets.<sup>23</sup>

At 7:15 p.m., PO1 Julaton submitted the seized items to the PNP Crime Laboratory for examination.<sup>24</sup> Sebilleno and Enrique were also subjected to a drug test. The laboratory examination of the sachets was found positive for shabu. Sebilleno's drug test and Enrique's urine sample respectively yielded positive and negative results for the presence of dangerous drugs.<sup>25</sup>

Testifying in his defense, Sebilleno denied the charge. He claimed that around 7:00 a.m. to 8:00 am on June 4, 2008, he was sleeping at home when his son woke him up and told him that there were two (2) men waiting outside. He asked the men who they were looking for. The men, whom he later identified as "Genova" and PO1 Julaton, asked who he was. He replied and identified himself as Boy Sebilleno. PO1 Julaton allegedly pointed a

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<sup>16</sup> Id.

<sup>17</sup> *Rollo*, p. 4.

<sup>18</sup> Id.

<sup>19</sup> Id. at 5.

<sup>20</sup> Id.

<sup>21</sup> *Rollo*, p. 5.

<sup>22</sup> *CA rollo*, p. 63.

<sup>23</sup> *Rollo*, p. 5.

<sup>24</sup> Id.

<sup>25</sup> Id. at 6.

gun at him and forced him to say that he was “Boy Trolley.” Sebilleno refused, and was subsequently hit in the stomach with PO1 Julaton’s gun. He asked Genova and PO1 Julaton what crime he committed, but he was ignored.<sup>26</sup>

Thereafter, Sebilleno was forced to ride the police vehicle and was brought to the police station.<sup>27</sup> He was incarcerated and informed that he was being charged with illegal sale of drugs.<sup>28</sup>

In its September 30, 2013 Decision,<sup>29</sup> the Regional Trial Court found Sebilleno guilty beyond reasonable doubt of illegal sale of dangerous drugs, punished under Section 5 of the Comprehensive Dangerous Drugs Act. On the other hand, Enrique was acquitted for insufficiency of evidence.

The Regional Trial Court, upon evaluation of the evidence, found “no ill motive or bad faith on the part of the arresting officers to concoct the allegations contained in their affidavit.”<sup>30</sup> Thus, the police officers’ testimonies deserve full faith and credit.<sup>31</sup> The dispositive portion of the Decision read:

WHEREFORE, premises considered and finding the accused GILBERT SEBILLEN0 y CASABAR, guilty beyond reasonable doubt, he is sentenced to LIFE IMPRISONMENT and to pay a FINE of PHP 500,000.00. The preventive imprisonment undergone by said accused shall be credited in his favor.

As regards the other accused, KYLE ENRIQUE y DAMBA, for insufficiency of evidence, he is ACQUITTED of the crime charged. The warrant of arrest issued against him is hereby lifted and set aside without prejudice to the liability of the bondsman for its failure to produce him when required by the court to do so.

The drug evidence are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.<sup>32</sup>

In its January 26, 2015 Decision,<sup>33</sup> the Court of Appeals affirmed Sebilleno’s conviction *in toto*. It likewise gave credence to the police officers’ testimonies and found that they were “replete with material details showing the elements of the crime[.]”<sup>34</sup> It ruled that the presumption that

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<sup>26</sup> *CA rollo*, p.64.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 65.

<sup>29</sup> *Id.* at 59–74.

<sup>30</sup> *Id.* at 69–70.

<sup>31</sup> *Id.* at 70.

<sup>32</sup> *Id.* at 74.

<sup>33</sup> *Rollo*, pp. 2–20.

<sup>34</sup> *Id.* at 11.

official duty was regularly performed was not overcome.<sup>35</sup>

The Court of Appeals held that Republic Act No. 9165 “admits of exceptions and need not be followed with pedantic rigor.”<sup>36</sup> Ruling that what is essential is the preservation of the seized items’ integrity, it excused the absence of the witnesses during inventory since “*tanods*” were afraid to witness in Barangay Alabang.<sup>37</sup> The dispositive portion of its Decision read:

**WHEREFORE**, the trial court’s Judgment dated September 30, 2013 convicting accused-appellant of violation of Section 5, Article II, RA No. 9165 is affirmed in toto.

**SO ORDERED.**<sup>38</sup> (Emphasis in the original)

Thus, Sebilleno filed his Notice of Appeal.<sup>39</sup> Giving due course to his appeal per its March 4, 2015 Resolution,<sup>40</sup> the Court of Appeals elevated<sup>41</sup> the case records to this Court.

In its January 27, 2016 Resolution,<sup>42</sup> this Court noted the case records and informed the parties that they may file their supplemental briefs.

Accused-appellant<sup>43</sup> and the Office of the Solicitor General<sup>44</sup> filed their respective Manifestations stating that they will no longer file a supplemental brief. These were noted by this Court in its June 8, 2016<sup>45</sup> and July 25, 2016 Resolutions.<sup>46</sup>

In its January 27, 2016 Resolution,<sup>47</sup> this Court noted the records of this case and directed the parties to file their respective supplemental briefs.

Both accused-appellant<sup>48</sup> and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General,<sup>49</sup> manifested that they would no longer file supplemental briefs. These were noted by this Court in its November 8, 2017 Resolution.<sup>50</sup>

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<sup>35</sup> Id. at 15.  
<sup>36</sup> Id. at 18.  
<sup>37</sup> Id. at 19.  
<sup>38</sup> Id. at 20.  
<sup>39</sup> Id. at 21.  
<sup>40</sup> Id. at 24.  
<sup>41</sup> Id. at 1.  
<sup>42</sup> Id. at 26.  
<sup>43</sup> Id. at 34–38.  
<sup>44</sup> Id. at 28–33.  
<sup>45</sup> Id. at 39–40.  
<sup>46</sup> Id. at 41.  
<sup>47</sup> Id. at 26–27.  
<sup>48</sup> Id. at 34–38.  
<sup>49</sup> Id. at 28–33.  
<sup>50</sup> Unpaginated.

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In his brief before the Court of Appeals,<sup>51</sup> accused-appellant asserts that the Court of Appeals erred in affirming his conviction despite the prosecution's failure to prove an unbroken chain of custody. The inventory was done in the police station, and the copy was neither signed by accused-appellant nor his representative or counsel. Likewise, there were no signatures from representatives from the media and the Department of Justice (DOJ), or any elected public official.<sup>52</sup>

Accused-appellant also argues that the nonpresentation of Police Chief Inspector Maridel Cuadra Rodis (PCI Rodis), the police officer who allegedly received the specimen for examination, casts doubt on the identity and integrity of the seized items.<sup>53</sup>

On the other hand, the Office of the Solicitor General maintains in its Brief<sup>54</sup> that failure to comply with the requirements of Republic Act No. 9165 is not fatal to the prosecution of illegal sale of dangerous drugs as long as the integrity of the seized drugs is preserved. It avers that the testimonies of PO1 Julaton and PO1 Ocampo duly established the chain of custody, hence, the seized drug from the accused was the same drug presented in court.<sup>55</sup> It claims that failure to present the concerned forensic chemist is immaterial since the Chemistry Report yielded positive results for shabu.<sup>56</sup>

The Solicitor General justifies the police officers' conduct of the inventory in the police station rather than at the place of arrest, since "the apprehending team would be putting their lives in peril considering that the area where the buy-bust operation was conducted is a notorious Muslim community."<sup>57</sup>

For this Court's resolution is the lone issue of whether or not accused-appellant Gilbert Sebilleno y Casabar is guilty beyond reasonable doubt of violating Article II, Section 5 of the Comprehensive Dangerous Drugs Act.

This Court grants the appeal and acquits accused-appellant.

## I

The elements to sustain convictions for violation of Section 5 of the Comprehensive Dangerous Drugs Act, or the illegal sale of dangerous drugs are "(1) proof that the transaction or sale took place and (2) the presentation

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<sup>51</sup> CA rollo, pp. 38–58.

<sup>52</sup> CA Rollo, p. 53.

<sup>53</sup> Id. at 48.

<sup>54</sup> Id. at 85–105.

<sup>55</sup> Id. at 101.

<sup>56</sup> Id. at 97.

<sup>57</sup> Id. at 99.

in court of the *corpus delicti* or the illicit drug as evidence.”<sup>58</sup> The prosecution must prove with moral certainty the *corpus delicti*.<sup>59</sup>

It is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt. Its identity and integrity must be proven to have been safeguarded. Aside from proving the elements of the charges, the fact that the substance illegally possessed and sold was the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. The chain of custody carries out this purpose as it ensures that unnecessary doubts concerning the identity of the evidence are removed.<sup>60</sup> (Citations omitted)

Contrary to the Solicitor General’s position, the police officers’ testimonies are not enough to prove that the confiscated item from the accused was the same drug presented in court. *Mallilin v. People*<sup>61</sup> explained:

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>62</sup> (Emphasis supplied)

The nature of narcotic substances necessarily entails heightened scrutiny. Further, “the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small.”<sup>63</sup> Here, allegedly seized from the accused-appellant was 0.16 gram of suspected shabu.<sup>64</sup> Thus, we employ the heightened scrutiny which *Mallillin* espoused in evaluating evidence.

<sup>58</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 500 [Per J. Leonen, Third Division] citing *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division]; *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division]; and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per J. Tinga, Second Division].

<sup>59</sup> *People v. Sagana*, 815 Phil. 356, 367 (2017) [Per J. Leonen, Second Division] citing *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

<sup>60</sup> *Id.* at 367–368 citing *Lopez v. People*, 725 Phil. 499, 507 (2014) [Per J. Perez, Second Division]; *People v. Lagahit*, 746 Phil. 896, 908 (2014) [Per J. Perez, First Division]; and *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

<sup>61</sup> 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

<sup>62</sup> *Id.* at 588–589.

<sup>63</sup> *Id.* at 588.

<sup>64</sup> *Rollo*, p. 6.



**II**

Section 21 of the Comprehensive Dangerous Drugs Act, as originally worded, provides the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia:

- (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)

*Lescano v. People*<sup>65</sup> summarized the requisites under Section 21 (1), as amended by Republic Act No. 10640:

As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be “immediately after seizure and confiscation.” As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.

Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons

<sup>65</sup> 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

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>66</sup>

Noncompliance with Section 21 casts doubt on the integrity of the *corpus delicti*, and essentially, on accused's guilt.<sup>67</sup> Considering that the constitutional presumption of innocence mandates proof beyond reasonable doubt,<sup>68</sup> "conviction cannot be sustained if there is a persistent doubt on the identity of the drug."<sup>69</sup> Acquittal thus, ensues.

Here, the prosecution failed to show the apprehending officers' strict compliance with Section 21.

First, Racquel L. Dilao, a local government employee, witnessed the inventory and taking of photographs of the seized items.<sup>70</sup> Second, none of the three (3) people required by Section 21(1), as originally worded,<sup>71</sup> was present.

The prosecution has "the positive duty to establish that *earnest efforts* were employed in contacting the representatives enumerated under Section 21 (1) of [Republic Act No.] 9165, or that *there was a justifiable ground* for failing to do so."<sup>72</sup> *People v. Mendoza*<sup>73</sup> stressed the third-party witnesses' insulating presence in securing the custody of the seized items:

Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of shabu that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.<sup>74</sup>

<sup>66</sup> Id. at 475.

<sup>67</sup> *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

<sup>68</sup> *Macayan v. People*, 756 Phil. 202, 213 (2015) [Per J. Leonen, Second Division], citing CONST. art. III, sec. 1; CONST. art. III, sec. 14 (2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac v. People*, 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

<sup>69</sup> *People v. Lorenzo*, 633 Phil. 393 (2010) [Per J. Perez, Second Division].

<sup>70</sup> *CA Rollo*, p. 63.

<sup>71</sup> The buy-bust operation was conducted in 2008, prior to Republic Act No. 10640's amendment. Thus, what applies is Republic Act No. 9165 as originally worded.

<sup>72</sup> *People v. Umipang*, 686 Phil. 1024, 1053 (2012) [Per J. Sereno, Second Division].

<sup>73</sup> 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

<sup>74</sup> Id. at 764.

This Court has previously held that attendance of third-party witnesses must be secured as early as the actual seizure of the items, and not only during inventory and taking of photographs.<sup>75</sup>

PO1 Julaton attempted to justify the presence of a local government employee, instead of an elected public official. The “*barangay tanods*” in Barangay Alabang allegedly refused to witness the inventory out of fear.<sup>76</sup> However, PO2 Julaton did not explain why the apprehending officers could not have asked other elected public officials to witness the inventory and photographing.

Worse, the prosecution failed to prove that earnest efforts were employed in securing the presence of the other two (2) witnesses from the media and the Department of Justice. No justification was proffered to excuse the law enforcers’ deviation from the law’s simple requirements.

Second, Section 21 directs the conduct of inventory and taking of photographs “immediately after seizure and confiscation.” *People v. Que*<sup>77</sup> explained that these must be done *at the place of arrest*:

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>78</sup> (Emphasis supplied)

The Implementing Rules allow the conduct of inventory of the seized items and taking of photographs “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.”<sup>79</sup> Deviations from the law may be excused, but the prosecution must plead and prove a justifiable ground.<sup>80</sup>

The Solicitor General averred that inventory was conducted in the

<sup>75</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 520–521 [Per J. Leonen, Third Division].

<sup>76</sup> *Rollo*, p. 19.

<sup>77</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per J. Leonen, Third Division].

<sup>78</sup> *Id.* at. 518–519.

<sup>79</sup> Implementing Rules and Regulations of Republic Act No. 9165 (2002), sec. 21(a).

<sup>80</sup> *People v. Holgado*, 741 Phil. 78, 98 (2014) [Per J. Leonen, Third Division].

police station, because “the apprehending team would be putting their lives in peril considering that the area where the buy-bust operation was conducted is a *notorious Muslim community*.”<sup>81</sup>

*The Office of the Solicitor General, which represents no less than the Government of the Philippines in a number of legal matters,<sup>82</sup> ought to be circumspect in its language. This averment from the Solicitor General exhibits biased, discriminatory, and bigoted views; unbecoming of a public official mandated to act with justice and sincerity, and who swore to respect the rights of persons.<sup>83</sup> This is the kind of language that diminishes the public’s trust in our state agents. These are the words that when left unguarded, permeate in the public’s consciousness, encourage further divide and prejudices against the religious minority, and send this country backward.*

*We cannot condone this.*

*As stressed, the prosecution must not only plead, but also prove an excusable ground. This Court fails to see how a Muslim community can be threatening or dangerous, that would put our law enforcers’ lives to peril. The Solicitor General’s colorful choice of word, “notorious,” does not inspire confidence either.*

Third, the prosecution failed to present as witness PCI Rodis, the police officer who received the specimen for laboratory examination.<sup>84</sup>

This Court acquitted the accused-appellant in *People v. Sagana*<sup>85</sup> when it found that the persons who handled the seized items were not presented as witnesses, without ample explanation:

The prosecution has the “burden of establishing the identity of the seized items.” Considering the sequence of the people who have dealt with the confiscated articles, the prosecution failed to justify why three (3) other significant persons were not presented as witnesses. These persons were the desk officer who supposedly recorded the incident in the police blotter, the investigator who prepared the request for examination, and *the police officer who received the articles in the laboratory*. “In effect, there is no reasonable guaranty as to the integrity of the exhibits inasmuch as it failed to rule out the possibility of substitution of the exhibits, which cannot but inure to its own detriment.”<sup>86</sup> (Emphasis supplied, citations omitted)

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<sup>81</sup> CA rollo, p. 99.

<sup>82</sup> Adm. Order No. 130 (1994).

<sup>83</sup> Republic Act No. 6713 (1989), sec. 4 (c).

<sup>84</sup> CA rollo, p. 48.

<sup>85</sup> 815 Phil. 356 (2017) [Per J. Leonen, Second Division].

<sup>86</sup> Id. at 376.

PO1 Julaton's testimony that the confiscated items were turned over to PCI Rodis is insufficient. Jurisprudence requires that the police officer who received the articles in the laboratory testify in court.<sup>87</sup> Neither does the Chemistry Report suffice.

### III

The Regional Trial Court and the Court of Appeals' reliance on the presumption of regularity in the performance of the law enforcers' official duty is misplaced. We clarified in *People v. Kamad*<sup>88</sup> that:

Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of 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>89</sup> (Emphasis supplied, citation omitted)

There were persistent doubts in the origins of the drugs supposedly seized from accused-appellant. The absence of the required witnesses during seizure, marking, inventory, and taking of photographs, along with the police officers' failure to conduct these at the place of arrest, and their nonpresentation of material witnesses who handled the items; and, lastly, their utter failure to justify these blatant lapses, reveal a seriously compromised chain of custody. Taken together, these instances raise doubt on the integrity of the confiscated items and, ultimately, on the commission of the crime.

This Court is, thus, constrained to acquit accused-appellant. However, we echo this Court's declarations in *People v. Holgado*:<sup>90</sup>

<sup>87</sup> Id.

<sup>88</sup> 624 Phil. 289 (2010) [Per J. Brion, Second Division].

<sup>89</sup> Id. at 311.

<sup>90</sup> 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial “big fish.” We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.<sup>91</sup>

**WHEREFORE**, the Court of Appeals’ January 26, 2015 Decision in CA-G.R. CR-HC No. 06441 is **REVERSED and SET ASIDE**. Accused-appellant Gilbert Sebilleno y Casabar 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 the action he has taken to this Court 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.

The Regional Trial Court is directed to turn over the seized sachets of methamphetamine hydrochloride to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of final judgement be immediately issued.

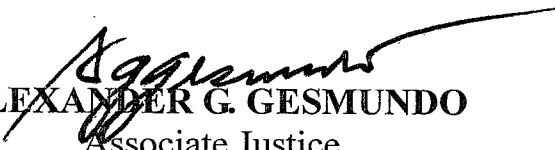
**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

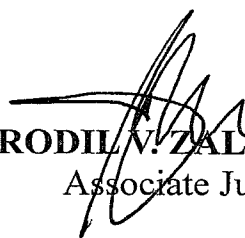
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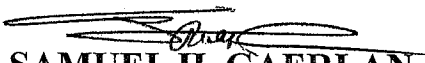
<sup>91</sup> Id. at 100.

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

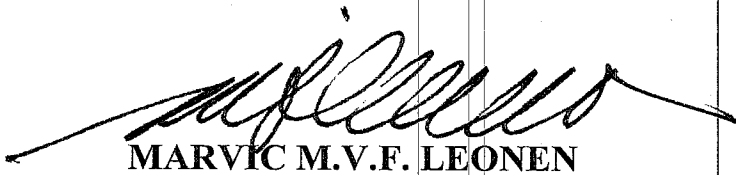
  
**ROSMARI D. CARANDANG**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

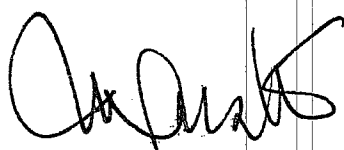
**ATTESTATION**

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.

  
**MARVIC M.V.F. LEONEN**  
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.

  
**DIOSDADO M. PERALTA**  
Chief Justice

