



Republic of the Philippines  
**Supreme Court**  
 Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES  
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PEOPLE OF THE PHILIPPINES,  
 Plaintiff-Appellee,

G.R. No. 248010

Present:

CAGUIOA, *Acting Chairperson*  
 REYES, J. JR.,  
 LAZARO-JAVIER,  
 INTING,\* and  
 LOPEZ, JJ.

- versus -

HENRY SORIANO y SORIANO,  
 Accused-Appellant.

Promulgated:

SEP 08 2020

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**DECISION**

**REYES, J. JR., J.:**

This resolves the appeal filed by Henry Soriano y Soriano (accused-appellant) from the Decision<sup>1</sup> dated September 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09035 affirming the Decision of the Regional Trial Court (RTC), Branch 8, La Trinidad, Benguet, in Criminal Case No. 10-CR-8284 finding him guilty beyond reasonable doubt of violation of Section 5, Article II, Republic Act (R.A.) No. 9165,<sup>2</sup> otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

\* Designated additional member in lieu of Chief Justice Diosdado M. Peralta per Raffle dated March 16, 2020.

<sup>1</sup> Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan; *rollo*, pp. 3-26.

<sup>2</sup> AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

8

### The Antecedents

Accused-appellant was charged before the RTC for violating Section 5, Article II of R.A. No. 9165, *viz.*:

That on or about the 10<sup>th</sup> day of December, 2010, at Buyagan, Poblacion, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully, and knowingly possess, control, sell and deliver 0.04 grams of methamphetamine hydrochloride also known as “[*shabu*,]” a dangerous drug, to **SPO11 RAYMOND B. TACIO**, a personnel of the Philippine National Police, in violation of said law.

#### CONTRARY TO LAW.<sup>4</sup>

Upon arraignment, accused-appellant pleaded “not guilty.” Thereafter, pre-trial and trial on the merits ensued.

The facts, as found by the CA, are as follows:

At around 2:00 in the afternoon of December 10, 2010, a confidential informant went to the Philippine National Police (PNP) Special Operations Unit-Regional Anti-Illegal Drugs Special Operation Task Group (SOU-RAIDSOTG) at Camp Bado Dangwa, La Trinidad, Benguet and informed Chief, P/SUPT. Glenn Lonogan, about the illegal drug activities of one “Henry Soriano” who could “dispense at any time his stuff ‘*Shabu*’ to any prospective buyer.” According to the informant, he transacted with “Henry Soriano” for the sale of ₱500 pesos worth of “*shabu*” while en route to the PNP SOU-RAIDSOTG Office, and “Henry Soriano” agreed to meet him near Buyagan Elementary School at Buyagan, La Trinidad, Benguet at 4:00 p.m. that day.<sup>5</sup>

P/SUPT. Glenn Lonogan thereafter formed a buy-bust team, with PSI Melchor Ong as team leader, SPO4 Romeo Abordo and SPO4 Nicolas Luna as backup operatives, SPO2 Benedict Calado as driver, PO2 Christian Boado as photographer and SPO2 Raymond Tacio as *poseur-buyer*. At the briefing, the informant described “Henry Soriano” as someone between 40 to 45 years of age, of medium built, with fair complexion and slightly curly hair. SPO2 Raymond Tacio was given a ₱500 bill to be used as buy-bust money and it was agreed that he would grab the suspect’s hand as pre-arranged signal that he had completed the purchase. The ₱500 bill to be used as buy-bust money was photocopied and the photocopy was authenticated and subscribed by City Prosecutor Elmer Sagsago.<sup>6</sup>

<sup>4</sup> Id. at 8.

<sup>5</sup> Id. at 4.

<sup>6</sup> Id.

Before going to the target area, police operatives coordinated with the Philippine Drug Enforcement Agency (PDEA) and the Coordination Form signed by P/SUPT. Glenn Lonogan for the operation to be conducted by the buy-bust team, was given control number 12-10-S3. The team, accompanied by the confidential informant, proceeded to Buyugan Elementary School on board an L-300 Van. SPO2 Raymond Tacio and the confidential informant waited at the street beside Buyugan Elementary School, while the other police officers positioned themselves strategically within viewing distance of the target area.<sup>6</sup>

At around 4:00 p.m., a man matching the description of "Henry Soriano" approached the team and asked, "*Manu ti gatangen yo*" (How much will you buy?), to which the confidential informant replied, "₱500 *laeng*." The confidential informant then introduced SPO2 Raymond Tacio, "*Isuna to gumatang*" (He will be the one to buy) as the buyer of drugs to "Henry Soriano," who stared at SPO2 Tacio and asked payment from him. SPO2 Raymond Tacio gave "Henry Soriano" the ₱500-peso buy-bust money and "Henry Soriano" gave SPO2 Raymond Tacio one heat-sealed transparent plastic sachet containing white crystalline substance.<sup>7</sup>

Upon consummation of the sale, SPO2 Tacio grabbed the right hand of "Henry Soriano" which was the pre-arranged signal. PO2 Boado and SPO4 Luna immediately rushed to the scene and helped SPO2 Tacio arrest "Henry Soriano." SPO2 Tacio frisked "Henry Soriano" and recovered the buy-bust money from his right front pocket. He compared the ₱500-peso bill with the photocopied bill and confirmed that the serial numbers in the original and photocopy were the same. SPO2 Tacio then marked the plastic sachet of white crystalline substance with "EXH. "A" RBT 10 DEC 2010" and placed his signature thereon at the place of arrest. PO2 Christian Boado took pictures of SPO2 Tacio while marking the plastic sachet in the presence of "Henry Soriano." The police officers asked for the name of accused-appellant, who identified himself as Henry Soriano. PO2 Boado then informed accused-appellant of his constitutional rights using the Ilocano dialect, which was understood by accused-appellant.<sup>8</sup>

Accused-appellant and the seized items were brought by the police officers to Camp Bado Dangwa, La Trinidad, Benguet where the police officers learned that the accused-appellant was a native of Mangaldan, Pangasinan who had been residing in La Trinidad, Benguet. Thereafter, an inventory of the seized drugs and buy-bust money was conducted in the presence of Rolando Leon, a Barangay elected official, Fiscal Mark C. Maranes, a DOJ representative, and Ruel Toquero, a representative from the media. PO2 Boado took pictures of the seized items and of Rolando Leon, Fiscal Mark C. Maranes and Ruel Toquero while signing the inventory in the

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<sup>6</sup> Id. at 5.

<sup>7</sup> Id.

<sup>8</sup> Id. at 5-6.

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Fiscal Mark C. Maranes and Ruel Toquero while signing the inventory in the presence of accused-appellant.<sup>9</sup>

A request for qualitative examination of the plastic sachet of white crystalline substance, as marked, and a request for drug test of the accused-appellant, were thereafter signed by P/SUPT. Glenn Lonogan. SPO2 Tacio turned over accused-appellant, as well as the marked plastic sachet and the requests for qualitative examination and drug test, to the PNP Crime Laboratory Office, Police Regional Office – Cordillera. The plastic sachet was received by “PSI Canlas R.F.” at “10:05 PM/10 Dec. 2010,” while accused-appellant was turned over to “PSI Canlas R.F.” at “10:07 PM/10 Dec. 2010.” Upon examination by Forensic Chemist PSI Rowena Fajardo Canlas, the “heat sealed transparent plastic sachet with markings ‘EXH “A” RBT 10 DEC 2010 and signature’ containing 0.04 gram of white crystalline substance” “gave **POSITIVE** result to the test for the presence of Methamphetamine hydrochloride, a dangerous drug,” per Chemistry Report No. D-88-2010 dated December 11, 2010. The urine sample taken from accused-appellant was also subjected to “screening and confirmatory test” which “gave **POSITIVE** result for the presence of Methamphetamine, a dangerous drugs,” per Chemistry Report No. DT-39-2010 dated December 14, 2010.<sup>10</sup>

Accused-appellant for his part averred that he sold vegetables at La Trinidad Trading Post in the morning of December 10, 2010, and in the afternoon, he visited his friend Mario Fernando at the latter’s apartment at Buyagan, La Trinidad, Benguet. While at the apartment, “Dick” arrived and chatted with him. Mario Fernando left the apartment to check on the schedule of his basketball game and to buy drinks. While the accused-appellant and “Dick” were playing “tong-its,” two men wearing black jackets entered the apartment and pointed their guns at accused-appellant. Another male person wearing a black jacket and carrying a gun also entered and asked, “Who is Henry here?” to which accused-appellant raised his hand and said that he was Henry. Accused-appellant was frisked and the men took his wallet, cellphone and the pot money on top of the table. He later came to know the men as PSI Melchor Ong, SPO4 Abordo and PO2 Boado. The police informed him that a person named “Victor” had been arrested in connection with illegal drug activities and asked accused-appellant if he knew other persons engaged in the sale of “*shabu*.” Accused-appellant said he knew who “Victor” was, but apart from him, he did not know anyone else involved in “*shabu*.” He was then taken to Camp Bado Dangwa on board a white van. According to him, the first time he saw the ₱500-peso bill allegedly used as buy-bust money was during the inventory at Camp Bado Dangwa, whereas he only saw the plastic sachet of “*shabu*” when SPO2 Tacio brought it out of his pocket for marking near Buyagan Elementary School.<sup>11</sup>

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<sup>9</sup> Id. at 6.

<sup>10</sup> Id. at 6-7.

<sup>11</sup> Id. at 7.

### The Ruling of the RTC

On November 17, 2016, the RTC rendered a Decision<sup>12</sup> finding the accused-appellant guilty in Criminal Case No. 10-CR-8284 for the illegal sale of dangerous drugs in violation of Section 5, Article II of R.A. No. 9165, thereby sentencing him to suffer the penalty of life imprisonment, and to pay a fine of ₱500,000.00.

In convicting the accused-appellant for violation of Section 5, Article II of R.A. No. 9165, the RTC was convinced that the prosecution was able to prove the elements of the crime beyond reasonable doubt. It brushed aside accused-appellant's defense of denial and frame-up, and further mentioned accused-appellant's failure to present any evidence of ill motive on the part of the prosecution witnesses to falsely impute the commission of the said crime upon him. The RTC expounded that without proof of ill motive, the testimonies of the police officers deserved full faith and credit and they were presumed to have performed their duties in a regular manner. In this regard, it held that the integrity and evidentiary value of the seized drugs had been duly preserved by the unbroken chain of custody of the *corpus delicti*.

Thus, the trial court disposed in this wise:

**WHEREFORE**, foregoing premises considered, the court finds accused Henry Soriano y Soriano GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act No. 9165 and hereby sentences him to suffer the penalty of Life Imprisonment and to pay a fine in the amount of Five Hundred Thousand Pesos (P500,000.00).

Pursuant to Article 29 of the Revised Penal Code, the period of the preventive imprisonment of the accused shall be credited in the service of his sentence, provided he conditions prescribed in such article have been fully met.

SO ORDERED.<sup>13</sup>

Aggrieved, accused-appellant elevated the case to the CA via a Notice of Appeal.<sup>14</sup>

### The Ruling of the CA

In its assailed Decision,<sup>15</sup> the CA affirmed the findings of the RTC that the elements for the prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 were met. It

<sup>12</sup> Penned by Judge Cecilia Corazon S. Dulay-Archog, Regional Trial Court (RTC) Branch 8, La Trinidad, Benguet; CA *rollo* pp. 38-50.

<sup>13</sup> *Rollo*, pp. 3-26.

<sup>14</sup> CA *rollo*, pp. 129-131.

<sup>15</sup> *Supra* note 1.

also agreed with the RTC that non-compliance by the police officers with the procedure laid down in Section 21, Article II of R.A. No. 9165 was not fatal to the prosecution's cause considering that it was able to sufficiently prove the unbroken chain of custody of the plastic sachet containing *shabu*, from the moment it came into the possession of SPO2 Tacio, the poseur-buyer, until the same was brought to the crime laboratory for testing, and its subsequent presentation in court. The CA brushed aside accused-appellant's defenses of denial and frame-up for being unmeritorious in light of his failure to present strong and concrete evidence that would support his claim as well as any ill motive on the part of the police officers to concoct the false charge against him. Such defenses cannot prevail over the positive assertions of the police officers who were deemed to have performed their official duties in a regular manner. The dispositive portion of the CA Decision reads:

**WHEREFORE**, the trial court's Decision dated November 17, 2016 and Resolution dated January 17, 2017 are affirmed in toto.

**SO ORDERED.**<sup>16</sup>

Hence, this appeal.

Accused-appellant centers his defense on the failure of the police officers to comply with the mandatory procedure in Section 21, Article II of R.A. No. 9165 relative to the handling of the seized *shabu*. In particular, he contends that the prosecution failed to prove all the material details of the buy-bust operation. Accused-appellant likewise questions the non-presentation of the confidential informant and argues that the same is fatal to the prosecution's case because it violated his constitutional right to confront the witness against him. Accused-appellant also puts in issue the fact that the inventory and photographing was not done immediately after seizure and confiscation of the illegal drug. Accordingly, accused-appellant stresses that he is entitled to an acquittal of the crime charged against him.<sup>17</sup>

### **The Issue**

The primordial issue for determination is whether accused-appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

### **Our Ruling**

We resolve to acquit accused-appellant Soriano on the ground of reasonable doubt.

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<sup>16</sup> *Rollo*, p. 26.

<sup>17</sup> *CA rollo*, pp. 13-36.

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To secure conviction for illegal sale of dangerous drugs, the prosecution must establish: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment.<sup>18</sup> In this offense, the existence of the drug is of paramount importance such that no drug case can be successfully prosecuted and no judgment of conviction can be validly sustained without the identity of the dangerous substance being established with moral certainty, it being the very *corpus delicti* of the violation of the law.<sup>19</sup> There must be a clear showing that “the drug itself is the object of the sale.”<sup>20</sup> Thus, the chain of custody over the confiscated drugs must be sufficiently proved.

Chain of custody is a procedural mechanism that ensures that the identity and integrity of the *corpus delicti* are clear and free from any unnecessary doubt or uncertainty. It secures the close and careful monitoring and recording of the custody, safekeeping, and transfer of the confiscated illegal drug so as to preclude any incident of planting, tampering, or switching of evidence. The links in the chain, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court<sup>21</sup> must be adequately proved in such a way that no question can be raised as to the authenticity of the dangerous drug presented in court. The Court thoroughly laid down the manner of establishing the chain of custody of seized items in *Mallillin v. People*:<sup>22</sup>

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. (Citations omitted)

In other words, it is incumbent upon the prosecution to establish that the confiscated drug and the drug submitted in court are one and the same by providing a clear narration of the following: 1) the date and time when,

<sup>18</sup> *People v. Cuevas*, G.R. No. 238906, November 5, 2018.

<sup>19</sup> *People v. Rivera*, G.R. No. 225786, November 14, 2018.

<sup>20</sup> *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

<sup>21</sup> *People v. Lim*, G.R. No. 231989, September 4, 2018.

<sup>22</sup> 576 Phil. 576, 587 (2008).

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as well as the manner, in which the illegal drug was transferred; 2) the handling, care and protection of the person who had interim custody of the seized illegal drug; 3) the condition of the drug specimen upon each transfer of custody; and 4) the final disposition of the seized illegal drug.

The chain of custody rule is embodied in Section 21(1), Article II of R.A. No. 9165 which specifies:

*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 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.

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

*SEC. 21. x x x (a)* The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that **the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** (Emphasis supplied)

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On July 15, 2014, Section 21 was amended by R.A. No. 10640<sup>23</sup> to this effect:

SEC. 21. x x x. —

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphases supplied)

Since the offense was committed on December 10, 2010, the Court is bound to evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165. The law sets forth the fine points of the **physical inventory** and **photograph** of the seized illegal drug such that:

1. They must be done immediately after seizure or confiscation;
2. They must be done in the presence of the following persons: a) the accused or his representative or counsel; b) representative from the media; c) representative from the DOJ; and d) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and
3. They shall be conducted at the following places: a) place where the search warrant is served; or b) at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

Measured against the foregoing yardstick, the prosecution miserably failed to establish the apprehending officers' faithful compliance with the rule on the chain of custody.

<sup>23</sup> AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF R.A. NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

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The members of the buy-bust team obviously did not comply with the procedural safeguards embodied in Section 21 of R.A. No. 9165 and its IRR. The physical inventory and photographing of the seized illegal drugs were not immediately done at the place of seizure. The presence of a representative from the media, the DOJ, and an elected public official were not secured to witness the inventory and photographing of the confiscated dangerous drug at the time of apprehension and seizure. Notwithstanding the foregoing deviations from Section 21 of R.A. No. 9165, the RTC and the CA were in unison in holding that there was substantial compliance with the law and that the integrity of the illegal drug seized from accused-appellant was preserved.

We do not agree.

The Court cannot turn a blind eye on the absence of a representative from the media, a representative from the DOJ, and an elected public official: 1) at the time of apprehension and seizure; and 2) at or near the place of apprehension and seizure. In *People v. Adobar*,<sup>24</sup> the Court shed light on when the presence of a representative from the media, the DOJ, and an-elected public official is required:

In no uncertain words, Section 21 requires the apprehending team to “immediately after seizure and confiscation, physically inventory and photograph [the seized illegal drugs] in the presence of the accused x x x or his 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.”

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs must be **at the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.

In all of these cases, the photographing and inventory are required to be done **in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof**. By the same intent of the law behind the mandate that the initial custody requirements be done “immediately after seizure and confiscation,” the aforesaid witnesses must already be physically present at the time of apprehension and seizure — a requirement that can easily be complied with by the buy- bust team considering that the buy-bust operation is, by its very nature, a planned activity. Simply put, the buy bust team had enough time and opportunity to bring with them these witnesses.

In other words, while the physical inventory and photographing is allowed to be done “at the nearest police station or at the nearest

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<sup>24</sup> G.R. No. 222559, June 6, 2018.

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office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure,” this does not dispense with the requirement of having the DOJ and media representative and the elected public official to be **physically present at the time of and at or near the place of apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs “immediately after seizure and confiscation.”**

The reason is simple, it is at the time of arrest or at the time of the drugs' “seizure and confiscation” that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practices of planting evidence.** (Citations omitted; emphases and underscoring in the original)

In *People v. [Lim]*,<sup>25</sup> the Court ruled:

Without the insulating presence of the representative from the media or the [DOJ], 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. x x x (Citation omitted)

In the instant case, the physical inventory and photographing of the seized items were not executed immediately at the place of apprehension and seizure. While these procedures may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, substantial compliance with Section 21 of R.A. No. 9165 may be allowed if attended with good and sufficient reason, a condition that was not met in this case. In *People v. Lim*, it has been held that “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.” The apprehending officers in the present case undoubtedly did not show that the immediate physical inventory and photographing posed a threat on the safety and security of the police officers, or of the confiscated dangerous substance nor did they offer any other acceptable reason for not complying strictly with the requirement of immediate inventory and photographing at the place of arrest.

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<sup>25</sup> G.R. No. 231989, September 4, 2018.

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The case of *People v. Ramos*<sup>26</sup> is explicit:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of R.A. 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Citations omitted; emphases and underscoring in the original)

It also bears stressing that the prosecution was glaringly mum about the absence of the required insulating witnesses during the marking of the seized item. It displayed indifference to this requirement of R.A. No. 9165; thus, to the mind of the Court, the integrity of the confiscated drug has been put in serious doubt.

The chain of custody rule, nevertheless, admits of an exception which is found in the saving clause introduced in Section 21(a), Article II of R.A. No. 9165. Less than strict compliance with the guidelines stated in Section 21 does not automatically render void and invalid the confiscation and custody over the evidence obtained. The saving clause is set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers.<sup>27</sup>

The first requirement directs the prosecution to identify and concede the lapses of the buy-bust team and thereafter give a justifiable and credible explanation therefor. *First*, records indicate that the prosecution did not concede nor give a viable explanation for the absence of the required witnesses during the marking of the seized item. *Second*, it also

<sup>26</sup> G.R. No. 233744, February 28, 2018.

<sup>27</sup> *People v. Fatallo*, G.R. No. 218805, November 7, 2018.

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failed to specify a reason for the conduct of the inventory and photographing in a place other than the place of apprehension and seizure.


Anent the second requirement, the prosecution was not able to prove that the integrity and evidentiary value of the seized items remained intact from the time of confiscation, marking, submission to the laboratory for examination, and presentation in court. The absence of the three required witnesses at the place of seizure for the immediate physical inventory and photographing without offering a justification created a gap in the chain of custody. Considering the miniscule amount of 0.04 grams of the confiscated illegal drugs involved in this case, rigid compliance with Section 21 of R.A. No. 9165 is expected from the apprehending officers. As aptly held in *People v. Plaza*,<sup>28</sup> “[buy-bust] teams should be more meticulous in complying with Section 21 of R.A. No. 9165 to preserve the integrity of the seized *shabu* most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with.”

There being no plausible reason for the apprehending officers non-compliance with Section 21 of R.A. No. 9165, accused-appellant must perforce be acquitted.

**WHEREFORE**, the appeal is hereby **GRANTED**. The Decision dated September 28, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 09035 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant **HENRY SORIANO y SORIANO** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, for immediate implementation. Said Director is ordered to report the action he has taken to this Court within five days from receipt of this Decision.

**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

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<sup>28</sup> G.R. No. 235467, August 20, 2018.


**WE CONCUR:**



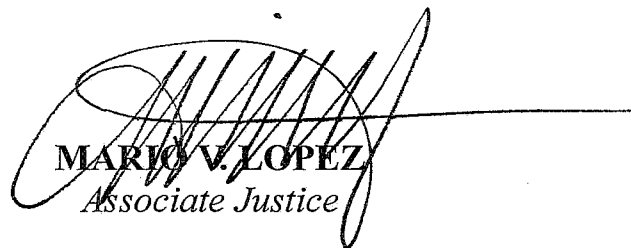
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*  
*Acting Chairperson*



**AMY C. LAZARO-JAVIER**  
*Associate Justice*



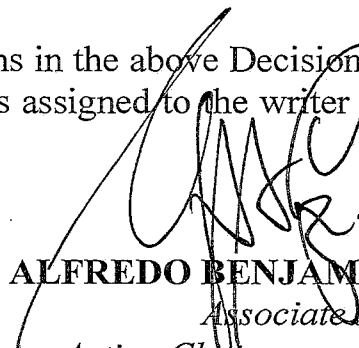
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*



**MARIO V. LOPEZ**  
*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.

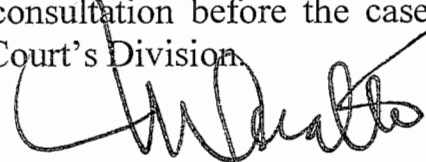


**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*  
*Acting Chairperson, First Division*

V

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Acting 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*