

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:*

“G.R. No. 236454 – People of the Philippines vs. Alvin Cupcupin y Manalang

The Case

This appeal assails the Decision¹ dated September 27, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07600 entitled “People of the Philippines v. Alvin Cupcupin y Manalang,” insofar as it affirmed appellant’s conviction for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165) also known as the Comprehensive Dangerous Drugs Act of 2002.

Proceedings Before the Trial Court

The Charges

Appellant Alvin Cupcupin y Manalang was charged with violation of Sections 5 and 11, Article II of RA 9165 under the following Informations:

Criminal Case No. 1336-2012

That on or about January 09, 2012 at around 7:10 o’clock in the evening, in the City of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, without being authorized by law, willfully,

- over – twenty (20) pages ...

114-B

¹ Penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Normandie B. Pizarro and Danton Q. Bueser, all members of the Eleventh Division, *Rollo*, pp. 2-18.

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unlawfully and criminally sell, trade and deliver one (1) heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride, known as shabu a dangerous drugs, weighing more or less 0.067 gram.

CONTRARY TO LAW.²

Criminal Case No. 1337-2012

That on or about January 09, 2012 at around 7:10 o'clock in the evening, in the City of Tarlac and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and criminally have in his possession and control one (1) piece of heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride, known as shabu, a dangerous drug, weighing 5.256 grams.

CONTRARY TO LAW.³

On arraignment, appellant pleaded not guilty to both charges.⁴ Trial ensued.

The Prosecution's Version

The testimonies of PSI Angelito Angel (PSI Angel), SPO4 Wilhelmino Alcantara (SPO4 Alcantara), PO1 Paul Andrew Pabustan (PO1 Pabustan), and PO2 Arnulfo Santiago (PO2 Santiago) may be synthesized, *viz*:

Following intelligence confirmation that appellant was connected with the Punzal Group which operated the drug trade in Tarlac, the Provincial Intelligence Branch of Philippine National Police-Tarlac launched a test-buy on appellant. The test-buy yielded positive results on appellant's peddling activities.⁵

Consequently, PSI Marcelino M. Teloza formed a buy-bust team to go after appellant.⁶ He designated SPO4 Alcantara to head the buy-bust team with PO1 Pabustan as poseur-buyer, and PO1 Santiago⁷ and PO2 Ruy Fabros (PO2 Fabros) as back-up.⁸ A confidential asset who was present during the briefing was tasked to contact appellant

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114-B

² Record, p. 1.

³ RTC Decision, Record, p. 176.

⁴ Order dated June 25, 2012, Record, p. 47.

⁵ TSN, August 6, 2012, pp. 3-6.

⁶ *Id.* at 7.

⁷ Referred to as PO1 Santiago in TSN, August 6, 2012, p. 8.

⁸ TSN, August 6, 2012, 7-8.

2/20

and arrange for a meet-up.⁹ Before the scheduled meet-up, the team prepared the buy-bust money, a ₱1,000.00 bill with serial number AE 124722 and marked "PTB." According to PO1 Pabustan, the letters stood for "Pabs To Buy."¹⁰

On January 9, 2012, around 7 o'clock in the evening, PO1 Pabustan and the confidential asset went to the 4th floor of the SM Tarlac parking lot to meet up with appellant.¹¹ The back-up members positioned themselves some twenty (20) to thirty (30) meters away.¹² Meantime, the asset got a text message from appellant that he was already in the vicinity. Around 7:10 in the evening, PO1 Pabustan and the asset met appellant who was standing beside his parked red Toyota Corolla.¹³ The asset introduced PO1 Pabustan to appellant as the guy who "*will purchase the shabu.*" Then appellant and the asset conversed in Ilocano. PO1 Pabustan eventually told appellant "*Kuha ako isa libo.*"¹⁴ Appellant replied, "*Okay.*" PO1 Pabustan handed the marked ₱1,000.00 bill to appellant who took and slid it into his right pocket. In exchange, appellant retrieved a heat-sealed transparent plastic sachet from his car and handed it to PO1 Pabustan. The sachet contained white crystalline substance. As soon as he took hold of the sachet, PO1 Pabustan scratched his head to signal that the drug deal had been consummated.¹⁵ Thereupon, SPO4 Alcantara, PO1 Fabros, and PO1 Santiago closed in and introduced themselves as police officers. SPO4 Alcantara frisked appellant and directed him to empty his pockets. Appellant complied and brought out from his pocket a cellular phone and the marked money.¹⁶

SPO4 Alcantara then instructed appellant to open the door of the car which appellant did. SPO4 Alcantara saw one (1) heat-sealed transparent plastic sachet lying on the front passenger's seat.¹⁷ The items seized from appellant, *i.e.*, one (1) sachet containing white crystalline substance subject of the buy-bust operation and one (1) sachet also containing white crystalline substance recovered from his car, cellular phone, and marked money were all laid on the ground.

- over -

114-B

⁹ *Id.* at 8.

¹⁰ *Id.* at 9-11.

¹¹ *Id.* at 11.

¹² TSN, December 11, 2012, p. 9.

¹³ TSN, August 6, 2012, p. 13.

¹⁴ *Id.* at 14-16.

¹⁵ *Id.* at 16-19.

¹⁶ *Id.* at 21-24.

¹⁷ TSN, January 29, 2013, p. 9.

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PO1 Pabustan marked the plastic sachet handed him by appellant with "PTB"¹⁸ while SPO4 Alcantara marked the sachet he recovered inside appellant's car with his initials "WAA."¹⁹ PO1 Santiago took pictures of the confiscated items, including appellant's cellular phone, in the presence of appellant, Barangay Kagawads Allan Bautista, Jerjohn Viray, and Rolando Santiago, and media representative Homer Teodoro of GMA News.²⁰

PO1 Pabustan prepared the confiscation receipt which was countersigned by Barangay Kagawads Bautista, Viray, and Santiago, and media representative Teodoro. There was no DOJ representative because the office was already closed when they went there earlier that day.²¹

The buy-bust team proceeded with appellant to Camp Macabulos, Tarlac City. While in transit, PO1 Pabustan remained in possession of the sachet marked "PTB" which he secured in an envelope together with the confiscation receipt.²²

At Camp Macabulos, PO1 Pabustan prepared separate requests for examination of the two (2) seized sachets.²³ Thereafter, PO1 Pabustan and SPO4 Alcantara went to the crime laboratory to turn-over the sachets. Forensic Chemist Angelito Angel and PO1 Carbonel received the sachets and the letter requests. PSI Angel did an examination of the specimens, the results of which yielded positive results for methamphetamine hydrochloride.²⁴

The prosecution offered the following documentary and object evidence:²⁵

- (1) Exhibit "A" – Affidavit of Arrest;
- (2) Exhibit "B" – Affidavit of Poseur Buyer;
- (3) Exhibit "C" – Pre-Operation Report;
- (4) Exhibit "D" – Coordination Form;

- over -

114-B

¹⁸ TSN, August 6, 2012, p. 24.

¹⁹ TSN, January 29, 2013, p. 12.

²⁰ TSN, August 6, 2012, pp. 25-30.

²¹ TSN, January 29, 2013, pp. 15-18.

²² TSN, October 16, 2012, pp. 5-6.

²³ *Id.* at 6.

²⁴ *Id.* at 7-9.

²⁵ Record, pp. 140-142.

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- (5) Exhibit "E" – photocopy of bills;
- (6) Exhibit "F" and series – pictures of inventory;
- (7) Exhibit "G" – Confiscation Receipt;
- (8) Exhibit "H" – Request for Laboratory Examination;
- (9) Exhibit "J" – Chemistry Report No. D-004-12;
- (10) Exhibit "K" – Chemistry Report No. D-005-12;
- (11) Exhibit "L" – first envelope with marking D-005-12; and
- (12) Exhibit "M" and series – second envelope, plastic sachet, and masking tape.

The defense filed its Motion with Leave of Court to File Demurrer to Evidence.²⁶ The same was denied under Order dated June 16, 2014, due to failure to specify the ground/s therefor.²⁷

The Defense's Version

Appellant and his wife Cinderella Cupcupin essentially testified:

He and his wife were at SM Tarlac on the day of the incident, January 9, 2012. They were eating at Shakey's when he excused himself to meet a person from the Land Transportation Office (LTO) at the mall parking lot.²⁸ On his way to the parking lot, he saw a certain Police Officer Cruz whom he even greeted "good afternoon." He was taken by surprise when PO Cruz suddenly grabbed him and declared he was being arrested. He was brought to the parking lot where he saw police officers Pabustan, Alcantara, and Santiago.²⁹ The police officers confiscated his personal belongings consisting of ₱35,000.00 cash, US\$140, four (4) cellular phones (Blackberry, Nokia 6500, Sony Ericsson W-8, and Nokia X-1), gold-plated Rayban sunglasses, bottle of Escape perfume, BDO ATM card, Guess wallet, and his ID. The police officers never returned the items to him.³⁰

- over -

114-B

²⁶ *Id.* at 145.

²⁷ *Id.* at 146.

²⁸ TSN, April 29, 2015, p. 4.

²⁹ TSN, December 10, 2014, p. 4.

³⁰ *Id.* at 6-7, 9.

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Meantime, two (2) friends of appellant went to Shakey's to tell Cinderella Cupcupin that appellant had been arrested.³¹ She immediately went to the 4th floor parking lot and saw appellant crying while in handcuffs. She tried to approach him but two (2) police officers who were in civilian clothes restrained her.³² They told her "*ilabas mo na yong binigay sa iyo ni Alvin.*" She gave them the envelope which her husband earlier handed her, albeit, she did not even know what was inside it. When it was opened, it was ₱7,000.00 cash.³³ The police did not take the money, but she was directed to go to the comfort room to be frisked by a female police officer. Inside the comfort room, she was also asked to undress and take off her shoes. The policewoman who frisked her reported to the other fellow officers that she did not find anything. Thereafter, the other police officers took the ₱7,000.00 inside the envelope and never returned it.³⁴

Both appellant and his wife testified that the photographs of the alleged confiscated items were not taken at the SM parking lot but at Camp Macabulos.³⁵

The defense offered as evidence Exhibit "1," the Sinumpaang Salaysay of Cinderella Cupcupin, and Exhibit "2," the pictures previously offered by the prosecution as Exhibits "F-2" and "F-3" (photos of the sachet found on the front passenger's seat of appellant's car), and Exhibits "F-4" and "F-5" (photos of appellant's red Toyota Corolla bearing Plate No. UNY-117).³⁶

Ruling of the Regional Trial Court

By Decision³⁷ dated June 4, 2015, appellant was convicted of illegal sale of dangerous drugs in Criminal Case No. 1336-2012. He was, however, acquitted of illegal possession of dangerous drugs in Criminal Case No. 1337-2012. The trial court disposed, thus:

WHEREFORE, in view of the foregoing, this Court finds the accused ALVIN CUPCUPIN y Manalang GUILTY beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs (Section 5, ART. II of R.A. 9165) and hereby sentences him to suffer the penalty of **life imprisonment**. Likewise, he is ordered to pay a fine of P500,000.00.

- over -

114-B

³¹ TSN, April 29, 2015, p. 4.

³² *Id.* at 11.

³³ *Id.* at 12.

³⁴ *Id.* at 13-16.

³⁵ TSN, December 10, 2014, p. 13.

³⁶ Record, pp. 170-171.

³⁷ Penned by Judge Lily C. De Vera-Vallo, RTC, Tarlac City, Branch 64, Record, pp. 175-198.

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Anent the crime of Illegal Possession of Dangerous Drugs (Section 11, ART. II of R.A. 9165), this Court hereby ACQUITS the accused based on reasonable doubt.

The Branch Clerk of Court is hereby directed to immediately transmit to the PDEA the subject items for proper disposal.

SO ORDERED.³⁸

Proceeding before the Court of Appeals

On appeal, appellant questioned his arrest and challenged anew the identity and integrity of the alleged seized items. He called attention to the following alleged inconsistencies and improbabilities: (1) according to PO1 Pabustan, the seized item marked "PTB" was received by PO1 Carbonel and forensic chemist PSI Angel at the crime laboratory; the same was inconsistent with SPO4 Alcantara's testimony that it was only PO1 Carbonel who received the items upon turn-over at the crime laboratory; (2) PO1 Pabustan said he initially marked the sachet at the police station because he forgot to do it at the place of arrest but he later gave a different testimony that the marking of the alleged seized drug took place at the place of arrest and that he merely "emboldened" the marking on the sachet at the police station; and (3) the evidence used was planted; assuming he was really caught peddling illegal drugs, it would have been absurd for him to do it at a public place and with total strangers.

The People's Arguments

The Office of the Solicitor General through Assistant Solicitor General Hermes L. Ocampo and State Solicitor Emmanuel S. Caluyo, countered that appellant can no longer raise as issue the supposed illegality of his arrest at this late stage. Any objection, defect, or irregularity attending an arrest must be made before the accused enters his or her plea. An accused who fails to move for the quashal of the information on ground of illegality of his or her arrest is estopped from questioning such purported illegal arrest.³⁹

Further, the trial court's assessment of the credibility of witnesses is entitled to great weight, if not finality, having had ample opportunity to observe the witnesses' behavior and his or her manner of testifying during trial. In addition, the police officers here enjoy the

- over -

114-B

³⁸ Record, p. 198.

³⁹ CA rollo, pp. 123-124.

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presumption of regularity in the performance of official duties. Even the alleged inconsistencies in their respective statements would not disqualify them from the benefit of the presumption for such inconsistencies refer to insignificant details which do not affect their credibility. Besides, even assuming that these police officers trumped-up the charges against appellant, why then did the latter not institute an administrative complaint against them?⁴⁰

Verily, appellant's defense of denial or frame-up is a standard ploy which is viewed with disfavor by the courts. Absent proof of intent to falsely impute a crime on appellant, the credibility afforded to the police officers must prevail over appellant's self-serving denial or claim of frame-up.⁴¹

All told, the prosecution was able to establish the presence of all the elements of illegal sale of prohibited drugs, including the preservation of the integrity and evidentiary value of the confiscated drugs: PO1 Pabustan categorically testified that after the seizure, he kept the sachet marked "PTB" in a long folder together with the confiscation receipt while SPO4 Alcantara remained in possession of the sachet marked "WAA." He and SPO4 Alcantara personally brought the sachets to the crime laboratory for examination and during the trial, they both identified the specimens as the same sachets they recovered from appellant.⁴²

To be sure, appellant failed to discharge the burden of reversing the presumption that the police officers handled the confiscated drugs with regularity and properly discharged their duties with respect thereto. More, appellant cannot raise the issue of the breach of the chain of custody rule for the first time on appeal.⁴³

Ruling of the Court of Appeals

By Decision dated September 27, 2017, the Court of Appeals affirmed.

It held that appellant's failure to raise below the alleged violation of the chain of custody precluded him from raising it for the first time on appeal conformably with *People v. Dela Cruz*.⁴⁴

- over -

114-B

⁴⁰ *Id.* at 124-128.

⁴¹ *Id.* at 128-129.

⁴² *Rollo*, pp. 138-139.

⁴³ *Id.* at 139.

⁴⁴ Phil. 620, 636 (2016).

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The Court of Appeals, nonetheless, ruled that the prosecution's evidence sufficiently established the elements of illegal sale of dangerous drugs, *i.e.*, (1) identities of the buyer and seller, the object and consideration; and (2) delivery of the thing sold and payment therefor. Further, the supposed inconsistencies in the testimony of prosecution witnesses pertain only to trivial matters which do not affect their credibility.

As for appellant's warrantless arrest, the same was valid for there was overwhelming evidence that he was actually committing a crime in the presence of police officers when the latter effected his warrantless arrest.

The Present Appeal

Appellant now seeks affirmative relief, praying anew for his acquittal. He faults the Court of Appeals for sustaining the verdict of conviction despite the prosecution's alleged failure to establish the elements of the offense and comply with the chain of custody rule, and notwithstanding the glaring inconsistencies of the testimonies of the prosecution witnesses and his illegal warrantless arrest.

Issue

Did the prosecution prove appellant's guilt of illegal sale of prohibited drugs?

Ruling

In criminal cases, the whole case is thrown open for review on appeal and it is the Court's duty to correct, cite, and address issues or errors whether assigned or not. Since what is at stake here is no less than appellant's liberty, the Court must thoroughly review the case records.⁴⁵ It cannot simply allow a man to be incarcerated without his conviction being carefully reviewed due to his counsel's failure to timely raise in issue the illegality of his arrest and the compromised integrity of the prosecution's evidence. It, thus, behooves the Court to examine anew the case records in order to determine whether all the elements of the crime had been established by the prosecution beyond a shadow of doubt, including the preservation of the integrity and evidentiary value of the alleged confiscated illegal drug.

***Appellant's warrantless
arrest was valid.***

- over -

114-B

⁴⁵ See *People v. Dahil, et. al*, 750 Phil. 212, 225 (2015).

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To begin with, a lawful arrest may be effected with or without warrant. With respect to a warrantless arrest, Section 5, Rule 113 of the Revised Rules of Criminal Procedure provides three (3) instances where it may be effected, *viz*:

SEC. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

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Here, appellant was arrested pursuant to Section 5(a) of the aforementioned provision. He was caught in the act of committing an offense, selling illegal drugs, during a buy-bust operation conducted by police officers. A buy-bust operation had long been recognized as a valid mode of apprehending drug pushers:

A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.⁴⁶

Appellant's bare assertion that there had been no buy-bust operation actually conducted on him cannot prevail over the ample evidence on record showing otherwise, *viz*: Affidavit of Arrest,⁴⁷ Affidavit of Poseur-buyer,⁴⁸ Pre-Operation Report,⁴⁹ Coordination Form,⁵⁰ Confiscation Receipt,⁵¹ and photographs⁵² taken during appellant's arrest. The existence of the buy-bust operation is bolstered

- over -

114-B

⁴⁶ *People v. Adriano*, 745 Phil. 203, 213 (2014).

⁴⁷ Record, p. 4.

⁴⁸ *Id.* at 5.

⁴⁹ *Id.* at 6.

⁵⁰ *Id.* at 7.

⁵¹ *Id.* at 8.

⁵² *Id.* at 10-12.

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by appellant and his wife's own admission that they were at SM Tarlac on the day and time the incident happened. More so because there was no showing that PO Cruz was impelled by any ulterior motive to frame-up appellant whom he only met for the first time when the buy-bust operation took place.

***Preservation of the
Corpus Delicti and the
Chain of Custody Rule***

Conviction for illegal sale of dangerous drugs rests on proof of the presence of the following elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.⁵³ In illegal drugs cases, the drug itself is the *corpus delicti*.

The prosecution must establish that the drug presented in evidence is the same illegal drug which was confiscated from appellant. It must prove that the integrity of the evidence is intact, right from the very moment it was seized up until its presentation in court. Any possibility or opportunity for switching, alteration, modification, or tampering must have been prevented. Indeed, primordial importance must be given to the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.⁵⁴

The chain of custody rule ensures that the integrity and evidentiary value of the seized drug are preserved so much so that unnecessary doubts as to their identity are removed.⁵⁵ Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing the Comprehensive Dangerous Drugs Act of 2002, defines *chain of custody*, viz:

“Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held

- over -

114-B

⁵³ See *People v. Honrado et. al*, 683 Phil. 45, 51-52 (2012).

⁵⁴ See *People v. Gayoso*, 808 Phil. 19, 22, 34 (2017).

⁵⁵ See *People v. Villarta et. al*, 740 Phil. 279, 295 (2014).

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temporary custody of seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

Simply put, the chain of custody requires that any person who came in contact with the seized drug must observe the procedure for its proper handling in order to remove any doubt that it was changed, altered, substituted, or modified before its presentation in court. The chain of evidence is constructed by proper exhibit handling, storage, labeling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence.⁵⁶

The strict observance of the chain of custody finds even greater significance in buy-bust operations due to serious abuses by law enforcement officers in this mode of apprehension of drug personalities. *People v. Caranto*⁵⁷ elucidates:

The built-in danger for abuse that a buy-bust operation carries cannot be denied. It is essential therefore, that these operations be governed by specific procedures on the seizure and custody of drugs. We had occasion to express this concern in *People v. Tan*, when we recognized that “by the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which illegal drugs can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.”

The four (4) links in the chain of custody have been defined, viz:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

- over -

114-B

⁵⁶ *People v. Balibay*, 742 Phil. 746, 756 (2014).

⁵⁷ 728 Phil. 507, 517-518 (2014).

114-B

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.⁵⁸

The prosecution must establish that there had been no break in any of the four (4) links in the chain.

Section 21 of RA 9165 prescribes the standard for handling, storage and initial custody of the confiscated illegal drug. RA 9165 was amended by RA 10640⁵⁹ which was approved on July 15, 2014. Appellant was arrested on January 9, 2012, hence, the unamended version of RA 9165 applies to him. Section 21 of RA 9165 provides, *viz*:

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.

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Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) fill in the details pertaining to the place of inventory and added a saving clause in case of non-compliance with the procedure outlined, thus:

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

- over -

114-B

⁵⁸ See *Dela Riva v. People*, 769 Phil. 872, 886-887 (2015).

⁵⁹ An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

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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:

- (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 persons 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.

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Records here, however, show that the first and second links in the chain of custody were seriously breached, leaving lingering doubts that the integrity and evidentiary value of the illegal drug presented in evidence had been preserved:

Missing First Link

a. Defective Marking

The first link refers to the marking of the confiscated drug. The apprehending officer must affix his initials or signature or any identifying mark on the dangerous drugs, in the presence of accused, immediately upon arrest in order to set apart the dangerous drug from other materials from the moment of seizure until they are disposed of at the close of criminal proceedings.⁶⁰

- over -

114-B

⁶⁰ See *People v. Siaton*, 789 Phil. 87, 100 (2016).

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The first link necessarily requires here an examination of PO1 Pabustan's testimony on where the marking of the illegal drug was actually done. At the hearing of August 6, 2012, PO1 Pabustan testified, viz:

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PROS. MANGLICMOT:

Q: Who put the markings "PTB"?

A: Me, sir.

Q: Where were you when you put the markings "PTB"?

A: When we were already in the office for the documentation, sir.

Q: Why is it that you did not put the markings when you were still in the crime scene, particularly at the parking lot?

A: I forgot to mark the recovered sachet at the scene, sir.⁶¹

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But at the subsequent hearing of October 16, 2012, PO1 Pabustan changed his testimony, saying that he marked the evidence at the place of arrest and not in the police station as he had previously testified, thus:

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Q: Officer Pabustan, you claimed when you testified last August 6, 2012 that you were the one who put the markings PTB on the items you bought from Alvin. Is that correct?

A: Yes, Your Honor.

Q: And according to you, you were already in your office when you put your markings?

A: Yes, Your Honor.

Q: Will you tell us the reason why you put the markings in your office and not on the scene of the operation?


A: I already put my markings at the scene, Your Honor, but I just re-marked it to enlighten it.

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- over -

114-B

⁶¹ TSN, August 6, 2012, p. 37.



PROS. MANGLICMOT

Q: So, no initial marking was made at the scene?

A: There is, Your Honor, at the scene itself.

Q: What markings did you put?

A: PTB, Your Honor.

PROS. MANGLICMOT

Q: You used the same pentel pen?

A: Yes, Your Honor.

Q: And when you were at the office?

A: I enlightened it, Your Honor.

Q: What do you mean enlighten?

A: To embolden the letters, Your Honor.

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Q: Why is there a need to embolden the letters?

A: Because at the time I put the markings, the ink was still wet and the letterings made smeared and so I need to double the markings, Your Honor.⁶²

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PO1 Pabustan's initial testimony that he marked the sachet at the police station and his sudden shift when he subsequently said he marked it at the parking lot right after the arrest cannot just be brushed aside lightly. Contrary to the findings of the trial court and the Court of Appeals, such inconsistency does not refer to a mere trivial matter. It pertains directly to the identity of the seized prohibited drug.

To repeat, marking of the evidence is an important step because it sets apart and identifies the illegal drug from all other materials present and/or seized at the *locus criminis*. It makes the illegal drug readily identifiable from all the other evidence confiscated from appellant. PO1 Pabustan's inconsistent testimony, however, engenders doubt on whether the crucial step on the marking of evidence was strictly complied with. It, thus, opened the possibility that the drug may have been switched, tampered with, altered, or substituted.

b. Absence of a DOJ representative

Section 21 of RA 9165 and its counterpart provision in the IRR require that three (3) witnesses be present during the marking of the evidence: a^e representative from the media and the Department of

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114-B

⁶² TSN, October 16, 2012, pp. 3-4.

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Justice (DOJ), and any elected public official who must all sign the inventory receipt. Here, only barangay officials and a media representative from GMA were present to witness the marking and photograph of the items seized from appellant. No DOJ representative was present.

The arresting team in this case failed to offer a valid justification for his failure to secure the presence of a DOJ representative as witness to the inventory and photograph of the seized items. Its proffered reason that the DOJ office was already closed does not qualify as justifiable ground. It bears stress that the buy-bust operation is a planned police operation. The buy-bust team, thus, had ample time to invite a DOJ representative. The buy-bust team, however, failed to do so.

This procedural lapse created doubts that the identity and evidentiary value of the seized drugs in this case had been preserved. It cannot be overemphasized that the presence of the persons who should witness the postoperation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody.⁶³

Missing Second Link

The second link in the chain of custody pertains to the turnover of the seized illegal drug by the apprehending officer to the investigator at the police station. At this stage, the seized substance is prepared for submission to the crime laboratory to confirm whether it is indeed a prohibited drug. As the one in charge of preparing the necessary documents therefor, the investigating officer must have necessarily come in contact the seized substance. The investigating officer must, thus, fully account for the manner in which he or she handled the evidence and the measures he or she employed while the same was in his or her custody to ensure that it was not tampered with, switched, contaminated, or substituted.

The second link, however, was entirely omitted in this case as the seized sachet was not turned-over to the investigating officer by the apprehending officer. PO1 Pabustan relevantly testified, *viz*:

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114-B

⁶³ *People v. Macud*, G.R. No. 219175, December 14, 2017, 849 SCRA 294, 321.

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Q: From the scene at the SM up to your office, according to you, you were in possession of the item marked PTB?

WITNESS

A: Yes, Your Honor.

PROS. MANGLICMOT

Q: And according to you, it was placed inside the envelope?

A: Yes, Your Honor.

Q: Upon reaching Camp Macabulos, what more transpired?

A: We went to our office for documentation and for preparing the request for drug test and specimen drug test for the recovered suspected shabu, Your Honor.

Q: Earlier, Mr. Witness, you identified some documents, particularly, the request for laboratory examination for the two (2) items?

A: Yes, Your Honor.

Q: Did you give the item PTB to anybody else while you were at Camp Macabulos?

A: No, Your Honor.

Q: So, all the time it was in your possession?

A: In my possession and in the folder, Your Honor.

PROS. MANGLICMOT

Q: After you have finished the documentation, I presume that you brought the item at the crime laboratory?

A: Yes, Your Honor.

Q: And the Crime Laboratory is within Camp Macabulos?

A: Yes, Your Honor.

Q: Who carried the items to the Crime Laboratory?

A: The item marked PTB, me, Your Honor and the other one is Sir Alcantara.

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Q: Who received it from you, the item PTB?

A: If I am not mistaken, Your Honor, PO1 Carbonel and Police Inspector Angel.⁶⁴

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114-B

⁶⁴ TSN, October 16, 2012, pp. 5-7.

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From PO1 Pabustan's own account, he remained in possession of the sachet from the time it was confiscated from appellant until the arresting team reached Camp Macabulos, and up until its submission to the crime laboratory. This is a clear deviation from the prescribed procedure requiring that the confiscated item be turned-over to the investigating officer at the police station. Again, no reasonable justification was offered for the apprehending team's failure to turn over the confiscated sachet to the investigating officer. The Court held that when the police officers who confiscated the dangerous drugs testified that they brought the accused and the seized item to the police station *without* identifying the police officer to whose custody the seized item was actually given, the second link in the chain of custody was deemed not to have been established.⁶⁵

Verily, the exacting compliance with the chain of custody rule must be underscored here considering that the amount of narcotics involved is miniscule, *i.e.*, 0.067 gram. The sheer smallness in size of the illegal drug creates greater danger of tampering, substitution, or switching.

In illegal sale of prohibited drugs, conviction cannot be sustained if there is persistent doubt on the identity of the drug which was presented in court. The presence of the elements of sale of the illegal drug must be established with the same degree of certitude that the substance illegally possessed and sold is the same substance offered in court as exhibit.⁶⁶ Otherwise, a verdict of acquittal becomes indubitable.

The presumption of regularity in the performance of official duties supposedly enjoyed by the police officers involved cannot stand in the face of compelling evidence on record that the chain of custody had been breached and the integrity and evidentiary value of the seized drug had not been safeguarded.

Here, the gaps in the chain of custody engender serious doubts on whether the illegal drugs presented in evidence were the very same substances that were allegedly peddled by appellant during the buy-bust operation. With these lingering doubts pervading here, the Court is strongly constrained to acquit appellant.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 27, 2017 of the Court of Appeals in CA-G.R. CR HC No.

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114-B

⁶⁵ See *People v. Enad*, 780 Phil. 346, 367 (2016).

⁶⁶ See *People v. Hementiza*, 807 Phil. 1017, 1038 (2017).

WJH

07600 is **REVERSED** and **SET ASIDE**. Appellant **ALVIN CUPCUPIN Y MANALANG** is **ACQUITTED** of violation of Section 5, Article II of RA 9165.

The Director of the Bureau of Corrections is ordered to (1) immediately **RELEASE ALVIN CUPCUPIN Y MANALANG** from custody, unless he is being held for some other lawful cause; and (2) **SUBMIT** his compliance report within five (5) days from notice.

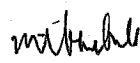
Let entry of judgment be immediately issued.

SO ORDERED.” *Inting, J., additional member per Special Order 2726 dated October 25, 2019.*

Very truly yours,

LIBRADA C. BUENA
Division Clerk of Court

By:


MARIA TERESA B. SIBULO
Deputy Division Clerk of Court ^{sk 117}
114-B

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Manila
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The Hon. Presiding Judge
Regional Trial Court, Branch 64
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(Crim. Case Nos. 1336-2012 & 1337-2012)

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