



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 241251

Present:

- versus -

PERALTA, *C.J., Chairman,*
CAGUIOA, *Working Chairman,*
REYES, J. JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

SAMMY GLOBA y COTURA, a.k.a.
“JR” and LOUIE ANADIA y
LUGARPO,

Promulgated:

Accused-Appellants.

DEC 10 2019

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DECISION

REYES, J. JR., J.:

This is an appeal from the Decision¹ dated March 15, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 09201, which affirmed the Decision² dated January 10, 2017 of the Regional Trial Court (RTC) of Quezon City, Branch 82, in Criminal Case No. GL-Q-12-177922, convicting accused-appellants Sammy Globa y Cotura (Sammy) and Louie Anadia y Lugarpo (Louie) for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

¹ Penned by CA Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos concurring; *rollo*, pp. 2-24.

² Penned by Presiding Judge Lyn Eborac-Cacha; *CA rollo*, pp. 58-74.

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The Facts

This case is rooted from an Information, charging accused-appellants of illegal sale of dangerous drugs as follows:

That on or about the 31st day of July 2012, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping with one another, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there wilfully, unlawfully and knowingly sell, dispense, deliver, transport, distribute or act as broker in the said transaction, three (3) heat-sealed transparent sachets, each containing the following[,] to wit:

(51.10) grams marking "JAM-SCG-0731-12"
(22.86) grams marking "JAM-SCG-1-07-31-12"
(23.95) gram[s] marking "JAM-SCG-2-07-31-12"
(97.91) grams total weight

of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.³

The prosecution evidence tends to establish that on July 30, 2012, at around 5:00 p.m., the District Anti-Illegal Drugs – Special Operation Task Group received a report from a confidential informant about the illegal drug activities of an alias "JR," later on identified as accused-appellant Sammy, along Cotabato St., Barangay Ramon Magsaysay, Quezon City. Acting upon said information, a buy-bust team was formed, wherein PO2 Jomar Manaol (PO2 Manaol) was tasked to act as poseur-buyer, while PO2 Jeffrey Dela Puerta, together with police officers Hernandez, Itom, Collado, and Ang, was assigned as a blocking and arresting officer.⁴

The confidential informant called up Sammy and ordered 100 grams of *shabu*. Sammy set the deal on the following day, July 31, 2012, at around 1:00 p.m., along Cotabato St., Barangay Ramon Magsaysay, Quezon City.⁵

Around 11:00 a.m. of July 31, 2012, the buy-bust team, together with the informant, proceeded to the target area. Thereat, PO2 Manaol was met by Sammy, who asked if he has the money with him. Sammy then invited PO2 Manaol to his house to show the latter the items. Upon arrival at his house, Sammy showed the items to PO2 Manaol and introduced him to accused-appellant Louie. As instructed by Sammy, PO2 Manaol handed the money to Louie and, thereafter, Sammy handed the illegal drugs to PO2

³ Id. at 58.

⁴ Id. at 60.

⁵ Id. at 61.

Manaol. At that instance, PO2 Manaol made a covert call to the team and opened the house door so the team could easily enter the premises.⁶

Upon the rest of the team's arrival, they introduced themselves as police officers. PO2 Manaol arrested Louie and recovered from the latter the buy-bust money, while PO2 Dela Puerta arrested Sammy.⁷

Thirty minutes thereafter, Barangay Captain Eduardo Fimalino and Dennis Datu of DZMM arrived at the place of arrest. The inventory, marking, and taking of photographs were then conducted thereat in the presence of the accused-appellants and said witnesses.⁸

Thereafter, the team, together with the accused-appellants, proceeded to the station. Thereat, SPO1 Corina Angeles prepared the Request for Laboratory Examination, Coordination Form, Inventory of Seized Items, Chain of Custody Form, Arrest and Booking Sheet, and the Letter-Referral to the Office of the City Prosecutor of Quezon City. Then, accused-appellants and the seized items were brought to Camp Crame for examination. The examination conducted by PCI Alejandro De Guzman yielded a positive result for the presence of methamphetamine hydrochloride or *shabu*, dangerous drugs.⁹

The defense presented a different version of the facts. Louie testified that on the day of his arrest, he was at Sammy's house for a drinking session. They fell asleep waiting for someone when suddenly, they heard somebody knock on the door and, simultaneously, about eight to nine armed persons entered and ordered them to lie on the floor face down. These men started looking for something around the house. Then, they were brought to a car and then back to the house where they were again told to lie on the floor face down. *Shabu* was then placed in front of them and, suddenly, people from the media arrived. Thereafter, they were brought to Camp Crame.¹⁰

The RTC found accused-appellants guilty as charged. The trial court ruled that between the positive identification by the poseur-buyer and the denial of the accused-appellants, the former prevails. The RTC also found that the prosecution was able to establish an unbroken chain of custody, upholding, thus, the identity and integrity of the seized items. It disposed:

WHEREFORE, premises considered, judgment is hereby rendered finding accused **Sammy Globa y Cotura** and **Louie Anadia y Lugarpo** "**Guilty**" beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165.

⁶ Id.

⁷ Id.

⁸ Id. at 62.

⁹ Id. at 64.

¹⁰ Id. at 66.

Accordingly, this Court sentences both accused **Sammy Globa y Cotura** and **Louie Anadia y Lugarpo** to suffer the penalty of *Life Imprisonment* and to each pay a Fine in the amount of Five hundred Thousand (P500,000.00) Pesos without eligibility for parole in accordance with R.A. 9346.

The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the dangerous drugs subject of this case for proper disposition and final disposal.

SO ORDERED.¹¹ (Emphasis in the original)

On appeal, the CA affirmed the RTC Decision in its entirety:

WHEREFORE, in the light of the foregoing, the instant appeal is DENIED. Consequently, the decision appealed from is AFFIRMED.

IT IS SO ORDERED.¹² (Emphasis in the original)

Hence, this appeal seeking the reversal of the conviction.

The Court's Ruling

This Court is guided by the important legal precept that in every criminal case where the accused enjoys the presumption of innocence, he is entitled to acquittal unless his guilt is shown beyond reasonable doubt.¹³ Although this Court has repeatedly expressed through its decisions its consistent support in the State's campaign against illegal drugs, it does so with prudent regard to the most basic fundamental rights of every individual in our democratic society. Thus, the burden of the reviewing court is really to see to it that no man is punished unless the proof of his guilt be beyond reasonable doubt.¹⁴

Accused-appellants, in this case, were charged, tried, and convicted of illegal sale of *shabu*. In prosecutions involving the illegal sale of dangerous drugs, the following elements must be established: (1) the identities of the buyer, seller, object, and consideration; and (2) the delivery of the thing sold and payment for it.¹⁵ As in any case involving dangerous drugs, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.¹⁶ For this purpose, the law provides for mandatory requirements for the police officers to comply with to preserve

¹¹ Id. at 74.

¹² *Rollo*, p. 24.

¹³ *People v. Claro*, 808 Phil. 455, 464 (2017).

¹⁴ *People of the Philippines v. Rogelio Yagao*, G.R. No. 216725, February 18, 2019.

¹⁵ *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 142.

¹⁶ *People v. Crispo and Herrera*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369.

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the identity and evidentiary value of the illegal drugs and/or paraphernalia from their seizure, initial custody, to their handling and presentation in court.

As the crime in this case was allegedly committed on July 31, 2012, the original text of Section 21(1), Article II of R.A. No. 9165 is applicable, which states:

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[.]

Supplementing this provision is Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which states:

(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[.]

The Court has consistently ruled and stressed that strict adherence to the above-stated procedure is mandatory as this was set forth as a reasonable safeguard to the possibility of contamination, alteration, or substitution, – whether intentional or unintentional – and even planting of evidence, in drug-related cases considering the unique characteristics of narcotic substances.

This, of course, is not to say that the Court expects perfect adherence to the procedure at all times. To be sure, we are not unaware of the fact that strict compliance with said mandatory requirements is not always possible under varied field conditions.¹⁷ Hence, the above-quoted provisions, as well as our case laws, provide for a saving clause in case of unavoidable deviation from the mandatory procedure. Non-compliance with said requirements under justifiable grounds will not render void and invalid the seizure and custody over the seized items as long as the integrity and evidentiary value of said items are properly preserved by the apprehending officers. For purposes of applying the saving clause, the prosecution must recognize the police officers' lapse/s, present a justification for such lapse/s and an explanation that reasonable efforts were exerted to comply with the procedure to no avail.¹⁸

In this case, the police officers unjustifiably failed to comply with the mandatory requirements of Section 21 of R.A. No. 9165 and its IRR.

The above-cited provisions clearly require the apprehending team to "immediately after seizure and confiscation" conduct the marking, inventory, and taking of photographs of the seized items. Further, it is required that said steps be undertaken in the presence of any elected public official and a representative from the media and the Department of Justice (DOJ) who are required to sign the inventory and given copies thereof. This Court has, in no ambiguous language, explained the necessity of having these witnesses, not only during the inventory, but more importantly, at the time of apprehension and seizure. In fact, it is at the time of arrest and confiscation when the insulating presence of the witnesses is needed, as it is their presence at such stage that would foreclose the pernicious practice of planting of evidence or compromising the integrity of the same. To be sure, this is a requirement that the buy-bust team could easily comply with given the nature of a buy-bust operation as supposedly a well-planned activity.¹⁹

In *People v. Tomawis*,²⁰ the Court expounded on the importance of this requirement:

It is [during this initial stage of apprehension and confiscation wherein] the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frameup as the witnesses would be able to testify that the buy-bust operation and

¹⁷ Id. at 370-371, citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

¹⁸ See *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513, 536.

¹⁹ See *People v. Sood*, G.R. No. 227394, June 6, 2018, 865 SCRA 368, 389.

²⁰ Supra note 15.

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inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so - and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished - does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."²¹

This is especially true in cases where there is a question as to whether or not a buy-bust operation actually took place as when the accused vehemently denies the same. The persisting doubts in our mind due to the fact that only the police officers were present during the apprehension and confiscation are not without basis as police impunity in such situation becomes inherent.²² Consider this: assuming the evidence was indeed planted, substituted, or altered, it would be difficult, if not impossible, for any accused to overcome by mere denial the oft-favored testimony of police officers.²³

Thus, in this case, while the apprehending officers conducted an inventory of the alleged seized items at the place of arrest, doubts as to whether a buy-bust operation was actually conducted still linger to our mind due to the admitted fact that the barangay captain and the media representative, who were supposed to attest to the trustworthiness of the source of the allegedly seized dangerous drugs, came only after thirty minutes from the arrest and alleged confiscation. No explanation was given by the prosecution as to such deviation.

Further, only two of the three mandatory witnesses under the original text of Section 21 above-quoted were present. It is well to emphasize that the law requires the presence of any elected public official **and** a representative from the media **and** the DOJ. The presence of these three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."²⁴

²¹ Id. at 150.

²² See *People v. Luna*, G.R. No. 219164, March 21, 2018, 860 SCRA 1, 26-27.

²³ Id.

²⁴ *People v. Cabrellos*, G.R. No. 229826, July 30, 2018, citing *People v. Sagana*, 815 Phil. 356, 373 (2017).

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As we have held previously, a sheer statement that “their Chief tried to call a representative from the DOJ but no one arrived,” cannot be considered as sufficient and acceptable justification for non-compliance with the strict requirements of the law. Due to the vital role played by said witnesses in the preservation of the integrity and evidentiary value of the *corpus delicti* in drugs cases, police officers are compelled not only to state reasons for the 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.²⁵

To be certain, these requirements are not unreasonably difficult to comply with considering, especially in this case, that the buy-bust team had until the next day, from the receipt of the confidential information, to plan the operation and make the necessary arrangements, knowing fully well that they would have to strictly comply with the set of procedure prescribed in Section 21, Article II of R.A. No. 9165 and its IRR.²⁶

With these unjustified lapses in the very first and most crucial link in the chain of custody, *i.e.*, the confiscation of illegal drugs from the accused, as well as in the inventory, this Court cannot merely ignore the lingering doubts, not only as to the identity and integrity of the subject *shabu* in this case, but more so as to the source thereof.

It is well to state at this point another basic legal precept in criminal prosecutions, which is *dubiis reus est absolvendus* – all doubts should be resolved in favor of the accused. Perforce, accused-appellants’ acquittal is warranted.

We note that this Court will relentlessly remind every police officer and prosecutor of their positive duty to comply with the mandatory requirements of Section 21 of R.A. No. 9165 and its IRR, and R.A. No. 10640 in applicable cases, so we could all effectively perform our part in the State’s campaign against illegal drugs; otherwise, every entrapment operation or prosecution of drugs cases will just be futile, if not arbitrary, actions against any individual. We quote herein the Court’s reminder in *People v. Luna*:²⁷

The law, being a creature of justice, is blind towards both the guilty and the innocent. The Court, as justice incarnate, must then be relentless in exacting the standards laid down by our laws - in fact, the Court can do no less. For when the fundamental rights of life and liberty are already hanging in the balance, it is the Court that must, at the risk of letting the guilty go unpunished, remain unforgiving in its calling. And if the guilty

²⁵ *People v. Crispo and Herrera*, supra note 16, at 377, citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

²⁶ *Id.* at 376-377.

²⁷ *Supra* note 22.

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does go unpunished, then that is on the police and the prosecution - that is for them to explain to the People.²⁸


WHEREFORE, premises considered, the Decision dated March 15, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 09201 is hereby **REVERSED and SET ASIDE**. Accordingly, accused-appellants Sammy Globa y Cotura, a.k.a. "JR," and Louie Anadia y Lugarpo are **ACQUITTED** of the offense charged on the ground of reasonable doubt. They are ordered immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

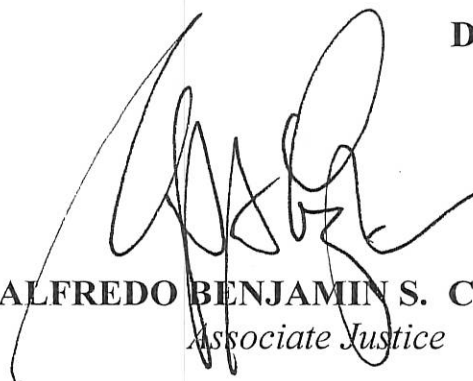
Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished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

SO ORDERED.

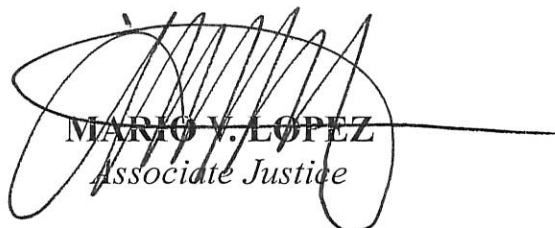

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

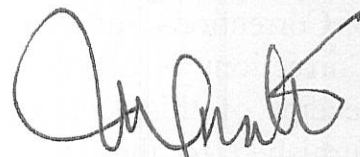

AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice

²⁸ Id. at 36.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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

G.R. No. 241251 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*,
versus SAMMY GLOBA y COTURA, a.k.a. “JR,” and LOUIE ANADIA
y LUGARPO, *accused-appellants*.

Promulgated:

DEC 10 2019

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CONCURRING OPINION

CAGUIOA, J.:

I agree with the *ponencia* that accused-appellants Sammy Globa y Cotura and Louie Anadia y Lugarpo should be acquitted for the prosecution’s failure to prove an unbroken chain of custody of the subject *shabu*, which placed its integrity in doubt.

Principally, in prosecuting violations of Republic Act No. (RA) 9165,¹ it is imperative that the identity and source of the seized substances as proof of the *corpus delicti* be sufficiently established.² The law and the unambiguous guidelines laid down by the Court have provided exacting safeguards on the preservation of the chain of custody of seized drugs, owing in large part to the ease with which such specimens may be switched, planted, or otherwise contaminated.

The establishment of the integrity of the *corpus delicti* is ensured by following the procedure provided in Section 21 of RA 9165, to wit:

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;

(2) Within twenty-four (24) hours upon confiscation/seizure of

¹ Comprehensive Dangerous Drugs Act of 2002.

² *People v. Rojas*, G.R. No. 222563, July 23, 2018.

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[.]³

Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) further specifies where the physical inventory and photographing of the seized items should be done, thus:

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:

- (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[.]⁴

Given the nature of a buy-bust operation, the possibility of abuse during its conduct is great,⁵ and law enforcers have been reminded time and again to

³ Underscoring supplied.

⁴ Emphasis and underscoring supplied.

⁵ *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007).

precisely observe and comply with the above requirements,⁶ lest their efforts in the State's campaign against illegal drugs be rendered inconsequential due to no other fault than their own. Several cases decided by the Court have so far shown that this failure often occurs during the seizing of the illegal drugs and the inventory thereof, particularly with respect to the site of the physical inventory and photographing of the same.

Facially, the language of Section 21(a), Article II of the IRR allows for physical inventory and photographing of the seized items to be conducted at the nearest police station or at the nearest office of the apprehending officer or team. However, such procedural concession must not be taken as an unbridled license to not undertake the inventory at the place of arrest, under the guise of practicability. Existing jurisprudence clarifies the phrase "immediately after seizure and confiscation" to contemplate the ideal compliance of conducting the physical inventory and photographing of the drugs immediately after, or at the place of apprehension.⁷

In *People v. Adobar*,⁸ this Court took the opportunity to elucidate the legally contemplated application of the phrase "immediately after seizure and confiscation," to wit:

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 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

⁶ *People v. Luna*, G.R. No. 219164, March 21, 2018, 860 SCRA 1, 36.

⁷ *People v. Sampa*, G.R. No. 242160, July 8, 2019; citation omitted.

⁸ G.R. No. 222559, June 6, 2018, 865 SCRA 220.

most needed. **It is their presence at that point that would insulate against the police practices of planting evidence.** x x x⁹

In other words, pragmatic convenience does not discharge the apprehending officers from the primary duty to exert every effort to inventory and photograph the confiscated items at the very site where they were seized. In no uncertain terms, this objective is further concretized by the governing internal rules and guidelines of the Philippine National Police (PNP). Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM),¹⁰ or the precursor of the Anti-Illegal Drugs Operation and Investigation (AIDSOTF-Manual) of 2010 and 2014, the strict procedure in the photographing and inventory of the seized items has been detailed, to wit:

Anti-Drug Operational Procedures
Chapter V. Specific Rules

x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation – in the conduct of buy-bust operation, the following are the procedures to be observed:

x x x x

- k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;
- l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;
- m. The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;
- n. Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and
- o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.

Furthermore, in the Revised PNP Manual on AIDSOTF-Manual, the handling, custody and disposition of the seized illegal drugs are also prescribed:

Section 2-6 Handling, Custody and Disposition of Drug and Non-

⁹ Id. at 251-252; emphasis and underscoring in the original, citations omitted.

¹⁰ PNPM-D-O-3-1-99 [NG].



Drug Evidence

2.33. During handling, custody and disposition of evidence, provisions of Section 21, RA 9165 and its IRR as amended by RA 10640 shall be strictly observed.

2.34. Photographs of pieces of evidence must be taken immediately upon discovery of such, without moving or altering its original position, including the process of recording the inventory and the weighing of illegal drugs in the presence of required witnesses, as stipulated in Section 21, Article II, RA 9165, as amended by RA 10640.

x x x x

a. Drug Evidence

- (1) Upon seizure or confiscation of illegal drugs or CPECs, laboratory equipment, apparatus and paraphernalia, the operating Unit's Seizing Officer/Inventory Officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:
 - (a) The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel;
 - (b) With an elected Public Official; and
 - (c) Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory.
- (2) For seized or recovered drugs covered by Search Warrants, the inventory must be conducted in the place where the Search Warrant was served.
- (3) For warrantless seizures like buy-bust operations, inventory and taking of photographs should be done at the nearest Police Station or Office of the apprehending Officer or Team.¹¹

These stipulated protocols in the PNPDEM and the AIDSOTF-Manual indicate that when the law provided that the physical inventory and photographing be "immediately after seizure and confiscation," it meant for the inventory and photographing to be done at the very site of seizure, and not elsewhere once removed from the place of arrest.

The seeming contradiction of the third sub-paragraph of 2.34, *i.e.*, that inventory and photographing after warrantless seizures are to be done at the nearest police station, with the general rule on "on-site" inventory and photographing, *i.e.*, "immediately after seizure and confiscation," must be reconciled because it so far departs from the letter and spirit of Section 21 of RA 9165 and Section 21(a), Article II of its IRR in that it prescribes as mandatory a crucial stage in the buy-bust operation. Particularly, it provides that inventory and photographing after warrantless seizures "should" be done at the police station nearest the site of the buy-bust operation, when the aforecited Sections of RA 9165 and its IRR require that the inventory and

¹¹ Emphasis supplied.



photographing be done “immediately” after seizure and confiscation (or the buy-bust transaction), subject to the different situational challenges existing during the buy-bust operation which warrant whenever “practicable,” conducting the inventory and taking of photographs at the nearest police station or office of the apprehending team. In addition, this provision is also inconsistent with the requirements included in the same enumeration that refers to the handling of “Drug Evidence,” specifically the main subhead of 2.34 which requires that evidence must be photographed and inventoried without being moved or altered from their original position, and 2.34(1) which provides that physical inventory, markings and photographing of seized items must be done at the same place of operation.

In other words, Section 21(a), as a general rule and as fleshed out by jurisprudence, primarily requires that the inventory be done at the place of seizure. As an exemption to that general rule, in the event of situational challenges that prevent the photographing and inventory at the place of arrest, and with a satisfactory justification therefor, only then may the same be done at the nearest police station or office of the apprehending officers.

Further, during prosecution, mere invocation of an inconvenience that rendered the inventory impracticable at the site of seizure does not translate to substantial compliance with Section 21(a), especially if such invocation is not sufficiently explained in the records of the case and supported by evidence.

If the rule were otherwise, the very purpose for which such requirement was provided may very well be met only in theory, but defeated in practice.

The danger of slackened compliance with this requirement is illustrated in the scenarios on the ground that demonstrate how a perfunctory observance of this requirement opens up the buy-bust operation to the dangerous proclivities¹² including planted evidence to incarceration of an innocent for life.

For instance, this practicability clause pertaining to site of inventory has given rise to the propensity of some apprehending officers to choose to conduct photographing and inventory of the seized items at the nearest police station, on the basis of inconveniences, including the seemingly ubiquitous “existence of a commotion.”¹³ This has also often made way for the practice of “calling in”¹⁴ the insulating witnesses after the fact of seizure, which has likewise exposed the validity of the seizure and confiscation to question.

The law is likewise categorical that in case of non-compliance, only

¹² See *People v. Dela Cruz*, 666 Phil. 593 (2011); *Valdez v. People*, 563 Phil. 934 (2007); *Arcilla v. Court of Appeals*, 463 Phil. 914 (2003); and *People v. Pagaura*, 334 Phil. 683 (1997).

¹³ *People v. Sampa*, supra note 7.

¹⁴ See *People v. Ordiz*, G.R. No. 206767, September 11, 2019; *People v. Narvas*, G.R. No. 241254, July 8, 2019; *People v. Dagdag*, G.R. No. 225503, June 26, 2019; *People v. Nieves*, G.R. No. 239787, June 19, 2019; *People v. Malana*, G.R. No. 233747, December 5, 2018; *People v. Rivera*, G.R. No. 225786, November 14, 2018; *People v. Musor*, G.R. No. 231843, November 7, 2018; and *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131.

upon recognition of a lapse in this respect, and a concomitant acceptable justification therefor, may the validity of the subject seizure be maintained. In the case of *People v. Barte*,¹⁵ the Court had expounded on this duty to explain non-compliance:


When there is failure to comply with the requirements for proving the chain of custody in the confiscation of contraband in a drug buy-bust operation, the State has the obligation to credibly explain such non-compliance; otherwise, the proof of the *corpus delicti* is doubtful, and the accused should be acquitted for failure to establish his guilt beyond reasonable doubt.¹⁶

The belated arrival of the insulating witnesses was not justified in this case, let alone recognized, by the apprehending officers, and even on this count alone, without going into the lack of a Department of Justice representative as a witness, the accused already merited acquittal.

For failure to discharge this duty to justify, the saving clause of the Chain of Custody is decidedly out of the question.

With this non-compliance, distrust has been cast on the identity and integrity of the *corpus delicti*, leading to the absence of an essential element in the crime charged, which, in turn, must inevitably result in reasonable doubt as to the guilt of herein accused.

Based on these premises, I vote to **GRANT** the instant appeal and **REVERSE** and **SET ASIDE** the Decision of the Court of Appeals dated March 15, 2018 finding accused-appellants Sammy Globa y Cotura and Louie Anadia y Lugarpo guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

¹⁵ 806 Phil. 533 (2017).

¹⁶ Id. at 536.

