Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOR JELAMIN MUSA,[*] IVAN USOP BITO,[**] and MONSOUR ABDULRAKMAN ABDILLA,[***] Petitioners,	**G.R. No. 242132**
- versus -	Present: BERSAMIN,[****] *C.J.*, Chairperson, PERLAS-BERNABE,[*****] JARDELEZA, GESMUNDO,[****] and CARANDANG, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated: SEP 25 2019

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 30, 2018 and the Resolution[3] dated August 23, 2018 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 01553-MIN which affirmed the Judgment[4] dated June 22, 2016 of the Regional Trial Court of Lupon, Davao Oriental, Branch 32 (RTC) in Crim. Case No. 1694-14 finding petitioners Nor Jelamin Musa (Musa), Ivan Usop Bito (Bito), and Monsour Abdulrakman Abdilla (Abdilla; collectively, petitioners) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act

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[*] Also referred to as "Norjelamin Musa" in some parts of the records.
[**] Also referred to as "Vito" in some parts of the records.
[***] Also referred to as "Abadillo" in some parts of the records.
[****] On official business.
[*****] Designated Acting Chairperson per Special Order No. 2704 dated September 10, 2019.
1 *Rollo*, pp. 36-54.
2 Id. at 6-23. Penned by Associate Justice Tita Marilyn B. Payoyo-Villordon with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring.
3 Id. at 30-31.
4 Records, pp. 143-167. Penned by Presiding Judge Emilio G. Dayanghirang III.

No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and sentencing them to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 each.

The Facts

Petitioners were charged with violation of Section 5, Article II of RA 9165 in an Amended Information[6] which reads:

> That on or about July 22, 2014 in the Municipality of Governor Generoso, Province of Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, mutually conspiring and confederating with each other, without authority of law, did then and there willfully, unlawfully and feloniously ***transport*** from Pagalungan, Maguindanao to Barangay Tibanban, Governor Generoso, Davao Oriental Methamphetamine Hydrochloride also locally known as "Shabu" with an estimated weight of 18.4349 grams, a dangerous drug, without proper license or permit from the authorities, to the damage and prejudice of the state.
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> CONTRARY TO LAW.[7] (Emphasis supplied)

When arraigned, petitioners entered a plea of *not guilty* to the offense charged.[8]

The prosecution alleged that on July 22, 2014, Police Chief Inspector Aldrin Quinto Juaneza (PCI Juaneza) of the Governor Generoso Municipal Police Station in Davao Oriental received confidential information from Police Superintendent Intelligence Officer Ruben Ramos (PSI Ramos) of the Davao Oriental Provincial Office about a purported plan to transport illegal drugs to Governor Generoso, Davao Oriental. Specifically, a white multi-cab vehicle with plate number NBD-279 with marking "Jarus Jeth" on its body was expected to transport illegal drugs from Pagalungan, Maguindanao to Governor Generoso. Armed with said information, PCI Juaneza and PSI Ramos arranged the conduct of a checkpoint to intercept the vehicle.[9]

At around 11:00 o'clock in the morning of July 22, 2014, a team composed of eight (8) police officers, including PCI Juaneza, SPO2[10] Joselito Alvarez (SPO2 Alvarez), PO3 Teodoro Blaya (PO3 Blaya), and PO3 Alvin Molejon (PO3 Molejon) established a checkpoint at Purok 1,

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5 Entitled "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," approved on June 7, 2002.

6 Dated August 7, 2014. Records, pp. 28-29.

7 Id. at 28.

8 Id. at 34.

9 See *rollo*, pp. 7-8.

10 Also referred to as "SPO3" in some parts of the records.

Barangay Tibanban, Governor Generoso, Davao Oriental. The team members strategically positioned themselves near and around the area.[11]

From a distance of about ten (10) meters, the police officers saw the subject multi-cab heading towards the checkpoint, prompting the police officers to prepare to flag down the vehicle. However, even before reaching the vicinity of the checkpoint, the multi-cab stopped and abruptly changed direction, prompting the police officers to pursue the evading vehicle aboard a *bongo* or pick-up type vehicle.[12]

After a brief chase, the police officers stopped and came upon the multi-cab, which had halted. PO3 Blaya testified that he saw all three petitioners alight from the multi-cab and walk towards a nearby hut twenty (20) meters away from the vehicle. Thereat, the police officers caught up with the petitioners, introduced themselves, and warned them not to escape. Then, SPO2 Alvarez noticed that Abdilla was clutching his left hand. Upon SPO2 Alvarez's order, Abdilla handed over one (1) transparent heat-sealed plastic sachet containing white crystalline substance, which was later on identified as "shabu." Meanwhile, Musa and Bito were also frisked by the rest of the team, although nothing was found in their possession.[13]

Upon receipt of the plastic sachet containing the white substance, SPO2 Alvarez handed the same to PO3 Molejon. At the police station, SPO2 Alvarez and PO3 Blaya both placed their markings[14] on the seized drugs. Thereafter, PCI Juaneza prepared the Receipt/Inventory of Property/ies Seized,[15] which was witnessed and signed by Vice Mayor Katrina Orencia (Vice Mayor Orencia), Kagawad Ermian Limbadan (Kagawad Limbadan) of Brgy. Tibanban, Governor Generoso, and Peter Z. Macado (Macado), a media personality from Mati City. Photographs[16] of the confiscated drugs were also taken in the presence of petitioners.[17]

Meanwhile, PO3 Molejon had custody of the seized substance. The following day or on July 23, 2014, he prepared the Request for Laboratory Examination,[18] which was duly received by one PO2 Billano.[19] Upon qualitative examination, the drug specimen tested positive[20] for Methamphetamine Hydrochloride or "shabu," a dangerous drug.

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11 See *rollo*, p. 8.
12 See id.
13 See id. at 8-9.
14 Their initials and the date of arrest.
15 Folder of Exhibits, Exhibit "B."
16 Records do not contain any photographs offered in evidence. The prosecution's Formal Offer of Exhibits shows that no photographs were offered or identified during trial. (See records, pp. 106-107.)
17 See *rollo*, p. 9-10.
18 Folder of Exhibits, Exhibit "C."
19 Also referred to as "Millano" in some parts of the records.
20 See Chemistry Report No. D-037-14, Folder of Exhibits, Exhibit "A."

In defense, Abdilla claimed that at around 4:00 o'clock in the morning of July 22, 2014, he went to Tibanban, Governor Generoso to observe the fish there. When he arrived at around 8:00 o'clock in the morning, he found no fish. Thus, he went to the waiting shed near the sea and sent a message to his in-law, asking her to have a vehicle brought over to Tibanban. Later on, a multi-cab arrived with Bito behind the wheel accompanied by Musa. The three of them waited for thirty (30) minutes at the waiting shed. Thereafter, three (3) persons, who introduced themselves as police officers, approached them. Poking their guns at the petitioners, the police officers required them to drop to the ground, where they were frisked and tied with a rope. Nothing was taken from them. Subsequently, they were brought to the police station.[21]

For his part, Musa asserted that on the date in question, he drove a multi-cab together with Bito to meet Abdilla and catch some fish. They arrived at around 11:30 in the morning at Sigaboy and met Adbilla in a hut. Five (5) minutes later, six (6) policemen arrived and pointed their guns at them, demanding that they bring out the drugs they were selling. Abdilla denied having drugs in their possession. Thereafter, they were brought to the police station. Musa averred that there was no police checkpoint at that time nor were they flagged down by the police. He denied that they turned right in an intersection going to Tibanban and that he saw any road on the right going in the said direction.[22]

The RTC Ruling

After trial on the merits, the RTC, in a Judgment[23] dated June 22, 2016, found petitioners guilty beyond reasonable doubt of the offense charged and sentenced them each to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.[24] The RTC found that the purpose of petitioners was to transport "shabu," considering that: (*a*) the multi-cab bearing plate number NDB-279 with marking "Jarus Jeth," which was the subject of the confidential information received by the police officers, suspiciously changed its course to avoid the checkpoint set up by the police officers; (*b*) after giving chase, the police officers caught up with the multi-cab which was already at a full stop, and they saw the petitioners alighting therefrom; and (*c*) they were able to recover a plastic sachet containing "shabu" from the possession of Adbilla. As petitioners' arrest was the result of a hot pursuit operation, it was immaterial that they were apprehended near a hut and not inside the vehicle.[25] Further, the integrity and probative value of the confiscated substance were properly preserved since the chain of custody was observed in this case.[26]

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21 See records, p. 145.
22 See id. at 149-150.
23 Id. at 143-167.
24 Id. at 166.
25 See id. at 150-152.
26 See id. at 160-161.

Aggrieved, petitioners appealed[27] to the CA.

The CA Ruling

In a Decision[28] dated January 30, 2018, the CA affirmed petitioners' conviction, sustaining the RTC's position that the warrantless search and arrest of petitioners in this case was valid, as the search of a moving vehicle is an exception to the rule that no search or seizure shall be made except by virtue of a valid warrant.[29] Moreover, it found that the prosecution was able to establish that the act of *transporting* the prohibited drugs had been committed, as can be gleaned from the testimonies of the police officers.[30] Likewise, it held that the chain of custody of the seized substance had been observed, from the time it was confiscated, to the time it was turned over to the investigating officer until it was brought to the forensic chemist for laboratory examination.[31] Finally, it ruled that conspiracy attended the commission of the offense, as the acts of petitioners demonstrated a coordinated plan to transport the illegal drugs.[32]

Petitioners' motion for reconsideration[33] was denied in a Resolution[34] dated August 23, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the judgment of conviction of petitioners for the offense charged.

The Court's Ruling

The petition is meritorious.

At the outset, well-settled is the rule that findings of fact of the trial court are given great respect. But when there is a misappreciation of facts as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings of the trial court, as in this case.[35]

"Transport" as used under the Dangerous Drugs Act

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27 See Notice of Appeal dated June 27, 2016; id. at 173.
28 *Rollo*, pp. 6-23.
29 See id. at 13-14.
30 See id. at 18-19.
31 See id. at 22.
32 See id. at 22-23.
33 Dated February 22, 2018. Id. at 24-28.
34 Id. at 30-31.
35 See *San Juan v. People*, 664 Phil. 547, 560 (2011).

"Transport" as used under the Dangerous Drugs Act means "to carry or convey from one place to another." The essential element of the charge is the *movement* of the dangerous drug from one place to another.[36]

There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.[37]

The prosecution failed to prove the fact of *"transport"* of illegal drugs

In this case, it is the prosecution's theory that petitioners *transported* 18.4349 grams of methamphetamine hydrochloride or *shabu* on July 22, 2014 from Pagalungan, Maguindanao to Governor Generoso, Davao Oriental using a white multi-cab vehicle with plate number NBD-279 with the marking "Jarus Jeth" on its body. However, the totality of the evidence offered by the prosecution to prove its theory falls short as to justify the affirmance of petitioners' conviction.

First, while it may be true that, per the confidential information relayed by PSI Ramos to PCI Juaneza, a white multi-cab vehicle bearing plate number NBD-279 and the name "Jarus Jeth" on its body traversed the highway and approached the police checkpoint at Purok 1, Barangay Tibanban, Governor Generoso, Davao Oriental, none of the prosecution witnesses was able to identify any of the passengers of the said vehicle. In fact, the first time the police officers were able to see the petitioners was after they had given chase and found the multi-cab vehicle parked close to a nearby hut, inside which petitioners were standing. During his direct examination, SPO2 Alvarez testified:

> Atty. Pudpud – What did you do when they change[d] the route?
>
> SPO2 Alvarez – The team leader advised our troops to chase the vehicle.
>
> Q – What happened when you chased the multicab?
>
> A – When we chased them we were able to catch them and stop them on (sic) the small shanty nipa hut with light materials.
>
> Q – What did they do when you were able to catch up with them?
>
> A – They are all there standing at the hut.

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[36] Id.

[37] *People v. Asislo*, 778 Phil. 509, 523 (2016); citations omitted.

Q – They are already alighted from the multicab?

A – Yes, sir.

x x x x

Q – When they approached the checkpoint and avoided the checkpoint, did you notice the other 2 passengers?

A – No, your honor, because their multicab has covered (sic) on the back.

Q – You were not able to determine how many are on board?

A – Yes, sir.

Q – How about the driver of this multicab, were you able to see?

A – No, sir.

Q – So, you were only able to see them on the hut?

A – Yes, sir.

x x x x[38]

SPO2 Alvarez affirmed this in his cross-examination, to wit:

Atty. Etulle – Now, when you arrived at the hut you saw the multicab park 20 meters away from the hut, am I correct?

A – Yes, sir.

Q – Was the engine still running or the engine was already stopped?

A – Already stopped.

Q – Did you see any passengers in the multicab?

A – No, sir.

Q – Did you see anyone alighted (sic) from the multicab?

A – No, sir.

Q – What you see are the 3 persons standing in the hut?

A – Yes, sir.[39]

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38 TSN, February 18, 2015, pp. 12-15.
39 TSN, February 18, 2015, p. 32.

One of the team members, PO3 Blaya, likewise testified that they did not see petitioners aboard the multi-cab when they caught up with it, *viz.*:

> Atty. Etulle – Now, upon reaching that point you said, you spotted the vehicle the multicab stopped at the open area where the shanty hut was located?
>
> PO3 Blaya – Yes, sir.
>
> Q – At the time you arrived, was the multicab at (sic) halted or stopped?
>
> A – The multicab has already stopped, sir.
>
> Q – Were there still passengers or people inside the multicab?
>
> A – None, sir.
>
> x x x x[40]

Considering the foregoing testimonies of the prosecution witnesses, it is clear that the identities of the petitioners as the persons who were driving and/or riding the multi-cab purportedly used to transport illegal drugs have not been established with absolute certainty. This identification is material because failure to establish that petitioners were driving or onboard the multi-cab vehicle at any time raises reasonable doubt that they were transporting illegal drugs as charged. The fact that they were standing in a hut close to where the multi-cab was parked when the police officers caught up with them does not prove that they were, at any time, inside the vehicle; necessarily, it does not automatically suggest that they *transported* illegal drugs.

Second, the inconsistent and flip-flopping testimonies of the police officers as to what really transpired at the checkpoint, among others, raise serious doubt on the veracity of the prosecution evidence. When he testified at the bail hearing, SPO2 Alvarez declared that when they saw the multi-cab approaching the checkpoint, they flagged it down but it merely ran through without stopping.[41] However, at the presentation of the prosecution's evidence in chief during trial, he completely changed his testimony and stated that the subject vehicle changed direction and avoided the checkpoint altogether.[42] When confronted with his contradictory statements by the defense counsel, SPO2 Alvarez merely asserted that his testimony in the direct examination was "what really happened" without, however, offering any explanation for the conflicting statements.[43]

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40 TSN, June 16, 2015, p. 15.
41 See TSN on Hearing on the Motion to Bail, October 14, 2014, p. 15.
42 See TSN, February 18, 2015, p. 12.
43 See TSN, February 18, 2015, p. 27.

Further, SPO2 Alvarez initially claimed having seen two (2) persons in front and one (1) person at the back of the multi-cab;[44] subsequently, however, he again changed his testimony and stated that he did not see any passengers at all.[45] Again, no explanation had been forthcoming for the wholly contrasting statements given by SPO2 Alvarez.

In view of the foregoing statements, the Court entertains reasonable doubt that petitioners transported illegal drugs as charged. The evidence of the prosecution fell short of proving that petitioners were actually on board the multi-cab which, per confidential information, will be supposedly used to transport illegal drugs or that petitioners travelled from Pagalungan, Maguindanao to Governor Generoso for the said purpose. Indeed, the prosecution failed to show that any distance was travelled by petitioners with the drugs in their possession.[46] That petitioners were standing in a hut located within the vicinity of the multi-cab does not prove with certainty that they were the driver and passengers of the vehicle. Undeniably, the conclusion that they were transporting drugs merely because of their proximity to the multi-cab when they were arrested has no basis and is pure speculative at best. It bears stressing that the guilt of the accused must be proved with moral certainty. It is the responsibility of the prosecution to prove the element of transport of dangerous drugs, namely, that transportation had taken place, or that the accused had moved the drugs some distance,[47] which does not obtain in this case.

Illegal Possession of Drugs under the Variance Doctrine

Nevertheless, the police officers testified that they were able to confiscate a heat-sealed transparent plastic sachet containing 18.4349 grams of white crystalline substance in the possession of Abdilla, which, upon qualitative examination, was determined to contain Methamphetamine hydrochloride, a dangerous drug.[48]

In view thereof, petitioners *may*, in theory, still be held liable for Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 by virtue of the *variance doctrine* as enunciated in Section 4,[49] Rule 120 of the Rules of Court. The rule is that when there is a variance between

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[44] See TSN, October 14, 2014, p. 16.
[45] See TSN, February 18, 2015, pp. 30-31.
[46] See *San Juan v. People*, supra note 35.
[47] See id.
[48] See Chemistry Report No. D-037-14, Folder of Exhibits, Exhibit "A."
[49] Section 4, Rule 120 of the Rules of Court states:

> Section 4. *Judgment in case of variance between allegation and proof.* – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged. An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter.[50] On this score, the *transport* of the illegal drugs would necessarily entail the *possession* thereof.

A conviction for Illegal Possession of Dangerous Drugs requires the confluence of the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.[51] The dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. **It is thus paramount for the prosecution to establish that the identity and integrity of the seized drug were duly preserved in order to sustain a conviction.** Otherwise, there would be no basis to convict for Illegal Possession of Dangerous Drugs because the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt.[52]

The chain of custody rule was not observed; hence, the integrity and probative value of the *corpus delicti* were not preserved

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[53] "Chain of custody" is the duly recorded authorized movements and custody of the seized drugs at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and the presentation in court for identification and destruction.[54] As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a

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50 *People v. Chi Chan Liu*, 751 Phil. 146, 164 (2015).

51 *Calahi v. People*, G.R. No. 195043, November 20, 2017, 845 SCRA 12, 19-20.

52 Id at 20.

53 See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 (2015) and *People v. Bio*, 753 Phil. 730, 736 (2015).

54 See *Cunanan v. People*, G.R. No. 237116, November 12, 2018, citing *People v. Sabdula*, 733 Phil. 85, 94 (2014).

matter of substantive law."[55] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[56]

In *People v. Nandi*,[57] the Court enumerated the following links that should be established in the chain of custody of the seized items: (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. Accordingly, the prosecution is put to task to account for each link of the chain from the moment the drugs are seized up to their presentation in court as evidence of the crime.

In any case, however, the Court has acknowledged that strict compliance with the chain of custody procedure may not always be possible.[58] During such eventualities, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[59] This is based on the saving clause found in Section 21 (a),[60] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[61] For the saving clause to apply, however, the prosecution must explain the reasons behind the procedural lapses.[62] Further, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[63]

A meticulous review of the records in this case shows that there was a glaring gap in the chain of custody of the seized item, thereby affecting its integrity and probative value. In his testimony, SPO2 Alvarez averred that he confiscated the illegal substance from Abdilla, and then turned it over to

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55 See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

56 See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, id.

57 639 Phil. 134 (2010), cited in *People v. Que*, G.R. No. 212994, January 31, 2018.

58 See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

59 See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

60 Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "*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."

61 Section 1 of RA 10640 pertinently states: "*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."

62 *People v. Almorfe*, supra note 59.

63 *People v. De Guzman*, 630 Phil. 637, 649 (2010).

PO3 Blaya.[64] Both SPO2 Alvarez and PO3 Blaya put their markings on the plastic sachet.[65] PO3 Blaya had custody of the plastic sachet from the place of arrest up to the time they arrived at the police station, where he turned it over PO3 Molejon,[66] the assistant investigator.[67] At the police station, PO3 Molejon conducted an inventory of the seized items.[68] The Receipt/Inventory of Property/ies Seized was signed by Vice Mayor Orencia, Kagawad Limbadan, and Macado, a member of the media. According to SPO2 Alvarez and PO3 Molejon, the arresting officers also took pictures of the confiscated item in the presence of petitioners.[69]

The following day, or on July 23, 2014, PO3 Molejon delivered the seized item as well as the Request for Laboratory Examination to the crime laboratory.[70] From the time of his receipt of the seized item from PO3 Blaya until it was delivered to the crime laboratory the following day, only PO3 Molejon had custody of and access to the seized item.[71] At the crime laboratory, a certain PO2 Billano, the acting evidence custodian, received the seized item and the laboratory request from PO3 Molejon.[72] On August 4, 2014, PO2 Billano turned over the request and the seized item to PO3 Ermer Cubillan (PO3 Cubillan), the evidence custodian.[73]

Unfortunately, records do not show what became of the seized item from the time it was in the custody of PO3 Cubillan until it was given to Police Inspector Ryan Pelayre Bajade (PI Bajade), the forensic chemist, for qualitative examination. There is no document showing that PO3 Cubillan turned it over directly to PI Bajade or if there were other personalities who handled the specimen. Clearly, therefore, there is a significant gap, a missing link in the chain of custody of the seized item. Because of this gap, there is no certainty that the sachet of drugs presented as evidence during trial was the same drugs found in Abdilla's possession, thereby rendering the probative weight of the seized item highly suspect.

Unjustified deviations from the mandate of Section 21, Article II of RA 9165

Furthermore, the stringent requirements under Section 21, Article II of RA 9165 were not strictly complied with. As part of the chain of custody procedure, the apprehending team is mandated, immediately after seizure and confiscation, to conduct a physical inventory and to photograph the seized items in the presence of the accused or the person from whom the

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64 See TSN, February 18, 2015, p. 14; and TSN, June 16, 2015, p. 5.
65 See TSN, February 18, 2015, p. 16; and TSN, June 16, 2015, p. 6.
66 See TSN, June 16, 2015, pp. 5-6.
67 See TSN, May 20, 2015, p. 5.
68 See TSN, May 20, 2015, p. 6.
69 See TSN, February 18, 2015, p. 17; and TSN, May 20, 2015, p. 12.
70 See TSN, February 18, 2015, p. 18; and TSN, May 20, 2015, p. 7.
71 See TSN, May 20, 2015, p. 7.
72 See TSN, May 20, 2015, p. 8.
73 See TSN, February 18, 2015, pp. 5-6.

items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if *prior* to the amendment of RA 9165 by RA 10640,[74] "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official";[75] or (*b*) if *after* the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media."[76] The presence of these witnesses safeguards "the establishment of the chain of custody and remove[s] any suspicion of switching, planting, or contamination of evidence."[77]

In this case, while the prosecution witnesses alleged that they took photographs of the seized item in the presence of the petitioners as well as of Vice Mayor Orencia, Kagawad Limbadan, and Macado, no such photographs are attached to the records. In fact, no photographs were identified by the prosecution witnesses or offered in evidence by the prosecution, as can be gleaned from its Formal Offer of Exhibits.[78] Without the actual photographs, the Court cannot accept the testimonies of the police officers that photographs were, indeed, taken.

Moreover, although the inventory was witnessed by two (2) barangay officials and a member of the media, there was no representative from the DOJ. It bears to stress that non-compliance with the required witnesses rule may be permitted only if the prosecution proves that the apprehending officers exerted *genuine and sufficient efforts* to secure their presence, although they eventually failed to appear. Although the earnestness of these efforts must be examined on a case-to-case basis, the primary objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[79] In this case, it would appear that there was no effort at all to secure the presence of a DOJ representative; hence, non-compliance with the rule cannot be excused.

WHEREFORE, the petition is **GRANTED**. The Decision dated January 30, 2018 and the Resolution dated August 23, 2018 rendered by the Court of Appeals in CA-G.R. CR-HC No. 01553-MIN are **REVERSED** and **SET ASIDE**. Accordingly, petitioners Nor Jelamin Musa, Ivan Usop Bito, and Monsour Abdulrakman Abdilla are hereby **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause their

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74 Entitled "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.'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014

75 Section 21 (1) and (2), Article II of RA 9165 and its IRR.

76 Section 21, Article II of RA 9165, as amended by RA 10640.

77 See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

78 Records, pp. 106-107.

79 See *People v. Manansala*, supra note 53.

immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

On official business
LUCAS B. BERSAMIN
Chief Justice
Chairperson

FRANCIS H. JARDELEZA
Associate Justice

On official business
ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

A T T E S T A T I O N

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.

ESTELA M. PERLAS-BERNABE
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

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

ANTONIO T. CARPIO
Acting Chief Justice*

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* Per Special Order No. 2703 dated September 10, 2019.