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Supreme Court  
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SUPREME COURT OF THE PHILIPPINES  
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THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 1, 2020**, which reads as follows:

**“G.R. No. 234945 (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. DAHDIE SALVADOR y GARCIA, accused-appellant).** — This Court resolves an appeal assailing the Decision<sup>1</sup> of the Court of Appeals, which upheld the Regional Trial Court’s Joint Decision<sup>2</sup> finding Dahdie Salvador y Garcia (Salvador) guilty beyond reasonable doubt of violating Sections 5 and 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

On June 3, 2013, two Informations were filed before the Regional Trial Court, charging Salvador with the illegal sale and illegal possession of dangerous drugs.<sup>3</sup> They read:

In Crim. Case No. 90059  
Violation of Sec.5, Art. II of R.A. No. 9165:

That on or about the 23<sup>rd</sup> day of May, 2013[,] in Caloocan City, Metro Manila[,] and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did[,] then and there[,] wil[l]fully, unlawfully[,] and feloniously sell and deliver to PO2 JOEL ROSALES, who posed as buyer, One (1) small heat -sealed [sic] transparent plastic sachet[,] later marked as DS/JR 5-23-13with [sic] signature[,] containing METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.01 gram, . . . which when subjected for [sic] laboratory examination gave POSITIVE result to the tests for Methylamphetamine Hydrochloride, a dangerous drug, and knowing the same to be such.

CONTRARY TO LAW.

<sup>1</sup> Id. at 2–18. The June 30, 2017 Decision in CA-G.R. CR-HC No. 08212 was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Samuel H. Gaerlan (now a member of this Court) and Jhosep Y. Lopez of the Twelfth Division, Court of Appeals, Manila.

<sup>2</sup> CA rollo, pp. 51–66. The June 3, 2014 Joint Decision in Crim. Case Nos. 90059 and 90060 was issued by the Regional Trial Court, Caloocan City, Branch 127. The ruling was not fully attached.

<sup>3</sup> Rollo, pp. 3–4.

July 1, 2020

In Crim. Case No. 90060  
Violation of Sec. 11, Art. II of R.A. No. 9165:

That on or about the 23<sup>rd</sup> day of May, 2013[,] in Caloocan City, Metro Manila[,] and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did[,] then and there[,] willfully, unlawfully[,] and feloniously have in his possession, custody[,] and control Two (2) small heat-sealed transparent plastic sachets[,] each later marked as DS/JP-1 5-23-13w/signature [sic] and DS/JP-2 5-23-13 w/signature[,] containing METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.04 gram & 0.04 gram; [sic] which when subjected to laboratory examination gave POSITIVE result to the tests for Methylamphetamine Hydrochloride, [sic] a dangerous drug, in gross violation of the above-cited law.

CONTRARY TO LAW.<sup>4</sup> (Citations omitted)

On arraignment, Salvador pleaded not guilty to the crimes charged. On pre-trial, the parties stipulated on Salvador's identity and the trial court's jurisdiction over the offense and his person. Trial then ensued.<sup>5</sup>

The prosecution presented four (4) witnesses: (1) Police Chief Inspector Richard Allan B. Mangalip (Chief Inspector Mangalip); (2) Police Officer 1 Jerome M. Pascual (PO1 Pascual); (3) PO3 Jeffred C. Pacis (PO3 Pacis); and (4) PO2 Joel Rosales (PO2 Rosales).<sup>6</sup> However, the testimonies of Chief Inspector Mangalip<sup>7</sup> and PO1 Pascual<sup>8</sup> were dispensed with upon the parties' stipulation.

According to the prosecution, at around 1:45 p.m. on May 23, 2013, the Caloocan City Police received information that a certain "Dahdie"—later identified as Salvador—was selling prohibited drugs in Marulas A, Barangay 36, Caloocan City.<sup>9</sup>

That same day, a team of five officers including PO2 Rosales, the designated poseur-buyer, conducted the buy-bust operation. PO2 Rosales was given the marked ₱200.00 bill with his initials, "JR."<sup>10</sup>

Later, the team proceeded to the Caltex Gasoline Station near the target area. From there, PO2 Rosales and the informant walked to Marulas A, while his companions stood by at strategic positions.<sup>11</sup>

<sup>4</sup> Id.

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

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

<sup>7</sup> Id.

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

<sup>9</sup> Id. at 7.

<sup>10</sup> Id. at 7-8.

Upon seeing Salvador, the informant approached him and said, "*Boss, kukuha itong tropa ko.*"<sup>12</sup> Salvador inquired how much PO2 Rosales wanted to buy, and the officer handed him the marked ₱200.00 bill. Salvador left for a few minutes and, when he returned, gave PO2 Rosales a plastic sachet of suspected shabu.<sup>13</sup>

At this, PO2 Rosales held Salvador by the nape, signaling to the team that the sale had been consummated. The other officers rushed to the scene. PO2 Rosales grabbed Salvador, introduced himself as a police officer, and retrieved the marked money. Another officer, PO3 Pacis, arrested Salvador and searched his pockets, recovering two other plastic sachets of suspected shabu.<sup>14</sup>

PO2 Rosales wrote "DS/JR (BUY BUST) 5-23-13" on the plastic sachet that Salvador had sold him. PO3 Pacis marked "DS/JP-1 (RECOVERED) 5-23-13" and "DS/JP-2 (RECOVERED) 5-23-13" on each of the two sachets recovered from the body search.<sup>15</sup>

The police officers then brought Salvador to the police station. There, PO1 Pascual inventoried the seized items and prepared the requests for laboratory examination and drug test, along with other documents. Then, he turned over Salvador, along with the confiscated articles, to the National Police District Crime Laboratory for testing.<sup>16</sup>

Upon examination, Chief Inspector Mangalip confirmed that the articles were indeed shabu. The specimen sold, which he marked "A1," weighed 0.01 gram, while the specimens obtained from frisking, marked "A2," and "A3," each weighed 0.04 gram.<sup>17</sup> Afterward, Chief Inspector Mangalip turned the specimens over to the evidence custodian.<sup>18</sup>

In his defense, Salvador disclaimed any knowledge of the illegal sale and possession of drugs. He testified that at around 12:15 p.m. on May 21, 2013, he was standing across a store near the railroad tracks between Gido 1 and Gido 2, Caloocan City, when four unidentified men parked their motorcycles and approached him. One of them asked him, "*Hoy, ikaw, anong ginagawa mo dyan?*" When he told them he was not doing anything, one of them frisked him. When they recovered nothing, the men instead handcuffed Salvador and dragged him to A. Mabini Street, where he was detained.<sup>19</sup>

<sup>11</sup> Id. at 8.

<sup>12</sup> Id. at 8.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id. at 8-9.

<sup>16</sup> Id. at 9.

<sup>17</sup> Id.

<sup>18</sup> Id. at 6.

<sup>19</sup> Id. at 10.

In its June 3, 2014 Joint Decision,<sup>20</sup> the Regional Trial Court found Salvador guilty of illegal possession and illegal sale of dangerous drugs:

**WHEREFORE**, premises considered, judgment is hereby rendered as follows:

In **Criminal Case No. 90059**, the Court finds Accused DAHDIE SALVADOR y GARCIA alias “Dahdie” guilty beyond reasonable doubt of the offense of Violation of Section 5, Article II of R.A. [No.] 9165, and he is hereby sentenced to suffer the penalty of life imprisonment and to pay the fine of Five [H]undred [T]housand [P]esos (Php500,000.00).

In **Criminal Case No. 90060**, the Court finds Accused DAHDIE SALVADOR y GARCIA alias “Dahdie” guilty beyond reasonable doubt of the offense of Violation of Section 11, Article II of R.A. [No.] 9165, and he is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum[,] to seventeen (17) years and eight (8) months[,] as the maximum, and to pay the fine of Three Hundred Thousand Pesos (P300,000.00).

The Jail Warden of Caloocan City, Caloocan City [sic] is hereby directed to cause the immediate transfer of custody of the said accused to the Director of National Bilibid Prison, Bureau of Corrections, Muntinlupa City, and to forthwith submit a written report of his compliance (or reason for non-compliance) with this order within ten (10) days from receipt hereof.

The drug subject matter hereof are hereby ordered confiscated and forfeited in favor of the government, and the Branch Clerk of Court of this Sala is hereby directed to turn over the said pieces of evidence to the Philippine Drug Enforcement Agency for their immediate destruction in accordance with law.

SO ORDERED.<sup>21</sup> (Emphasis in the original, citation omitted)

The Regional Trial Court held that PO2 Rosales’s testimony had sufficiently established all the elements of the crimes charged.<sup>22</sup> It gave credence to his straightforward and unequivocal testimony that positively identified Salvador. It further noted that the officers observed the chain of custody in preserving the seized sachets’ integrity and evidentiary value. On the other hand, it did not give credence to Salvador’s defense of denial and frame-up, finding no strong and convincing evidence to support them.<sup>23</sup>

On appeal, the Court of Appeals, in its June 30, 2017 Decision,<sup>24</sup> affirmed the Regional Trial Court’s Joint Decision.

<sup>20</sup> CA *rollo*, pp. 51–66. The dispositive portion was not fully attached to the *rollo*. The copy cited here is from the CA Decision, which wholly replicated the dispositive portion.

<sup>21</sup> Id. at 10–11.

<sup>22</sup> Id. at 59.

<sup>23</sup> Id. at 61–66.

<sup>24</sup> *Rollo*, pp. 2–18.

Noting that the proviso in Section 21 of Republic Act No. 9165's Implementing Rules and Regulations suggested flexibility in its compliance, the Court of Appeals upheld the integrity and evidentiary value of the seized sachets of shabu.<sup>25</sup>

For the Court of Appeals, the arresting officers' lapses did not compromise the identity and integrity of the confiscated items. It stated that the prosecution witnesses' detailed accounts established an unbroken chain of custody. Without ill motive on the police officers' part, the Court of Appeals upheld the presumption of regularity in the performance of official duties.<sup>26</sup>

Thus, Salvador filed a Notice of Appeal,<sup>27</sup> which the Court of Appeals gave due course to on August 14, 2017.<sup>28</sup> On December 13, 2017, this Court required the parties to simultaneously file their supplemental briefs.<sup>29</sup>

Both the Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines,<sup>30</sup> and accused-appellant<sup>31</sup> manifested that they would no longer file supplemental briefs. These were noted by this Court in its June 20, 2018 Resolution.<sup>32</sup>

In his Brief,<sup>33</sup> accused-appellant argues that the Regional Trial Court gravely erred in finding him guilty despite the police officers' failure to comply with Section 21 of the Comprehensive Dangerous Drugs Act.<sup>34</sup> He alleges that the inventory and photographing of the confiscated items were improper as no elected official, Department of Justice representative, or media representative were shown to have witnessed them.<sup>35</sup>

Accused-appellant also points out that the presumption of regularity cannot stand when the police officers grossly disregarded the law.<sup>36</sup> Since the prosecution failed to prove the seized drugs' identity, accused-appellant maintains that his acquittal is warranted.<sup>37</sup>

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<sup>25</sup> Id. at 14–16.

<sup>26</sup> Id. at 15.

<sup>27</sup> Id. at 19–21.

<sup>28</sup> Id. at 22.

<sup>29</sup> Id. at 24–25.

<sup>30</sup> Id. at 26–30.

<sup>31</sup> Id. at 34–38.

<sup>32</sup> Id. at 39–40.

<sup>33</sup> CA *rollo*, pp. 32–50.

<sup>34</sup> Id. at 38.

<sup>35</sup> Id. at 44.

<sup>36</sup> Id. at 46.

<sup>37</sup> Id. at 48.

On the other hand, the Office of the Solicitor General contends in its Brief<sup>38</sup> that the prosecution has substantially complied with the Comprehensive Dangerous Drugs Act.<sup>39</sup>

For this Court's resolution is the lone issue of whether or not the absence of an elective official, a representative from the media, and a representative from the Department of Justice during the buy-bust operation warrants the acquittal of accused-appellant Dahdie Salvador y Garcia.

This Court grants the appeal. Accused-appellant is acquitted.

## I

Convictions for Section 5, the illegal sale of dangerous drugs, and Section 11, the illegal possession of dangerous drugs, of the Comprehensive Dangerous Drugs Act require proof of essential elements:

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.<sup>40</sup>

Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, provides the guidelines in the custody and disposition of the dangerous drugs confiscated, seized, and/or surrendered:

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 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:

<sup>38</sup> Id. at 76–90.

<sup>39</sup> Id. at 85–86.

<sup>40</sup> *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division] citing *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per J. Tinga, Second Division].

- (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of 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 immediately upon completion of the said examination and certification;
- (4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used

or recycled for legitimate purposes: *Provider, further*, That a representative sample, duly weighed and recorded is retained[.]

Jurisprudence summed up these statutory requirements into four links in the chain of custody of the confiscated item:

[T]he following links should be established in the chain of custody of the confiscated item: *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 *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>41</sup>

Establishing the chain of custody of the seized items is crucial in safeguarding their identity and integrity and in proving that these were the exact ones presented in court.<sup>42</sup> *Corpus delicti* is, after all, an essential element in crimes involving dangerous drugs.

Conversely, disregard of the chain of custody rule equates to a failure to establish the critical elements of illegal sale and illegal possession of dangerous drugs, warranting acquittal:

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.<sup>43</sup>

Notably, a more stringent approach is applied in cases dealing with narcotics, owing to their nature of not being readily identifiable:

[T]he likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. . .

*A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature.* The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering,

<sup>41</sup> *People v. Nandi*, 639 Phil. 134, 144-145 (2010) [Per J. Mendoza, Second Division] citing *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

<sup>42</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 503 [Per J. Leonen, Third Division].

<sup>43</sup> *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per J. Perez, Second Division].



alteration or substitution of substances from other cases – by accident or otherwise – in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied*, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.<sup>44</sup> (Emphasis supplied, citations omitted)

Here, accused-appellant was charged with selling 0.01 gram of shabu, as well as possessing two sachets of shabu weighing 0.04 gram each. As *Mallillin v. People*<sup>45</sup> explained, the peculiar feature of dangerous drugs, especially when minuscule amounts are involved, requires heightened scrutiny in evaluating evidence.

## II

*People v. Dela Cruz*<sup>46</sup> explained the need for third-party witnesses under Section 21(1) of the Comprehensive Dangerous Drugs Act:

*People v. Que* demonstrated how the requirements under Section 21 (1) were relaxed by Republic Act No. 10640:

It was relaxed with respect to the persons required to be present during the physical inventory and photographing of the seized items. Originally under Republic Act No. 9165, the use of the conjunctive "and" indicated that Section 21 required the presence of all of the following, in addition to "the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel":

*First*, a representative from the media;

*Second*, a representative from the Department of Justice; and

*Third*, any elected public official.

As amended by Republic Act No. 10640, Section 21 (1) uses the disjunctive "or," *i.e.*, "with an elected public official and a representative of the National Prosecution Service *or* the media." Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other. (Emphasis in the original, citations omitted)

<sup>44</sup> *Mallillin v. People*, 576 Phil. 576, 588 (2008) [Per J. Tinga, Second Division].

<sup>45</sup> 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

<sup>46</sup> G.R. No. 229053, July 17, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65388>> [Per J. Leonen, Third Division].

. . . [M]ere marking of the seized paraphernalia is insufficient to comply with the specific requirements laid down in the Comprehensive Dangerous Drugs Act. *Que* explained the significance of strict compliance on the conduct of inventory, marking, and photographing in the presence of third-party witnesses:

What is critical in drug cases is not the bare conduct of inventory, marking, and photographing. Instead, it is the certainty that the items allegedly taken from the accused retain their integrity, even as they make their way from the accused to an officer effecting the seizure, to an investigating officer, to a forensic chemist, and ultimately, to courts where they are introduced as evidence. . . . What is prone to danger is not any of these end points but the intervening transitions or transfers from one point to another.

....

*The presence of third-party witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items.* The requirement of conducting the inventory and taking of photographs "immediately after seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure or confiscation. This is confirmed in *People v. Mendoza*, where the presence of these witnesses was characterized as an "insulating presence [against] the evils of switching, 'planting' or contamination[.]" . . .

....

Republic Act No. 10640 did introduce amendments that permit deviations from the law's express requirements when there are justifiable grounds:

*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.

*Que* laid down two (2) requisites that must be met to successfully invoke this proviso:

In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: first, the prosecution must specifically allege, identify, and prove "justifiable grounds"; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.

Justification for the absence of third-party witnesses must be alleged, identified, and proved. Further, there must be an earnest effort to secure their presence during the inventory:

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.<sup>47</sup> (Emphasis in the original, citations omitted)

A plain reading of the Comprehensive Dangerous Drugs Act calls for the apprehending team to seize, mark, inventory, and photograph the confiscated article in the presence of the accused<sup>48</sup> or their counsel, along with the third-party witnesses: an elective official, a representative from the media, and a representative from the Department of Justice. The “insulating presence” of these witnesses obliterates doubt on the identity of the dangerous drugs, especially in light of the evil *Mallillin* sought to prevent in advocating for heightened scrutiny. *People v. Mendoza*<sup>49</sup> teaches:

<sup>47</sup> Id.

<sup>48</sup> It may be the person/s from whom such items were confiscated and/or seized, if he or she is not the one indicted in the same case.

<sup>49</sup> 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of shabu that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.<sup>50</sup>

Here, there was absolutely no mention in any of the testimonies to account for the absence of *all* the third-party witnesses. None of the police officers attempted to secure any of the witnesses’ presence. They did not even proffer any general supposition that the representatives were unavailable. This nonchalant attitude in blatant disregard of the law easily destroys the prosecution’s case. Not only are our *law enforcers* required to justify their noncompliance with the simple requirement of the law, but they must also show that they exerted earnest efforts to comply with their mandate.

The prosecution cannot claim substantial compliance when it failed to allege, let alone prove, efforts to ensure the attendance of the required witnesses. The police officers’ deviation from the statutory requirements cannot be excused. This creates doubt on the integrity of the *corpus delicti* and, necessarily, on the commission of the crimes.

### III

Neither can the prosecution invoke the presumption of regularity in the performance of official duties to compensate for the law enforcers’ glaring lapses. The Court of Appeals erred on this point.

Failure to comply with Section 21 of the Comprehensive Dangerous Drugs Act “negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties.”<sup>51</sup> *People v. Que*<sup>52</sup> discussed this presumption’s limitations when weighed against the constitutional presumption of innocence:

Even the customary presumption of regularity in the performance of official duties cannot suffice. *People v. Kamad* explained that the presumption of regularity applies only when officers have shown compliance with “the standard conduct of official duty required by law.” It is not a justification for dispensing with such compliance:

<sup>50</sup> Id. at 764.

<sup>51</sup> *People v. Navarrete*, 665 Phil. 738, 749 (2011) [Per J. Carpio Morales, Third Division].

<sup>52</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per J. Leonen, Third Division].

Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. *A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.* In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined shabu and that formally offered in court cannot but lead to serious doubts regarding the origins of the shabu presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the *corpus delicti* without which the accused must be acquitted.

From the constitutional law point of view, the prosecution's failure to establish with moral certainty all the elements of the crime and to identify the accused as the perpetrator signify that it failed to overturn the constitutional presumption of innocence that every accused enjoys in a criminal prosecution. When this happens, as in this case, the courts need not even consider the case for the defense in deciding the case; a ruling for acquittal must forthwith issue.<sup>53</sup> (Emphasis in the original, citations omitted)

The presumption of regularity in the conduct of official functions does not arise when the police officers grossly neglect their statutory duties. This presumption and the substantial compliance rule may not be invoked to justify violations of the accused's rights. We urge our law enforcers to observe their most basic duty: compliance with the law.

Conviction only arises if the prosecution proves the accused's guilt beyond reasonable doubt. Proof beyond reasonable doubt requires moral certainty, "or that degree of proof which produces conviction in an unprejudiced mind."<sup>54</sup> It occupies a constitutional stance,<sup>55</sup> as guaranteed by

<sup>53</sup> Id. at 507–508.

<sup>54</sup> RULES OF COURT, Rule 133, sec. 2.

<sup>55</sup> *Macayan, Jr. v. People*, 756 Phil. 202, 213–214 (2015) [Per J. Leonen, Second Division].

the due process clause<sup>56</sup> and the presumption of innocence under the Bill of Rights.<sup>57</sup>

Here, no proof beyond reasonable doubt was shown. The prosecution failed to establish the *corpus delicti*, a critical element to establish illegal sale and illegal possession of dangerous drugs. This warrants accused-appellant's acquittal.

**WHEREFORE**, the Court of Appeals' June 30, 2017 Decision in CA-G.R. CR-HC No. 08212 is **REVERSED** and **SET ASIDE**. Accused-appellant Dahdie Salvador y Garcia is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

Let a copy of this Resolution 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 the action he has taken within five days from receipt of this Resolution. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

The Regional Trial Court is also directed to turn over the seized shabu to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of final judgement be issued immediately.

**SO ORDERED.**" (Delos Santos, J., designated additional Member per Raffle dated June 22, 2020 *vice* Gaerlan, J.)

Very truly yours,

*Misael D C Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court  
GER  
10/01/20

<sup>56</sup> CONST., art. III, sec. 1 provides:

SECTION 1: No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

*See People v. Morales*, 630 Phil. 215, 219 (2010) [Per J. Del Castillo, Second Division].

<sup>57</sup> CONST., art. III, sec. 14(2) provides:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

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The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 127, 1400 Caloocan City  
(Crim. Case No. 90059-60)

The Director General  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Mr. Dahdie Salvador y Garcia  
c/o The Superintendent  
New Bilibid Prison  
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