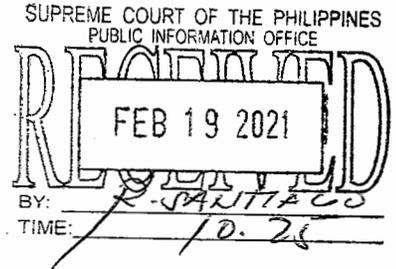




Republic of the Philippines  
Supreme Court  
Manila  
THIRD DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated August 26, 2020, which reads as follows:*

**“G.R. No. 244177 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. ALLAN RAGAS y VALATIAN, *accused-appellant*). —** This Court resolves an appeal from the Court of Appeals Decision,<sup>1</sup> which affirmed the Regional Trial Court’s conviction<sup>2</sup> of Allan Ragas y Valatian for illegal sale of dangerous drugs, penalized under Section 5 of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Ragas was charged with the crime in a February 22, 2011 Information which reads:

That on or about 4:20 o’clock in the afternoon of February 21, 2011 at Brgy. Poblacion, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) heat-sealed plastic sachet containing 0.056 gram of Methamphetamine Hydrochloride (SHABU), a dangerous drug.

CONTRARY TO LAW.<sup>3</sup> (Citation omitted)

On arraignment, Ragas pleaded not guilty to the crime charged. Trial then ensued.<sup>4</sup>

<sup>1</sup> *Rollo*, pp. 2–16. The Decision dated May 31, 2018 in CA G.R. CR-HC No. 08395 was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Ramon A. Cruz and Pablito A. Perez of the Eleventh Division of the Court of Appeals Manila.

<sup>2</sup> *CA rollo*, pp. 58–68. The Decision dated March 30, 2016 in Criminal Case No. U-17248 was penned by Presiding Judge Gonzalo P. Marata of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 48.

<sup>3</sup> *Rollo*, p. 3.

<sup>4</sup> *Id.*

The prosecution presented the testimonies of Police Officer 3 Arnulfo Cayetano, Jr. (PO3 Cayetano) and PO2 Edwin De Ocampo (PO2 De Ocampo).<sup>5</sup>

The prosecution alleged that at around 10:00 a.m. on February 21, 2011, a confidential informant came to the Urdaneta City Police Station to report the rampant selling of illegal drugs beside the nearby Magic Mall in Barangay Poblacion, Urdaneta City, Pangasinan.<sup>6</sup> The informant described how drug peddlers, disguised as ambulant vendors, would sell drugs to those who would make a hand signal: “raising the index finger pointing upward.”<sup>7</sup>

PO2 De Ocampo and PO3 Cayetano then planned a buy-bust operation and formed a team of police officers, in coordination with the local Philippine Drug Enforcement Agency. PO2 De Ocampo was designated as the poseur-buyer, with PO3 Cayetano as his immediate back-up. They prepared two ₱100.00 bills as buy-bust money, and their serial numbers were recorded in the police blotter.<sup>8</sup>

At around 4:20 p.m. that day, the informant texted PO2 De Ocampo that the drug peddlers were already beside the mall, on Belmonte Street.<sup>9</sup>

As the officers reached the target area, PO2 De Ocampo found some ambulant vendors at the parking area on the eastern side of Magic Mall. Once he approached them and pointed his index finger upward,<sup>10</sup> a vendor, whom the officers would later identify as Ragas, went up to him and asked, “*Kuha ka bro?*” to which PO2 De Ocampo replied, “*dos* (two hundred).”<sup>11</sup>

Ragas then left them shortly, and upon his return, gave PO2 De Ocampo an orange plastic sachet. In turn, PO2 De Ocampo handed him the buy-bust money. When PO2 De Ocampo opened the orange sachet, he saw another plastic sachet—heat-sealed, transparent, and containing white crystalline substance, which he suspected to be shabu. At this, he grabbed Ragas’s right hand, introduced himself as a police officer, and arrested Ragas, informing him of his constitutional rights and the reason for his arrest. By then, PO3 Cayetano had moved in to assist in the arrest.<sup>12</sup>

<sup>5</sup> Id. The testimonies of SPO4 Jovencio Elegado, Police Chief Inspector Emelda B. Roderos, NUP Mercedita Velasco and Police Inspector Jervel Rillorta were dispensed with after the parties had entered into a stipulation of facts. (*See rollo*, p. 3).

<sup>6</sup> Id. at 4.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id. at 3–4.

<sup>11</sup> Id. at 5. *See also* CA *rollo*, p. 61, RTC Decision.

<sup>12</sup> Id.

PO2 De Ocampo took custody of the plastic sachets upon confiscation from Ragas.<sup>13</sup> After the arrest, he marked the orange sachet with his initials, "EMO1."<sup>14</sup> PO3 Cayetano testified that from Magic Mall to the police station, PO2 De Ocampo had the orange sachet, the transparent sachet, and the buy-bust money with him.<sup>15</sup> Affirming this, PO2 De Ocampo added that after the team had brought Ragas to the police station, he marked the heat-sealed transparent sachet of suspected shabu with "EMO."<sup>16</sup>

There, Police Inspector Jervel Rillorta prepared a Certificate of Inventory for the two marked sachets.<sup>17</sup>

A Request for Laboratory Examination was then prepared, which PO2 De Ocampo then submitted along with the transparent sachet of suspected shabu to the Crime Laboratory. Police Chief Inspector Emelda Roderos (Chief Inspector Roderos) examined the specimen, which tested positive for shabu.<sup>18</sup>

Afterward, Chief Inspector Roderos<sup>19</sup> turned over the transparent sachet to the evidence custodian. It was kept in the evidence room for safekeeping until she retrieved it for presentation in court.<sup>20</sup>

Meanwhile, the defense only presented Ragas as its witness.<sup>21</sup>

Ragas claimed that at around 11:00 a.m. on February 21, 2011, he was selling cigarettes outside Magic Mall when a man, whom he would later find out was PO3 Cayetano, suddenly approached him from behind.<sup>22</sup> The officer allegedly poked him with a gun.<sup>23</sup> Ragas was so shocked that he was unable to say anything as PO3 Cayetano handcuffed him. Four more persons later joined the officer, and they all took Ragas to the police station, where he was jailed.<sup>24</sup>

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> CA rollo, p. 59.

<sup>16</sup> Rollo, p. 4.

<sup>17</sup> CA rollo, p. 61.

<sup>18</sup> Rollo, p. 5. Per Chemistry Report No. D-032-2011-U.

<sup>19</sup> CA rollo, p. 60. Her oral testimony was dispensed with, as per June 8, 2011 Order of the Regional Trial Court.

<sup>20</sup> Rollo, pp. 4-5.

<sup>21</sup> Id. at 6.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

Ragas was later brought out and taken into a room, where PO2 De Ocampo showed him a white substance that looked like vetsin.<sup>25</sup> After he had told PO2 De Ocampo that he did not know what the substance was, he was again detained. The next day, Ragas was brought to the Justice Hall, before being transferred to the district jail.<sup>26</sup>

In its March 30, 2016 Judgment,<sup>27</sup> the Regional Trial Court found Ragas guilty as charged. It ruled that the prosecution proved that the drug sale took place. It also noted that the prosecution positively identified Ragas as the seller.<sup>28</sup> It also found Ragas's testimony unsubstantiated, noting that his denial cannot prevail over the positive testimony of the prosecution.<sup>29</sup> It held:

WHEREFORE, finding the accused guilty of the crime of Illegal Sale of Dangerous Drugs defined and penalized under Sec. 5, Art. II of R.A. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002, the court hereby sentences him to suffer the penalty of Life Imprisonment and to pay a fine of Php500,000.00.

The prohibited drug presented in court as evidence is hereby forfeited in favor of the government and shall be forwarded to the PDEA Office for proper disposition.

Accused having been convicted is hereby ordered committed to the National Bilibid Prison, Muntinlupa City, Philippines, for the service of his sentence and in the meanwhile he is hereby ordered detained at the Bureau of Jail Management and Penology, Urdaneta City, Pangasinan, pending his transfer to the National Bilibid Prison.

SO ORDERED.<sup>30</sup>

Ragas appealed to the Court of Appeals,<sup>31</sup> arguing that the prosecution failed to prove his guilt beyond reasonable doubt.<sup>32</sup> He pointed out that the prosecution failed to present the coordination form showing that the buy-bust team worked with the Philippine Drug Enforcement Agency. He argued that the buy-bust money was not marked, dusted with fluorescent powder, or subjected to fingerprinting, before and after the operation. He likewise cited inconsistencies in PO2 De Ocampo's testimony. He also claimed that the police officers failed to comply with the requirements under Section 21(1) of Republic Act No. 9165 and its Implementing Rules and Regulations.<sup>33</sup>

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<sup>25</sup> CA *rollo*, p. 62.

<sup>26</sup> Id.

<sup>27</sup> Id. at 58-68.

<sup>28</sup> Id. at 63.

<sup>29</sup> Id. at 67-68.

<sup>30</sup> *Rollo*, p. 2.

<sup>31</sup> Id. at 17.

<sup>32</sup> Id. at 6-7.

<sup>33</sup> Id. at 7.

In its assailed May 31, 2018 Decision,<sup>34</sup> the Court of Appeals affirmed *in toto* the Regional Trial Court's ruling.<sup>35</sup> It affirmed that the prosecution proved all the elements of the crime charged and positively identified Ragas as the seller.<sup>36</sup> It upheld the prosecution's positive testimonies over Ragas's defense of denial, which it found to be weak, self-serving, and unsubstantiated.<sup>37</sup> It noted that the inconsistencies in the prosecution witnesses' testimonies were trivial details that did not detract from their credibility.<sup>38</sup> It also upheld the presumption of regularity in the officers' performance of official duty after Ragas had failed to show any ill motive on their part, and even admitted that he did not know them prior to the arrest.<sup>39</sup>

The Court of Appeals likewise ruled that the buy-bust operation was not invalidated by the failure to mark the buy-bust money, or to dust it with fluorescent powder, or to subject it to fingerprinting before and after the operation. It found that the buy-bust money is merely corroborative, and need not be presented so long as the sale was adequately proven, and the seized drug was presented in court.<sup>40</sup>

The Court of Appeals further held that the chain of custody was unbroken and there was no evidence that the integrity of the seized item was compromised.<sup>41</sup> It ruled that so long as the integrity and evidentiary value of the confiscated item was properly preserved, the seizure is not rendered inadmissible even if the prosecution marked the seized item only at the police station and failed to present the inventory and photograph in evidence. It also noted that even if PO2 De Ocampo did not mention that the marking was done in Ragas's presence, Ragas did not object to it during the trial court proceedings. It likewise found that the prosecution sufficiently complied with the immediate marking requirement as they did it when they arrived at the police station, which was just near the area of arrest.<sup>42</sup>

The Court of Appeals also held that the prosecution did not need to present the testimony of the forensic chemist, Chief Inspector Roderos, to detail how the specimen was handled, as the defense agreed to dispense with her testimony. The parties had even stipulated that she personally received the seized item. Thus, Ragas effectively waived the opportunity to question the forensic chemist on how she handled the seized items.<sup>43</sup>

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<sup>34</sup> Id. at 2-16.

<sup>35</sup> Id. at 15-16.

<sup>36</sup> Id. at 8.

<sup>37</sup> Id. at 8 and 10.

<sup>38</sup> Id. at 9.

<sup>39</sup> Id. at 9-10.

<sup>40</sup> Id. at 11.

<sup>41</sup> Id. at 15.

<sup>42</sup> Id. at 12-15 citing TSN dated June 27, 2011 and TSN dated June 10, 2013.

<sup>43</sup> Id. at 14 citing RTC records, pp. 45-46.

The Court of Appeals disposed:

WHEREFORE, the Appeal is DENIED for lack of merit. The Decision dated March 30, 2016 of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 48 in Criminal Case No. U-17248 is hereby AFFIRMED.

SO ORDERED.<sup>44</sup>

On June 25, 2018, Ragas filed his Notice of Appeal.<sup>45</sup>

In a March 11, 2019 Resolution,<sup>46</sup> this Court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs.

The Office of the Solicitor General, representing plaintiff-appellee People of the Philippines, manifested that it would adopt its Brief before the Court of Appeals instead.<sup>47</sup>

Accused-appellant, through the Public Attorney's Office, filed his Supplemental Brief.<sup>48</sup>

Accused-appellant argues that the buy-bust team unjustifiably failed to comply with the chain of custody rule, and thus, failed to preserve the integrity and evidentiary value of the seized items.<sup>49</sup> He points out that the seized items were marked merely as "EMO" and "EMO-1" but did not indicate the date, time, and place the evidence was found and seized. He also points out that it was not marked immediately upon seizure or in his presence. He mentions that the prosecution admitted to not marking the buy-bust money.<sup>50</sup>

Accused-appellant further contends that despite the officers' time and opportunity to coordinate the entrapment, they still failed to secure the presence of a elected public official or representative from the Department of Justice or the media during the buy-bust and the marking, inventory, and photographing of the seized items. Accused-appellant contends that there was no showing that the police officers even tried to secure their presence, or that they had any justifiable ground in failing to do so.<sup>51</sup>

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<sup>44</sup> Id. at 15-16.

<sup>45</sup> Id. at 17-19.

<sup>46</sup> Id. at 23-24.

<sup>47</sup> Id. at 28-30.

<sup>48</sup> Id. at 41-52. It was filed on August 27, 2019, following this Court's granting of Ragas's two Motions for Extension of Time to file Supplemental Brief.

<sup>49</sup> Id. at 43-44.

<sup>50</sup> Id. at 44-45.

<sup>51</sup> Id. at 45-46.

Accused-appellant further points out that the prosecution failed to submit in evidence the physical inventory and photograph of the seized drug. He also alludes to the inconsistencies made by PO2 De Ocampo as to how the officer made contact with him, where the seized orange plastic sachet was marked, and when the seized item was submitted to the Crime Laboratory.<sup>52</sup>

The issue in this case is whether or not the prosecution proved beyond reasonable doubt that accused-appellant Allan Ragas y Valatian is guilty of illegal sale of dangerous drugs.

We reverse the conviction.

To sustain convictions for the crime of illegal sale of drugs as penalized under Section 5 of Republic Act No. 9165, the following elements must be proved: “(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.”<sup>53</sup>

The second element, the presentation of the *corpus delicti*, requires exacting compliance with the chain of custody requirements, as laid out in Section 21<sup>54</sup> of Republic Act No. 9165:

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:

- (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 dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the

<sup>52</sup> Id. at 46.

<sup>53</sup> *People v. Que*, 824 Phil. 882, 893 [Per J. Leonen, Third Division].

<sup>54</sup> Republic Act No. 9165 has been amended by Republic Act No. 10640 in 2014. However, since the incident occurred in 2011, the applicable law is still Republic Act No. 9165.

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[.] (Emphasis supplied)

These requirements can be broken down into four links, beginning from the moment that the drug is seized until its presentation and identification in court. In *People v. Nandi*:<sup>55</sup>

[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>56</sup> (Emphasis in the original)

In each link, the prosecution has to establish the manner by which the arresting officers handled the seized item. Failure to do so means failure to establish the integrity and identity of the *corpus delicti*.<sup>57</sup> Without the *corpus delicti*, the second element of the offense cannot be proven.

For the first link, the seized item is required to be marked, inventoried, and photographed immediately after confiscation at the place of seizure or at the nearest police station. These processes must be in the presence of the accused and three witnesses: (a) an elected public official; (b) a representative from the media; and (c) a representative from the Department of Justice. In *People v. Tumangong*:<sup>58</sup>

<sup>55</sup> 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

<sup>56</sup> Id. at 144–145 citing *People v. Kamad*, 624 Phil. 289 [Per J. Brion, Second Division].

<sup>57</sup> *People v. Dizon*, G.R. No. 223562, September 4, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65729>> [Per J. Lazaro-Javier, Second Division].

<sup>58</sup> G.R. No. 227015, November 26, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64735>> [Per J. Del Castillo, First Division].

*[N]either photograph nor inventory of the seized item had been made in the presence of an elected public official, a representative of the DOJ and of the media. Section 21 of Article II of RA 9165, prior to its amendment by RA 10640 on July 15, 2014, which is the law applicable at the time of the commission of the offense, clearly requires the apprehending team to mark, conduct a physical inventory, and to photograph the seized item in the presence of the accused or his representative or counsel, with an elected public official and a representative of DOJ and the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter the common practice of planting evidence. While strict compliance may not always be possible, the police officers, nonetheless, should give justifiable reasons for non-compliance. Regrettably, in the instant case, no justifiable reason had been proffered for this fatal omission. . . . More than that, there was no showing that there was any effort to procure the presence of a representative of media, when no barangay official came to the place of arrest and after they were declined by the DOJ. Law enforcers should be mindful of the procedures required in the seizure, handling and safekeeping of confiscated drugs; otherwise, there will be wastage of efforts and resources in the apprehension and prosecution of violators of our drug laws.<sup>59</sup> (Emphasis supplied, citations omitted)*

The need to secure the witnesses' presence was echoed in *People v. Dizon*,<sup>60</sup> where this Court held that the absence of only one of them already warrants an acquittal:

Both witnesses confirmed that the required inventory and photograph were done at the place of arrest and in the presence of elected officials Reynaldo Sumagaysay and Santiago Saberon, Jr. and DOJ representative Agent Ernesto Tagle. One (1) required witness though was missing: a representative from media. Absence of one of the required witnesses is already a breach of the chain of custody rule.

In *People v. Seguinte*, the Court acquitted the accused because the prosecution's evidence was bereft of any showing that a representative from the DOJ was present during the inventory and photograph. The Court keenly noted, as in this case, that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegations of frame up.

Although PO3 Pedeglorio testified that media representative Neil Rio came later to the NBI Dumaguete Office and affixed his signature to the inventory, the same, however, did not cure the incipient breach. He was not mentioned as one of those present at the place of arrest who actually witnessed the inventory. In *People vs. Acabo*, the Court acquitted the accused because there was a deviation from the witness requirement as the conduct of the inventory and photograph was not witnessed by the DOJ while the media representative merely signed the certificate of inventory but

<sup>59</sup> Id.

<sup>60</sup> G.R. No. 223562, September 4, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65729>> [Per J. Lazaro-Javier, Second Division].

did not actually witness the inventory and photograph of the seized items. The Court reiterated that the law requires the presence of these witnesses primarily to ensure that the chain of custody has been duly established, and thus remove any suspicion of switching, planting, or contamination of evidence.

We have clarified, that a perfect chain may be impossible to obtain at all times because of varying field conditions. In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. The prosecution, however, offered no explanation why media representative Rio did not witness the first part or the second part of the inventory. He was only asked to affix his signature to the inventory itself. In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the provision "so long as the integrity and evidentiary value of the seized items are properly preserved", will not come into play.<sup>61</sup> (Emphasis in the original, citations omitted)

The required witnesses must also be present at the time of confiscation of the illegal drugs, or be near the buy-bust area. In *People v. Tomawis*.<sup>62</sup>

From the above testimonies, it can be gleaned that *barangay* councilors Burce and Gaffud were not present near to or at the place of arrest. They were merely called to witness the inventory at the Pinyahan *barangay* hall and then the drugs were shown to them by the PDEA agents. They did not even have prior knowledge of the buy-bust operation.

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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 subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

*The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which 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 frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.*

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<sup>61</sup> Id.

<sup>62</sup> G.R. No. 228890, April 18, 2018, 862 SCRA 131 [Per J. Caguioa, Second Division].

*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.”*<sup>63</sup> (Emphasis supplied)

Moreover, *People v. Reyes*<sup>64</sup> teaches:

Thirdly, another substantial gap in the chain of custody concerned the absence of *any representative of the media or of the Department of Justice (DOJ), and of the elected public official during the buy-bust operation and at the time of the confiscation of the dangerous drugs from the accused in the area of operation.* The Prosecution did not attempt to explain why such presence of the media or DOJ representatives, and of the elected public official had not been procured despite the buy-bust operation being mounted in the afternoon of November 27, 2002 following two weeks of surveillance to confirm the veracity of the report on the illegal trading in drugs by the accused. *The objective of requiring their presence during the buy-bust operation and at the time of the recovery or confiscation of the dangerous drugs from the accused in the area of operation was to ensure against planting of evidence and frame up. It was clear that ignoring such objective was not an option for the buy-bust team if its members genuinely desired to protect the integrity of their operation.* Their omission attached suspicion to the incrimination of the accused. The trial and appellate courts should not have tolerated the buy-bust team’s lack of prudence in not complying with the procedures outlined in Section 21(1) *in light of the sufficient time for them to comply.*<sup>65</sup> (Emphasis supplied, citations omitted)

Here, the prosecution failed to adequately show that the seized items were confiscated, marked, inventoried, and photographed in the presence of the required witnesses. There was likewise no mention that the buy-bust team made any effort to secure their presence. Accused-appellant even alleges that the inventory and photographing were not done in his presence, and points out that neither the inventory nor photograph of the seized items was submitted. Neither is there any explanation from the prosecution as to why the officers did not comply with the law’s requirements.

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<sup>63</sup> Id. at 149–150 citing *People v. Mendoza*, 736 Phil. 749, 764 (2014) [Per J. Bersamin, First Division].

<sup>64</sup> 797 Phil. 671 (2016) [Per J. Bersamin, First Division].

<sup>65</sup> Id. at 689–690.

The facts of this case are similar to those in *People v. Battung*.<sup>66</sup>

An examination of the records showed that the prosecution totally failed to comply with the procedures outlined under Section 21 of R.A. No. 9165. . . .

. . . .

Admittedly, there was no physical inventory of the seized item. Without such inventory, a doubt is created whether the shabu was really taken from appellant. There were also no photographs taken of the inventory in the presence of appellant or his representative or counsel and the required witnesses under Section 21 of R.A. No. 9165, to wit: a representative from the media and the Department of Justice (*DOJ*), and any elected public official. In fact, it was not established at all that the police officers exerted any effort to secure the presence of the required witnesses. The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody. The marking of the seized item by PO1 Juaño at the police station is not sufficient to establish the chain of custody. It has been held that the mere marking of the seized item without the required physical inventory and photographs of the same in the presence of the witnesses mentioned under Section 21 was not enough compliance with the law.<sup>67</sup> (Citations omitted)

Thus, from the first link alone, the prosecution has already failed to establish the integrity of the *corpus delicti*.

It is true that the Implementing Rules and Regulations of Republic Act No. 9165 provides a saving clause: deviations from the chain of custody requirements will not automatically void the seizure and custody of the drugs, so long as their integrity and evidentiary value are preserved.<sup>68</sup> However, in *Battung*, this Court discussed that it falls on the prosecution to justify these lapses. This is especially true when the amount of the allegedly seized drugs is so minuscule. After all, the chain of custody requirements are meant to protect against tampering, planting, or contaminating the evidence:

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also

<sup>66</sup> G.R. No. 230717, June 20, 2018, 867 SCRA 438 [Per J. Peralta, Second Division].

<sup>67</sup> Id. at 453-454.

<sup>68</sup> Implementing Rules and Regulations of Republic Act No. 9165 (2002), sec. 21(a).

clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.

....  
While the last paragraph of Section 21 (a) of the IRR of R.A. No. 9165 provides that non-compliance with the requirements of Section 21 will not render void and invalid the seizure and custody of the seized items, it was made clear that this is so under justifiable ground and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. In other words, the procedural lapse must first be acknowledged and adequately explained. We held that the justifiable ground for non-compliance must be proven as a fact as the Court cannot presume what these grounds are or that they even exist. Here, we find nothing on record of any explanation proffered by the prosecution for the procedural lapse.

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: **(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

To stress, while We had made rulings in the past that failure to strictly comply with the statutory safeguards in the conduct of a buy-bust operation will not render the seized items inadmissible in evidence provided the integrity and the evidentiary value of the seized items have been preserved, We find it imperative for the prosecution to show the courts that the non-compliance with the procedural safeguards provided under Section 21 of R.A. No. 9165 was not consciously ignored. Well-settled is that the procedure in section 21 of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.

Moreover, we held in *People v. Holgado* that considering the minuscule amount of the drug seized, there is a need to be more compliant with the requirements of Section 21 of R.A. No. 9165. Here, only 0.022 grams of shabu were seized from appellant; thus, the exacting standards under the law become more important.

The presumption of regularity in the performance of duty of the arresting officers as found by the RTC and the CA finds no application in this case. Such presumption stands only when no reason exists in the

records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. In this case, the police officers' failure to observe the chain of custody rule without any explanation negates the presumption. Since a serious doubt was created on the integrity and the identity of the *corpus delicti*, consequently, there is a failure to establish an element of the crime of illegal sale of dangerous drugs, and so appellant must be acquitted.<sup>69</sup> (Emphasis in the original, citations omitted)

In this case, the prosecution did not explain why it failed to comply with the requirements under Section 21 of Republic Act No. 9165. This is fatal, given that the drugs allegedly seized from accused-appellant merely weighed 0.056 gram.<sup>70</sup> As the officers disregarded the law's safeguards against planting, tampering, or altering evidence, this Court cannot conclude with moral certainty that accused-appellant is guilty beyond reasonable doubt of the crime charged. Ultimately, his acquittal must ensue.

**WHEREFORE**, the appeal is **GRANTED**. Accused-appellant Allan Ragas y Valatian is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt of the crime of illegal sale of dangerous drugs. He is **ORDERED IMMEDIATELY RELEASED** unless he is being 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 is directed to report to this Court, within five days from receipt of the Resolution, the action he has taken. 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 directed to turn over the seized drugs to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

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<sup>69</sup> Id. at 452-456.

<sup>70</sup> *Rollo*, p. 3.

**SO ORDERED.”**

By authority of the Court:

*Mis. PDC Batt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
*GER*  
*2/2/21*

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REGIONAL TRIAL COURT  
Branch 48, Urdaneta  
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(Crim. Case No. U-17248)

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The Superintendent  
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