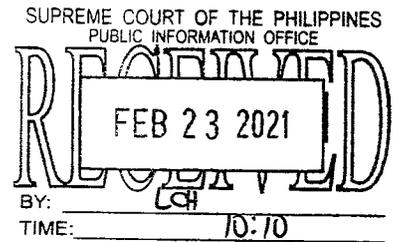




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **June 8, 2020**, which reads as follows:*

**“G.R. No. 209199 (*Manuel Cudal y Balgos v. People of the Philippines*).** –Before Us is a Petition for Review on *Certiorari*<sup>1</sup> filed by Manuel Cudal y Balgos (petitioner) assailing the Decision<sup>2</sup> dated March 4, 2013 of the Court of Appeals (CA) in CA-G.R. CR No. 33699, which affirmed the Decision<sup>3</sup> dated April 20, 2010 of the Regional Trial Court (RTC) of Manila, Branch 16 finding petitioner guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs.

**Facts of the Case**

Petitioner was charged in an Information for violation of Section 5, Article II of Republic Act No. (R.A.) 9165, to wit:

That on or about November 10, 2004, in the City of Manila, Philippines, the said accused not having been authorized by law to sell, trade, deliver or give away any dangerous drug, did then and there willfully, unlawfully, knowingly sell ZERO POINT ZERO TWO TWO (0.022) gm. of white crystalline substance containing methylamphetamine hydrochloride, known as “shabu”, a dangerous drug.

Contrary to law.<sup>4</sup>

Upon arraignment, petitioner pleaded not guilty to the charge. Thereafter, trial ensued.

**Version of the prosecution**

Following a tip from a confidential informant, the Office of the Anti-Illegal Drugs, Police Station No. 5 Western Police District formed a team to

<sup>1</sup> *Rollo*, pp. 8-33.

<sup>2</sup> Penned by Associate Justice Manuel M. Barrios, with Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro, concurring; *id.* at 36-45.

<sup>3</sup> Penned by Judge Carmelita S. Manahan; *id.* at 52-62.

<sup>4</sup> *Id.* at 52.

conduct a buy-bust operation against petitioner, who was engaged in illegal drug activities. The team was headed by Senior Police Officer (SPO) 4 Norberto Morillo (SPO4 Morillo), SPO1 Ricardo Interno (SPO1 Interno), Police Officer (PO) 3 Modesto Bernel (PO3 Bernel), PO3 Elmer Gutierrez (PO3 Gutierrez) and PO2 Ferdinand Bulanadi (PO2 Bulanadi). PO3 Bernel was designated as the *poseur-buyer*.<sup>5</sup> PO3 Bernel testified that during the briefing it was planned that they would buy one-half kilo of *shabu* amounting to more or less ₱400,000.00. Since the informant and petitioner knew each other, only a downpayment of ₱200,000.00 shall be given to petitioner. Thus, during the briefing they prepared paper-cut-like bills and one genuine ₱100.00 bill with serial number VB620372 placed on top of the bogus money. The bogus money they prepared was about half-inch thick.<sup>6</sup>

Around 8:30 p.m., they proceeded to the target area in T.M. Kalaw Avenue, corner Ma. Orosa Street. PO3 Bernel and the informant alighted from their vehicle and waited for petitioner, while the rest of the team stayed inside the vehicle. Then, petitioner and his companion arrived in a green Revo with plate number WKX 730. PO3 Bernel and the informant approached petitioner.<sup>7</sup>

The informant introduced PO3 Bernel to petitioner as a frequent buyer of *shabu*. Petitioner said “*pare di naming dala yung item kaya gusto mo sama ka sa amin sa Culi at don tayo magbayaran.*” PO3 Bernel replied “*baka pwede na lang tayo magbayaran sa Maynila at kung may dala kayong sample baka pwedeng ipatikim.*” Petitioner said, “*swerte ka pare meron kaming sample dito worth one piso pare pwede matikman yan.*”<sup>8</sup>

Petitioner then pulled “*something*” from his pocket and handed it to PO3 Bernel. The latter then examined it. PO3 Bernel handed the buy-bust money to petitioner. Thereafter, PO3 Bernel introduced himself as a police officer and grabbed the arm of petitioner which was the pre-arranged signal. The back-up officers then rushed to the place.<sup>9</sup>

PO3 Bernel testified that the sachet containing white crystalline substance was marked by himself at the police station with “MGB” and that he handed the same to the investigator. He also testified that another plastic sachet was confiscated beneath the driver’s seat of the vehicle, and it was marked with “EMR,” which referred to the initials of petitioner’s companion named Erick Magpayo (Erick).<sup>10</sup>

SPO1 Interno testified that when they arrived at the target area, PO3 Bernel and the informant alighted from their vehicle to wait for petitioner. When petitioner arrived, the informant and petitioner talked while PO3 Bernel

<sup>5</sup> Id. at 55.

<sup>6</sup> Id. at 55-56.

<sup>7</sup> Id. at 55.

<sup>8</sup> Id. at 55-56.

<sup>9</sup> Id. at 56.

<sup>10</sup> Id.

was standing at a distance “*para po huwag masunog ang trabaho.*”<sup>11</sup> Later, a commotion ensued between PO3 Bornel, the informant and petitioner. They then heard PO3 Bornel saying “positive.” Thereafter, they brought petitioner and Erick to the police station. Upon reaching the station, the informant handed SPO1 Interno the two (2) plastic sachets.<sup>12</sup> SPO1 Interno then prepared the request for laboratory examination. He testified that while they arrested two (2) persons, the recommendation of the inquest prosecutor, however, was for Erick to be released subject to further investigation.<sup>13</sup>

Upon cross-examination, SPO1 Interno admitted that PO3 Bornel did not execute the pre-arranged signal. They just noticed a commotion so they rushed for assistance.<sup>14</sup>

PO3 Gutierrez testified that SPO1 Interno thoroughly investigated petitioner. He further testified that SPO1 Interno was the one who marked the evidence. However, he was not able to see the alleged drugs, even at the police station.<sup>15</sup>

Forensic Chemical Officer Elisa Reyes (FCO Reyes) testified that she conducted the laboratory examination on the confiscated items consisting of two (2) heat-sealed transparent plastic sachets. She claimed that she received the two(2) heat-sealed plastic sachets on November 11, 2004 at 12:30 p.m. and that they were delivered by PO3 Vargas. Upon examination, they yielded positive for Methylamphetamine Hydrochloride or *shabu*.<sup>16</sup>

### Version of the defense

Petitioner testified that he was an operator/driver of a Tamaraw FX with a Tandang Sora Bayan Palengke to Kalaw and vice-versa route. However, on November 10, 2004, he did not operate because he noticed that the brakes of the Tamaraw FX were defective, hence he repaired them. He finished repairing the brakes around 5:00 p.m. Thereafter, he went to 7-Eleven at Visayas Avenue to meet Erick because the latter will introduce him to the owner of a carinderia beside Jollibee. The owner of the carinderia would like to buy the rice petitioner was selling.<sup>17</sup>

At 6:30 p.m., they went to Kalaw Street on board the green Revo of Erick. When they were about to make a right turn to Taft Avenue, their vehicle was stopped by a certain “Joker.” He does not know Joker personally but he knew that he was a barker at T.M. Kalaw terminal. Joker requested to go with them. They presumed that Joker will be referring a client who will hire their vehicle. When they were about to leave, a dark-colored car with headlights on made a counterflow towards the direction of Taft Avenue. Three (3) men with

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<sup>11</sup> Id. at 54.

<sup>12</sup> Id. at 53.

<sup>13</sup> Id. at 54.

<sup>14</sup> Id.

<sup>15</sup> TSN dated November 30, 2005, pp. 19-20.

<sup>16</sup> *Rollo*, p. 53.

<sup>17</sup> Id. at 57.

guns alighted from the vehicle and three (3) men with firearms outside Wendy's rushed towards their vehicle. He was made to lie down on the ground. A gun was poked at him and a foot was on his back while he was being handcuffed. He was brought to the police station. He did not know what the police officers did to Erick and Joker. At the police station, he was forced to admit that they were selling drugs, but he denied the same.<sup>18</sup>

### **Ruling of the Regional Trial Court**

On April 20, 2010, the RTC ruled that the prosecution was not able to sufficiently establish the elements of Illegal Sale of Dangerous Drugs. PO3 Bornel and the other witnesses were inconsistent with their statement. According to PO3 Bornel, he executed the pre-arranged signal, however, according to the two (@) other prosecution witnesses, there was no execution of the pre-arranged signal. They only rushed to the scene because of a commotion.<sup>19</sup>

However, while the prosecution was not able to prove illegal sale of dangerous drugs, petitioner can still be held guilty for illegal possession of dangerous drugs, thus:

WHEREFORE, prosecution having proven the guilt of accused beyond reasonable doubt of the offense of violation of Section 11, RA 9165, accused MANUEL CUDAL y BALGOS is hereby CONVICTED.

Accused is sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day to eight (8) years and to pay a fine of One Hundred Thousand Pesos (P100,000.00).

The Branch Clerk, Atty. Rechie N. Ramos-Malabanan is ordered to turn over one (1) plastic sachet containing zero point zero two two (0.022) gram of white crystalline substance containing methylamphetamine hydrochloride known as "shabu" to the Philippine Drug Enforcement Agency for proper disposition.

SO ORDERED.

### **Ruling of the Court of Appeals**

Aggrieved, petitioner appealed his conviction to the CA. The CA, however, rendered a Decision<sup>20</sup> on March 4, 2013 denying the appeal of petitioner and affirming *in toto* the ruling of the RTC.

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<sup>18</sup> Id. at 57-58.

<sup>19</sup> Id. at 59.

<sup>20</sup> Supra note 2.

### Petitioner's arguments

Petitioner argued that the RTC found that the testimony of PO3 Bornel, as *poseur*-buyer was not consistent with the testimonies of his other two (2) companions in the buy-bust operation, inasmuch as PO3 Bornel's claim that he executed the pre-arranged signal was belied by the testimonies of SPO1 Interno and PO3 Gutierrez stating that PO3 Bornel did not execute the pre-arranged signal, they simply rushed to the scene because of the commotion. Considering that the RTC doubted the credibility of PO3 Bornel's uncorroborated testimony regarding the actual buy-bust operation, it should necessarily follow that the testimony of PO3 Bornel as to petitioner's possession of the dangerous drugs should be tainted.<sup>21</sup>

Petitioner further argued that there is doubt as to whether the illegal drugs recovered from him was also the same one examined by the forensic chemist and presented to the court since there were numerous breaks in the chain of custody in handling the seized items.<sup>22</sup>

### Issue

The issue in this case is whether petitioner is guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs.

### Ruling of the Court

For a successful prosecution of the crime of Illegal Possession of Dangerous Drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>23</sup>

In this case, the police officers initially charge petitioner for illegal sale of dangerous drugs, however, the RTC found that the prosecution was not able to prove the sale because the prosecution witnesses, namely PO3 Bornel, SPO1 Interno, and PO3 Gutierrez are inconsistent with their testimonies that there is a sale that transpired. Thus, the RTC merely convicted petitioner for illegal possession of dangerous drugs, because possession is absorbed in the crime of illegal sale of dangerous drugs.

However, the inconsistency in the testimonies of the police officers does not merely downgrade the crime to illegal possession of dangerous drugs. It entirely destroys the credibility of the buy-bust operation itself. As already found by the RTC, the testimony of PO3 Bornel that he executed the pre-arranged signal of grabbing the petitioner's arm to signify the completion of the sale was belied by the testimonies of SPO1 Interno and PO3 Gutierrez. They both categorically stated that they merely rushed to the scene because of

<sup>21</sup> *Rollo*, pp. 18-19.

<sup>22</sup> *Id.* at 20-27.

<sup>23</sup> *People v. Hementiza*, 807 Phil. 1017, 1025-1026 (2017).

the commotion between PO3 Bornel, the informant, and petitioner. They claimed that they did not see PO3 Bornel execute any pre-arranged signal. Aside from this, PO3 Bornel testified that during the briefing they prepared paper-cut-like bills which are half-inch thick<sup>24</sup> and one genuine ₱100.00 bill placed on top of the bogus money. However, none of the other prosecution witnesses who claimed to be present during the briefing testified that they prepared paper-cut-like bills. They testified that the buy-bust money is only a ₱100.00 bill. These circumstances are highly questionable for Us to believe that there is a legitimate buy-bust operation.

In addition to the questionable conduct of the buy-bust operation, in cases of illegal sale/possession of dangerous drugs under R.A. 9165, it is also essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>25</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt which therefore warrants an acquittal.<sup>26</sup> In order to establish the identity of the dangerous drug with moral certainty, there must be observance of the chain of custody rule enshrined in Section 21 of R.A. 9156.

Here, since the buy-bust operation was conducted prior to the amendment of R.A. 9165, 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 his representative or counsel, as well as certain required witnesses, namely: (1) a representative from the media; (2) a representative from the DOJ; and (3) any elected public official.<sup>27</sup>

Time and again this Court emphasized the importance of marking the seized items since this is the first link in the chain of custody. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence.<sup>28</sup>

Here, the first link of the chain of custody is already broken. As testified to by PO3 Bornel, upon his seizure of the plastic sachet of *shabu*, he was in custody of the same since seizure until their arrival at the police station where he placed his marking "MGB" on the plastic sachet. PO3 Bornel also stated that another plastic sachet was found by the other police officers beneath the

<sup>24</sup> TSN dated July 16, 2008, p. 42.

<sup>25</sup> *People v. Crispo*, G.R. No. 230065, March 14, 2018.

<sup>26</sup> *People v. Gamboa*, G.R. No. 233702, June 20, 2018.

<sup>27</sup> Republic Act No. 9165, Art. 2, Sec. 21.

<sup>28</sup> *People v. Coreche*, 612 Phil. 1238, 1244 (2009).

driver's seat of the green Revo where the marking "EMR" was placed. However, SPO1 Interno testified that the confidential informant turned over to him the seized items at the police station where SPO1 Interno marked the seized items.<sup>29</sup> On the other hand, PO3 Gutierrez testified that he did not see the seized items even at the police station.<sup>30</sup> With these varying testimonies, the possibility of switching, planting, and tampering of the evidence is high since the police officers are not even sure who placed the markings.

Further, We examined the entire records of this case and We found no testimony whatsoever that the police officers even conducted an inventory of the seized items in the presence of the accused, a representative of the DOJ, a public official, and a media representative. The police officers did not even offer any explanation as to the absence of these witnesses and their failure to conduct an inventory of the seized items.

Another break in the chain of custody is the failure of the prosecution to establish who gave the request for laboratory examination and the seized items to FCO Reyes. As testified by her, she received the same from PO3 Vargas. However, nowhere in the records did it appear that a certain PO3 Vargas handled the seized items or how those items got into his possession.

Clearly, the chain of custody in handling the seized illegal drugs was broken. As such, the integrity and the evidentiary value of the alleged seized plastic sachets were not preserved. Thus, there is no clear proof that the sachets of *shabu* allegedly confiscated from petitioner were the same items brought to the crime laboratory, examined in the laboratory, retrieved from the evidence custodian and brought to the court to be identified as the same items confiscated from the petitioner. In fact, there is another sachet of drugs allegedly recovered beneath the driver's seat of the green Revo marked "EMR," but the same suddenly disappeared from the records; the police officers would even use this sachet to include Erick in the charge. Thus, there is possibility of switching and planting of evidence in this case.

This Court is not unmindful of the fact that police officers have in their favor the presumption of regularity in the performance of official duties. However, the said presumption only applies when the officers are shown to have complied with the standard conduct of official duty as provided for by law.<sup>31</sup> It cannot prevail over the Constitutional presumption of innocence and cannot, by itself, constitute proof beyond reasonable doubt.<sup>32</sup> In this case, the presumption of regularity cannot work in favor of the police officers since the records of the case is replete with major flaws in the preservation of the integrity and evidentiary value of the seized items as required under R.A. 9165.

<sup>29</sup> TSN dated June 22, 2005, p. 20.

<sup>30</sup> TSN dated November 30, 2005, pp. 19-20.

<sup>31</sup> *People v. Que*, 824 Phil. 882, 899 (2018).

<sup>32</sup> *People v. Ramos*, 791 Phil. 162, 175 (2016).

The highly dubious story of the police officers that they conducted a legitimate buy-bust operation against petitioner, compounded by the serious lapses they committed in preserving the integrity and evidentiary value of the alleged *shabu* confiscated from petitioner, render his acquittal proper.

**WHEREFORE**, the instant appeal is **GRANTED**. The Decision dated March 4, 2013 of the Court of Appeals in CA-G.R. CR No. 33699 is hereby **REVERSED** and **SET ASIDE**. Petitioner Manuel Cudal y Balgos is **ACQUITTED** of the charge for violation of Section 11, Article II of Republic Act No. 9165. Petitioner Manuel Cudal y Balgos is ordered immediately **RELEASED** from custody, unless he is being held for another lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five (5) days from receipt of this Resolution.

**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court *8/2/17/al*

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Branch 16, 1000 Manila  
(Crim. Case No. 232121)

The Director General  
BUREAU OF CORRECTIONS  
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The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Mr. Manuel Cudal y Balgos  
c/o The Superintendent  
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