



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE  
**RECORDED**  
FEB 15 2021  
BY: J. DAN  
TIME: 1:41

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 25, 2021**, which reads as follows:

**“G.R. No. 203795 (Lopette Santos y Alba v. People of the Philippines).**

– This Petition for Review on *Certiorari*<sup>1</sup> assails the July 16, 2012 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. No. 34104, which affirmed in *toto* the March 30, 2011 Decision<sup>3</sup> of the Regional Trial Court (RTC), Branch 259 of Parañaque City finding Lopette Santos y Alba (Santos) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. 9165 (RA 9165), otherwise known as Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Santos was charged with Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 in an Information<sup>4</sup> which reads:

That on or about the 1<sup>st</sup> day of December 2009, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess, did then and there willfully, unlawfully and feloniously have in [his] possession and under [his] control and custody two (2) small heat transparent plastic sachets, containing white crystalline substance weighing 0.01 gram each or a total weight of 0.023 [gram], which when tested were positive for **Methylamphetamine Hydrochloride (shabu)** a dangerous drug.

CONTRARY TO LAW.<sup>5</sup>

The facts, as alleged by the prosecution, are as follows:

On 1 December 2009, at around ten o’clock in the evening, PO3 Fernan Acbang and PO2 Domingo Julaton on board [a] black Toyota vehicle

<sup>1</sup> *Rollo*, pp. 10-33.  
<sup>2</sup> *Id.* at 35-58; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan.  
<sup>3</sup> *Id.* at 91-98; penned by Presiding Judge Danilo V. Suarez.  
<sup>4</sup> *Records*, p. 1.  
<sup>5</sup> *Id.*

proceeded to their target area at barangay Don Galo, Parañaque City to conduct their anti-narcotic operation on the following persons: Franco Soledad, appellant Lopette Santos, Nestor Saguibal, Alberto Navarro, Roy Vertudes, Humer Vertudes, Ma. Luiza Cajipo, and Xenen Cortez, all of whom are involved in the proliferation of drugs.

Upon reaching their target area, they saw a person wearing a red t-shirt conversing with another unidentified person on board a motorcycle. Their asset on-site identified that the person in the red shirt was appellant [Santos].

While inside their vehicle, the arresting officers moved closer to their target at distance of about one (1) meter. PO2 Julaton saw appellant [Santos] [hand over] plastic sachets containing white crystalline substance to the person on a motorcycle. Suspecting that the items were shabu, PO2 Julaton immediately approached appellant and introduced himself as a police officer while PO3 Acbang went after the person on the motorcycle.

When instructed to empty his hand, PO2 Julaton discovered that appellant [Santos] had in his possession two (2) pieces of plastic sachet containing white crystalline substance suspected to be shabu.

Having failed to apprehend the person on the motorcycle, PO3 Acbang went back to where PO2 Julaton and appellant [Santos] were. It was then that the two transparent sachets recovered from appellant [Santos] were marked with the characters "DJ 12/01/09" and "DJ-12/01/09", respectively.

Considering that "[k]inukuyog na kami at dumarami na ang mga kamag-anak ng suspect", the arresting officers were constrained to conduct their inventory at the barangay hall of Don Galo, which was about fifteen (15) meters where appellant was apprehended.

**At the barangay hall and in the presence of Tanod Benjamin Leonardo and Ex-O Alberto Calderas, the arresting officers took pictures of the seized items and the inventory proceedings. The Receipt/Inventory of Property Seized prepared by the arresting officers were certified by Tanod Leonardo and Ex-O Calderas.**

The arresting officers then proceeded to the Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF) at the Paranaque Police Station for proper documentation. It was there that the Spot Report and the Request for Laboratory Examination were prepared by PO2 Julaton. The Spot Report was sent through fax to the Philippine Drug Enforcement Agency (PDEA) while the Request for Laboratory Examination together with the seized specimen was turned over by PO2 Julaton to the Philippine National Police (PNP) Crime Laboratory.

Forensic Chemical Officer Richard Allan B. Mangalip conducted the examination of the subject packs of shabu and found the same to contain the presence of methylamphetamine hydrochloride, a dangerous drug per Physical Science Report No. D-568-09S.<sup>6</sup> (Emphasis supplied)

<sup>6</sup> Rollo, pp. 102-105.

For his part, Santos denied the charges against him, and claimed that at around 10 o'clock in the morning of December 1, 2009, he was in his house at Barangay Don Galo, Parañaque City, making a blue print<sup>7</sup> when suddenly, armed men in civilian attire arrived, handcuffed him, and searched his house.<sup>8</sup> When he asked why he was being apprehended, he was told to keep quiet.<sup>9</sup> Thereafter, he was brought to the precinct and accused of possessing two plastic sachets of *shabu*.<sup>10</sup>

### Ruling of the Regional Trial Court:

In its March 30, 2011 Decision,<sup>11</sup> the trial court found Santos guilty as charged.<sup>12</sup> The dispositive portion of the Decision reads:

**WHEREFORE, PREMISES CONSIDERED,** the Court finds accused **LOPETTE SANTOS Y ALBA in Criminal Case No. 09-1237, GUILTY, BEYOND REASONABLE DOUBT,** for **Violation of Sec. 11, Art. II of RA 9165.** This court hereby sentences accused to suffer the penalty of imprisonment of **twelve (12) years and one (1) day as minimum to fourteen (14) years and eight months as maximum and to pay a fine of Php300,000.00.**

The bailbond posted by the accused is hereby cancelled. The specimens are forfeited in favor of the government and the Branch Clerk of Court is directed to immediately turn over with dispatch to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Supreme Court OCA Circular No. 51-2003.

SO ORDERED.<sup>13</sup>

In finding Santos guilty, the trial court gave full credence to the testimony Police Officer 2 Julaton (PO2 Julaton),<sup>14</sup> who testified that he was the one who recovered the plastic sachets from Santos, personally marked them with "DJ 12/01/09" and "DJ-12/01/09" at the crime scene, and brought them to the PNP Crime Laboratory hours after the incident.<sup>15</sup> The contents of the sachets were then examined by Police Inspector Richard Mangalip (P/Insp. Mangalip), who found the specimens with markings "DJ 12/01/09" and "DJ-12/01/09" positive for *shabu*.<sup>16</sup> The RTC thus found that all the links in the chain of custody were established by the prosecution.<sup>17</sup>

<sup>7</sup> Id. at 69-70.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. at 91-98.

<sup>12</sup> Id. at 97-98.

<sup>13</sup> Id.

<sup>14</sup> Id. at 95.

<sup>15</sup> Id. at 92.

<sup>16</sup> Id.

<sup>17</sup> Id. at 95.

**Ruling of the Court of Appeals:**

The appellate court affirmed in *toto* the March 30, 2011 Decision of the RTC.<sup>18</sup> It held that the integrity and evidentiary value of the seized items were duly preserved considering PO2 Julaton's testimony that he confiscated the items, marked the same, conducted the inventory, prepared the reports and brought the specimens to the crime laboratory.<sup>19</sup>

Santos moved for reconsideration which was, however, denied by the appellate court in its October 8, 2012 Resolution.<sup>20</sup> Hence, this Petition.

**The Petition:**

In arguing that the prosecution failed to prove his guilt beyond reasonable doubt, Santos raised the following arguments:

*First*, there was a break in the chain of custody since the prosecution failed to proffer the testimony of PO2 Elbert Ocampo (PO2 Ocampo), the police officer who purportedly received the seized items from PO2 Julaton and delivered the same to the crime laboratory.<sup>21</sup>

*Second*, the prosecution was not able to establish that the items delivered to the crime laboratory and received by the forensic chemist, chemically tested and finally preserved and presented in court, were the very same items allegedly seized from the Santos.<sup>22</sup>

*Third*, PO2 Julaton and PO3 Fernan Acbang (PO3 Acbang) failed to comply with Section 21 of RA 9165, considering that the inventory was conducted without the presence of representatives from the media and the Department of Justice (DOJ).<sup>23</sup>

*Finally*, the presumption that PO2 Julaton had regularly performed his duties cannot be the lone basis for Santos' conviction.<sup>24</sup>

**Issue**

The issue in this case is whether Santos is guilty beyond reasonable doubt of illegal possession of prohibited drugs.

---

<sup>18</sup> Id. at 35-58.

<sup>19</sup> Id. at 47.

<sup>20</sup> Id. at 59-60.

<sup>21</sup> Id. at 21-24.

<sup>22</sup> Id. at 24-26.

<sup>23</sup> Id. at 26-28.

<sup>24</sup> Id. at 28-29.

### Our Ruling

The Petition is meritorious.

#### Procedural matter.

We note that Santos raises an issue of fact in his Petition. He contends that it was PO2 Ocampo who delivered the seized items to the crime laboratory, and not PO2 Julaton,<sup>25</sup> contrary to the factual findings of both the trial court and the appellate court.

However, it is settled that factual findings of the trial court are accorded great respect and are even conclusive on this Court when affirmed by the CA.<sup>26</sup> After a careful review of the records, We find no reason to deviate from their factual findings.

#### Substantive matters.

To secure a conviction for Illegal Possession of Dangerous Drugs under Sec. 11, the prosecution must prove the existence of the following elements beyond reasonable doubt: “(a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.”<sup>27</sup>

Since the dangerous drugs are the *corpus delicti* of the offense, the prosecution must prove the identity of the seized items with proof beyond reasonable doubt.<sup>28</sup> This necessity arises from the very nature of drugs; “they are not readily identifiable,” and are easily open to “tampering, alteration, or substitution”:

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, 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.** x x x<sup>29</sup> (Emphasis supplied)

To ensure that the integrity and evidentiary value of the items confiscated from the accused are preserved in drugs operation cases, RA 9165 laid down the procedure in the seizure and custody of dangerous drugs, or the chain of

<sup>25</sup> Id. at 21-24.

<sup>26</sup> *People v. Yau*, 741 Phil. 474, 763 (2014), citing *People v. Algarme*, 598 Phil. 423, 438-439 (2009).

<sup>27</sup> *People v. Matias*, G.R. No. 243020, December 5, 2019, citing *People v. Lumaya*, G.R. No. 231983, March 7, 2018, 858 SCRA 114, 125.

<sup>28</sup> *Mallillin v. People*, 576 Phil. 576, 588 (2008).

<sup>29</sup> Id. at 588-589.

custody.<sup>30</sup> An “unbroken chain of custody over the dangerous drugs” must be shown by the prosecution to remove any doubts on the identity of the dangerous drugs “on account of switching, ‘planting,’ or contamination of evidence.”<sup>31</sup> “Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.”<sup>32</sup>

Section 21 of RA 9165, before its amendment in 2014, reads:

*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 persons 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[.]

x x x x (Emphasis supplied)

In relation to this, Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165 provides:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided*, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.] (Emphasis supplied)

<sup>30</sup> *Hedreya v. People*, G.R. No. 243313, November 27, 2019

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*, citing *People v. Paz*, G.R. No. 229512, January 31, 2018, 854 SCRA 23, 34-35.

In 2014, RA 9165 was amended by RA 10640<sup>33</sup> which took effect on July 23, 2014. The amendments relate to the required third-party witnesses, the locations where the physical inventory and taking of photographs must be conducted, and the inclusion of a proviso governing noncompliance with the chain of custody requirements.<sup>34</sup>

Here, since the crime was alleged to have been committed by Santos on December 1, 2009,<sup>35</sup> We apply RA 9165 prior to its amendment.

### **Witness requirement under Sec. 21.**

Among the requirements in Sec. 21 is the presence of witnesses during the inventory and taking of photographs. These are the representatives from the media and Department of Justice (DOJ), and any elected public official, who are required to sign the copies of the inventory and be given copies thereof. This requirement is important “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”<sup>36</sup>

Notably, the latest jurisprudence on illegal drugs cases shows a growing trend in acquittals based on noncompliance with the witness requirement.

In *Edangalino v. People*,<sup>37</sup> this Court acquitted the accused who was charged with illegal possession of dangerous drugs in view of the absence of the required witnesses during the inventory of the seized items.<sup>38</sup> Because of

<sup>33</sup> An Act To Further Strengthen The Anti-Drug Campaign Of The Government, Amending For The Purpose Section 21 Of Republic Act No. 9165, Otherwise Known As The “Comprehensive Dangerous Drugs Act Of 2002 (2013).

<sup>34</sup> The amended Section 21 of RA 9165 provides:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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 person/s 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**.[.x x x (Emphasis supplied)

<sup>35</sup> Records, p. 1.

<sup>36</sup> *People v. Tomas*, G.R. No. 241631, March 11, 2019, citing *People v. Corral*, G.R. No. 233883, January 7, 2019, and *People v. Gaa*, G.R. No. 222559, June 6, 2018.

<sup>37</sup> G.R. No. 235110, January 8, 2020.

<sup>38</sup> Id.

their absence, the identity of the seized item was put in serious question, which in turn cast doubt as to the guilt of the accused.<sup>39</sup> We noted that while the failure of the apprehending team to strictly comply with Sec. 21 did not *ipso facto* render the seizure and custody of the items void, the prosecution nevertheless was not able to prove any justifiable ground for noncompliance and preservation of the integrity and evidentiary value of the seized items.<sup>40</sup> Thus, acquittal was proper.<sup>41</sup>

In *People v. Ruiz*,<sup>42</sup> this Court likewise acquitted the accused who were convicted of violation of RA 9165 for the same reason.<sup>43</sup> Since the buy-bust operation took place on February 26, 2015, We applied RA 9165 as amended by RA 10640, which required the presence of at least two witnesses during the inventory and taking of photographs.<sup>44</sup> While a media representative was present during the inventory and taking of photographs, We held that this did not constitute substantial compliance with the witness requirement.<sup>45</sup>

Similarly, in *Hedreyda v. People*,<sup>46</sup> this Court acquitted the accused who was indicted for illegal possession of dangerous drugs since the only witness present during the inventory was the media representative.<sup>47</sup> The prosecution likewise did not prove any justifiable ground for noncompliance.<sup>48</sup> We held that such failure to prove any justifiable ground was fatal, necessarily resulting to acquittal:

**The prosecution's failure to justify its noncompliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to its case.** The absence of these witnesses during the inventory stage constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of invoking the saving clause. There being a substantial gap or break in the chain, it casts serious doubt on the integrity and evidentiary value of the *corpus delicti*. As such, the petitioner must be acquitted.<sup>49</sup> (Emphasis supplied)

In *People v. Frias*,<sup>50</sup> We acquitted the accused despite the presence of two media representatives and three elective local officials during the inventory and taking of photographs.<sup>51</sup> We held that without any justifiable ground pleaded and proved for the absence of the DOJ representative, conviction may not lie.<sup>52</sup> In support of our ruling, We also cited the following

<sup>39</sup> Id.  
<sup>40</sup> Id.  
<sup>41</sup> Id.  
<sup>42</sup> G.R. No. 243635, November 27, 2019.  
<sup>43</sup> Id.  
<sup>44</sup> Id.  
<sup>45</sup> Id.  
<sup>46</sup> *Supra*, note 30.  
<sup>47</sup> Id.  
<sup>48</sup> Id.  
<sup>49</sup> Id.  
<sup>50</sup> G.R. No. 234686, June 10, 2019.  
<sup>51</sup> Id.  
<sup>52</sup> Id.

cases:

In *People v. Seguinte*, the Court acquitted the accused because the prosecution's evidence was totally 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 allegation of frame up.

In *People v. Rojas*, the Court likewise acquitted the accused because the presence of representatives from the DOJ and the media was not obtained despite the buy-bust operation against the accused being supposedly pre-planned. The prosecution, too, did not acknowledge, let alone, explain such deficiency.

Another. In the recent case of *People v. Vistro*, the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule during the physical inventory and photograph of dangerous drugs. The Court similarly made the observation that the first condition under the saving clause was not fulfilled, *i.e.*, the prosecution failed to offer any justification for the absence of the representatives from the DOJ and the media.<sup>53</sup>

*People v. Alconde*,<sup>54</sup> *People v. Royol*,<sup>55</sup> *People v. Pantallano*,<sup>56</sup> *People v. Cartina*,<sup>57</sup> *Dizon v. People*,<sup>58</sup> *People v. Laway*,<sup>59</sup> *People v. Comoso*,<sup>60</sup> *People v. Acub*,<sup>61</sup> *Veriño v. People*,<sup>62</sup> *People v. Bahoyo*,<sup>63</sup> *People v. Galuken*,<sup>64</sup> *People v. Dela Cruz*,<sup>65</sup> *People v. Merando*,<sup>66</sup> *People v. Castillo*,<sup>67</sup> *People v. Quilatan*,<sup>68</sup> *People v. Caray*,<sup>69</sup> *People v. Matias*,<sup>70</sup> *People v. Santos*,<sup>71</sup> and many other cases promulgated in recent years were resolved along the same stroke of the pen. These cases undoubtedly remove any question on the effect of unjustified noncompliance with the witness requirement.

<sup>53</sup> Id.

<sup>54</sup> G.R. No. 238117, February 4, 2019.

<sup>55</sup> G.R. No. 224297, February 13, 2019.

<sup>56</sup> G.R. No. 233800, March 6, 2019.

<sup>57</sup> G.R. No. 226152, March 13, 2019.

<sup>58</sup> G.R. No. 239399, March 25, 2019.

<sup>59</sup> G.R. No. 227741, March 27, 2019.

<sup>60</sup> G.R. No. 227497, April 10, 2019.

<sup>61</sup> G.R. No. 220456, June 10, 2019.

<sup>62</sup> G.R. No. 225710, June 19, 2019.

<sup>63</sup> G.R. No. 238589, June 26, 2019.

<sup>64</sup> G.R. No. 216754, July 17, 2019.

<sup>65</sup> G.R. No. 229053, July 17, 2019.

<sup>66</sup> G.R. No. 232620, August 5, 2019.

<sup>67</sup> G.R. No. 238339, August 7, 2019.

<sup>68</sup> G.R. No. 218107, September 9, 2019.

<sup>69</sup> G.R. No. 245391, September 11, 2019.

<sup>70</sup> *Supra* note 27.

<sup>71</sup> G.R. No. 218579, December 5, 2019.

**Noncompliance with Sec. 21 may be excused by justifiable grounds.**

The foregoing notwithstanding, Sec. 21(a), Art. II of the IRR contains a “saving clause”<sup>72</sup> which allows for deviations from the requirements in the presence of “**justifiable grounds**” and conditioned upon showing that the integrity and the evidentiary value of the seized items are properly preserved. This is in recognition of the fact that “strict compliance with the requirements of [Sec. 21] may not always be possible”<sup>73</sup> under varied field conditions. The saving clause reads:

*Provided, further, that non-compliance with these requirements under **justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team,** shall not render void and invalid such seizures of and custody over said items[.] (Emphasis supplied)*

Before successfully invoking the saving clause, “the prosecution bears the burden of first acknowledging procedural lapses and specifically plead justifiable grounds for these lapses.”<sup>74</sup> The justifiable grounds must be “proven as a fact, because the Court cannot presume what these grounds are or that they even exist.”<sup>75</sup>

In addition, the prosecution also bears the burden of pleading “specific safety measures” taken in view of noncompliance with Sec. 21.<sup>76</sup> As regards the absence of the required witnesses, “it must be alleged and demonstrated that earnest efforts were undertaken to secure their attendance.”<sup>77</sup> In *People v. Ramos*,<sup>78</sup> We said:

*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. x x x<sup>79</sup>

Thus, in case of noncompliance with Sec. 21, particularly with the witness requirement, the prosecution must not only prove the existence of the justifiable grounds for noncompliance and the preservation of the integrity and

<sup>72</sup> *People v. Sarabia*, G.R. No. 243190, August 28, 2019.

<sup>73</sup> *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 372, citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>74</sup> *People v. Castillo*, *supra*, citing *People v. Sanchez*, *supra*.

<sup>75</sup> *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 373, citing *People vs. de Guzman*, 630 Phil. 637, 648-649 (2010).

<sup>76</sup> *People v. Castillo*, *supra*, citing *People v. Sanchez*, *supra* note 73.

<sup>77</sup> *Id.*, citing *People v. Lim*, G.R. No. 231989, September 4, 2018.

<sup>78</sup> G.R. No. 233744, February 28, 2018, 857 SCRA 175, 178, citing *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

<sup>79</sup> *Id.*

evidentiary value of the seized items, but also the earnest efforts expended to secure the witnesses' attendance.

**The prosecution failed to prove compliance with Sec. 21, or to justify noncompliance therewith.**

Applying the foregoing to the instant case, We find that the prosecution failed to prove compliance with Sec. 21, or to justify noncompliance therewith. Consequently, there is doubt as to the identity of the seized items.

It is clear from the records that during the inventory and taking of photographs, only two barangay officials were present.<sup>80</sup> There were no representatives from the media and the DOJ,<sup>81</sup> in clear violation of Sec. 21. Such noncompliance may *not* be excused because *first*, the prosecution never acknowledged its failure to secure the presence of the required witnesses; *second*, failing to acknowledge such failure, it did not plead nor prove any justifiable ground therefor; and *third*, it did not demonstrate earnest efforts to secure the attendance of the witnesses.

While the prosecution insisted that the integrity and evidentiary value of the seized items were preserved,<sup>82</sup> such insistence alone cannot excuse noncompliance with Sec. 21, particularly the witness requirement, considering that there was no justifiable ground pleaded nor proved to excuse such noncompliance, nor were there earnest efforts to secure the attendance of the witnesses.

Time and again, We have reminded prosecutors to prove compliance with the requirements of Sec. 21, including the witness requirement, as noncompliance may result to **acquittal** in the absence of justifiable grounds. In *People vs. Miranda*,<sup>83</sup> We said:

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.** Since compliance with this procedure is determinative of the integrity and evidentiary value of the corpus delicti and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused and, perforce, overturn a conviction.<sup>84</sup>

<sup>80</sup> Records, p. 103.

<sup>81</sup> Id.

<sup>82</sup> *Rollo*, pp. 107-108.

<sup>83</sup> G.R. No. 229671, January 31, 2018, 854 SCRA 42-63.

<sup>84</sup> Id. at 62.

By not acknowledging noncompliance with Sec. 21, the prosecution in this case lost its opportunity to invoke the saving clause.

**There is doubt as to whether the integrity and evidentiary value of the seized items were preserved.**

We also doubt whether the integrity and evidentiary value of the seized items were preserved, considering that the prosecution failed to prove that the drugs received by the forensic chemist are the same ones recovered from the accused, and the same ones presented to the court.

As part of the chain of custody, the prosecution must establish the link between the investigating officer and the forensic chemist, and the forensic chemist and the court.<sup>85</sup> Thus, the forensic chemist is one of the key witnesses in the prosecution of drugs cases.

We note from the pre-trial order that the testimony of the forensic chemist was dispensed with after the defense admitted his qualifications:

STIPULATIONS

x x x x

- Defense admitted the qualification of the forensic chemist, P/Insp. Richard Allan B. Mangalip, but he (sic) has no personal knowledge on the source of the specimen submitted for laboratory examination, the testimony of the chemist is dispensed.<sup>86</sup>

Further, the defense likewise admitted the due execution of Physical Science Report No. D-568-09S.<sup>87</sup>

In *People v. Cabuhay*,<sup>88</sup> We enumerated the necessary stipulations in case the parties dispense with the testimony of the forensic chemist:

In *People v. Pajarín*, the Court ruled that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial.<sup>89</sup> (Citations omitted, emphasis supplied)

<sup>85</sup> *People v. Dahil*, 750 Phil. 212, 231 (2015), citing *People v. Kamad*, 624 Phil. 289, 304-306 (2010).

<sup>86</sup> Records, p. 48.

<sup>87</sup> Id. at 48-49.

<sup>88</sup> G.R. No. 225590, July 23, 2018.

<sup>89</sup> Id., citing *People v. Pajarín*, 654 Phil. 461, 466 (2011).

Here, the stipulation covered only the qualifications of the forensic chemist and the due execution of Physical Science Report No. D-568-09S. The defense even expressly limited the stipulation in that the forensic chemist “has no personal knowledge on the source of the specimen submitted for laboratory examination.”<sup>90</sup>

Without any evidence to prove that the items received by P/Insp. Mangalip were the same items recovered from Santos, and also the same ones presented to the RTC, there is a break in the chain of custody. Consequently, there is no guarantee that the integrity and evidentiary value of the seized items were preserved. The stipulation on the qualifications of P/Insp. Mangalip and the due execution of Physical Science Report No. D-568-09S do not suffice to dispense with this requirement.

In the recent case of *People v. Sultan*,<sup>91</sup> We acquitted the accused charged with illegal sale and illegal possession of dangerous drugs after finding the identity of the seized items to be compromised partly due to the prosecution’s failure to present the forensic chemist:

Moreover, the prosecution failed to present as witness PO2 Albarico, the police officer who personally received the specimen and the request for laboratory examination.

**In Sagana, this Court acquitted the accused-appellant when it found that the prosecution did not proffer the testimonies of persons who handled the seized items without ample explanation.** This Court explained:

The prosecution has the “burden of establishing the identity of the seized items.” Considering the sequence of the people who have dealt with the confiscated articles, the prosecution failed to justify why three (3) other significant persons were not presented as witnesses. These persons were the desk officer who supposedly recorded the incident in the police blotter, the investigator who prepared the request for examination, and *the police officer who received the articles in the laboratory*. **“In effect, there is no reasonable guaranty as to the integrity of the exhibits inasmuch as it failed to rule out the possibility of substitution of the exhibits, which cannot but inure to its own detriment.”** (Emphasis supplied, citations omitted)

Here, Chief Inspector Puentespina recalled that PO2 Hechanova turned the seized items over to PO2 Albarico, who placed them in his personal drawer for safekeeping. However, his testimony is mere hearsay and inadmissible in evidence. The testimony on matters of which only PO2 Albarico has personal knowledge cannot be admitted or given probative value.

**Without PO2 Albarico's testimony, this Court finds a fatal gap in that juncture involving PO2 Hechanova, the designated poseur-buyer, and Chief Inspector Puentespina, the forensic chemical officer. This — together**

<sup>90</sup> Records, p. 48.

<sup>91</sup> G.R. No. 225210, August 7, 2019.

with the absence of the required third-party witnesses, the police officers' lack of a sense of immediacy to mark, inventory, and photograph the items at the place of the arrest, and the unsound manner of transporting whatever items were supposedly seized from accused-appellant — reveals a seriously compromised chain of custody. These put in serious suspicion the identity of the objects of the offenses attributed to accused-appellant, leaving reasonable doubt on his guilt. His constitutional right to be presumed innocent prevails:

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. (Citations omitted)

This Court is, thus, constrained to **acquitt** accused-appellant.<sup>92</sup> (Emphasis supplied, citations omitted)

At this point, We note that the preservation of the integrity and evidentiary value of the seized items becomes more crucial in this case, considering that the drugs allegedly recovered weigh only 0.023 gram in total, relatively a minuscule amount. In *People vs Angeles*,<sup>93</sup> We held that when the amount of drugs recovered is minuscule, police officers should all the more comply with Sec. 21:

What makes the observance of the chain of custody even more crucial to the present case is that the drugs recovered from Angeles were only **0.02 grams**. In *People v. Holgado*, the Court cautioned that the minuscule amount of drugs recovered should alert authorities to be more observant of the procedures, to wit:

Apart from the officers' glaring noncompliance with Section 21, two circumstances are worth underscoring in this case. First, the shabu supposedly seized amounted to five (5) centigrams (0.05 grams). This quantity is so minuscule it amounts only to about 2.5% of the weight of a five centavo coin (1.9 grams) or a one-centavo coin (2.0 grams).

xxx xxx xxx

While the minuscule amount of narcotics seized by itself is not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Mallillin v. People*, this Court said that "the 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.<sup>94</sup> (Emphasis supplied, citations omitted)

<sup>92</sup> Id.

<sup>93</sup> G.R. No. 218947, June 20, 2018, 867 SCRA 281-299.

<sup>94</sup> Id. at 297, citing *People v. Holgado*, 741 Phil. 78, 99 (2014).

Thus, PO2 Julaton and PO3 Acbang should have exerted all efforts to strictly comply with Sec. 21.

In view of the foregoing unjustified deviations from the established procedure, We find that the identity of the *corpus delicti* has not been established with moral certainty by the prosecution. Consequently, Santos' guilt is also cast in doubt, warranting his acquittal.

**WHEREFORE**, the Petition is hereby **GRANTED**. The assailed Decision rendered by the Court of Appeals in CA-G.R. CR. No. 34104 is **REVERSED** and **SET ASIDE**. Accused-appellant Lopette Santos y Alba is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

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

Let entry of judgment be issued immediately.

**SO ORDERED.**" (Leonen, *J.*, on official business; Hernando, *J.*, Acting Chairperson; Lopez, *J.*, designated as additional member per raffle dated January 20, 2021 vice *J.* Inting who recused himself due to the prior participation of his sister, *J.* Socorro B. Inting, in the proceedings in the Court of Appeals).

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

GER  
2/3/21

Special & Appealed Cases Service  
PUBLIC ATTORNEY'S OFFICE  
DOJ Agencies Building  
East Avenue cor. NIA Road  
Diliman, 1104 Quezon City

COURT OF APPEALS  
CA G.R. CR. No. 34104  
1000 Manila

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
Legaspi Village, 1229 Makati City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 259  
1700 Parañaque City

The Director General  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Superintendent  
New Bilibid Prison North  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Mr. Lopette Santos y Alba  
c/o The Superintendent  
New Bilibid Prison North  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Director General  
PHILIPPINE NATIONAL POLICE  
National Headquarters  
Camp Crame, Quezon City

The Director General  
PHILIPPINE DRUG ENFORCEMENT AGENCY  
PDEA Bldg., NIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

The Chairman  
DANGEROUS DRUGS BOARD  
3<sup>rd</sup> Floor DDB-PDEA Bldg.,  
NIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

PUBLIC INFORMATION OFFICE  
Supreme Court, Manila  
[For uploading pursuant to A.M. 12-7-1-SC]

LIBRARY SERVICES  
Supreme Court, Manila

Judgment Division  
JUDICIAL RECORDS OFFICE  
Supreme Court, Manila

G.R. No. 203795

len/



  
(152)  
URES