

## SECOND DIVISION

[ G.R. No. 231305, September 11, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALVIN GALISIM Y GARCIA, ACCUSED-APPELLANT.**

### DECISION

**LAZARO-JAVIER, J.:**

#### The Case

This appeal seeks to reverse the Decision<sup>[1]</sup> dated August 16, 2016 of the Court of Appeals in CA-G.R. CR HC No. 06705 affirming the conviction of appellant Alvin Galisim y Garcia for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165).

#### The Proceedings Before the Trial Court

##### *The Charge*

On February 21, 2011, two (2) separate Informations were filed against appellant, *viz*:

##### Criminal Case No. 17436-D

"On or about February 19, 2011, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO3 Julius Maynigo, a member of Philippine National Police, who acted as a poseur-buyer, one (1) heat-sealed transparent plastic sachet containing two (2) centigrams (0.02 gram) of white crystalline substance, which was found positive to the test of methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>[2]</sup>"

##### Criminal Case No. 17437-D

"On or about February 19, 2011, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession and under his custody one (1) heat-sealed transparent plastic sachet containing two (2) centigrams (0.02 gram) of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the aforesaid law.

Contrary to law.<sup>[3]</sup>

The case was raffled to the Regional Trial Court - Branch 164, Pasig City.

On arraignment, appellant pleaded not guilty.

During the trial, PO3 Julius M. Maynigo (PO3 Maynigo) and PO3 Richard D. Coquia (PO3 Coquia), testified for the prosecution. On the other hand, appellant Alvin Galisim y Garcia testified as lone witness for the defense.

### The Prosecution's Version

PO3 Maynigo and PO3 Coquia's testimonies are synthesized as follows:

On February 19, 2011, around 9:30 in the evening, Police Senior Inspector Renato B. Castillo (P/Insp. Castillo) formed a team to conduct buy-bust operation in Baltazar Street, Villa Monique, Barangay Pinagbuhatan, Pasig City (Villa Monique). The team included PO3 Maynigo as poseur-buyer, PO3 Coquia as team leader, police officers Gerardo Javier, Roderick Ladera, Jayson Rael, Jonathan Lunzaga and three (3) others as back-up.

During the meeting, P/Insp. Castillo relayed to the team an information from a confidential informant that three (3) individuals namely: Alias Macalone, Alias Atoy, and Alias Igtad were selling dangerous drugs in Villa Monique. He provided PO3 Maynigo two (2) 100 peso bills to be used as buy-bust money.<sup>[4]</sup>

The team headed to the Philippine Drug Enforcement Agency (PDEA) to secure authority on the buy-bust operation. PO1 Jocelyn Jacinto issued a Coordination and Pre-Operation Report dated February 19, 2011. Thereafter, they and the confidential informant headed to Villa Monique.<sup>[5]</sup>

Around 11:30 in the evening, PO3 Maynigo and the confidential informant walked through an alley in Villa Monique, looking for Alias Macalone, Alias Atoy, and Alias Igtad. There, the confidential informant met a man, later identified as appellant Alvin Galisim y Garcia. Appellant asked if they wanted to "score" (buy illegal drugs). PO3 Maynigo nodded to signal his interest while the confidential informant said "*bibili kami*." PO3 Maynigo handed the buy-bust money to appellant who slid it in his pocket. In turn, appellant took out two (2) plastic sachets from his right pocket and asked PO3 Maynigo to choose which one to buy, the latter picked one (1) item and after verifying that it contained white crystalline substance, he immediately removed his bulletcap: the pre-arranged signal. Before PO3 Coquia could have approached them, PO3 Maynigo was already holding appellant who was resisting arrest. As soon as PO3 Coquia had closed in, they handcuffed appellant and conducted a body search on him. They found in appellant's possession another plastic sachet containing white crystalline substance, the buy-bust money, and a .30 caliber carbine ammunition.<sup>[6]</sup>

PO3 Maynigo and PO3 Coquia immediately marked all three (3) items. PO3 Maynigo marked the first sachet which he bought from appellant with "**JM-Alvin-1-02-19-2011**" and the second sachet which PO3 Coquia found in appellant's possession during the search, with "**JM-Alvin-2-02-19-2011**." "JM" stands for Julius M. Maynigo, "Alvin," for appellant's name, and "02-19-2011" for the date of seizure. PO3 Coquia further marked the .30 caliber with RDC/Alvin 02-19-2011. "RDC" stands for Richard D. Coquia and "02-19-2011" referred to the date. PO3 Coquia placed the items in a zip lock container. Appellant was thereafter informed of his rights and the offense he supposedly committed. The team left the area together with appellant and proceeded to Eastern Police District (EPD) Annex, Meralco Avenue, Pasig City. There, they informed investigator PO3 Nelson Cruz (PO3 Cruz) about the buy-bust incident and showed him the confiscated items. PO3 Coquia took pictures of the evidence inside the office while PO3 Cruz prepared the Request for Laboratory Examination and Request for Drug Test. PO3 Coquia also prepared an Affidavit of Arrest.<sup>[7]</sup>

The following day or on February 20, 2011, PO3 Maynigo and PO3 Coquia went to the EPD Crime Laboratory in Marikina City and submitted the requests together with the seized items.<sup>[8]</sup>

Per Physical Sciences Report No. No. D-54-11E dated February 20, 2011, Forensic Chemist Police Chief Inspector Isidro Cariño (PCI Cariño) verified that the specimens<sup>[9]</sup> subject of the buy-bust and confiscated from appellant yielded positive for methamphetamine hydrochloride, a dangerous drug.<sup>[10]</sup>

The prosecution offered the following in evidence:

1. Request for Laboratory Examination dated February 20, 2011;
2. *Shabu*;
3. Physical Science Report No. D-54-11 E dated February 20, 2011;
4. Buy-bust money;
5. *Sinumpaang Salaysay* of PO3 Richard Coquia;
6. *Sinumpaang Salaysay* of PO3 Maynigo;
7. Request for Drug Test Examination dated February 20, 2011;
8. Certificate of Inventory dated February 19, 2011;
9. Coordination Form dated February 19, 2011;
10. Pre-Operation Report dated February 19, 2011; and
11. Pictures of the seized items.<sup>[11]</sup>

### **The Defense's Version**

Appellant testified that on February 19, 2011 around 10:30 in the evening, he was resting in his house at Villa Monique. His wife woke him up to buy milk for their child. On his way to buy infant's milk two (2) persons, a male and a female, wearing civilian clothes arrested him. When he asked why, they did not respond. He was, thereafter, dragged out of the alley, brought inside a car, and mauled. Inside the car, appellant was asked to just point to a person who sold drugs, so he can be released. The police officers mauled and strangled him when he was unable to give them a name. Thereafter, they transported him to a police precinct and brought him inside a room. There, they interrogated him about a certain "Atoy." But he refused to give any information, thus, causing them to lock him in the detention cell. The arresting officers badly beat him up but he was not brought to the hospital for treatment or medical examination.

On February 20, 2011, around 7 o'clock in the morning, they took him out of the detention cell. Three (3) plastic sachets consisting of one (1) bullet and two (2) white crystalline substance were shown him. They forced him to sign on the tape attached to the plastic sachets. Later in the afternoon, he was brought to the prosecutor's office. The prosecutor asked him questions but he was unable to speak because he was strangled earlier by several police officers. As a result, he suffered from swollen throat.<sup>[12]</sup>

The defense did not offer any documentary evidence.<sup>[13]</sup>

### **The Trial Court's Ruling**

By Joint Judgment dated December 12, 2013,<sup>[14]</sup> the trial court convicted appellant of violation of Sections 5 and 11, Article II of RA 9165, *viz*:

WHEREFORE, judgment is rendered as follows:

1. In Criminal Case No. 17436-D, the Court finds accused Alvin Galisim y Garcia **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of RA No. 9165, and hereby imposes upon him the **penalty of life imprisonment and a fine of five hundred thousand pesos (P 500,000.00)**.
2. In Criminal Case No. 17437-D, the Court also finds accused Alvin Galisim y Garcia **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165, and hereby imposes upon him indeterminate penalty of imprisonment

from twelve (12) years and one (1) day, as the minimum term, to fifteen (15) years, as the maximum term, and to pay a fine of three hundred thousand pesos (P 300,000.00).

**SO ORDERED.**

### **The Proceedings Before the Court of Appeals**

On appeal, appellant faulted the trial court for finding him guilty as charged despite the incredulity of the prosecution's evidence and its failure to prove beyond reasonable doubt the *corpus delicti*'s identity and integrity,<sup>[15]</sup> *viz*:

**First**, it is beyond human comprehension that appellant would casually sell illegal drugs in a public place to a total stranger.

**Second**, no representative from the media, Department of Justice (DOJ), and a duly elected official witnessed the marking and inventory of the seized items.

**Third**, the seized items were photographed at the police station and not at the place of arrest. There were also no representatives from the media and the DOJ, or elected Barangay Officials who witnessed them.

**Finally**, the prosecution failed to establish that from the time the illegal drugs were confiscated up to the time they were presented in court, the contents were not tampered or substituted. The parties merely stipulated that the forensic chemist received and examined the specimens, and his findings were reflected in the Physical Science Report No. D-54-11E.

On the other hand, the Office of the Solicitor General through Assistant Solicitor General Reynaldo L. Saludares and Associate Solicitor Ron Winston A. Reyes, countered in the main: a) selling regulated or prohibited drugs to complete strangers openly and in public is a common occurrence which the Court has taken judicial notice of; b) failure of the buy-bust team to comply with Section 21(1) of RA 9165 will not negate the presumption of regularity in the performance of duty. For what is important is the preservation of the integrity and evidentiary value of the seized items.<sup>[16]</sup>

### **The Court of Appeals' Ruling**

By Decision dated August 16, 2016,<sup>[17]</sup> the Court of Appeals affirmed. It ruled that the prosecution had adequately and satisfactorily proved the elements of illegal sale of shabu and illegal possession of shabu. It also declared that lack of designated witnesses as required under Section 21 (1) of RA 9165 was not fatal to the prosecution's case, so long as the integrity and evidentiary value of the illegal drugs were preserved.<sup>[18]</sup> Its dispositive portion states:

**WHEREFORE**, the instant **APPEAL** is hereby **DENIED**. Accordingly, the Decision dated December 12, 2013 in Criminal Cases No. 17436-D and 17437-D of the Regional Trial Court, which adjudged accused-appellant ALVIN GALISIM y GARCIA guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

**SO ORDERED.**

### **The Present Appeal**

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal.

In compliance with Resolution dated July 10, 2017<sup>[19]</sup> both the OSG and appellant

manifested[20] that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

## The Threshold Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural infirmities relative to the chain of custody over the *corpus delicti*?

### Ruling

We acquit.

Appellant was charged with illegal sale and illegal possession of dangerous drugs allegedly committed on February 19, 2011. The governing law is, therefore, RA 9165 before its amendment in 2014.

Section 21 of RA 9165 provides the procedure to ensure the integrity of the *corpus delicti*, viz:

**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 seized, 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;** (emphasis added)

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Its Implementing Rules and Regulations further states:

**Section 21.** (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,** (emphases added)

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally sold by the accused is the same substance presented in court.<sup>[21]</sup>

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:<sup>[22]</sup>, **first**, the seizure and marking 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 by the forensic chemist to the court.<sup>[23]</sup>

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.<sup>[24]</sup>

Here, prosecution witness and arresting officer PO3 Maynigo testified:

Q: After removing the bullet, what happened?

A: I kept the plastic sachet of shabu that I was able to buy from and then held him.

Q: Where did you keep that transparent plastic sachet of shabu that you bought from the accused?

A: In my pocket.

Q: What pocket?

A: Left pocket.

Q: Were you able to identify the person who sold you that shabu?

A: Yes, ma'am.

Q: What was his name?

A: Alvin Galisim.

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Q: After keeping the shabu in your left pocket and arrested the accused, what happened next?

A: I also confiscated the other plastic sachet of shabu from his hand but at that time he was already resisting arrest and he was shouting and so my backup arrived and assisted me in pacifying him.

Q: What was the name of your back up?

A: PO3 Richard Coquia.

Q: What happened to the second plastic sachet that you confiscated from the accused?

A: I also kept it in my pocket.

Q: What happened next after you got hold of that plastic sachet?

A: I introduced myself as police officer and he resisted arrest and then my back up Coquia arrived and assisted me and we were able to handcuff him.

Q: What happened next after that?

A: When we managed to handcuff the accused and pacified him, Coquia frisked him and he was able to confiscate the two hundred pesos buy bust money from the accused and one caliber [.30] bullet.

Q: What happened to the two plastic sachets that you kept in your pocket?

A: Our companion produced a document and we prepared the inventory and we indicated the two plastic sachets that we confiscated from the accused.

Q: Who made the inventory?

A: Ako po ma'am.

Q: Where did you make that inventory?

A: At the place of the crime scene, ma'am.

Q: And again [mr.] witness, what are those things that you entered in the inventory form?

A: I marked the first plastic sachet that I got from the accused with my initial JM-the name of the accused Alvin-1 and the numerical date 02-19-2011 and my signature.

Q: When did you put the markings [mr.] witness before the inventory or after the inventory?

A: Before we executed the inventory, I first marked the plastic sachet.

Q: What happened to the other plastic sachet?

A: I placed the same markings, JM-Alvin-2-02-19-2011 with my signature.

Q: Where did you put those markings?

A: I placed it on the masking tape that was placed on the plastic sachet.

Q: Who put the masking tape?

A: Ako po.

Q: Where did you put the markings?

A: At the scene of the crime.

Q: Where was the accused when you put the markings?

A: Katabi ko po.

Q: Mr. witness you said that you put the two plastic sachets on your pocket. How were you able to distinguish the first from the second sachet?

A: Iyong nasa ilalim, iyong ang buy bust na plastic sachet.

Q: And the second one?

A: The first was put deeper into my pocket and the second one was put in a shallow place.

Q: What were the contents of the first plastic sachet. The first plastic sachet that you bought from the accused?

A: Meron po siyang laman na white crystalline substance.

Q: What about the second sachet?

A: The same.

Q: What was that?

A: Shabu po ma'am.

Q: And after you made the markings, what happened next?

A: Akin pong isinulat sa inventory form.

Q: What did you indicate?

A: Pangalan ng suspect Alvin Galisim, saka iyong lugar, saka iyong first plastic sachet na JM-Alvin-1-02-19-2011 at iyong second sachet ganoon din ang isinulat ko.<sup>[25]</sup>

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Q: While making this marking (sic), where was the accused at that time?

A: Nasa crime scene din po si Alvin. Sa lugar na pinaghulihan naming sa kanya.

Q: If shown to you the certificate of inventory, would you be able to identify the same?

A: Yes ma'am.

Q: I am showing to you the certificate of inventory dated February 19, 2011, can you please go over this certificate of inventory and tell us what is the relation of that document to the one you testified?

A: This is the same.

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Q; What happened next after you accomplished the certificate of inventory?

A: We brought Alvin to our office.

Q: What about the specimen?

A: It was with me.

Q: Why did (sic) keep that specimen. At the scene of the crime, where was the specimen?

A: It was with me.

Q: From the scene of the crime to your office, who was in custody of the seized evidence?

A: I am.<sup>[26]</sup>

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Q: Where was your office again that time?

A: EPD Annex, Meralco Avenue, Pasig City<sup>[27]</sup>

PO3 Coquia also testified as the team leader of the buy-bust team:

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Q: After arriving at your office, what happened next?

A: When we arrived at our office, we immediately informed our investigator, PO3 Nelson Cruz about the incident, ma'am.

Q: So what happened next?

A: We showed him the evidence confiscated, ma'am.

Q: So after that, what happened next, Mr. Witness?

A: We showed the evidence confiscated to the investigator. I took a picture of the evidences inside our office, ma'am.

Q: What device did you use in taking pictures of the recorded evidence?

A: Digicam, Kodak, ma'am.<sup>[28]</sup>

The arresting officers' testimonies, on their face, bear how the chain of custody here had been breached in several instances.

**First**, PO3 Maynigo failed to mention in his testimony that representatives from the media, DOJ, or an elected Barangay Official witnessed the conduct of the post-operation procedures. No explanation was given for their absence, thus:

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Q: What happened to the two plastic sachets that you kept in your pocket?

A: Our companion produced a document and we prepared the inventory and we indicated the two plastic sachets that we confiscated from the accused.

Q: Who made the inventory?

A: Ako po ma'am.

Q: Where did you make that inventory?

A: At the place of the crime scene, ma'am.

Q: And again [mr.] witness, what are those things that you entered in the inventory form?

A: I marked the first plastic sachet that I got from the accused with my initial JM-the name of the accused Alvin-1 and the numerical date 02-19-2011 and my signature.

Q: When did you put the markings [mr.] witness before the inventory or after the inventory?

A: Before we executed the inventory, I first marked the plastic sachet.

Q: What happened to the other plastic sachet? I

A: I placed the same markings, JM-Alvin-2-02-19-2011 with my signature.

Q: Where did you put those markings?

A: I placed it on the masking tape that was placed on the plastic sachet.

Q: Who put the masking tape?

A: Ako po.

Q: Where did you put the markings?

A: At the scene of the crime.

Q: Where was the accused when you put the markings?

A: Katabi ko po.

Q: Mr. witness you said that you put the two plastic sachets on your pocket. How were you able to distinguish the first from the second sachet?

A: Iyong nasa ilalim, iyon ang buy bust na plastic sachet.

Q: And the second one?

A: The first was put deeper into my pocket and the second one was put in a shallow place.

Q: What were the contents of the first plastic sachet. The first plastic

sachet that you bought from the accused?

A: Meron po siyang laman na white crystalline substance.

Q: What about the second sachet?

A: The same.

Q: What was that?

A: Shabu po ma'am.

Q: And after you made the markings, what happened next?

A: Akin pong isinulat sa inventory form.

Q: What did you indicate?

A: Pangalan ng suspect Alvin Galisim, saka iyong lugar, saka iyong first plastic sachet na JM-Alvin-1 -02-19-2011 at iyong second sachet ganoon din ang isinulat ko.<sup>[29]</sup>

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Q: While making this marking, where was the accused at that time?

A: Nasa crime scene din po si Alvin. Sa lugar na pinaghulihan naming sa kanya.

Q: If shown to you the certificate of inventory, would you be able to identify the same?

A: Yes ma'am.

Q: I am showing to you the certificate of inventory dated February 19, 2011, can you please go over this certificate of inventory and tell us what is the relation of that document to the one you testified?

A: This is the same.<sup>[30]</sup>

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Q: What happened next after you accomplished the certificate of inventory?

A: We brought Alvin to our office.

Q: What about the specimen?

A: It was with me.

Q: Why did (sic) keep that specimen. At the scene of the crime, where was the specimen?

A: It was with me.

Q: From the scene of the crime to your office, who was in custody of the seized evidence?

A: I am.<sup>[31]</sup>

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Q: Where was your office again that time?

A: EPD Annex, Meralco Avenue, Pasig City.<sup>[32]</sup>

The presence of the three (3) required representatives, together with the accused, is mandated by law. Failure to comply with this requirement shall result in the acquittal of the accused. In

<sup>[33]</sup>

the case of *People v. Mendoza*, the Court emphasized that the presence of these personalities is an insulation against the evils of switching, planting, or contamination of evidence. While non-compliance may be allowed under justifiable circumstances, jurisprudence states that prosecution must show that the PDEA operatives exerted earnest efforts to comply with the procedure.<sup>[34]</sup>

In *People v. Macud*,<sup>[35]</sup> the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule. The prosecution in that case failed to satisfactorily explain the absence of the DOJ representative, media representative, and local elective official during the marking, inventory, and photograph of the seized dangerous drug.

In *People v. Adobar*<sup>[36]</sup> the Court emphasized that it is at the time of arrest or at the time of the drugs' "seizure and confiscation" that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practices of planting evidence.** (emphasis in the original)

*Second*, the photograph requirement was not complied with. The buy-bust team took photographs of the seized items at the EPD's office in Pasig City and not at the place of arrest. PO3 Coquia's testimony is indicative of the breach, *viz*:

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Q: After arriving at your office, what happened next?

A: When we arrived at our office, we immediately informed our investigator, PO3 Nelson Cruz about the incident, ma'am.

Q: So what happened next?

A; We showed him the evidence confiscated, ma'am.

Q: So after that, what happened next, Mr. Witness?

**A: We showed the evidence confiscated to the investigator. I took a picture of the evidences inside our office, ma'am.**

Q: What device did you use in taking pictures of the recorded evidence?

A: Digicam, Kodak, ma'am.<sup>[37]</sup> (emphasis supplied)

What the law requires is that the drugs must be photographed at the **place of apprehension and/or seizure** in the presence of the three (3) required witnesses.

*People v. Adobar*<sup>[38]</sup> similarly enunciated that the photographs be taken "immediately after seizure and confiscation" which means both the physical inventory and photographing of the drugs must be at the **place of apprehension and/or seizure**. In all of these cases, the photograph and inventory are required to be done in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof.

While the procedure may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, substantial compliance with Section 21 of RA 9165 may be allowed if attended with good and sufficient reason.<sup>[39]</sup> Here, the prosecution did not give any valid explanation on why this condition was not accomplished.

*Third*, the handling of the *corpus delicti* from the investigating officer to the forensic chemist was not sufficiently established.

PO3 Maynigo testified that when he delivered the seized items to their office in EPD Pasig City, they showed them to investigating officer PO3 Cruz. The latter prepared drug and

laboratory requests dated February 20, 2011. But PO3 Cruz never got hold of the items, yet, he peremptorily issued the requests. It was in fact PO3 Maynigo who actually brought the items from EPD Pasig City to EPD Crime Laboratory, Marikina City, on the following day.<sup>[40]</sup>

PO3 Cruz was not presented as a witness after the parties had stipulated that: (1) the witness was the police investigator in this case; (2) as police investigator, he prepared the request for laboratory examination and request for drug test; and (3) he turned over the documents to the arresting officers who brought them to the EPD Crime Laboratory Service in Marikina City.

There was sufficient lapse of time from appellant's arrest and seizure of the illegal drugs, delivery of the items to investigating officer PO3 Cruz, to their actual turnover to forensic chemist PCI Cariño. Appellant was arrested on February 19, 2011 at 11:55 in the evening, the illegal drugs were also confiscated about the same time. Then, the items were transported to EDP Office Pasig City for PO3 Cruz' investigation and preparation of requests. The items were only turned over to forensic chemist PCI Cariño of EPD Crime Laboratory, Marikina City the following day or on February 20, 2011 at 3:00 p.m. PO3 Maynigo testified on:<sup>[41]</sup>

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On Cross-examination:

ATTY. SONGCO:

Q: By the way, Mr. Witness, what was the time of the arrest?  
A: On or about 11:55 p.m., ma'am.

Q: And what was the time the specimen and the request were delivered to the EDP Crime Laboratory?  
A: Past 3:00 o'clock in the afternoon of February 20, 2011, ma'am.

**Q: And that would be thirteen (13) hours after the arrest. Am I correct?**

**A: Yes, ma'am.**

Q: After the arrest and you went to your office, did you handle cases other than this one?

A: I cannot recall, ma'am, because I was transferred to explosive ordinance.

**Q: Did you go home on February 20, 2011?**

**A: Yes, ma'am.**

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On Re-direct Examination:

PROS. MADAMBA:

Q: You said that you went to the EPD Crime Laboratory in Marikina around 3:00?

A: Past 3:00, ma'am.

Q: That was February 20?

A: Yes, ma'am.

Q: You also said that you went to your house on February 20. What time did you go to your house?

A: In the evening, ma'am.

Q: So, after you went to EPD Crime Laboratory in Marikina, that was the only time that you went to your house?

A: Yes, ma'am.

Q: When you arrested the accused and you brought him to your office and you bought him to EPD Crime Laboratory in Marikina, did you handle any other case aside from this from that duration of time?

A: None, ma'am.<sup>[42]</sup>

The buy-bust team allowed thirteen (13) hours to lapse from the time of arrest before turning over the seized items to PCI Cariño at the EPD Crime Laboratory in Marikina City. The lapse of thirteen (13) hours, thus, created doubt on the identity and integrity of the *corpus delicti*.

**Finally**, the fourth link was likewise not sufficiently established. Absent any testimony on the management, storage, and preservation of the illegal drugs subject of seizure after its qualitative examination, the fourth link in the chain of custody of the illegal drugs could not be reasonably established.<sup>[43]</sup> In this case, both the prosecution and defense dispensed with forensic chemist PCI Cariño's testimony during the hearing on September 15, 2011.

In *People v. Ubungen y Pulido*<sup>[44]</sup> citing *People v. Pajarin*, the Court ruled that in case of 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 took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that it could not be tampered pending trial.

Here, the prosecution and defense dispensed with PCI Cariño's testimony and stipulated that "**he had received and examined the specimens and issued the findings in his report.**"<sup>[45]</sup> Albeit Physical Science Report No. D-54-11E was offered as evidence, nothing therein showed, however, the manner of handling the specimens before PCI Cariño received them, how he examined the items, and how these items left his possession to ensure they will not be substituted or tampered during trial.

Unquestionably, the chain of custody here was broken from the time the illegal drugs were confiscated up to their presentation in court. The repeated breach of the chain of custody rule had cast serious uncertainty on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly restrained appellant's right to liberty. Verily, therefore, a verdict of acquittal is in order.<sup>[46]</sup>

Strict adherence to the chain of custody rule must be observed,<sup>[47]</sup> the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence vis-avis the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule. The Court notes here that appellant is not even among the three suspected drug dealers which the buy bust team intended to arrest. They just chanced upon him during the buy-bust investigation.

We have clarified, though, that a perfect chain may be impossible to obtain at all times because of varying field conditions.<sup>[48]</sup> 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.<sup>[49]</sup> The prosecution's witnesses, however, offered an unacceptable excuse for the deviation from the strict requisites of the law.

In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved," too, will not come into play.

For perspective, life imprisonment is imposed for unauthorized sale of dangerous drugs even for the minutest amount. It, thus, becomes inevitable that safeguards against abuses of power in the conduct of buy-bust operations be strictly implemented. The purpose is to eliminate wrongful arrests and, worse, convictions. The evils of switching, planting or contamination of the *corpus delicti* under the regime of Republic Act No. 6425 (RA 6425), otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected if the lawful requirements were otherwise lightly brushed aside.<sup>[50]</sup>

As heretofore shown, the chain of custody had been breached several times over; the metaphorical chain, irreparably broken. Consequently, the identity and integrity of the seized drug item were not deemed to have been preserved. Perforce, appellant must be unshackled, acquitted, and released from restraint.<sup>[51]</sup>

Suffice it to state that the presumption of regularity in the performance of official functions<sup>[52]</sup> cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.<sup>[53]</sup> And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule.

**ACCORDINGLY**, the appeal is **GRANTED**. The Decision dated August 16, 2016 of the Court of Appeals in CA-G.R. CR HC No. 06705 is **REVERSED** and **SET ASIDE**.

Appellant **ALVIN GALISIM y GARCIA** is **ACQUITTED** in G.R. No. 231305 (Criminal Case Nos. 17436-D and 17437-D). The Director of the Bureau of Corrections, Muntinlupa City is ordered to: a) immediately release appellant **ALVIN GALISIM y GARCIA** from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.

**SO ORDERED.**

*Carpio, (Chairperson), Caguioa, Reyes, J., Jr., and Zalameda, JJ., concur.*

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Noel G. Tijam and Francisco P. Acosta, all members of the Fourth Division, *rollo*, pp. 2-11.

[2] Record, Criminal Case No. 17436-D, pp. 1-2.

[3] *Id.*

[4] TSN, June 26, 2012, pp. 2-13.

[5] TSN, July 23, 2013, pp. 2-21.

[6] TSN, June 26, 2012, pp. 2-13; TSN, July 23, 2013, pp. 2-21.

[7] TSN, September 18, 2012, pp. 2-19.

[8] TSN, June 26, 2012, pp. 2-13; TSN, July 23, 2013, pp. 2-21.

[9] Specimens A (JM-Alvin-1-02-19-2011 with signatures) and B (JM-Alvin-2-02-19-2011 with signatures) - Two (2) heated transparent plastic sachets each with 0.02 gram of white crystalline substances; See Physical Sciences Report D-54-11E dated February 20, 2011; Record, p. 80.

[10] Record, p. 80.

[11] Record, pp. 72-91.

[12] TSN, November 21, 2013, pp. 2-14.

[13] *Id.* at 14.

[14] CA *rollo*, pp. 8-15.

[15] Accused-Appellant's Brief dated September 30, 2014; CA *rollo*, pp. 30-40.

[16] Plaintiff-Appellee's Brief dated January 27, 2015; CA *rollo*, pp. 73-83.

[17] *Rollo*, pp. 2-11.

[18] *Id.*

[19] *Id.* at 17-18.

[20] Manifestation (In Lieu of Supplemental Brief) dated October 24, 2017 filed by Office of the Solicitor General; *rollo*, pp. 19-21; and Manifestation (In Lieu of a Supplemental Brief) dated November 2, 2017 filed by the Public Attorney's Office; *rollo*, pp. 23-25.

[21] *People v. Calvelo*, G.R. No. 223526, December 6, 2017, 848 SCRA 225, 243-244.

[22] As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

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[23] *People v. Dahil*, 750 Phil. 212, 231 (2015).

[24] *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

[25] TSN, September 18, 2012, pp. 4-8.

[26]

Id. at 13.

[27] *Id.* at 15.

[28] TSN, July 23, 2012, p. 17.

[29] TSN, September 18, 2012, pp. 6-8.

[30] *Id.* at 11-12.

[31] *Id.* at 13-14.

[32] *Id.* at 15.

[33] 736 Phil. 749, 761 (2014).

[34] citing *People v. Miranda*, G.R. No. 229671, January 31, 2018.

[35] G.R. No. 219175, December 14, 2017, 849 SCRA 294.

[36] G.R. No. 222559, June 6, 2018. "TSN, July 23, 2012, p. 17.

[38] Supra note 36.

[39] *People v. Tampan*, G.R. No. 222648, February 13, 2019.

[40] TSN, September 18, 2012, p. 14-16.

[41] TSN, March 12, 2013, p. 4.

[42] *Id.* at 5.

[43] *People v. Ubungen y Pulido*, G.R. No. 225497, July 23, 2018.

[44] *Id.*

[45] RTC Judgment dated December 12, 2013; CA *rollo*, pp. 8-15.

[46] See *Antonio Jocson y Cristobal v. People*, G.R. No. 199644, June 19, 2019.

[47] *People v. Lim*, G.R. No. 231989, September 04, 2018.

[48] See *People v. Abetong*, 735 Phil. 476, 485 (2014).

[49] See Section 21 (a), Article II, of the IRR of RA 9165.

[50] *Largo v. People*, G.R. No. 201293, June 19, 2019, citing *People v. Luna*, G.R. No. 219164, March 21, 2018.

[51] Supra note 46.

[52] Section 3 (m), Rule 131, Rules of Court.

[53] *People v. Cabiles*, 810 Phil. 969, 976 (2017).