

# FIRST DIVISION

[ G.R. No. 238870, October 06, 2021 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ABDUL RACMAN OSOP OMAR AND EDDIE RASCAL Y SARAPIDA,  
ACCUSED-APPELLANTS.**

## DECISION

**LOPEZ, J., J.:**

Before Us is an appeal, pursuant to a Notice of Appeal<sup>[1]</sup> filed by accused-appellants Abdul Racman Osop Omar (*Omar*) and Eddie Rascal y Sarapida (*Rascal*) on February 15, 2018, seeking the reversal of the Decision<sup>[2]</sup> dated January 31, 2018, of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01597-MIN. In its Decision, the *CA* affirmed the Decision<sup>[3]</sup> of the Regional Trial Court (*RTC*) Branch 34 of Panobo City, dated July 15, 2016, which convicted Omar and Rascal of violation of Section 5 under Republic Act (*R.A.*) No. 9165.<sup>[4]</sup> Aside therefrom, Rascal was also found guilty of violating Section 11 of the same law.

### *Facts and Antecedent Proceedings*

The facts, as culled from the *CA* Decision, are as follows:

On February 15, 2013, an Information was filed with the *RTC* Branch 34 of Panobo City against accused-appellants Omar and Rascal for the sale of methamphetamine hydrochloride (*shabu*), docketed as Criminal Case No. CrC 63-2013. It stated:

That on or about February 13, 2013, in the City of Panobo, Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, without being authorized by law, willfully, unlawfully and knowingly traded, sold and delivered one (1) small heat-sealed transparent sachet of methamphetamine hydrochloride otherwise known as "shabu" weighing 0.1804 gram, a dangerous drug, to PO2 NOEL V. VILDOSOLA, who was acting as a *poseur*-buyer in a legitimate buy-bust operation, in the presence of PO2 NOLY PATRICK A. SAPUL, receiving one (1) marked money of One Thousand Peso bill (P1,000.00) with Serial Number SJ949514.

Contrary to law.<sup>[5]</sup>

A second Information, docketed as Criminal Case No. CrC 64-2013, was filed on the same day in the same *RTC* branch against Rascal for the illegal possession of *shabu*. It stated:

That on or about February 13, 2013, in the City of Panobo, Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully, and knowingly had in his possession, control and custody Seventy[-]Nine (79) pieces of small heat-sealed transparent sachet of methamphetamine hydrochloride otherwise known as "shabu" inside a blue belt bag, to wit:

"NYV P-1" – 0.0484 gram	"NYV P-41" – 0.0520 gram
"NYV P-2" – 0.0216 gram	"NYV P-42" – 0.0530 gram

"NYV P-3" – 0.0560 gram	"NYV P-43" – 0.0378 gram
"NYV P-4" – 0.0479 gram	"NYV P-44" – 0.0434 gram
"NYV P-5" – 0.0422 gram	"NYV P-45" – 0.0435 gram
"NYV P-6" – 0.0436 gram	"NYV P-46" – 0.0514 gram
"NYV P-7" – 0.1955 gram	"NYV P-47" – 0.0480 gram
"NYV P-8" – 0.1653 gram	"NYV P-48" – 0.0586 gram
"NYV P-9" – 0.1816 gram	"NYV P-49" – 0.0364 gram
"NYV P-10" – 0.2096 gram	"NYV P-50" – 0.0450 gram
"NYV P-11" – 0.2097 gram	"NYV P-51" – 0.0460 gram
"NYV P-12" – 0.1948 gram	"NYV P-52" – 0.0454 gram
"NYV P-13" – 0.1924 gram	"NYV P-53" – 0.0420 gram
"NYV P-14" – 0.1790 gram	"NYV P-54" – 0.0429 gram
"NYV P-15" – 0.0470 gram	"NYV P-55" – 0.0375 gram
"NYV P-16" – 0.0465 gram	"NYV P-56" – 0.0439 gram
"NYV P-17" – 0.0518 gram	"NYV P-57" – 0.0525 gram
"NYV P-18" – 0.0524 gram	"NYV P-58" – 0.0467 gram
"NYV P-19" – 0.0225 gram	"NYV P-59" – 0.0534 gram
"NYV P-20" – 0.0405 gram	"NYV P-60" – 0.0495 gram
"NYV P-21" – 0.0521 gram	"NYV P-61" – 0.0537 gram
"NYV P-22" – 0.0396 gram	"NYV P-62" – 0.0369 gram
"NYV P-23" – 0.2087 gram	"NYV P-63" – 0.0404 gram
"NYV P-24" – 0.2146 gram	"NYV P-64" – 0.0408 gram
"NYV P-25" – 0.2035 gram	"NYV P-65" – 0.0523 gram
"NYV P-26" – 0.1696 gram	"NYV P-66" – 0.0416 gram
"NYV P-27" – 0.1998 gram	"NYV P-67" – 0.0554 gram
"NYV P-28" – 0.1955 gram	"NYV P-68" – 0.0437 gram
"NYV P-29" – 0.0448 gram	"NYV P-69" – 0.0500 gram
"NYV P-30" – 0.1770 gram	"NYV P-70" – 0.0460 gram
"NYV P-31" – 0.0432 gram	"NYV P-71" – 0.0442 gram
"NYV P-32" – 0.1824 gram	"NYV P-72" – 0.0509 gram
"NYV P-33" – 0.1530 gram	"NYV P-73" – 0.0400 gram
"NYV P-34" – 0.1806 gram	"NYV P-74" – 0.0507 gram
"NYV P-35" – 0.0436 gram	"NYV P-75" – 0.0422 gram
"NYV P-36" – 0.0396 gram	"NYV P-76" – 0.0431 gram
"NYV P-37" – 0.0520 gram	"NYV P-77" – 0.0482 gram
"NYV P-38" – 0.0489 gram	"NYV P-78" – 0.1014 gram
"NYV P-39" – 0.0436 gram	"NYV P-79" – 0.0840 gram
"NYV P-40" – 0.0255 gram	

Or a total of 6.3722 grams, all dangerous drug

Contrary to law.<sup>[6]</sup>

During the arraignment on April 24, 2013, Omar pleaded not guilty to the charge of illegal sale of *shabu*,<sup>[7]</sup> while Rascal pleaded not guilty to the charges of illegal sale and illegal possession of *shabu*.<sup>[8]</sup>

Thereafter, in the Order<sup>[9]</sup> dated May 21, 2014, the RTC adopted the minutes of the Preliminary Conference proceedings in its entirety as the pre-trial proceeding in the instant

cases. Following this, the pre-trial proceedings were terminated and trial ensued.

During trial, the prosecution presented PO2 Noel Y. Vildosola (*PO2 Vildosola*) and PO2 Noly Patrick Sapul y Antalan (*PO2 Sapul*) as its witnesses. Both were members of the Philippine National Police (*PNP*) assigned at the Panabo City Police Station and described the incident as an entrapment or buy-bust after receiving information that Omar and Rascal were selling prohibited drugs.<sup>[10]</sup>

PO2 Vildosola testified that while he was at the public market doing patrol work at around 10 o'clock in the morning on February 13, 2013, he received a report from a civilian asset that two (2) persons known as alias Abdul (later identified as Omar) and Eddie (later identified as Rascal) were selling drugs at Brgy. San Francisco, Panabo City.<sup>[11]</sup> PO2 Vildosola then brought the asset to Panabo City Police Station, where he was interviewed by the police officers. Thereafter, Chief of Intelligence Officer Martin Plaza III organized a buy bust team, where PO2 Vildosola was designated as a *poseur* buyer. PO2 Vildosola was provided with one thousand pesos (P1,000.00) as buy-bust money, which PO2 Vildosola marked with his initials "NYV".<sup>[12]</sup> The asset reportedly took a while to set up a meeting with the persons selling shabu as the latter were suspicious of the alleged buyers. When they finally agreed to meet up with the asset and the alleged buyers, PO2 Vildosola, PO2 Sapul, and the rest of the buy-bust team proceeded to Purok 1, Brgy. San Francisco where the transaction took place. PO2 Vildosola, PO2 Sapul and the asset arrived in the area located at Purok 1, Brgy. San Francisco, Panabo City at about 3:00 in the afternoon on board a motorcycle. When the asset saw the persons selling *shabu*, he then informed PO2 Vildosola and PO2 Sapul that the two (2) persons waiting there were Omar and Rascal, as identified during the trial proceedings.<sup>[13]</sup>

The police officers then followed the asset as he approached Omar and Rascal. The asset introduced them as his trusted friends who would like to buy *shabu*.<sup>[14]</sup> Omar and Rascal then conferred with each other in their own dialect after which Omar told PO2 Vildosola it was okay to buy. PO2 Vildosola then informed Omar that he would buy P1,000.00 pesos worth of *shabu* and handed to Omar the marked money. Rascal opened his belt bag containing several sachets and selected one sachet he believed to be worth P1,000.00 and handed the same to Omar. He gave it to PO2 Vildosola who examined the same and thereafter placed it inside his pocket.<sup>[15]</sup>

Afterwards, PO2 Vildosola shouted loudly to Omar and Rascal that they were police officers and pulled out his firearm and directed them to drop to the ground. Omar and Rascal complied while PO2 Vildosola's companions rushed to the scene and secured the area. They read to Omar and Rascal their rights and frisked them.<sup>[16]</sup> They recovered 79 sachets containing the alleged *shabu*, a lighter, a cellphone, and other personal items from Rascal while they seized the P1,000.00 marked money, a cellphone and other belongings from Omar.<sup>[17]</sup>

PO2 Vildosola marked the seized sachets of the alleged *shabu* at the crime scene in the presence of Omar and Rascal, Department of Justice (*DOJ*) representative Ian R. Dionola (*Dionola*), a media representative Jun Gumban (*Gumban*), and *barangay kagawad* Conrad Theodore Matutino (*Matutino*). An inventory of the seized items then followed. PO2 Sapul took some photographs during the inventory.<sup>[18]</sup> PO2 Vildosola testified that the cellular phone of Rascal contained several messages referring to the *shabu* transaction and added that he did not delete the messages but took the battery out from the phone and wrapped it with masking tape before turning it over to the property custodian. He took custody of the seized sachets and brought Omar and Rascal and the sachets of the alleged *shabu* to the crime laboratory.<sup>[19]</sup>

PO2 Sapul, in his testimony, corroborated the material aspects of the account given by PO2 Vildosola. He said that he was present during the briefing conducted by Officer Plaza in the afternoon of February 13, 2013 for a possible entrapment operation against alias Abdul (Omar) and Eddie (Rascal) who were reported to be selling drugs in Panabo City.<sup>[20]</sup>

After the prosecution presented its last witness, it filed its Joint Formal Offer of Exhibits for both Criminal Cases 63-2013 and 64-2013.<sup>[21]</sup>

On the part of the defense, Omar and Rascal took the witness stand alleging a frame-up.

Omar testified that, on February 13, 2013, the day of their arrest, he and his uncle, Rascal, went to Panabo City to look for a family member who had eloped. When they arrived at the Panabo City Terminal, they were met by Rascal's friend who brought them to a boarding house in Hofileña Subdivision, San Francisco, Panabo City. As Omar wanted to take a bath, he went to a store in Hofileña Subdivision to buy shampoo and cellphone load. However, while he was on his way to the store, he was arrested by the police officers.<sup>[22]</sup> He stated that he felt harassed for being apprehended when they did not commit anything wrong against the police officers.<sup>[23]</sup> When asked at cross-examination why he did not complain as they were being arrested, Omar answered it was because they were not allowed to react.<sup>[24]</sup>

Rascal, in his testimony, echoed the testimony of Omar. He stated that he was in Panabo City because he was looking for the niece of his wife who eloped, and this is an act that the Muslim religion forbids. He testified that he was resting at the boarding house in Hofileña Subdivision but later followed Omar to the store when he realized that Omar was taking a long time to return. They were both arrested and he said that they were brought across a cemetery, where they saw the items purportedly seized from them already prepared. Their pictures were taken in front of a cemetery.<sup>[25]</sup> When asked during cross examination as to why they did not resist the arrest or shout for help, he answered that he believed PO2 Vildosola to be a policeman despite the civilian attire because he declared so, and carried a gun.<sup>[26]</sup> He claimed that the police just concocted a story against them since they were Muslims and new to the place and can hardly speak the Visayan dialect.<sup>[27]</sup>

After the testimonies were taken, the defense offered the two (2) Judicial Affidavits of Omar and Rascal, to prove its contents and to be considered as part of their testimonies. The exhibits were admitted in evidence and the counsel for prosecution did not present any rebuttal evidence.<sup>[28]</sup> In an Order<sup>[29]</sup> dated March 15, 2016, the RTC terminated the trial proceedings and set the promulgation of judgment on September 22, 2016.

### ***The RTC Ruling***

On July 15, 2016, the RTC promulgated a Decision for both Criminal Case Nos. CrC 63-2013 and 64-2013, convicting Omar and Rascal as charged. It stated that, between the two (2) separate charges, the charge for the sale of prohibited drugs will necessarily take precedence as it was the one that served as basis for the arrest and frisking of the accused which, in turn, led to the discovery of additional items. The RTC stated that the determination of culpability is a two-step process: *first*, ascertaining what are required by the law to sustain the charges, and *second*, assessing and evaluating the testimonial accounts whether or not the requirements were met. The RTC declared that the present case comes down to credibility and found that the credibility from the account of the police officers was the one that deserved credence as it weaved a convincing and believable tale that is in accord with the usual buy-bust account, notwithstanding the minor inconsistencies in the testimonials. In contrast, it found the version of the accused-appellants to engender disbelief and suspicion that amounted to nothing but pure and simple alibi. The RTC then disposed the case as follows:

**WHEREFORE**, judgement is hereby rendered as follows:

- a. Finding accused *Abdul Racman Osop Omar* and *Eddie Sarapida Rascal* guilty beyond reasonable doubt of selling shabu defined and penalized under Section 5 of R.A. No. 9165 in Criminal Case No. CrC No. 63-2013. Accordingly, they are each sentenced to suffer in this case the penalty of life imprisonment and to pay fine in the amount of Php 500,000.00.



b. Finding accused *Eddie Sarapida Rascal* guilty beyond reasonable doubt of illegal possession of shabu defined and penalized under Section 11 of R.A. 9165 in Criminal Case No. CrC No. 64-2013. Accordingly, he is sentenced to suffer in this case an indeterminate penalty of twenty (20) years and one (1) day as minimum period to life imprisonment as maximum period and to pay fine in the amount of Php 400,000.00.

In the service of their respective sentences, accused are entitled to the full credit of his preventive imprisonment pursuant to the provisions of Art. 29 of the Revised Penal Code. Both shall serve their sentences, successively in the case of Eddie S. Rascal at Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte.

The total 80 sachets of shabu subject matter of the instant two cases are hereby confiscated and forfeited in favor of the government through the PDEA subject to the destruction by the latter in accordance with existing laws and regulations. In connection thereto, PDEA Regional Office XI is directed to assume custody of the subject drugs for its proper disposition within ten (10) days from notice.

SO ORDERED.<sup>[30]</sup>

Aggrieved, both Omar and Rascal filed an appeal with the CA, seeking the reversal of their conviction on the following grounds:

- i. The Court *a quo* gravely erred in convicting accused-appellants of the offenses charged notwithstanding the failure of the prosecution to prove their guilt beyond reasonable doubt;
- ii. The Court *a quo* erred in finding that the both (sic) appellants were guilty of section 5, Art. II of R.A. 9165 despite the fact that there was no actual buy-bust operation;
- iii. The Court *a quo* erred in finding appellant Eddie Rascal guilty of Section 11, Art. II of RA 9165 notwithstanding the failure of the prosecution to prove his guilt beyond reasonable doubt[;]
- iv. The Court *a quo* gravely erred in convicting the appellant despite the apparent gaps in the chain of custody[.]<sup>[31]</sup>

### ***The CA Ruling***

On January 31, 2018, the CA issued a Decision affirming the ruling of the RTC. It found that the all the elements in the prosecution for the illegal sale and illegal possession of shabu were duly established. The CA also found that the prosecution sufficiently established every link in the chain of custody of the subject dangerous drugs, beginning with the markings done by PO2 Vildosola in the presence of the accused and the required witnesses under R.A. No. 9165, to their transfer to the Panobo City Police Station, followed by their transportation to the Davao del Norte Provincial Crime Laboratory at Tagum City, until the turn-over of the drugs to the court.

As to the issue raised on how the seized items were safekept by PO2 Vildosola after their seizure, the CA considered as sufficient his testimony of identifying the 80 sachets of *shabu* in court as the same ones recovered from the accused-appellants.

Anent the issue raised by the accused-appellants on the prosecution's non-presentation of the Forensic Chemist in court, the CA ruled that such non-presentation does not affect the chain of custody because the existence, due execution, and veracity of the contents for the Chemistry Report were admitted by the parties during the pre-trial conference.

As to the issue raised on the belated presence of witnesses during the inventory of the seized items, the CA was not persuaded. It stated that the appellants failed to substantiate such claim and that it raised the issue for the first time on appeal, contravening the basic rules of fair play and justice.

Finally, as to the issue on the integrity of the prosecution witness, the CA stated that an inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused. The CA found that inconsistencies pointed to by the appellants only refers to minor details that had nothing to do with the elements of the crime, hence these did not cast doubt on the integrity of the evidence of the prosecution.

The CA affirmed the Decision of the RTC. Hence, Omar and Rascal filed a Notice of Appeal on February 15, 2018.<sup>[32]</sup>

In a Resolution<sup>[33]</sup> dated March 22, 2018, the CA gave due course to the Notice of Appeal filed by accused-appellants through the Public Attorney's Office. The Supreme Court received the records of this case on May 16, 2018.

In a Resolution<sup>[34]</sup> dated June 25, 2018, the Supreme Court required both parties to file a Supplemental Brief, if so desired. On October 08, 2018, the Accused-Appellants filed a Manifestation in Lieu of Supplemental Brief, adopting all the allegations and arguments set forth in the Appellant's Brief. The Office of the Solicitor General (OSG) filed a similar Manifestation to expedite the resolution of this case and avoid repetition of arguments.<sup>[35]</sup>

*Issues*

The issues adopted by Omar and Rascal are the following:

1. Whether or not [Omar and Rascal] are guilty of offenses under Section 5, Article II of R.A. 9165 or whether or not there was an actual bu[y]-bust operation;
2. Whether appellant Rascal is guilty of the offense under Section 11, Article II of R.A. 9165[,] and[;]
3. Whether the PDEA complied with the requirements under Section 21 of R.A. 9165.<sup>[36]</sup>

*Ruling*

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.<sup>[37]</sup> The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>[38]</sup>

Following this, it was baseless for the CA to perfunctorily dismiss an issue raised by the Omar and Rascal solely on ground that it was raised for the first time on appeal.

This is all the more true considering that the Court has previously pronounced that the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.<sup>[39]</sup>

R.A. No. 9165, the applicable law at the time of Omar and Rascal's arrest, prohibits the sale of dangerous drugs and provides the penalties for violations thereof. It states:

SECTION 5.

*Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

Jurisprudence provides that, in order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.<sup>[40]</sup>

The first element is met in this case. As found by the CA, PO2 Vildosola, who acted as the *poseur*-buyer, categorically identified Omar and Rascal as the ones who sold him P1,000.00 worth of *shabu*.<sup>[41]</sup> The direct testimony of PO2 Vildosola states:

(PO2 Vildosola, directly examined by Pros. Bondono)

Q: Did the asset tell you of who is the one selling this rampant illegal drug?

A: He said they are Alias Eddie and Alias Abdul, sir.

xxx

Q: If these two persons are preset (sic) in court, would you be able to identify them?

A: Yes, sir.

Q: Point to them one by one?

Interpreter: The witness pointed to the third person sitting at the accused bench who when asked of his name answered that he is Eddie Rascal.

Q: How about the second accused?

Interpreter: The witness pointed to the fourth person sitting at the accused bench who when asked of his name answered that he is Abdul Racman Omar.<sup>[42]</sup>

The Court affirms the findings of the CA that the second element was met, citing the testimony of PO2 Vildosola that he handed Omar the buy-bust money and the latter pocketed it. Rascal, on the other hand, took one of the sachets of *shabu* from his blue belt bag and handed the sachet he thought was worth P1,000.00 to Omar, who also handed the same to PO2 Vildosola.<sup>[43]</sup> His testimony was corroborated by the testimony of PO2 Sapul and was substantiated with: 1) the Request for Laboratory Examination; 2) Chemistry Report of the Forensic Chemist Gucor who examined the sachets and found that all the 80 sachets were positive for *shabu*; 3) the buy-bust money; 4) the Inventory of the Property Seized that were witnessed by relevant officers; 5) several photographs taken during the operation; 6) the delivery receipt of the sachets seized; and 7) the duly identified sachet marked as NYV 1-BB.<sup>[44]</sup> The Court upholds the conviction for Omar and Rascal for the Illegal Sale of Dangerous Drugs.

*Illegal Possession of Dangerous Drugs*

R.A. 9165 prohibits the possession of dangerous drugs and metes out the penalties for violations according to the weight of the dangerous drugs involved:

SECTION 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

X X X X

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

X X X X

Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are less than five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of or more but less than five hundred (500) grams of marijuana[.]

In instances wherein, an accused is charged with Illegal Possession of Dangerous Drugs, the Court has provided that the prosecution must establish the following elements to warrant conviction: (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>[45]</sup>

For the first element, it is worth pointing out that 79 sachets of *shabu* were recovered from Rascal, amounting to a total of 6.3722 grams,<sup>[46]</sup> all confirmed to be dangerous drugs.<sup>[47]</sup> For the second and third elements, the CA aptly found that Rascal did not make any assertion that such possession was authorized. His free and conscious possession of the drug was manifested when he did not utter words denying his possession of *shabu* at the time of his arrest nor shouted for help for the wrong accusation thrown at him by the police officers.<sup>[48]</sup>

*No Broken Chain of Custody*

In the crimes of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, case law instructs that it is essential for the identity of the prohibited drug to be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>[49]</sup>

Following the provisions on the custody of dangerous drugs under Section 21 of R.A. No. 9165<sup>[50]</sup> and in the Implementing Rules and Regulations of R.A. No. 9165, the Dangerous Drugs Board provided a detailed definition for the chain of custody involving drugs and other substances in Section 1 (b) of DDB Regulation No. 1, Series of 2002<sup>[51]</sup>:



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[.]

The Court has previously explained that the chain of custody is divided into four links:

*[F]irst*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.<sup>[52]</sup>

As the CA correctly held, the prosecution here was able to account for every link in the chain of custody.

The first link was established when PO2 Vildosola marked the sachet sold to him by Omar and Rascal with his initials "NYV-1BB" while the other 79 sachets were marked by him as "NYV-P1" to "NYV-P79".<sup>[53]</sup>

The safekeeping of the seized sachets of prohibited drugs were duly established by the prosecution through PO2 Vildosola's testimony:

(PO2 Vildosola, directly examined by Pros. Bondoan)

Q: What did you do with the one (1) sachet of shabu that you receive?

A: I placed it inside my pocket, sir.<sup>[54]</sup>

xxx

Q: I would like to show you seventy-nine (79) pieces of sachet of shabu as Exh. L to L-78 and sealed with masking tape marked as Exh. "L-80" xxx kindly look at it, examine and tell us if these sachets of shabu as you said were the ones recovered from the accused Eddie Rascal?

A: These are all the 79 sachets of shabu were recovered from accused Eddie Rascal, sir because my signature and initial was found on each of the sachet of shabu written on the masking tape attached to it, respectively.<sup>[55]</sup>

The second and third links were established when PO2 Vildosola testified that after he marked the 80 sachets, he took custody of the same and brought them to Panabo City Police Station, where another photograph of the 80 sachets was taken.<sup>[56]</sup> From the Panabo City Police Station, the police officers brought Omar and Rascal, as well as the seized sachets to the Davao del Norte Provincial Crime Laboratory at Tagum City where the seized sachets were received by PO1 Jeffrey L. Cambalon (*PO1 Cambalon*) at 11:45 in the evening of February 13, 2013, thus:

(PO2 Vildosola, directly examined by Pros. Bondoan)

Q: Where did the team go next after the inventory and marking of the exhibits were done at the crime scene?

A: We went to the police station, sir.

Q: Can you tell us what happened at the police station?

A: When we arrived at the police station, we had the desk officer place the incident on the blotter, then we prepared the documents for the filing of the case and those that we will bring to the crime laboratory, sir.

XXX

Q: After the documents were prepared by the investigator, what happened next?

A: We brought the accused and all the drugs to the crime laboratory bringing with us the Request for Laboratory Examination, sir.

XXX

Q: To whom did you turn over the subject items at the crime laboratory office, if you can still remember?

A: To PO1 Cambalon, sir.

Q: What is your proof that indeed, you submitted the said items to the crime laboratory office for laboratory examination?

A: They affixed their signature in the Request for Laboratory Examination that we brought and likewise, we took pictures at the crime laboratory, sir.

XXX

Q: Before you delivered the items to the crime laboratory, who sealed these sachets of shabu?

A: I was the one who sealed it, sir.

Q: Meaning, you put it in a resealable plastic to secure it?

A: Yes Sir.<sup>[57]</sup>

Taking into account that PO2 Vildosola acted both as the arresting officer and the investigating officer who turned over the specimens to the crime laboratory, the seized illegal drugs clearly did not change hands.<sup>[58]</sup>

After PO1 Cambalon personally received the 80 sachets of suspected shabu from PO2 Vildosola, these were then examined by Forensic Chemist Gucor, who prepared a Chemistry Report dated February 14, 2013 which stated that all sachets were positive for *shabu*.<sup>[59]</sup> The qualifications of Forensic Chemist Gucor and the existence, due execution, and veracity of the contents of the said report were later stipulated by the parties on May 21, 2014.<sup>[60]</sup>

On the same date that the Chemistry Report was issued, Forensic Chemist Gucor turned over the 80 sachets of drugs to PO1 Rhuffy D. Federe (*PO1 Federe*) for safekeeping.<sup>[61]</sup>

Finally, the fourth link was established when the 80 sachets were brought to court. On August 8, 2013, the Clerk of Court V of the RTC of Panobo City, Branch 34, received the following items from PO1 Federe:

One (1) heat sealed big transparent plastic pack marked as D-015022013 containing the following:

1. One self-sealing transparent cellophane containing one heat-sealed sachet of 0.1304 gram of white crystalline substance marked on a paper tape with pertinent data including signatures with control number D-015-2013 A;
2. One self-sealing plastic transparent cellophane containing seventy-nine (79) heat-sealed transparent plastic sachets each containing white crystalline substance with a total weight of 6.3722 grams marked on a paper tape attached with pertinent data including signatures with control number 0-015-2013 B.
3. One (1) original copy of chain of custody, control no. D-01502013.
4. One (1) original copy of Chemistry Report No. D-015-2013 dated 14 February 2013.<sup>[62]</sup>

The Pre-trial Order dated May 21, 2014 likewise states the stipulations between the parties:

13. The subject items marked as Exhs. "L" to "L-78" and "K" were endorsed to PNP Crime Laboratory on 13 February 2013 at 11:45 pm and its subsequent custody up to the time it was delivered to this Court.<sup>[63]</sup>

*The numerous sachets of drugs seized diminishes the possibility of planting or tampering of evidence.*

In contrast, the defense of the accused for both charges are denial and frame-up. The Court, in several instances, has stated that the defense of frame-up in drug cases requires clear and convincing evidence. The Court views such claim with distrust because it can easily be feigned and fabricated.<sup>[64]</sup>

In *People v. Lung Wai Tang*<sup>[65]</sup> the Court considered the quantity of shabu consisting of almost eight (8) kilograms to provide strong probative value favoring the prosecution's version of events. Applying the Court's ratiocinations analogously to the facts in this case, We cannot overlook the total of 80 sachets recovered in the police officers' operation. Such large quantity of sachets of prohibited drugs are not easily planted, tampered or manipulated. This is all the more persuasive when coupled with the CA's findings that Rascal did not resist when the police officers arrested him nor filed any charge against the police officers after the alleged wrongful accusation. Lastly, Rascal admitted to the picture taken of them in front of the cemetery during the inventory of the seized drug sachets. In the said picture, the representatives from the media, DOJ, and a *barangay kagawad* were present.<sup>[66]</sup> Without proof of any intent on the part of the police officers to falsely impute to appellants the commission of a crime, the presumption of regularity in their performance of official duty and the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, deserve to prevail over the bare denials and self-serving claims of frame-up by appellants.<sup>[67]</sup>

*Compliance with the Three-Witness Rule was Sufficiently Established by the Prosecution*

The defense, adopting its arguments in the Appellant's Brief, asserts that all the representatives that were mentioned were not around during the actual buy-bust operation, frisking and seizure.<sup>[68]</sup> The defense alleges that, by belatedly inviting the *barangay kagawad*, the DOJ and media representative – as if was done by mere afterthought the very essence of brushing aside doubts on the execution of the buy-bust operation and the evils of switching, "planting" or contamination of the evidence seized was negated.<sup>[69]</sup>

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."<sup>[70]</sup> Hence, such allegations, even if raised for the first time on appeal, should be considered.

Prior to the amendment of R.A. No. 9165 by R.A. No. 10640, the following witnesses were required to be present during the physical inventory and photographing of the seized items: a representative from the media and the Department of Justice (*DOJ*), and any elected public official.<sup>[71]</sup>

A careful consideration of the records would show that the prosecution sufficiently complied with these requirements.

The direct testimony of the arresting officer, PO2 Vildosola, stated as follows:

(PO2 Vildosola, directly examined by Pros. Bondoan)

Q: Who were present when these sachets of shabu were marked?

A: The media representative, Barangay Officials and representative from the Department of Justice, Sir.

Q: How about the two accused?

A: They were also present when we did the markings, sir.

Q: Tell us, why the representative of the media, person from the barangay and representative from the DOJ were there, what are their purposes?

A: We invited them to serve as our witnesses for the markings on the sachets of shabu that we seized from the two accused at the crime scene, sir.

Q: How about the inventory of the property seized, where was it conducted?

A: We did the inventory at the crime scene also after the markings of the seized items, sir.

Q: Tell us, what was done during the marking of the seized items and during the inventory?

A: While I was doing the markings on all of the seized items, my companion Officer Sapul were taking pictures, sir.

Q: If these pictures will be shown to you, will you be able to identify it?

A: Yes, sir.

X X X X

Q: Was the inventory reduced into writing?

A: Yes sir, we have.

Q: If copies will be shown to you, will you be able to identify it?

A: Yes, sir.<sup>[72]</sup>



The testimony was substantiated with the Inventory of Property Seized for Omar<sup>[73]</sup> and Rascal,<sup>[74]</sup> dated on the same day of the arrest, which similarly bare documentation stating:

That the physical inventory and photographed of (sic) of seized item/s was conducted at Purok-1, Brgy. San Francisco, Panabo City in the presence of the following witnesses:

Signature	Name
1. Department of Justice	Ian Dionola (sgd) 4:30 pm, 2/13/13
2. Elected Public Official:	Conrad Theodore A. Matutina (sgd) 4:30 pm, 2/13/13
3. Media Representative	Jim Gumban (sgd) 4:30 pm, 2/13/13

Supporting photographs were also submitted showing Omar and Rascal together with the arresting officer PO2 Noel Vildosola, DOJ representative Dionola, *brgy. kagawad* Matutina, media representative Gumban and the Duty Investigator PO3 Archel Calamba. The photographs were taken during the conduct of inventory of property seized and certification of property seized on February 13, 2013 at Purok 1, Brgy. San Francisco, Panabo City.<sup>[75]</sup>

Section 21 of the Implementing Rules and Regulations of R.A. No. 9165 points out the conditions for the conduct of the physical inventory and taking of photograph of the seized items, such that:

1. It must be done immediately after seizure or confiscation;
2. It must be done in the presence of the following personalities: a) the accused or his representative or counsel; b) representative from the media; c) representative from the DOJ; and d) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and
3. It shall be conducted at the following places: a) place where the search warrant is served; or b) at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.<sup>[76]</sup>

It is the first requirement that is in question, as the appellants allege the belated presence of the three required witnesses.

Such unsupported allegations cannot render the confiscated items inadmissible. *Firstly*, the presumption of regularity of performance of official duty stands when no reason exists in the records by which to doubt the regularity of the performance of official duty.<sup>[77]</sup> *Secondly*, even in cases where there is an absence of the required witnesses, the Court has taken into consideration the sufficient effort to secure the required witnesses.<sup>[78]</sup> As held in the case of *People v. Tomas*:

Less stringent compliance with the requirements of Section 21 [of R.A. 9165] does not necessarily render void and invalid the seizure and custody over the seize items provided: 1) there is justifiable ground for non-compliance; and 2) the integrity and evidentiary value of the seized items are properly preserved. As a saving mechanism and an exception to the strict compliance rule, the prosecution must be able to satisfy these twin requisites so as not to imperil the success of the prosecution's case.<sup>[79]</sup>

In this case, there was no such absence to speak of as the three required witnesses for the conduct of the physical inventory and taking of photographs of the seized drugs were secured by the arresting officers. The minimum safeguards mandated by Section 21 of R.A. No. 9165, therefore, have been met. The Court emphasizes that the purpose of requiring three insulating witnesses during the physical inventory and photographing of the seized illegal drugs is "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."<sup>[80]</sup>

Such fears or suspicion of planting evidence have been sufficiently dissuaded by the complete signatories in the respective Inventories of Property Seized for Omar and Rascal, as well as the sheer volume of the sachets of drugs involved, which We have exhaustively discussed above.

As a final note, it must be clarified that in Criminal Case No. 64-2013, Rascal was caught in possession of 6.3722 grams of *shabu*, punishable by imprisonment of 20 years and 1 day to life imprisonment, and a fine. In the case of *People v. Pis-an*,<sup>[81]</sup> the Court interpreted the maximum of life imprisonment as follows:

However, as succinctly pointed out by Justice Mario V. Lopez in his Reflections, the maximum penalty of life imprisonment may only be imposed when the crime of illegal possession was committed in the presence of two or more persons or in a social gathering pursuant to Section 1325 of R.A. No. 9165. Here, since it was not shown [that] Pis-an was caught possessing the dangerous drugs during a party, or at a social gathering or meeting, or in the proximate company of at least two persons, the maximum imposable penalty should be below life imprisonment which is currently pegged 40 years and 1 day.

In view of the foregoing, we modify the penalty imposed by the RTC, as affirmed by the CA. Since Pis-an was found to have been in illegal possession of 9.38 grams of *shabu*, he is meted the penalty of imprisonment ranging from 20 years and one day, as minimum, to 30 years, as maximum.

**WHEREFORE**, the instant appeal is **DENIED**. The Decision dated January 31, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01597-MIN is **AFFIRMED with MODIFICATION**. Accordingly, the Decision dated July 15, 2016 of the Regional Trial Court is modified as follows:

- a. Accused Abdul Racman Osop Omar and Eddie Sarapida Rascal are found guilty beyond reasonable doubt of selling shabu defined and penalized under Section 5 of R.A. No. 9165 in Criminal Case No. CrC 63-2013. Accordingly, they are each sentenced to suffer in this case the penalty of life imprisonment and to pay a fine in the amount of Php 500,000.00;
- b. Accused Eddie Sarapida Rascal is found guilty beyond reasonable doubt of illegal possession of shabu defined and penalized under Section 11 of R.A. No. 9165 in Criminal Case No. CrC 64-2013. Accordingly, he is sentenced to suffer an indeterminate penalty of twenty (20) years and one (1) day as minimum, to thirty (30) years as maximum period of imprisonment, and to pay a fine in the amount of Php 400,000.00.

In their service of their respective sentences, accused are entitled to the full credit of their preventive imprisonment pursuant to the provisions of Article 29 of the Revised Penal Code. Both shall serve their sentences, successively in the case of Eddie S. Rascal, at Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte.

**SO ORDERED.**

*Gesmundo, C.J., (Chairperson), Caguioa, Lazaro-Javier, and M. Lopez, JJ., concur.*

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[1] CA *Rollo*, pp. 127-128.

[2] Penned by Associate Justice Oscar Y. Badelles, with Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon concurring; *id.* at 113-126.

[3] Penned by Presiding Judge Dax Gonzaga Xenos; *id.* at 43-58.

[4] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

[5] Records, p. 1.

[6] *Id.* at 44-45.

[7] *Id.* at 37.

[8] *Id.* at 69.

[9] *Id.* at 105-106.

[10] CA *Rollo*, p. 114.

[11] *Id.* at 115.

[12] *Id.*

[13] TSN, July 9, 2014, p. 8.

[14] *Id.* at 9.

[15] *Id.* at 14-15.

[16] *Id.* at 18.

[17] CA *Rollo*, p. 116.

[18] *Id.* at 116.

[19] *Id.*

[20] Records, p. 216.

[21] *Id.* at 176-180.

[22] *Id.* at 183.

[23] TSN January 21, 2016, p. 9.

[24] *Id.*

[25] Records, p. 199.

[26]

TSN, dated March 15, 2016, p. 6.

[27] Records, p. 200.

[28] *Id.* at 104.

[29] *Id.* at 204-205.

[30] CA *Rollo*, pp. 57-58.

[31] CA *Rollo*, pp. 27-28.

[32] *Supra* note 1.

[33] CA *Rollo*, p. 142.

[34] *Rollo*, pp. 131-132.

[35] CA *Rollo*, pp. 133-134.

[36] *Id.* at 33.

[37] *People v. Villalon, Jr.*, G .R. No. 249412, March 15, 2021, citing *People v. Dahil*, 750 Phil. 212, 225 (2015).

[38] *Id.* citing *People v. Comboy*, 782 Phil. 187, 196 (2016).

[39] *Id.*

[40] *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

[41] *Rollo*, p. 118.

[42] TSN, July 9, 2014, pp. 3, 8.

[43] *Rollo*, p. 9.

[44] *Id.* at 10.

[45] *People v. Cabrellos*, *supra* note 34.

[46] Records, p. 45.

[47] *Id.* at 124.

[48] *Rollo*, p. 10.

[49] *People v. Cabrellos*, *supra* note 34.

[50] Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled



precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and /or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/ her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

[51] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment October 18, 2002.

[52] *People v. Villalon, Jr.*, G.R. No. 249412, March 15, 2021, citing *Dela Riva v. People*, 769 Phil. 872, 886-887 (2015).

[53] *Rollo*, p. 11; TSN, July 9, 2014, pp. 21-22; Records, p. 131.

[54] *Rollo*, p. 13; TSN, July 9, 2014, p. 15.

[55] *Rollo*, pp. 13-14; TSN, February 6, 2015, pp. 21-22.

[56] *Rollo*, pp. 11-12; Records, pp. 16 and 133; TSN, February 6, 2015, p. 4.

[57] *Rollo*, p. 14; citing TSN, February 6, 2015, p. 9.

[58] See *Panti v. People of the Philippines*, G.R. No. 251332 (Notice), July 6, 2020.

[59] *Rollo*, p. 12, citing Records, pp. 126, 133.

[60] *Id.*, citing Records, p. 107.

[61] Records, p. 136.

[62] *Id.* at 80.

[63] *Id.* at 108-109.

[64] *Arcilla v. Court of Appeals*, 463 Phil. 914, 925 (2003).

[65] G.R. No. 238517, November 27, 2019.

[66] *Rollo*, p. 10.

[67] *People v. Lung Wai Tang*, *supra* note 65.

[68] *CA Rollo*, p. 38.

[69] *People v. Barrion*, G.R. No. 240541, January 21, 2019.

[70] *Id.*

[71] See *People v. Magaron*, G.R. No. 234040, June 26, 2019.

[72] TSN, July 9, 2014, pp. 22-21.

[73] *Records*, p. 127.

[74] *Id.* at 128.

[75] *Id.* at 130.

[76] *People v. Tomas*, G.R. No. 241631, March 11, 2019.

[77] *People v. Arposeple and Sulogaol*, 821 Phil. 340, 369 (2017).

[78] *People v. Ramos*, 826 Phil. 981, 996 (2018).

[79] *Supra* note 70.

[80] *Id.*

[81] G.R. No. 242692, July 13, 2020.