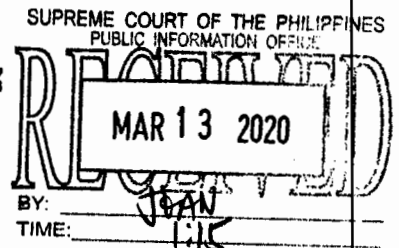




Republic of the Philippines
Supreme Court
Manila



THIRD DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 241636 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. LOEL PIS-AN TORILLO and GINO LAJOT CAYAPAS, *accused-appellants*). — For the illegal sale of dangerous drugs, an accused’s conviction may only be sustained if all the crime’s elements have been established beyond reasonable doubt and all the requirements under Section 21 of Republic Act No. 9165 have been complied with.

This Court resolves an appeal from the Decision¹ of the Court of Appeals, which affirmed the Judgment² of the Regional Trial Court finding Loel Pis-an Torillo (Torillo) and Gino Lajot Cayapas (Cayapas) guilty beyond reasonable doubt of illegal sale of dangerous drugs.

In an April 26, 2014 Information, Torillo and Cayapas were charged with violation of Article II, Section 5 of Republic Act 9165, or the Comprehensive Dangerous Drugs Act of 2002:

That on or about April 25, 2014, in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating, and mutually helping and aiding one another, not being then lawfully authorized by law, did, then and there willfully, unlawfully and feloniously sell and/or deliver to a poseur buyer one (1) heat sealed transparent plastic sachet containing a net weight of 0.08 gram of Methamphetamine Hydrochloride commonly called shabu, a dangerous drug.

Contrary to law.³

¹ *Rollo*, pp. 4–14. The Decision dated May 23, 2018 was penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol of the Eighteenth Division, Court of Appeals, Cebu City.

² *CA rollo*, pp. 27–40. The Decision dated October 20, 2016 was penned by Presiding Judge Joseph A. Elmaco of Branch 36, Regional Trial Court of Dumaguete City.

³ *Rollo*, pp. 4–5.

On May 15, 2014, Torillo and Cayapas were arraigned. Both of them pleaded not guilty to the charge.⁴ Thus, trial on the merits ensued.

The prosecution presented seven (7) witnesses: (1) Gilieta Josy Binondo (Binondo); (2) Anthony Chilius Benlot (Benlot); (3) Anthony Maguinsay (Maguinsay); (4) Carlito Mercado, Jr. (Mercado); (5) Police Chief Inspector Josephine Llana (Chief Inspector Llana); (6) Police Officer 1 Larry Aquiatan (PO1 Aquiatan); and (7) Police Officer 1 Ariel Arabe (PO1 Arabe).⁵

According to the prosecution, at around 4:30 p.m. on April 25, 2014, a confidential informant arrived at the Dumaguete City Police Office to report that he had set up a transaction with “Opaw” and “Gino” to buy shabu at the crossing of Barangay Cadawinonan, Dumaguete City. Acting on the information, the police officers coordinated with the Philippine Drug Enforcement Agency and conducted a briefing for a buy-bust operation. PO1 Arabe, who was designated as the poseur-buyer,⁶ was given a ₱500.00 bill with serial number ND909593 as buy-bust money.⁷

At around 5:00 p.m., the police officers went to the target site to conduct the buy-bust operation.⁸ PO1 Arabe and the informant were dropped off at the crossing.⁹ The assigned back-up, PO1 Aquiatan, positioned himself in a store across the street while the other officers stood by 15 meters from PO1 Arabe and the informant.¹⁰

After 10 to 15 minutes, two (2) persons, later identified as Torillo and Cayapas, approached PO1 Arabe and the informant. Torillo immediately asked for the money. PO1 Arabe gave him the buy-bust money, and in exchange, Cayapas handed an elongated plastic sheet that PO1 Arabe confirmed to contain shabu.¹¹

After he had announced that he was a police officer, PO1 Arabe, with the help of PO1 Aquiatan, arrested Torillo and Cayapas and informed them of their constitutional rights in Visayan. He then frisked the suspects and recovered the buy-bust money from Torillo.¹² He also marked the sold plastic sachet with the initials “LPT” and “GLC.”¹³

⁴ CA rollo, p. 27.

⁵ Id at 28. The testimonies of Binondo, Benlot, Maguinsay, Mercado, Chief Inspector Llana, and PO1 Aquiatan were stipulated testimonies (CA rollo, pp. 28–30).

⁶ Rollo, p. 5.

⁷ CA rollo, p. 32.

⁸ Rollo, p. 5.

⁹ CA rollo, p.16.

¹⁰ Rollo, p. 5.

¹¹ Id at 5–6.

¹² CA rollo, p. 31.

¹³ Rollo, p. 6.

As bystanders started crowding the area, the police officers decided to bring the suspects and conduct the inventory and photographing at the police station.¹⁴ PO1 Arabe placed the marked sachet and buy-bust money in a brown envelope, which he kept in his sling bag on their way there.¹⁵

At the police station, Senior Police Officer 4 Dario Paquera called the required witnesses for the inventory of the seized drug.¹⁶ Binondo, the barangay captain, Benlot, a representative from the City Prosecution's Office, and Maguinsay, a media practitioner for radio station DYWC, witnessed the inventory and signed the inventory receipt.¹⁷ Photographs of the seized items were also taken.¹⁸

Afterward, PO1 Arabe returned the seized sachet inside the brown envelope, which he then sealed and signed.¹⁹ He then prepared a Request for Laboratory Examination and brought the envelope to the Crime Laboratory.²⁰ At 7:05 p.m., Chief Inspector Llena received the envelope and conducted an examination on the seized drug, which yielded positive results for methamphetamine hydrochloride.²¹

In his defense, Torillo testified that on April 25, 2014, his father asked him to buy tocino at the store along the crossing of Barangay Cadawinonan.²² Cayapas, his neighbor and cousin's live-in partner, went with him to buy bread at the same store. Before reaching the store, however, they were suddenly pulled into a pick-up truck by armed strangers and were brought to a police station.²³

There, Torillo and Cayapas were made to sit in front of a table, on top of which were a plastic sachet and a ₱500.00 bill. They were asked if they knew someone who could be exchanged for them, as in a *palit-ulo* scheme. When they could not identify anyone, they were brought to a detention cell.²⁴

Cayapas corroborated Torillo's testimony.²⁵

¹⁴ Id.

¹⁵ CA rollo, p. 31.

¹⁶ Rollo, p. 6.

¹⁷ CA rollo, pp. 28-29.

¹⁸ Id. at 36.

¹⁹ Id. at 36 and rollo, p. 6.

²⁰ Id. at 31.

²¹ Rollo, p. 6.

²² Id.

²³ CA rollo, p. 32.

²⁴ Id.

²⁵ Rollo, p. 7.

In its October 20, 2016 Judgment,²⁶ the Regional Trial Court found Torillo and Cayapas guilty beyond reasonable doubt of selling dangerous drugs. It lent credence to PO1 Arabe's detailed narration of the buy-bust operation²⁷ and an unbroken chain of custody.²⁸ It also pointed out that if the testimonies of Torillo and Cayapas were true, they should have shouted for help "to create even a slight commotion to alarm the neighborhood that they [we]re being forcibly taken by armed men."²⁹ They could have also presented their family members as witnesses to corroborate their testimonies, the trial court noted.³⁰

The dispositive portion of the Judgment read:

WHEREFORE, in view of the foregoing findings, accused **LOEL PIS-AN TORILLO** and accused **GINO LAJOT CAYAPAS** are hereby found **GUILTY** beyond reasonable doubt as **conspirators** in selling **METHAMPHETAMINE HYDROCHLORIDE** commonly known as "**SHABU**", with a net weight of 0.08 grams, (*sic*) penalized under **Section 5 in relation to Section 26, Article II, of R.A. 9165, the Comprehensive Dangerous Drugs Act of 2002**, and sentenced **each** to suffer the penalty of **LIFE IMPRISONMENT**, and ordered to pay a fine of **Five Hundred Thousand Pesos (Php 500,000.00) each**.

The seized dangerous drugs are considered forfeited in favor of the government and to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposal.

SO ORDERED.³¹ (Emphasis in the original)

Torillo and Cayapas appealed before the Court of Appeals.³²

In their Brief,³³ they argued that PO1 Arabe's testimony had inconsistencies that made the case against them weak.³⁴ They further pointed that the buy-bust money was merely photocopied, and not marked or logged on the briefing or the logbook.³⁵

On the other hand, the Office of the Solicitor General argued in its Brief³⁶ that the alleged inconsistent statements of PO1 Arabe are actually not

²⁶ CA rollo, pp. 27-40.

²⁷ Id. at 33-34.

²⁸ Id. at 37.

²⁹ Id. at 39.

³⁰ Id.

³¹ Id. at 40.

³² Rollo, p. 7.

³³ CA rollo, pp. 10-26.

³⁴ Id. at 21.

³⁵ Id. at 22.

³⁶ Id. at 50-66.

contradictory.³⁷ It asserted that even if there were inconsistencies, these did not relate to the elements of the offense charged.³⁸

In a May 23, 2018 Decision,³⁹ the Court of Appeals affirmed Torillo's and Cayapas' convictions. It found the inconsistencies in the prosecution witnesses' testimonies to be minor details that neither affected the offense charged nor raised doubts on the integrity of the seized drug.⁴⁰ It applied the settled rule that the trial court's assessment should be respected, owing to its unique position to observe the witnesses' deportment on the stand.⁴¹ It also held that the marking of the buy-bust money is not required to preserve the chain of custody, and is in fact prohibited by Presidential Decree No. 247.⁴²

The dispositive portion of the Decision read:

WHEREFORE, the Judgment of the Regional Trial Court (RTC), Branch 36, Dumaguete City in Criminal Case No. 22243, finding accused-appellants, **LOEL PIS-AN TORILLO** and **GINO LAJOT CAYAPAS**, guilty beyond reasonable doubt for Violation of Section 5, Article II of Republic Act (R.A.) No. 9165, sentencing each of them to suffer the penalty of **LIFE IMPRISONMENT** and ordering each to pay a fine of **Five Hundred Thousand Pesos (P500,000.00)** is hereby **AFFIRMED**.

SO ORDERED.⁴³ (Emphasis in the original)

Aggrieved, Torillo and Cayapas filed a Notice of Appeal,⁴⁴ which was given due course in the July 17, 2018 Resolution of the Court of Appeals.⁴⁵

In an October 17, 2018 Resolution,⁴⁶ this Court acknowledged receipt of the records forwarded by the Court of Appeals and ordered the parties to file supplemental briefs.

In their respective Manifestations, accused-appellants⁴⁷ and the Office of the Solicitor General,⁴⁸ on behalf of plaintiff-appellee People of the Philippines, informed this Court that they would no longer file supplemental briefs.

³⁷ Id. at 59–60.

³⁸ Id. at 61.

³⁹ *Rollo*, pp. 4–14.

⁴⁰ Id. at 12.

⁴¹ Id. at 10.

⁴² Id. at 11.

⁴³ Id. at 14.

⁴⁴ Id. at 15–17.

⁴⁵ Id. at 18.

⁴⁶ Id. at 21–22.

⁴⁷ Id. at 37–39.

⁴⁸ Id. at 33–36.

The sole issue here is whether or not accused-appellants Loel Pis-An Torillo and Gino Lajot Cayapas are guilty beyond reasonable doubt of the illegal sale of dangerous drugs.

This Court reverses their convictions.

For a conviction in criminal cases to ensue, the prosecution must establish beyond reasonable doubt all the elements of the crime allegedly committed by the accused. In this case, accused-appellants have been charged with the illegal sale of dangerous drugs.

Section 5 of Republic Act No. 9165 states in part:

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.

The elements of the illegal sale of dangerous drugs are: “(1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.”⁴⁹ This Court has explained:

The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former; the crime is considered consummated by the delivery of the goods.⁵⁰ (Citation omitted)

As to the first element, the proof of the transaction must be credible and complete. In many cases, this proof is obtained in the conduct of a legitimate buy-bust operation:

[A] buy bust operation is a valid and legitimate form of entrapment of the drug pusher. In such operation, the poseur buyer transacts with the suspect by purchasing a quantity of the dangerous drug and paying the price agreed upon, and in turn the drug pusher turns over or delivers the dangerous drug subject of their agreement in exchange for the price or

⁴⁹ *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division] citing *People v. Darisan*, 597 Phil. 479 (2009) [Per J. Corona, First Division].

⁵⁰ *People v. Villarta*, 740 Phil. 279, 291 (2014) [Per J. Perez, Second Division].

other consideration. Once the transaction is consummated, the drug pusher is arrested, and can be held to account under the criminal law. The justification that underlies the legitimacy of the buy-bust operation is that the suspect is arrested *in flagrante delicto*, that is, the suspect has just committed, or is in the act of committing, or is attempting to commit the offense in the presence of the arresting police officer or private person[.]⁵¹ (Citations omitted)

As to the second element, the subject of the sale must be shown to be the dangerous drug. Thus, the prosecution must produce the *corpus delicti*, or the body of the crime.⁵²

To prove the second element, the prosecution must establish that the *corpus delicti* presented in court is the same *corpus delicti* confiscated from the accused. Failure to do so casts reasonable doubt on the integrity of the seized item and opens the possibility that the seized item was planted, tampered with, replaced, or substituted.⁵³

It is not enough that the evidence offered has probative value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. *The evidence is not relevant merely because it is available but that it has an actual connection with the transaction involved and with the parties thereto.* This is the reason why authentication and laying a foundation for the introduction of evidence are important.⁵⁴ (Emphasis supplied, citation omitted)

To achieve this, the prosecution must abide by a strict set of requirements called the chain of custody rule, which affirms the principle that penal laws are construed strictly against the government and liberally in favor of the accused.⁵⁵

The requirements are found in Section 21⁵⁶ of the Comprehensive Dangerous Drugs Act:

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

⁵¹ *People v. Andaya*, 745 Phil. 237, 246 (2014) [Per J. Bersamin, First Division].

⁵² *People v. De Leon*, 624 Phil. 786, 796 (2010) [Per J. Velasco, Jr., Third Division].

⁵³ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 509 [Per J. Leonen, Third Division].

⁵⁴ *People v. Belocura*, 693 Phil. 476, 495–496 (2012) [Per J. Bersamin, First Division].

⁵⁵ *People v. Bautista*, 723 Phil. 646, 651 (2013) [Per J. Abad, Third Division].

⁵⁶ Section 21 of Republic Act No. 9165 has been amended by Republic Act No. 10640 on July 15, 2014. However, the applicable law in this case is still Republic Act No. 9165 since the incident occurred in April 26, 2014.

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[.]

The seized item goes through four (4) stages that are linked together; in each link, the prosecution must show how and with whom the seized item was kept in custody. This Court enumerated the four (4) links in *People v. Nandi*:⁵⁷

[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 from the forensic chemist to the court.⁵⁸

In this case, the witness requirement is relevant. To establish the chain of custody, a representative from the media, the Department of Justice, and an elected public official must be secured as witnesses to the operation.

⁵⁷ 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

⁵⁸ *Id.* at 144–145 citing *People v. Kamad*, 624 Phil. 289 [Per J. Brion, Second Division].

This Court has clarified that these representatives are not only required to witness the inventory or photographing of the seized items, but to witness the actual buy-bust operation. This is in consideration that the nature of drugs makes it easily planted, and that buy-bust operations are setups usually arranged in advance after considerable planning and preparation. When officers have been given sufficient time to prepare, their failure to comply with the explicit requirement of securing witnesses raises doubt on the integrity of the operation. In *People v. Reyes*:⁵⁹

Thirdly, another substantial gap in the chain of custody concerned the absence of any representative of the media or of the Department of Justice (DOJ), and of the elected public official during the buy-bust operation and at the time of the confiscation of the dangerous drugs from the accused in the area of operation. The Prosecution did not attempt to explain why such presence of the media or DOJ representatives, and of the elected public official had not been procured despite the buy-bust operation being mounted in the afternoon of November 27, 2002 following two weeks of surveillance to confirm the veracity of the report on the illegal trading in drugs by the accused. The objective of requiring their presence during the buy-bust operation and at the time of the recovery or confiscation of the dangerous drugs from the accused in the area of operation was to ensure against planting of evidence and frame up. It was clear that ignoring such objective was not an option for the buy-bust team if its members genuinely desired to protect the integrity of their operation. Their omission attached suspicion to the incrimination of the accused. The trial and appellate courts should not have tolerated the buy-bust team's lack of prudence in not complying with the procedures outlined in Section 21(1), *supra*, in light of the sufficient time for them to comply.⁶⁰ (Citation omitted)

The three-witness rule was also reiterated in *People v. Tanes*,⁶¹ where it was held insufficient that the representatives were only called in to witness and sign the inventory at the police station:

The RTC cannot thus be faulted for relying on the clear and unequivocal ruling made in *Jehar Reyes* because unless overturned, the same remains good case law. To the contrary, *Jehar Reyes* has even been cited by the Court in at least six cases subsequent to it, one of which is *People v. Sagana*, wherein the Court made similar findings regarding the three witness rule. Citing *Jehar Reyes*, the Court therein held:

Similarly, none of the required third-party representatives was present during the seizure and inventory of the dangerous articles. **Their presence in buy-bust operations and seizure of illicit articles in the place of operation would supposedly guarantee “against planting of evidence and frame-up.”** In other words, they are “necessary to insulate the apprehension and

⁵⁹ 797 Phil. 671 (2016) [Per J. Bersamin, First Division].

⁶⁰ Id. at 689-690.

⁶¹ G.R. No. 240596, April 3, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65152>> [Per J. Caguioa, Second Division].

incrimination proceedings from any taint of illegitimacy or irregularity.”

x x x In this case, the records were **bereft of any explanation why the third-party representatives were present only during the belated photographing of the confiscated articles.** Hence, the very purpose of their mandated presence is defeated. . . .

It bears stressing that the pronouncement in *Jehar Reyes* as regards the presence of the three witnesses in the buy-bust operation has also been ruled upon by the Court in other cases. In the recent case of *People v. Supat*, the Court made the following pronouncements:

Section 21(1) of RA 9165 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation.** Further, the inventory must be done **in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official,** who shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable that the IRR allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team. This also means that **the three required witnesses should already be physically present at the time of apprehension - a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** In other words, the buy-bust team has enough time and opportunity to bring with them said witnesses.

Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, **the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.** The reason is simple: it is at the time of arrest - or at the time of the drugs['] “seizure and confiscation” - that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence. . . .

....

In this case, the testimonies of the prosecution witnesses showed noncompliance with the three-witness rule: *first*, only two witnesses were present; and *second*, the two witnesses were merely “called in” to witness the inventory of the seized drug. Additionally, no photograph was presented showing the inventory of the seized *shabu* in the presence of

Tanes and the witnesses. Hence, the RTC did not commit grave abuse of discretion when it granted the petition for bail on the ground that the evidence of Tanes' guilt was not strong due to doubts as regards the preservation of the chain of custody. Such ruling by the RTC has unquestionable jurisprudential basis. Consequently, the CA was correct in upholding the RTC.⁶² (Emphasis in the original, citations omitted)

The requisite is imposed to guard against any irregularities that may have been conducted in the act of apprehension and seizure, and to disprove any defense of frame-ups usually invoked by the accused. In *People v. Tomawis*:⁶³

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

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, *the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near*

⁶² Id.

⁶³ G.R. No. 228890, April 18, 2018, 862 SCRA 131 [Per J. Caguioa, Second Division].

*the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”*⁶⁴ (Emphasis supplied)

In this case, the three-witness rule was not complied with.

PO1 Arabe clearly testified on how the incident took place: the confidential informant apprised the police that he set up a transaction to buy shabu from accused-appellants. Acting on this, the police team planned and executed a buy-bust operation. They arrested accused-appellants, then confiscated and marked the alleged dangerous drug. They brought both accused-appellants and the seized item to the police station, where they called in the media representative, the Department of Justice representative, and the barangay official to witness and sign the inventory.⁶⁵

Nowhere in PO1 Arabe’s testimony were the police officers shown to have been accompanied by the required three (3) witnesses during the buy-bust operation itself. He testified:

Q: And what happened after that?

A: So, at about 5 o’clock in the afternoon, we went to the place on board [our] Isuzu Pick up Car and with me was the confidential agent and we dropped at the crossing of Cadawinonan.

Q: How many of you went to Cadawinonan on board the Isuzu pick up?

A: On the Isuzu pick up Sir, we were three (3) Police Officer (*sic*) and one confidential agent, and the other team members were on board their motorcycle.

Q: These Police Officers who were inside the Isuzu Pick up, who were they?

A: The driver SPO4 Pacquera, our Police Officer Felix Cleopaz, III and the confidential agent.

Q: You were also with that pick up?

A: Yes, Sir.⁶⁶

Both the Court of Appeals⁶⁷ and the Regional Trial Court⁶⁸ noted that the required three (3) witnesses were called only to witness the inventory at the police station, *after* the arrest and seizure.

⁶⁴ Id. at 149–150 citing *People v. Mendoza*, 736 Phil. 749, 764 (2014) [Per J. Bersamin, First Division].

⁶⁵ *Rollo*, pp. 5–6.

⁶⁶ *CA rollo*, p. 60, Appellee’s Brief.

⁶⁷ *Rollo*, p. 6. The Court of Appeals stated:

The stipulated testimonies of the three (3) witnesses—Binondo, Benlot, and Maguinsay—are likewise consistent that while they witnessed the inventory of the seized item and signed the inventory receipt at the police station, they have no personal knowledge of the arrest of accused-appellants and the seizure or marking of the alleged dangerous drugs.⁶⁹

PO1 Arabe explained that the inventory was conducted at the police station because bystanders have begun to gather around the target site. However, there is no explanation for the absence of the required witnesses in the buy-bust operation.⁷⁰

With the arresting officers' failure to comply with the three-witness rule, the prosecution fell short of proving the elements of the offense. The safeguards imposed by law and jurisprudence require proof that the crime was committed with moral certainty. Since the prosecution failed to comply with all the requirements to establish proof beyond reasonable doubt, accused-appellants cannot be declared guilty of the illegal sale of dangerous drugs. This Court is left with no choice but to acquit them.

WHEREFORE, the May 23, 2018 Decision of the Court of Appeals in CA-G.R. CEB CR. HC. No. 02434 is **REVERSED AND SET ASIDE**. Accused-appellants Loel Pis-An Torillo and Gino Lajot Cayapas are **ACQUITTED** for the prosecution's failure to prove their guilt beyond reasonable doubt. They are ordered immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director is directed to report the action taken to this Court within five (5) days from receipt of this Resolution. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

Upon their arrival [at the police station], SPO4 Dario Paquera called the representatives coming from the Department of Justice, the media, and a [barangay] official, to witness the booking of the items confiscated.

⁶⁸ CA *rollo* p. 158. The Regional Trial Court stated:

When they arrived at the police station, SPO4 Paquera called the witnesses – the DOJ representative, the Barangay Official and the media representative. Upon their arrival, they conducted an inventory of the seized items placing the same on top of the table.

⁶⁹ Id. at 28–29.

⁷⁰ *Rollo*, p. 6.

SO ORDERED.”

Very truly yours,

Misael DC Batt
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Deputy Division Clerk of Court
gm 2/6/20

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REGIONAL TRIAL COURT
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(Criminal Case No. 22243)

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

Messrs. Loel Pis-an Torillo & Gino Lajot
Cayapas
c/o The Superintendent
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