Republic of the Philippines
Supreme Court
Manila

EN BANC

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,*	**G.R. No. 250307**
	Present:
- versus -	GESMUNDO, *C.J.*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO, LOPEZ, J., DIMAAMPAO, MARQUEZ, KHO, JR., and SINGH, *JJ.*
ROBERT UY *y* TING, ONG CHI SENG[*] @ JACKIE[**] ONG or ARCHIE, CO CHING KI[***] @ CHAI ONG, TAN TY SIAO, GO SIAK PING, JAMES GO ONG @ WILLIAM GAN,[****] *Accused,*	
ROBERT UY *y* TING, *Accused-Appellant.*	Promulgated: February 21, 2023

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DECISION

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* Also referred to as "Co Chi Seng" in some parts of the RTC Decision (see CA *rollo*, p. 132).

** Also referred to as "Jacky Ong" in some parts of the RTC Decision (see CA *rollo*, p. 144).

*** Also referred to as "Co Ching Seng" in some parts of the records (see RTC records [Crim. Case No. 1180-V-03], p. 13).

**** Also referred to as "Willy Gan" or "Willie Gan" in some parts of the *rollo*.

GESMUNDO, *C.J.*:

This is an Appeal[1] seeking to reverse and set aside the April 25, 2019 Decision[2] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 08320, which affirmed with modification the June 30, 2014 Joint Judgment[3] of the Regional Trial Court of Valenzuela City, Branch 171 (*RTC*) in Criminal Case Nos. 1179-V-03 and 1180-V-03. The RTC found Robert Uy *y* Ting (*accused-appellant*) guilty beyond reasonable doubt of Violations of Section 5, in relation to Sec. 26(b), and of Sec. 11, Article II of Republic Act (*R.A.*) No. 9165.[4]

The Antecedents

In Criminal Case No. 1179-V-03,[5] accused-appellant, together with five other accused, namely Ong Chi Seng @ Jackie Ong or Archie (*Jackie Ong*), Co Ching Ki @ Chai Ong, Tan Ty Siao, Go Siak Ping, and James Go Ong @ William Gan or @ Willie Gan (*Willie Gan*), were charged with Violation of Sec. 5, in relation to Sec. 26(b), Art. II of R.A. No. 9165, as follows:

> That on November 10, 2003, along Mac Arthur Highway, Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who all belong to a drug syndicate, and in fact, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully, and feloniously deliver, distribute and dispatch in transit or transport methamphetamine or methylamphetamine hydrochloride, known as "shabu" and with an approximate total weight of nine thousand three hundred eighty four point seven (9,384.7) grams without the corresponding license or authority of law.
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> Contrary to law.[6]

Meanwhile, in Criminal Case No. 1180-V-03,[7] accused-appellant, together with the aforementioned five other accused, were charged with Illegal Possession of Dangerous Drugs under Sec. 11, Art. II of R.A. No. 9165, in the following manner:

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1 *Rollo*, pp. 30-33.
2 Id. at 3-29; penned by Associate Justice Ronaldo Roberto B. Martin and concurred in by Associate Justices Ramon M. Bato, Jr. and Ramon A. Cruz.
3 CA *rollo*, pp. 129-163; penned by Presiding Judge Maria Nena J. Santos.
4 Otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." Effective: July 4, 2002.
5 RTC records (Crim. Case No. 1179-V-03), pp. 83-85.
6 Id. at 84.
7 Id. at 86-88.

> That on November 11, 2003, or on dates prior thereto, at a warehouse at No. 6011 Benito Jao Street, Mapulang Lupa, Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who all belong to a drug syndicate, and in fact, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully, and feloniously possess or have under their control methamphetamine or methylamphetamine hydrochloride, a dangerous drug, that is commonly known as "shabu" and with an approximate total weight of one hundred nineteen point zero eighty (119.080) kilograms and also chloromethamphetamine hydrochloride, a dangerous drug, and with an approximate total weight of one hundred eleven point two hundred (111.200) kilograms without the corresponding license or authority required by law.
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> Contrary to law.[8]

Upon arraignment on April 12, 2004, accused-appellant pleaded "not guilty"[9] to the charges against him. Meanwhile, on May 4, 2004, Willie Gan also pleaded "not guilty"[10] during his arraignment. The two criminal cases were consolidated and tried jointly.[11]

The CA summarized the evidence for the prosecution as follows:

> The witnesses for the prosecution were P/Sr. Insp. Rainerio De Chavez (PSI De Chavez) and SPO2 Severino Busa (SPO2 Busa). PO2 Rogelio Rodriguez (PO2 Rodriguez) and Supt. Winnie Quidato (Supt. Quidato) also testified as corroborating witnesses. Rogelio Samorano (Samorano) testified for the prosecution that he was the owner of the subject warehouse which was rented out to Willie Gan.
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> PSI De Chavez testified that he was the team leader of the Anti-Illegal Drug Special Operation Task Force (AID-SOTF) of Camp Crame which jointly operated with the Bureau of Immigration (BI) led by Supt. Quidato on 10 November 2003, around 1:00 p.m. to implement the Mission Order (MO) against a certain Jackie Ong who was staying at Room 402 Oro Building, Sanchez Street, Binondo, Manila. PSI De Chavez alleged that prior to the implementation of the MO, his team conducted a surveillance operation against Jackie Ong sometime in October 2003 to verify if he was involved in illegal drugs. PSI De Chavez alleged that when they went to the place of Jackie Ong on 10 November 2003, he knocked on the door of the apartment and that Jackie Ong was the one who opened it. According to PSI De Chavez, Jackie Ong allowed them to enter the unit when they asked permission with the assistance of a Chinese interpreter, Mr. Ramon Yang, who they brought along. PSI De Chavez claimed that he noticed three (3) Chinese looking persons inside the room who, when asked to produce proper documents of their stay in the country, failed to do so. PSI De Chavez testified that Jackie Ong also was not able to produce the proper documents

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8 Id. at 87.
9 Id. at 101-102.
10 Id. at 132.
11 *Rollo*, p. 5.

such that Jackie Ong and the three (3) Chinese nationals were brought to their office at Camp Crame for further investigation where the personal circumstances of the four (4) Chinese nationals were obtained.

PSI De Chavez further testified that when they informed the four (4) Chinese nationals that they would be deported to China for violating immigration laws, Co Ching Ki and Jackie Ong, through an interpreter, offered ten (10) kilos of shabu in exchange for their freedom. PSI De Chavez claimed that he hesitated but played along and later reported the matter to his superior, Supt. Federico E. Lasiste. PSI De Chavez alleged that he then gave his mobile phone to Co Ching Ki who, after several calls, told them that the ten (10) kilos of shabu were ready for pick-up and that a vehicle was needed to deliver them. PSI De Chavez averred that PSI Melchor Cantil offered his Mitsubishi Lancer with Plate No. PLH 673 and that they then proceeded to McDonald's along McArthur Highway, the designated pick-up area. PSI De Chavez, stated that they arrived there before 7:30 p.m. then parked the car before leaving the place.

PSI De Chavez claimed that after a few minutes, a man boarded the car and drove it. PSI De Chavez testified that they followed the car until it entered a warehouse in Mapulang Lupa, Valenzuela City. According to PSI De Chavez, he parked his vehicle 15 meters away from the said warehouse then waited for the car to come out. PSI De Chavez stated that the car proceeded to the pick-up area and PSI De Chavez approached the car because it did not park on the agreed upon spot. PSI De Chavez averred that he saw a box inside the car when its driver was about to get out. PSI De Chavez alleged that he instructed PO1 Richel Creer to get the box and when they opened it, five (5) plastic bags of white crystalline substance were inside the box. PSI De Chavez claimed that they arrested the driver of the car who later identified himself as Robert Uy. PSI De Chavez alleged that they went to the warehouse, secured and guarded the same and that the rest of the team returned to their office at Camp Crame with Robert Uy.

PO2 Rogelio Rodriguez testified that he was a [backup] of the team which conducted a test buy on 20 October 2003, around 10:00 a.m. against a certain Archie (Jackie Ong). PO2 Rodriguez claimed that during the said test buy, the informant and PO1 Creer met a Chinese looking man who handed something to the informant and then immediately left. PO2 Rodriguez averred that they tried to apply for search warrants after the test buy and attempted to buy large amounts of shabu from Jackie Ong, but failed because their operation appeared to have been busted. PO2 Rodriguez alleged that they instead sought the assistance of the BI to check the legality of the stay of Jackie Ong in the country and deport him if warranted.

PO2 Rodriguez further testified that he was part of the team that went to Binondo, Manila on 10 November 2003, and the team that implemented another MO against Willie Gan on 26 December 2003 which resulted in the latter's arrest. PO2 Rodriguez claimed that he was also a member of the team that entrapped and arrested Robert Uy, and the group that served the search warrant on the warehouse in Mapulang Lupa, Valenzuela City.

For his part, Supt. Winnie Quidato testified that in 1998 he was a police officer assigned as Deputy Chief for Intelligence, and in 2002 was an Action Officer for Drugs and Counter-Terrorism of the BI. He alleged that he was part of the team that went to Binondo, Manila on 10 November 2003 with Supt. Lasiste of the AID-SOTF to implement the MO against Jackie Ong where they also found the three (3) Chinese nationals. Supt. Quidato averred that they brought Jackie Ong and the Chinese nationals to the AID-SOTF Office when the said Chinese nationals failed to produce their immigration documents. Supt. Quidato claimed that he left the said office at 6:30 p.m. that day when the relatives of the Chinese nationals did not arrive to produce the said documents. Supt. Quidato alleged that on 11 November 2003, he was also at the Mapulang Lupa [sic] when the AID-SOTF implemented the search warrant on the warehouse which was witnessed by Commissioner Andrea D. Domingo, General Edgar B. Aglipay, the Chief of AID-SOTF, the team of SOCO and the Presidential Security Group who were waiting for the arrival of the President. Supt. Quidato added that he was also part of the team that implemented the other MO, dated 23 December 2003, against Willie Gan on 26 December 2003.

SPO2 Severino Busa for his part, testified that he used to be a police operative assigned at the [AID-SOTF] at Camp Crame, Quezon City from March 2003 to 2005. SPO2 Busa alleged that on 11 November 2003, around 8 o'clock a.m., he, PSI De Chavez, PO3 Josefino S. Callora, PO2 Creer, and Col. Nelson T. Yabut had a meeting with their chief, Supt. Lasiste, Jr., regarding the execution of the search warrant for the subject warehouse where he was designated as the seizing officer of the team. SPO2 Busa claimed that when they were dispatched they were able to reach the warehouse located at No. 6011 Benito Hao Street, Barangay Mapulang Lupa, Valenzuela City around 9:30 a.m. that same day. SPO2 Busa claimed that around 10:45 a.m., PSI De Chavez and PO2 Creer arrived with the search warrant after which, their team served the warrant and found shabu inside the warehouse. SPO2 Busa alleged that the said search was witnessed by barangay officials of Barangay Mapulang Lupa, some media reporters, the SOCO Operatives and that the accused were also present during the search. SPO2 Busa further alleged that the SOCO operatives itemized and listed the evidence recovered inside the warehouse and that he then prepared the Inventory Receipt and the Certificate of Orderly Search. According to SPO2 Busa, around 5:00 p.m., they returned to Camp Crame and turned over all the evidence with markings to SOCO.

For his part, Rogelio Samorano testified that he was the owner of the subject warehouse which he leased to Willie Gan. Samorano alleged that Robert Uy contacted him by phone and arranged a meeting to inspect the warehouse. Samorano claimed that a few days after he met Robert Uy and Willie Gan at the warehouse, the two became interested to rent the same for Php 130,000.00 a month. Samorano further alleged that when Robert Uy called again, they came to terms with the Php 130,000.00 rent then met Robert Uy and Willie Gan again at the warehouse where they talked about the terms and conditions of the lease. Samorano averred that he only learned

the warehouse was raided when his brother told him about it.[12] (Emphases and citations omitted)

Meanwhile, the CA likewise summarized the evidence of the defense in the following manner:

On the other hand, the Judicial Affidavits of Robert Uy dated 9 January 2008 and 23 July 2012 were used during the hearing for his discharge as state witness and adopted as part of his direct testimony.

Robert Uy alleged that he was a businessman who owned the RFT Enterprises, a hardware and construction supply store, located in Mabini St., Sangandaan, Caloocan City. Robert Uy claimed that he met Willie Gan sometime in 1999 through the latter's uncle Tia Ma, an electrical and construction materials supplier. Robert Uy averred that Willie Gan was introduced to him as a businessman who was engaged in school supplies and furnitures and that they later became good friends and business associates. According to Robert Uy, Willie Gan was not familiar with Metro Manila, so he was hired as his driver for Php 30,000.00 a month but on a part-time basis only. Robert Uy further testified that in January 2003, Willie Gan requested him to look for a warehouse in Valenzuela City and that he found one at No. 6011 Benito Jao St., Mapulang Lupa, Valenzuela City which was owned by Samorano. Robert Uy alleged that Samorano and Willie Gan met and talked about renting the warehouse and that they eventually agreed to rent the same for Php 130,000.00 per month. Robert Uy alleged that the warehouse was then turned over to Willie Gan and the latter had it repaired. Robert Uy alleged that Samorano visited the warehouse once and that no Chinese national except Willie Gan ever visited the same. Robert Uy stated that after the said repairs were finished in May, he noticed that a container van had delivered several furnitures and drums of soap labeled with "Bleaching Powder." Robert Uy alleged that Willie Gan instructed the driver of the said van and his helpers to leave the van inside the warehouse and fetch it the following day. Thereafter, according to Robert Uy, the furnitures and the drums were unloaded by several workers and that he then left the warehouse alone because Willie Gan had to sleep in the warehouse that night.

Robert Uy further testified that he drove Willie Gan from the latter's house to the warehouse and to other places like Pasig City and Malabon which became his routine. Robert Uy claimed that he never talked to the persons that Willie Gan visited nor heard their conversations. Robert Uy further averred that he did not see other Chinese nationals at the warehouse or at the places they visited in Metro Manila. Robert Uy then claimed that Willie Gan did not call or ask to be driven starting October 2003 up to 9 November 2003. Robert Uy averred that on 10 November 2003, around 6:00 p.m., Willie Gan instructed him by phone to meet up at McDonald's in South Supermarket along the MacArthur Highway. Robert Uy alleged [that] he arrived at the designated place between 7:30 and 8:30 p.m. Robert Uy averred that Willie Gan called again and told him about the red Mitsubishi

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12 *Rollo*, pp. 8-11.

> Lancer car with the keys already on the ignition switch and was also told to drive the same to the warehouse.
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> Robert Uy alleged that he followed the instructions of Willie Gan and that when he arrived at the warehouse, Willie Gan was already at the gate with the box, and that Willy Gan boarded the car and placed the said box in the backseat. Robert Uy claimed that before they reached the Mercury Drug store, Willy Gan alighted then told him to proceed to the Mercury Drug store and leave the car there where someone would get it. Robert Uy claimed that after parking the car in front of Mercury Drug store, several police officers immediately accosted him. Robert Uy alleged that he asked them what his violation was but instead of getting an answer, he was told to board the said car. Robert Uy claimed that they went to the warehouse and kept watch outside the said warehouse. According to Robert Uy, they then boarded the car and then proceeded to Camp Crame where one of the police officers opened the compartment, brought out the box, and opened it. Robert Uy contended that he saw the box filled with five (5) big plastic bags containing white powder.
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> Robert Uy further testified that around 11:00 p.m., he was led to a room of the AID-SOTF at the second floor where he met the four (4) Chinese nationals for the first time whose names were only then revealed to him by the police officers.[13] (Citations omitted)

The RTC Ruling

Preliminarily, it must be stated that, in its January 20, 2011 Order,[14] the RTC dismissed the cases against Jackie Ong, Tan Ty Siao, and Go Siak Ping, on the basis of a demurrer to evidence. It held that there is no proof that the three accused participated in the bribe made by Co Ching Ki to Police Senior Inspector Rainerio De Chavez (*PSI De Chavez*) since the testimonial evidence only established that it was Co Ching Ki who spoke with PSI De Chavez about said offer. Further, the RTC found that the prosecution failed to establish conspiracy among the three accused and Co Ching Ki since it was only Co Ching Ki who facilitated the delivery of the 10 kilograms (*kg.*) of *shabu*. Finally, it declared that the documentary and testimonial evidence presented by the prosecution utterly failed to link the confiscated evidence to said three accused.[15]

In its June 30, 2014 Joint Decision, the RTC found accused-appellant guilty beyond reasonable doubt of Violations of Sec. 5, in relation to Sec. 26(b), and of Sec. 11, Art. II of R.A. No. 9165. The RTC also convicted Willie

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13 *Rollo*, pp. 11-13.
14 RTC records (Criminal Case No. 1179-V-03), pp. 727-735.
15 Id. at 731-735.

Gan of Violation of Sec. 11 of the same law, while the rest of the accused were acquitted. The dispositive portion reads:

> WHEREFORE, in view of the foregoing, in Crim. Case No. 1179-V-03, the Court finds the accused ROBERY UY y TING GUILTY beyond reasonable doubt of the crime of Violation of Sec. 5 in relation to Sec. 26 par. (b) of Article II of Republic Act No. 9165 and sentenced to suffer the penalty of Life Imprisonment and to pay a FINE in the amount of Five Hundred Thousand Pesos while the Court finds accused Willy Gan @ William Gan not guilty of said crime.
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> In Crim. Case No. 1180-V-03 the Court also finds the accused ROBERT UY y Ting and WILLY GAN @ WILLIAM GAN both GUILTY beyond reasonable doubt of the crime of Violation of Sec. 11, Art. II of Republic Act No. 9165 and sentenced to suffer the penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and EACH to pay a FINE in the amount of Three Hundred Thousand Pesos (P300,000.00).
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> Accused Robert Uy y Ting shall serve the penalty successively. He and Willy Gan @ William Gan shall be given full credit of their preventive imprisonment.
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> Meanwhile, the accused CO CHING KI is ACQUITTED on both cases due to insufficiency of evidence. Consequently, the Jail Warden of the Valenzuela City Jail is directed to release the person of Co Ching Ki unless he is being held for some other legal and lawful cause.
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> The Branch Clerk of Court is directed to turn over to PDEA the drugs used as evidence in this case for proper disposition.
>
> SO ORDERED.[16]

The RTC acquitted Co Ching Ki on the basis that there is no clear and direct evidence that he was ever in possession of any illegal drugs. It doubted the version of the prosecution that Jackie Ong and Co Ching Ki offered to bribe the police officers with 10 kg. of *shabu*.[17]

Meanwhile, the RTC convicted accused-appellant of both charges against him. It held that accused-appellant was caught *in flagrante delicto*. He had in his possession, particularly inside the compartment of the car he was driving, the box containing five plastic bags of white crystalline substance which weighed nearly 10 kg. and which, when tested, were positive for methylamphetamine hydrochloride. The RTC observed that accused-appellant actually delivered the box containing the subject plastic bags to the police officers. It emphasized that mere possession of a dangerous drug

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16 CA *rollo*, pp. 162-163.
17 Id. at 156-158.

constitutes the crime punished by Sec. 11, Art. II of R.A. No. 9165. Further, accused-appellant admittedly transported the 10 kg. of *shabu* from the warehouse in Mapulang Lupa to the place where he was accosted by the police officers in Maysan Road, near Mercury Drug along McArthur Highway. Such act constitutes a violation of Sec. 5, Art. II of R.A. No. 9165.[18]

On the other hand, the RTC convicted Willie Gan of violating Sec. 11, Art. II of R.A. No. 9165 as the lessee of the warehouse where the 119.080 kg. of methylamphetamine hydrochloride, and the 111.200 kg. of chloromethamphetamine hydrochloride were seized. As lessee, Willie Gan had control over said warehouse. Nonetheless, the RTC absolved Willie Gan of the charge of violation of Sec. 5 since there was no corroborating evidence that he instructed accused-appellant to pick-up the illegal drugs from the warehouse. There was likewise no positive evidence identifying him as having alighted from the car on its way to McDonald's Valenzuela City.[19]

Unsatisfied, accused-appellant filed an appeal before the CA. Willie Gan did not assail the RTC Decision; instead, he filed a Notice of Non-Appeal[20] on October 24, 2014.

The CA Ruling

In its April 25, 2019 Decision, the CA affirmed the RTC ruling with modification as follows:

> **WHEREFORE**, the Appeal is hereby **DENIED**. The *Joint Decision* dated 30 June 2014 is **AFFIRMED** with **MODIFICATION** that in Criminal Case No. 1180-V-03, the penalty of **LIFE IMPRISONMENT AND A FINE OF TEN MILLION PESOS (Php10,000,000.00)** are imposed against Robert Uy, the only appellant in these cases.
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> **SO ORDERED**.[21]

The CA rejected accused-appellant's contention that he was instigated to deliver the illegal drugs. It found that the arrest of accused-appellant was a result of an entrapment operation. It observed that prior to the alleged offer of Jackie Ong and Co Ching Ki of 10 kg. of *shabu* which led to the arrest of accused-appellant, he was unknown to the apprehending officers. Hence, the criminal intent could not have originated from the arresting officers which makes the operation against accused-appellant an entrapment instead of an

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18 Id. at 158-159.
19 Id. at 159-161.
20 RTC records (Crim. Case No. 1179-V-03), pp. 1043-1044.
21 *Rollo*, p. 28.

instigation. It also held that regardless of whether the police officers provided the car to transport the illegal drugs, its use was only a means resorted to for the purpose of arresting the person who would execute the plan, who turned out to be accused-appellant. The CA also rejected accused-appellant's defense of lack of knowledge that the box contained *shabu* since the act of transporting *shabu* is *malum prohibitum.* The transportation thereof need not be accompanied by proof of criminal intent, motive, or knowledge.[22]

The CA further held that the evidence against accused-appellant is admissible. The arrest of accused-appellant was a valid warrantless arrest since he was caught *in flagrante delicto.* There is no dispute that accused-appellant boarded and drove the car from the agreed upon pick-up area until he reached and entered the warehouse in Mapulang Lupa, Valenzuela City. When accused-appellant went out of the warehouse, he returned to the pick-up area and parked there. At that point in time, the police officers had probable cause to believe that accused-appellant was transporting illegal drugs inside the car for delivery. The subsequent search on accused-appellant, which yielded the box, is a search incidental to a lawful arrest and did not require a warrant for its validity. Thus, the illegal drugs seized from accused-appellant are admissible in evidence.[23]

The CA declared that Sec. 5, Art. II of R.A. No. 9165 also covers the delivery of dangerous drugs. In said instance, proof that the transaction actually took place would be material, coupled with presentation in court of the *corpus delicti* as evidence, while the payment of consideration is insignificant. The CA observed that, in the instant case, accused-appellant did not deny delivering the *shabu.* Thus, it affirmed the conviction for violation of Sec. 5, Art. II of R.A. No. 9165.[24]

The CA also affirmed accused-appellant's conviction for violation of Sec. 11. It observed that the illegal drugs were seized from the warehouse by virtue of a search warrant, and after accused-appellant was already detained. The CA charged accused-appellant with knowledge of the contents of the warehouse since he drove the car to the warehouse. His easy access to the same, for the CA, shows his knowledge of the warehouse's contents. Also, accused-appellant confirmed that Willie Gan called him that evening despite having no contact for more or less a month. He followed Willie Gan's instructions despite the questionable circumstance where the key was left in the ignition port. Accused-appellant also admitted that Willie Gan was already waiting at the gate of the warehouse when he arrived there and that Willie Gan boarded the car and placed the box in the backseat. All these, for the CA,

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22 Id. at 16-18.
23 Id. at 18-19.
24 Id. at 19-20.

revealed the conspiracy between accused-appellant and Willie Gan. It also observed that accused-appellant is a businessman who owns a company engaged in hardware and construction supply. As such, it found it difficult to believe that accused-appellant would serve as driver to Willie Gan for the measly sum of ₱30,000.00 per month unless he had more to gain from the relationship.[25]

Finally, the CA held that the integrity and evidentiary value of the seized items had been preserved. According to the appellate court, the chain of custody was unbroken. While there was no representative from the Department of Justice (*DOJ*), the same is not fatal. It stressed that the cases arose not as the result of a buy-bust operation, but were the legal and logical consequence of an offer from Co Ching Ki and Jackie Ong to provide 10 kg. of *shabu* to the arresting officers in exchange for their freedom. The arresting officers then had no sufficient time to secure the presence of the necessary witnesses and prepare the documents, otherwise their covers might have been busted.[26]

The CA modified the penalty for Criminal Case No. 1180-V-03 to life imprisonment, and the fine to ₱10,000,000.00 since the information for said criminal case charged accused-appellant with illegal possession of approximately 119.080 kg. of *shabu* and 111.200 kg. of chloromethamphetamine hydrochloride.[27]

Issues

Accused-appellant ascribes the following errors on the part of the CA:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 5, IN RELATION TO PARAGRAPH (B), SECTION 26 OF R.A. NO. 9165, DESPITE THE FACT [THAT] HE WAS MERELY INSTIGATED INTO CARRYING THE TEN [(10)] KILOGRAMS OF SHABU DURING THE 10 NOVEMBER 2013 INCIDENT.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 5, IN RELATION TO PARAGRAPH (B), SECTION 26 OF R.A. NO. 9165,

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25 Id. at 20-21.
26 Id. at 26-27.
27 Id. at 28.

AND SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165 DESPITE THE FACT THAT THE PIECES OF EVIDENCE OBTAINED FROM THE 10 AND 11 NOVEMBER 2003 OPERATIONS ARE INADMISSIBLE FOR BEING FRUITS OF THE POISONOUS TREE.

III

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 5, ARTICLE II, IN RELATION TO SECTION 26 (PAR. B), OF REPUBLIC ACT NO. 9165 AS THE ELEMENTS FOR THE COMMISSION THEREOF ARE LACKING.

IV

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165 AS THE ELEMENTS FOR THE COMMISSION THEREOF ARE LACKING.

V

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED BY RULING THAT HE CONSPIRED WITH HIS FELLOW ACCUSED IN THE COMMISSION OF THE CRIMES CHARGED.

VI

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PNP AID-SOTF TO OBSERVE THE PROCEDURE PROVIDED FOR IN SECTION 21 OF R.A. NO. 9165 AND ITS IMPLEMENTNG RULES AND REGULATIONS.

VII

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FACT THAT THE *CORPUS DELICTI* WAS NOT ESTABLISHED WITH RESPECT TO THE 10 NOVEMBER 2003 SEARCH AND SEIZURE FOR FAILURE TO OBSERVE THE CHAIN OF CUSTODY.[28]

First, accused-appellant contends that he was instigated into committing the crime by the four Chinese nationals, Willie Gan, and the Philippine National Police Anti-Illegal Drugs Special Operations Task Force (*PNP AID-SOTF*). He makes much of the fact that the car used in the delivery of the 10 kg. of *shabu* was supplied by the police officers. Thus, the police officers facilitated, and even ensured, the transport of the alleged drugs. He

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[28] CA *rollo*, pp. 74-76.

insists that he had no participation whatsoever in the commission of the offense. Further, in relation to the box containing the 10 kg. of *shabu*, accused-appellant points out that it was Willie Gan who placed the prohibited items inside the vehicle and not him. Also, Jackie Ong denied having known or met accused-appellant prior to November 10, 2003. The criminal design originated from the minds of the agents of the State rather than that of accused-appellant.[29]

Second, accused-appellant insists that since he was a victim of instigation, his arrest was illegal. The concomitant search and seizure are likewise illegal and inadmissible in evidence. He argues that even if the police officers were tipped off by the four Chinese nationals, it would not render the arrest and attendant search and seizure valid. He contends that mere tips and even reliable information are not sufficient to justify a warrantless arrest since there must also be a commission of some overt act. Further, the box containing the 10 kg. of *shabu* was opaque; the seized items were not in plain view. Since there is no basis for accused-appellant's arrest, the search and seizure were invalid and the evidence obtained cannot be used against him. Further, the evidence obtained during the November 11, 2003 operation are also inadmissible since the information gathered from accused-appellant after his illegal arrest was the basis for such operation.[30]

Third, accused-appellant insists that not all elements of violation of Sec. 5 are present. Since no sale occurred, there is also no delivery. Further, R.A. No. 9165 defines the term "deliver" as "any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration."[31] Accused-appellant claims that he never knew the contents of the box as it was Willie Gan who placed it there.[32]

Fourth, two of the elements of the crime of violation of Sec. 11 are absent. Accused-appellant points out that he was already in custody when the search warrant was served at the warehouse on November 11, 2003. It was impossible for him to have had actual possession of the drugs seized inside the warehouse. Further, he did not have constructive possession of the same. While he helped Willie Gan secure a lease over the warehouse, he did not have any idea that it was going to be used for illicit purposes. He also asserts that the operatives failed to comply with the proper procedure with respect to the specimens seized at the warehouse. Senior Police Officer 2 Severino Busa (*SPO2 Busa*) reportedly admitted that the operatives did not bother asking

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29 Id. at 86-96.
30 Id. at 100-107.
31 Republic Act No. 9165, Art. II, Sec. 5(k).
32 CA *rollo*, p. 108.

accused-appellant to sign the Receipt of Property Seized (Inventory Receipt).[33]

Fifth, conspiracy was also not established in the instant case. The mere fact that accused-appellant was Willie Gan's friend and driver is not enough to give rise to a presumption of conspiracy. Accused-appellant did not have intimate knowledge of the business dealings entered into by the latter.[34]

Sixth, the police officers failed to observe the procedure provided under Sec. 21 of R.A. No. 9165 and its Implementing Rules and Regulations (*IRR*). Accused-appellant points out that the police officers failed to take photographs of the 10 kg. of *shabu* allegedly seized from him on November 10, 2003. He also highlights the absence of representatives from the DOJ and the media, and any elected public official. Further, there is nothing in the records detailing the participation of the required individuals during the alleged seizure, marking, and inventory of the 10 kg. of *shabu* on November 10, 2003. The seized items were not immediately inventoried at the nearest police station from the scene where accused-appellant was apprehended as they went all the way to Camp Crame. The same is also true for the seizure at the warehouse on November 11, 2003 since the police officers never asked accused-appellant to sign the Inventory Receipt. Hence, there is grave doubt as to the identity of the *corpus delicti*.[35]

Finally, the prosecution failed to establish every link in the chain of custody which renders the identity of the *corpus delicti* questionable. For the items seized during the November 10, 2003 incident, the prosecution failed to present Police Officer 1 Richel Creer[36] (*PO1 Creer*) despite him being the first to touch and open the box containing the five plastic bags of *shabu* equal to 10 kg. It was also PO1 Creer who delivered the same to the PNP Crime Laboratory. Further, the prosecution failed to present Insp. Abapo, the evidence custodian. With regard to the November 11, 2003 incident, PO2 Joseph Ursita (*PO2 Ursita*), the officer who received the seized specimens from SPO2 Busa, was not presented as witness by the prosecution. Further, PO3 Joseph Garciten, the evidence custodian, was also not presented as a witness.[37]

On the other hand, in its Brief for the Appellee[38] dated May 3, 2017, filed before the CA, the Office of the Solicitor General (*OSG*), on behalf of

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33 Id. at 109-111; see also Exhibits "HH-1"-"HH-9," folder of exhibits, pp. 146-149.
34 Id. at 111-112.
35 Id. at 113-121.
36 Also referred to as "PO2 Creer" in some parts of the *rollo* (see *rollo*, p. 11).
37 CA *rollo*, pp. 121, 124-125.
38 Id. at 170-189.

the People of the Philippines, argues that accused-appellant's guilt for the crimes of Violations of Sec. 5, in relation to Sec. 26(b), and of Sec. 11, Art. II of R.A. No. 9165 has been proven beyond reasonable doubt. The OSG asserts that accused-appellant is guilty of delivery or transportation of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165 because, as established by evidence and as admitted by accused-appellant, he delivered or transported the box containing five bags of *shabu* with a total weight of 10 kg. Accused-appellant was caught *in flagrante delicto* committing said crime. His defense that he did not know the contents of the box because it was Willie Gan who placed the same in the pick-up car is self-serving. Further, the OSG points out that accused-appellant's admission to PSI De Chavez that there are many illegal substances inside the warehouse belies his claim that he was not aware of the contents of the box. Mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of satisfactory evidence.[39]

The OSG also argues that the prosecution had established the unbroken chain of custody of the seized illegal drugs from the time the team led by PSI De Chavez recovered the five plastic bags containing *shabu* from accused-appellant and the illegal drugs from the warehouse until when they were brought for laboratory examination. It posits that accused-appellant failed to demonstrate any compelling reason to disturb the trial court's finding on the credibility of witnesses.[40] The OSG also rejects the claim of instigation. There is no truth to accused-appellant's claim that he was lured by the police officers into transporting the 10 kg. of *shabu*. In fact, prior to that incident, the police officers did not know who he was. The fact is that accused-appellant facilitated, delivered, or transported the 10 kg. of *shabu* on his own volition without any instigation or participation by the police officers.[41] Further, the OSG contends that there is no merit to accused-appellant's claim that the trial court erred in admitting the evidence of the prosecution because it was the result of an invalid warrantless arrest and search. To the contrary, the arrest and consequent search of the five bags are valid because accused-appellant was caught *in flagrante delicto* committing the offense of delivery or transportation of illegal drugs. Thus, the illegal drugs seized from accused-appellant are admissible in evidence.[42]

On a final note, the OSG asserts that the trial court erred in imposing the penalty of imprisonment from 12 years and 1 day, as minimum, and 14 years and 8 months, as maximum, and a fine amounting to ₱300,000.00 on accused-appellant for the crime of violating Sec. 11, Art. II of R.A. No. 9165. Since the illegal drugs recovered from the warehouse were more than the

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39 Id. at 179-182.
40 Id. at 183-184.
41 Id. at 184-185.
42 Id. at 185-186.

minimum 50 grams threshold set by law, life imprisonment and a fine of ₱500,000.00 should be imposed on accused-appellant.[43]

The Court's Ruling

The appeal is meritorious.

Preliminarily, it must be stated that the instant case arose out of two incidents – (a) the November 10, 2003 incident which involved accused-appellant allegedly transporting and delivering 10 kg. of *shabu* (Crim. Case No. 1179-V-03), and (b) the November 11, 2003 incident which involved the search conducted in the Mapulang Lupa warehouse (Crim. Case No. 1180-V-03). For the first incident, accused-appellant was charged with Violation of Sec. 5, in relation to Sec. 26(b), Art. II of R.A. No. 9165, while for the second incident, accused-appellant was charged with Violation of Sec. 11, Art. II of R.A. No. 9165.

After a review of the records, accused-appellant must be acquitted of both charges on the basis of reasonable doubt. The seizure of a significant or large amount of dangerous drugs does not detract from the obligatory nature of proving the *corpus delicti*, operationalized through strict compliance with the requirements of Sec. 21 of R.A. No. 9165.

Crim. Case No. 1180-V-03 should be dismissed. The prosecution failed to establish that accused-appellant had possession, whether actual or constructive, over the items seized from the warehouse or over the warehouse itself.

To recall, the CA affirmed accused-appellant's conviction of Violation of Sec. 11 on the ground that accused-appellant had knowledge of the contents of the warehouse since he drove the car to the warehouse. This easy access, according to the CA, revealed accused-appellant's knowledge of the warehouse's contents.

The Court disagrees.

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[43] Id. at 186.

In *People v. Quijano*,[44] the Court reiterated the well-established rule that:

> For a successful prosecution of an offense for illegal possession of dangerous drugs, the prosecution must establish the following elements: *(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. This crime is *mala prohibita*, as such, criminal intent is not an essential element. The prosecution, however, must prove that the accused had the intent to possess (*animus possidendi*). **Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. Constructive possession, on the other hand, exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.**[45] (Emphases supplied)

In the instant case, the prosecution failed to prove the crucial element of possession. It failed to prove that accused-appellant had possession, either actual or constructive, of the items seized from the warehouse during the November 11, 2003 incident.

Accused-appellant could not have had actual possession of the items seized from the warehouse because he was already in custody of the police officers when the search of the warehouse was conducted on November 11, 2003. It was simply impossible for accused-appellant to have had actual possession of said drugs since he was already in custody.

Neither was there evidence that accused-appellant had constructive possession over the warehouse and, in turn, its contents. It must be emphasized that the lessee of the warehouse was Willie Gan. The prosecution itself established the same through the testimony of Rogelio Samorano,[46] the prosecution witness. Samorano did not testify that accused-appellant was a co-lessee of the warehouse with Willie Gan. Thus, the one who had dominion and control over the warehouse was Willie Gan, as the lessee thereof.

The purported knowledge ascribed to accused-appellant by the CA cannot, and does not, equate to constructive possession. Although knowledge of the accused of the existence and character of the drugs in a certain place is an internal act, it may only be presumed from the fact that the dangerous drugs are in such place over which the accused has control or dominion, or within

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44 G.R. No. 247558, February 19, 2020, 933 SCRA 348.

45 Id. at 358-359.

46 Also referred to as "Roger Samurano" in some parts of the records (see folder of exhibits, p. 120).

such premises in the absence of any satisfactory explanation.[47] To emphasize, the law requires that accused-appellant have dominion and control over the drugs or the place where the same were found for a finding of Violation of Sec. 11. This vital element is missing in the instant case.

On this score, accused-appellant must be acquitted of Violation of Sec. 11, Art. II of R.A. No. 9165.

The prosecution failed to establish the corpus delicti in both Crim. Case Nos. 1179-V-03 and 1180-V-03.

In addition to the foregoing, the Court finds that accused-appellant must be acquitted of both charges against him for failure of the prosecution to establish the *corpus delicti*. There is lack of evidence that the arresting officers complied with the mandatory requirements of Sec. 21 of R.A. No. 9165.

At this juncture, the Court must address an obvious factor in the instant case. Criminal Case No. 1179-V-03, the charge of Violation of Sec. 5, in relation to Sec. 26(b), Art. II of R.A. No. 9165, involved 9,384.7 grams of *shabu*; while Criminal Case No. 1180-V-03, the charge of Illegal Possession of Dangerous Drugs under Sec. 11, Art. II of R.A. No. 9165, involved 119.080 kg. of *shabu* and 111.200 kg. of chloromethamphetamine hydrochloride. These are very significant or large quantities of dangerous drugs and, truly, their presence and seizure in our country, even back in 2003, raises serious concerns about the safety and security of the Filipino people.

In *People v. Lung Wai Tang*[48] (*Lung Wai Tang)*, the Court stated that "[s]trict adherence to the procedural safeguards is required where the quantity of illegal drugs seized is small, since it is highly susceptible to planting, tampering, or alteration of evidence. On the other hand, large amounts of seized drugs are not as easily planted, tampered, or manipulated."[49]

Expounding further, *Lung Wai Tang* proposed that the threshold amounts set in the plea-bargaining framework should guide in determining whether the quantity of seized drugs are large or small. Where it is large, strong probative value should be given to the same:

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47 See *Estores v. People*, G.R. No. 192332, January 11, 2021.
48 G.R. No. 238517, November 27, 2019, 926 SCRA 271.
49 Id. at 287.

> Thus, in determining whether the quantity of seized drugs may be considered large or small, courts should be guided by the threshold amounts set in the [plea-bargaining] framework. If the amount of drugs seized precludes the availability of plea-bargaining, it shall be deemed a large amount and should be given strong probative value.
>
> **While seizure of bulk quantities of drugs will not excuse police officers from complying with the procedural requirements under the law, the strong evidentiary treatment should encourage law enforcement agencies to focus on large-scale drug operations instead of small-time street dealers.**[50] (Emphasis supplied)

Nevertheless, it must be emphasized that *Lung Wai Tang* applied the old drugs law, R.A. No. 6425.[51] On the other hand, the present case involves the drugs law of R.A. No. 9165, prior to its amendment by R.A. No. 10640.[52]

In *People v. Bautista*,[53] the Court emphasized the burden of the State to prove not only the elements of sale and possession of illegal drugs, but also the *corpus delicti*:

> In drug-related prosecutions, the **State bears the burden not only of proving the elements of the offenses of sale and possession of *shabu* under Republic Act No. 9165, but also of proving the *corpus delicti*, the body of the crime.** "*Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged. The *corpus delicti* is a compound fact made up of two (2) things, *viz.*: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result." **The dangerous drug is itself the very *corpus delicti* of the violation of the law prohibiting the possession of the dangerous drug. Consequently, the State does not comply with the indispensable requirement of proving *corpus delicti* when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented in court.**[54] (Emphases supplied; italics omitted)

The obligatory quality of proving the *corpus delicti* cannot be gainsaid and this obligatory quality is not diminished or affected when large or substantial amounts of dangerous drugs are involved. This is because the law itself, R.A. No. 9165, as amended, makes no distinction between large or

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50 Id. at 289.

51 Entitled "The Dangerous Drugs Act of 1972." Approved on March 30, 1972.

52 Entitled "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the Comprehensive Dangerous Drugs Act of 2002." Effective: August 7, 2014.

53 682 Phil. 487 (2012).

54 Id. at 499-500.

small amounts of seized drugs in applying the procedural safeguards in Sec. 21. As the familiar legal *maxim* goes, *where the law does not distinguish, we should not distinguish.*

In the more recent case of *People v. Baterina,*[55] which involved 48,565.683 grams of *marijuana* fruiting tops, the Court convicted the accused therein and found that the strict requirements of Sec. 21 of R.A. No. 9165 were complied with by the apprehending officers. Thus, the accused in said case was convicted because the *corpus delicti* was proven beyond reasonable doubt.

In the instant case, despite large or substantial amounts of dangerous drugs being involved, the Court must acquit accused-appellant due to the failure of the law enforcement agents to comply with the mandatory requirements of Sec. 21 of R.A. No. 9165.

R.A. No. 9165 provides for the custody and disposition of confiscated, seized, and/or surrendered drugs, thus:

> 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.** (Emphases supplied)

Meanwhile, its IRR states:

> Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals,*

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[55] G.R. No. 236259, September 16, 2020.

> *Instruments/Paraphernalia and/or Laboratory Equipm*ent. — 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:
>
> > (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 **[noncompliance] 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**[.]

Plainly, Sec. 21 of R.A. No. 9165 requires that three insulating witnesses — a representative from the media, a representative from the DOJ, and any elected public official — be present during the physical inventory and photograph of the seized items at the place of seizure or, if not practicable, at the nearest police station or at the nearest office of the apprehending officer/team.[56]

Aside from being present during the physical inventory and photograph of the seized items, the insulating witnesses must also sign and receive a copy of the inventory. As the Court observed in *People v. Casa*,[57] the requirement to sign the inventory extends only to the insulating witnesses and not to the accused. "Instead, the apprehending officers shall state in their inventory report that it was conducted in the presence of the accused, or his or her representative or counsel, and the insulating witnesses."[58]

Significantly, on August 7, 2014, R.A. No. 10640 amended R.A. No. 9165 and only required the presence of an elected public official and a

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56 *People v. Casa*, G.R. No. 254208, August 16, 2022.
57 Id.
58 Id.

representative of the National Prosecution Service or the media.[59] Nevertheless, since the incidents herein occurred on November 10 and 11, 2003, then the required three witnesses under R.A. No. 9165 should still be observed.[60]

For the required physical inventory and photography of the seized items during the November 10, 2003 incident, the testimony of PSI De Chavez is illuminating:

> Fiscal Formaran to the witness:
>
> Q: How about Robert Uy and the carton box containing the five (5) plastic bags of white crystalline substance, what did you do about that?
>
> The witness:
>
> A. After we reached Mapulang Lupa, after cordoning the area, we immediately proceeded to our office, Your Honor.
>
> x x x x
>
> Q. Now, at your office, what did you do in connection with the arrest of Robert Uy?
> A. After that we made the request for laboratory examination to determine the presence of methylamphetamine hydrochloride to the confiscated five (5) [plastic] bags of white crystalline substance, your Honor.
>
> Q. You are referring to the white crystalline substance recovered from Robert Uy?
> A. Yes, sir.
>
> x x x x
>
> Fiscal Formaran to witness:
>
> Q. Now, Mr. witness, if that carton box will be presented to you which you said you recovered from accused Robert Uy, if presented to you, can you still identify the same?
> A. Yes, your Honor.
>
> Q. And what is your identification on that carton box?
> A. I affixed my signature on that carton box, your Honor.

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59 See Sec. 21, Art. II of R.A. No. 9165, as amended by R.A. No. 10640.

60 The Court noted in *People v. Gutierrez* (842 Phil. 681, 690 [2018]) and *Matabilas v. People* (G.R. No. 243615, November 11, 2019, 925 SCRA 336, 346), that under Section 5 of R.A. No. 10640, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." R.A. No. 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and *The Manila Bulletin* (Vol. 499, No. 23; World News section, p. 6). Thus, R.A. No. 10640 appears to have become effective on August 7, 2014.

Q. How about the plastic bags contained in that carton box?
A. The same, your Honor, I affixed also my signature.[61]

The seizing officer was PO1 Creer.[62] However, PSI De Chavez was the one who "marked" the carton box and the five plastic bags. It is unclear when PSI De Chavez marked these items and if the marking was done in the presence of accused-appellant. Certainly, there is nary any allusion as to the presence of the three required witnesses during said marking. There is also no inventory receipt. While photographs of the carton box[63] and the five plastic bags of *shabu*[64] were offered in evidence, it is unclear if these photographs were taken at the place of seizure or, if not practicable,[65] at the nearest police station or at the nearest office of the apprehending officer/team. All told, the police officers did not even attempt to comply with the requirements of Sec. 21 of R.A. No. 9165 as to the physical inventory and photography of the seized items from the November 10, 2003 operation.

As to the November 11, 2003 incident, SPO2 Busa testified that the search was witnessed by *barangay* officials of Barangay Mapulang Lupa and some media reporters. Glaringly absent from the list of witnesses is the DOJ representative. SPO2 Busa also testified that it was the Scene of the Crime Operatives (*SOCO*) who itemized and listed the evidence recovered in the warehouse but it was he who allegedly prepared the Inventory Receipt.[66] **Said alleged Inventory Receipt was not submitted in evidence by the prosecution. Further, the prosecution also failed to present photographs of the items seized during the November 11, 2003 operation. While photographs were indeed taken at the site of the operation, these photographs are merely of the warehouse gate,[67] exterior,[68] door,[69] the operatives while securing the specimens recovered inside the warehouse,[70] a general photo of the items found inside the warehouse,[71] and the operatives together with the items inside the warehouse.[72] This hardly constitutes the required inventory and photography under Sec. 21 of R.A. No. 9165.**

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61 *Rollo*, pp. 23-25.
62 Id. at 9.
63 Exhibit "P-7," folder of exhibits, p. 89.
64 Exhibits "P-8," "P-9," "P-10," "P-11," and "P-12," id. at 90-94.
65 *People v. Casa*, supra note 56.
66 *Rollo*, p. 11.
67 Exhibit "D," folder of exhibits, p. 32.
68 Exhibit "D-1," id.
69 Exhibit "D-2," id. at 33.
70 Exhibit "N-18," id at 65.
71 Exhibit "N-19," id. at 66.
72 Exhibit "N-20," id. at 67.

Based on the foregoing, it is clear that there was failure to strictly comply with the requisites of Sec. 21 of R.A. No. 9165 in both operations.

Admittedly, such failure to comply with the provisions of Sec. 21 may be excused provided that there are: (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained.[73] These requirements are cumulative, not alternative. Thus, in order to excuse failure to comply with the requirements of Sec. 21, there must be both justifiable reasons for such failure and proof that the integrity and evidentiary value of the evidence was maintained. It is not enough that only the second requisite is met. The prosecution must allege and prove the presence of a justifiable ground and then prove that the integrity and evidentiary value of the evidence were preserved.

The Court held in *People v. Lim*[74] (*Lim*) that:

> It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**.
>
> Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:
>
> > It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable

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[73] *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019, 926 SCRA 613, 640.
[74] 839 Phil. 598 (2018).

> without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for [noncompliance]. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their [noncompliance], but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[75] (Emphases supplied; citations omitted)

Herein, the Court finds untenable the ground proffered by the prosecution to justify the absence of the three insulating witnesses during the November 10, 2003 operation and the absence of the DOJ representative during the November 11, 2003 operation.

For the November 10, 2003 operation, the prosecution argues that the police officers could not secure the presence of the insulating witnesses due to the urgency of the situation arising from Co Ching Ki and Jackie Ong's offer of 10 kg. of *shabu* in exchange for their freedom.[76] However, the Court fails to see the urgency cited by the prosecution. The police officers had all the advantage, and held all of the cards so to speak, at that point. When they were informed by Co Ching Ki that the 10 kg. of *shabu* were ready for pick-up and that a vehicle was needed to deliver them, the police officers could have simultaneously secured the presence of the insulating witnesses while preparing the pick-up of the alleged drugs. The supposed urgency of the situation is not apparent to the Court.

As to the November 11, 2003 operation, it is glaring that the prosecution did not even offer any excuse for the absence of the DOJ representative. There is also no allegation that they attempted to secure the presence of the DOJ representative.

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75 Id. at 621-622.
76 *Rollo*, p. 9.

On the basis of the foregoing, the Court finds that there was noncompliance with the requirements of Sec. 21 and such failure cannot be excused. Thus, the *corpus delicti* of the seized items during both operations was not proven.

At this juncture, the Court deems proper to address a potential concern involving the effect of failure to comply with the strict requirements of Sec. 21. It is well-established that compliance with the requirements of Sec. 21 is mandatory and any failure to do so may only be excused upon (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained.[77]

Considering that both these requisites must concur for the Court to excuse noncompliance with Sec. 21, some sectors may fear that such rule engenders acquittal since the defense need only prove that the police officers failed to allege justifiable reasons for their failure to comply with Sec. 21.

This concern is more apparent than real.

The Court takes this opportunity to hark back to the guidelines set down in *Lim*, particularly on the requirement that the apprehending/seizing officers must state their compliance with Sec. 21 and, in case of non-observance, the justification for the same in their sworn statements/affidavits before the investigating fiscal. In case of failure to state the same, the investigating fiscal is mandated not to immediately file the case but to, instead, refer the same for further preliminary investigation:

> [J]udicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Section 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations directs:
>
> > A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.
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> While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to

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[77] *People v. Asaytuno, Jr.*, supra note 73.

> weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, the following should henceforth be enforced as a mandatory policy:
>
> 1. **In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.**
>
> 2. In case of **non-observance** of the provision, the apprehending/seizing officers must **state the justification or explanation** therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
>
> 3. If there is **no justification or explanation expressly declared** in the sworn statements or affidavits, **the investigating fiscal must not immediately file the case before the court.** Instead, he or she must **refer the case for further preliminary investigation** in order to determine the (non) existence of probable cause.
>
> 4. If the investigating fiscal filed the case despite such absence, the **court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause** in accordance with Section 5, Rule 112, Rules of Court.[78] (Emphases and underscoring supplied)

In view of these guidelines set forth in *Lim*, it is evident that mere failure to provide justification for failure to comply with Sec. 21 will not immediately result in an acquittal. The investigating fiscal is empowered and, in fact, mandated, not to immediately file the case but to, instead, refer it for further preliminary investigation.

In addition to the failure to comply with the strict requirements of Sec. 21, the Court harbors serious concerns over the identity, integrity, and evidentiary value of the seized items. There are material gaps in the chain of custody of the seized items.

The identity, integrity, and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established. The links to be established in the chain of custody, as enumerated in *People v. Salvador*,[79] are as follows:

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78 *People v. Lim*, supra note 74, at 624-625.

79 726 Phil. 389 (2014).

> *[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.[80]

There are material gaps in all links of the chain of custody for the items seized from both the November 10 and November 11, 2003 operations.

The first link in the chain is the seizure and marking, if practicable, of the seized items by the apprehending officer. Marking of the seized items is crucial in proving the chain of custody because it serves to distinguish the marked evidence from the *corpus* of all other similarly related evidence from the time they are seized until they are disposed of at the end of the proceedings, thus, preventing switching, planting, or contamination of evidence.[81]

In the November 10, 2003 operation, PO1 Creer was the seizing officer.[82] However, the one who "marked" the carton box and the five plastic bags was PSI De Chavez. Clearly, possession over the seized items from the November 10, 2003 operation was transferred at some point from PO1 Creer to PSI De Chavez. However, there is no testimony on how the integrity and evidentiary value of the seized items were preserved when possession thereof was transferred. PO1 Creer, in fact, was never presented as a witness and, as such, there is likewise no evidence on how he kept and preserved the items seized. Further, there is no testimony on exactly how PSI De Chavez marked the items seized. From the very first instance, the identity of the seized items from the November 10, 2003 operation is questionable.

As to the November 11, 2003 operation, the prosecution never alleged that the items seized from the warehouse were marked. SPO2 Busa only testified that the SOCO itemized and listed the evidence recovered, but it was he who prepared the Inventory Receipt. Again, no such inventory receipt was presented. SPO2 Busa also failed to testify how he kept and preserved the evidentiary value of the seized items prior to turning over the same to PO2 Ursita. Once more, the identity of the seized items from the November 11, 2003 operation is dubious from the first instance.

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80 Id. at 405.
81 *Tumabini v. People*, G.R. No. 224495, February 19, 2020, 933 SCRA 60, 95-96.
82 *Rollo*, p. 9.

The second link of the chain is the turnover of the illegal drugs seized by the apprehending officer to the investigating officer. The Court previously noted that "this is a necessary step in the chain of custody because it is the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents."[83]

For both the November 10 and November 11, 2003 operations, the investigating officer was not identified. As such, there is no testimony or evidence available as to the turnover of the seized items by the apprehending officer to such investigating officer. This is another material gap in the chain of custody which throws into question the identity of the seized items from both operations.

Similarly lacking is the third link in the chain. The third link is the turnover by the investigating officer of the illegal drugs to the forensic chemist for laboratory examination.

For the November 10, 2003 operation, it was allegedly PO1 Creer who delivered the seized items to the PNP Crime Laboratory. To reiterate, he was never presented in court as a witness. There is, thus, no testimony on how he kept and preserved the seized items from the November 10, 2003 operation. Similarly, PO2 Ursita, the one who received the confiscated items from the November 11, 2003 operation, did not testify. Thus, there is still no testimony on how the integrity and evidentiary value of the seized items from the November 11, 2003 operation were preserved. The third link in the chain is entirely missing for both operations.

Finally, there is also a gap in the fourth link of the chain of custody. The fourth link is the turnover and submission of the seized illegal drugs from the forensic chemist to the court.

For both the November 10 and November 11, 2003 operations, the evidence custodian of the items seized was not presented in court. For the November 10 operation, the evidence custodian was Insp. Abapo, while the evidence custodian for the November 11 operation was PO3 Garciten. Despite being identified, they were not presented in court and there is also no other testimony establishing how they kept and preserved the integrity and evidentiary value of the seized items.

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[83] *Tumabini v. People*, supra at 97.

Accordingly, due to the egregious deficiencies in the observance of the rule on the chain of custody of the items seized from both the November 10 and November 11 operations, the Court cannot conclude that the identity, integrity, and evidentiary value of the seized items were preserved. Again, the large amount of dangerous drugs involved in the instant case does not excuse the failure to prove the identity, integrity, and evidentiary value of the seized items. There is reasonable doubt as to the *corpus delicti.* Accused-appellant must be acquitted of both charges on the basis of reasonable doubt.

On the applicability of this ruling to Willie Gan

To recall, Willie Gan was convicted by the RTC of Violation of Sec. 11, Art. II of R.A. No. 9165 and meted the penalty of "twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and x x x to pay a FINE in the amount of Three Hundred Thousand Pesos ([₱]300,000.00)."[84] He did not appeal this ruling and, by force of law, said conviction became final and executory against him.

Nonetheless, it is well-established that "an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties."[85]

Sec. 11, Rule 122 of the Revised Rules of Criminal Procedure[86] provides that a judgment shall not affect a non-appealing accused unless it is applicable and favorable to him:

> Section 11. *Effect of appeal by any of several accused.* —
>
> (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

The serious defects in the chain of custody of the items seized from the November 11, 2003 operation is equally applicable to accused-appellant and to Willie Gan. The evidence against accused-appellant and Willie Gan are inexplicably linked.[87] Thus, there is reasonable doubt as to the *corpus delicti* of the crime of Illegal Possession of Dangerous Drugs, defined and punishable under Sec. 11, Art. II of R.A. No. 9165, for which Willie Gan was convicted

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84 CA *rollo*, pp. 162-163.
85 *People v. Artellero*, 395 Phil. 876, 889 (2000).
86 A.M. No. 00-5-03-SC. Effective: December 1, 2000.
87 See *People v. Artellero*, supra.

of. Despite his non-appeal, the acquittal in favor of accused-appellant must be applied to Willie Gan since it is applicable and favorable to him.

On a final note

It is truly regrettable that the Court must acquit accused-appellant in the instant case and extend such acquittal to Willie Gan.

The law enforcement agents and the prosecution must exercise more prudence and care in their compliance with the requirements of Sec. 21 of R.A. No. 9165.

The instant case reveals the law enforcement agents' complete ignorance of the requirements of Sec. 21 of R.A. No. 9165. The pieces of evidence submitted in the instant case, such as the photographs taken of the warehouse, demonstrate an utter lack of care in complying with the requirements of the law. Instead of taking a photograph of the items seized, the apprehending officers merely saw fit to take a photograph of the operatives securing the specimens recovered inside the warehouse[88] and the operatives together with the items inside the warehouse.[89] Further, there is nary any allegation that they even attempted to secure the required insulating witnesses for the November 10, 2003 incident. This ignorance extends to the prosecution because the records are woefully bereft of any attempt on its part to even invoke justifiable circumstances to excuse the failure of the law enforcement agents to even attempt to comply with the mandatory requirements of Sec. 21 of R.A. No. 9165. The utter disregard for the law demonstrated by these actors is reprehensible.

Even more reprehensible is the error committed by the RTC in the penalty imposed upon Willie Gan and accused-appellant for Violation of Sec. 11, Art. II of R.A. No. 9165.

Sec. 11, Art. II of R.A. No. 9165 is clear in providing that the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00 is imposed where the *shabu* or other dangerous drugs possessed is 50 grams or more:

> 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

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88 Exhibit "N-18," folder of exhibits, p. 65.
89 Exhibit "N-20," id. at 67.

> 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
>
> (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
>
> x x x x
>
> (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (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, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Despite such clear language to impose the penalty of life imprisonment, the RTC imposed against Willie Gan a penalty of "twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and x x x to pay a FINE in the amount of Three Hundred Thousand Pesos ([₱]300,000.00)."[90] Willie Gan evidently did not anymore appeal the RTC Decision because the lower penalty imposed was advantageous to him. Notably, the prosecution did not even question the insufficient penalty imposed against Willie Gan.

The Court also cannot help but observe that, despite this case initially involving five Chinese nationals (Jackie Ong, Co Ching Ki, Tan Ty Siao, Go Siak Ping, and Willie Gan) and accused-appellant, the sole Filipino, it ended with only accused-appellant and Willie Gan convicted by the RTC, with Willie Gan even meted a penalty far too lenient than that imposed by law. It bewilders the Court how the RTC could have acquitted Co Ching Ki and Jackie Ong, ratiocinating that their bribe to PSI De Chavez was not proven as a fact, and, in the same breath, convict accused-appellant whose participation in the events could have only arisen if the bribe, as recounted by PSI De Chavez, occurred. Further, it truly confounds the Court how the RTC could have imposed an erroneous penalty on Willie Gan and accused-appellant for Violation of Sec. 11, Art. II of R.A. No. 9165 when there is no room for confusion in the language of the law. Even the prosecution's failure to appeal the incorrect penalty imposed on Willie Gan astounds the Court. Truly, the

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90 CA *rollo*, pp. 162-163.

acquittal in the instant case is ordained by the multiple errors, whether through negligence or misfeasance, committed by the prosecution, the defense, and the trial court.

The Court beseeches all actors[91] in the administration of criminal justice in Our jurisdiction to effectively carry out their respective duties and responsibilities, keeping in mind that any failure on their part will likely result in acquittal. Such is the burden imposed on these actors, ordained by the evidentiary value required in criminal cases: proof beyond reasonable doubt.

The Court emphasizes that the acquittal in the instant case is borne of the failure to prove beyond reasonable doubt the charges against accused-appellant and, in turn, against Willie Gan.

WHEREFORE, the appeal is **GRANTED**. The April 25, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08320 is **REVERSED** and **SET ASIDE**. Accused-appellant Robert Uy *y* Ting and accused James Go Ong @ William Gan or @ Willie Gan are hereby **ACQUITTED** of the charges against them for failure of the prosecution to prove their guilt beyond reasonable doubt.

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to **IMMEDIATELY RELEASE** Robert Uy *y* Ting and Willie Gan from detention, unless they are being lawfully held in custody for any other reason, and to **INFORM** the Court of the action hereon within five days from receipt of this Decision.

Let a copy of this Decision be **FURNISHED** the Secretary of Justice, the Secretary of the Department of the Interior and Local Government, the Chief of the Philippine National Police, and the Director General of the Philippine Drug Enforcement Agency for their information, guidance, and appropriate action.

Let entry of judgment be issued immediately.

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[91] "Three (3) principal actors play an integral part in the administration of criminal justice in Our jurisdiction. These principal actors are the public prosecutor, the defense, and the trial court. The result of acquittal in the instant case was ordained by the actuations of these three principal actors." (*People v. Pagal*, G.R. No. 241257, September 29, 2020).

SO ORDERED.

ALEXANDER G. GESMUNDO
Chief Justice

WE CONCUR:

See separate concurring opinion

MARVIC M.V.F. LEONEN
Senior Associate Justice

See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

I concur in the result
Please see Separate Opinion

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

see separate concurring opinion

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

Please see Separate Concurring Opinion
ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court