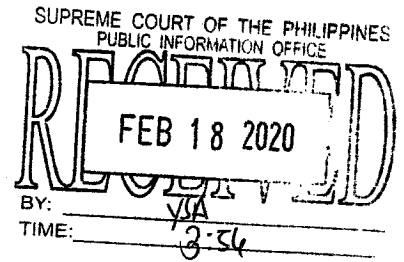




Republic of the Philippines  
Supreme Court  
Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 236596

Present:

PERALTA, C.J., Chairperson,  
CAGUIOA,  
REYES, J., JR.,  
LAZARO-JAVIER, and  
LOPEZ, JJ.

- versus -

MUSTAFA SALI y ALAWADDIN  
a.k.a. "Tapang/Pang,"  
Accused-Appellant.

Promulgated:

JAN 29 2020  
*[Signature]*

X-----X

RESOLUTION

PERALTA, C.J.:

On appeal is the November 21, 2017 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01335-MIN which affirmed the March 31, 2014 Decision<sup>2</sup> of the Regional Trial Court (RTC), 9<sup>th</sup> Judicial Region, Branch 13, Zamboanga City in Criminal Case Nos. 24967 and 24968, finding accused-appellant Mustafa Sali y Alawaddin a.k.a. "Tapang/Pang" guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information dated July 5, 2010, Sali was charged with violation of Section 5, Article II of R.A. No. 9165, committed as follows:

<sup>1</sup> Rollo, pp. 3-11; penned by Associate Justice Oscar V. Badelles, and concurred in by Associate Justices Romulo V. Borja and Ruben Reynaldo G. Roxas.

<sup>2</sup> CA rollo, pp. 99-106.

*[Handwritten mark]*

That on or about June 21, 2010, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there wil[l]fully, unlawfully and feloniously, SELL and DELIVER to IO1 Michael C. Lanza, a member of [the] Philippine Drug Enforcement Agency (PDEA) 9, who acted as poseur-buyer, one (1) small heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.0241 gram, which when subjected to qualitative examination gave positive result to the test for Methamphetamine Hydrochloride (SHABU), knowing the same to be a dangerous drug.

CONTRARY TO LAW.<sup>3</sup>

Another Information was filed on the same date before the RTC against Sali for violation of Section 11, Article II of R.A. No. 9165, committed as follows:

That on or about June 21, 2010, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there wil[l]fully, unlawfully and feloniously have in his possession and under his custody and control one (1) small heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.0155 gram, which when subjected to qualitative examination gave positive result to the test for Methamphetamine Hydrochloride (SHABU), knowing the same to be a dangerous drug.

CONTRARY TO LAW.<sup>4</sup>

In his arraignment, Sali pleaded not guilty<sup>5</sup> to both charges. He was detained at the Zamboanga City Jail during the trial of the case.

The prosecution presented three (3) witnesses, namely: Intelligence Officer 1 (IO1) Michael C. Lanza, IO1 Bracio B. Natividad and IO1 Joel Sacro. The defense, for its part, presented the accused and a certain Sandra Ahil.<sup>6</sup>

#### *Version of the Prosecution*

On June 21, 2010, at around 10:00 a.m., a confidential informant (CI) reported to Intelligence Officer 3 (IO3) Abdulsokor S. Abdulgani of the Philippine Drug Enforcement Agency (PDEA) that a certain "Tapang" is engaged in selling drugs in Campo Islam, Zamboanga City. The report was

<sup>3</sup> Records (Criminal Case No. 24967), p. 1.

<sup>4</sup> Records (Criminal Case No. 24968), p. 1.

<sup>5</sup> Records (Criminal Case No. 24967), pp. 28-29.

<sup>6</sup> CA rollo, p. 100.

relayed to Senior Police Officer 1 Faigdar A. Jaafar who directed IO3 Abdulgani to form a buy-bust team. During the planning of the operation, IO1 Lanza was assigned as the poseur-buyer, to be accompanied by the CI, and IO1 Natividad was tasked to serve as back-up. A marked money of two hundred pesos (₱200.00) was given to IO1 Lanza by IO3 Abdulgani to serve as the buy-bust money. Further, IO1 Lanza was instructed that after the consummation of the sale, he would remove his bull cap as a pre-arranged signal to execute the arrest.<sup>7</sup>

At about 1:00 p.m. of the same date, after coordination with the Zamboanga City Police, the buy-bust team proceeded to Campo Islam, Zamboanga City. Upon arrival, IO1 Lanza, together with the CI, walked towards the *sari-sari* store of Sali. At the *sari-sari* store, the CI called out for "Pang" and Sali peeked out of the window. The CI introduced IO1 Lanza to Sali as a buyer and when Sali asked how much, IO1 Lanza responded "200." Sali then drew from his left pocket a coin purse and pulled from it one (1) small sachet containing white crystalline substance and gave it to IO1 Lanza. In return, IO1 Lanza verified if it was indeed *shabu* then gave the two hundred pesos (₱200.00) to Sali. Immediately after the sale was done, IO1 Lanza removed his bull cap, and IO1 Natividad rushed to the scene and arrested Sali. IO1 Lanza introduced themselves as PDEA agents and told Sali that he was under arrest for violation of R.A. No. 9165. Sali was apprised of his constitutional rights in Tagalog. The one (1) small sachet containing white crystalline substance that was subject of the sale was marked as "MCL" and the same was turned over to IO1 Sacro, the investigator.<sup>8</sup> IO1 Sacro marked the said one (1) small sachet with "JPS," his initials, and "06/21/10."<sup>9</sup>

In the meantime, IO1 Natividad, as a matter of procedure, frisked Sali and found another sachet of suspected *shabu*, a coin purse, the marked money, and other paper bills. IO1 Natividad proceeded to mark the suspected *shabu* with his initials "BBN" and turned it over to IO1 Sacro who marked the same with "JPS" "06/21/10." IO1 Sacro was in possession of the contraband until Sali was brought to the police station where IO1 Sacro conducted the inventory of the confiscated items. After the inventory, IO1 Sacro prepared the letter-request for the examination of the suspected drugs which were received by one Police Officer 3 Paner of the Philippine National Police Crime Laboratory, Zamboanga City. The qualitative examinations of the sachet marked as "MCL" "JPS" "06/21/10," weighing 0.0241 gram, and the sachet marked as "BBN" "JPS" "06/21/10," weighing 0.0155 gram, were conducted by Police Senior Inspector Mark Christian N. Maceda.<sup>10</sup> Both sachets were found positive for the presence of Methamphetamine Hydrochloride or *shabu*

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<sup>7</sup> Rollo, p. 4.

<sup>8</sup> CA rollo, p. 100.

<sup>9</sup> Rollo, p. 4.

<sup>10</sup> Id. at 4-5.

as shown in Chemistry Report No. D-031-2010.<sup>11</sup> Meanwhile, the urine sample of Sali yielded a positive result for the presence of Methamphetamine Hydrochloride or *shabu* as reflected in Chemistry Report No. CDT-040-2010.<sup>12</sup>

### *Version of the Defense*

Between 12:00 and 1:00 p.m. of June 21, 2010, Sali was at his parents' house in Campo Islam, Zamboanga City, helping with the thanksgiving celebration for his one-year old son, Arjamar. He was with his family, together with his sisters Kah Manis and Kah Sandra. While thereat, he heard his son crying in the bedroom, prompting him to check the room; looking outside, he heard the voices of two (2) male persons in civilian attire, armed with pistols, looking for Mustafa. He went out of the room and was asked by the same persons if he was Mustafa, he answered positively. Immediately thereafter, he was pulled by the said persons outside the house. He was ordered by the same persons to go with them for some questions. Initially, he resisted but he was restrained by handcuffs. He asked for the persons' identities but was only told to go with them or else he would be hurt. At this point, Sali was very scared and he cried as he also saw his mother crying with the rest of his family seated. Sali was then subjected to a body search but nothing was found. Subsequently, he observed that around eight men were already waiting outside and went to search the house but the search went futile.<sup>13</sup>

Eventually, Sali was brought inside a vehicle and to the police station. He was made to sit down and was told that he was seen with a companion who was always going to Recondo to buy *shabu* but he denied such fact and said that he did not know any of it. Furthermore, Sali was told that he should help the police authorities and if he failed to do so, he would be put in jail. The investigation continued and Sali was subsequently asked to produce fifty thousand pesos (₱50,000.00) for his release. The police officers told Sali to ask his family for the said amount, prompting him to ask his sister Kah Manis but to no avail. Since he cannot produce the said amount, he remained in jail.<sup>14</sup>

### *RTC Ruling*

After trial, the RTC handed a guilty verdict on Sali for illegal possession and sale of *shabu*. The dispositive portion of the March 31, 2014 Decision states:

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<sup>11</sup> Records (Criminal Case No. 24967), p. 12.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Rollo*, p. 6.

<sup>14</sup> *Id.*

WHEREFORE, in the light of all the foregoing, [this] Court finds accused MUSTAFA SALI y ALAWADDIN a.k.a. "TAPANG/PANG":

1. In Criminal Case No. 24967 GUILTY beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00) without subsidiary imprisonment in case of insolvency;
2. In Criminal Case No. 24968 GUILTY beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165 and hereby sentences him to suffer the penalty of TWELVE YEARS (12) AND ONE (1) DAY TO TWENTY (20) YEARS OF IMPRISONMENT and a fine of THREE HUNDRED THOUSAND PESOS (P300,000.00) without subsidiary imprisonment in case of insolvency[.]

The methamphetamine hydrochloride (shabu) subject of these cases are ordered turned over to the proper government agency for disposition.

SO ORDERED.<sup>15</sup>

### *CA Ruling*

On appeal, the CA affirmed the RTC Decision. The CA agreed with the findings of the trial court that the prosecution effectively established that the chain of custody of the seized dangerous drugs — from the seizure, marking, submission to the laboratory for testing, and presentation in court — was not compromised. Likewise, all the elements in the prosecution for illegal possession of dangerous drugs were established by the prosecution beyond reasonable doubt. The fact that the contraband was found in Sali's physical possession shows that he freely and consciously possessed the dangerous drugs. The CA was not convinced by Sali's assertion that the markings on the confiscated sachets were insufficient as mere initials, without the signature and name of the suspect and a date, did not make the same unique and distinct. For the appellate court, it agreed with the Office of the Solicitor General that it is not required for the apprehending officer to put his initials and signature on the seized items and any distinguishing mark suffices to set apart as evidence the dangerous drugs or other related items seized from the accused. Lastly, the CA was in the position that even if the police officers did not strictly comply with the requirements of Section 21, Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165, the non-compliance did not affect the evidentiary weight of the drugs seized from Sali and the chain of custody of evidence in the present case is shown to be unbroken.



<sup>15</sup>

Records (Criminal Case No. 24967), p. 113.

Before us, the People and Sali manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA. Essentially, Sali maintains his position that there is no moral certainty on the *corpus delicti*, lapses in the strict compliance with the requirements of Section 21 of R.A. No. 9165 must be explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.

### ***Our Ruling***

We find the appeal meritorious. The judgment of conviction is reversed and set aside, and Sali should be acquitted based on reasonable doubt.

Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

(1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>16</sup> (Citation omitted)

In the illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge.<sup>17</sup> In *People v. Gatlabayan*,<sup>18</sup> "the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect."<sup>19</sup> Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."<sup>20</sup>

The prosecution failed to establish the chain of custody of the seized sachets of *shabu* from the time they were recovered from Sali up to the time they were presented in court. Section 1 (b) of Dangerous Drugs Board



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<sup>16</sup> *People v. Ismael*, 806 Phil. 21, 29 (2017).

<sup>17</sup> *Id.*

<sup>18</sup> 669 Phil. 240, 252 (2011).

<sup>19</sup> *People v. Mirondo*, 771 Phil. 345, 356-357 (2015).

<sup>20</sup> See *People v. Ismael*, *supra* note 16, at 29.

Regulation No. 1, Series of 2002,<sup>21</sup> which implements the Comprehensive Dangerous Drugs Act of 2002, defines chain of custody as follows:

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

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

(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[.]

Supplementing the above-quoted provision, Section 21 (a) of the IRR of R.A. No. 9165 provides:

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

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

<sup>21</sup> Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

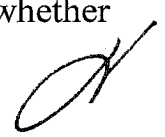
In the present case, the physical inventory and photograph, as evidenced by the Certificate of Inventory,<sup>22</sup> were done at the PDEA, Regional Office 9, Upper Calarian, Zamboanga City, and not where the buy-bust operation was conducted. Although these processes may be excused in cases where the safety and security of the apprehending officers, witnesses required by law and item seized are threatened by immediate danger, the present case is not one of those. The allegation that the physical inventory and photograph were not done in the crime scene because of security reason will not suffice. The prosecution failed to expound what security threats the law enforcement agents were facing at the time of the buy-bust operation.

In the Joint-Affidavit of Arrest of IO1 Lanza and IO2 Natividad, it was mentioned that it was only after Sali was brought to their office, which is at the PDEA, Regional Office 9, when the proper documentation happened and not immediately upon seizure and arrest. There is also no justification contained in the Joint-Affidavit of Arrest of why the physical inventory and photograph were done away from the crime scene. It is hard to imagine that the apprehending officers were able to mark the items seized at the crime scene but were not able to photograph the same.

Moreover, it is apparent from the Certificate of Inventory that it was signed by the representatives from the media and the Department of Justice, and by an elected public official, but there is no signature of Sali or his representative. No evidence was proffered to indicate that the inventory was conducted in the presence of Sali or his duly authorized representative. The photographs submitted as evidence could not conclusively determine whether Sali was present during the inventory.

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<sup>22</sup> Records, p. 15.





Hence, the prosecution failed to prove valid causes for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. Worse, there is no showing that earnest efforts were done to secure the attendance of Sali's representative. The witnesses' testimonies in open court and in the Joint-Affidavit miserably failed to mention the causes for non-compliance with Section 21.

The Court stressed in *People of the Philippines v. Vicente Sipin y De Castro*:<sup>23</sup>

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

The non-observance of the procedure mandated by Section 21 of R.A. No. 9165, as amended, casts serious doubt if the illegal drugs presented in court are the same illegal drugs seized from Sali. It is worthy to note the quantities of the illegal drugs seized which are only 0.0241 gram and 0.0155 gram. They are extremely small amounts which are highly susceptible to planting and tampering. This is the very reason why strict adherence to Section 21 is a must.

There being no justifiable reason in this case for non-compliance by the law enforcement agents with Section 21 of R.A. No. 9165, this Court finds it necessary to acquit Sali for the prosecution's failure to prove his guilt beyond reasonable doubt.

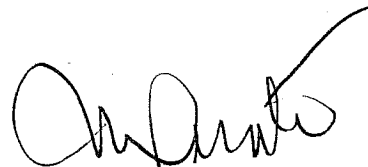
**WHEREFORE**, premises considered, the November 21, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01335-MIN which affirmed the March 31, 2014 Decision of the Regional Trial Court, 9<sup>th</sup> Judicial Region, Branch 13, Zamboanga City in Criminal Case Nos. 24967 and 24968, finding accused-appellant Mustafa Sali y Alawaddin a.k.a. "Tapang/Pang" guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*,

<sup>23</sup> G.R. No. 224290, June 11, 2018 (citations omitted).

is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Mustafa Sali y Alawaddin is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Penal Superintendent of the San Ramon Prison and Penal Farm, for immediate implementation. Said Penal Superintendent is ordered to report to this Court within five (5) working days from receipt of this Resolution the action he has taken.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Chief Justice

**WE CONCUR:**



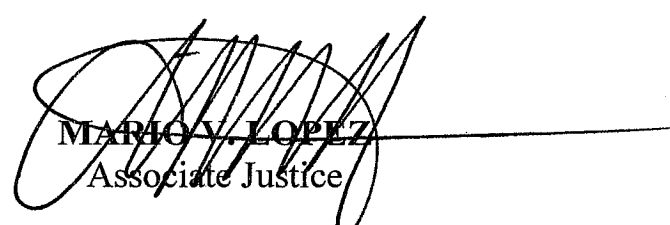
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**JOSE C. REYES, JR.**  
Associate Justice



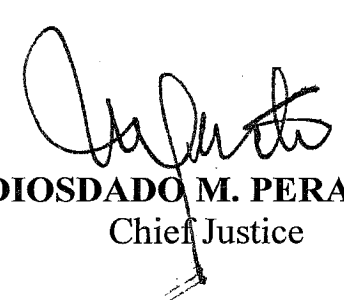
**AMY C. LAZARO-JAVIER**  
Associate Justice



**MARIO V. LOPEZ**  
Associate Justice

**CERTIFICATION**

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



**DIOSDADO M. PERALTA**  
Chief Justice