# CRIMINAL LAW

2018 Cases

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## (2018 Cases)

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**HILARIO B. ALILING, *Petitioner,* -versus- PEOPLE OF THE PHILIPPINES, *Respondent.***

G.R. No. 230991, SECOND DIVISION, June 11, 2018, Caguioa, *J.*

*The inconsistency in the statements of the prosecution witnesses on material points significantly erodes the credibility of their testimonies, juxtaposed against the forthright and consistent testimonies of the defense witnesses. With the probative value of the prosecution witnesses' testimony greatly diminished, the alibi of the accused is given credence. In the instant case, the prosecution failed to overcome the burden of proving the accused's guilt beyond reasonable doubt. Acquittal, therefore, is in order.*

**FACTS:**

Private complainant Jerry Tumbagan y Marasigan (private complainant) testified that at around 10:00 pm, when he was about to board his motorcycle, he was shot at the back and when he looked back, he recognized accused Hilario Aliling (accused) as the one firing. Jesus Marasigan y Camson, uncle of private complainant, testified that he saw the latter ride his motorcycle and then suddenly, accused Hilario Aliling arrived and fired twice at the private complainant.

For the defense, on the other hand, accused testified that on April 18, 2010, they were campaigning for a certain Apacible. According to the accused, they finished campaigning at around 6:00 o'clock in the evening of the same day and waited for the start of the *miting de avance*. They left the *miting de avance* at around 12:00 midnight and proceeded to the house of Annie, their coordinator, at Barangay Matingain and arrived there at around 1:00 o'clock in the morning. Thereafter, he took his motorcycle and went home. The accused arrived at his house at around 1:30 o'clock. His testimony was corroborated by Adrian Carl Atienza who testified that on April 18, 2010, from 8:00 o'clock in the morning up to 1:00 o'clock of the following day, he was with the accused, together with several others, at Barangay Masalisi, and Michael Perez Bathan who testified that he heard gunshots and saw private complainant run and fall to the ground but did not see the accused when the shooting happened and instead saw an unidentified gunman.

The RTC convicted the accused for frustrated murder. The CA affirmed the RTC decision. the RTC and CA did not give credence to the defense's testimonial evidence based on the alleged inconsistencies of the witnesses' statements especially with regard to his testimony when he stated that he used his motorcycle on the day of the incident but then on cross-examination, he stated that he left his motorcycle at the house of their coordinator.

**ISSUE:**

Whether or not the accused is guilty of frustrated murder. (NO)

**RULING:**

In criminal prosecutions, a person who stands charged of a crime enjoys the presumption of innocence, as enshrined in the Bill of Rights. He is designated as the accused precisely because the allegations against him have to be proven beyond reasonable doubt. Positive testimony is generally given more weight than the defenses of denial and alibi which are held to be inherently weak defenses because they can be easily fabricated. However, the defenses of denial and alibi should not be so easily dismissed by the Court as untrue. While, indeed, the defense of denial or alibi can be easily fabricated, the same can be said of untruthful accusations, in that they can be as easily concocted.

In alibi, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise physically impossible for him to be at the scene of the crime at the time thereof. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.

In the instant case, the RTC and CA did not give credence to the defense's testimonial evidence based on the alleged inconsistencies of the witnesses' statements. However, the Court found that the accused's alibi was straightforward, credible, and corroborated by an impartial witness. Furthermore, there was eyewitness testimony to the effect that the accused was not the gunman.

Moreover, the testimonies of the prosecution witnesses are contradictory on a material point. Marasigan claimed that the gunshots were successively fired. However, the private complainant testified that there was a pause between the shots. At first glance, it would seem that the succession of the gunshots is not a material point. However, the manner of execution of the crime is of prime significance especially in the testimony of private complainant, the victim himself, as he testified that the pause between shots supposedly gave him the opportunity to turn his head and see the culprit after he was shot for the first time in the back. However, this testimony is contradicted by Marasigan who testified that the shots were successive. Notably, the testimony of Marasigan as to the continuous succession of shots is corroborated by the testimony of defense witness Bathan, who also testified that the shots were fired one after another.Furthermore, in his Sinumpaang Salaysay which he identified and authenticated before the RTC, private complainant attested that the accused had a companion that night at the basketball court. However, during his cross-examination, he denied his statement.

The inconsistency in the statements of the prosecution witnesses on material points significantly erodes the credibility of their testimonies, juxtaposed against the forthright and consistent testimonies of the defense witnesses. With the probative value of the prosecution witnesses'

testimony greatly diminished, the alibi of the accused is given credence. In the instant case, the prosecution failed to overcome the burden of proving the accused's guilt beyond reasonable doubt. Acquittal, therefore, is in order.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- MICHAEL DELIMAN and ALLAN DELIMA, *Accused-Appellants.***

G.R. No. 222645, THIRD DIVISION, June 27, 2018, MARTIRES, *J.*

*For evident premeditation to be appreciated as a qualifying circumstance, the following elements must be present: (a) a previous decision by the accused to commit the crime; (b) overt act or acts indicating that the accused clung to one's determination; and (c) lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of one's acts.*

**FACTS:**

Accused-appellants Michael Delima and Allan Michael, together with their co-accused, were charged with murder after conniving and confederating together and mutually helping one another, armed with a bladed and pointed weapon, with deliberate intent, with intent to kill, and with treachery and evident premeditation, attacked, assaulted and stabbed Ramel Mercedes Congreso, which led to his death instantaneously.

The RTC found Michael and Allan guilty for murder and the CA affirmed the decision of the lower court despite inconsistencies on the part of the testimonies of the witnesses.

**ISSUE:**

Whether or not accused-appellants are guilty beyond reasonable doubt of murder. (NO)

**RULING:**

The Supreme Court held that the appeal is partly meritorious, but Michael and Allan Delima were found guilty of homicide, and not of murder.

Killing is tantamount to murder only when qualifying circumstances are present. Accused-appellants argue that even if they are found responsible for Ramel's death, they could not be found guilty of murder because there was no proof of the qualifying circumstances of treachery and evident premeditation.

For evident premeditation to be appreciated as a qualifying circumstance, the following elements must be present: (a) a previous decision by the accused to commit the crime; (b) overt act or acts indicating that the accused clung to one's determination; and (c) lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of one's acts.

In this case, nothing in the records establishes the above-mentioned elements. In fact, it is worth emphasizing that neither the RTC nor the CA discussed the presence of the said qualifying circumstance. Consequently, evident premeditation cannot qualify the crime to murder.

On the other hand, there is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The requisites for treachery to be appreciated are: (a) at the time of the attack, the victim was not in a position to defend; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed.

Here, it is unquestionable that Ramel was in no position to defend himself when Allan stabbed him. He was previously mauled by five persons and at the time of the stabbing, Michael was holding him by his legs. Ramel's weakened state and restricted movement rendered him unable to parry the lethal blows Allan inflicted on him. Nevertheless, Ramel's defenseless state alone does not suffice to appreciate the existence of treachery. After all, not only must the victim be shown defenseless, but it must also be shown that the accused deliberately and consciously employed the means and method of attack.

The Court held that without any particulars as to the manner in which the aggression commenced or how the act that resulted in the victim's death unfolded, treachery cannot be appreciated. In this case, there is no proof of the circumstances surrounding the manner in which the aggression commenced, appellant should be given the benefit of the doubt and treachery cannot be considered.

While the accused-appellants contest the credibility of the witness because of inconsistencies. However, the Court held that in order for inconsistencies in a witness' testimony to warrant acquittal, the same must refer to significant facts vital to the guilt or innocence of the accused or must have something to do with the elements of the crime. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. Here, the apparent inconsistency merely refers to insignificant matters as it only pertained to the sequence of how the events unfolded.

Furthermore, denial and alibi cannot prevail over positive identification, for the defense of alibi to prosper, the accused must prove (a) that she was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for her to be at the scene of the crime during its commission. Physical impossibility refers to the distance and the facility of access between the crime scene and the location of the accused when the crime was committed. She must demonstrate that she was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.

Conspiracy was also established by their overt acts, despite accused-appellants's contentions. There is an implied conspiracy if two or more persons aim their acts towards the accomplishment of the same unlawful subject, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment and may be inferred though no actual meeting among them to concert means is proved. The essence of conspiracy is unity of action and purpose. As early as the initial

assault against Ramel, it is readily apparent that Allan and Michael's concerted action was towards the common purpose of hurting Ramel after they ganged up on him together with three other unidentified malefactors. Then, accused-appellants were mutually motivated by the desire to kill Ramel after Allan stabbed Ramel while Michael held the latter by the legs. Their concerted actions cannot be brushed aside as separate and distinct because Michael continued to hold the victim while Allan stabbed him several times.

**B. Felonies**

**1. Criminal liabilities and felonies**

**a. Grave vs. less grave vs. light felonies**

**b. Aberratio ictus, error in personae, and praeter intentionem**

**c. Impossible crime**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – HESSON CALLAO Y MARCELINO and JUNELLO AMAD, *Accused-Appellant.***
G.R. No. 228945, SECOND DIVISION, March 14, 2018, CAGUIOA, *J*.

*The requisites of an impossible crime are: (1) that the act performed would be an offense against persons or property; (2) that the act was done with evil intent; and* ***(3) that its accomplishment was inherently impossible, or the means employed was either inadequate or ineffectual****. The third element, inherent impossibility of accomplishing the crime, was explained more clearly by the Court in the case of Intod v. Court of Appeals. It was established that to be impossible under this clause, the act intended by the offender must be by its nature one impossible of accomplishment. There must be either (1)* ***legal impossibility****, or (2)* ***physical impossibility*** *of accomplishing the intended act in order to qualify the act as an impossible crime.*

**FACTS:**

Sario Joaquin (Sario), the lone witness, testified that while in the flea market, Hesson and Junello discussed a plan to kill the victim, Fernando Adlawan (Fernando) as ordered by one Enrile Yosores (Enrile). Sario was not part of the planning and did not know why Enrile wanted to have Fenando killed. In the evening of the same day, Hesson, Junello, Remmy and Sario left the flea market and went to the house of Fernando. Sario tagged along because Hesson threatened to kill him if he separated from the group. Junello, upon seeing Fernando, approached the latter and asked for a cigarette lighter. After Fernando gave Junello the lighter, the latter struck Fernando on the nape with a piece of firewood. **Junello then took a bolo and hacked Fernando's body** on the side. **Fernando lost consciousness** and as he laid motionless on the ground, H**esson stabbed him twice in the chest using a knife**. Hesson then sliced open Fernando's chest and took out the latter's heart using the same knife. Junello followed and took out Fernando's liver using a bolo.

Hesson and Junello then fed Fernando's organs to a nearby pig after which they cut Fernando's neck and sliced his body into pieces. Thereafter, the two (2) accused left the crime scene, followed by Sario and Remmy. After the incident, Remmy was killed by Enrile during the town fiesta of Guincalaban.

The trial court found Hesson guilty beyond reasonable doubt of the crime of Murder qualified by treachery. CA affirmed the trial court's conviction with modification only as to the damages awarded.

Hesson **argues that he should only be convicted of committing an impossible crime**. Allegedly, he cannot be held liable for Murder because **it was legally impossible for him to kill Fernando as the latter was already dead when he stabbed him.**

**ISSUE:**

Whether the crime committed was not murder but an impossible crime. (NO)

**RULING:**

Hesson is liable for Murder, not for an impossible crime.

The requisites of an impossible crime are: (1) that the act performed would be an offense against persons or property; (2) that the act was done with evil intent; and **(3) that its accomplishment was inherently impossible, or the means employed was either inadequate or ineffectual**. The third element, inherent impossibility of accomplishing the crime, was explained more clearly by the Court in the case of *Intod v. Court of Appeals*:

> To be impossible under this clause, the act intended by the offender must be by its nature one impossible of accomplishment. There must be either (1) legal impossibility, or (2) physical impossibility of accomplishing the intended act in order to qualify the act as an impossible crime.

**Legal impossibility occurs where the intended acts, even if completed, would not amount to a crime.The impossibility of killing a person already dead falls in this category.**

On the other hand, factual impossibility occurs when extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the intended crime.

The **victim's fact of death before he was stabbed by Hesson was not sufficiently established** by the defense. While Sario testified that he thought Fernando was already dead after he was hacked by Junello because the former was already lying on the ground motionless, this statement cannot sufficiently support the conclusion that, indeed, Fernando was already dead when Hesson stabbed him. **Sario's opinion of Femando's death was arrived at by merely looking at the latter's body**. **No other act was done to ascertain this**, such as checking of Fernando's pulse, heartbeat or breathing.

More importantly, **even assuming that it was Junello who killed Fernando and that the latter was already dead when he was stabbed by Hesson**, Hesson is **still liable for murder** because of the **clear presence of conspiracy** between Hesson and Junello. As such, Junello's acts are likewise, legally, Hesson's acts.

## d. Stages of execution

**CARLOS JAY ADLAWAN, *petitioner*, *vs. PEOPLE OF THE PHILIPPINES*, *respondent.***

G.R. No. 197645, THIRD DIVISION, April 18, 2018, MARTIRES, *J.*

*In criminal cases for frustrated homicide, the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim. In this case, intent to kill was sufficiently shown not only by the testimonies of Georgia, the victim herself, and Fred, the eyewitness, but also by the established fact that Georgia sustained multiple deep hack wounds on her head, neck, and abdomen, among other parts of her body.*

**FACTS:**

Carlos Jay Adlawan, accused and petitioner herein, was charged in two separate informations with Frustrated Homicide and Attempted Robbery. The victim, Adlawan's stepmother, Georgia, arrived home on the day of the incident and heard the petitioner talking with the Adlawans' houseboy, in the backyard. The petitioner asked Cornelio in a loud voice *"unsa na?"* ("what now?"). Georgia proceeded to the backyard to ask Cornelio what the conversation was about. On her way to the yard, she met the petitioner who proceeded to his room on the second floor.While Georgia was talking to Cornelio, the petitioner came back and angrily asked Georgia *"asa ang kwarta?"* ("where is the money?"). She replied saying, *"unsa, wa mo kahibalo nga na ospital inyong amahan?"* ("why, don't you know that your father is in the hospital?").Apparently, earlier that day, Georgia instructed her secretary withdraw P100,000.00 from the bank to pay for the hospital bills of Alfonso.Thereafter, the petitioner furiously told her *"mura kag kinsa!" ("as if you are somebody!")*, and started hacking her using a *katana*, hitting her on the left portion of the neck and on the stomach. Georgia parried the blows using her hands.Georgia ran towards the garage in front of the house, but petitioner pursued her and continued his attack, hitting her shoulders and her back until she fell down. Sensing that petitioner would finish her off, she summoned all her strength, kicked his leg, and then grabbed and squeezed his sex organ.

The medical certificaterevealed that Georgia sustained multiple deep hack wounds on her head, neck, and abdomen, among other parts of her body. The petitioner, however, argues that the prosecution witnesses failed to establish intent to kill, and the injuries were not so serious as to cause her death. The RTC acquitted him of Attempted Robbery, but found him guilty of Frustrated Homicide.

**ISSUE:**

Whether or not the petitioner is liable for Frustrated Homicide (YES)

**RULING:**

In criminal cases for frustrated homicide, the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim. In this case, intent to kill was sufficiently shown not only by the testimonies of Georgia,

the victim herself, and Fred, the eyewitness, but also by the established fact that Georgia sustained multiple deep hack wounds on her head, neck, and abdomen, among other parts of her body.

The gravity of these wounds was clearly shown by the photographs presented by the prosecution, and the medical certificate. Dr. Kangleon even testified that Georgia could have died if no medical attention was given to her.

That petitioner intended to kill Georgia, and that the injuries she sustained were fatal and would have caused her death if not for the timely medical intervention, were therefore established by proof beyond reasonable doubt.

**e. Continuing crimes**

**f. Complex crimes and composite crimes**

**2. Circumstances affecting criminal liability**

**a. Justifying circumstances**

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- PFC ENRIQUE REYES, *Appellant.***
G.R. No. 224498, FIRST DIVISION, January 11, 2018, TIJAM, *J.*

*Granting Enrique's allegations were true, neither the "looming" threat perceived nor the remarks overheard satisfies the requirement of an actual, menacing, sudden and unexpected danger to accused-appellant's life. To constitute imminent unlawful aggression, the* ***attack must be at the point of happening and must not be imaginary or consist in a mere threatening attitude****.*

*There is treachery when the offender, in committing any of the crimes against persons, employs means or methods which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.*

**FACTS:**

At around 7 am of August 13, 1990, Enrique Reyes (Enrique) fired his armalite rifle upwards. Danilo Estrella (Danilo) was then walking towards his house after tending to his fighting cock, and was three steps away from his residence when Enrique fired at him from behind using an armalite rifle, which caused him to fall on the ground. Enrique approach Danilo and took the .38 caliber tucked in Danilo's waist and fired the same upwards thrice. Afterwards, he placed the gun on Danilo's right hand. When the police arrived, Enrique surrendered himself with the firearms he used. Danilo was later on declared dead due to multiple gunshot wounds.

Enrique invoked **self-defense**. On the day of the incident, he heard Danilo and his comrades planning on killing someone. Fearing for his family's safety, Enrique prepared his armalite and called for assistance from the police. After sometime, Celia, a neighbor of the parties, was on her way to Enrique's house and saw a man holding a gun approaching Enrique from behind. When Celia shouted "Ricky," Enrique turned towards Celia and saw Danilo holding a gun in the act of shooting him. Enrique drew and fired his Armalite rifle, hitting Danilo who fell on the ground.

The RTC found Enrique guilty of **Murder** with the qualifying circumstance of **treachery.** According to the RTC, the killing was not done in self-defense in the absence of unlawful aggression. CA agreed as to the RTC's finding on self-defense, but found no aggravating circumstance, downgraded the conviction from Murder to **Homicide.**

**ISSUES:**

Whether or not Self-defense is present in the killing. (NO)
Whether or not Treachery attended the killing of Danilo. (YES)

**RULING:**

*Self-defense is not present in the killing.*
By invoking self-defense, Enrique admitted inflicting the fatal injuries that caused Danilo's death, albeit under circumstances that, if proven, would have exculpated him. With this admission, the **burden of proof shifted to him** to show that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person invoking self-defense.

Unlawful aggression is the indispensable element of self-defense, for **if no unlawful aggression** attributed to the victim is established, **self-defense is unavailing for there is nothing to repel**. Accordingly, the confluence of these elements of unlawful aggression must be established by the accused, to wit: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or at least imminent; and (c) the attack or assault must be unlawful.

Enrique contends that the "looming" death threat from Danilo's group, owing to his exposure of the latter's alleged illegal activities, became real and evident when he overheard Danilo's plan to kill him. Thus, he submits that Danilo's remarks were "more than enough to show the imminent and real danger" to his life. Granting Enrique's allegations were true, neither the "looming" threat perceived nor the remarks overheard satisfies the requirement of an actual, menacing, sudden and unexpected danger to accused-appellant's life. To constitute imminent unlawful aggression, the **attack must be at the point of happening and must not be imaginary or consist in a mere threatening attitude**. Further, granting that Danilo was indeed holding a gun, as defense portrayed him, Enrique's infliction of multiple gunshot wounds on the victim is neither commensurate nor reasonable. The second element of self-defense is thus clearly absent.

*Treachery attended the killing of Danilo.*
There is treachery when the offender, in committing any of the crimes against persons, employs means or methods which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. When alleged in the information and clearly proved, treachery qualifies the killing and elevates it to the crime of murder.

Treachery was established in this case. Prosecution witnesses showed that Danilo was walking towards his house after tending to his fighting cock, and was three steps away from his residence when accused-appellant suddenly rushed towards his direction and shot him. Enrique's shots, fired from an assault rifle, were multiple and successive, depriving Danilo of any chance to run or to defend himself and repel the attack. Thus, Supreme Court reinstated RTC's conviction.

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- YOLANDO PANERIO *and ALEX ORTEZA*, *Appellant.***
G.R. No. 205440, THIRD DIVISION, January 15, 2018, MARTIRES, *J.*

*Unless the victim commits unlawful aggression against the accused, self-defense, whether complete or incomplete, cannot be appreciated, for there would be no unlawful aggression to prevent or repel.*

*Even where all indicia tend to support the conclusion that the attack was sudden and unexpected, yet no precise data on this point exists, treachery cannot be taken into account. Thus, since Olivar did not see how the attack was carried out and cannot testify on how it began, the court cannot presume from the circumstances of the case that there was treachery.*

**FACTS:**

On the night of the incident, at a certain billiard hall in Mintal, Davao City, Yolando Panerio (Panerio) and Alex Orteza (Orteza), both drunk, scattered the billiard balls causing disruption; thus, the games stopped. Panerio and Orteza then left the hall, and saw Elesio Ung (Elesio) on the road. While under the influence of alcohol, Panerio and Orteza repeatedly stabbed Elesio. Panerio used a fan knife and was in front of the victim; while Orteza used an ice pick and was at the victim's back. Witness Olivar brought Elesio to the hospital, but died the next day. Elesio sustained a total of 11 stab wounds. Panerio and Orteza were both arrested, but Orteza escaped. The two were charged with Murder.

Panerio invoked self-defense. He explained that he and Orteza went out to buy food that night. They walked by the store where they saw Elesio and another person drinking. Elesio and his companion called and offered them drinks, but they refused. Feeling disrespected, Elesio got mad and boxed Panerio. Elesio tried to stab Panerio, but failed to do so as the knife fell. Panerio took the knife and stabbed Elesio. RTC and CA found Panerio guilty of Murder.

**ISSUES:**

Whether or not self-defense should be appreciated. (NO)
Whether Panerio is guilty of Murder. (NO)

**RULING**

<u>*Self-defense was not established*</u>
To bring about a result favorable to the accused in the form of exculpation from criminal liability, the accused must establish the essential requisites of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means used to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the person defending himself.

Panerio's failed to prove that he acted in self-defense when he and Orteza killed Elesio.Unless the victim commits unlawful aggression against the accused, self-defense, whether complete or incomplete, cannot be appreciated, for there would be no unlawful aggression to prevent or repel.

Panerio's assertion that Elesio, then drunk, boxed him and attempted to stab him is unsubstantiated by any convincing proof. Moreover, Panerio's account on how many times he stabbed the victim is miserably inconsistent with the post-mortem findings on the deceased.Of the 11 stab and puncture wounds, at least seven are deemed fatal. The large number of wounds sustained by the victim negates any claim of self-defense.

*The crime committed is homicide; treachery was not established*
Although the guilt of Panerio and Orteza for the death of Elesio is unquestioned, the Court is of the view that the Panerio may only be convicted of homicide, not murder. The prosecution failed to prove that the crime was committed with treachery or with any other qualifying circumstance.

Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in its execution, tending directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.For treachery to be appreciated, the concurrence of two conditions must be established: *first*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and *second*, the means of execution was deliberately or consciously adopted.

The testimony of Olivar clears the fact that he only witnessed the incident when Elesio was already being stabbed by Panerio and Orteza. He did not witness how the incident started and he had no idea what moved the two accused to stab Elesio to death. All that could be gleaned from Olivar's account was that Panerio and Orteza were both under the influence of alcohol; and that they stabbed Elesio, presumably when they met him on the road.

In this regard, it has been held that even where all indicia tend to support the conclusion that the attack was sudden and unexpected, yet no precise data on this point exists, treachery cannot be taken into account. Thus, when the witness did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery.

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee* **-versus- ARSENIO ENDAYA, JR. y PEREZ,** *accused-appellant.*

GR No. 225745, THIRD DIVISION, February 28, 2018, MARTIRES, *J.*

*It is elementary that unlawful aggression on the part of the victim is the primordial consideration in self-defense. Absent this element, there could be no self-defense, whether complete or incomplete. For unlawful aggression to be appreciated, there must be an actual, sudden, and unexpected attack or imminent danger, not merely a threatening or intimidating attitude. In this case, the fact that the victims suffered multiple stab wounds which caused their death negates Arsenio's claim of self-defense. If at all, these stab wounds demonstrate a criminal mind to end the life of the victims.*

**FACTS:**

Arsenio Endaya, Jr. was charged with parricide committed against his wife Jocelyn Quita-Endaya and with murder committed against his mother-in-law, Marietta Bukal-Quita.

Witness Jennifer de Torres narrated that while watching television, he heard Jocelyn, his mother, shouting for help from their house. He immediately rushed to Jocelyn's aid and he saw Arsenio stabbing her twice with a bladed weapon. After arming himself with a bolo, Jennifer ran out of their house and again saw Arsenio stab Mariette a once. When Arsenio saw Jennifer, the former fled. The two victims were pronounced dead on arrival.

Arsenio admitted the killing but he invoked self-defense. He alleged that he had an argument with Jocelyn where Jennifer suddenly arrived and hacked him several times on different parts of his body. To defend himself, Arsenio got hold of a knife and tried to stab Jennifer more than once. But because it was dark that time, he mistakenly stabbed Jocelyn instead. He tried to leave the premises, but Marietta blocked his way. Again, he mistakenly stabbed Marietta instead of Jennifer because according to him, his eyes were oozing with blood.

**ISSUE:**

Whether or not the justifying circumstance of self-defense may be appreciated in favor of Arsenio. (NO)

**RULING:**

It is elementary that unlawful aggression on the part of the victim is the primordial consideration in self-defense. Absent this element, there could be no self-defense, whether complete or incomplete. For unlawful aggression to be appreciated, there must be an actual, sudden, and unexpected attack or imminent danger, not merely a threatening or intimidating attitude. In this case, the fact that the victims suffered multiple stab wounds which caused their death negates Arsenio's claim of self-defense. If at all, these stab wounds demonstrate a criminal mind to end the life of the victims.

Contrary to his claims, his minor injuries suggest that they may have been inflicted by Jocelyn and Marietta who resisted the attacks of their ruthless assailant. Thus, his claim that he was hacked by Jennifer several times is unmeritorious considering the absence of wounds on several parts of his body matching his allegation.

Assuming arguendo that there was unlawful aggression on the part of De Torres and/or any of the two victims, he failed to sufficiently explain how the victims ended up with four stab wounds each, nor to establish that the means employed by him to repel the alleged unlawful aggression was reasonable and necessary.

**PEOPLE OF THE PHILIPPINES**, ***Plaintiff-Appellee*****, -versus- RESURRECION JUANILLO MANZANO, JR. AND REZOR JUANILLO MANZANO, ACCUSED, REZOR JUANILLO MANZANO, *Accused-Appellant.***

G.R. No. 217974, THIRD DIVISION, March 05, 2018, MARTIRES, *J.*

*It is vigorously underscored that the pith and soul of the justifying circumstance of self-defense is the presence of unlawful aggression; thus, the absence of this requisite readily converts the claim of self-defense into nothingness even with the existence of the other elements because the two other essential elements of self-defense would have no factual and legal bases without any unlawful aggression to prevent or repel.*

**FACTS:**

The accused-appellant and his elder brother Resurrecion Manzano were charged with murder before the RTC of San Jose, Antique. The murder was coupled with qualifying circumstance of treachery and abuse of superior strength. Accused-appellant pleaded not guilty during the arraignment and raised the justifying circumstance of self-defense.

There were two versions of the story. The version of the defense provided that about 9:30 p.m. on 19 March 2010, while the accused-appellant was home sitting by the window, he saw Lucio Silava (*Lucio*) throwing stones at his house. Accused-appellant was sure that this person is indeed Lucio. The accused-appellant immediately went out to inquire from Lucio why he was throwing stones at his house but Lucio threw a stone at him that hit his right knee and caused him to fall down. Lucio rushed towards the accused-appellant to stab him with a knife but was unsuccessful as they grappled for its possession. It was at that instance that the accused-appellant called out to Resurrecion, who was home that time, to run away so that he would not be involved. Because Lucio was very drunk, the accused-appellant was able to take hold of the knife, but blacked out and started stabbing Lucio. Thereafter, the accused-appellant ran away and proceeded to the house of Reno Manzano (*Reno*), an elder brother, at Barangay San Angel, San Jose, Antique, where he also met Resurrecion. The following day, the accused-appellant surrendered to the police authorities.

Here is the version of the prosecution: at about 9:00 p.m. on 19 March 2010, the spouses Lucio and Victoria were inside their store fronting the accused-appellant's house. Lucio was having his dinner at the kitchen inside the store while Victoria was watching the store when the accused-appellant and Resurrecion called out from the gate saying that they would buy cigarettes. Because the gate leading to the store was already closed, Lucio told the accused-appellant and Resurrecion to come in. Resurrecion told Victoria that he will buy cigarettes. The accused-appellant entered the store and proceeded to where Lucio was having dinner. Resurrecion then changed his mind about buying cigarettes and proceeded towards the kitchen. Thereafter, Victoria heard Lucio ask, "What wrong have I committed?" Victoria rushed to the kitchen and there saw Lucio bloodied and leaning on the door, while the accused-appellant and Resurrecion were stabbing him.Victoria went out of the store shouting for help. When she went back inside, she saw Lucio run outside the store but still within the fenced premises, and the accused-appellant and Resurrecion were going after him. From where she stood, Victoria saw Resurrecion hold Lucio's hands while the accused-appellant, who was positioned behind Lucio, held Lucio's body with one arm while with his other hand stabbed Lucio's back. When Resurrecion released his grip on Lucio, the latter fell face down but the accused-appellant and Resurrecion continued to stab him. The accused-appellant and Resurrecion thereafter ran towards the direction of the farm.

**ISSUES:**

1. Whether the justifying circumstance of self-defense should be appreciated. (NO)
2. Whether the crime committed is murder. (YES)
3. Whether the mitigating circumstance of voluntary surrender should be appreciated (NO)

**RULING:**

1. To successfully invoke self-defense, an accused must establish: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful. The evidence provided by the prosecution, which is a picture of the victim's blood splattered in their kitchen, belies the contention of self-defense. Furthermore, the defense did not provide a strong and convincing evidence that there is indeed self-defense. In addition, accused-appellant's plea of self-defense is controverted by the nature, number, and location of the wounds inflicted on the victim, since the gravity of said wounds is indicative of a determined effort to kill and not just to defend. The postmortem examination conducted on the body of Lucio revealed that he sustained fifteen wounds, four of which were fatal, and that the cause of his death was hypovolemic shock secondary to hemorrhage secondary to multiple stab wounds. There was undeniable intent on the part of the accused-appellant to kill Lucio.

2. One of the qualifying circumstances of murder is treachery. Treachery is present when the offender commits any of the crimes against a person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. Treachery is not presumed but must be proved as conclusively as the crime itself.

   For the qualifying circumstance of treachery to be appreciated, the following elements must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. Relative to the first element, the essence of treachery is when the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow. As to the second element, the means adopted must have been a result of a determination to ensure success in committing the crime. Additionally, in murder or homicide, the offender must have the intent to kill; otherwise, the offender is liable only for physical injuries. The evidence to prove intent to kill

may consist of, inter alia, the means used; the nature, location, and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of or immediately after the killing of the victim.

The prosecution established that the accused-appellant and Resurrecion deliberately made it appear to Victoria and Lucio on the night of 19 March 2010, that their main purpose in coming to the store was to buy cigarettes. They came at night when neighbors were probably asleep which would make it impossible for them to lend assistance to Lucio. The absence of scuffle among Lucio, the accused-appellant, and Resurrecion substantiate the finding that the attack was swift and deliberate so that the unarmed and unsuspecting Lucio had no chance to resist or escape the blow from his assailants. The intent to kill by the accused-appellant and Resurrecion was confirmed by the fact that they were armed with knives when they attacked Lucio who sustained a total of fifteen wounds.

3. For voluntary surrender to be appreciated as a mitigating circumstance, the following elements must be present: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.Records show that it was Reno who went to the Hamtic police station to request that they take custody of the accused-appellant who was then in his house. Undoubtedly, when the police went to Reno's house at San Angel, San Jose, Antique, it was for the purpose of arresting the accused-appellant and not because he was surrendering to them voluntarily.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* RONILLO LOPEZ, JR. y MANTALABA @ "DODONG", *accused-appellant.***

G.R. No. 232247, SECOND DIVISION, April 23, 2018, PERALTA, *J.*

*At the heart of the claim for self-defense is the element of unlawful aggression, which is the condition sine qua non for upholding the same as a justifying circumstance. The test of the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself. Ronillo's plea of self-defense was belied by physical evidence. No injury of any kind or gravity was found on the person of Ronillo. Even granting arguendo that Ronillo suffered injuries, such injuries were surely not serious or severe as it was not even detected.*

**FACTS:**

Ronillo was charged with the crime of Parricide under Article 246 of the Revised Penal Code for killing his father, Ronillo Lopez, Sr. The victim's mother was at her house when she heard her grandson, the accused, call for help, saying that he stabbed his father. Lopez then, together with his

grandmother and one other person who heard the commotion, went back to the house where they found the victim lying on the ground. When they checked his pulse, they determined he was dead. The incident was reported to the police. Ronillo admitted that he stabbed his father, but maintained that he merely acted in self-defense. According to him, they were having a drinking spree, however, drunken, he went home ahead and slept. He then woke up to the beatings inflicted by his drunken father. Lopez Sr., took a hard object and struck it on his son's head. The accused, overcome with passion and his judgment obfuscated, struck back with a knife, stabbing his father.

**ISSUE:**

Whether or not there was a valid act of self-defense on the part of the accused (NO)

**RULING:**

Self-defense is appreciated as a justifying circumstance only if the following requisites were present: (1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person making the defense; (2) there was reasonable necessity of the means employed to prevent or repel the unlawful aggression; (3) there was lack of sufficient provocation on the part of the person claiming the defense.

At the heart of the claim for self-defense is the element of unlawful aggression, which is the condition sine qua non for upholding the same as a justifying circumstance. The test of the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself. Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or at least, imminent; and (c) the attack or assault must be unlawful.

Ronillo's plea of self-defense was belied by physical evidence. No injury of any kind or gravity was found on the person of Ronillo when he was brought to the hospital for medical examination. Even granting *arguendo* that Ronillo suffered injuries, such injuries were surely not serious or severe as it was not even detected. The superficiality of the injuries was not an indication that appellant's life and limb were in actual peril. The Court is conviced that Lopez Sr., was by no means the unlawful aggressor.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus- LEONARDO B. SIEGA, *Accused-appellant.***

G.R. No. 213273, SECOND DIVISION, June 27, 2018, CAGUIOA, *J.*

*An accused, who pleads self-defense, has the burden of proving, with clear and convincing evidence, that the killing was attended by the following circumstances: (1)* ***unlawful aggression*** *on the part of the*

*victim; (2)* ***reasonable necessity of the means employed*** *to prevent or repel such aggression; and (3)* ***lack of sufficient provocation*** *on the part of the person resorting to self-defense. Of these three, unlawful aggression is most important and indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person." Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.*

*However, as duly pointed out by the RTC and CA, Siega's account of events is belied by the straightforward and credible testimony of Alingasa that* ***Bitoy did not carry any weapon at that time.*** *This was corroborated by the fact that no weapon was recovered from the victim.*

*Moreover, even if the Court were to believe Siega's version of the events, still, no unlawful aggression can be deduced, because there was clearly* ***no imminent danger on the person of Siega*** *as would justify his killing of Bitoy. Unlawful aggression is predicated on an actual, sudden, unexpected or imminent danger — not merely a threatening or intimidating action.* ***Bitoy's supposed act of holding a weapon from his waist does not pose any actual, sudden or imminent danger to the life and limb of Siega****.*

**FACTS:**

On October 16, 2005, at around 4:00 p.m., Siega was about to enter his house when he heard a sound coming from the feeder road facing his residence. When Siega turned to the source of the noise, he saw Pacenciano Bitoy (Bitoy), rushing towards him and shouting at him to get out of his house so that they could end their grudge against each other. As Bitoy was nearing him, Siega saw the former attempting to draw the bolo that was wrapped on his waist. Scared by Bitoy's actions, Siega immediately grabbed unto the bolo that was then beside him and hacked Bitoy. Siega inflicted several injuries on Bitoy, before the latter retreated and ran away. Siega then went inside his house, changed his clothes and surrendered to the authorities.

On the other hand, the prosecution alleged that at about 4:30 p.m. of October 16, 2005, Bitoy and his friend Alingasa were walking along the feeder road of Sitio Lubong Sapa on their way home to Sitio Jagna. As they were nearing the Purok Center of Sitio Lubong Sapa, just near the house of Siega, the latter armed with a bolo suddenly approached them and asked "kinsay mopalag" or who would dare challenge me. Bitoy replied that no one would dare challenge him. Seemingly satisfied with Bitoy's response, Siega walked towards the direction of the Purok Center; while Bitoy and Alingasa continued to walk towards Sitio Jagna. Bitoy then intimated to Alingasa that it was a good thing that he had nothing on Siega then. Suddenly, Siega turned back, asked Bitoy whether he was the tough guy of Jagna, and stabbed the latter with a long bolo on the left part of his chest. Surprised by the incident, Bitoy tried to flee but Siega ran after him and continued his assault. Alingasa saw Siega continue to hack Bitoy even if the latter was already lying on the ground. Alingasa ran away and proceeded to the direction of Sitio Jagna. He hurried to the wife of Bitoy and told her the fate that befell her husband. Due to the severity of his wounds, Bitoy died that afternoon.

RTC ruled against the accused. CA affirmed. Hence, this appeal.

**ISSUE:**

Whether the CA erred in upholding Siega's conviction for the crime of Murder. (NO)

**RULING:**

An accused, who pleads self-defense, has the burden of proving, with clear and convincing evidence, that the killing was attended by the following circumstances: (1) **unlawful aggression** on the part of the victim; (2) **reasonable necessity of the means employed** to prevent or repel such aggression; and (3) **lack of sufficient provocation** on the part of the person resorting to self-defense. Of these three, unlawful aggression is most important and indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person." Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.

In this case, records disclose that Siega failed to establish unlawful aggression on the part of the victim, Bitoy. Thus, his claim of self-defense must necessarily fail.

In his version of the incident, Siega claimed that Bitoy came rushing to his house armed with a bolo. When Bitoy attempted to draw his weapon, Siega picked up a sharp pointed bolo and stabbed Bitoy several times. However, as duly pointed out by the RTC and CA, Siega's account of events is belied by the straightforward and credible testimony of Alingasa that **Bitoy did not carry any weapon at that time.** This was corroborated by the fact that no weapon was recovered from the victim.

Moreover, even if the Court were to believe Siega's version of the events, still, no unlawful aggression can be deduced, because there was clearly **no imminent danger on the person of Siega** as would justify his killing of Bitoy. Unlawful aggression is predicated on an actual, sudden, unexpected or imminent danger — not merely a threatening or intimidating action. **Bitoy's supposed act of holding a weapon from his waist does not pose any actual, sudden or imminent danger to the life and limb of Siega**. In fact, in ***People v. Escarlos,*** the Court ruled that the mere drawing of a knife by the victim does not constitute unlawful aggression as the peril sought to be avoided by the accused is uncertain, premature and speculative:

On the matter of treachery as a qualifying circumstance of Murder, the courts a quo correctly ruled that treachery attended the killing of Bitoy.

The essence of treachery is the sudden and unexpected attack against an unarmed and unsuspecting victim, who has no chance of defending himself. Here, a credible eyewitness testified that Siega, armed with a bolo, stabbed Bitoy on the chest several times, while the latter was merely conversing with Alingasa. That the attack was frontal does not rule out the existence of treachery; because it was so sudden and unexpected that Bitoy, unarmed and had no chance to defend himself, was felled down by Siega's repeated hacking blows.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. DANILO JAPAG and ALVIN LIPORADA, accused, DANILO JAPAG, accused-appellant.**

G.R. No. 223155, July 23, 2018, FIRST DIVISION, DEL CASTILLO, J

*The most important requisite of self-defense is unlawful aggression which is the condition sine qua non for upholding self-defense as a justifying circumstance.*

*Unlawful aggression "contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of [a] weapon.*

*After a thorough review of the records, The Court finds that appellant failed to discharge the burden of proving that the unlawful aggression had originated from the victim.*

*First, it is undisputed that appellant boarded a motorcycle and fled the situs criminis immediately after stabbing the victim at the back. "Flight is a veritable badge of guilt and negates the plea of self-defense.*

*Second, the location, nature and seriousness of the wound sustained by the victim is inconsistent with self-defense; rather, these factors indicate a determined effort to kill.*

**FACTS:**

On March 16, 2009, at around 3:00 p.m., Ramil Parrocho (Ramil), the victim's twin brother, was at a sari-sari store in front of Gregorio Catenza National High School when he saw appellant Japag, Liporada, and Macalalag blocking the way of the victim who was then about to the enter the school gate.

Ramil thereafter saw Liporada punch his brother at the left cheek while being held in place by Macalalag. Suddenly, appellant, who was positioned behind the victim, drew a bladed weapon from his pocket and stabbed the latter at the back. Upon receiving the stabbing blow, the victim fell on the ground. The attack on the victim was so unexpected that Ramil and even the security guards at the school outposts were not able to come to his rescue. Appellant, Liporada and Macalalag immediately fled towards the direction of the highway. The victim was rushed to the EVRMC Hospital in Tacloban City, but he was pronounced dead on arrival.

Appellant raised the justifying circumstance of self-defense in order to exculpate himself from criminal liability. RTC found appellant guilty beyond reasonable doubt of the crime of murder. CA affirmed the assailed RTC Decision.

**ISSUE: 1. Whether appellant was able to sufficiently prove the justifying circumstance of self-defense (NO)**

**2.Whether the victim's stabbing was attended by treachery (YES)**

**RULING:**

**1.** It is settled that when an accused invokes self-defense, the burden of proof is shifted from the prosecution to the defense, and it becomes incumbent upon the accused to prove, by clear and convincing evidence, the existence of the following requisites of self-defense: first, unlawful aggression on the part of the victim; second, reasonable necessity of the means employed to prevent or repel such aggression; and third, lack of sufficient provocation on the part of the person defending himself.

The most important requisite of self-defense is unlawful aggression which is the condition sine qua non for upholding self-defense as a justifying circumstance. Unlawful aggression "contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of [a] weapon."

After a thorough review of the records, The Court finds that appellant failed to discharge the burden of proving that the unlawful aggression had originated from the victim.

**First**, it is undisputed that appellant boarded a motorcycle and fled the situs criminis immediately after stabbing the victim at the back. "Flight is a veritable badge of guilt and negates the plea of self-defense.

**Second**, the location, nature and seriousness of the wound sustained by the victim is inconsistent with self-defense; rather, these factors indicate a determined effort to kill.

**Third**, both the RTC and the CA found the testimony of Ramil (the victim's twin brother) to be clear and convincing in its vital points, i.e., on his detailed narration of the stabbing incident and his positive identification of appellant as one of his brother's assailants.

**2.** There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make.

In this case, the records clearly show that the victim's killing was attended by treachery, considering that: **(a)** the victim was fatally stabbed by appellant from behind immediately after receiving a punch in the face from Liporada; **(b)** the victim was held in place by Macalalag when the stabbing blow was delivered by appellant; and **(c)** the attack was so sudden and unexpected that the victim's brother and even the nearby security guards were unable to prevent it.

The totality of these circumstances clearly shows that the means of execution of the attack gave the victim no opportunity to defend himself or to retaliate, and said means of execution was deliberately adopted by appellant.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- RODOLFO OLARBE y BALIHANGO, *Accused-Appellant*.**
G.R. No. 227421, THIRD DIVISION, July 23, 2018, BERSAMIN,J.

*For a person to exonerate himself on the ground of self-defense under the Revised Penal Code, he must establish the following facts: (1)* ***unlawful aggression on the part of the victim;*** *(2)* ***reasonable necessity of the means employed to prevent or repel such aggression;*** *and (3)* ***lack of sufficient provocation on the part of the person resorting to self-defense.*** *Olarbe also invoked the justifying circumstance of defense of a stranger. In both of these circumstances,* ***the indispensable requisite for either is unlawful aggression*** *mounted by the victim against the accused or the stranger.*

*Contrary to the ruling of the trial court and appellate court, all elements of self-defense is present in this case. There is unlawful aggression on the part of the victim as proven by the following facts. The Supreme Court finds that Arca committed continuous and persistent unlawful aggression against Olarbe and his common-law spouse that lasted* ***from the moment he forcibly barged into the house and brandished his gun until he assaulted Olarbe's common-law spouse*** *with a bolo. Reasonable necessity of the means employed is still present even if Arca sustained several wounds. To rule out reasonable necessity on the basis of the number of wounds would be unfair to Olarbe since the rule of reasonable necessity is* ***not ironclad in its application but is dependent upon the established circumstances of each particular case. The absence of any showing that Olarbe had provoked Arca, or that he had been induced by revenge, resentment, or other evil motive*** *had been equally proven by the defense.*

**FACTS:**

On the night of the incident, Rodolfo Olarbe (Olarbe) and his wife were sleeping in their house in Luisiana, Laguna. Suddenly, they were awakened by the sound of a gunshot and shouting from Romeo Arca (Arca) who appeared to be drunk. **He was holding a rifle** when he entered the house and aimed the gun at them. **Olarbe immediately grabbed the gun from him** and they grappled for its possession. Olarbe managed to wrest the gun away from Arca. In the midst of the confusion, **Olarbe was able to shoot Arca causing the latter to lean sidewards.** Nevertheless, **Arca managed to get his bolo from his waist and continued to attack them.** Olarbe grabbed the bolo and **successfully acquired the bolo** by struggling for its possession. **He instantly hacked Arca causing his death.** After the incident, accused voluntarily surrendered to the police authorities.

Olarbe was charged with the crime of murder. **He raised the justifying circumstances of self-defense and defense of stranger** but these pleas were denied by the RTC of Laguna which convicted him guilty of the crime charged. It held that the **initial unlawful aggression by Arca had ceased** when Olarbe shot him in the head and caused him to lean sideward. It disbelieved Olarbe's insistence that Arca had still been able to grab his bolo and assault Olarbe's common-law spouse. The Court of

Appeals affirmed the conviction of Olarbe finding that the factual findings of the RTC were consistent with the evidence on record and accorded with human experience.

**ISSUE:**

Whether or not it was erroneous to reject Olarbe's pleas of self-defense and defense of stranger (YES)

**RULING:**

For a person to exonerate himself on the ground of self-defense under the Revised Penal Code, he must establish the following facts: (1) **unlawful aggression on the part of the victim;** (2) **reasonable necessity of the means employed to prevent or repel such aggression;** and (3) **lack of sufficient provocation on the part of the person resorting to self-defense.** Olarbe also invoked the justifying circumstance of defense of a stranger. In both of these circumstances, **the indispensable requisite for either is unlawful aggression** mounted by the victim against the accused or the stranger. Without such unlawful aggression, the accused is not entitled to the justifying circumstance.

Contrary to the findings of the trial court and the appellate court, the rejection of Olarbe's plea was **unwarranted**. The RTC and the CA's decision were all based on speculation. First, there was **no credible showing that the shot to the head had rendered Arca too weak to draw the bolo and to carry on with his aggression** in the manner described by Olarba. Second, the State did not demonstrate that **the shot from the gun fired at close range sufficed to disable Arca from further attacking with his bolo.** Third, **nothing in the record indicated Arca's physical condition at the time of the incident.** And finally, **to rule out any further aggression by Arca with his bolo after the shot in the head** considering the fact that Arca would have enough adrenaline to continue with the assault **is also speculative**. The Supreme Court finds that Arca committed continuous and persistent unlawful aggression against Olarbe and his common-law spouse that lasted **from the moment he forcibly barged into the house and brandished his gun until he assaulted Olarbe's common-law spouse** with a bolo. Since the assault was not merely a threatening fact, **Olarbe was justified in believing that he and his common-law spouse's lives to be in extreme danger from Arca.**

Going to the other requisites of self-defense, Olarbe was able to prove both. Reasonable necessity of the means employed is still present even if Arca sustained several wounds however, these wounds were only lacerations whose nature and extent were not explained. The lack of explanations has denied the Court the means to fairly adjudge the reasonableness of the means adopted by Olarbe to repel the unlawful aggression. **To rule out reasonable necessity on the basis of the number of wounds would be unfair to Olarbe since the rule of reasonable necessity is not ironclad in its application but is dependent upon the established circumstances of each particular case.The absence of any showing that Olarbe had provoked Arca, or that he had been induced by revenge, resentment, or other evil motive had been equally proven by the defense.**

## b. Exempting circumstances

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ROLAND MIRAÑA Y ALCARAZ, *Accused-Appellant*.**
G.R. No. 219113, THIRD DIVISION, April 25, 2018, MARTIRES, *J.*

*For the defense of insanity to prosper, it must be proven that the accused was completely deprived of intelligence, which must relate to the time immediately preceding or simultaneous to the commission of the offense with which he is charged.*

*Taken against the standard of clear and convincing evidence, the proof proffered by the defense fails to pass muster. Imelda and Mercy testified that accused-appellant believed that the victim was a witch and that in the days prior to the incident, accused-appellant was behaving oddly, such as smiling to himself and calling a chicken late at night. Their testimonies, however, fail to shed light on accused-appellant's mental condition immediately before, during, and immediately after he committed the crime. Moreover, those mentioned unusual behaviors are not proof of a complete absence of intelligence, because not every aberration of the mind or mental deficiency constitutes insanity.*

*In addition, Dr. Escuadera testified she conducted a psychiatric interview with accused-appellant on 21 July 2009, and that her findings, showed she deemed accused-appellant fit for trial; and that accused appellant had a history of mental illness, which she identified as schizophrenia.More importantly, Dr. Escuadera's testimony on accused-appellant's previous mental illness does not specifically pertain to the time of the commission of the crime. Even her medical report on accused-appellant's mental status, for the purpose of determining his fitness to stand trial, is bereft of any indication that he was completely deprived of intelligence or discernment at the time he mortally hacked the victim.*

*Accused-appellant's actuations immediately after the incident also negate a complete absence of intelligence or discernment when he killed the victim. As testified to by PO3 Corono, accused-appellant approached the police officers when they arrived at the crime scene, told them that he was responsible for hacking the victim, pointed to the bolo he used, and indicated that he had already washed the weapon.The foresight to wash the bolo after killing the victim and, thereafter, the consciousness to decide to confess to the authorities what he had done upon their arrival, suggest that accused-appellant was capable of discernment during the time of the incident.*

**FACTS:**

Dominga Agnas Vda. de Globo (*the victim*) was a 73-year-old widow lived on her own but prior to her death, she frequently slept at the house of Alberto Miraña (*Alberto*) because accused-appellant had been harassing her, such as by throwing stones at her. The victim believed that accused-appellant was threatening her because she once reprimanded him after she caught him stealing fruits from her property.

Alberto once found the victim in his house trembling while praying. She told Alberto that she was scared because accused-appellant had chased her with a bolo. Alberto and her brother both advised her not to go home yet and report the incident to the barangay but she refused. She then went home to await the call of her son, who was working abroad.

Between 6 o'clock to 6:30 in the morning of 17 June 2008, Armando Orce (*Armando*), the victim's neighbor, was at the coconut plantation near his house when he heard a woman cry out followed by

a loud cry of a man. As he came near his house, he saw the victim lying on her side on the ground. He also saw accused-appellant's father crying at the back of their house facing the accused-appellant.

PO3 Bobby Corono (*PO3 Corono*), with two (2) other police officers, responded to a call about the incident. Upon arrival, PO3 Corono saw the body of the victim. Accused-appellant approached PO3 Corono and admitted he was responsible for the victim's death; pointed to the bolo he used to hack the victim which he washed afterwards. PO3 Corono thereafter arrested accused-appellant and brought him to the police station along with the bolo as evidence. When asked by the victim's son what accused-appellant did to his mother, accused-appellant replied that he killed her.

Defense offers that in the morning of the same day, Imelda Miraña (*Imelda*) found out that her son, accused-appellant, had killed the victim. She did not know of any personal enmity between accused-appellant and the victim prior to the incident. She noticed, however, that her son started exhibiting odd behavior after the latter's nose was bitten by a cousin. He would smile without anyone in front of him; he would call a chicken late at night; and would keep on saying to himself that the victim was a witch. After the incident, she observed that accused-appellant just sat inside their house, staring blankly. The same was noticed by the accused-appellant's sister; that her brother kept smiling and could not sleep, and kept on saying that the victim was a witch who once was in their backyard.

During trial, accused-appellant claimed not to know or recall the events surrounding the incident, the identity of the victim, and his confinement and treatment at the mental hospital. The defense was insanity.

RTC ruled that accused-appellant was not able to prove his defense of insanity, holding that "while the purported behavior of accused-appellant would suggest an abnormal mental condition, it cannot however be equated with a total deprivation of will or an absence of the power to discern, to accept insanity." It thereafter appreciated the aggravating circumstance of abuse of superior strength to qualify the crime to murder, in consideration of the fact that the victim was a 73-year-old unarmed woman as against a male assailant in his early twenties.

CA agreed with the RTC that accused-appellant failed to overcome the presumption of sanity; and his bizarre acts prior to the incident cannot be considered insanity for the purpose of exonerating him because not every aberration of the mind constitutes insanity. CA affirmed RTC's decision with modification as to the award of damages.

**ISSUE:**

Whether or not insanity could be appreciated in accused-appellant's favor in order to exculpate him from criminal liability. (NO)

**RULING:**

For the defense of insanity to prosper, it must be proven that the accused was completely deprived of intelligence, which must relate to the time immediately preceding or simultaneous to the commission of the offense with which he is charged.

Since the state of a person's mind can only be judged by his behavior, establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted

with the accused, or who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused, or who is qualified as an expert, such as a psychiatrist.

Taken against the standard of clear and convincing evidence, the proof proffered by the defense fails to pass muster. Imelda and Mercy testified that accused-appellant believed that the victim was a witch and that in the days prior to the incident, accused-appellant was behaving oddly, such as smiling to himself and calling a chicken late at night. Their testimonies, however, fail to shed light on accused-appellant's mental condition immediately before, during, and immediately after he committed the crime. Moreover, those mentioned unusual behaviors are not proof of a complete absence of intelligence, because not every aberration of the mind or mental deficiency constitutes insanity.

In addition, Dr. Escuadera testified she conducted a psychiatric interview with accused-appellant on 21 July 2009, and that her findings, showed she deemed accused-appellant fit for trial; and that accused appellant had a history of mental illness, which she identified as schizophrenia.More importantly, Dr. Escuadera's testimony on accused-appellant's previous mental illness does not specifically pertain to the time of the commission of the crime. Even her medical report on accused-appellant's mental status, for the purpose of determining his fitness to stand trial, is bereft of any indication that he was completely deprived of intelligence or discernment at the time he mortally hacked the victim.

Vague references to his history of mental illness and subsequent diagnosis of schizophrenia do not satisfy the quantum of proof required to exempt accused-appellant from criminal liability, especially since the defense failed to establish that accused-appellant's mental ailments, if such was the case, related to the time of the commission of the crime.

Accused-appellant's actuations immediately after the incident also negate a complete absence of intelligence or discernment when he killed the victim. As testified to by PO3 Corono, accused-appellant approached the police officers when they arrived at the crime scene, told them that he was responsible for hacking the victim, pointed to the bolo he used, and indicated that he had already washed the weapon.The foresight to wash the bolo after killing the victim and, thereafter, the consciousness to decide to confess to the authorities what he had done upon their arrival, suggest that accused-appellant was capable of discernment during the time of the incident.

From the foregoing, it is clear that the defense failed to prove the accused-appellant's insanity hence his conviction must be upheld.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus-. DIONESIO ROY y PERALTA, *accused-appellant*.**
G.R. No. 225604, FIRST DVISION, July 23, 2018, DEL CASTILLO, *J.*

***Paragraph 1, Article 12*** *of the Revised Penal Code provides that an imbecile or insane person is exempt from criminal liability, unless he acted during a lucid interval.* ***"It requires a complete deprivation of rationality in committing the act, i.e., that the accused be deprived of reason, that there be no consciousness of responsibility for his acts, or that there be complete absence of the power to discern."*** *The law presumes that every person is sane. Anyone who pleads the exempting circumstance of insanity bears the burden to prove that he was completely deprived of reason when he committed the*

*crime charged. Note that the* ***proof of an accused's insanity must "relate to the time immediately preceding or simultaneous with the commission of the offense with which he is charged."***

*Here, the defense failed to overcome the presumption of sanity. As correctly observed by the CA, Dr. Domingo's report could not positively and certainly conclude that appellant's state of imbecility afflicted him at the time he raped AAA. Furthermore, appellant's actions at the moment of the rape reveal that appellant was aware of what he was committing, and that what he was doing was wrong. Appellant, as convincingly testified to by AAA dragged AAA into a secluded spot, thereby isolating himself and AAA to facilitate the commission of his lust. When AAA tried to call for help, appellant covered her mouth, ensuring that they would not be disturbed. Such precautions make it difficult to believe that appellant was in such a state that he could not discern what was right from wrong, or that he was completely deprived of intelligence or will.*

**FACTS**

AAA testified that 'around 4 p.m.' of 30 June 2010 she was strolling in Intramuros when somebody dragged her into a break or opening in a wall. She recognized her assailant as the appellant, whom she calls Roy and who lived a block away from her family's house. After dragging her into the opening, appellant allegedly removed her clothes. AAA shouted but appellant covered her mouth and removed his own shorts and briefs. Then he pulled her hair and made her sit on his lap, facing him. With her legs spread apart, appellant tried to insert his penis into her vagina. Appellant also held her by the waist and kissed her lips. There was no full penetration; she testified that he only 'dipped' his penis into her organ. Appellant then sensed that someone saw them and he stood up and put on his clothes. A security guard then arrived and handcuffed the appellant.

AAA's mother, BBB, presented a Certificate of Live Birth showing that her daughter was born on 13 May 2001.

The defense, on the other hand, prayed for the RTC to refer appellant for psychiatric examination to determine his mental status and level of comprehension which the RTC granted. Subsequently, Dr. Grace Domingo from the National Center for Mental Health testified on the appellant's mental status. She stated that appellant had undergone a battery of tests and examinations, and concluded that the results showed appellant to be suffering from imbecility, or moderate mental retardation. She clarified that while this was irreversible, appellant can be taught. On cross, she testified that the finding of **imbecility only covered the mental status of the appellant at the time he underwent mental evaluation, and not necessarily at the time of the offense, meaning that, at the time of the rape, appellant probably knew what he was doing and the consequences thereof**.

The RTC convicted accused guilty of the crime of Statutory Rape since AAA was only nine years old at the time of the rape incident. The RTC found unavailing appellant's defense of imbecility as there was no clear and competent proof that he had no control over his mental faculties immediately prior to or during the perpetration of the crime. CA affirmed the conviction.

**ISSUE**

Whether or not accused should be exempted from criminal liability due to insanity as he was suffering from moderate mental retardation as bolstered by the medical report. (NO)

**RULING**

The prosecution satisfactorily established the elements of the crime of statutory rape, namely: "(1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse." As the law presumes absence of free consent when the victim is below the age of 12, it is not necessary to prove force, intimidation or consent as they are not elements of statutory rape. It was established by the evidence on record, specifically AAA's Birth Certificate, that AAA was only nine years old at the time she was raped by her assailant. We, thus, rule that appellant's claim of absence of evidence of force and intimidation does not militate against the finding of rape.

The Court, further, cannot appreciate the exempting circumstance of insanity in favor of appellant.

**Paragraph 1, Article 12** of the Revised Penal Code provides that an imbecile or insane person is exempt from criminal liability, unless he acted during a lucid interval. **"It requires a complete deprivation of rationality in committing the act, i.e., that the accused be deprived of reason, that there be no consciousness of responsibility for his acts, or that there be complete absence of the power to discern."**The law presumes that every person is sane. Anyone who pleads the exempting circumstance of insanity bears the burden to prove that he was completely deprived of reason when he committed the crime charged. Note that the **proof of an accused's insanity must "relate to the time immediately preceding or simultaneous with the commission of the offense with which he is charged."**

Here, the defense failed to overcome the presumption of sanity. As correctly observed by the CA, Dr. Domingo's report could not positively and certainly conclude that appellant's state of imbecility afflicted him at the time he raped AAA. Moreover, we agree with the CA's observation, affirming the findings of the trial court, that the actions of appellant negated complete destruction of intelligence at the time the rape was committed.

Furthermore, appellant's actions at the moment of the rape reveal that appellant was aware of what he was committing, and that what he was doing was wrong. Appellant, as convincingly testified to by AAA dragged AAA into a secluded spot, thereby isolating himself and AAA to facilitate the commission of his lust. When AAA tried to call for help, appellant covered her mouth, ensuring that they would not be disturbed. Such precautions make it difficult to believe that appellant was in such a state that he could not discern what was right from wrong, or that he was completely deprived of intelligence or will.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* JESSIE HALOC Y CODON, *Accused-Appellant*.** G.R. No. 227312, FIRST DIVISION, September 5, 2018, BERSAMIN, *J.*

*Insanity is one of the recognized exempting circumstances under Article 12 of the Revised Penal Code. In his attempt to escape criminal responsibility, the accused-appellant submits that he was entitled to the benefit of the exempting circumstance of insanity. He alleges that he was insane at the time of his lethal assaults, and, therefore, he should not be criminally responsible for the death and injuries he had inflicted.*

*Strictly speaking, a person acting under any of the exempting circumstances commits a crime but cannot be held criminally liable therefor. The exemption from punishment stems from the complete absence of intelligence or free will in performing the act. The defense of insanity is thus in the nature of a confession or avoidance. The accused who asserts it is, in effect, admitting to the commission of the crime. Hence, the burden of proof shifts to him, and his side must then prove his insanity with clear and convincing evidence.*

*The defense of insanity rests on the test of cognition on the part of the accused. Insanity, to be exempting, requires the complete deprivation of intelligence, not only of the will, in committing the criminal act. Mere abnormality of the mental faculties will not exclude imputability. The accused must be so insane as to be incapable of entertaining a criminal intent. He must be deprived of reason, and must be shown to have acted without the least discernment because there is a complete absence of the power to discern or a total deprivation of freedom of the will. Thus, insanity may be shown by surrounding circumstances fairly throwing light on the subject, such as evidence of the alleged deranged person's general conduct and appearance, his acts and conduct inconsistent with his previous character and habits, his irrational acts and beliefs, and his improvident bargains.*

*Based on the foregoing, the accused-appellant did not establish the exempting circumstance of insanity. His mental condition at the time of the commission of the felonies he was charged with and found guilty of was not shown to be so severe that it had completely deprived him of reason or intelligence when he committed the felonies charged. Based on the records, he had been administered medication to cure his mental illness, but there was no showing that he suffered from complete deprivation of intelligence. On the contrary, the medical professionals presented during the trial conceded that he had been treated only to control his mental condition.*

*There was also no showing that the accused-appellant's actions manifested his insanity immediately after the hacking incidents. His own sister, Araceli Haloc-Ayo, declared that he had recognized her and had surrendered the bolo to her after his deadly assault. Clearly, he had not been totally deprived of the capacity of cognition.*

**FACTS:**

Jessie Haloc y Codon, then fifty-one (51) years old, was apprehended by barangay officials after he hacked Allan de la Cruz, nine (9) years and his brother Arnel, four (4) years old, inside the de la Cruz's yard at Barangay Union, Gubat, Sorsogon on June 22, 2008 at around 12 noon. Arnel died as a result of the hacking blow to his neck, while Allan sustained injuries on his upper arm.

According to the Joint Inquest Memorandum, the accused, who was armed with a 24-inch bolo, went to the dela Cruzes' and attempted to strike the victims' father, Ambrosio who was able to escape. Unfortunately, Ambrosio's five (5) sons were following him. Jessie took his ire on Ambrosio's children, hacking Allan on the arm and taking Arnel and cutting his neck, severing the jugular veins and nearly decapitating his head resulting to Arnel's immediate death.

The accused-appellant, assisted by the Public Attorney's Office (PAO) did not submit any counter-affidavit. On June 22, 2008, an Information was filed charging accused-appellant of Attempted Murder for attacking, assaulting and hacking one ALLAN DE LA CRUZ, a 9 year old minor, hitting the victim on his right arm, thus accused commences the commission of Murder directly by overt acts

but was not able to perform all the acts of execution which would have produce the crime of Murder by reason of causes or accident other than his own spontaneous desistance, that is, the said Allan de la Cruz was brought to a hospital and was given medical assistance which prevented his death.

Another Information was filed against accused-appellant for Murder of ARNEL DE LA CRUZ, a 4 year old minor, inflicting upon him mortal wounds which caused his death.

On September 3, 2008, the original date for the accused's arraignment, the PAO manifested that he could not effectively interview the accused as he seemed to be mentally unfit. The PAO asked that the accused be first subjected to psychiatric evaluation which the trial court granted. On July 7, 2010, the Head of the Department of Psychiatry of Bicol Medical Center, Cadlan, Pili, Camarines Sur submitted a report stating that the accused is already fit for trial.

On July 22, 2010, the accused was arraigned and he pleaded "not guilty" to both charges. Invoking insanity, the (order of) trial was reversed and the accused-appellant was first to present evidence.

Araceli Haloc-Ayo (Araceli) older sister of the accused testified that the victims Arnel and Allan were the accused's neighbours. The accused got angry at them since as they were noisy and he could not sleep. Although she was not present during the actual hacking incident, she went near the accused right after and found him standing by the trail. He recognized her and voluntarily gave the bolo to her. Araceli said that she noticed that her brother's eyes were "blazing" but she just came near him to prevent his brother from inflicting further injury. She said that her brother was acting differently and was very fierce. Days before the incident, Araceli visited the accused in his place and she learned that he has been drinking alcohol since he could not sleep, thinking about his child who was about to get married. Araceli also admitted that prior to the incident, she brought her brother to the hospital where he was treated. He got well and was not violent. He also recognized members of his family.

Suson Haloc (Susan), the accused's wife, testified that she has been married with him for thirty (30) years. She claimed that her husband was a kind person. In 2003, Jessie was brought to the Mental Hospital in Cadlan because of a mental disorder. He was cured with the medicines given him. In 2008, her husband's mental disorder recurred as he was drinking liquor again. In the last week of April 2008, the accused was brought to a certain Dr. Gregorio who prescribed four (4) tablets to him which made her husband well. After a month, her husband again suffered a mental disorder. She noticed that his eyes were "glazing", he could not work in the farm normally and he could not recognize her. Thus she left the house two (2) days before the incident and went to Juban, Sorsogon to her siblings.

Dr. Imelda Escuadra (Dr. Escuadra), a psychiatrist, testified that the accused was brought to Don Susano Memorial Mental Hospital in Cadlan on August 22, 2003 and on July 16, 2007. Although she was not the one who treated the accused, she confirmed that the accused was a patient of the hospital based on their records. Dr. Benedicto Aguirre, now deceased, was the one who personally treated the accused.

RTC rejected the defense of insanity, and convicted the accused-appellant as charged. It opined that there was no evidence to show that he had been totally deprived of reason; that, therefore, he had presented no competent witness to establish his insanity; and that his witnesses had even declared that he had been treated in 2003 and on April 18, 2008, which, when taken together with the presumption of law in favor of sanity, doomed his defense of insanity.

CA affirmed the convictions, observing that even Dr. Imelda Escuadra, the psychiatrist of the Don Susano Memorial Mental Hospital in Cadlan, Pili, Camarines Sur, had testified that the mental condition of the accused-appellant had improved; that during the last time that he had consulted with her, he had no longer shown psychotic signs and symptoms; that his mental condition could not be a mitigating circumstance because no evidence had been presented showing that his mental condition had diminished his will power

**ISSUE:**

Whether the defense of insanity should have been appreciated as an exempting circumstance. (YES)

**RULING:**

There is no denying that the crimes committed by the accused- appellant were murder and attempted murder. Allan dela Cruz, the victim in the attempted murder, declared that the accused-appellant had stormed into their house in order to hack Ambrosio, the victims' father, but Ambrosio had been able to escape the assault by running away. His escape prompted his five sons, including Arnel and Allan, to run away after him. The accused-appellant pursued them, and he first hacked the 9-years old Allan, hitting him in the arm, and then seized the 4-year old Arnel, hacking him in the neck causing his instantaneous death.

The authorship of the crimes by the accused-appellant became undisputed because he himself admitted assaulting the victims. Also undisputed were that Arnel had died from the hacking assault by the accused-appellant, as evidenced by his death certificate, and that both victims were minors below 10 years old, as stipulated during the pre-trial.

Insanity is one of the recognized exempting circumstances under Article 12 of the *Revised Penal Code.* In his attempt to escape criminal responsibility, the accused-appellant submits that he was entitled to the benefit of the exempting circumstance of insanity. He alleges that he was insane at the time of his lethal assaults, and, therefore, he should not be criminally responsible for the death and injuries he had inflicted.

Strictly speaking, a person acting under any of the exempting circumstances commits a crime but cannot be held criminally liable therefor. The exemption from punishment stems from the complete absence of intelligence or free will in performing the act. The defense of insanity is thus in the nature of a confession or avoidance. The accused who asserts it is, in effect, admitting to the commission of the crime. Hence, the burden of proof shifts to him, and his side must then prove his insanity with clear and convincing evidence.

The defense of insanity rests on the test of cognition on the part of the accused. Insanity, to be exempting, requires the complete deprivation of intelligence, not only of the will, in committing the criminal act. Mere abnormality of the mental faculties will not exclude imputability. The accused must be so insane as to be incapable of entertaining a criminal intent. He must be deprived of reason, and must be shown to have acted without the least discernment because there is a complete absence of the power to discern or a total deprivation of freedom of the will. Thus, insanity may be shown by surrounding circumstances fairly throwing light on the subject, such as evidence of the alleged deranged person's general conduct and appearance, his acts and conduct inconsistent with his previous character and habits, his irrational acts and beliefs, and his improvident bargains.

Based on the foregoing, the accused-appellant did not establish the exempting circumstance of insanity. His mental condition at the time of the commission of the felonies he was charged with and found guilty of was not shown to be so severe that it had completely deprived him of reason or intelligence when he committed the felonies charged. Based on the records, he had been administered medication to cure his mental illness, but there was no showing that he suffered from complete deprivation of intelligence. On the contrary, the medical professionals presented during the trial conceded that he had been treated only to control his mental condition.

There was also no showing that the accused-appellant's actions manifested his insanity immediately after the hacking incidents. His own sister, Araceli Haloc-Ayo, declared that he had recognized her and had surrendered the bolo to her after his deadly assault. Clearly, he had not been totally deprived of the capacity of cognition.

The accused-appellant was subjected to medical tests after the hacking incidents. According to Dr. Imelda Escuadra, the psychiatrist of the Don Susano Memorial Mental Hospital in Cadlan, Pili, Camarines Sur, the medications previously prescribed to him were medicines administered to a patient suffering psychosis. She did not categorically state, however, that he had been psychotic. Nonetheless, even if we were to deduce from her testimony that he had been suffering some form of psychosis, there was still no testimony to the effect that such psychosis had totally deprived him of intelligence or reason.

In view of all the foregoing, the accused-appellant's actions and actuations prior to, simultaneously with and in the aftermath of the lethal assaults did not support his defense of insanity. This, coupled with the presumption of law in favor of sanity, now warrants the affirmance of his convictions, for he had not been legally insane when he committed the felonies. Neither should his mental condition be considered as a mitigating circumstance. As we have noted, the Defense presented no evidence to show that his condition had diminished the exercise of his will power.

SC affirms the decision of CA finding accused Jessie Haloc y Codon guilty beyond reasonable doubt of the crimes of Attempted Murder and Murder without accepting insanity as an exempting nor mitigating circumstance.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- CARPIO MARZAN y LUTAN, *Accused-Appellant.***

G.R. No. 207397, FIRST DIVISION, September 24, 2018, Del Castillo, *J.*

*It is settled that the moral and legal presumption is always in favor of soundness of mind; that freedom and intelligence constitute the normal condition of a person. Accused-appellant's abnormal behavior immediately before the stabbing incident and at the time of the incident, while suggestive of an aberrant behavior, cannot be equated with a total deprivation of will or an absence of the power to discern. On the contrary, accused was even sane enough to help his mother stand up after falling on the ground and seated her in front of a house and surrender himself and his bolo to the responding policemen.*

*Two conditions must necessarily occur before treachery or alevosia may be properly appreciated, namely: (l) the employment of means, methods, or manner of execution that would insure the offender's safety from any retaliatory act on the part of the offended party, who has, thus, no opportunity for self-*

*defense or retaliation; and (2) deliberate or conscious choice of means, methods, or manner of execution. Here, as correctly found by the RTC and the CA, both requisites were present. The sudden attack on the victim who was then at home, bedridden, recuperating from sickness, completely unaware of any danger and unable to defend himself constituted treachery because the accused-appellant was ensured that the victim would not be in any position to ward off or evade his blows, or strike back at him.*

*The consideration of any mitigating circumstance in accused-appellant's favor would be superfluous because, although the imposable penalty under Article 248 of the Revised Penal Code is reclusion perpetua to death, the prohibition to impose the death penalty pursuant to Republic Act No. 9346 rendered reclusion perpetua as the only penalty for murder, which penalty, being indivisible, could not be graduated in consideration of any modifying circumstances*

**FACTS:**

The prosecution presented Bernardo, Erlinda Cabiltes (Erlinda), Lolita Rombaoa (Lolita), and Dr. Valentin Lumibao (Dr. Lumibao) who testified as to the guilt of the accused-appellant. It was alleged that Erlinda saw accused-appellant enter the house of her bedridden father, Apolonio, while uttering *"agda kalaban ko"* (I have an enemy). Not long after, Erlinda heard her father screaming *"apay Aping!"* (Why Aping?) and *"uston Aping!"* (enough, Aping!). Thereafter, Erlinda saw accused-appellant emerge from her father's house with a blood-stained shirt holding a bladed weapon dripping with blood. Lolita also saw accused-appellant come out of Apolonio's house holding the same blood-drenched weapon. Bernardo tried to placate accused-appellant but, unfortunately, was struck in the stomach by the latter. Dr. Lumibao declared accused-appellant's cause of death as hypovolemic shock resulting from the stab wounds.

The defense claimed that accused-appellant was insane at the time of the incident. To prove it, the defense presented his wife Isabel Marzan (Isabel) who testified that her husband had behavioral problems and suffering from a mental condition. She said that her husband would often appear to be nervous and *tulala*. As regards the stabbing incident, Isabel recounted that, on that fateful day, she saw her husband going back and forth mumbling something. She, together with her mother-in-law and brother-in-law Eduardo Marzan, tried to calm accused-appellant but the latter suddenly ran towards Apolonio's house while holding a bolo and uttering the words, "*kesa ako ang maunahan nila, unahan ko na sila*". According to Isabel, accused-appellant, after stabbing his brothers Apolonio and Bernardo, just sat down and remained tulala until the police arrived and handcuffed him.

The RTC found accused-appellant, whose conviction the CA affirmed albeit with modification as regards the fact that the RTC failed to consider the mitigating circumstance of voluntary surrender.

**ISSUES:**

1. Whether or not the CA erred in disregarding the accused-appellant's plea of insanity; (NO)
2. Whether or not the CA erred in taking into account the qualifying circumstance of treachery; (NO) and
3. Whether or not the CA erred in failing to appreciate the mitigating circumstance of voluntary surrender. (NO)

**RULING:**

1. It is settled that the moral and legal presumption is always in favor of soundness of mind; that freedom and intelligence constitute the normal condition of a person. Otherwise stated, the

law presumes all acts to be voluntary, and that it is improper to presume that acts were done unconsciously. Therefore, whoever invokes insanity as a defense has the burden of proving its existence. Even assuming that the testimony of the wife is true, accused-appellant's abnormal behavior immediately before the stabbing incident and at the time of the incident, while suggestive of an aberrant behavior, cannot be equated with a total deprivation of will or an absence of the power to discern. On the contrary, accused was even sane enough to help his mother stand up after falling on the ground and seated her in front of a house and surrender himself and his bolo to the responding policemen.

2. Two conditions must necessarily occur before treachery or *alevosia* may be properly appreciated, namely: (l) the employment of means, methods, or manner of execution that would insure the offender's safety from any retaliatory act on the part of the offended party, who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods, or manner of execution. The essence therefore of treachery is the suddenness and unexpectedness of the attack on an unsuspecting victim thereby depriving the latter of any chance to defend himself and thereby ensuring its commission without risk to the aggressor. Here, as correctly found by the RTC and the CA, both requisites were present. The sudden attack on the victim who was then at home, bedridden, recuperating from sickness, completely unaware of any danger and unable to defend himself constituted treachery because the accused-appellant was ensured that the victim would not be in any position to ward off or evade his blows, or strike back at him. Evidently, the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate. There is thus no doubt that treachery attended the killing.
3. Contrary to the ruling of the CA, voluntary surrender should not be appreciated. There was no showing that accused-appellant unconditionally and voluntarily surrendered himself to the authorities either because he acknowledged his guilt or because he wished to save them the trouble and expense in looking for and capturing him. Accused-appellant was just nonchalantly sitting at the curb when the police force responded and handcuffed him. In any case, as the Court ruled in *People v. Lota*, "the consideration of any mitigating circumstance in accused-appellant's favor would be superfluous because, although the imposable penalty under Article 248 of the Revised Penal Code is *reclusion perpetua* to death, the prohibition to impose the death penalty pursuant to Republic Act No. 9346 rendered *reclusion perpetua* as the only penalty for murder, which penalty, being indivisible, could not be graduated in consideration of any modifying circumstances." In fine, there being no modifying circumstance, the proper penalty for the crime of murder is *reclusion perpetua*.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- JUNIE (OR DIONEY) SALVADOR, SR. *Accused-Appellant.***

G.R. No. 223566, THIRD DIVISION, June 27, 2018, MARTIRES, *J.*

*For purposes of exemption from criminal liability, mere behavioral oddities cannot support a finding of insanity unless the totality of such behavior indubitably shows a total absence of reason, discernment, or free will at the time the crime was committed. Insanity exists when there is a complete deprivation of intelligence while committing the act, i.e., when the accused is deprived of reason, he acts without the least discernment because there is a complete absence of power to discern, or there is total deprivation of freedom of the will. The legal teaching consistently maintained in our jurisprudence is that the plea of insanity is in the nature of confession and avoidance. Hence, if the accused is found to be sane at the*

*time he perpetrated the offense, a judgment of conviction is inevitable because he had already admitted that he committed the offense.*

**FACTS:**

Accused-appellant Junie (or Dioney) Salvador, Sr. was charged with five counts of murder. The prosecution asserts that Salvador was responsive when asked about his personal circumstance. The defense, on the other hand, argued that Salvador was given medicine for depression and later for psychosis, accused-appellant also testified that he remembers the victims but does not recall that he killed them.

The RTC held that there was no question that the accused-appellant was the author of the gruesome killings of Miraflor, his partner, and the four children. The only issue was whether accused-appellant was fully aware of the wrongness of his acts to hold him liable. The RTC ruled that Salvador failed to establish by clear and convincing evidence that he was suffering from insanity or loss or absence of reason before he killed his victims. Thus, the lower court found Salvador guilty, which the Court of Appeals affirmed this decision and modified only the award of damages.

**ISSUE:**

Whether or not accused-appellant, at the time of the commission of the offenses, was insane, and, thus, is exempted from criminal liability. (NO)

**RULING:**

The Supreme Court ruled that the appeal is without merit and found Salvador guilty beyond reasonable doubt as accused-appellant failed to prove his defense of insanity.

Jurisprudence dictates that every individual is presumed to have acted with a complete grasp of one's mental faculties. It is improper to assume the contrary, i.e., that acts were done unconsciously, for the moral and legal presumption is that every person is presumed to be of sound mind, or that freedom and intelligence constitute the normal condition of a person. Thus, the presumption under Article (Art.) 800 of the Civil Code is that everyone is sane. On the one hand, insanity as an exempting circumstance is provided for in Art. 12, paragraph (par.) 1 of the Revised Penal Code.

He who invokes insanity as a defense has the burden of proving its existence; thus, for Salvador's defense of insanity to prosper, two (2) elements must concur: (1) that defendant's insanity constitutes a complete deprivation of intelligence, reason, or discernment; and (2) that such insanity existed at the time of, or immediately preceding, the commission of the crime.

Notably, it cannot be ascertained even with Dr. Villanueva's testimony that accused-appellant's disorder existed at the time of or immediately preceding the commission of the crime. Villanueva cannot state for sure that when accused-appellant committed the crimes he was suffering from any mental illness. It is even significant that Dr. Villanueva admitted it was possible that accused-appellant's present condition was triggered by the massacre that he committed and not because he already had the disorder at the time he killed his victims.

The Court held that an inquiry into the mental state of an accused should relate to the period immediately before or at the very moment the felony is committed. Thus, the diagnosis on Salvador

long after the 11 February 2011 incident, even if this was testified to by a doctor, may not be relied upon to prove accused-appellant's mental condition at the time of his commission of the offenses.

Furthermore, accused-appellant's testimony did not help to fortify his defense of insanity. While accused-appellant denied having any memory of what transpired on 11 February 2011, and claimed that he was merely informed of what had happened that day, he admitted nonetheless that he knew who his victims were, and that it was because of the pain that he felt whenever he remembered what happened that made him intentionally erase the incident from his mind.

For purposes of exemption from criminal liability, mere behavioral oddities cannot support a finding of insanity unless the totality of such behavior indubitably shows a total absence of reason, discernment, or free will at the time the crime was committed. Insanity exists when there is a complete deprivation of intelligence while committing the act, i.e., when the accused is deprived of reason, he acts without the least discernment because there is a complete absence of power to discern, or there is total deprivation of freedom of the will. The legal teaching consistently maintained in our jurisprudence is that the plea of insanity is in the nature of confession and avoidance. Hence, if the accused is found to be sane at the time he perpetrated the offense, a judgment of conviction is inevitable because he had already admitted that he committed the offense.

**c. Mitigating circumstances**

**d. Aggravating circumstances**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- GENERALDO M. CONDINO, *Accused-Appellant.***

G.R. No. 219591, FIRST DIVISION, February 19, 2018, DEL CASTILLO, *J.*

*There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make. In this case, the attack was attended by treachery, considering that: a) the means of execution of the attack gave the victim no opportunity to defend himself or to retaliate; and b) said means of execution was deliberately adopted by appellant.*

**FACTS:**

Appellant was charged with the crime of murder. According to the prosecution, appellant appeared before the Lupon Tagapamayapa at the Barangay Hall of Barangay Lanao, Daanbantayan, Cebu, in a hearing for the alleged destruction of a plastic chair owned by the barangay. Also present during the hearing was the victim, Isabelo D. Arrabis (Arrabis), who was then the first councilor of the barangay. After the hearing, the victim, together with other barangay officials went out of the hall and sat down on a nearby bamboo bench for a chat. While they were talking, appellant, who was just outside the gate of the Barangay Hall, calmly walked toward the group, and with his left hand, grabbed the victim's neck from behind and stabbed the latter three to four times using a yellowish pointed metal, hitting a portion just below the victim's left breast. The victim was taken to the Daanbantayan District Hospital but he was pronounced dead on arrival. On the other hand, the defense presented appellant as its lone witness who claimed self-defense.

The RTC found appellant guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code. The RTC gave full faith and credence to the testimonies of the prosecution's witnesses who testified clearly, spontaneously and in a straightforward manner that appellant perpetrated the crime against the victim. It also noted that the victim's killing was attended by the qualifying circumstances of treachery, since the victim was given no opportunity to defend himself with the attack having been sudden and unsuspected, and evident premeditation, which was manifested by appellant's act of bringing a pointed metal in attending the hearing. The CA, in turn, affirmed the factual findings of the RTC. The CA rejected appellant's claim of self-defense. It found that appellant was unable to discharge his burden of proving unlawful aggression, as his "version of the events was uncorroborated, and his testimony was found to be less credible by the RTC. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself." In addition, the CA held that the prosecution was able to establish the elements of murder beyond reasonable doubt.

Aggrieved, appellant filed the present appeal.

**ISSUES:**

1. Whether the prosecution was able to prove his guilt beyond reasonable doubt, considering that "the testimonies of the prosecution witnesses were replete with inconsistencies and contradictions in material points directly going to their perception and recollection of the stabbing incident." (YES)
2. Whether the victim's stabbing was attended by treachery. (YES)

**RULING:**

In resolving issues involving the credibility of witnesses, the Court adheres to the well-settled rule that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination." Thus, in *Reyes, Jr. v. Court of Appeals*, the Court explained that inconsistencies or contradictions in the testimony of the victim do not affect the veracity of the testimony if inconsistencies do not pertain to material points.

In this case, the alleged inconsistencies in the testimonies of the prosecution's witnesses pertained to minor details and collateral matters which did not affect the substance of their declarations and the veracity of their statements.

As for the issue on the presence of the qualifying circumstance of treachery, the Court agrees with the CA's conclusion that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.

"There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make."

In this case, appellant, coming from behind the victim, suddenly held the latter's neck using his left hand, and with his right hand, stabbed the victim three to four times using a yellowish pointed metal. Clearly, the attack was attended by treachery, considering that: a) the means of execution of the attack gave the victim no opportunity to defend himself or to retaliate; and b) said means of execution was deliberately adopted by appellant.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- OSCAR MAT-AN y ESCAD, *Accused-Appellant.***
G.R. No. 215720, THIRD DIVISION, February 21, 2018, MARTIRES, *J.*

*The crime committed against Minda is murder* ***qualified by abuse of superior strength.*** *In a plethora of cases, the Court consistently held that the circumstance of abuse of superior strength is present* ***when a man, armed with a deadly weapon, attacks an unarmed and defenseless*** *which is applicable in this case:* ***Oscar was about 5'10 tall armed with a knife whereas Minda was only 4'11 in height, was already 61 years old, and was carrying a child. The Court also concurs that Oscar can be held guilty of slight physical injuries with respect to Anthonette considering that the prosecution failed to prove that there was an intent to kill and the injuries suffered by Anthonette were only superficial.***

**FACTS:**

Norma Gulayan (Norma) testified that she was selling halo-halo beside Minda Basaay's (Minda) store in Baguio City. **Minda, a 61 year old woman**, was inside her store cradling her **18-month-old granddaughter, Anthonette**, in a blanket when Oscar Mat-An (Oscar) entered the store in which an argument between the two ensued. Oscar, the husband of Minda's daughter, was asking Minda why her daughter was not answering her calls but Minda responded by telling Oscar to return once he was sober. After which, Norma heard Minda moaning and immediately ran inside the store where she saw Oscar stab Minda twice. Norma pulled him out of the store and away from Minda. Sheyanne Mat-An, Oscar's daughter, also took the witness stand and stated that Norma told them that Minda was stabbed by their father. Upon hearing this, they immediately went to Minda's store where they saw the bloody body of Minda and Anthonette, who was underneath Minda's body, appearing to be injured. Sheyanne ran to the roadside where she saw her father was being held by her neighbors. Afterwards, Oscar was brought to the police station.

**Minda subsequently died**. A post-mortem examination conducted revealed that **Minda sustained four stab wounds, three of which were fatal while one was superficial.** As regards **Anthonette, a medico-legal certificate revealed that she sustained a superficial stab wound in the nape area.**

Oscar was charged with the crimes of **attempted homicide for the acts he committed against Anthonette and murder for killing Minda.** The information states that the killing was **attended by the aggravating circumstances of evident premeditation and abuse of superior strength.** The RTC of Baguio City convicted Oscar of the crimes charged holding that the prosecution was able to prove beyond reasonable doubt that Oscar had committed the crime. It also appreciated the aggravating circumstances of evident premeditation and abuse of superior strength noting that **Oscar was about 5'10 tall armed with a knife whereas Minda was only 4'11 in height, was already 61 years old, and was carrying a child.**

On appeal, the Court of Appeals affirmed with modifications the decision of the RTC. The appellate court ruled that evident premeditation could not be appreciated to qualify the killing of Minda to murder as the prosecution failed to establish with certainty the time when Oscar decided to commit the felony and that he clung to his determination to kill Minda could not be inferred. Nevertheless, it ruled that the abuse of superior strength attended the killing due to the evident disparity of strengths between the two as noted by the RTC. It also ruled that Oscar could not be held liable for attempted

homicide because there was **no evidence that he had the intent to kill Anthonette. It only convicted Oscar for slight physical injuries as the medico-legal results showed that Anthonette only suffered superficial injuries.**

**ISSUE:**

Whether or not the lower courts erred in finding Oscar guilty for the death of Minda and injuries sustained by Anthonette. (NO)

**RULING:**

Oscar assails the credibility of the prosecution witnesses claiming that there were discrepancies in the testimonies of Norma and Sheyanne but this argument deserves no merit as it is established in our criminal jurisprudence that when the issue is one of credibilities of witnesses, the appellate courts will not disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during trial. Unless there is a showing that the trial court plainly overlooked certain facts of substance and value which may affect the result of the case or misapprehension of facts, the trial court's assessment of the credibility of witnesses will be upheld. In this case, no cogent reason exists which would justify the reversal of the trial court's assessment on the credibility of the witnesses since the inconsistencies were only on minor details which do not undermine the integrity of a prosecution witness.

The Supreme Court also concurs that the crime committed against Minda is murder **qualified by abuse of superior strength.** In a plethora of cases, the Court consistently held that the circumstance of abuse of superior strength is present **when a man, armed with a deadly weapon, attacks an unarmed and defenseless** which is applicable in this case. **The Court also concurs that Oscar can be held guilty of slight physical injuries with respect to Anthonette considering that the prosecution failed to prove that there was an intent to kill and the injuries suffered by Anthonette were only superficial.**

Oscar also disputes that the trial and appellate courts erred in not appreciating the alternative circumstance of intoxication to mitigate his liability but **he failed to clearly establish his state of intoxication was unintentional and not habitual to mitigate his liability.** He also failed to present sufficient evidence that would show that he was in a state of intoxication as would blur his reason.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* -versus- MANUEL CORPUZ, *accused-appellant.***

GR No. 215320, THIRD DIVISION, February 28, 2018, MARTIRES, *J.*

*An attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and weapon used in the act afforded him, and from which the woman was unable to defend herself.There is also abuse of such superiority when the victim is old and weak, while the accused is stronger because of his relatively younger age.Here, the two victims were defenseless old women – Romana at 74 years old, and Leonila at 65 years old. In*

*contrast, Manuel was armed with a deadly weapon. Further, at the time of the incident, Manuel was around 36 years old, in the prime of his years.*

**FACTS:**

Manuel Corpuz was charged with two counts of murder for killing Romana Arcular and Leonila Risto, aged 74 and 65 respectively at the time of their death.

Witness Leonilo Bongalan stated that he went to the farm to check on Leonila, his mother-in-law. Upon reaching the farm, he saw Manuel hacking Leonila and Romana with a bolo. On that same day, two other witnesses saw Manuel on the trail, half-naked and holding a bolo. They noted that he came from the direction of the place where the incident happened. Manuel interposed the defense of alibi and denial which was corroborated by his wife.

The lower courts ruled that the killing was attended by the circumstance of abuse of superior strength.

**ISSUE:**

Whether or not abuse of superior strength attended the commission of murder. (YES)

**RULING:**

The Court has consistently held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.There is also abuse of such superiority when the victim is old and weak, while the accused is stronger because of his relatively younger age.

Here, the two victims were defenseless old women – Romana at 74 years old, and Leonila at 65 years old. In contrast, Manuel was armed with a deadly weapon. Further, at the time of the incident, Manuel was around 36 years old, in the prime of his years.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* -versus- RODOLFO ADVINCULA y MONDANO, *accused-appellant.***

G.R. No. 218108, THIRD DIVISION, April 11, 2018, MARTIRES, *J.*

*There is treachery when a victim is set upon by the accused without warning, as when the accused attacks the victim from behind, or when the attack is sudden and unexpected and without the slightest provocation on the part of the victim or is, in any event, so sudden and unexpected that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant.*

*In the present case, Reggie has no chance to defend himself because the accused-appellant surreptitiously sneaked behind him and gave him a headlock which restrained his movement.*

**FACTS:**

On August 4, 2005, Rollane, Reggie, and Joseph were at a store talking when suddenly, the accused-appellant sneaked from Reggie's back, grabbed Reggie's neck, and drove a knife at Reggie's side. Reggie was able to push away the accused-appellant causing both of them to fall down. Reggie was able to ran away, however, the accused-appellant caught up with him when he stumbled. Thereafter, the accused-appellant stabbed him twice in his chest while he was in a supine position. Reggie was brought to the hospital where he was pronounced dead on arrival.

The accused-appellant, on his part, contended that he acted in defense of a relative. He claimed that he was at home on August 4, 2005, when Reggie, armed with a kitchen knife, entered the living room and threatened to stab the accused-appellant's two siblings. He argued that the safety of his siblings were compromised because the threat to harm them was a positive strong act of real danger considering that Reggie has already entered his house.

The RTC convicted the accused-appellant of murder. The RTC ruled that treachery and evident premeditation attended the killing of Reggie. On appeal, the Court of Appeals modified the decision of the lower court and held that the circumstance of evident premeditation was absent in the case. However, the Court of Appeals maintained the finding of the RTC convicting the accused-appellant for murder.

**ISSUE:**

Whether or not treachery was present (YES)

**RULING:**

For the crime of murder to be present, the following elements must be present:

(1) that a person was killed;

(2) that the accused killed him or her;

(3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and

(4) that the killing is not parricide or infanticide

In this case, treachery attended the killing of Reggie. There is treachery when a victim is set upon by the accused without warning, as when the accused attacks the victim from behind, or when the attack is sudden and unexpected and without the slightest provocation on the part of the victim or is, in any event, so sudden and unexpected that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant. In order for treachery to be properly appreciated, two elements must be present:

(1) at the time of the attack, the victim was not in a position to defend himself; and

(2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him**.**

Reggie has no chance to defend himself because the accused-appellant surreptitiously sneaked behind him and gave him a headlock which restrained his movement. Reggie tried to escape from the accused-appellant, however, he failed because when he stumbled, the latter was able to catch up with him. Reggie, who was then bleeding, was no longer able to protect himself from further stabbing by the accused-appellant.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- RANDY GAJILA y SALAZAR, *Accused-Appellant*.**

G.R. No. 227502, FIRST DIVISION, July 23, 2018, DEL CASTILLO,J.

*When the accused invoked self-defense, the burden of proof is shifted from the prosecution to the defense. The accused must prove the following requisites of self-defense:* ***first, unlawful aggression on the part of the victim****; **second, reasonable necessity of the means employed to prevent or repel such aggression****; and* ***third, lack of sufficient provocation on the part of the person defending himself.*** *The fact that* ***appellant tried to flee the scene of the crime immediately after the stabbing incident and the location, nature, and seriousness of the wounds sustained by the victim are inconsistent with a plea of self defense since they were all aimed at the major organs of the victim's body*** *negate any assertion that there was unlawful aggression on the part of the victim.*

***The victim's killing was attended by treachery*** *considering that the victim was* ***stabbed by victim from behind,appellant was holding the victim by the neck with his left arm when he delivered the first stabbing blow;*** *and* ***the attack was so sudden and unexpected that the victim was unable to defend himself.*** *The totality of these circumstances clearly shows that* ***the means of execution of the attack gave the victim no opportunity to defend himself*** *or to retaliate, and said means of execution was* ***deliberately adopted*** *by the appellant.*

**FACTS:**

Randy Gajila (Appellant) worked as a butcher in one of the stalls in Quinta Market along Quiapo, Manila. One night, he arrived at the market, apparently drunk and because of his condition, he was told to just lie down on a bench near the stall. Moments later, appellant stood up and approached Gerry Alcantara, his co-worker who was also employed as a butcher, from behind then **used his left hand to hold the victim in place by the neck** then **stabbed the victim at the back**. The victim turned around but **he was stabbed for the second time.** Appellant would have succeeded in stabbing the victim again but was only prevented. He **immediately fled the scene** but was eventually subdued by civilians and barangay tanods at the market. Unfortunately, the victim died at the hospital

the following day. According to the Medico-Legal report, the cause of death was the stab wound sustained by the victim at the back. In his defense, appellant raised the justifying circumstance of self-defense.

Appellant was charged with the crime of murder with the aggravating circumstances of **nighttime**, **treachery**, **evident premeditation**, and **abuse of superior strength**. The Regional Trial Court of Manila found appellant guilty of the crime charged and held that the victim's killing was **attended by the qualifying circumstance of treachery** holding that **by attacking the victim at a time when his attention was drawn to his work of weighing the meat on the scale, he gave the victim no chance to prepare his defense on the attack** but the trial court ruled that **the attendant circumstances of evident premeditation, taking advantage of superior strength, and nighttime were not proven beyond reasonable doubt.** The Court of Appeals agreed with the findings of the RTC.

**ISSUES:**

(1) Whether or not the appellant was able to sufficiently prove the justifying circumstance of self-defense (NO)
(2) Whether or not the victim's stabbing was attended by treachery (YES)

**RULING:**

(1) When the accused invoked self-defense, the burden of proof is shifted from the prosecution to the defense. The accused must prove the following requisites of self-defense: **first**, **unlawful aggression on the part of the victim**; **second, reasonable necessity of the means employed to prevent or repel such aggression**; and **third, lack of sufficient provocation on the part of the person defending himself.** The appellant failed to discharge the burden of proving that the unlawful aggression originated from the victim. The fact that **appellant tried to flee the scene of the crime immediately after the stabbing incident and the location, nature, and seriousness of the wounds sustained by the victim are inconsistent with a plea of self defense since they were all aimed at the major organs of the victim's body.** Furthermore, the absence of any physical evidence showing that appellant sustained some injury from having been allegedly attacked by the victim does not prove and absence of any showing that appellant had suffered physical injuries negate the claim that there was aggression on the part of the victim.

(2) **The victim's killing was attended by treachery** considering that the victim was **stabbed by victim from behind,appellant was holding the victim by the neck with his left arm when he delivered the first stabbing blow;** and **the attack was so sudden and unexpected that the victim was unable to defend himself.** The totality of these circumstances clearly shows that **the means of execution of the attack gave the victim no opportunity to defend himself** or to retaliate, and said means of execution was **deliberately adopted** by the appellant.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- ALBERTO PETALINO alias "LANIT", *Accused-Appellant.***

G.R. No. 213222, FIRST DIVISION, September 24, 2018, Bersamin, *J.*

*For treachery to be appreciated, therefore, the Prosecution must establish the attendance of the following essential elements, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or to retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, method or form of execution must be shown to be deliberated upon or consciously adopted by the offender.*

*To start with, the acts constituting treachery were not sufficiently averred in the information, which pertinently stated that "accused, armed with a knife, with treachery and evident premeditation, with a decided [purpose] to kill .... stab, hit and wound Johnny Nalangay with the said knife... causing upon the latter injuries on vital parts of his body which caused his death." It failed to state that the accused-appellant had deliberately adopted means of execution that denied to the victim the opportunity to defend himself, or to retaliate; or that the accused-appellant had consciously and deliberately adopted the mode of attach to ensure himself from any risk from the defense that the victim might make.*

*The fact alone that the attack mounted by the accused-appellant against the victim was sudden and unexpected, and did not afford the latter any opportunity to undertake any form or manner of defense or evasion did not necessarily justify a finding that treachery was attendant without any showing that the accused-appellant had consciously and deliberately adopted such mode of attack in order to insure the killing of the victim without any risk to himself arising from the defense that the latter could possibly adopt. That showing was not made herein. For one, the stabbing was committed when the victim was walking together with Bariquit, whose presence even indicated that the victim had not been completely helpless. Also, Bariquit's testimony indicated that the encounter between the victim and the accused-appellant had been only casual because the latter did not purposely seek out the victim.*

**FACTS:**

Eyewitness Franklin Bariquit (Bariquit) walked behind the victim when the two passed through a narrow alley towards Iznart St. While they were walking, Bariquit saw a person, whom he later identified as accused Alberto Petalino alias "Lanit", walking towards them from the opposite direction. When accused had passed the victim, he suddenly turned towards him, grabbed his hair and without warning, stabbed the victim in the back. The victim tried to run away, but he fell down after running a distance. Thereafter, the accused and Bariquit confronted each other, the latter kicked the accused causing him to fall down and to drop his knife. Bariquit then ran away and proceeded to PO's Marketing which was located near the Bank of the Philippine Islands. After sensing that the accused was no longer chasing him, he went back to the alley where he last saw the victim. There, Bariquit found the victim lying on the ground, face down and bloodied all over. The victim managed to utter some words but became unconscious when he was taken to St. Paul's Hospital where he eventually died.

The RTC and the CA found the accused-appellant guilty of murder, appreciating the presence of the qualifying circumstance of treachery.

**ISSUE:**

Whether or not the qualifying circumstance of treachery is present in this case. (NO)

**RULING:**

For treachery to be appreciated, therefore, the Prosecution must establish the attendance of the following essential elements, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or to retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, method or form of execution must be shown to be deliberated upon or consciously adopted by the offender.

To start with, the acts constituting treachery were not sufficiently averred in the information, which pertinently stated that "accused, armed with a knife, with treachery and evident premeditation, with a decided [purpose] to kill .... stab, hit and wound Johnny Nalangay with the said knife... causing upon the latter injuries on vital parts of his body which caused his death." It failed to state that the accused-appellant had deliberately adopted means of execution that denied to the victim the opportunity to defend himself, or to retaliate; or that the accused-appellant had consciously and deliberately adopted the mode of attach to ensure himself from any risk from the defense that the victim might make. To merely state in the information that treachery was attendant is not enough because the usage of the term treachery was but a conclusion of law.

For treachery to be properly appreciated, the State must show not only that the victim had been unable to defend himself, but also that the accused had consciously adopted the mode of attack to facilitate the perpetration of the killing without risk to himself. The fact alone that the attack mounted by the accused-appellant against the victim was sudden and unexpected, and did not afford the latter any opportunity to undertake any form or manner of defense or evasion did not necessarily justify a finding that treachery was attendant without any showing that the accused-appellant had consciously and deliberately adopted such mode of attack in order to insure the killing of the victim without any risk to himself arising from the defense that the latter could possibly adopt. That showing was not made herein. For one, the stabbing was committed when the victim was walking together with Bariquit, whose presence even indicated that the victim had not been completely helpless. Also, Bariquit's testimony indicated that the encounter between the victim and the accused-appellant had been only casual because the latter did not purposely seek out the victim. In this connection, treachery could not be appreciated despite the attack being sudden and unexpected when the meeting between the accused and the victim was casual, and the attack was done impulsively.

**e. Alternative circumstances**

**f. Absolutory causes**

**3. Persons liable and degree of participation**

**a. Principals, accomplices, and accessories**

**b. Conspiracy and proposal**

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- OSCAR GIMPAYA and ROEL GIMPAYA, *Appellants.***
G.R. No. 227395, SECOND DIVISION, January 10, 2018, CAGUIOA, *J.*

*Conspiracy exists when* ***two or more persons come to an agreement concerning the commission of a felony and decide to commit it****. The essence of conspiracy is the unity of action and purpose.*

*To determine if Oscar conspired with Roel, the Court must examine the overt acts of accused-appellant before, during, and after the stabbing incident and the totality of the circumstances. The inception and location of the stabbing incident must also be considered.*

*As it was not Oscar who delivered the fatal blow it was incumbent upon the prosecution to establish the existence of conspiracy.The* ***act of Oscar in merely hugging the victim does not establish conspiracy in the intent to kill****.*

**FACTS:**

On September 16, 2000, according to the prosecution, there was a commotion inside the compound where the parties are living. Prosecution witness Roosevelt testified that he saw the victim Genelito Clete (Genelito) being hugged by accused Oscar Gimpaya (Oscar) while the other accused Roel Gimpaya (Roel) was stabbing Genelito. When Roselyn Clete (Roselyn), wife of Genelito check what what the commotion was all about, she saw that her husband was already dead and was slumping on the ground. Genelito was brought to the hospital, but he was pronounced dead due to stab wounds he obtained.

On the other hand, according to the defense witness Lea Gimpaya (Lea), wife of Oscar, that it was Genelito who started the aggression when the latter went to the house of Oscar and Lea and called Oscar to go outside his house. When Oscar went outside, Genelito struck Oscar with an umbrella which caused Oscar to fall down. Genelito went to him and continuously boxed him. Lea shouted for help and so Roel arrived and stabbed Genelito at his back. Roel then fled away and remained at large.

The accused were charged with Murder. The RTC found Oscar and Roel guilty of Murder qualified by Treachery. The CA affirmed the RTC's decision.

**ISSUE:**

Whether or not Oscar's guilt for the crime of murder was proven beyond reasonable doubt. (NO)

**RULING:**

The Supreme Court does not agree with the lower courts as to the finding that conspiracy existed between Oscar and Roel.

Conspiracy exists when **two or more persons come to an agreement concerning the commission of a felony and decide to commit it**. The essence of conspiracy is the unity of action and purpose. Conspiracy requires the same degree of proof required to establish the crime — proof beyond reasonable doubt.

The RTC did not discuss its finding of conspiracy; it merely held that "both accused acted in concert towards a common criminal goal." Conspiracy was not also discussed by the CA. On the subject, the appellate court only said that "the Oscar and Roel acted in concert in killing the victim." These pronouncements do not sufficiently establish that there was a conspiracy between Oscar and Roel in the stabbing of the victim.

The records are also wanting of any indication of conspiracy. To determine if Oscar conspired with Roel, the Court must examine the overt acts of accused-appellant before, during, and after the stabbing incident and the totality of the circumstances. The inception and location of the stabbing incident must also be considered.

Due to the conflicting testimonies of the witness, the Court finally ruled that it was Roel who stabbed Genelito in the back and not Oscar. As it was not Oscar who delivered the fatal blow it was incumbent upon the prosecution to establish the existence of conspiracy.The **act of Oscar in merely hugging the victim does not establish conspiracy in the intent to kill**. It was not proven that he acted in concert with Roel or that he even knew of Roel's intention to stab Genelito. It was not established that Oscar was hugging Genelito deliberately to enable Roel to stab him as he had no knowledge of Roel's intention.

In *People v. Jesalva*, the Court ruled:

> It is not sufficient, however, that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. **It is necessary that the assailants be animated by one and the same purpose.**

Furthermore, after the stabbing incident, Oscar did not flee and abandon the supposed victim, unlike Roel who immediately escaped and remains at-large. **While non-flight is not necessarily an indication of innocence, this Court has recognized that taken together with other circumstances, it may bolster the innocence of the accused**. There is nothing on record which indicates that Oscar knew that Roel was going to stab Genelito. Notably, it was not Oscar, but his wife Lea, who called for help as she witnessed the altercation between Genelito and her husband. In addition, the stabbing incident was done in the heat of the moment; it was not premeditated or planned.

Absent any evidence to create the moral certainty required to convict accused-appellant Oscar, the Court cannot uphold the RTC and CA's finding of guilt. Oscar's guilt was not proven beyond reasonable doubt.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus - HERMIE PARIS y NICOLAS, *Accused*, RONEL FERNANDEZ y DELA VEGA, *Accused-Appellant.***
G.R. No. 218130, FIRST DIVISION, February 14, 2018, DEL CASTILLO, *J.*

*Under Article 8 of the Revised Penal Code, "a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."*

**FACTS:**

In an Information, appellant Ronel Fernandez (Fernandez) and accused Hermie Paris (Paris) were charged in conspiracy with each other of the special complex crime of robbery with homicide. According to the prosecution, at around midnight in the warehouse of Anna Leizel Trading and Construction Supply, Fernandez, who was a stay-in worker, opened the gate, and let Paris and his unnamed companions enter the warehouse. Paris and one of his companions broke into the office of Anna Leizel Abagat (Anna) and got assorted pieces of jewelry worth the sum of P128,000.00 and cash amounting to P700,000.00, all owned by Anna. However, before going, to said office, Paris and his companion went to Reymark Salvador's room, who was also a stay-in worker, and was stabbed to death. Later on, Fernandez admitted the crime and made his Extra-Judicial Confession in the presence of his lawyer, Atty. Francisco. Thereafter, the RTC found Fernandez and Paris guilty beyond reasonable doubt of the special complex crime of robbery with homicide, which the CA affirmed.

Dissatisfied with the judgment, Fernandez elevated the case to the Court. In his defense, Fernandez contends that his extrajudicial confession cannot be used against him since the same was inadmissible. At the police station, Fernandez claimed that he was forced to admit his participation in the crime. He further claims that there was insufficient circumstantial evidence against him and that the prosecution failed to establish conspiracy. Fernandez insists that the RTC erroneously convicted him since the prosecution failed to prove his guilt beyond reasonable doubt.

**ISSUE:**
Whether Fernandez was guilty of the special complex crime of robbery with homicide. (YES)

**RULING:**
Fernandez was not assisted by counsel at all times during his custodial investigation. Moreover, the Court agrees with the CA that his lawyer, Atty. Francisco, was not an independent counsel, being a legal consultant in the Office of the Municipal Mayor of Binmaley. Also, the Court finds that Atty. Francisco was not vigilant in protecting the rights of Fernandez during the course of the custodial investigation. Given these circumstances, Fernandez's extrajudicial confession is inadmissible in evidence.

Notwithstanding the inadmissibility of Fernandez' extrajudicial confession, his conviction for the crime of robbery with homicide can still be obtained on the basis of circumstantial evidence. "To justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal liability of the accused. Jurisprudence requires that the circumstances must be established to form an unbroken chain of events leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime."

The following pieces of circumstantial evidence, as testified by Fernandez himself, established his guilt for the crime of robbery with homicide: first: Fernandez and Paris were acquaintances even prior to the incident; second: Fernandez opened the gate of Anna Leizel Trading without first checking who was knocking outside thereby allowing Paris and his companions to freely enter the premises; third: Paris and his companions purposely proceeded directly to the room occupied by the victim Salvador; fourth: Paris and his companions did not harm Fernandez despite the latter having already recognized or seen their faces; instead, they went looking for Salvador who was then asleep and killed him; fifth: it was Fernandez who directed Paris and his companions to the office of Anna; sixth: Fernandez did not offer any resistance nor attempted to help Salvador; and, seventh: Fernandez did not do anything after seeing Paris and his companions leave Anna's office carrying a

bag; interestingly, he waited for more than three hours before informing his employers about the incident.

To the Court's mind, these pieces of circumstantial evidence lead to a fair and reasonable conclusion that Fernandez and Paris conspired to rob Anna Leizel Trading making them the authors of the crime to the exclusion of all others. Under Article 8 of the Revised Penal Code, "a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." In this case, considering the abundance of circumstantial evidence against Fernandez and Paris, the Court finds that Fernandez and Paris conspired to rob Anna.

Time and again, the Court has ruled that when there is conspiracy, the act of one is the act of all. Thus, "when homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same." In the present case, both Fernandez and Paris were coconspirators who are guilty of the special complex crime of robbery with homicide.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- BENITO LABABO ALIAS "BEN," WENEFREDO LABABO, JUNIOR LABABO (AL), and FFF, *accused-appellants*.**
G.R. No. 234651, THIRD DIVISION, June 6, 2018, VELASCO, JR., *J.*

*Article 8 of the RPC provides that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To prove conspiracy, the prosecution must establish the following three requisites: (1) two or more persons came to an agreement, (2) the agreement concerned the commission of a crime, and (3) the execution of the felony was decided upon. Once conspiracy is established, the act of one becomes the act of all.*

*Here, it was established that Wenefredo and FFF were present at the scene of the crime, both wielding a bolo. However, it was also established that their alleged participation thereat did not go beyond being present and holding said weapons. As a matter of fact, both the victims only sustained gunshot wounds. While it is true that mere presence at the scene of the crime at the time of its commission, without actively participating in the conduct thereof, is insufficient to prove that the accused conspired to commit the crime, Wenefredo and FFF's act of standing near the victims and Benito, while wielding bolos, does not partake of this nature.*

*Their overt act of staying in close proximity while Benito executes the crime served no other purpose than to lend moral support by ensuring that no one could interfere and prevent the successful perpetration thereof. Their presence thereat has no doubt, encouraged Benito and increased the odds against the victims, especially since they were all wielding lethal weapons.*

**FACTS:**

Accused-appellants Benito, Wenefredo, Junior, and FFF, all surnamed "Lababo," were charged in an Information for the crime of Murder. Additionally, Benito and Wenefredo were likewise indicted with the crime of Frustrated Murder.

On October 27, 2007, at around 3:00 in the afternoon, BBB, his wife CCC, and their son AAA, alighted from a motorcycle in front of Benito's house, some fifty meters away from their residence, and proceeded directly to go to their house. A few minutes later, CCC heard a gunshot accompanied by a child's scream emanating from near Benito's house. When she went outside to check, she saw her husband and son lying on the ground, wounded. Within close proximity is Benito holding a 29-inch gun locally known as *"bardog"* together with Wenefredo, FFF, and Junior, all armed with *bolos*. Jesus Caparal corroborated these accounts, saying that he was nearby when the incident occurred and that after hearing gunshots, he proceeded to his house. On the way there, he saw Benito holding a *"bardog,"* with the three each holding a bolo, while AAA and BBB were lying on the ground. He reported the incident to the Barangay Tanod.

When the victims were brought to the hospital, AAA was declared dead on arrival. BBB survived the gunshot wounds but was confined at the hospital for one month. DDD, CCC's adopted daughter, reported the incident to the police authorities of Northern Samar.

RTC found accused appellants guilty of murder. Benito and Wenefredo were also found guilty for the crime of frustrated murder. According to the trial court, despite the fact that there was no eyewitness to the actual commission of the crime, the combination of the circumstantial evidence points out to accused-appellants as the perpetrators and conspirators.

CA affirmed. Anent the theory that the accused appellants conspired to kill the victims, the CA held that the pieces of circumstantial evidence establish a common criminal design — that is, to harm and kill the victims. The appellate court added that although the victims only sustained gunshot wounds from Benito's bardog, and not from the bolos held by the three, the fact that they stayed together while wielding said bladed weapons are enough to demonstrate their common evil intent to threaten, harm, and eventually assault the victims.

With respect to the penalties and damages imposed, the CA affirmed the penalty meted upon Benito and Wenefredo. But for FFF, the appellate court noted that he was 17 years old at the time of the commission of the crime thus, being a minor, Article 68 (2) of the Revised Penal Code, which states that the penalty next lower than that prescribed by law shall be imposed upon a person over fifteen and under eighteen, but always in the proper period, shall apply to him. After following said provision and the Indeterminate Sentence Law, the CA held, the range of penalty for FFF is *prision mayor* in any of its period, as minimum, to *reclusion temporal* in its medium period, as maximum. The CA thus modified the RTC's ruling by imposing upon FFF for his commission of the crime of murder the penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

**ISSUE:**

Whether the accused appellants conspired to commit the crimes charged. (YES)

**RULING:**

Article 8 of the RPC provides that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To prove conspiracy, the prosecution must establish the following three requisites: (1) two or more persons came to an agreement, (2) the

agreement concerned the commission of a crime, and (3) the execution of the felony was decided upon. Once conspiracy is established, the act of one becomes the act of all.

In Bahilidad v. People, the Court summarized the basic principles in determining whether conspiracy exists or not. Thus:

> ….. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohort.
>
> It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.

Here, it was established that Wenefredo and FFF were present at the scene of the crime, both wielding a bolo. However, it was also established that their alleged participation thereat did not go beyond being present and holding said weapons. As a matter of fact, both the victims only sustained gunshot wounds. While it is true that mere presence at the scene of the crime at the time of its commission, without actively participating in the conduct thereof, is insufficient to prove that the accused conspired to commit the crime, Wenefredo and FFF's act of standing near the victims and Benito, while wielding bolos, does not partake of this nature.

Their overt act of staying in close proximity while Benito executes the crime served no other purpose than to lend moral support by ensuring that no one could interfere and prevent the successful perpetration thereof. Their presence thereat has no doubt, encouraged Benito and increased the odds against the victims, especially since they were all wielding lethal weapons.

Indeed, one who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator, especially if they did nothing to prevent the commission of the crime. Under the circumstances, there is no evidence to support a conclusion that they have nothing to do with the killing. Therefore, indeed, the three conspired to commit the crimes charged.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- JONATHAN PAL, THANIEL MAGBANTA, and TATAN CUTACTE, Accused, RON ARIES DAGATAN CARIAT, *Accused-Appellant.***

G.R. No. 223565, FIRST DIVISION, June 18, 2018, DEL CASTILLO, *J.*

*Conspiracy was established in this case. There is conspiracy "when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose."*

*In the case at bar, although Cariat did not personally have sexual intercourse with AAA, his acts together with Pal and Cutacte clearly demonstrated a* ***common design to have carnal knowledge of AAA.*** *Cariat helped Magbanta, Pal, and Cutacte in restraining AAA and in dragging her to a secluded grassy area. He also pointed a knife at AAA while Magbanta inserted his penis into AAA's vagina. Cariat* ***concurred in the criminal design*** *to rape AAA.* ***Since there was conspiracy, the act of one was the act of all making them equally guilty of the crime of rape against AAA.***

**FACTS:**

AAA testified that her neighbors Jonathan Pal and Thaniel Magbanta invited her to celebrate Pal's birthday. After joining their drinking spree, AAA later on felt dizzy and intoxicated. She testified that Magbanta punched her stomach and Pal, Magbanta, Tatan Cutacte, and appellant Ron Cariat dragged her to a grassy and secluded area near Pal's house. AAA cried for help but no one heard her. Magbanta punched her again and warned her not to resist or else he would kill her. She added that appellant **Ron Cariat held her legs and pointed a knife at her** while Pal and Cutacte acted as a lookout. Magbante laid on top of her and forcibly inserted his penis inside his vagina. Cariat, Pal and Cutacte were all laughing as they watched Magbanta rape AAA.

The RTC found Ron Cariat guilty of the crime of rape. The prosecution through AAA's testimony was able to establish conspiracy among the four accused to commit the crime of rape. While it was Magbanta who had sexual intercourse with AAA, appellant Ron Cariat held her legs which allowed Magbanta to consummate the rape. This constituted direct participation in the commission of the crime. The CA affirmed the RTC's judgement.

**ISSUE:**

Whether or not appellant Ron Cariat was guilty of the crime of rape. (YES)

**RULING:**

Under Article 266-A of the Revised Penal Code, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.

In this case, the testimony of AAA established that Magbanta had sexual intercourse with her with the assistance of Cariat, Pal, and Cutacte. She testified that Cariat held her legs, pointed a knife at her and helped his co-accused drag her to a secluded grassy area which allowed Magbanta to consummate the rape. These show that Magbanta had sexual intercourse with AAA against her will through force, threat, and intimidation with the assistance of Cariat and the other accused.

Conspiracy was established in this case. There is conspiracy "when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose."

In the case at bar, although Cariat did not personally have sexual intercourse with AAA, his acts together with Pal and Cutacte clearly demonstrated a common design to have carnal knowledge of AAA. Cariat helped Magbanta, Pal, and Cutacte in restraining AAA and in dragging her to a secluded

grassy area. He also pointed a knife at AAA while Magbanta inserted his penis into AAA's vagina. Cariat concurred in the criminal design to rape AAA. Since there was conspiracy, the act of one was the act of all making them equally guilty of the crime of rape against AAA.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- YYY, *Accused-Appellant.***
G.R. No. 224626, THIRD DIVISION, June 27, 2018, MARTIRES, *J.*

*A medico-legal report is not indispensable in rape cases as it is merely corroborative in nature. Thus, even without it, an accused may still be convicted on the sole basis of the testimony of the victim. As such, the credibility of the witness should be assessed independently regardless of the presence or absence of a medico-legal report. Trial courts are expected to scrutinize the victim's testimony with great caution, with or without a medico-legal report to corroborate the same.*

**FACTS:**

YYY was charged with rape under Article 335 of the Revised Penal Code committed against his half-sister, AAA, who decided to file a case against YYY after she discovered that he was also raping her younger sister.

AAA positively identified YYY as her abuser and had categorically and clearly narrated how he had forced himself upon her. It disregarded YYY's defense of denial and alibi in view of AAA's positive identification of him was able YYY pleaded not guilty and set up a defense of denial and alibi.

The RTC found YYY guilty of three counts of rape defined and penalized under Art. 335 of the RPC because all incidents occurred prior to the passage of R.A. No. 8353. The Court of Appeals affirmed with modification the RTC decision.

**ISSUE:**

Whether or not the court a quo erred in convicting YYY based on the testimony of AAA despite lack of evidence that would corroborate the claims. (NO)

**RULING:**

The Supreme Court held that the appeal has no merit and affirmed the Court of Appeals decision with modification on damages.

YYY's attempt at exoneration rests heavily on his challenge of AAA's credibility as a witness. He argues that the medical findings do not necessarily support her claims that she was raped on three separate dates. As such, YYY surmises the trial court should have been more circumspect in assessing AAA's testimony. He bewails that a deeper scrutiny of AAA's testimony becomes more imperative considering that it appears to be perfect, raising the possibility that she was rehearsed. YYY highlights that the incident occurred almost nine (9) years prior to her testimony in court. Finally, he believes that AAA's actions are contrary to human experience and negate her allegations that there was force and intimidation during the rape incidents.

A medico-legal report is not indispensable in rape cases as it is merely corroborative in nature. Thus, even without it, an accused may still be convicted on the sole basis of the testimony of the victim. As such, the credibility of the witness should be assessed independently regardless of the presence or

absence of a medico-legal report. Trial courts are expected to scrutinize the victim's testimony with great caution, with or without a medico-legal report to corroborate the same.

In the present case, YYY does not point to any inconsistency in AAA's testimony to discredit her. Rather, he perceives that her testimony was immaculate, such that it was in all likelihood rehearsed. The Court held that it is axiomatic that the trial court's assessment of the credibility of witnesses, the probative weight of their testimonies and conclusions drawn therefrom are accorded the highest respect by appellate courts considering that their revisory power and authority are generally limited to the bare and cold records of the case.

Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the lower court's assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witness while testifying and detect if they are lying. After an assiduous review of the records, the Court finds no reason to depart from the assessment by the trial court of AAA's testimony. She was straightforward and categorical in narrating YYY's dastardly deeds and never wavered in identifying him as her abuser.

AAA's testimony alone sufficed in establishing the elements of rape: (1) accused had carnal knowledge of the victim; and (2) it was accomplished (a) through the use of force or intimidation; (b) when the victim is deprived of reason or otherwise unconscious; or (c) when the victim is under 12 years of age or is demented.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- PEDRO RUPAL, *Accused-Appellant.***
G.R. No. 222497, THIRD DIVISION, June 27, 2018, MARTIRES, *J.*

*For a charge of rape under Art. 266-A(1) of Republic Act (R.A.) No. 8353 to prosper, it must be proved that: (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. The gravamen of rape under Art. 266-A (1) is carnal knowledge of "a woman against her will or without her consent." In this case where it was alleged to have been committed by force, threat or intimidation, "it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause."*

**FACTS:**

Accused-appellant Pedro Rupal was found guilty of Rape as defined and penalized under Article 266-A of the Revised Penal Code against AAA, a minor. Rupal pleaded not guilty and set up denial and alibi as his defense.

The RTC held that AAA's testimony was straightforward and believable, coming from a child who had neither reason to tell a lie nor motive to falsely charge accused-appellant. While the RTC took note of the fact that there were only the medical certificate and the testimony of the physician to corroborate AAA's testimony, these, however, did not weaken the case since she was able to sufficiently prove that Rupal raped her. The RTC also stressed that jurisprudence provides that great weight is given to the testimony of a child who was a rape victim.

The Court of Appeals sustained the lower court's evaluation as to to AAA's credibility since the trial judge had the advantage of examining the real and testimonial evidence before it as well as the demeanor of the witnesses.

**ISSUE:**

Whether or not the court a quo gravely erred in giving much weight and credence to the testimony of AAA (NO).

**RULING:**

The Supreme Court ruled that the elements of rape were proven by the prosecution.

For a charge of rape under Art. 266-A(1) of Republic Act (R.A.) No. 8353 to prosper, it must be proved that: (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. The gravamen of rape under Art. 266-A (1) is carnal knowledge of "a woman against her will or without her consent." In this case where it was alleged to have been committed by force, threat or intimidation, "it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause."

Convincingly, AAA narrated that Rupal had carnal knowledge of her against her will. Rupal, however, denigrates AAA's testimony as against human experience saying, albeit he was not armed when he allegedly dragged her to the coconut plantation, she only cried instead of physically resisting him or shouting for help. Moreover, he claimed that it was not shown that he threatened AAA from the waiting shed until the alleged rape was consummated.

In any rape case, the law does not impose a burden on the rape victim to prove resistance because it is not an element of rape. That AAA did not offer any resistance to accused-appellant or did not shout for help does not find that she voluntarily submitted to his hideous acts considering that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. It is important to state the enlightened teaching that the workings of the human mind placed under emotional stress are unpredictable, and people react differently: some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.

The absence of any threat to AAA from accused-appellant at the waiting shed does not disprove the fact that he had carnal knowledge of her. It will be noted that pursuant to Art. 266-A of the RPC, rape is committed when a man has carnal knowledge of a woman either through force, or threat, or intimidation, among other circumstances. Thus, proof that the offense was committed either through any of the three means, i.e., force, threat, or intimidation, will suffice to warrant a conviction as long as this is satisfactorily proven by the prosecution.

"Force, as an element of rape, must be sufficient to consummate the purposes which the accused had in mind. On the other hand, intimidation must produce fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter

as when she is threatened with death if she reports the incident." In this case, AAA was able to credibly narrate that it was through force that accused-appellant was able to carry out his evil desire by dragging her from the shed to the coconut plantation and there pushing her to the ground to abuse her. In the same vein, the circumstance of intimidation was demonstrated by accused-appellant's threat that he would kill her mother and her siblings once she revealed to BBB what he did to her.

Furthermore, inconsistencies on minor details and collateral matters do not affect the substance, truth, or weight of the victim's testimonies. Even granting that there were inconsistencies in AAA's claim as to the number of times accused-appellant had carnal knowledge of her, jurisprudence instructs that "when the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity." Courts generally give leeway to minor witnesses when relating traumatic incidents of the past.

Significantly, AAA's testimony that she was raped finds support in the medical findings that the lacerations in AAA's vaginal opening could have been caused by the forcible entry of a hard object, possibly a male genitalia, and that her hymen was no longer intact. It is emphasized that when a rape victim's allegation is corroborated by a physician's finding of penetration, "there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge."

The Supreme Court emphasized that the legal teaching trenchantly maintained in jurisprudence is that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case.

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- RONELO BERMUDO *y* MARCELLANO, ROMMEL BERMUDO *y* CAPISTRANO, and ROLANDO BERMUDO *y* CAPISTRANO, *Appellants.***
G.R. No. 225322, THIRD DIVISION, July 4, 2018, MARTIRES, *J.*

*Treachery is present when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. Its elements are: (1) employment of means, method or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim; and (2) deliberate adoption of such means, method or manner of execution.*

*Gilberto was completely defenseless at the time of the attack because he was surprised by Rommel with a blow to the head causing him to fall to the ground. Rommel and co-accused continued to attack him causing him multiple injuries, including the fatal ones. Further, Rommel and his co-accused consciously adopted the means of attack because they were already armed when they proceeded to the crime scene.*

**FACTS:**

According to the witnesses Philip Bedrero and Grace Bedrero, on 7 March 2012, at around 6:30 P.M., Ronelo and Philip were arguing in front of the Philip's house about George, the latter's nephew, for supposedly wrecking the former's bike. After the argument, both parties parted ways and returned to their homes. At around 8:30 P.M. of the same day, Ronelo, this time armed with a bolo, stood in front of Philip's house demanding the latter to come out so he could kill him. Unfazed, Philip went outside to have a word with Ronelo. George's father, Gilberto, decided to come out of his house and tried to pacify Ronelo telling him that they would fix his bike the next day.

Suddenly, Rommel and Rolando rushed towards Gilberto and, without warning, Rommel struck Gilberto on the head with a small ax which made the latter fall. As Gilberto lay prostrate, Ronelo hacked him in the stomach while Rolando beat him with a piece of wood and stabbed him with a bolo. Philip tried to help Gilberto, but Rommel swung his ax at him injuring his upper lip causing him to retreat to his house.

Thereafter, Grace ran towards Gilberto, but Ronelo ordered her to leave forcing her to step away. They continued to assault Gilberto by hacking him in the chest and striking his face with a piece of wood. Rommel and Rolando urged him to finish Gilberto.

Gilberto was brought to the hospital, where Philip was also being treated for his wounds. Unfortunately, Gilberto died after several hours of treatment. Gilberto died of asphyxia by manual strangulation and a stab wound in the chest.At the hospital, Philip also saw Ronelo. He notified police that the latter was one of those who attacked Gilberto; consequently, Ronelo was brought to the police station. On the other hand, Rommel was brought to the precinct after he was identified at the crime scene as one of the suspects — Rolando eluded arrest and is still at-large. The accused were charged with murder.

The RTC found the accused guilty of murder. It highlighted the prosecution witnesses' categorical identification of Rommel and Ronelo as the ones who assaulted Gilberto and described their respective participation in the death of the victim. The CA affirmed the RTC's ruling in toto.

**ISSUE:**
Whether or not Rommel is guilty of the crime of Murder. (YES)

**RULING:**

Based on Philip and Grace's testimony, all the elements of the crime of murder were proven beyond reasonable doubt, *viz.*: (1) a person was killed; (2) the accused killed the victim; (3) the killing was attended by any of the qualifying circumstance in Article248, *i.e.*, treachery or *alevosia*; and (4) the killing is neither parricide nor infanticide.

Treachery is present when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. Its elements are: (1) employment of means, method or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim; and (2)

deliberate adoption of such means, method or manner of execution. In other words, the means of attack, consciously adopted by the assailant, rendered the victim defenseless.

In the present case, it is apparent that Gilberto was completely defenseless at the time of the attack because he was surprised by Rommel with a blow to the head causing him to fall to the ground. Rommel and co-accused continued to attack him causing him multiple injuries, including the fatal ones. Further, Rommel and his co-accused consciously adopted the means of attack because they were already armed when they proceeded to the crime scene.

Further, both Philip and Grace categorically and consistently identified Rommel as one of those who attacked Gilberto. Their narrations are so interwoven that when taken together, Gilberto's demise at the hands of Rommel and his co-accused is clearly illustrated.According to Philip, he witnessed how Rommel and his co-accused commenced their assault on Gilberto. He, however, fled the scene when Rommel attacked him after he tried to help Gilberto.On the other hand, Grace witnessed how Rommel and his co-accused continued to maul Gilberto after he was already lying on the ground.Philip and Grace's testimony corroborate each other on material points.

Rommel and his co-accused are equally guilty of murder as conspirators. Conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. There is an implied conspiracy when two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment. In other words, there must be unity of purpose and unity in the execution of the unlawful objective.

In this case, Rommel and his co-accused clearly acted with a common purpose to kill Gilberto as manifested by their coordinated actions. Accused-appellant initiated the assault and assisted his co-accused in accomplishing their goal. Even if there is no direct evidence to establish who among the culprits inflicted the mortal blow, they are all guilty of murder as conspirators because their mutual purpose impelled them to execute their harmonized attack on Gilberto.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. JOHN CARLO SALGA and RUEL "TAWING" NAMALATA, accused-appellants.**

**G.R. No. 233334, July 23, 2018,** THIRD DIVISION, BERSAMIN, J

*To be held guilty as a co-principal by reason of conspiracy, therefore, the accused must be shown to have performed an overt act in pursuance or in furtherance of the conspiracy. The overt act or acts of the accused may consist of active participation in the actual commission of the crime itself, or of moral assistance to his co-conspirators by moving them to execute or implement the criminal plan.*

*The records bear out that only Constancio saw Ruel, but such sighting of Ruel was after the robbery when he was already driving the green motorcycle with John and another person on board. This was not the overt act necessary to make Ruel a part of the conspiracy.*

*The mere fact that the accused were seen together immediately after the commission of a felony does not necessarily prove the existence of a conspiracy between them. The Prosecution must show that the*

*accused performed overt acts showing unanimity of design or concert of action; otherwise, each is liable only for the consequences of his own acts.*

**FACTS:** Joan Camille Zulita testified that on February 14, 2010, around 4:00 o'clock in the afternoon, she was watching television when she noticed that three persons entered their gate. Joan was shocked and could not move out of fear because the two persons who went towards her were armed. Afterwards, the man who told her to keep quiet and who was later identified as appellant Salga asked her about the location of the vault. She contended that Salga and his companion brought the vault to the sala where they successfully opened it and took all the money inside. At that time, when the robbers left her inside the bedroom, she hurriedly hid under the bed. While hiding under the bed, she affirmed that she heard a gunshot from outside. When she sensed that the armed men had already left, she went out of her hiding place and went to the living room, where she saw the vault already emptied of its content. The armed men took cash amounting to P34,000.00 from the vault and her Samsung E590 cellphone worth P6,000.00.Subsequently, Joan Camille went to look for their househelp Catalina Arcega, but could not find the latter. When she and her children went back to their house, Jackel found Catalina Arcega in the garden, seriously injured with a wound on her head. Catalina Arcega was still conscious when she was brought to a nearby hospital. Unfortunately, she died the following day.

Constancio Hinlo, Jr. as inside the office of the Civilian Volunteer Organization when he and his fellow civilian volunteers received a call informing them that the house of Josephine Zulita was robbed. He averred that he responded to the call and walked towards Zulita's house. While on his way, he saw a green motorcycle with three riders. He affirmed that he recognized the driver of the motorcycle as appellant Ruel Namalata (Namalata). He also recognized Salga, who was riding at the back of Namalata with a black backpack. A third rider was at the back of Salga, but he could not identify him. He disclosed that he knew Namalata and Salga because they were his drinking buddies

RTC convicted Ruel and John of robbery with homicide on the basis of the testimonies of Joan Zulita (Joan) and Constancio Hinlo, Jr. (Constancio).

In the CA, Ruel argued that Constancio was the only one who had implicated him based on having seen him driving a motorcycle with John and an unidentified person on board; and that Constancio's testimony did not suffice to support his conviction for robbery with homicide due to its being contrary to human experience.

CA affirmed the conviction of Ruel and John

**ISSUE:** Whether or not the guilt of Ruel beyond reasonable doubt has been established(NO)

**RULING:**

The Court cannot concur with the CA's conclusion against Ruel.

The circumstances listed by the CA were insufficient to produce the conviction of Ruel. The lower courts and the Prosecution gave too much weight and emphasis to the fact that Constancio had seen Ruel speeding away on the motorcycle with John and another person on board. The scene, to a detached observer, was certainly far from unequivocal, for it was openly susceptible to various interpretations, including some that would not implicate Ruel in the commission of the robbery with homicide. For one, there is the possibility that Ruel only happened to pass by, and that John and the

other person — both of whom Ruel most probably knew — only asked to ride tandem with him. Such possibility, even if highly probable, was still innocent without a clear showing of his deeper involvement in the criminal enterprise. Verily, the guilt of Ruel could not be fairly deduced from scrutinizing just one or two particular circumstances, for the law demanded a combination of several circumstances that together paint a convincing picture of his being the author of the crime.

**The Prosecution did not credibly establish the conspiracy between John and Ruel**

To be held guilty as a co-principal by reason of conspiracy, therefore, the accused must be shown to have performed an overt act in pursuance or in furtherance of the conspiracy. The overt act or acts of the accused may consist of active participation in the actual commission of the crime itself, or of moral assistance to his co-conspirators by moving them to execute or implement the criminal plan.

Conformably to the foregoing, The Court consider the findings of the lower courts on the existence of the conspiracy to be factually and legally unwarranted. Joan, although present at the scene of the crime, never identified Ruel as part of the group of robbers. In fact, no witness placed him at the crime scene during the entire period of the robbery. If we have always required conspiracy to be established, not by conjecture, but by positive and conclusive evidence, then it was plainly speculative for the CA to count Ruel as the fourth member of the group of robbers and even to name him as the robbers' lookout outside the house despite the absence of evidence to that effect. On the contrary, the records bear out that only Constancio saw Ruel, but such sighting of Ruel was after the robbery when he was already driving the green motorcycle with John and another person on board. This was not the overt act necessary to make Ruel a part of the conspiracy.

The Court needs to stress, too, that the community of design to commit an offense must be a conscious one; and that conspiracy transcends mere companionship. Hence, mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.

In view of the foregoing, Ruel's mere act of driving of the motorcycle with John and the unidentified person on board did not amount to an overt act indicating his having conspired in committing the robbery with homicide. Consequently, he was not John's co-conspirator. He must be acquitted, for the evidence of the Prosecution to establish his guilt for the robbery with homicide was truly insufficient.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* AQUIL PILPA Y DIPAZ, *Accused-Appellant*.**
G.R. No. 225336, SECOND DIVISION, September 5, 2018, CAGUIOA, *J.*

*gThe existence of conspiracy need not, at all times, be established by direct evidence; nor is it necessary to prove prior agreement between the accused to commit the crime charged. Indeed, conspiracy is very rarely proved by direct evidence of an explicit agreement to commit the crime. Thus, the rule is well-settled that conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, where such conduct reasonably shows community of criminal purpose or design.*

*In the present case, both the RTC and CA correctly inferred from the collective acts of the assailants that conspiracy exists despite the absence of direct evidence to the effect. As the prosecution correctly argued:*

*"The conduct of appellant and "JR" in approaching the group of Alde, stabbing him and running after him, indubitably shows that they had agreed to kill him. After the incident, appellant was also found to be in "JR"s home. It is contrary to human experience and logic to be present at the home of a friend who had just stabbed another without being aware of such occurrence as appellant alleges.*

*xxx*

***The fact that appellant was unable to actually stab Alde, not by his own volition but due to the parry of Alde's companion "Choy", does not preclude the existence of conspiracy. Conspiracy can rightly be inferred and proven by the acts of stabbing committed by both appellant and "JR" jointly and concertedly.*** *The existence of conspiracy renders appellant as a co-principal even if he failed to actually stab Alde.*

*xxx*

*Appellant's lame attempt to refute the existence of conspiracy relying on the cases of* ***People vs. Jorge*** *and* ***People vs. Iligan, et. al.*** *is misplaced because in those cases, the persons involved did not take part in the actual stabbing. In this case, appellant himself took part in the stabbing.* ***Furthermore, appellant's assertion that such crime was already consummated by "JR" and therefore appellant can no longer be liable for conspiracy is untenable and without basis. The fact that "JR" was able to stab Alde first does not mean that appellant who stabbed him next can be exculpated from conspiracy. Otherwise, every conspiracy charge may be thwarted by the mere fact that one of the conspirators beat the others to the act."***

**FACTS:**

On August 23, 2003, around 8:00 in the evening, prosecution eyewitness Barangay Tanod Leonila Abuel (Leonila) went to Quirino Highway, Pandacan, as she was assigned by her officer in charge to look for a certain Reynan. When she arrived at the highway, she saw a group of five persons which include the victim Dave Alde (Alde), Carol Asis (Carol) and Evangeline Abuel (Eva) and two other people the names of which she failed to remember. She approached the said group and asked if they knew the whereabouts of Reynan to which Carol answered in the negative.

While still talking to the group, another group of five men, which included one named "JR" and appellant Aquil Pilpa (Pilpa) arrived. At this point, "JR" stabbed Alde on the chest with a big knife while appellant was positioned at the back of Leonila. After "JR" stabbed Alde, Pilpa, who was a mere arms-length away from Leonila, poised to thrust Alde as well. At this point, witness Leonila tried to intervene by announcing her position as Barangay Tanod but appellant disregarded said intervention by uttering "wala kaming pakialam kahit Barangay Tanod ka[.]" Witness Leonila sustained injuries as she attempted to parry the thrusts. Appellant's attempts to stab Alde ultimately failed because "Choy" a companion of Alde, was able to parry the thrusts. Leonila then ordered Alde to run away which he was able to do despite his wounds, but appellant and his group gave chase. Thereafter, appellant and his group scampered away. Subsequently, Alde was brought to the Ospital ng Maynila to be given timely medical attention.

While Alde was brought to the hospital, tanod Leonila, accompanied by the police, one of them, PO3 Benedict Cruz, caught up appellant who was found in a house near the railroad. She identified appellant as one of the group. Appellant was then arrested and brought to the hospital as it is the

standard operating procedure to provide medical attention to suspects. When appellant was brought to the hospital, the victim Alde positively identified appellant as one of those who stabbed him.

Alde underwent emergency surgery due to the stab wounds inflicted on him. He was then referred for further surgery. Unfortunately, twenty minutes after the operation, while in the recovery room, Alde went into cardiac arrest and succumbed to death.

Accused, on the other hand, maintained that he was not in the place of incident and denied that he was with alias JR when the stabbing incident happened. Pilpa further denied that he had participation in the killing of the victim and stressed that he was not familiar with the identities of the witnesses presented by the prosecution. Further, the accused clarified in court that he had no motive to attack or kill the victim as he did not even personally know Dave Alde.

RTC convicted Pilpa of the crime of Murder. The RTC found that the positive identification by the prosecution witnesses Leonila, Evangeline and Carolina deserved to be given greater evidentiary weight over the general denial by Pilpa that he was not at the place of the incident at the time it took place. The RTC held that Pilpa was liable - although it was only the certain "JR" who was able to inflict stab wounds on the victim - because there was conspiracy among the assailants of Alde.10 As conspiracy was present, the RTC ruled that all of the assailants were liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime perpetrated in furtherance of such conspiracy.

The RTC also found that treachery attended the killing of Alde, hence Pilpa was liable for Murder instead of Homicide. The RTC reasoned that "[t]he attack made by Pilpa and his group to the victim was so swift and unexpected affording the hapless and unsuspecting victim no opportunity to resist or defend himself."

CA affirmed. CA held that conspiracy may be deduced from the conspirators' conduct before, during and after the commission of the crime indicative of a joint purpose, concerted action and community of interests - and that the facts of the present case reveal such concerted action to achieve the purpose of killing Alde. The CA further held that treachery was present despite the fatal assault being a frontal attack, because the said attack was sudden and unexpected and the victim was unarmed.

**ISSUE:**

Whether conspiracy exists among assailants of Alde. (YES)

**RULING:**

It is well-established that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is the unity of purpose and intention in the commission of a crime. There is conspiracy if at the time of the commission of the offense, the acts of two or more accused show that they were animated by the same criminal purpose and were united in their execution, or where the acts of the malefactors indicate a concurrence of sentiments, a joint purpose and a concerted action.

It is true that the elements of conspiracy must be proved by the same kind of proof — proof beyond reasonable doubt — necessary to establish the physical acts constituting the crime itself. However,

this is not to say that direct proof of such conspiracy is always required. The existence of conspiracy need not, at all times, be established by direct evidence; nor is it necessary to prove prior agreement between the accused to commit the crime charged. Indeed, conspiracy is very rarely proved by direct evidence of an explicit agreement to commit the crime. Thus, the rule is well-settled that conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, where such conduct reasonably shows community of criminal purpose or design.

In the present case, both the RTC and CA correctly inferred from the collective acts of the assailants that conspiracy exists despite the absence of direct evidence to the effect. As the prosecution correctly argued:

> "The conduct of appellant and "JR" in approaching the group of Alde, stabbing him and running after him, indubitably shows that they had agreed to kill him. After the incident, appellant was also found to be in "JR"s home. It is contrary to human experience and logic to be present at the home of a friend who had just stabbed another without being aware of such occurrence as appellant alleges.
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> **The fact that appellant was unable to actually stab Alde, not by his own volition but due to the parry of Alde's companion "*Choy*", does not preclude the existence of conspiracy. Conspiracy can rightly be inferred and proven by the acts of stabbing committed by both appellant and "*JR*" jointly and concertedly.** The existence of conspiracy renders appellant as a co-principal even if he failed to actually stab Alde.
>
> xxx
>
> Appellant's lame attempt to refute the existence of conspiracy relying on the cases of ***People vs. Jorge*** and ***People vs. Iligan, et. al.*** is misplaced because in those cases, the persons involved did not take part in the actual stabbing. In this case, appellant himself took part in the stabbing. **Furthermore, appellant's assertion that such crime was already consummated by "*JR*" and therefore appellant can no longer be liable for conspiracy is untenable and without basis. The fact that "*JR*" was able to stab Alde first does not mean that appellant who stabbed him next can be exculpated from conspiracy. Otherwise, every conspiracy charge may be thwarted by the mere fact that one of the conspirators beat the others to the act."**

## C. Penalties

### 1. Penalties that may be imposed and retroactive effect of penal laws

**IN RE: CORRECTION/ADJUSTMENT OF PENALTY PURSUANT TO REPUBLIC ACT NO. 10951, IN RELATION TO *HERNAN, Petitioner -versus – SANDIGANBAYAN, Respondent***
G.R. No. 240347, EN BANC, August 14, 2018, TIJAM, *J.*

*The determination of whether the petitioner is entitled to immediate release in accordance with **R.A. No. 10951**, would necessarily involve ascertaining, among others, the actual **length of time actually served** and whether **good conduct time allowance** should actually be allowed, and thus should be*

*better* ***undertaken by the trial court****, which is relatively more equipped to make findings of both fact and law.*

**FACTS:**

Petitioner was convicted of the crime of *Estafa* under Article 315, paragraph 2(a) of the Revised Penal Code for pretending to be a lawyer, a certain "Atty. Amos Saganib Sabling" that will help private complainants to facilitate the release of their friend from jail for P100,000.00 as attorneys fees. Despite receipt of the said amount, however, the prisoner was never released and worse, he died in jail. Petitioner was found guilty beyond reasonable doubt, for the crime of *Estafa*, and he was sentenced to suffer the penalty of imprisonment from ***five (5) years of prision correccional as minimum to nine (9) years of prision mayor as maximum***. Per his Prison Record, petitioner already **has two (2) years, seven (7) months, and six (6) days time served with earned good conduct time allowance** as of June 6, 2018.

Meanwhile, **R.A. No. 10951** was promulgated on August 29, 2017, which provides under Article 315, paragraph 3 that *estafa*, involving an amount of over P40,000.00 but not exceeding P1,200,000.00 shall be punishable by *arresto mayor* in the maximum period to *prision correccional* in its minimum period.

Applying, thus, the Indeterminate Sentence Law and invoking our ruling in *Hernan*, allowing for the re-opening of an already terminated case and the recall of an Entry of Judgment for purposes of modifying/reducing the penalty to be served, petitioner comes before this Court averring that he is entitled to have his sentence modified in accordance with R.A. No. 10951 and be released immediately from confinement in view of the aforesaid circumstances.

**ISSUE:**

Whether petitioner is entitled to the relief prayed for. (YES)

**RULING:**

While the petitioner correctly invoked **R.A. No. 10951** for the modification of his sentence, in the recent case of *In Re: Correction/Adjustment of Penalty pursuant to R.A. No. 10951 in Relation to Hernan v. Sandiganbayan*, this Court, however, ruled that the determination of whether the petitioner is entitled to immediate release would necessarily involve ascertaining, among others, the actual **length of time actually served** and whether **good conduct time allowance** should actually be allowed, and thus should be better **undertaken by the trial court**, which is relatively more equipped to make findings of both fact and law. In the said case, the Court also had the occasion to issue Guidelines considering the anticipated influx of similar petitions, in the interest of justice and efficiency.

**Wherefore**, the petition was granted and the case was **remanded to the RTC** for the determination of: (1) the proper penalty in accordance with Republic Act No. 10951; and (2) whether petitioner Samuel is entitled to immediate release on account of full service of his sentence.

**2. Classification**

**3. Duration and effects**

**4. Application**

**a. RPC provisions**

**b. Indeterminate Sentence Law (Act No. 4103)**

**IN RE: CORRECTION/ ADJUSTMENT OF PENALTY PURSUANT TO REPUBLIC ACT NO. 10951, IN RELATION TO HERNAN V. SANDIGANBAYAN,**

**EMALYN MONTILLANO y BASIG,** *Petitioner.*

G.R. No. 240563, EN BANC, August 14, 2018, TIJAM, J.

*The determination of whether the petitioner is entitled to immediate release would necessarily involve ascertaining, among others, the actual length of time actually served and whether good conduct time allowance should actually be allowed, and thus should be better undertaken by the trial court, which is relatively more equipped to make findings of both fact and law. The Court laid down guidelines in determining the sentence which the petitioner should likewise have. The third guideline provides that the petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined and for the determination of the sentence that should be imposed.*

**FACTS:**

In the said RTC Judgment dated June 15, 2017, petitioner was convicted of the crime of Simple Theft and thus, sentenced as follows. she is sentenced to suffer an indeterminate penalty of imprisonment of six months of *arresto mayor* as minimum to four years of *prision correccional* as maximum. The preventive imprisonment undergone by petitioner shall be credited in her favor. Per the RTC Branch Clerk of Court's Certification[6] dated November 7, 2017, no appeal was filed in the said case. Per her Prison Record, petitioner already has two years, three months, and twenty-seven days time served with earned good conduct time allowance as of May 8, 2018. Meanwhile, R.A. No. 10951 was promulgated on August 29, 2017, which provides under Section 81, paragraph 4 thereof, that any person guilty of theft shall be punished by *arresto mayor* in its medium period to *prision correccional* in its minimum period[8] if the value of the property stolen is over P5,000.00 but does not exceed P20,000.00. Applying, thus, the Indeterminate Sentence Law and invoking our ruling in *Hernan*, allowing for the re-opening of an already terminated case for purposes of modifying/reducing the penalty to be served, petitioner comes before this Court averring that she is entitled to have her sentence modified in accordance with R.A. No. 10951 and thereafter, to be immediately released from confinement in view of the aforesaid circumstances.

**ISSUE:**

Whether the petitioner is entitled to the relief prayed for (NO).

**RULING:**

While the petitioner correctly invoked R.A. No. 10951 for the modification of her sentence, in the recent case of *In Re: Correction/Adjustment of Penalty pursuant to R.A. No. 10951 in Relation to Hernan v. Sandiganbayan – Rolando Elbanbuena y Marfil*,however, this Court ruled that the determination of whether the petitioner is entitled to immediate release would necessarily involve ascertaining, among others, the actual length of time actually served and whether good conduct time allowance should actually be allowed, and thus should be better undertaken by the trial court, which is relatively more equipped to make findings of both fact and law. The Court laid down guidelines in determining the sentence which the petitioner should likewise have. The third guideline provides that the petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined and for the determination of the sentence that should be imposed.

**c. Three-fold rule**

**d. Subsidiary imprisonment**

**5. Graduation of penalties**

**6. Accessory penalties**

**7. Execution and service**

**a. RPC provisions**

**b. Probation Law (PD 968, as amended)**

**c. Juvenile Justice and Welfare Act (RA 9344, as amended)**

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- BENITO LABABO ALIAS "BEN," WENEFREDO LABABO, JUNIOR LABABO (AL), and FFF, *accused-appellants*.**
G.R. No. 234651, THIRD DIVISION, June 6, 2018, VELASCO, JR., *J.*

*CA correctly took into account FFF's minority, he being 17 years old at the time of the commission of the crime, in reducing the period of imprisonment to be served by him. Being of said age, FFF is entitled to the privileged mitigating circumstance of minority under Article 68 (2) of the RPC which provides that the penalty to be imposed upon a person under 18 but above 15 shall be the penalty next lower than that prescribed by law, but always in the proper period.*

*In addition, FFF, being a minor at the time of the commission of the offense, should benefit from a suspended sentence pursuant to Section 38 of RA 9344, or the Juvenile Justice and Welfare Act of 2006.*

*FFF may thus be confined in an agricultural camp or any other training facility in accordance with Section 51 of Republic Act No. 9344, which provides that "[a] child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD." The case shall*

*thus be remanded to the court of origin to effect appellant's confinement in an agricultural camp or other training facility, following the Court's pronouncement in People v. Sarcia.*

**FACTS:**

Accused-appellants Benito, Wenefredo, Junior, and FFF, all surnamed "Lababo," were charged in an Information for the crime of Murder. Additionally, Benito and Wenefredo were likewise indicted with the crime of Frustrated Murder.

On October 27, 2007, at around 3:00 in the afternoon, BBB, his wife CCC, and their son AAA, alighted from a motorcycle in front of Benito's house, some fifty meters away from their residence, and proceeded directly to go to their house. A few minutes later, CCC heard a gunshot accompanied by a child's scream emanating from near Benito's house. When she went outside to check, she saw her husband and son lying on the ground, wounded. Within close proximity is Benito holding a 29-inch gun locally known as *"bardog"* together with Wenefredo, FFF, and Junior, all armed with *bolos*. Jesus Caparal corroborated these accounts, saying that he was nearby when the incident occurred and that after hearing gunshots, he proceeded to his house. On the way there, he saw Benito holding a *"bardog,"* with the three each holding a bolo, while AAA and BBB were lying on the ground. He reported the incident to the Barangay Tanod.

When the victims were brought to the hospital, AAA was declared dead on arrival. BBB survived the gunshot wounds but was confined at the hospital for one month. DDD, CCC's adopted daughter, reported the incident to the police authorities of Northern Samar.

RTC found accused appellants guilty of murder. Benito and Wenefredo were also found guilty for the crime of frustrated murder. According to the trial court, despite the fact that there was no eyewitness to the actual commission of the crime, the combination of the circumstantial evidence points out to accused-appellants as the perpetrators and conspirators.

CA affirmed. Anent the theory that the accused appellants conspired to kill the victims, the CA held that the pieces of circumstantial evidence establish a common criminal design — that is, to harm and kill the victims. The appellate court added that although the victims only sustained gunshot wounds from Benito's bardog, and not from the bolos held by the three, the fact that they stayed together while wielding said bladed weapons are enough to demonstrate their common evil intent to threaten, harm, and eventually assault the victims.

With respect to the penalties and damages imposed, the CA affirmed the penalty meted upon Benito and Wenefredo. But for FFF, the appellate court noted that he was 17 years old at the time of the commission of the crime thus, being a minor, Article 68 (2) of the Revised Penal Code, which states that the penalty next lower than that prescribed by law shall be imposed upon a person over fifteen and under eighteen, but always in the proper period, shall apply to him. After following said provision and the Indeterminate Sentence Law, the CA held, the range of penalty for FFF is *prision mayor* in any of its period, as minimum, to *reclusion temporal* in its medium period, as maximum. The CA thus modified the RTC's ruling by imposing upon FFF for his commission of the crime of murder the penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

**ISSUE:**

Whether the penalty imposed to FFF by CA is correct. (YES)

**RULING:**

CA correctly took into account FFF's minority, he being 17 years old at the time of the commission of the crime, in reducing the period of imprisonment to be served by him. Being of said age, FFF is entitled to the privileged mitigating circumstance of minority under Article 68 (2) of the RPC which provides that the penalty to be imposed upon a person under 18 but above 15 shall be the penalty next lower than that prescribed by law, but always in the proper period.

Murder is punishable by reclusion perpetua to death. However, pursuant to RA No. 9346, proscribing the imposition of the death penalty, the penalty to be imposed on appellant should be reclusion perpetua. Applying Article 68 (2), the imposable penalty must be reduced by one degree, i.e., from reclusion perpetua, which is reclusion temporal. Being a divisible penalty, the Indeterminate Sentence Law is applicable. To determine the minimum of the indeterminate penalty, reclusion temporal should be reduced by one degree, *prision mayor*, which has a range of from six (6) years and one (1) day to twelve (12) years. The minimum of the indeterminate penalty should be taken from the full range of *prision mayor*. Furthermore, there being no modifying circumstances attendant to the crime, the maximum of the indeterminate penalty should be imposed in its medium period which is 14 years, eight months, and one day to 17 years and four months.

In addition, FFF, being a minor at the time of the commission of the offense, should benefit from a suspended sentence pursuant to Section 38 of RA 9344, or the Juvenile Justice and Welfare Act of 2006. Said provision reads:

> **SEC. 38.** ***Automatic Suspension of Sentence***. — Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, **instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application:** ***Provided, however*****, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt**.
>
> Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

As for the penalties imposed on Benito and Wenefredo anent their conviction for Murder and Frustrated Murder, there is no reason to disturb the RTC and CA's ruling thereon.

It is well to recall that Section 38 of the law applies regardless of the imposable penalty, since R.A. No. 9344 does not distinguish between a minor who has been convicted of a capital offense and another who has been convicted of a lesser offense. We, therefore, should also not distinguish and should apply the automatic suspension of sentence to a child in conflict with the law who has been found guilty of a heinous crime.

Furthermore, the age of the child in conflict with the law at the time of the promulgation of judgment of conviction is immaterial. What matters is that the offender committed the offense when he/she was still of tender age. The promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with the Act in order that he/she is given the chance to live a normal life and become a productive member of the community.

FFF may thus be confined in an agricultural camp or any other training facility in accordance with Section 51 of Republic Act No. 9344, which provides that "[a] child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD." The case shall thus be remanded to the court of origin to effect appellant's confinement in an agricultural camp or other training facility, following the Court's pronouncement in People v. Sarcia.

## D. Extinction of criminal liability

**SHIRLEY T. LIM, MARY T. LIM-LEON and JIMMY T. LIM, *petitioners*, *vs.* PEOPLE OF THE PHILIPPINES, *respondent*.**

G.R. No. 226590, SECOND DIVISION, April 23, 2018, REYES, JR., *J.*

*If the offense is falsification of a public document, the period for prescription commences on the date of registration of the forged or falsified document. Since the registration of the documentary requirements for transfer of title, including the falsified Secretary's Certificate, was made on March 29, 2000, this is the proper reckoning point from which the prescription of the crime began to run. From this date, there was a constructive notice of falsification to the entire world, including Lucy.*

*Considering that the complaint could not have been filed earlier than its date of execution, prescription already set in by March 29, 2010, or approximately five months before the execution of the complaint on September 21, 2010. Their criminal liability was already extinguished.*

**FACTS:**

The petitioners were charged with falsification of a public document. They are siblings whom are officers of Pentel Merchandising Co., (Pentel), established by their father Quintin C. Lim. Quintin died on September 6, 1996. One of the stockholders of Pentel, Lucy Lim, alleged that the petitioners falsified the Secretary's Certificate dated February 29, 2000. This Board Resolution authorized Jimmy Lim, one of the petitioners, to dispose the parcel of land covered by a Transfer Certificate of Title (TCT) registered under Pentel's name. Jimmy was able to enter into a Deed of Absolute Sale on March 21, 2000, conveying the subject properties to Spouses Lee. According to Lucy, the Secretary's Certificate, dated February 29, 2000, bearing the sais board resolution, was falsified because it was made to appear that Quintin signed it, despite having already died on September 16, 1996 -- or more than three years from the time of its execution. They were found guilty by the Regional Trial Court

and the Court of Appeals. However, for the first time on appeal to the Supreme Court, the petitioners argued that despite finding their guilt, the crime with which they were charged already prescribed.

**ISSUE:**

Whether or not the criminal liability of the petitioners has already been extinguished by prescription (YES)

**RULING:**

As a general rule, an action for the quashal of the information on the ground that the criminal liability has already been extinguished must be made before an accuse enter his plea, otherwise, it is deemed waived. However, Section 9, Rule 117 of the Rules of Criminal Procedure carves out an exception, which includes prescription of the crime. Even prior to the promulgation of the present Rules, the Court in *People v. Castro,* ruled that the accused may raise the prescription of the crime at any stage of the proceeding:

As prescription of the crime is the loss by the State of the right to prosecuteand punish the same, it is absolutely indisputable that from the moment the State has lost or waived such right, the defendant may, at any stage of the proceeding, demand and ask that the same be finally dismissed and he be acquitted from the complaint, and such petition is proper and effective even if the court taking cognizance of the case has already rendered judgment and said judgment is merely in suspense, pending the resolution of a motion for a reconsideration and new trial, and this is the mere so since in such a case, there is not yet any final and irrevocable judgment.

The crime was fully consummated through the execution of the Secretary's Certificate, dated February 29, 2000, whcih certified under oath that such meeting happened, with the participation of Quintin, and that the Board Resolution was passed with his approval. Since the Secretary's Certificate is notarized, it is considered a public document. As this involves the crime of falsification of a public document, the imposable penalty under the RPC is prision correccional, falling within the purview of correctional penalty, which prescribes in ten (10) years.

Article 90 of the RPC provides that the period of prescription commences from the day on which the crime is discovered by the offended party, the authorities or their agents. But if the offense is *falsification* of a *public document*, the period for prescription commences on the date of registration of the forged or falsified document. Since the registration of the documentary requirements for transfer of title, including the falsified Secretary's Certificate, was made on March 29, 2000, this is the proper reckoning point from which the prescription of the crime began to run. From this date, there was a constructive notice of falsification to the entire world, including Lucy.

It is well-settled that the filing of the complaint the fiscal's office interrupts the prescriptive period. Unfortunately, the records of this case do not show the date when Lucy's Afficavit of Complaint was filed. The Court notes, however, that it was executed on September 21, 2000. Considering that the complaint could not have been filed earlier than its date of execution, prescription already set in by March 29, 2010, or approximately five months before the execution of the complaint on September 21, 2010. Their criminal liability was already extinguished.

## E. Civil liability in criminal cases

**LYDIA CU, *Petitioner.* -versus- TRINIDAD VENTURA, *Respondent.***
G.R. No. 224567, THIRD DIVISION, September 26, 2018, PERALTA, *J.*

***The prosecution failed to prove its case not only in its criminal aspect but also in its civil aspect where the required proof needed is only a preponderance of evidence.*** *"Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto."*

*Cu's testimony alone does not constitute preponderant evidence to establish Ventura's liability to her. Apart from the dishonored check, Cu failed to adduce any other evidence to prove that Ventura has still an unpaid obligation to her.* ***Unsubstantiated evidence is not equivalent to proof under the Rules.***

**FACTS:**

Lydia Cu testified that Trinidad Ventura obtained a loan from her in the amount of $100,000.00. As a partial payment of the loan, Ventura issued a check in the amount of P2,400,000.00. Cu deposited the check for payment but the same bounced for the reason that it was drawn against insufficient funds.

Cu filed a Complaint-Affidavit against Ventura for violation of Batas Pambansa Blg. 22. The MeTC found Ventura guilty of the said crime. The RTC reversed the decision of the MeTC, acquitting Ventura of the crime and dismissing the civil aspect of the case for failure of Cu to prove the requisite quantum of evidence which is preponderance of evidence. Cu filed a petition for review under Rule 42, or ordinary appeal with the CA. The CA dismissed the appeal and ruled that in criminal actions brought before the CA or the Supreme Court, the authority to represent the State is solely vested in the Office of the Solicitor General.

Cu contends that Ventura has been proven to have violated BP 22 as all the elements of the offense were proven by the prosecution. She also insists that there is no need for the representation of the OSG as she questioned the civil aspect of the decision of the RTC.

Hence, this petition.

**ISSUES:**

Whether or not Ventura is liable to Cu for the civil aspect. (NO)

**RULING:**

In criminal cases or proceedings, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State. However, there are two exceptions: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to

act on the case to the prejudice of the State and the private offended party, and **(2) when the private offended party questions the civil aspect of a decision of a lower court.**

In this case, **Cu filed an ordinary appeal with the CA.** This is already an indication that what she was seeking was the reversal of the entire decision of the RTC, in both its criminal and civil aspects. **Cu should have filed a special civil action for certiorari had she intended to merely preserve her interest in the civil aspect of the case.**

Moreover, based on the records, **the prosecution failed to prove its case not only in its criminal aspect but also in its civil aspect where the required proof needed is only a preponderance of evidence.** "Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto."

Cu's testimony alone does not constitute preponderant evidence to establish Ventura's liability to her. Apart from the dishonored check, Cu failed to adduce any other evidence to prove that Ventura has still an unpaid obligation to her. **Unsubstantiated evidence is not equivalent to proof under the Rules.**

## II. REVISED PENAL CODE - BOOK II

### A. Crimes against National Security and Laws of Nations

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- MAXIMO DELA PEÑA, *accused-appellant.***

G.R. No. 219581, FIRST DIVISION, January 31, 2018, DEL CASTILLO, *J.*

*The Information categorically alleged that the incident happened along the river bank of Brgy. San Roque, Municipality of Villareal, Province of Samar.*

*Under Section 2 (a) of PD 532, "Philippine waters" is defined as follows:*

> *[A]ll bodies of water, such as but not limited to, seas, gulfs, bays around, between and connecting each of the Islands of the Philippine Archipelago, irrespective of its depth, breadth, length or dimension, and all other waters belonging to the Philippines by historic or legal title, including territorial sea, the sea-bed, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction.*

*From this definition, it is clear that a river is considered part of Philippine waters.*

**FACTS:**

On September 24, 2005, at around 1:00 a.m., Julita Nacoboan, together with her husband and son, were about to board their pump boat loaded with 13 sacks of copra. As the Nacoboan's pump boat

was about to depart, a smaller boat suddenly blocked its path. Three armed men then immediately boarded the pump boat. One of the armed men pointed a firearm at Jose and ordered him to proceed to the aft or the rear side of the boat. Julita identified him as the appellant. Another armed person grabbed Julita's bag and took the following items: 1) P1,000.00 Cash; 2) Earrings; 3) Cellular phone; and 4) Necklace.

When they arrived at the small island, the appellant unloaded the 13 sacks of copra.The appellant and his armed companions then brought the pump boat to another island where its engine, propeller tube, and tools were taken and loaded on appellant's boat. Consequently, the Nacoboan's boat was left without an engine and they had to paddle to safety.

The following day, Julita went to the police authorities in Villareal, Samar to report the incident. Appellant was charged with the crime of piracy defined under Presidential Decree (PD) No. 532.

RTC rendered judgment finding appellant guilty of **piracy under PD 532**. CA affirmed appellant's conviction.

**ISSUE**:

Whether appellant is guilty of piracy. (YES)

**RULING:**

Section 2 (d) of PD 532 defines piracy as follows:

> Any attack upon or seizure of any vessel, or the taking away of the whole or part thereof or its cargo, equipment, or the personal belongings of its complement or passengers, irrespective of the value thereof, by means of violence against or intimidation of persons or force upon things, committed by any person, including a passenger or member of the complement of said vessel***, in Philippine waters,***shall be considered as piracy

Appellant maintains that the Information did not state that the vessel in question was in Philippine waters and that its cargo, equipment, or personal belongings of the passengers or complement were seized.

The Court disagrees. The Information categorically alleged that the incident happened along the river bank of Brgy. San Roque, Municipality of Villareal, Province of Samar.

Under Section 2 (a) of PD 532, "Philippine waters" is defined as follows:

> ***All bodies of water*****,** such as but not limited to, seas, gulfs, bays around, between and connecting each of the Islands of the Philippine Archipelago, irrespective of its depth, breadth, length or dimension, and all other waters belonging to the Philippines by historic or legal title, including territorial sea, the sea-bed, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction.

From this definition, it is clear that a river is considered part of Philippine waters.

The Information also clearly alleged that the vessel's cargo, equipment, and personal belongings of the passengers were taken by the appellant and his armed companions. The Information also stated

that the vessel's equipment which consisted of the engine, propeller tube, and tools were taken and carried away by the appellant. Furthermore, the Information also stated that the personal belongings of the passengers consisting of two watches, jewelry, cellphone, and cash money were taken by the appellant and his armed companions.

From the foregoing, the Court finds that the prosecution was able to establish that the victims' pump boat was in Philippine waters when appellant and his armed companions boarded the same and seized its cargo, equipment, and the personal belongings of the passengers.

**B. Crimes against the Fundamental Law of the State**

**C. Crimes against Public Order**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus- HERMINIO VIBAL, JR. y UAYAN, ARNOLD DAVID y CRUZ, CIPRIANO REFREA, JR. y ALMEDA, RICARDO H. PINEDA, EDWIN R. BARQUEROS, and DANIEL YASON, Accused, HERMINIO VIBAL, JR. y UAYAN, and ARNOLD DAVID y CRUZ, *Accused-appellant***

G.R. No. 229678, SECOND DIVISION, June 20, 2018, PERALTA, *J.*

*Experience dictates that precisely because of the startling acts of violence committed right before their eyes, eyewitnesses can recall with a high degree of reliability the identities of the criminals and how at any given time the crime has been committed by them. It is important to note that PO3 Almendras identified Vibal and David as the gunmen* ***without any presumptions or suggestions from the police or the court at the trial.***

*Further, as an* ***actual victim****, PO3 Almedras is naturally interested in vindicating the outrageous wrong done to his person. His natural interest in securing the conviction of the perpetrators would strongly deter him from implicating persons other than the real culprits.*

**FACTS:**

The prosecution alleged that the police officers were assigned as security escorts of the Mayor. Mayor Arcillas was then solemnizing marriages at the 2nd floor of the Municipal City Hall of Sta. Rosa City. The ceremony ended at around 10:00 o'clock in the morning. The Mayor then proceeded to the Office of the Commission on Audit (COA) located at the same floor. While they were going out of the room where the ceremony was conducted, **PO3 Almendras noticed that they were being followed by two (2) young kids.** After spending a moment in the COA office, the group then proceeded to the Office of the Mayor. On their way to said Office, gunshots were fired on them. PO3 Almendras was not able to pull out his gun since there was a rapid fire coming from their front and back. He, PO2 Rivera and the Mayor sustained gunshots wounds. The three (3) fell to the ground. While on the floor, PO3 Almendras heard three (3) more gunshots before he felt dizzy. Thereafter, PO3 Almendras and Mayor Arcillas were brought to the hospital.

The autopsy revealed that Mayor Arcillas sustained three (3) gunshot wounds, the fatal of which are the 2 gunshots in his head. PO2 Rivera, on the other hand, sustained two (2) gunshot wounds, on the

nape and chest, the latter being the fatal one that caused the death of the victim. PO3 Almendras was examined and found to have **fracture at the left forearm and weakness of the right hand.**

On the other hand, the defense denied participation. Accused David alleged that he was at Tanay, Rizal at the time of the commission of the crime. Whereas, Accused Vibal claimed that on that date, he was at GMA Cavite with his family.

RTC ruled against the accused. CA upheld the conviction of Vibal and David for two counts of complex crime of Direct Assault with Murder (as against the assault and shoot of Mayor Arcillas and PO2 Rivera) but held that the said appellants are criminally liable only for the complex crime of **Direct Assault with Attempted Murder** (as against the assault and shoot of PO3 Almendras). CA held that the credible testimony of PO3 Almendras is sufficient to sustain the conviction of the appellants. Hence, this petition.

**ISSUE:**

Whether the identification of the culprits by eyewitness PO3 Almendras was reliable and positive enough to support the convictions of the appellants. (YES)

**RULING:**

PO3 Almendras vividly recounted before the RTC the appellants' respective positions and participation in the shooting incident, having been able to witness closely how they committed the crime, more so because the crime happened in the morning when conditions of visibility are very much favorable. He had a close and unobstructed view of the incident and was able to take a good glimpse and recognize the faces of the gunmen as the same two young males he saw earlier in the day following his group.

Experience dictates that precisely because of the startling acts of violence committed right before their eyes, eyewitnesses can recall with a high degree of reliability the identities of the criminals and how at any given time the crime has been committed by them. It is important to note that PO3 Almendras identified Vibal and David as the gunmen **without any presumptions or suggestions from the police or the court at the trial.**

Further, as an **actual victim**, PO3 Almedras is naturally interested in vindicating the outrageous wrong done to his person. His natural interest in securing the conviction of the perpetrators would strongly deter him from implicating persons other than the real culprits.

Appellants committed the **second form of assault**, the elements of which are: 1) **that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent;** 2) **the assault was made when the said person was performing his duties or on the occasion of such performance**; and 3) **the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party** as a person in authority or an agent of a person in authority.

Here, Mayor Arcillas was a duly elected mayor of Sta. Rosa, Laguna and thus, was a person in authority while PO2 Rivera and PO3 Almendras were agents of a person in authority. There is no dispute that all of the three victims were in the performance of their official duties at the time of the shooting incident. Mayor Arcillas was inside the Sta. Rosa City Hall officiating a mass wedding, and thereafter, while he was walking along the hallway from the COA office to his office, he was shot and killed. Victim PO2 Rivera and private complainant PO3 Almendras were likewise performing their duty of protecting and guarding Mayor Arcillas at the time of the shooting incident. Appellants' conduct of attacking the victims inside the Sta. Rosa City Hall clearly showed their criminal intent to assault and injure the agents of the law.

When the assault results in the killing of an agent or of a person in authority for that matter, there arises the complex crime of **Direct Assault with murder or homicide.** Here, **treachery** qualified the killing of Mayor Arcillas and PO2 Rivera to murder. Treachery also attended the shooting of PO3 Almendras. There is treachery when the following essential elements are present, viz.: (a) **at the time of the attack, the victim was not in a position to defend himself;** and (b) **the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him**.

In the case at bench, the shooting was deliberate and without a warning, done in a swift and unexpected manner. Mayor Arcillas, PO2 Rivera and PO3 Almendras were **absolutely unaware of the imminent deadly assaults**, and were for that **reason in no position to defend themselves** or to repel their assailants. Vibal and David, who were armed with guns, suddenly appeared in front and at the back of Mayor Arcillas, PO2 Rivera and PO3 Almedras and shot the three victims.

It is well-settled that when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wounds but did not die because of timely medical assistance, the crime committed is **frustrated murder or frustrated homicide** depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present. But, if the wounds sustained by the victim in such a case were not fatal or mortal, then the crime committed is only **attempted murder or attempted homicide.**

Here, the use of firearms and the manner of the commission of the crime by the appellants unmistakably show that they intended to kill PO3 Almendras and that treachery was present. However, no evidence was adduced to show that the nature of gunshot wounds sustained by PO3 Almedras was sufficient to cause the latter's death without timely medical intervention.

**D. Crimes against Public Interest**

**E. Crimes against Public Morals**

**F. Crimes committed by Public Officers**

**MANUEL M. VENEZUELA, *Petitioner,* -versus – PEOPLE OF THE PHILIPPINES, *Respondent.***
G.R. No. 205693, SECOND DIVISION, February 14, 2018, REYES, JR., *J.*

*Payment or reimbursement is not a defense in malversation. The payment, indemnification, or reimbursement of, or compromise on the amounts or funds malversed or misappropriated, after the*

*commission of the crime, does not extinguish the accused's criminal liability or relieve the accused from the penalty prescribed by the law. At best, such acts of reimbursement may only affect the offender's civil liability, and may be credited in his favor as a mitigating circumstance analogous to voluntary surrender.*

**FACTS:**
Petitioner Manuel Venezuela (Venezuela) was charged of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC), as amended. Venezuela was the Municipal Mayor of Pozorrubio, Pangasinan from 1986 to June 30, 1998. In the course of the investigation of the Commission on Audit, the Audit Team (AT) discovered a shortage of Php2,872,808.00 on the joint accounts of Pacita Costes (Costes), then Municipal Treasurer, and Venezuela, as well as illegal cash advances. Consequently, the AT issued three demand letters to Venezuela, ordering him to liquidate his cash advances. An audit report was thereafter submitted by the Team, which Venezuela denied the truth of the contents thereof.

Venezuela avers that he had fully liquidated his cash advances to Costes and that he presented receipts proving his payments. On the other hand, the People, through the Office of the Ombudsman, counter that the fact of payment was not proven, and even if established, would not exonerate him from the crime. Also, the receipts were issued to different persons, in different amounts and for different purposes. Moreover, during the period shown in the official receipts presented by Venezuela, Costes, the alleged issuer of the receipts, was no longer holding office at the Municipal Treasurer's Office.

The Sandiganbayan promulgated the assailed Decision convicting Venezuela of the crime of Malversation of Public Funds. The Sandiganbayan held that the prosecution proved all the elements of the crime beyond reasonable doubt.

**ISSUE:**

Whether or not the prosecution failed to establish Venezuela's guilt beyond reasonable doubt (NO)

**RULING:**

The elements of malversation are (i) that the offender is a public officer, (ii) that he had custody or control of funds or property by reason of the duties of his office, (iii) that those funds or property were public funds or property for which he was accountable, and (iv) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

In the case at bar, all the elements for the crime were sufficiently proven by the prosecution beyond reasonable doubt. Venezuela was a public officer, being then the Municipal Mayor of Pozorrubio, Pangasinan from 1997 to 1998, the period relevant to the time of the crime charged. Likewise, during Venezuela's tenure as the municipal mayor, he incurred unliquidated cash advances amounting to Php2,872,808.00. These unliquidated cash advances constituted funds belonging to the Municipality of Pozorrubio, and earmarked for use by the said municipality. Finally, anent the last element for the crime of malversation of public funds, Venezuela failed to return the amount of Php2,572,808.00, upon demand. His failure or inability to return the shortage upon demand created a prima facie evidence that the funds were put to his personal use, which Venezuela failed to overturn.

On the claim of Venezuela of full payment of the unliquidated cash advances, the Court held that payment or reimbursement is not a defense in malversation. The payment, indemnification, or reimbursement of, or compromise on the amounts or funds malversed or misappropriated, after the commission of the crime, does not extinguish the accused's criminal liability or relieve the accused from the penalty prescribed by the law. At best, such acts of reimbursement may only affect the offender's civil liability, and may be credited in his favor as a mitigating circumstance analogous to voluntary surrender. Nevertheless, the Court observed that Venezuela did not fully prove his defense of payment.

Lastly, the Court maintained that demand is not necessary in malversation. Demand merely raises a prima facie presumption that the missing funds have been put to personal use. The demand itself, however, is not an element of, and is not indispensable to constitute malversation.

## G. Crimes against Persons

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- JESUS EMPUESTO y SOCATRE, *accused-appellant*.**
G.R. No. 218245, THIRD DIVISION, January 17, 2018, MARTIRES, *J.*

*For a charge of rape under Article 266-A (1) of RA 8353 to prosper, it must be proved that (1) the offender had carnal knowledge of a woman (2) through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. What is decisive in a charge of rape is the complainant's positive identification of the accused as the malefactor.*

*In this case, AAA was able to positively identify Socatre as the person who surreptitiously entered her house. Because the room where AAA and her children were sleeping was lighted, she was able to distinctly see Socatre armed with a bolo and standing beside the mosquito net.*

**FACTS:**

In an Information, accused-appellantJesus Empuesto y Socatre (Socatre) was charged with rape.

The prosecution tried to prove its case through the testimony of private complainant AAA, BBB, Rebecca Bantilan, and Dr. Jaime Gregorio L. Salarda.

On 1 July 2005, Socatre went to Rebecca's house to invite her husband to attend the Parents-Teachers Association *(PTA)* meeting. Rebecca's husband is the brother of AAA's husband. Because Rebecca's husband was plowing the field at that time, he asked Rebecca to come with Socatre instead. At about 2:30 p.m., when Rebecca and Socatre were already in front of AAA's house on their way to attend the PTA meeting, Socatre called out to ask AAA, "Marehan, is padrehan still in Cebu?" to which AAA answered in the affirmative.

On 3 July 2005, at about 1:00 a.m., Socatre stealthily entered AAA's house through a hole on the floor which was made of bamboo slats and elevated from the ground. While she and her children were sleeping, AAA heard a noise coming through the floor. Because the light was on, AAA saw that it was Socatre who entered the house. Armed with a bolo, Socatre switched off the light. He poked his bolo at AAA and told her not to make any noise, otherwise, he would kill her and her children.

Because AAA's youngest child was crying, Socatre told AAA to breastfeed her child. Then, Socatre removed AAA's panty and forcefully inserted his penis into her vagina. Thereafter, Socatre left while AAA just cried out of fear. AAA saw a black female panty on the floor which she believed belonged to Socatre because whenever she washed clothes at the river she would usually see him there taking a bath and wearing a black panty.

That same morning, AAA went to her parents-in-law and narrated to them what happened. Thereafter, she went to the police and submitted herself to a medical examination.

The RTC found Socatre guilty beyond reasonable doubt for the crime of Rape. The CA affirmed the RTC decision with modifications as to the award of damages.

**ISSUE:**

Whether the court *a quo* erred in pronouncing the guilt of Socatre despite the failure of the prosecution to prove his guilt beyond reasonable doubt. (NO)

**RULING:**

For a charge of rape under Article 266-A (1) of RA 8353 to prosper, it must be proved that (1) the offender had carnal knowledge of a woman (2) through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. What is decisive in a charge of rape is the complainant's positive identification of the accused as the malefactor.

Records will confirm that AAA was able to positively identify Socatre as the person who surreptitiously entered her house. She knew Socatre because they were neighbors. Her husband was the godfather of Socatre's eldest son, thus, he called her *"marehan."* Because the room where AAA and her children were sleeping was lighted, she was able to distinctly see Socatre armed with a bolo. She saw Socatre turn off the light and get inside the mosquito net.

Indeed, even if Socatre turned off the light, she was sure that it was he who got inside the mosquito net because she clearly recognized his voice when he threatened her; when he told her that he needed only her; when he ordered her to remove her panty; and when he instructed her to breastfeed her youngest child.

AAA testified that because she was immobilized by fear, Socatre was the one who removed her panty. Socatre then positioned himself on top of her and inserted his penis into her vagina. Undeniably, all the elements of rape had been clearly and effectively proven by the prosecution and convinced the SC to sustain the findings of the trial court.

The SC found Jesus Empuesto y Socatre guilty beyond reasonable doubt of Rape under Art. 266-A 1 (a) of the Revised Penal Code, as amended, and sentenced him to suffer the penalty of *reclusion perpetua*.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- JUVY D. AMARELA AND JUNARD G. RACHO, *accused-appellants*.**
G.R. Nos. 225642-43, THIRD DIVISION, January 17, 2018, MARTIRES, *J.*

*The SC follows certain guidelines when the issue of credibility of witnesses is presented before it, to wit:*

> *First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand.*
> *Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings.*
> *And third, the rule is even more stringently applied if the CA concurred with the RTC.*

*After a careful review of the records and a closer scrutiny of AAA's testimony, the SC was not fully convinced that AAA was telling the truth. The following circumstances, particularly, casted doubt as to the credibility of her testimony: (1) the version of AAA's story appearing in her affidavit-complaint differs materially from her testimony in court; (2) AAA could not have easily identified Amarela because the crime scene was dark and she only saw him for the first time; (3) her testimony lacks material details on how she was brought under the stage against her will; and (4) the medical findings do not corroborate physical injuries and are inconclusive of any signs of forced entry.*

**FACTS:**

This case involves two (2) Informations charging Juvy D. Amarela and Junard G. Racho of rape.

The prosecution presented the testimony of private complainant [AAA] to prove its case. On February 10, 2009, at around 6:00 p.m., AAA, together with her aunt, was watching a beauty contest which was being held at a basketball court where a make-shift stage was put up. The only lights available were those coming from the vehicles around.

She had the urge to urinate so she went to the comfort room beside the building of the Maligatong Cooperative near the basketball court. Between the cooperative building and the basketball court were several trees. She was not able to reach the comfort room because Amarela suddenly pulled her towards the day care center. Amarela punched her in the abdomen. Then he undressed her. She tried to resist but he was stronger. He boxed her upper thigh. Thereafter, he inserted his penis inside her vagina and made a push and pull movement. She shouted for help and then three (3) men came to her rescue so Amarela fled.

The three (3) persons brought her to a hut. But they had bad intentions with her. So she fled and hid in a neighboring house. When she saw that the persons were no longer around, she went to the house of Godo Dumandan who brought her first to the Racho residence because Dumandan thought her aunt was not at home. Dumandan stayed behind so Neneng Racho asked her son Racho to bring AAA to her aunt's house instead.

AAA then said that Racho brought her to a shanty. She was told to lie down. When she refused, Racho boxed her abdomen. She resisted by kicking him but he succeeded in undressing her. He, then, undressed himself and placed himself on top of AAA. Racho then inserted his penis into [AAA]'s vagina. Thereafter, Racho left her. So AAA went home alone.

When she reached home, her parents were already asleep. She went inside her room and cried. The following morning, she decided to leave home. Her mother was surprised at her decision until eventually, AAA told her mother about what happened to her. They reported the matter to the police and eventually Amarela and Racho were arrested.

The RTC found AAA's testimony, positively identifying both Amarela and Racho, to be clear, positive, and straightforward. Hence, the trial court did not give much weight to their denial as these could not have overcome the categorical testimony of AAA.

The CA affirmed the RTC's judgment *in toto.*

**ISSUE:**

Whether AAA's testimony is credible and, therefore, warrants the conviction of the accused-appellants. (NO)

**RULING:**

In an appeal from a judgment of conviction in rape cases, the issue boils down, almost invariably, to the credibility and story of the victim and eyewitnesses.

The SC follows certain guidelines when the issue of credibility of witnesses is presented before it, to *wit*:

> First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand.
> Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings.
> And third, the rule is even more stringently applied if the CA concurred with the RTC.

After a careful review of the records and a closer scrutiny of AAA's testimony, the SC was not fully convinced that AAA was telling the truth. The following circumstances, particularly, casted doubt as to the credibility of her testimony: (1) the version of AAA's story appearing in her affidavit-complaint differs materially from her testimony in court; (2) AAA could not have easily identified Amarela because the crime scene was dark and she only saw him for the first time; (3) her testimony lacks material details on how she was brought under the stage against her will; and (4) the medical findings do not corroborate physical injuries and are inconclusive of any signs of forced entry.

It has often been noted that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight since affidavits being taken *ex parte* are usually incomplete and inadequate. Courts usually brush aside these inconsistencies since they are trivial and do not impair the credibility of the rape victim. In this case, however, the version in AAA's affidavit-complaint is remotely different from her court testimony. By this alone, the SC was hesitant to believe AAA's retraction because it goes into whether it was even possible for Amarela to abduct AAA against her will.

It must be remembered that if courts were to convict based on the lone testimony of the victim, her testimony must be clear, straightforward, convincing, and consistent with human experience. The courts must set a high standard in evaluating the credibility of the testimony of a victim who is not a minor and is mentally capable.

Second, the SC also find it dubious how AAA was able to identify Amarela considering that the whole incident allegedly happened in a dark place. In fact, she had testified that the place was not illuminated and that she did not see Amarela's face.

Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt.

Third, her claim that she was forcibly brought under a makeshift stage, stripped naked, and then raped seems unrealistic and beyond human experience.

Fourth, the challenge to AAA's credibility is further supported by the medical findings of the medico-legal officer. The medico-legal certificate would reflect that AAA had no pertinent physical injuries.

As to Racho's case, the SC noted that AAA testified only once for both criminal cases. This means that both Amarela and Racho were convicted based on her lone testimony. Since the SC doubted AAA's account on how she was raped by Amarela, the SC had to consider her testimony against Racho under the same light.

The prosecution has the primordial duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion. The prosecution in this case miserably failed to present a clear story of what transpired. Henceforth, the SC was constrained to reverse the RTC and the CA rulings due to the presence of lingering doubts which are inconsistent with the requirement of guilt beyond reasonable doubt as quantum of evidence to convict an accused in a criminal case.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- NOEL BEJIM y ROMERO, *accused-appellant*.**

G.R. No. 208835, FIRST DIVISION, January 19, 2018, DEL CASTILLO, *J.*

*Carnal knowledge is "the act of a man having sexual intercourse or sexual bodily connections with a woman." There must be proof that his penis touched the labias of the victims or slid into their female organs and not merely stroked the external surface thereof, to produce a conviction of rape by sexual intercourse.*

*The testimonies of "AAA" and "BBB" show that the evidence adduced by the prosecution did not conclusively establish the element of carnal knowledge. In Criminal Case Nos. 07-CR-6765, 07-CR-6766, and 07-CR-6767, there is no categorical proof of entrance of Romero's male organ into the labia of the pudendum of "AAA." Neither is there evidence to show that Romero made an attempt to penetrate "AAA's" vagina. The prosecution's evidence lacks definite details regarding penile penetration.*

**FACTS:**

Romero was charged before the RTC with seven counts of statutory rape under seven separate Informations. The cases were consolidated and tried jointly.

Criminal Case No. 07-CR-6765

"AAA" first met Romero who was the helper of her cousin "CCC's" father at "CCC's" house when she went there to play. In the first week of October 2001 while at "CCC's" house, Romero made "AAA" lie on a sofa. He undressed her, applied cooking oil on her vagina and on his penis, and then rubbed his penis against her vagina. He then pulled "CCC" to the sofa and again placed cooking oil on his penis and on "CCC's" vagina. Romero warned "AAA" and "CCC" not to tell anyone of what transpired otherwise he would kill them and their families.

Criminal Case No. 07-CR-6766

Sometime in the second or third week of October 2001, while "AAA" and "CCC" were playing at the latter's house, Romero again pulled them to a sofa. "AAA" and "CCC" tried to run away but Romero caught them at the living room. He forced "AAA" to lie on the sofa and applied cooking oil on his penis and her vagina. Romero rubbed his penis on "AAA's" vagina. She felt pain. Thereafter, Romero likewise pulled "CCC" to the sofa and rubbed his penis against her vagina. After threatening them, Romero wore his pants and went out of the house.

Criminal Case No. 07-CR-6767

"BBB" is also a cousin of "CCC" and "AAA." In the first week of September 2001 while she and "CCC" were inside the latter's house, Romero suddenly pulled them to the sofa. Romero laid "CCC" on the sofa, applied cooking oil on her vagina and his penis, and tried to insert his penis into "CCC's" vagina. Thereafter, Romero turned to "BBB." He made her lie on the sofa and tried to insert his penis into her vagina. Unsuccessful, he just rubbed his penis against her vagina. "BBB'' felt pain. Romero immediately ran away upon seeing the arrival of "BBB's" cousins. "BBB" told her cousins that they were sexually molested by Romero but warned them not to tell anybody.

Criminal Case No. 07-CR-6768

In the first week of September 2001, while "CCC" and "BBB" were playing inside their house, Romero made "CCC" lie on the sofa and put cooking oil on his penis and on her vagina. "BBB" saw Romero's penis penetrating "CCC's" vagina. When Romero saw "CCC's" two sisters he went out of the house.

Criminal Case No. 07-CR-6769

In the second week of October 2001, appellant laid "CCC" on the kitchen table, put cooking oil on his penis and her vagina and tried to penetrate it but was unsuccessful.

Criminal Case No. 07-CR-6770

In the last week of October 2001, while "CCC" was sleeping in her sister's bedroom, Romero came and mounted her and tried to insert his penis but he failed, albeit she felt his big penis. "CCC" did not tell her father of what happened because of Romero's threat.

Criminal Case No. 07-CR-6771

Sometime in the first week of October 2001 and while inside "CCC's" house, Romero laid "CCC" on the sofa, put cooking oil on her vagina and his penis. He tried to insert his penis into her vagina but failed. Thereafter, Romero went outside.

The RTC found Romero guilty beyond reasonable doubt of seven counts of rape. The CA affirmed with modifications the RTC Consolidated Judgment.

**ISSUE:**

Whether the court *a quo* gravely erred in finding Romero guilty of the crime of rape despite the prosecution's failure to prove his guilt beyond reasonable doubt.
(YES – in Criminal Case Nos. 07-CR-6765, 07-CR-6766, 07-CR-6767, and 07-CR-6769)
(NO – in Criminal Case Nos. 07-CR-6768 and 07-CR-6771)

**RULING:**

***Criminal Case Nos. 07-CR-6765, 07-CR-6766, and 07-CR-6767***

Rape is committed by having carnal knowledge of a woman with the use of force, threat or intimidation or when she is under 12 years of age or is demented. Where the victim is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place. Carnal knowledge is "the act of a man having sexual intercourse with a woman." There must be proof that his penis touched the *labias* of the victims or slid into their female organs and not merely stroked the external surface thereof, to produce a conviction of rape by sexual intercourse.

The testimonies of "AAA" and "BBB" show that the evidence adduced by the prosecution did not conclusively establish the element of carnal knowledge. In Criminal Case Nos. 07-CR-6765, 07-CR-6766, and 07-CR-6767, there is no categorical proof of entrance of Romero's male organ into the *labia* of the *pudendum* of "AAA." Neither is there evidence to show that Romero made an attempt to penetrate "AAA's" vagina. The prosecution's evidence lacks definite details regarding penile penetration. On the contrary, "AAA" and "BBB" stated that Romero merely "brushed or rubbed" his penis on their respective private organs. While "BBB" testified that Romero tried to insert his penis into her vagina, she nevertheless failed to state for the record that there was the slightest penetration into it. What is clear on record is that Romero merely brushed it.

Indeed, the grazing of the victims' private organ caused pain, but it cannot be presumed that carnal knowledge indeed took place by reason thereof. As the Court held in *People v. Brioso*, "the Court is loath to convict an accused for rape solely on the basis of the pain experienced by the victim as a result of efforts to insert the penis into the vagina." Significantly, from their own declaration following the public prosecutor's questioning, they suffered pains not because of Romero's attempt to insert his penis but because of the grazing of their vagina.

Romero can, at most, be only convicted of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5 of Republic Act (RA) No. 7610, which was the offense proved.

All the elements of acts of lasciviousness under Article 336 of the RPC and sexual abuse under Section 5 (b) of RA 7610 were sufficiently established. Specifically, Romero committed lasciviousness when he poured cooking oil on the victims' private organ and rubbed them with his penis. They were subjected to "other sexual abuse" as required under Section 5 (b) of RA 7610. "A child is deemed subjected to 'other sexual abuse' when he or she indulges in lascivious conduct under the coercion or influence of any adult." In the present cases, the victims were sexually abused as they were coerced, influenced, threatened and intimidated by Romero.

***Criminal Case No. 07-CR-6769***

The SC found no compelling reason to not apply its earlier ratiocination in Criminal Case Nos. 07-CR-6765, 07-CR-6766 and 07-CR-6767 to the incidents committed on "CCC" sometime in October 2001. The SC could not discern from "CCC's" testimony that there was penile penetration even only in the slightest degree.

***Criminal Case Nos. 07-CR-6768 and 07-CR-6771***

The Court is convinced that in Criminal Case Nos. 07-CR-6768 and 07-CR-6771, there was a slight penetration on "CCC's" genitalia. "CCC'' positively testified that Romero's penis indeed touched her vagina. That Romero's penis was not inserted enough only indicates that he was able to penetrate her even partially. Anyway, complete penetration is not required to consummate the crime of rape.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- ARNEL KALIPAYAN y ANIANO, *accused-appellant*.**
G.R. No. 229829, THIRD DIVISION, January 22, 2018, GESMUNDO, *J.*

*The aggravating circumstance of dwelling need not be "deliberately and purposely intended" by an accused for it to be appreciated. Rather, it aggravates the felony when the crime was committed in the residence of the offended party and the latter did not give any provocation.*

*As pointed out earlier, Glaiza was only preparing dinner in the sanctity of her home when the attack happened. Clearly, there was no provocation that would exempt this case from being aggravated by the circumstance of dwelling.*

**FACTS:**

Accused-appellant Arnel was charged with the crime of murder under Art. 248 of the RPC.

Prosecution witnesses testified that Glaiza and Arnel were lovers and they have a child. They lived with Glaiza's grandmother Celestina. Glaiza and Arnel's relationship took a negative turn with the incident that occurred on June 25, 2008.

Josephine Paraiso, Glaiza's mother, testified that on June 25, 2008, at around 5:45 p.m., she was watching television inside their house while Celestina and Glaiza were in the kitchen preparing dinner. Arnel entered their house without permission, approached Glaiza, stabbed her in the back and held her hair. Arnel then made Glaiza face him and continued stabbing her in the abdomen. Josephine tried to stop Arnel but the latter poked the knife at her, telling her not to interfere. Josephine then ran outside the house and asked for help. A neighbor, Dennis Alegre, tried to stop Arnel but the latter was undeterred. Josephine decided to leave the house while Arnel escaped. With Arnel gone, Josephine went back inside their house, where she found Glaiza still breathing. Glaiza was brought to a hospital where she was declared dead on arrival.

They later discovered that Arnel could be somewhere in V&G Subdivision in Tacloban City. When they saw Arnel, Josephine confirmed that he was the one that stabbed Glaiza. The police arrested Arnel and frisked him, which resulted in the discovery of the knife used against Glaiza.

The RTC found accused-appellant guilty beyond reasonable doubt of committing the crime of murder.

The CA affirmed with modifications the decision of the RTC.

**ISSUE:**

Whether the trial court erred in convicting accused-appellant of murder despite the failure of the prosecution to establish any qualifying circumstance. (NO)

**RULING:**

The elements of murder are as follows: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide. The sole issue in this case is the existence of a circumstance that would qualify the killing of Glaiza to the crime of murder.

As concluded by the RTC, evident premeditation is not present in this case. The evidence shows that when Arnel swiftly entered the house and went straight to the kitchen, he already had a decision to harm Glaiza. However, the element that there was a sufficient lapse of time between the decision to commit the crime and its actual commission was not proven satisfactorily inasmuch as it would qualify the killing as murder.

The decision to kill prior to the moment of its execution must have been the result of meditation, calculation, reflection or persistent attempts. This aspect was not proven by the prosecution beyond reasonable doubt and as such, evident premeditation cannot be said to be present here. Nevertheless, the conclusion that the crime is still murder stays not because of the existence of evident premeditation, but of treachery.

Treachery is a circumstance that must be proven as indubitably as the crime itself and constitutes two (2) elements: (1) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate, and (2) that said means of execution were deliberately or consciously adopted.

Both elements of treachery are doubtlessly attendant here. Even in the short span of time that Celestina turned her back to switch on the stove, accused-appellant already managed to start his deplorable deed. This is a sign of his conscious choice to employ the specific means and methods to kill Glaiza, and not the product of some sudden emotional response. There is also no proof to show that he and Glaiza were engaged in a heated discussion immediately prior to the incident.

Further, Glaiza was attacked in the back, with accused-appellant holding her hair to prevent her from moving.

The second element of treachery is likewise undoubtedly present. The time and place, and manner of attack were deliberately chosen. The time of the attack was a time in which people usually prepare their supper and households are buzzing with activity. Accused-appellant's mode of attack, of suddenly entering the house and going straight to where Glaiza was is also clearly indicative of his nefarious plan to attack when Glaiza was not in a position to defend herself.

With this finding that treachery is present, the conclusion that the circumstance of abuse of superior strength is absorbed therein necessarily follows.

Notably, the aggravating circumstance of dwelling need not be "deliberately and purposely intended" by an accused for it to be appreciated. Rather, it aggravates the felony when the crime was committed in the residence of the offended party and the latter did not give any provocation. It is considered an aggravating circumstance primarily because of the sanctity of privacy accorded to the human abode.

As pointed out earlier, Glaiza was only preparing dinner in the sanctity of her home when the attack happened. Clearly, there was no provocation that would exempt this case from being aggravated by the circumstance of dwelling. Therefore, the penalty imposed upon accused-appellant should be that for an aggravated crime, which is death in this case. However, pursuant to R.A. 9346, the penalty of *reclusion perpetua* shall be imposed, with no eligibility for parole.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,*-versus- EDWIN DAGSA y BANTAS,*accused-appellant.***

G.R. No. 219889, SECOND DIVISION, January 29, 2018, PERALTA, *J.*

*Under the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure and affirmed by settled jurisprudence, even though the crime charged against the accused was for rape through carnal knowledge, he can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape.*

*The CA found accused-appellant guilty of the crime of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of RA 7610, which defines and penalizes acts of lasciviousness committed against a child*

*The essential elements of this provision are:*

1. *The accused commits the act of sexual intercourse or lascivious conduct.*

*2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.*

*3. The child, whether male or female, is below 18 years of age*

*As to the first element, witnesses positively testified that accused-appellant fondled AAA's vagina.*

*The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse.*

*Anent the third element, there is no dispute that AAA was four years old at the time of the commission of the crime.*

**FACTS:**

The victim, AAA, a young girl who was then four (4) years old, was walking home with two of her classmates when accused-appellant blocked their path and told AAA's classmates to go ahead as he would be giving AAA a candy. AAA's classmates left her and, after walking a little farther, they looked back and saw accused-appellant remove AAA's panty and proceeded to fondle her vagina

The following day, while BBB was giving AAA a bath, the latter refused that her vagina be washed claiming that it was painful. Upon her mother's inquiry, AAA replied that accused-appellant played with her vagina and inserted his penis in it. BBB immediately went to talk to AAA's classmates about the incident whereby the said classmates relayed to her what they saw. They then proceeded to the police station to report the incident. AAA's classmates gave their statements, but AAA was not able to give hers as she was too shy. A criminal complaint for rape was eventually filed against accused-appellant.

RTC held that ccused is guilty as charged, while the CA modified the conviction to Acts of Lasciviousness.

**ISSUE:**

Whether or not the CA erred in finding accused-appellant not liable for rape. (NO)

**RULING:**

The CA did not commit error in finding accused-appellant not liable for rape. Pertinent portions of the CA Decision, which the Court quotes with approval, are as follows:

> Here, the evidence of the prosecution failed to establish that Edwin had carnal knowledge of AAA. Michael's testimony did not show that Edwin had carnal knowledge with AAA. He only testified that he saw Edwin holding AAA's vagina. Clearly, Michael and Jomie's testimonies failed to prove that Edwin inserted his penis [into] AAA's vagina. What they saw was only his act of fondling AAA's private part which is not rape.
>
> BBB's testimony that AAA admitted to her that she was sexually molested by Edwin cannot be treated as part of the *res gestae*. To be admissible as part of the*res gestae*, a statement must be spontaneous, made during a startling occurrence or immediately prior or subsequent thereto, and must relate to the circumstance of such occurrence. Here, AAA did not immediately tell BBB of the alleged rape. It was only the next day that she told her mother of the incident after

> she was asked what was wrong. Verily, the declaration was not voluntarily and spontaneously made as to preclude the idea of deliberate design.

Nonetheless, the Court agrees with the ruling of the CA that accused-appellant is guilty of the crime of acts of lasciviousness. Under the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure and affirmed by settled jurisprudence, even though the crime charged against the accused was for rape through carnal knowledge, he can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape.

The CA found accused-appellant guilty of the crime of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of RA 7610, which defines and penalizes acts of lasciviousness committed against a child

The essential elements of this provision are:

1. The accused commits the act of sexual intercourse or *lascivious conduct*.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child, whether male or female, is below 18 years of age

As to the first element, Records show that the prosecution duly established this element when the witnesses positively testified that accused-appellant fondled AAA's vagina sometime in October 2004.

The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. In the case of *Olivarez v. Court of Appeals*, this Court explained that the phrase, "other sexual abuse" in the above provision covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult. As in the present case, it is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls, like AAA, who could not be expected to act with equanimity of disposition and with nerves of steel

Anent the third element, there is no dispute that AAA was four years old at the time of the commission of the crime.

Thus, on the basis of the foregoing, the Court finds that the CA correctly found accused-appellant guilty of the crime of acts of lasciviousness under Article 336 of the RPC in relation to Section 5 (b), Article III of RA 7610.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- EMILIANO DE CHAVEZ, *accused-appellant*.**
G.R. No. 218427, FIRST DVISION, January 31, 2018, DEL CASTILLO, *J.*

*Inaccuracies and inconsistencies in the testimony of a rape victim is not unusual considering that the painful experience is oftentimes not remembered in detail. The Court has consistently ruled that there is sufficient basis to conclude the existence of carnal knowledge when the testimony of a rape victim is*

*corroborated by the medical findings of the examining physician as "lacerations, whether healed or fresh, are the best physical evidence of forcible decoration."*

*In this case, the victim's testimony is corroborated not only by her sister but also by the medical findings of the examining physician, who testified that the presence of deep healed lacerations on the victim's genitalia is consistent with the dates the alleged sexual acts were committed.*

**FACTS:**

Private complainant "XXX" is the daughter of appellant and "ZZZ."

On June 2, 2005, "XXX," who was then thirteen (13) years old, was sleeping on the floor of their room while her siblings were sleeping with their father on the bed. "XXX" was suddenly awakened when her father lay beside her. She asked him what he was doing. Appellant did not answer, then slowly he raised her shirt. He whispered "Sundin mo na lang ako at pag hindi mo ako sinunod ay papatayin ko ang mga kapatid mo" then he told "XXX" "ibaba mo ang jogging pants at panty mo." Because of fear, "XXX" followed her father's order. Appellant then inserted his finger into her vagina. She did not ask for help because she was afraid After a few minutes, appellant removed his finger and returned to bed.

On June 3, 2005, "XXX" was awakened when her father lay on top of her. Appellant inserted his penis into "XXX's" vagina. She begged him to stop but he just ignored her and did a pumping motion for few minutes, then went back to bed. Meanwhile, "YYY," "XXX's" younger sister, who was sleeping on the bedside beside the mat where "XXX" was sleeping was awakened when she saw appellant on top of the latter. The following morning, "YYY" told "XXX" that she saw what the appellant did to her. That same day, June 4, 2005, appellant inserted again his finger into "XXX's" vagina.

On September 30, 2005, "XXX" was awakened when her father removed her clothes and inserted his penis into her vagina. The following morning, "XXX" noticed a white discharge on her panty. "XXX" was prompted to proceed to the house of her mother to report what appellant did to her when the latter hurt her brother. Immediately, they went to the police station and filed a complaint.

Appellant, on the other hand, testified that the accusations of his daughter against him were done in retaliation because he scolded his children and severely punished his youngest child.

During the trial, the prosecution presented the testimonies of private complainant "XXX," her sister "YYY," and Dr. Roy Camarillo, the Medico-Legal Officer of the PNP Crime Laboratory. Medical examination shows definite evidence of abuse of sexual contact.

RTC found appellant guilty beyond reasonable doubt of two counts of qualified rape and two counts of rape by sexual assault. CA affirmed the decision.

**ISSUE:**

Whether or not the prosecution was not able to prove the accusations against the accused-appellant because of the inconsistencies in the testimonies of the witnesses (NO)

**RULING:**

Inaccuracies and inconsistencies in the testimony of a rape victim is not unusual considering that the painful experience is oftentimes not remembered in detail as "It causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget." Besides, the determination of the credibility of a witness is best left to the trial court, which had the opportunity to observe the deportment and demeanor of the witness while testifying.

Moreover, the Court has consistently ruled that there is sufficient basis to conclude the existence of carnal knowledge when the testimony of a rape victim is corroborated by the medical findings of the examining physician as "lacerations, whether healed or fresh, are the best physical evidence of forcible decoration."

In this case, the victim's testimony is corroborated not only by her sister but also by the medical findings of the examining physician, who testified that the presence of deep healed lacerations on the victim's genitalia is consistent with the dates the alleged sexual acts were committed.

Accordingly, the Court finds no reason to disturb the findings of the RTC, which was affirmed by the CA. It bears stressing that factual findings of the trial court, when affirmed by the CA, are generally binding and conclusive upon the Court.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- CRISANTO CIRBETO y GIRAY, accused-appellant.**

G.R. No. 231359, SECOND DVISION, February 7, 2018, PERLAS-BERNABE, *J*

*To successfully prosecute the crime of Murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.*

*Treachery was correctly appreciated as a qualifying circumstance in this case. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. The evidence in this case clearly shows that the attack against Casipit was sudden, deliberate, and unexpected. He was completely unaware of any threat to his life as he was merely walking with accused-appellant on the date and time in question.*

**FACTS:**

On December 31, 2010, at around 3:15 in the afternoon, while prosecution eyewitness Roger Dalimoos was outside a fast food restaurant he saw his friend Casipit together with accused-appellant.. Dalimoos boarded a jeepney by hanging on to its end. Upon reaching the stoplight at the corner of the street, from which he could still see Casipit and Cirbeto who were already in front of

the mall, Dalimoos saw Cirbeto suddenly pull a knife from the right side of his back, hold Casipit's shirt with his left hand, and stab him with the knife using his right hand. Cirbeto was able to stab Casipit once before the latter managed to run away. However, Cirbeto ran after Casipit and caught up to him. Thereafter, the former held the latter's shirt again, pulled him to the ground, and stabbed him repeatedly, resulting in the latter's death. Casipit sustained five (5) stab wounds caused by a bladed weapon. Consequently, accused-appellant was charged with the crime of Murder attended by the qualifying circumstances of treachery, evident premeditation, and abused of superior strength.

RTC ruled that Cirbeto attended by the qualifying circumstances of treachery and evident premeditation, which it inferred from the act of accused-appellant in bringing with him a knife and waiting for the perfect moment to kill Casipit. CA affirmed the decision of RTC. CA found that Casipit was caught off-guard when he was stabbed by accused-appellant, which act reeks of treachery. CA likewise sustained the RTC's finding that evident premeditation was present in this case, as the same may be inferred from the outward act of Cirbeto in bringing a knife with him.

**ISSUE:**

Whether or not the CA correctly affirmed accused-appellant's conviction for the crime of Murder. (YES)

**RULING:**

To successfully prosecute the crime of Murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.

In this case, the prosecution was able to establish a confluence of the foregoing elements, considering the following: (1) the victim Casipit was killed; (2) accused-appellant was positively identified as the one who killed him; (3) Casipit's killing was attended by treachery, a qualifying circumstance; and (4) the killing is neither parricide nor infanticide.

Treachery was correctly appreciated as a qualifying circumstance in this case. Treachery is the direct employment of means, methods, or forms in the execution of the crime against persons which tends directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. The evidence in this case clearly shows that the attack against Casipit was sudden, deliberate, and unexpected. He was completely unaware of any threat to his life as he was merely walking with accused-appellant on the date and time in question.

However, the Court is of a different view with respect to the purported presence of evident premeditation. For evident premeditation to be considered as a qualifying or an aggravating circumstance, the prosecution must prove: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the culprit has clung to his determination; and (c) a

sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.

In this case, nothing has been offered to establish when and how he planned and prepared for the same, nor was there a showing that sufficient time had lapsed between his determination and execution. The Court stresses the importance of the requirement in evident premeditation with respect to the sufficiency of time between the resolution to carry out the criminal intent and the criminal act, affording such opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what accused-appellant had planned to do, where the interval should be long enough for the conscience and better judgment to overcome the evil desire and scheme.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- ROMULO BANDOQUILLO y OPALDA, accused-appellant.**
G.R. No. 218913, FIRST DVISION, February 7, 2018, DEL CASTILLO, *J*

*As held in **People v. Ortoa** full penetration is not necessary for rape to be consummated:*

> *x x x **In any case, for rape to be consummated, full penetration is not necessary**. Penile invasion necessarily entails contact with the labia. It suffices that there is proof of the entrance of the male organ into the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape.*

*Note that when the offended party is a young and immature girl between the age of 12 to 16, as in this case, courts are inclined to give credence to her version of the incident, considering not only her relative vulnerability but also the public humiliation to which she would be exposed by court trial if her accusation were untrue.*

**FACTS:**
"AAA," then only 14 years of age, was sleeping inside her room in their house when she was suddenly awakened by her father, herein appellant, who forcibly undressed her, touched her breasts and kissed her neck. "AAA" begged appellant not to continue with what he was doing. Appellant, however, disregarded his daughter's pleas and succeeded in having carnal knowledge of "AAA." Immediately thereafter, "AAA" contacted her mother, "ZZZ," who was then residing in Manila, and disclosed what had happened to her. "ZZZ" quickly travelled back to Sorsogon. Thereafter, "AAA" and "ZZZ" reported the incident to DSWD and the local authorities. "AAA" was then physically examined. Based on her Medical Certificate "AAA" had healed lacerations as well as hematoma on the outer part of her vaginal canal.

RTC found appellant guilty of the crime rape under Article 266-A. CA affirmed the assailed the decision of the RTC with the following modification: a.) it convicted appellant of qualified rape.

**ISSUE:**
Whether "AAA's" testimony is credible, given the inconsistency in her testimony as regards the consummation of the crime. (YES)

**RULING:**
The alleged inconsistency in "AAA's" testimony, i.e., that "AAA" had earlier testified that appellant's penis was only able to enter the labia of her sexual organ but later stated that appellant was able to insert his penis into her vagina, is more apparent than real.

There is no real inconsistency in "AAA's" narration of the rape incident: first, appellant's penis touched the labia of "AAA's" sexual organ; second, appellant tried to push his penis into "AAA's" sexual organ, and "AAA" felt pain and tried to resist; and third, appellant was not able to fully penetrate "AAA's" vagina because her little brother, who was sleeping outside her room, woke up and called out to their father.

As held in **People v. Ortoa** full penetration is not necessary for rape to be consummated:

> x x x In any case, for rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the labia. It suffices that there is proof of the entrance of the male organ into the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape.

Note that when the offended party is a young and immature girl between the age of 12 to 16, as in this case, courts are inclined to give credence to her version of the incident, considering not only her relative vulnerability but also the public humiliation to which she would be exposed by court trial if her accusation were untrue.

Given these circumstances, appellant is guilty of the crime qualified rape under Article 266-B of the Revised Penal Code, where the rape victim is under 18 years of age and the offender is a parent.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus - JOMAR SISRACON y RUPISAN, MARK VALDERAMA y RUPISAN, ROBERTO CORTEZ y BADILLA, LUIS PADUA y MITRA and ADONIS MOTIL y GOLONDRINA, *Accused-Appellants.***
G.R. No. 226494, SECOND DIVISION, February 14, 2018, PERALTA, *J.*

*The elements of rape committed under Article 266-A (1) (a) of the Revised Penal Code, as amended, are: (a) that the offender, who must be a man, had carnal knowledge of a woman, and (b) that such act is accomplished by using force or intimidation. In this case, all the elements of the crime of rape have been properly established by the prosecution and aptly appreciated by the RTC and the CA.*

**FACTS:**
In nine (9) Informations, the appellants were charged of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369.

AAA, the victim who was then 15 yrs. old, testified that after the appellants intoxicated her, appellant Jomar Sisracon (Jomar) went on top of her and, against her will, inserted his penis in her vagina. After having carnal knowledge with AAA, Jomar told the others "sino ang susunod"? Thus, another man of heavier weight went on top of AAA and inserted his penis in her vagina. AAA identified that it was Jomar who carried him to another room and placed her in a "papag" because she heard him say, "dito

na, dito na." AAA testified that she was familiar with Jomar's voice because she knew him and the other appellants since childhood. AAA alleged that Jomar and his eight (8) companions in conspiracy with each other raped her.

While the cases against the four accused were sent to archives pending their apprehension, the other five accused-appellants contended that there are no concrete evidence to show that AAA has been sexually abused by them, hence, it is wrong for the trial court to rely merely on the testimony of AAA in convicting them with the crime charged in the Informations. They also claim that based on the testimony of AAA, there was no proof of the identity of the appellants as the perpetrators of the crime. They, likewise, assert that they cannot be convicted of rape with the aggravating circumstance of nighttime and committed by two or more persons because the records show that the prosecution failed to establish that they took advantage of the same situations in the commission of the crime.

Both the RTC and the CA found the appellants guilty as charged of nine (9) counts of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369.

**ISSUE:**
Whether the accused-appellants are guilty beyond reasonable doubt of the crimes charged. (YES)

**RULING:**
The elements of rape committed under Article 266-A (1) (a) of the Revised Penal Code, as amended, are: (a) that the offender, who must be a man, had carnal knowledge of a woman, and (b) that such act is accomplished by using force or intimidation. In this case, all the elements of the crime of rape have been properly established by the prosecution and aptly appreciated by the RTC and the CA. Through the testimony of AAA, it was clearly proven that the appellants committed the crime and, as such, an attack on her credibility is futile.

The Court agrees with the findings of the court a quo as regards AAA's positive identification of Jomar, through his voice, as one of the persons who raped her. AAA was detailed in her narration and remained consistent even on rigid cross-examination. She testified on all incidents that transpired from the beginning until the end of her ordeal. A candid and honest narration by the victim of how she was abused must be given full faith and credit for they contain earmarks of credibility. When the testimony of the victim is simple and straightforward, the same must be given full faith and credit. The determination of the outcome of every rape case, hinges upon the credibility of the complainant's testimony.

Also, the Court agrees with the findings of the court a quo that the commission of the crime of rape was accomplished by appellants, in conspiracy with each other. The testimony of AAA reveals that appellants conspired with one another in raping her. All of the appellants acted in concert to achieve a common goal which was to have carnal knowledge with AAA. Appellants appear to have consented in all the acts of their co-accused taking turns in raping AAA considering none of them prevented the commission of the crime, but rather participated in aiding one another in their dastardly acts.

However, based on the testimony of AAA, that she recognized appellant Jomar as the first person who raped her followed by another person of heavier built before she passed out, it is more appropriate to convict the appellants with just two (2) instead of nine (9) counts of rape as earlier ruled by the

RTC and affirmed by the CA as the other seven counts of rape have not been proven beyond reasonable doubt.

Moreover, the Court appreciates the presence of nighttime, as strong indications show that the accused specifically sought it to facilitate the commission of the crime. Abuse of superior strength is not to be considered as an aggravating circumstance in view of the existence of conspiracy, thus the same is deemed inherent.

Lastly, the Court held that the herein minor appellants shall be entitled to appropriate disposition under Section 51, R.A. No. 9344, or confinement of convicted children in agricultural camps and other training facilities, which extends even to one who has exceeded the age limit of twenty-one (21) years, so long as he committed the crime when he was still a child, and provides for the confinement of convicted children.

**EDEN ETINO, *Petitioner,* -versus- PEOPLE OF THE PHILIPPINES, *Respondent.***
G.R. No. 206632, FIRST DIVISION, February 14, 2018, DEL CASTILLO, *J.*

*In order to determine whether the crime committed is attempted or frustrated parricide, murder or homicide, or only lesiones (physical injuries), the crucial points to consider are: a) whether the injury sustained by the victim was fatal, and b) whether there was intent to kill on the part of the accused.*

**FACTS:**
In an Information, petitioner Eden Etino (Etino) was charged of the crime of frustrated homicide. According to the prosecution, while complainant Jessierel Leyble (Leyble) and his companions, Isidro Maldecir, and Richard Magno, were walking on their way home, he was shot with a 12 gauge shotgun by the petitioner, hitting the back portion of his right shoulder and other parts of his body. Leyble's testimony was corroborated by Maldecir who categorically stated that Leyble was shot by petitioner from behind, and was thereafter brought to the Don Benito Lopez Memorial Hospital for treatment. To prove the injuries suffered by Leyble, the prosecution presented Nida Villarete Sonza (Sonza) in her capacity as the officer-in-charge of the security of all the medical records of the patients in the hospital for the reason that Dr. Rodney Jun Garcia, who treated Leyble, was unable to testify as he is now based in a different city.

The RTC found petitioner guilty beyond reasonable doubt of the crime of frustrated homicide. It ruled that petitioner was positively identified as the perpetrator of the crime charged against him, especially so, when the complainant, Leyble, was alive to tell what actually happened. The CA affirmed the decision of the RTC.

**ISSUE:**
Whether the CA erred in holding that his guilt for the charged crime of frustrated homicide was proven beyond reasonable doubt, since the physician who examined the victim was not presented in court. (YES)

**RULING:**
The Court ruled in several cases that when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wound/s but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the

Revised Penal Code are present. However, if the wound/s sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide. If there was no intent to kill on the part of the accused and the wound/s sustained by the victim were not fatal, the crime committed may be serious, less serious or slight physical injury. Thus, in order to determine whether the crime committed is attempted or frustrated parricide, murder or homicide, or only lesiones (physical injuries), the crucial points to consider are: a) whether the injury sustained by the victim was fatal, and b) whether there was intent to kill on the part of the accused.

It is settled that "where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, the character of the wound is doubtful," and such doubt should be resolved in favor of the accused. In the present case, there is no proof of the extent of injury sustained by the victim. The Court finds that the prosecution failed to present evidence to prove that the victim would have died from his wound without timely medical assistance, as his Medical Certificate alone, absent the testimony of the physician who diagnosed and treated him, or any physician for that matter, is insufficient proof of the nature and extent of his injury. This is especially true, given that said Medical Certificate merely stated the victim's period of confinement at the hospital, the location of the gunshot wounds, the treatments he received, and his period of healing. Without such proof, the character of the gunshot wounds that the victim sustained enters the realm of doubt, which the Court must necessarily resolve in favor of petitioner.

"The assailant's intent to kill is the main element that distinguishes the crime of physical injuries from the crime of homicide. The crime can only be homicide if the intent to kill is proven." The intent to kill must be proven "in a clear and evident manner so as to exclude every possible doubt as to the homicidal intent of the aggressor." In the present case, the intent to kill was not sufficiently established. When the intent to kill is lacking, but wounds are shown to have been inflicted upon the victim, as in this case, the crime is not frustrated or attempted homicide but physical injuries only. Since the victim's period of incapacity and healing of his injuries was more than 30 days — he was confined at the hospital from November 5 to 25, 2001, or for 20 days, and his period of healing was "two (2) to four (4) weeks barring complications" — the crime committed is serious physical injuries under Article 263, par. 4 of the Revised Penal Code.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus - CARLOS BAUIT y DELOS SANTOS, *Accused-Appellant.***

G.R. No. 223102, FIRST DIVISION, February 14, 2018, DEL CASTILLO, *J.*

*In People v. Arpon, citing People v. Condes, the Court has held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. x x x The trial judge, therefore, can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.*

*In the case at bar, both the trial and appellate courts uniformly found the testimony of "AAA" in narrating the rape incident to be straightforward, clear and convincing.*

**FACTS:**
The accused-appellant was charged with rape of his biological daughter, "AAA," a minor, 12 years old. According to the prosecution, in the early morning of July 20, 2011, while she was on her way to the bathroom, accused-appellant suddenly held her and forced her to lie down in their room. Accused-appellant pulled down her short pants and underwear. After removing his own pants, he placed himself on top of her and inserted his penis into her vagina. "AAA" felt pain in the process. She resisted but her effort was in vain. After taking her bath, "AAA" went to school as if nothing happened. Upon the arrival of her mother "BBB" from Cagayan, "AAA" confided to her the incident. With the help of her aunts, the matter was reported to a barangay kagawad and then to the police station wherein "AAA" gave her statement. After an investigation, "AAA" was sent to a doctor in Camp Crame for genital examination.

Accused-appellant denied raping "AAA." Instead, he insists that there was physical impossibility to commit the rape considering the layout of the place of the alleged incident and the close proximity of the rooms in the house which were separated by mere thin plywoods. He relies on the medico-legal finding that the deep healed lacerations were inflicted by sexual contacts that occurred more than one week from the time of the genital examination of "AAA." He points out that there were barely three days in between the date of the incident and the examination and therefore he could not have been the author of the rape. Moreover, he avers that the absence of any contusion or abrasion on the body of "AAA" and any seminal fluid on her vagina negate the commission of rape.

The RTC found accused-appellant guilty beyond reasonable doubt of the crime of rape against "AAA," giving credence to the testimony of "AAA" and her positive identification of accused-appellant as her rapist. It found the testimony of "AAA" straightforward and categorical. It ruled that tenacious resistance on the part of "AAA" was irrelevant considering his moral ascendancy over her. Likewise, the CA found no merit in the appeal of accused-appellant and concurred with the factual findings of the trial court.

**ISSUE:**
Whether the court a quo gravely erred in convicting him of rape despite the prosecution's failure to prove his guilt beyond reasonable doubt (NO)

**RULING:**
The arguments of accused-appellant deserve scant consideration considering that all pertain to the issue of credibility of the testimony of the private complainant, "AAA."

In *People v. Arpon*, citing *People v. Condes*, the Court held:

> Time and again, the Court has held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. x x x The trial judge, therefore, can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and

detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.

In the case at bar, both the trial and appellate courts uniformly found the testimony of "AAA" in narrating the rape incident to be straightforward, clear and convincing. The Court found nothing significant from the testimony of "AAA" to justify a deviation from the above-quoted general rule.

Furthermore, the Court is not persuaded with the posit of the prosecution that since the alleged rape occurred on July 20, 2011, or less than three days before "AAA" was examined, the lacerations were not caused by him but somebody else. As held in *People v. Rubio*, "a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime. In fact, a doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape. The presence of healed or fresh hymenal laceration is not an element of rape." "In the crime of rape, the testimony of the victim, and not the findings of the medico-legal officer, is the most important element to prove that the felony had been committed." "Moreover, the absence of external injuries does not negate rape. In fact, even the presence of spermatozoa is not an essential element of rape."

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- AUGUSTO GONZALES, ESMENIO PADER, JR., and MARCELO ANTONIO, *Accused,* MARCELO ANTONIO, *Accused-Appellant.***
G.R. No. 223113, FIRST DIVISION, February 19, 2018, DEL CASTILLO,J.

*The prosecution satisfactorily established all the elements for the crime of Rape which are as follows: (a) t****hat the offender has carnal knowledge of a woman*** *and (2)* ***that he accomplished such act through force or intimidation.*** *AAA who was 15 years old when the crime occurred, narrating the incident and positively identifying of one of the rapists proves the crime actually occurred.* ***The Supreme Court has consistently upheld that youth and immaturity have always been considered as badges of truth and sincerity.***

*AAA's failure to resist the sexual assault did not militate against her claim that she was raped. In previous cases,* ***the courts have always held that the failure of a victim to shout for help does not negate rape.Physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused, it is not an essential element of rape.***

**FACTS:**

**AAA,who was then a 15 year old girl**, on December 13, 1999, at around 8:00 PM was on her way home when she met Marcelo Antonio (Appellant), Augusto Gonzales (Augusto), Esmenio Pader (Esmenio), and Marlon Cajobe (Marlon) on the road. Augusto invited "AAA" to go with them but AAA refused. As a result, Appellant, Augusto, and Esmenio dragged AAA to the sandpile and proceeded to remove her clothes while Marlon was watching. Both the Appellant and Esmenio pinned AAA down by holding her hands and feet and Augusto punched AAA on the face and body. **Appellant was the first one who entered his penis inside "AAA's" vagina which was then followed by Augusto and Esmenio.** A woman who passed by heard "AAA's" cries and called a Barangay Kagawad who chased Augusto and Esmenio but he was only able to apprehend the Appellant. AAA, accompanied by her mother, went to a hospital for a physical examination where AAA was physically examined. A Medico-

Legal Certificate was issued i**ndicating findings of multiple lacerations surrounding the hymen**, **bleeding**, **and presence of spermatozoa.**

Appellant, along with Augusto and Esmenio, was charged with Rape but Augusto and Esmenio were still at large. The RTC of Olongapo City found Appellant guilty of the crime charged. The trial court accorded full faith and credence to the evidence presented by the prosecution, particularly to AAA's testimony. The Appellant appealed before the Court of Appeals arguing that AAA's testimony were marred with serious flaws and loopholes. He also contends that AAA failed to show resistance to the alleged attack thus failing to show that the sexual intercourse was not consensual. However, the Court of Appeals affirmed the decision of the trial court finding the presence of all the elements of Rape. They further held that AAA's failure to resist the attack cannot be taken as voluntariness or consent to the sexual assault and the inconsistencies in AAA's testimonies do not negate the assertion of Rape for those were merely trivial and immaterial.

**ISSUE:**

Whether or not Appellant's conviction for the crime of Rape by the Court of Appeals was proper (YES)

**RULING:**

The prosecution satisfactorily established all the elements for the crime of Rape which are as follows: (a) t**hat the offender has carnal knowledge of a woman** and (2) **that he accomplished such act through force or intimidation.** AAA, who was 15 years old when the crime occurred, narrating the incident and positively identifying of one of the rapists proves the crime actually occurred. **The Supreme Court has consistently upheld that youth and immaturity have always been considered as badges of truth and sincerity.** Furthermore, **the fact that the Medico-Legal Report found the presence of hymenal lacerations, bleeding, and spermatozoa strengthened AAA's testimony.**

Neither can the Appellant claim that AAA's failure to resist the sexual assault militated against her claim that she was raped. In previous cases, **the courts have always held that the failure of a victim to shout for help does not negate rape.Physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused, it is not an essential element of rape.** Likewise, the discrepancies and inconsistencies in the testimony of AAA cannot discredit that the crime actually occurred. The inconsistencies only consisted trivial matters and not material facts. As correctly held by the trial court and the Court of Appeals, the testimony of AAA passed the test of credibility. As such, Appellant can be convicted only with the testimony of the victim.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ISIDRO RAGASA y STA. ANA alias "NONOY", *Accused-Appellant*.**
G.R. No. 202863, THIRD DIVISION, February 21, 2018, MARTIRES, *J.*

*All the elements of the crime of rape are present in this case.* ***The accused-appellant was armed with a knife and threatened to kill her if she informs anybody about the incident.AAA's hands were also tied behind her back to avoid any resistance on her part.***

***The alleged inconsistencies only refer to trivial and collateral matters which do not diminish the credibility of AAA's testimony.Jurisprudence dictates that youth and immaturity are generally badges of truth.*** *Nor is the allegation of the accused appellant that AAA's hymen could not have healed quickly may be accepted as* ***proof of hymenal laceration is not an element of rape and healed lacerations do not negate rape.***

**FACTS:**

On March 10, 2000, at about 8 AM, AAA, **who was then 13 years old**, was left alone sleeping in the house when her mother and grandmother left to sell banana cue. At about 9 AM, AAA heard somebody trying to open the door to her room. As she was about to go to the door, it opened and she saw Isidro Ragasa (Accused-appellant) **holding a knife**, AAA was about to shout but accused-appellant covered her mouth with a rubber cloth and **tied her hands back with a rubber strip.** The accused-appellant **threatened to kill her if she told anybody about the incident**. He then pulled up her t-shirt to her breasts, removed her shorts, and underwear and and also stripped himself. According to the victim, **accused-appellant succeeded in having sexual intercourse with her four times.** After having succeeded in his lustful desires, he escaped through the window. Three days after the incident, AAA informed her father regarding the incident and accompanied by her grandmother, they reported the incident to the police. AAA was submitted to **physical examination and a medical certificate was issued** which shows **healed lacerations and irritation around the labia minora.** AAA was able **to positively identify the accused-appellant** because he was friends with his brother when he was staying in Manila.

Accused-appellant was charged with the crime of rape. The RTC of Manila found him guilty of the crime charged ruling that the element of force and intimidation was present based on the testimonies that he was holding a knife. The trial court also found no reason to discredit the testimony of the victim which was corroborated by the medical certificate. However, even if it was alleged that AAA was raped four times, the information only charged one count of rape. On appeal, the Court of Appeals affirmed the conviction of the lower court according weight to the findings of the said court.

**ISSUE:**

Whether or not the trial erred in convicting the accused-appellant of the crime of rape (NO)

**RULING:**

The Supreme Court believes that the prosecution was able to establish beyond reasonable doubt that the crime of rape was committed. To make sure the crime would succeed, **the accused-appellant was armed with a knife and threatened to kill her if she informs anybody about the incident.AAA's hands were also tied behind her back to avoid any resistance on her part.**

The arguments raised by the accused-appellant that there were inconsistencies and improbabilities in the testimony of AAA is devoid of any merit. **The alleged inconsistencies only refer to trivial and collateral matters which do not diminish the credibility of AAA's testimony.Jurisprudence dictates that youth and immaturity are generally badges of truth.** Nor is the allegation of the accused appellant that AAA's hymen could not have healed quickly may be accepted as **proof of hymenal laceration is not an element of rape and healed lacerations do not negate rape.** Accused-appellant's claim that committing rape while the victim's hands were tied behind her back

is impossible also deserves scant consideration. It even proved that her testimony was truthful and unrehearsed as according to the Court, it is highly improbable that a girl of tender age would know such ways. In addition, the medico-legal findings further bolstered the testimonial evidence of the prosecution which only proves that rape has been committed.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- BENEDICT GOMEZ y RAGUNDIAZ, *Accused-Appellant.***

G.R. No. 220892, FIRST DIVISION, February 21, 2018, DEL CASTILLO, *J.*

*The straightforward and categorical testimony of AAA and her positive identification of appellant* ***proved that the latter had carnal knowledge of AAA against her will and without her consent****. As such, her testimony must prevail over the uncorroborated and self-serving denial of appellant. Moreover, AAA's credibility is* ***bolstered by her prompt report of the incident*** *to her mother, a day after it transpired, which just goes to show that* ***AAA did not have the luxury of time to fabricate a rape story.***

**FACTS:**

On January 20, 2007, AAA, **then 15-year old girl**, went to the birthday party of her classmate. Together with other persons, she was included in a drinking session. AAA was the one serving liquor to the group but she was replaced by another person when she felt dizzy after drinking 10 shots of liquor. Upon waking up, **AAA found herself naked with Benedict Gomez (Appellant) on top of her and his penis inside her vagina.** AAA pushed appellant twice but to no avail nad lost consciousness not too long after. When she woke up the following day, she was told by two people that appellant and some of his friends had carnal knowledge with her. **AAA immediately told her mother about what happened** and submitted herself to a medico-legal examination on the following day which revealed the application of recent blunt force or penetrating trauma upon her.

The appellant was charged with the crime of rape. The RTC of Quezon City convicted him of the crime charged relying on the positive identification of the appellant by AAA. It also stressed that AAA's testimony was consistent with her out-of-court statements. The Court of Appeals affirmed the decision of the RTC and likewise gave credence to AAA's positive identification of appellant as the person who raped her.

**ISSUE:**

Whether or not the trial and appellate courts erred in convicting appellant of the crime charged (NO)

**RULING:**

The Court of Appeals correctly affirmed the RTC Decision convicting appellant of simple rape as **the prosecution successfully established beyond reasonable doubt that appellant had carnal knowledge of the victim which was committed through force and intimidation.**

**The straightforward and categorical testimony of AAA and her positive identification of appellant proved that the latter had carnal knowledge of AAA against her will and without her consent.** As such, her testimony must prevail over the uncorroborated and self-serving denial of appellant. Moreover, AAA's credibility is **bolstered by her prompt report of the incident** to her mother, a day after it transpired, which just goes to show that **AAA did not have the luxury of time to fabricate a rape story.**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ROMEO GARIN y OSORIO, *Accused-Appellant*.**

G.R. No. 222654, FIRST DIVISION, February 21, 2018, DEL CASTILLO, *J.*

*Jurisprudence consistently holds that* ***testimonies of minor victims are generally given full weight and credence*** *as the court considered* ***their youth and immaturity as badges of truth and sincerity.*** *AAA's testimony was consistent which was further corroborated by the medical findings that there were abrasions and redness on the victim's vaginal area.*

*The fact that there was* ***no in-court identification is immaterial*** *as held by the court in People vs Quezada,* ***in-court identification is not necessary and it is only essential when there is a question of doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial.***

**FACTS:**

Private complainant, AAA, a four year old girl, testified that on 25 December 2010, she was about to go to the house of her aunt when Romeo Garin (appellant) took her and placed her on his lap. While on the lap of the appellant, the latter put his finger inside her vagina and she felt pain. She ran away but appellant chased her and caught her. Appellant then covered her mouth and boxed her in the stomach. When she returned home, the mother of AAA, BBB, noticed something was wrong with her daughter and asked her what happened. At first, AAA refused to say anything but then she told her mother about the incident. BBB decided to immediately report the incident to the Women and Child Protection Desk and brought her daughter to a Medical Center to have her genitalia examined. However, due to the number of patients, it was only three days after the incident where she was examined. There were showings of abrasions and redness on AAA's vaginal area.

Appellant was charged with the crime of rape through sexual assault before the RTC of Butuan City, The RTC found him guilty of the crime charged. Aggrieved, appellant elevated the case to the Court of Appeals which rendered a decision affirming the conviction of the appellant.

**ISSUE:**

Whether or not the trial and appellate courts erred in convicting the accused-appellant of the crime charged (NO)

**RULING:**

Appellant claims that he should be acquitted as the prosecution was not able to prove the accusations against him beyond reasonable doubt maintaining that there was no in-court identification that occurred. However, **the Court did not agree as jurisprudence consistently holds that testimonies of minor victims are generally given full weight and credence as the court considered their youth and immaturity as badges of truth and sincerity. AAA's testimony was consistent which was further corroborated by the medical findings that there were abrasions and redness on the victim's vaginal area.**

The fact that there was **no in-court identification is immaterial** as held by the court in *People vs Quezada*, **in-court identification is not necessary and it is only essential when there is a question of doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial.**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- JOSEPH AGALOT y RUBIO, *Accused-Appellant*.**

G.R. No. 220884, THIRD DIVISION, February 21, 2018, MARTIRES, *J.*

***The prosecution sufficiently proved the existence of all elements of rape.*** *The testimony of the victim narrated that accused-appellant was* ***armed with a knife when the incident occurred and if she did not follow his lustful desires, he threatened to stab AAA.It is a basic rule that when a victim's testimony is credible and sufficiently establishes the elements of the crime, it may be enough basis to convict an accused of rape.*** *Considering that no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts, and subject herself to public trial or ridicule if she has not been a victim of rape and impelled to seek justice for the wrong done to her being.* ***Youth and immaturity are generally badges of truth and sincerity.***

**FACTS:**

When her parents separated, AAA was left by her father at the house of his sister BBB and her spouse CCC. Joseph Agalot (Accused-appellant) was the son of BBB and CCC. On 7 April 2002, at about 3 PM, AAA, who was already 12 years old was left at home with accused-appellant and other family members who were children. Accused-appellant ordered AAA to get a calendar from his brother;s house. AAA complied but unknown to her, accused-appellant had followed her to his brother's house. Accused-appellant told AAA to go upstairs but when she refused, he dragged her upstairs and when they were inside a room, accused-appellant, **then armed with a hunting knife, made AAA lie down and threatened to stab her if she refused.** After AAA laid down, accused-appellant removed his clothes, undressed her, and mounted her. **He inserted his penis into her vagina** and after having carnal knowledge with AAA, he left. AAA told BBB and CCC that their son raped her but they did not believe her. She then proceeded to accused-appellant's sister and told her what happened and afterwards, she accompanied AAA to the hospital for a medical examination which **showed abrasions inside the vaginal area.** The defense denied the accusations against him.

The accused-appellant was charged with the crime of rape. The RTC held that the prosecution was able to prove that the accused-appellant had carnal knowledge with AAA against her will through force. AAA's testimony was also supported by the medical examination which was conducted within 24 hours the incident took place. Moreover, the prompt filing of the case was an indication that AAA's accusation was true. Furthermore, AAA's testimony was consistent throughout the trial and complete with details which only a real victim of sexual assault could narrate. Accused-appellant appealed to the Court of Appeals which affirmed the decision of the RTC holding that all the elements of rape were sufficiently proven by the prosecution,

**ISSUE:**

Whether or not the trial and appellate court gravely erred in convicting the accused-appellant (NO)

**RULING:**

It is well-settled that the factual findings and evaluation of witnesses' credibility and testimony should be entitled to great respect unless it is shown that the trial court may have overlooked, misapprehended, or misapplied any fact or circumstances of weight and substance. In this case, the Supreme Court found nothing on record that would support the claims of the accused-appellant that the lower courts overlooked, misapprehended, or misapplied any material fact,

In addition, **the prosecution sufficiently proved the existence of all elements of rape.** The testimony of the victim narrated that accused-appellant was **armed with a knife when the incident occurred and if she did not follow his lustful desires, he threatened to stab AAA.It is a basic rule that when a victim's testimony is credible and sufficiently establishes the elements of the crime, it may be enough basis to convict an accused of rape.** Considering that no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts, and subject herself to public trial or ridicule if she has not been a victim of rape and impelled to seek justice for

the wrong done to her being. **Youth and immaturity are generally badges of truth and sincerity.** AAA's credibility was further fortified by her prompt report of the accused-appellant's carnal knowledge of her. There was also nothing from the records that would indicate that AAA had ill motive in testifying against the accused-appellant.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,*-versus-RICHARD RAMIREZ y TULUNGHARI, *Accused-Appellant.***

G.R. No. 219863, FIRST DIVISION, March 06, 2018,DEL CASTILLO, *J.*

*The absence of a lacerated hymen does not automatically call for an acquittal. The rupture of the hymen is not an essential and material fact in rape cases; it only further confirms that the vagina has been penetrated and damaged in the process.*

**FACTS:**

The victim, AAA, is a six year old, while the accused is a stay-in construction worker in Baliwag, Bulacan. AAA and accused were neighbors and accused is also a friend of AAA's uncle who would usually sleep over at the victim's house. One time, about 12 midnight, AAA was awakened by the accused when he removed her pajama and panty and placed himself on top of her. The accused licked her vagina before inserting his penis into it. She felt pain and cried. Since the accused threatened her if she told the incident to anybody, she kept mum about it. Weeks after, about 2:00 a.m., AAA was awakened by the shout of her uncle. There, she saw accused standing at the corner of the house with her panty at the latter's feet. Realizing that she was naked, she instantly wore her short pants and ran and embraced her uncle. AAA, accompanied by her grandparents and uncle, reported the incident to the police. The medico legal examination of the private organ of AAA revealed no laceration in her hymen.

Appellantdenied the accusations and provided that on the first occasion, he was on a drinking spree with his friends until 12 midnight. He slept together with his friends, side by side, and noticed that AAA is sleeping on the sofa. On the second occasion, appellant narrated that he was awakened by the punches thrown to him by AAA's uncle and was clobbered by another uncle of AAA. He went home and narrated the incident to his mother. Thereafter, the policemen arrived to his house and arrested him without warrant.

Two cases for rape and acts of lasciviousness were filed. The trial court convicted the appellant of the crime of rape and acts of lasciviousness. The Court of Appeals affirmed the conviction.

**ISSUE:**

Whether the accused is guilty of the crimes charged against him. (NO)

**RULING:**

The court modifies the conviction of rape but declares acquittal of the accused in acts of lasciviousness. Rape is committed when a man has carnal knowledge of a woman against her will or without her consent attended by any of the following circumstances: (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented. In this case, the offended party is below twelve years of age, elevating the crime to statutory rape. Although the medical examination provided that there was no lacerated hymen, the absence of a lacerated hymen does not automatically call for an acquittal. The rupture of the hymen is not an essential and material fact in rape cases; it only further confirms that the vagina has been penetrated and damaged in the process.

The guilt in acts of lasciviousness was not proven. AAA testified that he did not see the appellant on top of her or even remove her underwear. Her uncle shouted because, allegedly, her aunt saw accused lying on top of her. AAA's testimony as regards the second rape incident is not sufficient to convict appellant of rape or even acts of lasciviousness without the testimonies of her aunt and uncle who supposedly witnessed firsthand what happened on that night. AAA's narrative consisted of hearsay evidence which has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule.

**PEOPLE OF THE PHILIPPINES**, ***Plaintiff-Appellee*****, -versus- RAUL MARTINEZ AND LITO GRANADA,** ***Accused-Appellants***

G.R. No. 226394, SECOND DIVISION**,** March 07, 2018, REYES, JR., J.

*Carnal knowledge with a woman who is a mental retardate is rape. This stems from the fact that a mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood. Consequently, sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape. This is true regardless of the presence or absence of resistance. Only the fact of sexual congress between the accused and the victim, as well, as the latter's mental retardation must be proven.*

**FACTS:**

Victim AAA was cooking inside their house when accused Martinez barged in and dragged her outside the house. BBB, the victim's son, was ordered not to follow or else he will be hurt. Martinez dragged her in a bushy part where accused Granada was waiting. Both men took turns in having sexual intercourse with her. The accused-appellants ordered AAA to keep quiet, and threatened to kill her, if she made any noise. After which, the accused-appellants left AAA. As the result of the rape, AAA became pregnant. Her mother, CCC, relayed this matter to Martinez's mother to discuss the support for the unborn child. The discussion turned into a quarrel. During the trial, a psychologist testified that although AAA was 35 years old at the time of the rape incident, she possessed a mental ability of a 7 year old child. In fact, AAA was revealed to be suffering from a Mild Mental Retardation.

Accused Martinez denied the charge and testified that he and AAA were lovers. CCC wants him to marry her daughter but accused refused which resulted to CCC's anger towards him and concocting the charge of rape. Accused Granada, on the other hand, confirmed that the two were indeed sweethearts and CCC merely implicated him on the charge. The trial court convicted the accused-appellants and the Court of Appeals affirmed the conviction.

**ISSUE:**

Whether the conviction should be upheld. (YES)

**RULING:**

Carnal knowledge with a woman who is a mental retardate is rape. This stems from the fact that a mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood. Consequently, sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape. This is true regardless of the presence or absence of resistance. Only the fact of sexual congress between the accused and the victim, as well, as the latter's mental retardation must be proven.

In the case at bar, the prosecution sufficiently established beyond reasonable doubt that the accused-appellants successively had carnal knowledge with AAA, by taking turns in inserting their penis into her vagina, against her will and without her consent.

**PEOPLE OF THE PHILIPPINES, *PLAINTIFF-APPELLEE*,-versus- MAURICIO CABAJAR VIBAR, ACCUSED-APPELLANT.**

G.R. No. 215790, THIRD DIVISION, March 12, 2018, MARTIRES, J.

*It did not matter that the penetration lasted only for a short period of time because carnal knowledge means sexual bodily connection between persons; and the slightest penetration of the female genitalia consummates the crime of rape.*

**FACTS:**
AAA, a fifteen-year old girl, was cooking lunch outside their nipa hut when accused came and asked her to get his gloves inside their house. She refused to do so, which prompted accused to carry her inside and laid her on the floor. After removing her undergarments, he placed himself on top of her and AAA felt his organ enteredher vagina, causing her pain. AAA reported the incident to the police that same day. However, the case was dismissed because she does not want to cooperate due to the fact that her mother sided with the accused and there are death threats directed upon her. AAA left the Camarines Norte to work in Antipolo. When she came back, Vibar constantly harassed her by touching her breasts and kissing her.

Accused denied the accusations and stated that AAA concocted such incidents because he uttered unsavory remarks and scolded her for not preparing their lunch. There was also no harassment incident that happened. Accused stated that Arlene, his wife and Shirley conspired together and used

AAA to exact revenge upon him, hence there was a second rape case against him. While in detention, accused received a letter from AAA which stated that AAA was just coerced to file the rape charges and that she regretted her decision to do so. She elaborated that she was threatened by Arlene that if the charges will not push through, AAA will be the one put behind bars. The trial court convicted the accused of the crime of rape and the Court of Appeals subsequently affirmed the decision.

**ISSUE:**
Whether the accused is guilty beyond reasonable doubt of the crime of rape. (YES)

**RULING:**
The Court agrees that all the elements of rape are present in the case at bar. Under Article 266-A(l) of the RPC, rape is committed by a man who shall have carnal knowledge of a woman under any of the following circumstances: (a) Through force, threat or intimidation; (b) When the offended party is deprived of reason or is otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above is present. Here, AAA categorically testified that Vibar had carnal knowledge with her after the latter lay on top of her and inserted his penis into her vagina. In addition, force and intimidation were present.

AAA was straightforward and categorical in narrating how Vibar had forcibly taken her inside the house and mounted her while she was lying on the floor and then inserted his penis into her vagina. It did not matter that the penetration lasted only for a short period of time because carnal knowledge means sexual bodily connection between persons; and the slightest penetration of the female genitalia consummates the crime of rape.

Vibar merely relies on his self-serving testimony that he was sure that the letter was AAA's doing. Such
hollow assurance, however, in no way proves that AAA had indeed voluntarily executed the said document. He could have easily fabricated the letter and feigned that it was made by her. As such, AAA's professed letter is but a mere scrap of paper with no evidentiary value for lack of proper authentication.

**PEOPLE OF THE PHILIPPINES**, ***Plaintiff-Appellee,*** **-versus- NELSON NUYTE Y ASMA,** ***Accused-Appellant***
G.R. No. 219111, FIRST DIVISION, March 12, 2018, DEL CASTILLO, *J.*

*In the cases under consideration, the victim was 14 years old when the crimes were committed. Appellant may either be charged with violation of Section 5(b) of RA 7610 or with rape under Article 266-A of the RPC. Here, appellant was charged with violation of Section 5(b) of RA 7610. In such instance, the court must examine the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader scope of coercion or influence to have carnal knowledge with the victim.*

**FACTS:**

Appellant was charged in six separate Informations with one count of rape under Article 266-A of the Revised Penal Code (RPC) and five counts of violation of Section 5(b) of RA 7610. The information for the rape case provided that on about noon of April 10, 2004, after tethering the cows, AAA, 14 years old, was suddenly grabbed by the hair and, at knife point, was threatened by the accused to keep quiet or he will kill her and her mother. The accused successfully consummated his lewd designs by having carnal knowledge with her. The same act was committed on April 12, 14 and 19, 2004. On these occasions, she made an outcry but nobody heard her. On May 3, the accused again succeeded in his lustful desires, which prompted AAA to divulge the incidents to her mother. The last incident happened on May 12 when the sister of accused's wife fetched AAA's parents because accused allegedly raped AAA.

The accused interposed the defense that AAA is his sweetheart and that the sexual congress that happened between them for several times were consensual. The appellant's wife even testified that she found a love letter written by AAA in her husband's wallet. The trial court convicted the accused of all six cases, and the Court of Appeals affirmed the decision.

**ISSUE:**

Whether the accused should be convicted of six charges against him. (NO)

**RULING:**

The information contained elements of both crimes of rape defined under Article 266-A of the Revised Penal Code and of child abuse defined and penalized under Section 5(b) of RA 7610. However, the offender cannot be accused of both crimes for the same act without traversing his right against double jeopardy. If the victim is 12 years or older, as in this case, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape.

In the cases under consideration, the victim was 14 years old when the crimes were committed. Appellant may either be charged with violation of Section 5(b) of RA 7610 or with rape under Article 266-A of the RPC. Here, appellant was charged with violation of Section 5(b) of RA 7610. In such instance, the court must examine the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader scope of coercion or influence to have carnal knowledge with the victim.

In the present case, the evidence of the prosecution in no uncertain terms focused on the force or intimidation employed by appellant against "AAA" under Article 266-A (1)(a) of the RPC. The prosecution, through the steadfast declaration of "AAA", was able to establish that the appellant forced her to lie down on a grassy ground and, at knifepoint, inserted his penis into her vagina. The foregoing narration established beyond reasonable doubt the elements of rape, to wit: appellant had carnal knowledge of "AAA" through force and intimidation, and without her consent and against her will. Appellant therefore, should be held guilty of rape under Article 266-A(1)(a) of the RPC and sentenced to *reclusion perpetua* instead of violation of Section 5(b)of RA 7610.

As to appellant's claim that there was no resistance exhibited by "AAA" before and during the incidents since they had an amorous relation, the same cannot be taken in his favor. "Tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary. In addition, the "sweetheart theory" claimed by appellant is futile. It

was never substantiated by the evidence on record. The only evidence adduced to show such relationship were his testimony and that of his wife. The alleged love letter supposedly written by "AAA" was never presented in court. Thus, other than his self-serving assertion and that of his wife, which were rightly discredited by the trial court, nothing supported his claim that he and "AAA" were indeed lovers.

With regard to the alleged incidents on April 12, 14 and 19, 2004, the Court finds "AAA's" testimony to be inadequate and lacking specific details on how they were accomplished. AAA's bare statements that appellant repeated what he had done on her previously were not enough to establish beyond reasonable doubt the incidents subject in the other cases. Said declarations were mere general conclusions. The prosecution should present in detailed fashion the manner by which each of the crimes was committed.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – VILLARIN CLEMENO, *Accused-Appellant.***
G.R. No. 215202, THIRD DIVISION, March 14, 2018, MARTIRES, *J.*

*The **force or violence necessary in rape depends on the age, size, and strength of the persons involved and their relationship to each other**; and what is essential is that the act was accomplished against the will and despite the resistance of the victim. The Court has ruled that "in **rape committed by a father against his own daughter, the father's parental authority and moral ascendancy over his daughter substitutes for violence and intimidation**."*

*In People v. Rodriguez, the Court even had occasion to say that "it would be plain fallacy to say that the failure to shout or to offer tenacious resistance makes voluntary the victim's submission to the criminal act of the offender. It is quite enough that she has repeatedly tried, albeit unsuccessfully, to resist his advances."*

**FACTS:**

AAA narrated that sometime in June 2003, at around 11:00 o'clock in the evening, as she was sleeping on the bed while her two siblings slept on the floor, **she was awakened when accused-appellant suddenly laid on top of her**. Accused-appellant was able to remove AAA's shorts and panties **despite her resistance**. Accused-appellant held AAA's hands, parted her legs, and inserted his penis into her vagina. Thereafter, accused-appellant threatened to kill the whole family if she reported the incident. AAA **kept silent about the ordea**l because she **believed her father was capable of carrying out his threat.**

The same incident occurred in June 2004, when accused-appellant woke up AAA, laid on top of her, and made a push and pull motion, which caused AAA great pain. Because of this incident, AAA became pregnant and subsequently gave birth to a baby boy on 6 April 2005. AAA then revealed to her mother her ordeal with accused-appellant.

Accused-appellant questioned AAA's credibility and **posited that AAA's act of resistance was insufficient to prove that the sexual intercourse was against her will** because **she did not shout**

or ask for help; and lived with accused-appellant without attempting to run away to seek help in order to prevent further abuse; and that AAA's **delay in reporting the rape**, despite several opportunities to do so, was unnatural and contrary to human experience.

**ISSUE:**

Whether the lack of physical resistance from victim justifies acquittal of accused-appellant. (NO)

**RULING:**

Rape victims may have differing reactions to the shock and trauma of a sexual assault. **No standard form of reaction is expected from a victim**. Indeed, some may offer strong resistance while others none at all. More importantly, however, this is a case of a father sexually assaulting his child. The **force or violence necessary in rape depends on the age, size, and strength of the persons involved and their relationship to each other**; and what is essential is that the act was accomplished against the will and despite the resistance of the victim. The Court has ruled that "**in rape committed by a father against his own daughter, the father's parental authority and moral ascendancy over his daughter substitutes for violence and intimidation**."

In *People v. Rodriguez*, the Court even had occasion to say that "**it would be plain fallacy to say that the failure to shout or to offer tenacious resistance makes voluntary the victim's submission** to the criminal act of the offender. It is quite enough that she has repeatedly tried, albeit unsuccessfully, to resist his advances."

Here, AAA testified that she tried to push her father away but was overpowered. Moreover, in the face of **her father's moral ascendancy and parental authority, it is not contrary to human experience that AAA would resign to her father's wicked deeds**.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – RITZ BARING MORENO, *Accused-Appellant.***
G.R. No. 217889, THIRD DIVISION, March 14, 2018, MARTIRES, *J.*

*On the first requisite for the qualifying circumstance of treachery to be appreciated, the legal teaching must be stressed that the essence of treachery is that the **attack comes without a warning** and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim **no chance to resist or escape the sudden blow**. On the second requisite, jurisprudence maintains that "treachery as a qualifying circumstance **must be deliberately sought to ensure the safety of the accused** from the defensive acts of the victim". Unexpectedness of the attack does not always equate to treachery. There must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success.*

**FACTS:**

On the night of 3 October 2005, Reanne, the younger brother of Kyle, had a fistfight with his cousin, Tyke Philip Lomibao (Tyke), after Tyke hit Reanne with a cue stick. Kyle, who saw the incident, sided with Reanne; thus, the fistfight continued, but neighbors were subsequently able to separate the

three. That same night, inside their compound, while Reanne and Kyle were discussing what happened earlier to Tyke, accused-appellant arrived, positioned himself five meters away from Reanne and Kyle and **fired at them twice** with a .38 caliber revolver, the second shot **hitting Kyle in the chest** and was thereafter pronounced **dead on arrival**.

The RTC ruled that **killing was attended by treachery**. RTC considered the following facts in appreciating the qualifying circumstance of treachery in this case, *viz*: **no prior warning** or indication as to the presence of the accused-appellant; there was **no previous altercation** between the accused-appellant and the Capsa siblings; and the accused-appellant and the Capsa siblings hardly knew each other.

**ISSUE:**

Whether the prosecution was able to prove beyond reasonable doubt that the offense committed was murder. (NO)

**RULING:**

For the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the **employment of means, method, or manner of execution would ensure the safety of the malefactor** from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the **means, method, or manner of execution was deliberately or consciously adopted by the offender.** Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder.

On the first requisite, the legal teaching must be stressed that the essence of treachery is that the **attack comes without a warning** and in a swift, deliberate, and unexpected manner, **affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow**. On the second requisite, jurisprudence maintains that "treachery as a qualifying circumstance **must be deliberately sought to ensure the safety of the accused** from the defensive acts of the victim. Unexpectedness of the attack does not always equate to treachery." There must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success.

The accused-appellant's narration of the facts confirmed that the a**ttack he made on Kyle was not preconceived nor deliberately adopted**. The accused-appellant acted on impulse or at the spur of the moment, i.e., there was simply a directive from Tyke to kill Kyle. Kyle was not even armed when he was on his way to the Capsa compound as he merely borrowed Pala's gun.

"The **unexpectedness of an attack cannot be the sole basis of a finding of treachery** even if the attack was intended to kill another as long as the victim's position was merely accidental. The **meansadopted must have been a result of a determination to ensure success** in committing the crime"[42] which was unmistakably absent in this case.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – DANNY BANAYAT, *Accused-Appellant.***
G.R. No. 215749, THIRD DIVISION, March 14, 2018, MARTIRES, *J.*

*Applying the ruing in People v. Bayani, the Supreme Court explained force and intimidation as an element of rape, viz: "As to the finding of the trial court regarding the use of force and intimidation, it must be emphasized that* ***force as an element of rape need not be irresistible; it need but be present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point****.*

***Intimidation includes the moral kind*** *as the fear caused by threatening the girl with a knife or pistol. And where such intimidation exists and the* ***victim is cowed into submission as a result thereof,*** *thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength.*

**FACTS:**

At around 8:00 o'clock in the evening, AAA attended the wake of one Benigna Velora, her friend's grandmother. At around 10:00 o'clock p.m., she went to a store to buy some snacks because she was hungry. At the store, she saw accused-appellant, a longtime neighbor, drinking beer. Accused-appellant, **armed with a knife**, forcibly dragged her towards an abandoned house and there she was **ordered to remove her clothes**. Accused-appellant then placed his body on top of her and forcibly inserted his penis repeatedly into her vagina. Thereafter, accused-appellant's **threat to kill** her if she reported the incident to anyone prevented her from informing her parents. The next day, however, AAA revealed it to her grandmother because she was not feeling well.

Accused-appellant contended that his guilt was not proven beyond reasonable doubt because the **element of force or intimidation was not established**; that AAA merely narrated that the accused was armed with a bladed weapon which was a knife, but as to **how the knife was used to threaten her, was not revealed**.

**ISSUE:**

Whether the element of force or intimidation was established. (YES)

**RULING:**

Contrary to accused-appellant's position that the element of force or intimidation is wanting in the case at bar, AAA's testimony sufficiently establishes the existence of all the elements of rape required under Article 266-A of the RPC. In AAA's sworn statement, which was stipulated to be part of her direct testimony, AAA stated that she was forcibly dragged by the suspect with a bladed weapon (knife) to the abandoned house. AAA identified the assailant as accused-appellant, who, though drunk, was "so strong that she could not fight back.

In *People v. Bayani*, the Supreme Court explained force and intimidation as an element of rape, viz:

> "As to the finding of the trial court regarding the use of force and intimidation, it must be emphasized that **force as an element of rape need not be irresistible; it need but be**

> **present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point**. Intimidation must be viewed in light of the woman's perception and judgment at the time of the commission of the crime and not by any hard and fast rule; it is therefore enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident. **Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol. And where such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength**.

Hence, the act of accused-appellant holding a knife clearly produced fear in AAA's mind that the former would kill her if she would not submit to his sexual design. The act of holding a knife by itself is strongly suggestive of force or, at least, intimidation, and threatening the victim with a knife is sufficient to bring a woman into submission.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- XXX, ALFREDO GILLES, NIÑO G. MONTER AND CONSTANTE M. CASTIL ALIAS JUNJUN, ALIAS TANSYONG, *Accused-Appellants*.**

G.R. No. 229860, THIRD DIVISION, March 21, 2018, GESMUNDO, J.:

*Specifically, for the review of rape cases, the Court has consistently adhered to the following established principles: a) an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.*

*The credibility of the complainant is the single most important issue in the prosecution of rape cases. The categorical and candid testimony of the complainant suffices, and a culprit may be convicted solely on the basis of her testimony, provided that it hurdles the test of credibility.[15] It should not just come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, candid, straightforward and in accord with human experience.*

*It was never fully established whether sexual congress took place, especially as to some of the appellants. AAA asserted that Castil placed his penis inside her vagina, followed by XXX. But then as to Gilles and Monter, the story is confusing and unclear. The chronology of events is also hazily narrated. AAA claimed she fell asleep, but in the same testimony, said she was aware of Gilles and Monter raping her. The Court cannot take this as a positive allegation of Gilles and Monter's participation in the defilement. The participation of these appellants is tenuous at best, and based only on conjecture.*

**FACTS:**

On October 2, 2010, at about 2:00 o'clock dawn, province of Southern Leyte, Philippines, the above-named accused, conspiring, confederating and mutually helping each other, with lustful intent and

lewd designs, did then and there willfully, unlawfully and feloniously, by means of force, threats and intimidation, successfully have sexual intercourse with the victim [AAA], without her consent and against her will, to the damage and prejudice of the said victim and of social order.

The RTC ruled in favor of the prosecution. The RTC noted that AAA's unrefuted testimony that all the appellants raped her, started by Castil who removed her pants and panty, placed himself on top of her and placed his penis inside her vagina, followed by XXX, Monter, and Gilles who did the same, already established the essential element of sexual congress. To the RTC, XXX's testimony corroborated the fact that there was sexual congress between him and AAA. In contrast to AAA's testimony, described as candid and unwavering, XXX's version appeared contrived and ineffectual.

In sustaining the conviction of appellants, the CA noted that the victim was a retardate, and therefore the force or intimidation required to overcome her is of a lesser degree than that used against a normal adult. In this case, considering AAA is feeble-minded, the force required by law is the sexual act itself. The CA highlighted that appellants were convicted of the crime of simple rape through force and intimidation under paragraph 1(a) of Article 266-A of the Revised Penal Code. However, it was established by testimonial evidence of FFF and the medical report of Dr. Esclamado that AAA is known to have mental deficiency. From these pieces of evidence, the CA determined AAA to be mentally deficient.

**ISSUE:**

Whether the courts *a quo* erred in convicting the appellants of the crime charged in giving full weight and credence to the materially unreliable and uncorroborated testimonies of the prosecution witnesses (YES)

**RULING:**

Specifically, for the review of rape cases, the Court has consistently adhered to the following established principles: a) an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

Following these principles, the Court has also refined how rape is proved. The credibility of the complainant is the single most important issue in the prosecution of rape cases. The categorical and candid testimony of the complainant suffices, and a culprit may be convicted solely on the basis of her testimony, provided that it hurdles the test of credibility.It should not just come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, candid, straightforward and in accord with human experience. Where the discrepancies and contradictory statements on important details in the testimony seriously impair its probative value, cast serious doubt on its credibility, and erode the integrity of the testimony, the Court should acquit the accused.

It is true that the Court accords great respect to the trial court's findings on witnesses' credibility. This is because trial provides judges with the opportunity to detect cues and expressions that could suggest sincerity or betray lies and ill will, not reflected in the documentary or object evidence. The

exception, of course, is when the trial court and/or the CA overlooked or misconstrued substantial facts that could have affected the outcome of the case.

It was never fully established whether sexual congress took place, especially as to some of the appellants. AAA asserted that Castil placed his penis inside her vagina, followed by XXX. But then as to Gilles and Monter, the story is confusing and unclear. The chronology of events is also hazily narrated. AAA claimed she fell asleep, but in the same testimony, said she was aware of Gilles and Monter raping her. The Court cannot take this as a positive allegation of Gilles and Monter's participation in the defilement. The participation of these appellants is tenuous at best, and based only on conjecture.

More importantly, there was also no clear showing of force, threat, or intimidation from AAA's story. She narrated that only Castil held her arm, without even saying how he held it or describing the force, if any, that was inflicted upon her. This hardly comprises the force, threat, or intimidation contemplated by law.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ALFREDO OPEÑA Y BACLAGON, *Accused-Appellants*.**

G.R. No. 220490, FIRST DIVISION, March 21, 2018, DEL CASTILLO, *J.*

*It has been repeatedly ruled that "delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated, particularly when the delay can be attributed to fear instilled by threats from one who exercises ascendancy over the victim."[11] In People v. Coloma[12] cited in People v. Cañada,[13] the Court considered an eight-year delay in reporting the long history of rape by the victim's father as understandable and insufficient to render the complaint of a 13-year old daughter incredible. In the present case, the inaction of "AAA" is understandable and may even be expected as she was scared due to the threat on her and her mother if she would divulge the incident done to her.*

**FACTS:**

Before noon, on May 3, 2007, "AAA"[3] was inside a room at the second floor of their house in Quezon City, when her father (appellant) suddenly entered, approached her and forcibly removed her shorts and underwear. After removing his shorts, appellant parted "AAA's" legs and inserted his penis into "AAA's" vagina. While appellant was doing this act, "AAA" kept resisting and crying. Appellant told "AAA" to keep quiet and not to shout or else he will inflict harm upon her.

RTC declared appellant guilty beyond reasonable doubt of the crime of rape which the CA affirmed.

**ISSUE:**

Whether or not trial court gravely erred in finding the accused-appellant guilty of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt. (NO)

**RULING:**

In his quest for acquittal, appellant assails "AAA's" credibility pointing out that her failure to report the alleged incident for nine years rendered her accusation doubtful. He avers that there was no

evidence to establish that force or intimidation was employed by him. He contends that "AAA's" failure to shout for help made her actuation unnatural.

The Court finds appellant's submissions untenable.

It has been repeatedly ruled that "delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated, particularly when the delay can be attributed to fear instilled by threats from one who exercises ascendancy over the victim."[11] In *People v. Coloma*[12] cited in *People v. Cañada*, the Court considered an eight-year delay in reporting the long history of rape by the victim's father as understandable and insufficient to render the complaint of a 13-year old daughter incredible. In the present case, the inaction of "AAA" is understandable and may even be expected as she was scared due to the threat on her and her mother if she would divulge the incident done to her.

The question of whether the circumstances of force or intimidation are absent in accomplishing the offense charged gains no valuable significance considering that appellant, being the biological father of "AAA," undoubtedly exerted a strong moral influence over her which may substitute for actual physical violence and intimidation.

Neither appellant's submission of "AAA's" alleged failure to shout for help during the sexual congress will exonerate him. The Court has declared repeatedly that "failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust. Besides, physical resistance is not an element of rape."[16] Moreover, "AAA" was threatened and prevented by appellant from making an outcry during die incident.

The fact that "AAA" kept on texting on her cellphone a day after the rape will not undermine her credibility, As held in *People v. Ducay*, "[t]he range of emotions shown by rape victims is yet to be captured even by the calculus. It is thus unrealistic to expect uniform reactions from rape victims." "We have no standard form of behavior for all rape victims in the aftermath of their defilement, for people react differently to emotional stress.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ELEUTERIO URMAZA Y TORRES, *Accused-Appellants*.**

G.R. No. 219957, THIRD DIVISION, April 04, 2018, MARTIRES, *J.*:

*The cases of People v. Caoile and People v. Ventura laid down a technical definition of the term "demented" as referring to a person who has dementia, which is a condition of deteriorated mentality, characterized by marked decline from the individual's former intellectual level and often by emotional apathy, madness, or insanity.*

*On the other hand, the phrase deprived of reason under paragraph 1(b) has been interpreted to include those suffering from mental abnormality, deficiency, or retardation. Thus, AAA, who was clinically*

*diagnosed to be a mental retardate, can be properly classified as a person who is "deprived of reason," not one who is "demented.*

**FACTS:**

On or about the 7th day of September 2011, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ELEUTERIO URMAZA y TORRES, by means of force and intimidation, did then and there, wilfully, unlawfully and criminally, have carnal knowledge upon complainant [AAA], who is a demented person (deaf-mute), against her will and consent to the damage and prejudice of the latter.

The RTC found Urmaza guilty beyond reasonable doubt of the crime of qualified rape. CA modified the ruling and ruled that carnal knowledge of a woman who is a mental retardate is considered rape, and proof of force or intimidation is unnecessary because a mental retardate is incapable of giving consent to the sexual act.

**ISSUE:**

Whether it was proven that Urmaza is guilty beyond reasonable doubt of qualified rape. (NO)

**RULING:**

It was alleged in the Amended Information that AAA is a demented person (deaf-mute). The tapestry of this case, however, depicts a victim who is suffering from mental retardation, not dementia. For clarity's sake, the Court must restate that mental retardation and dementia are not synonymous and thus should not be loosely interchanged.

The cases of *People v. Caoile*[24] and *People v. Ventura*[25] laid down a technical definition of the term "demented" as referring to a person who has dementia, which is a condition of deteriorated mentality, characterized by marked decline from the individual's former intellectual level and often by emotional apathy, madness, or insanity.

On the other hand, the phrase *deprived of reason* under paragraph 1(b) has been interpreted to include those suffering from mental abnormality, deficiency, or retardation. Thus, AAA, who was clinically diagnosed to be a mental retardate, can be properly classified as a person who is "deprived of reason," not one who is "demented."

The elements necessary to sustain a conviction for rape are: (1) the accused had carnal knowledge of the victim; and (2) said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[29] In the case at bar, Urmaza never denied having carnal knowledge of AAA. Thus, the only matter to be resolved by this Court is whether appellant had carnal knowledge of AAA against her will using threats, force or intimidation; or that AAA was deprived of reason or otherwise unconscious, or was under 12 years of age or is demented.

In our jurisdiction, carnal knowledge of a woman suffering from mental retardation is rape since she is incapable of giving consent to a sexual act. Under these circumstances, all that needs to be proved

for a successful prosecution are the facts of sexual congress between the rapist and his victim, and the latter's mental retardation.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- BERNIE CONCEPCION, *Accused-Appellant*.**

G.R. No. 214886, THIRD DIVISION, April 04, 2018, LEONEN, *J.*:

*The facts as found by the Regional Trial Court and the Court of Appeals show that after raping AAA, accused-appellant continued to detain her and refused to release her even after raping her. Thus, although the initial abduction of AAA may have been absorbed by the crime of rape, the continued detention of AAA after the rape cannot be deemed absorbed in it. Likewise, since the detention continued after the rape had been completed, it cannot be deemed a necessary means for the crime of rape.*

*The elements of slight illegal detention are all present here. Accused-appellant is a private individual. The Court of Appeals found that after raping AAA, accused-appellant continued to detain her and to deprive her of her liberty. It also appreciated AAA's testimony that accused-appellant placed electrical wires around the room to electrocute anyone who might attempt to enter it. He refused to release AAA even after his supposed demands were met. The detention was illegal and not attended by the circumstances that would render it serious illegal detention. Thus, this Court finds accused-appellant guilty of the crime of slight illegal detention.*

**FACTS:**

On February 17, 2001, at around 5:00 p.m., AAA arrived home in a tricycle, bringing with her a sack of rice. Concepcion was at the gate of the house, drunk, when AAA arrived. She went inside the house to place her lunchbox and to find someone to help her carry the sack of rice. Concepcion intercepted her at the garage area. He held a knife to her back and dragged her to his room. Then he locked his room and blocked its door using his bed. Concepcion then pulled AAA to the bed and told her to undress. She begged Concepcion not to rape her. He undressed her, pulled down his pants, cut her underwear using his knife, and then inserted his hand in her vagina. AAA felt pain and struggled. Then, Concepcion inserted his penis into her vagina.

The Regional Trial Court found Concepcion guilty of the complex crime of forcible abduction with rape. The Court of Appeals also found that the prosecution established the elements of abduction. However, the Court of Appeals ruled that the crime of rape absorbed the forcible abduction, considering that it was established that the forcible abduction of AAA was for the purpose of raping her.

**ISSUE:**

Whether or not the accused may be convicted of a separate crime of other than rape. (YES)

**RULING:**

The facts as found by the Regional Trial Court and the Court of Appeals show that after raping AAA, accused-appellant continued to detain her and refused to release her even after raping her. Thus,

although the initial abduction of AAA may have been absorbed by the crime of rape, the continued detention of AAA after the rape cannot be deemed absorbed in it. Likewise, since the detention continued after the rape had been completed, it cannot be deemed a necessary means for the crime of rape.

The felony of slight illegal detention has four (4) elements:

1. That the offender is a private individual.
2. That he *kidnaps* or *detains* another, or m any other manner *deprives* him of his *liberty*.
3. That the act of kidnapping or detention is *illegal*.
4. That the crime is committed without the attendance of any of the circumstances enumerated in Art. 267.

The elements of slight illegal detention are all present here. Accused-appellant is a private individual. The Court of Appeals found that after raping AAA, accused-appellant continued to detain her and to deprive her of her liberty. It also appreciated AAA's testimony that accused-appellant placed electrical wires around the room to electrocute anyone who might attempt to enter it. He refused to release AAA even after his supposed demands were met. The detention was illegal and not attended by the circumstances that would render it serious illegal detention. Thus, this Court finds accused-appellant guilty of the crime of slight illegal detention.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee* -versus- BRYAN GANABA y NAM-AY, *Accused-appellant.***

G.R. No. 219240, THIRD DIVISION, April 4, 2018, MARTIRES, *J.*

*By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Hence, in evaluating the testimony of a rape victim, testimony of the complainant must be scrutinized with extreme caution, and that the evidence must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defense. Therefore, mere alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant.*

*The crime of rape has the following elements:*

*1. that the accused had carnal knowledge of the victim;*

*2. that the said act was accomplished*

*(a) through use of force and intimidation*

*(b) when the victim is deprived of reason or otherwise unconscious, or*

*(c) when the victim is under 12 years of age or is demented.*

**FACTS**:

AAA was the nanny of the accused-appellant. On 1 July 2009, at about 2:30 p.m., as AAA was feeding accused-appellant's four-month-old child inside the room, accused-appellant sneaked in then closed the door and window.

However, AAA suddenly noticed that behind her was accused-appellant who was only wearing his shorts. As AAA turned, accused-appellant held both her arms and mounted her. AAA retaliated by kicking him, but he pinched her left shoulder then stood up and got a knife. AAA tried to escape, but the door was locked. Then, accused-appellant poked the knife at her, threatened to kill her, dragged her to the bed, mounted her, parted her legs, and proceeded to have carnal knowledge of her.

Accused-appellant's friend arrived, hence, he went out and proceeded to the restroom; while AAA immediately left for her brother's house and there confided what happened to her. That very same day, AAA reported the incident to the police and was then physically examined by Dr. Chua.

Accused-appellant denied every allegation of AAA, and argued that he could not have raped her because on that day, he was just at home with his wife watching TV and that AAA was not in his house at the time.

RTC held accused-appellant guilty of having carnal knowledge of AAA by using force, threat, and intimidation. CA affirmed the accused-appellant's conviction of having raped AAA.

**ISSUE:**

Whether or not accused-appellant was guilty beyond reasonable doubt of the crime of rape.

**RULING:**

YES, accused-appellant is guilty of rape. The Supreme Court gave three reasons: the weight and credence of AAA's testimony, the weakness of accused-appellant's defense, and the attendance of all the elements of the crime of rape.

First, the Supreme Court found no error on the part of RTC in evaluating the credibility of AAA's testimony. Following the sequence of events, AAA wasted no time in reporting her ordeal to the authorities which signifies validity and truth of her charge against the accused-appellant, further bolstered by the testimony and medico-legal report of Dr. Chua.

Second, the Court did not give credence over accused-appellant's defense as such were only mere alibi and denial. It is a well-settled rule in criminal law jurisprudence that denial is intrinsically a weak defense, and alibi is viewed with suspicion as it can easily be fabricated.

Last, all the elements of the crime of rape were all present, to wit: (1) the accused had carnal knowledge of the victim, and (2) said act was accomplished through any of the following (a) the use of force and intimidation, or (b) the victim was deprived or reason or otherwise unconscious, or (c) the victim is under 12 years of age or is demented. In this case (1) accused-appellant indeed had

carnal knowledge of AAA, and (2) such was done by accused-appellant holding a knife which strongly signifies the attendance of force or intimidation.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* -versus- JERRY BUGNA Y BRITANICO, *accused-appellant.***

G.R. No. 218255, THIRD DIVISION, April 11, 2018, MARTIRES, *J.*

*In People v. Castel, the Court explained:*

> *It is hornbook doctrine that in the incestuous rape of a minor, actual force or intimidation need not even be employed where the overpowering moral influence of the father would suffice. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. One should bear in mind that in incestuous rape, the minor victim is at a great disadvantage. The assailant, by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. As a consequence, proof of force and violence is unnecessary, unlike when the accused is not an ascendant or a blood relative of the victim*

*There is qualified rape when a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the victim has carnal knowledge with a minor through force, threat or intimidation.*

*In the present case, it was AAA's father who raped her twice. AAA positively identified his father as the one who raped her. Being AAA's father, actual force or intimidation is not needed to convict Bugna.Such relationship or influence rendered her unable to resist her father's advances.*

**FACTS:**

Sometime in April 2007, AAA and her four siblings were about to go to sleep when Bugna arrived drunk from a drinking session. At the same day, she felt her father removing her shorts while they were sleeping. Bugna inserted his finger to AAA's vagina and decided to mount her to insert his penis into her vagina. On December 21, 2007, AAA and her siblings were again left alone in their house with their father because their mother went to General Santos City. At around 2:00 am of the same date, she again felt her father pulling down her shorts. AAA attempted to run, however, her father was able to grab her and instructed her to lie down on the floor. He went on top of her scared daughter and inserted his penis to her vagina. Thereafter, Bugna went back to sleep and left AAA in pain. AAA was able to report the incident to her mother only after some time because Bugna warned her that her mother might send him to jail if she found out.

The RTC convicted Bugna for two counts of rape. On appeal, the Court of Appeals affirmed the conviction. Hence, the accused appealed before the Supreme Court.

**ISSUE:**

Whether or not the accused is guilty beyond reasonable doubt of the crime of rape. (YES)

**RULING:**

There is qualified rape when a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the victim has carnal knowledge with a minor through force, threat or intimidation.The elements of qualified rape are as follows: (a) there is sexual congress; (b) with a woman; (c) done by force and without consent; (d) the victim is a minor at the time of the rape; and (e) **offender is a parent** (whether legitimate, illegitimate or adopted) of the victim.

In the present case, all the foregoing elements are present to convict Bugna for two counts of rape committed against AAA. An accused may be convicted based solely on the testimony of the witness, provided that it is credible, natural, convincing and consistent with human nature and the normal course of things. AAA was able to recall how she was raped twice by **her own father**. She testified that she was first raped in April, 2007 and the other one was on December 21, 2007. She also testified that there were other incidents of sexual abuse committed by her father. Furthermore, AAA's testimony is rendered more credible and believable because Bugna neither alleged nor proved that AAA was motivated with ill will or malice in testifying against him.

AAA was also able to positively identify Bugna as the assailant because the moon provided sufficient illumination for her to see his face. Being her daughter, AAA is intimately familiar with the physical features of Bugna, such as his voice or stature. She could easily distinguish her father from other persons inside the room especially since only her siblings were with them during the rape incidents

Bugna is guilty of rape through force and intimidation. Bugna argues that he should not be convicted of rape through force and intimidation because AAA did not resist and after the incident, AAA slept beside him as if nothing happened. In incest rape of a minor, the moral ascendancy of the ascendant substitutes force or intimidation. In *People v. Castel,* the Court explained:

> **It is hornbook doctrine that in the incestuous rape of a minor, actual force or intimidation need not even be employed where the overpowering moral influence of the father would suffic**e. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. One should bear in mind that in incestuous rape, the minor victim is at a great disadvantage**.** The assailant, by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity**. As a consequence, proof of force and violence is unnecessary, unlike when the accused is not an ascendant or a blood relative of the victim**

In the present case, Bugna was AAA's father, hence, actual force and intimidation does not need to be present in order to convict Bugna. Such relationship or influence rendered her unable to resist her father's advances. Similarly, Bugna's insistence that AAA's lack of resistance belies her allegation of rape deserves scant consideration

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus- MARDY AQUINO, MARIO AQUINO, RECTO AQUINO, INYONG NARVANTE, ROMY FERNANDEZ, FELIX SAPLAN, BONIFACIO**

**CAGUOIA AND JUANITO AQUINO, *Accused,* MARDY AQUINO AND MARIO AQUINO, *Accused-appellants*.**

G.R. No. 203435, THIRD DIVISION, April 11, 2018, MARTIRES, *J.*

*The difference between homicide and murder is the attendance of qualifying circumstances, such as abuse of superior strength, in the latter crime. Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor's that is plainly and obviously advantageous to the aggressor/s, and purposely selected or taken advantage of to facilitate the commission of the crime. In simpler terms, to take advantage of superior strength is to purposely use force excessively out of proportion to the means of defense available to the person attacked. In order for the Court to appreciate this qualifying circumstance, there must be a clear showing of disparity age, size, and strength of parties.*

*However, presence of several assailants or mere superiority in numbers does not ipso facto indicate the presence of this circumstance. Totality of evidence must show that the encounter between the victim and his assailants was planned and premeditated. There must be a conscious effort on the part of the accused to use or take advantage of any superior strength that they then enjoyed.*

**FACTS**:

On 15 May 2001, at around 10:30AM, Inyong Narvante approached Ernesto Caguioa and asked the latter for some fish as he was in a drinking spree with his friends. However, Ernesto refused and just teased Inyong for voting for a certain Domalante. This infuriated Inyong so he threatened Ernesto.

Later in the morning, while Ernesto, (his son) Jackie Caguioa, Rick De Guzman, and Orlando Ferrer were waiting for a boat to transfer their catch to Dagupan, Ernesto's twin sons, together with two more men reported to their father and brother Jackie that the accused threw stones at twin's group when they were washing their fishing nets.

Jackie confronted the accused when they were having a drinking session. He asked them why they attacked his brothers. Ernesto followed Jackie. However, the accused just laughed at him; then, they suddenly grabbed, restrained him (two men held his arms), and stabbed Jackie. Ernesto attempted to help his son but was restrained by the neck, and was also stabbed in his left arm, stomach, and left thigh.

After the incident, the accused ran away and left behind Ernesto and Jackie. The two were brought to the hospital, but Jackie died on the way.

RTC found the accused guilty of murder and frustrated murder and frustrated murder. CA affirmed the conviction of the accused-appellants.

**ISSUE**:

Whether or not the accused-appellants are guilty of murder and frustrated murder. (NO)

**RULING**:

The RTC and CA erred in finding the accused guilty of murder. The accused-appellants may be held liable only for homicide and attempted homicide. Article 248 of the Revised Penal Code provides:

> ART. 248 - *Murder.* Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua,* to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity.

It is undisputed that a person, Jackie Caguioa died, that appellants killed him, and that the killing was neither parricide nor infanticide. However, abuse of superior strength was not present nor clearly established by the prosecution. Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s, and purposely selected or taken advantage of to facilitate the commission of the crime. In other words, to take advantage of superior strength means to purposely use force excessively out of proportion to the means of defense available to the attacked.

However, mere superiority in numbers does not equate to the presence of this circumstance. Moreover, the totality of evidence shows that the encounter between the victim and his assailants was unplanned and unpremeditated; there was no conspiracy. It was not clearly established by the accused that they took advantage of their number, and purposely held Jackie by the arms so that two of them would be free to stab him.

With respect to the crime of attempted homicide, the elements are as follows: (1) the accused intended to kill his victim by his use of a deadly weapon in the assault; (2) the victim sustained wounds that are not fatal; and (3) none of the qualifying circumstances for murder are present.

In the case, the prosecution failed to prove that Ernesto's wounds would have resulted in his death were it not for the medical treatment he received. Dr. Carlito Arenas (the doctor who attended to Ernesto) testified that the possibility of death from such wounds is remote.

Hence, since Ernesto's wounds were not fatal and absent a showing that Ernesto's wounds would have cause his death, then the accused-appellant's guilt is limited to the crime of attempted homicide.

Therefore, the accused-appellants are guilty of homicide for the killing of Jackie Caguioa, and attempted homicide of that of Ernesto Caguioa.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus- GLEN ABINA y LATORRE and JESUS LATORRE y DERAYA, *Accused-appellants.***

G.R. No. 220146, FIRST DIVISION, April 18, 2018, DEL CASTILLO, *J.*

*The difference between murder and homicide is that the attendance of treachery in former crime. In order that treachery be appreciated, (1) the victim was in no position to defend himself or herself when*

*attacked; and, (2) the assailant consciously and deliberately adopted the methods, means, or form of one's attack against the victim.*

*In People v. Vilbar, the Court held that there is no treachery when the attack against the victim was impulsive, even if the same was unexpected. The accused must have made a preparation to kill the victim in such a way that the former insures the commission of the crime, or it would make it difficult for the victim to retaliate.*

*However, in Rustia, Jr. v. People, the Court explained that treachery must not be based on the sole fact that the victim was unable to defend him or herself. Prosecution must clearly prove and establish the conscious adoption on the part of the accused of such mode of attack that would result in the killing with risk to the accused.*

**FACTS:**

At about 1:00 p.m. on 1 February 2008, Anthony Asadon (Anthony) and his wife were at Glen Abina's (Glen) house for his birthday celebration. At that time, Glen, Jesus Latorre (Jesus), Pio Jongaya, and the victims Anthony and Rodolfo Mabag were having a drinking spree.

At about 5:00 p.m. Anthony and his wife asked permission to leave the party, but Glen disapproved because they were just about to buy liquor. However, Glen and his wife proceeded to leave, but Glen suddenly took his gun and shot Anthony at his right eye.

As Anthony fell on the ground, Jesus stabbed him with a bolo. Rodolfo, Glen's cousin, defended Anthony by drawing his bolo and hit Glen's chin. In turn, Glen and Jesus hacked and stabbed Rodolfo on his arms, forehead, and face. As a result, both Anthony and Rodolfo died.

Glen and Jesus were then charged with murder for the killing of Anthony and Rodolfo.

Jesus defended that on 1 February 2008, 4:00 p.m., he was in his house; by 5:00 p.m. he went to his face, and subsequently went home after a while. On his way home, he saw Roberto Jongaya (Dondon) with a gun directed at Anthony and Rodolfo. He tried to make Dondon stop, but Dondon did not heed and eventually shot Anthony on the forehead, and Rodolfo was hit at the right side of his head. When the two fell, Glen and Dondon stabbed them with their own bolos. Jesus grabbed the bolos and gun, then placed them in his sack. He subsequently delivered the weapons to the Barangay Captain of concord, informed the latter about the incident and went home.

At the evening of 1 February 2008, he was arrested and brought to the barangay proper. He was interrogated and was being forced to admit the commission of the crime. Glen was also arrested; however, Dondon and Roberto Jongaya escaped.

The RTC found Glen and Jesus guilty of (1) murder for the death of Anthony; and (2) homicide for the death of Rodolfo.

CA concurred with the findings of the RTC. However, the Court already dismissed the case against Jesus in view of his death. Thus, the Court will only resolve the issue of Glen's culpability.

**ISSUE:**

Whether or not Glen is guilty of murder and homicide. (NO)

**RULING:**

Glen should be guilty of two counts of homicide, because (with respect to his crime on Anthony's death) there is no proof that treachery attended the commission of the crime.

Article 14(16) of the RPC defines treachery as:

> There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which offended party might take.

There are two elements required in order for treachery to be appreciated: (1) the victim was in no position to defend himself or herself when attacked; and (2) the assailant consciously and deliberately adopted the methods, means, or form of one's attack against the victim.

Further, according to jurisprudence, there is no treachery when the attack against the victim was impulsive, even if it was sudden and unexpected; it shall not be based solely on the fact that the victim was unable to defend himself or herself; and that mere suddenness or unexpectedness of the attack is not sufficient to establish treachery.

While it is true that Glen suddenly and unexpectedly attacked Antony, there is no proof that he deliberately and consciously adopted such mode of attack to facilitate the killing without any risk to himself arising from any defense that Anthony might have adopted. If Glen deliberately intended that no risk would come to him, he could have chosen another time and place to attack Anthony, not on a birthday party. Thus, it appeared that Glen did not consciously intend to employ a particular mode of attack to kill Anthony. The attack was but a spur of the moment caused by sheer annoyance when Anthony and his wife wanted to leave the party while it was still on going.

Hence, absent the qualifying circumstance of treachery, the crime committed is only homicide.

**PEOPLE OF THEPHILIPPINES, *plaintiff-appellee*, *vs.* BENITO MOLEJON, *accused-appellant*.**

G. R. No. 208091, FIRST DIVISION, April 23, 2018, TIJAM, *J.*

*The Supreme Court has consistently held that rape is committed when intimidation is used on the victim, which includes moral intimidation or coercion.It bears emphasis that the accused resorted to force, threat and intimidation by threatening to kill the victims, and their family to consummate his lust. The accused also committed acts of lasciviousness using intimidation on AAA and BBB. The essence of acts of lasciviousness is lewd design, that is, deriving vicarious pleasure from acts performed on the person of the victim.*

**FACTS:**

Benito Monlejon was charged of five counts of Qualified Rape and 11 counts of acts of laciviousness, in which three of the former was committed against his own 13-year old stepdaughter AAA and two against his 11-year old stepdaughter BBB. As regards the latter charges, eight was committed against

AAA and three were against BBB. AAA averred that on different occasions, she was either rape or sexually abused and molested by Monlejon. She testified that the accused would finger her vagina repeatedly, and would sometimes insert his penis into her vagina. BBB gave an identical testimony of her step-father's licentious acts. Both victims also testified that accused-appellant threateaned to kill them, including their mother and siblings, if they ever divulge to anyone their awful experience. This came to an end when their mother, CCC, witnessed the accused standing behind BBB, with his hand inserted inside BBB's shorts. The accused denied the accusations, however, the Regional Trial Court convicted him as charged, which was affirmed by the Court of Appeals.

**ISSUE:**

Whether or not Monlejon was found guilty beyond reasonable doubt of the crime of Qualified Rape and acts of lasciviousness. (YES)

**RULING:**

The Supeme Court ruled that carnal knowledge had been proven. The respective testimonies of AAA and BBB vividly describe their harrowing experience in the hands of the accused. It bears emphasis that the accused resorted to force, threat and intimidation by threatening to kill the victims, their mother, and their other siblings, to consummate his lust. The Supreme Court has consistently held that rape is committed when intimidation is used on the victim, which includes moral intimidation or coercion. The accused also committed acts of lasciviousness using intimidation on AAA and BBB. The essence of acts of lasciviousness is lewd design, that is, deriving vicarious pleasure from acts performed on the person of the victim. The acts complained of have been sufficiently proved by the testimonies of the complainants.

It also denied the accused's contention that he could not have done the acts since they lived in a cramped house with several occupants. The Court rules that lust is no respecter of time and place, and rape defies constrains of the same. It has been shown repeatedly that many instances of rape were committed not in seclusion but in very public circumstances.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- DECITO FRANCISCO Y VILLAGRACIA, *Accused-Appellant*.**
G.R. No. 216728, THIRD DIVISION, June 4, 2018, MARTIRES, *J.*

*Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. To constitute treachery, two conditions must be present: 1) the employment of means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and 2) the means of execution were deliberately or consciously adopted.*

*In this case, the victim was stabbed suddenly and he was totally unprepared for the unexpected attack as he was watching a card game at the precise time of the incident. He had absolutely no chance to defend himself. The prosecution, however, failed to prove the existence of the second condition. The mere fact that the attack was inflicted when the victim had his back turned will not in itself constitute treachery. It must appear that such mode of attack was consciously adopted with the purpose of*

*depriving the victim of a chance to either fight or retreat. When there is no evidence that the accused had, prior to the moment of the killing, resolved to commit the crime, or there is no proof that the death of the victim was the result of meditation, calculation or reflection, treachery cannot be considered.*

*The suddenness of attack does not, of itself, suffice to support a finding of treachery, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery. Indeed, it could have been done on impulse, as a reaction to an actual or imagined provocation offered by the victim.Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, it can in no way be established from mere suppositions that the accused perpetrated the killing with treachery.*

**FACTS:**

On 23 September 2001, at around 10:00 o'clock in the evening, Jaime Noriega III (the victim) was watching a game of Lucky Nine in a wake. During the game, accused-appellant suddenly came from behind the victim and, without warning, stabbed him on the left side of his body with a 13-inch knife, locally known as "pisao." The victim, who was then seated at the table, fell down. Accused-appellant pulled out the knife from the victim's body. The victim was able to utter the words, "I am wounded." Accused-appellant then fled while still holding the knife he used to stab the victim.

Pacifico Daantos (Daantos), the victim's uncle, who was sitting near him at the time, chased accused-appellant but the latter managed to escape. On the same evening, however, accused-appellant was apprehended by the responding officers while he was crossing a street at Manlurip, San Jose, Tacloban City.

Meanwhile, the victim was brought to the hospital where he expired in the early morning of 24 September 2001, due to massive blood loss as a result of the stab wound.

However, the accused-appellant claims that he acted in self-defense. That on 23 September 2001, at around 6:30 p.m., he was at McArthur Park when two persons boarded his pedicab and told him to bring them to VicMar Beach Resort. Upon arrival at the resort, the two persons disembarked and asked him to wait for them. At around 7:00 o'clock in the evening, with no sign of the two persons, accused-appellant left. Thereafter, his friend Martin called him up and invited him to drink tuba at the former's place. At around 10:00 o'clock in the evening, accused appellant left Martin's place. While he was riding his pedicab, two strangers accosted him. One of them suddenly stabbed him in his left arm. Accused appellant then jumped to the right side of his pedicab, but the other assailant hit his back with an iron pipe. Accused-appellant was able to stab one of his assailants with his short bolo. Thereafter, his assailants ran away.

RTC found accused-appellant guilty of murder, ruling that he failed to prove that he had acted in self-defense. While he claimed that he was stabbed and then hit by an iron pipe, he did not offer any proof to show that he had indeed suffered injuries. The trial court observed that accused-appellant was arrested almost immediately after the stabbing incident and that following established police procedure, he would have been subjected to a body search at the police station. Whatever injuries the policemen may have seen on his body would have been recorded in the police logbook and he would have been brought by the arresting officers to the hospital for treatment. Further, the trial

court declared that the attack was attended by treachery because accused-appellant suddenly camefrom behind the victim and immediately stabbed him, concluding that there was no way for the victim to defend himself from the attack.

CA affirmed. As regards the contention that the prosecution witnesses could not have identified him, CA held that Daantos positively affirmed that he saw accused-appellant. The CA noted that the table where the victim was seated at collapsed and that such peculiar occurrence would naturally divert a person's attention to the source of the commotion, such that when Daantos turned his gaze towards the victim, accused-appellant was already pulling out a short bolo from the left side of the victim. It added that from Elias' account, the victim was sitting at the edge of the table while he was standing; and that from such elevated position, he could clearly see what transpired. The appellate court opined that the attack on the victim came from the rear showing that accused-appellant had consciously adopted such means of execution to prevent any risk to himself.

**ISSUE:**

Whether the guilt of accused-appellant for murder has been proven beyond reasonable doubt. (NO)

**RULING:**

Generally, the elements of murder are: 1) that a person was killed; 2) that the accused killed him; 3) that the killing was attended by *any* of the qualifying circumstances mentioned in Article 248; and 4) that the killing is not parricide or infanticide.

These circumstances have already been established by the trial and appellate courts. Accused-appellant did not offer any substantial reason to deviate from the well-known rule that findings of fact and assessment of credibility of witnesses are matters best left to the trial court.

Accused-appellant contends that Daantos could not have seen him because he was not facing the victim at the exact time of the stabbing incident. However, it was precisely because of the commotion that Daantos' attention was drawn to the victim and the accused-appellant. Consequently, it was not impossible for Daantos not to see accused-appellant's face. It is worthy to note that accused-appellant was not wearing any mask at the time of the incident and the place was well-lit. Daantos' testimony was even corroborated by Elias who was then in front of the victim. Thus, accused-appellant's allegation is nothing but a futile attempt to reverse his conviction. He did not aver, much less prove, any ill motive on the part of the witnesses to testify against him. Hence, the Court finds no compelling reason to disturb the findings of the trial court which were affirmed by the appellate court.

What remains to be resolved is the appreciation of treachery as a qualifying circumstance. Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. To constitute treachery, two conditions must be present: 1) the employment of means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and 2) the means of execution were deliberately or consciously adopted.

In this case, the victim was stabbed suddenly and he was totally unprepared for the unexpected attack as he was watching a card game at the precise time of the incident. He had absolutely no chance

to defend himself. The prosecution, however, failed to prove the existence of the second condition. The mere fact that the attack was inflicted when the victim had his back turned will not in itself constitute treachery. It must appear that such mode of attack was consciously adopted with the purpose of depriving the victim of a chance to either fight or retreat. When there is no evidence that the accused had, prior to the moment of the killing, resolved to commit the crime, or there is no proof that the death of the victim was the result of meditation, calculation or reflection, treachery cannot be considered.

The suddenness of attack does not, of itself, suffice to support a finding of treachery, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery. Indeed, it could have been done on impulse, as a reaction to an actual or imagined provocation offered by the victim.Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, it can in no way be established from mere suppositions that the accused perpetrated the killing with treachery.

Aside from showing that accused-appellant's attack on the victim was sudden and unexpected, there is nothing in the record which would prove that such method or form of attack was deliberately chosen by accused-appellant. Thus, treachery cannot be appreciated in order to qualify the killing to murder. Accused-appellant is found guilty beyond reasonable doubt of the crime of homicide.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- CHRISTOPHER BADILLOS, *accused-appellant*.**
G.R. No. 215732, THIRD DIVISION, June 6, 2018, MARTIRES, *J.*

*Treachery is present when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.*

*A finding of the existence of treachery should be based on clear and convincing evidence. Such evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed. In the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder.*

*Thus, for treachery to be appreciated, two elements must concur: first, the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and second, the said means, method, and manner of execution were deliberately adopted. It has been consistently held, however, that mere suddenness of an attack is not sufficient to constitute treachery where it does not appear that the aggressor adopted such mode of attack to facilitate the perpetration of the killing without risk to himself.*

*In this case, there was no showing that the mode of attack on Alex was consciously adopted without risk to the assailants. In the first place, the trial court's observation that Christopher and his companion deliberately waited for Alex in the alley would require the former to have a prior knowledge of the latter's plan to pass through the said alley at Barangay Batia.*

**FACTS:**

Christopher Badillos (Christopher) and a "John Doe" were charged with murder for the killing of Alex H. Gregory (Alex) in an Information.

Prosecution witness Domingo C. Gregory (Domingo) testified that on 11 August 2007, at around 7:00 P.M. or 8:00 P.M., he and his cousin (the victim), Alex were walking home to Brgy. Malibo Matanda, Pandi, Bulacan, after attending the barrio fiesta of Barangay Sta. Clara, Sta. Maria, Bulacan. They were walking along an alley or "tawid-bukid" at Barangay Batia, Bocaue, Bulacan, when suddenly, Christopher and an unidentified person appeared in front of them. Christopher was armed with a bladed weapon, while the unidentified person held a wooden club more particularly described as a "dos por dos." The unidentified person struck Alex with the wooden club three times hitting him on the nape and at the back of his head. Christopher followed by stabbing Alex once in his left chest. Alex was able to run at first but shortly after fell to the ground. The two assailants chased Alex, but they failed to catch him as residents from nearby houses started gathering near the scene. Thereafter, Domingo ran towards the house of his co-worker to ask for help. On cross-examination, he stated that the place where the incident took place was well-lit by the street lights.

Domingo could not think of any reason or ill motive why Christopher and his companion would harm Alex. He recalled, however, that Alex and Christopher had an argument prior to the incident. That earlier that day, he, Alex, and Christopher were among the guests of a certain "Bong" at the barrio fiesta of Barangay Sta. Clara. At around 6:00 P.M., they were partaking of food and drinks together with other visitors when an altercation ensued between Alex and Christopher. At that time, Domingo was speaking with someone else and could not hear what the two were arguing about. After that, Domingo and Alex decided to go home, leaving Bong's house ahead of Christopher. Domingo continued that they tried hailing tricycles but when they failed to find a ride, they decided to walk home. Domingo could not estimate how far they had walked before they were ambushed by Christopher and his companion. He alleged, however, that the incident happened near the residence of Christopher who was a resident of Barangay Batia.

Jonathan Gregory (Jonathan), the brother of the victim, testified that at around 7:00 P.M. or 8:00 P.M. on 11 August 2007, he was in their house at Barangay Malibo Matanda when his comadre, Cecilia, came and informed him that his brother, was stabbed at Barangay Batia. After hearing the news, he immediately rushed to his brother on his motorcycle. He arrived at the scene of the crime at around 9:00 P.M. There, he saw Alex bloodied, sprawled on the ground, and almost dying or "naghihingalo." While in this condition, Alex told him that he was stabbed by "Boyet" whose real name was Christopher. After a while, a police mobile arrived and brought Alex to the hospital. Alex, however, died on the same night. Jonathan explained that they had known Christopher even before the incident because he was their neighbor at Barangay Batia when they were residing there.

Christopher offered the alibi of physical impossibility of his presence at the crime scene at the time of the incident; that he was ordered by his mom to borrow money from his cousin in Canumay, Valenzuela. He was told to stay for the night which he did and went home only on the following morning.

RTC found Christopher guilty beyond reasonable doubt of the crime of murder. It was convinced that the prosecution was able to prove the identity of Christopher as the person who stabbed and killed Alex. Moreover, the trial court considered Alex's statement to Jonathan as a dying declaration

pointing to Christopher as his assailant. It did not give credence to Christopher's defense of alibi noting the failure to demonstrate physical impossibility of his presence at the crime scene at the time of the incident. The trial court further appreciated the aggravating circumstance of treachery to qualify the killing to murder ratiocinating that Christopher, in committing the crime, employed means, methods, or forms to insure its execution without risk to himself. CA affirmed.

**ISSUE:**

Whether the crime committed is murder. (NO)

**RULING:**

In convicting Christopher of murder, the trial and appellate courts appreciated the aggravating circumstance of treachery, finding the attack on Alex sudden and unexpected. Specifically, the trial court observed that Christopher and his companion deliberately waited for the victim in the alley, armed themselves with weapons, and attacked the unsuspecting victim in a swift and abrupt manner giving him no opportunity to repel the aggression. However, contrary to the pronouncements of the trial and appellate courts, the presence of treachery was not established.

Treachery is present when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

A finding of the existence of treachery should be based on clear and convincing evidence. Such evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed. In the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder.

Thus, for treachery to be appreciated, two elements must concur: first, the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and second, the said means, method, and manner of execution were deliberately adopted. It has been consistently held, however, that mere suddenness of an attack is not sufficient to constitute treachery where it does not appear that the aggressor adopted such mode of attack to facilitate the perpetration of the killing without risk to himself.

In this case, there was no showing that the mode of attack on Alex was consciously adopted without risk to the assailants. In the first place, the trial court's observation that Christopher and his companion deliberately waited for Alex in the alley would require the former to have a prior knowledge of the latter's plan to pass through the said alley at Barangay Batia.

Clear from Domingo's narration is the fact that he and Alex decided to walk home along Barangay Batia only after they failed to find a ride home. And at the time they arrived at that decision, Christopher was no longer around to learn of such. Given these circumstances, it is highly doubtful that Christopher could have anticipated Alex along the alley or "tawid-bukid" at Barangay Batia. Consequently, treachery cannot be appreciated to qualify the crime to murder as the mode of attack could not have been consciously or deliberately adopted. Without treachery, Christopher can only be convicted of homicide.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- JUNREL R. VILLALOBOS, *Accused-Appellant.***

G.R. No. 228960, SECOND DIVISION, June 11, 2018, Peralta, *J.*

*The credibility of a rape victim is enhanced when, as in the case at bench, she has no motive to testify against the accused or where there is absolutely no evidence which even remotely suggests that she could have been actuated by such motive. Further, the fact that AAA resolved to face the ordeal and relate in public what she suffered evinces that she did so to obtain justice. Her willingness and courage to face the authorities as well as to submit to medical examination, are mute but eloquent confirmation of her sincere resolve to vindicate the outrageous wrong done to her person, honor and dignity.*

**FACTS:**

AAA awoke to someone grasping her right leg while she was sleeping with her children in their room. The intruder, whose face was covered such that his eyes were the only ones visible, lifted the mosquito net and pointed a gun at AAA while covering her mouth. AAA asked "Who are you?" and the intruder replied "Wake up because we will go outside?" At gun point, AAA followed the intruder. AAA then recognized the voice of the intruder to be that of the accused-appellant as he frequently visited her cousin Joel.

Accused-appellant brought AAA to a nipa hut located along a road about 50 meters away from AAA's house. Accused-appellant ordered AAA to remove her dress. She refused and answered "no." Accused-appellant then put down the gun, removed his short pants and thereafter undressed AAA and sucked her breast. Thereafter, he touched and rubbed AAA's vagina and ordered her to lie down while he inserted his penis into her vagina.

Not contented, accused-appellant then ordered AAA to suck his penis. After thirty minutes, he lifted her buttocks and inserted his penis into her anus for another half hour. AAA begged accused-appellant to stop because it was already painful, but accused-appellant ignored AAA's pleas. He continued to make a push and pull movement. Accused-appellant again rubbed her vagina after he put saliva on his hands. AAA was made to suck accused-appellant's penis for over another half an hour.

Although the nipa hut was not lighted, AAA saw and recognized the face of the accused-appellant in the moonlight. Also, accused-appellant by then had already removed the t-shirt he used to cover his face. AAA was not able to shout because accused-appellant pointed the gun at her and warned her to keep silent. AAA cried silently.

A "multicab" later approached the direction of the nipa hut and the vehicle's light passed through the nipa hut. This gave AAA a chance to run away.

For his defense, the accused-appellant denied having sexual intercourse with AAA on the night of the alleged incident as he claimed he was sleeping in his room then. His testimony was corroborated by his younger sister and his elder brother.

The RTC found accused-appellant guilty as charged, and that the prosecution was able to establish with certitude that Villalobos had carnal knowledge of AAA through force and intimidation, and such

fact was established through the clear and convincing testimony of the said victim who has no motive to falsely testify against accused-appellant Villalobos. The CA affirmed the RTC ruling.

**ISSUE:**

Whether or not accused-appellant is guilty of the crime of rape (YES)

**RULING:**

In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Here, the trial court found AAA's testimony to be credible as it was made in a candid and straightforward manner, coupled with her occasional crying while relaying her story.The trial court's reliance on the victim's testimony is apt, considering that it was credible in itself and buttressed by the testimony of the medico- legal officer. AAA narrated in the painstaking and well-nigh degrading public trial her unfortunate and painful ordeal in a logical manner. Without hesitation, AAA pointed an accusing finger against Villalobos as the person who ravished and sexually molested her.

The credibility of a rape victim is enhanced when, as in the case at bench, she has no motive to testify against the accused or where there is absolutely no evidence which even remotely suggests that she could have been actuated by such motive. Further, the fact that AAA resolved to face the ordeal and relate in public what she suffered evinces that she did so to obtain justice. Her willingness and courage to face the authorities as well as to submit to medical examination, are mute but eloquent confirmation of her sincere resolve to vindicate the outrageous wrong done to her person, honor and dignity.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- RODOLFO GRABADOR, JR., ROGER ABIERRA, DANTE ABIERRA and ALEX ABIERRA, Accused, ALEX ABIERRA, *Accused-Appellant.***
G.R. No. 227504, SECOND DIVISION, June 13, 2018, REYES, JR., *J.*

*The following requisites of **treachery** must be proven, (1) "the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender."*

*In the case at bar, Dennis was unaware of the attack. Although Rodolfo and Dennis had an argument, they shook hands thereafter and this gesture made Dennis believe that their issues have been sorted. However, to Dennis' surprise, Rodolfo came back after 15 minutes, with three other armed men. Dennis, **who was unarmed, was completely unaware of the imminent peril to his life.** In a rapid motion, the men, including Alex, suddenly shot Dennis with their sumpak. The onslaught was so **sudden and unexpected** that Dennis had no chance to run, mount a defense or evade the bullets. The deliberate stealth and swiftness of the attack employed by Alex and his cohorts, **significantly diminished the risk of retaliation from Dennis.***

*The following requisites must be proven in order to establish the existence of **evident premeditation**: (1) the time when the offender determined to commit the crime, (2) an act manifestly indicating that he clung to his determination, and (3) a sufficient lapse of time between the determination and execution,*

*to allow him to reflect upon the consequences of his act, and to allow his conscience to overcome the resolution of his will.*

*In the case at bar,* ***the prosecution failed to identify the time when Alex decided to kill Dennis.*** *This is necessary to prove that indeed, a sufficient period of time passed between the determination to kill and its actual execution, which would have allowed Alex to meditate and reflect on his plans, and allow his conscience to overcome the determination of his will.*

**FACTS:**
Noel Sumugat, brother of victim Dennis Sumugat, testified that he saw Dennis having an argument with Rodolfo at around 4:00pm of April 13, 2001, outside of his house in Taguig City. He was situated seven meters away from them. Dennis and Rodolfo shook hands after their argument and Rodolfo left for home. At around 5:30pm, Rodolfo came back with Alex, Roger, and Dante who were all carrying a homemade shotgun (sumpak). Noel said that it was Alex who shot Dennis and that he knew them because they were his neighbors. Noel rushed Dennis to the hospital where he was confined for multiple shotgun wounds with cardiac pulmonary injury. Dennis died days after.

Alex denied the allegations against him. He said that Roger and Dante are his brothers and that he did not know either Rodolfo and the victim Dennis. He claimed that he was in Naga attending the wake of his father on the day of the incident. He only moved to Manila in 2004 and has not seen his brothers since 2001. Maribel, Alex's sister, and his neighbor Virgie testified that Alex, Roger, and Dante were all in Bicol attending their father's wake.

The RTC found Alex guilty beyond reasonable doubt of the crime of Murder. It held that the killing was qualified by treachery and evident premeditation. The CA affirmed the trial court's conviction but ruled that the crime was not attended by evident premeditation considering that the prosecution failed to prove that the decision to kill prior to the moment of its execution was the result of meditation calculation, reflection or persistent attempts. It held that it was not shown that Alex had enough opportunity to reflect upon the consequences of his intended act, as the prosecution merely presumed the premeditation from the lapse of time.

In his appeal, Alex claimed that Noel's testimonies were inconsistent and his acts during the incident were unnatural and contrary to human experience, that he was in Bicol at the time of the commission of the crime, and that the prosecution failed to prove that the killing was attended by treachery and evident premeditation.

**ISSUES:**

1. Whether or not the prosecution proved Alex's guilt beyond reasonable doubt of the crime of murder qualified by treachery. (YES)
2. Whether or not the prosecution failed to prove that the killing was attended by evident premeditation. (YES)

**RULING:**

1. Under Article 248 of the RPC, murder is defined as the unlawful killing of a person which is not parricide or infanticide, committed through any of the following qualifying circumstances, to wit: .
    a. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

    xxx

    e. With evident premeditation.

In the case at bar, the essential elements of murder were duly established: (1) the victim Dennis was killed; (2) Dennis was killed by Alex; (3) the killing was attended by treachery; and (4) Dennis is not the father, or child, ascendant or descendant of Alex.

Treachery or aleviosa is present when the when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.

The following requisites of treachery must be proven**, (1) "the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender."**

In the case at bar, Dennis was unaware of the attack. Although Rodolfo and Dennis had an argument, they shook hands thereafter and this gesture made Dennis believe that their issues have been sorted. However, to Dennis' surprise, Rodolfo came back after 15 minutes, with three other armed men. Dennis, who was unarmed, was completely unaware of the imminent peril to his life. In a rapid motion, the men, including Alex, suddenly shot Dennis with their sumpak. The onslaught was so sudden and unexpected that Dennis had no chance to run, mount a defense or evade the bullets. The deliberate stealth and swiftness of the attack employed by Alex and his cohorts, significantly diminished the risk of retaliation from Dennis.

2. The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment.

The following requisites must be proven in order to establish the existence of evident premeditation: **(1) the time when the offender determined to commit the crime, (2) an act manifestly indicating that he clung to his determination, and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act, and to allow his conscience to overcome the resolution of his will.**

In the case at bar, the prosecution failed to identify the time when Alex decided to kill Dennis. This is necessary to prove that indeed, a sufficient period of time passed between the determination to kill and its actual execution, which would have allowed Alex to meditate and reflect on his plans, and allow his conscience to overcome the determination of his will.

In People v. Illescas, the Court ruled that a lapse of 15 minutes is not sufficient to conclude that evident premeditation attended the commission of the offense. The 15-minute interval is not sufficient time for the accused to coolly reflect on their plan to kill the victim.

In People v. Dadivo, the Court warned that there can be no evident premeditation if the accused's act of leaving the crime scene was too short a time to meditate or reflect upon his decision to stab the victim.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- RICARDO TANGLAO y EGANA, *Accused-Appellant.***
G.R. No. 219963, THIRD DIVISION, June 13, 2018, MARTIRES, *J.*

*Under **Art. 266-A (1) (d) of R.A. No. 8353 or statutory rape** where the child victim's consent is immaterial because the law presumes that her young age makes her incapable of discerning good from evil. Its elements are as follows**: (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her**, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. **It is enough that the age of the victim is proven and that there was sexual intercourse.***

*In the case at bar, AAA **positively identified her father** Ricardo Tanglao as the one who raped her. This was corroborated by DDD when he testified. On the element of carnal knowledge, AAA's testimony was **straight forward and convincing and consistent with DDD's testimony on material and important details.***

*The testimony of a rape victim who is of tender age is credible and the revelation of an innocent child whose chastity was abused deserves full credence. The record is bereft of any showing that AAA and DDD would falsely testify against their father. Based on Ricardo's testimony, AAA was allegedly being abused by BBB, EEE, and Reyes. Hence, AAA had nowhere to go but to him. It would be beyond cognition that AAA would want him placed behind bars. Moreover, DDD who lived with Ricardo was aware that it would be to his disadvantage if Ricardo would be imprisoned.*

**FACTS:**

*Version of the Prosecution:*

AAA, CCC, and DDD were the children of accused-appellant and BBB. The parents separated some time after marriage, causing AAA to stay with BBB (mother), while CCC and DDD stayed with accused appellant (father).

When AAA was seven years old, she went to accused-appellant's house and stayed there for the night. Accussed-appellant placed himself between AAA and DDD at the upper portion of a double-deck bed, covered AAA's mouth, kissed her lips and neck, and forcefully inserted his penis into her vagina. AAA wanted to shout but was unable to do so. DDD heard AAA whimpering and asked her what's the

matter, but AAA did not answer. DDD felt that the bed was shaking and with the light coming from the lamppost outside, he saw AAA's legs quivering. He saw accused-appellant moving his body back and forth. AAA asked permission to leave the room to urinate. DDD followed AAA downstairs. When AAA came back to the room, she and DDD situated themselves on the lower deck. AAA whispered to DDD that she was raped by papa. Later, accused-appellant carried DDD up to the upper deck, kissed him, touched his penis, and then pushed him away.

The following morning, accused-appellant threw away AAA's bloodied underwear. She was asked by accused-appellant to get some food from the eatery. While on her way, she saw the helper of her mother's customer and together they went to see BBB. AAA and BBB then proceeded to the barangay hall to prove that BBB did not kidnap AAA.

At the barangay hall, AAA told BBB that accused-appellant had raped her. They went to an aunt's place to get her vagina examined. BBB saw that AAA's vagina was swollen so they went immediately to the police station to report the incident. Dr. Baluyot conducted a medical examination on AAA and Dr. Leynes conducted a psychological evaluation which revealed that AAA was sexually abused and had problems with primary support group.

*Version of the Defense:*

Accused-appellant testified that AAA complained to him that BBB and her live-in partner Ronnie Reyes, whom she called "demonyo" were hurting her. They went to the DSWD the following day. The DSWD employee interviewed AAA and the latter said that EEE who was BBB's brother had mounted her. AAA and the accused-appellant proceeded to the NBI to file a complaint against BBB, EEE and Reyes. Days after, the accused-appellant reported to the barangay that AAA was missing. Then, the accused-appellant was arrested on the basis of a complaint filed by BBB for the rape of AAA.

*The RTC Ruling:*

The RTC held that the prosecution was able to establish the elements of rape under Art. 266-A of R.A. No. 8353. It ruled that in an incestuous rape of a minor, neither actual force nor intimidation need be employed; nor proof of force and violence exerted by the aggressor is essential. In a rape by a father of his daughter, the former's moral ascendancy and influence substitute for violence and intimidation.

*The CA Ruling:*

The CA affirmed the RTC's ruling. It further held that Ricardo's contention on his appeal that AAA could not have been raped because there was no "evident injury in her genitalia" deserves no consideration. According to CA, absence of external injuries does no negate rape and that an intact hymen does not disprove a finding that the victim was actually sexually violated.

**ISSUE:**

Whether or not accused-appellant is guilty beyond reasonable doubt of the crime of rape. (YES)

**RULING:**

Under Article 266-A rape is committed by a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;
b) When the offended party is deprived of reason or otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority; and
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

For a successful prosecution of rape, the following elements must be proved beyond reasonable doubt, to wit**: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force and intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.**

Under **Art. 266-A (1) (d) of R.A. No. 8353 or statutory rape** where the child victim's consent is immaterial because the law presumes that her young age makes her incapable of discerning good from evil. Its elements are as follows**: (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her**, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. **It is enough that the age of the victim is proven and that there was sexual intercourse.**

In the case at bar, AAA **positively identified her father** Ricardo Tanglao as the one who raped her. This was corroborated by DDD when he testified. On the element of carnal knowledge, AAA's testimony was **straight forward and convincing and consistent with DDD's testimony on material and important details.**

The testimony of a rape victim who is of tender age is credible and the revelation of an innocent child whose chastity was abused deserves full credence. The record is bereft of any showing that AAA and DDD would falsely testify against their father. Based on Ricardo's testimony, AAA was allegedly being abused by BBB, EEE, and Reyes. Hence, AAA had nowhere to go but to him. It would be beyond cognition that AAA would want him placed behind bars. Moreover, DDD who lived with Ricardo was aware that it would be to his disadvantage if Ricardo would be imprisoned.

AAA also immediately informed BBB what had happened to her. She did not have enough time to fabricate a rape story. Her testimony was corroborated by Dr. Baluyot and Dr. Leynes who confirmed that AAA was sexually abused.

The defense presented by Ricardo was inherently weak. The incident subject of his complaint before the NBI allegedly took place month before the rape incident. Hence, his complaint was inconsequential to AAA's charge against him for rape. Even if BBB, EEE, and Reyes indeed abused AAA, this does not destroy the truth that Ricardo had raped AAA. The Court gives more weight to the testimony of a young rape victim.

With regard to Ricardo's contention that AAA could not have been raped because there was no "evident injury in her genitalia", the Court held that **proof of hymenal laceration is not an element of rape**. An intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape." Dr. Baluyot's finding that there was "penetrating trauma" on AAA's genitalia supported AAA's credible testimony that she was raped by the accused-appellant.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- RONNIE DELA CRUZ A.K.A. "BAROK", *Accused-Appellant.***
G.R. No. 219088, THIRD DIVISION, June 13, 2018, MARTIRES, *J.*

*In People v. Joson, the Court held that* ***force or violence that is required in rape cases is relative****; when applied, it need not be overpowering or irresistible. That it enables the offender to consummate his purpose is enough.* ***The parties' relative age, size and strength should be taken into account in evaluating the existence of the element of force in the crime of rape****. The degree of force which may not suffice when the victim is an adult may be more than enough if employed against a person of tender age. There is force when the resistance is expressed* ***through deeds*** *and even* ***through words.***

*In this case, AAA verbally and physically manifested her resistance but Dela Cruz persisted nonetheless. The degree of force* ***becomes immaterial in view of AAA's minority and the fact that her intoxication impaired her physical strength.***

**FACTS:**

Ronnie Dela Cruz was charged with the crime of rape under Article 266-A (a) of the RPC in relation to RA 7610 committed against AAA.

AAA testified that she and her 17-year-old aunt BBB were drinking in the house of the latter's boyfriend "Noknok". Dela Cruz and his friends then arrived and joined them. When BBB noticed that AAA was already sleepy, she asked Dela Cruz if AAA could sleep in his house as AAA did not want to go home and Noknok's house was too small. Upon arriving at Dela Cruz's house, AAA went inside and was immediately followed by Dela Cruz. He kissed her, removed her clothes, mounted her and inserted his penis into her vagina. AAA cried and pushed him away but he carried on with the sexual intercourse. Once AAA got home in the morning, she told her aunt about the incident who in turn informed her parents. Her mother accompanied her to the police station to report about the incident. She was subjected to medical examination by Dr. Ebdane which showed that AAA had fresh lacerations in her hymen suggesting that a blunt object was inserted into her genitalia.

Dela Cruz testified that he could not remember well what happened but he was sure that if something did happen between him and AAA, it was consensual.

The RTC found Dela Cruz guilty of Rape under Article 266-A (a) of the RPC. It ruled that Dela Cruz had sexual intercourse with AAA through force because he persisted despite AAA's pleas for him to

stop. The amount of force applied is inconsequential because the same need not be irresistible so long as it was enough to bring about the desired result. The CA affirmed the RTC's decision.

**ISSUE:**

Whether or not the accused was guilty of the crime of rape. (YES)

**RULING:**

Under Article 266-A (1) of the RPC, rape is committed when a man has carnal knowledge of a woman under any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; or (d) when the offended party is under 12 years old or demented, even if none of the above circumstances are present.

**In short, the following are the elements of rape: (1) accused had carnal knowledge of the victim; and(2) it was accomplished (a) through force, threat or intimidation; (b) when the victim is deprived of reason; or (c) against a victim below 12 years of age or is demented.**

Based on the foregoing facts, Dela Cruz had carnal knowledge of AAA. She vividly recalled how he had sex with her. Also, AAA's testimony was corroborated by the findings of Dr. Ebdane who found fresh lacerations in her hymen. Dela Cruz never denied having intercourse AAA and merely testified that the sexual intercourse was consensual.

Dela Cruz argues that his act of following her into the room and kissing her hardly constitute force. In People v. Joson, the Court held that **force or violence that is required in rape cases is relative**; when applied, it need not be overpowering or irresistible. That it enables the offender to consummate his purpose is enough**. The parties' relative age, size and strength should be taken into account in evaluating the existence of the element of force in the crime of rape**. The degree of force which may not suffice when the victim is an adult may be more than enough if employed against a person of tender age. There is force when the resistance is expressed **through deeds** and even **through words.**

In this case, AAA verbally and physically manifested her resistance but Dela Cruz persisted nonetheless. The degree of force **becomes immaterial in view of AAA's minority and the fact that her intoxication impaired her physical strength.**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- ARDIN CUESTA CADAMPOG, *Accused-Appellant.***
G.R. No. 218244, THIRD DIVISION, June 13, 2018, MARTIRES, *J.*

*There is treachery when the offender commits any of the crimes against persons**, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime without risk to himself arising from the defense which the offended party*

***might make.*** *The essence of treachery is* ***the sudden and unexpected attack*** *by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim.*

*In this case, the act of Ardin in shooting the victim through the bamboo slats constitutes treachery or aleviosa. The family was having supper when Florencio was shot.* ***He had no suspicion that he was to be assaulted****. The sudden, swift attack gave* ***him no opportunity to defend himself.*** *Therefore, the crime committed was murder.*

**FACTS:**

The victim Florencio Napoles, Alicia Napoles and the latter's mother were having dinner in the house of Alicia's nephew when Alicia suddenly heard two gun bursts. She saw her bloodied husband fell down then stood up immediately and peeped through the bamboo slats. She saw accused-appellant Ardin Cadampog wearing dark jacket and short pants and a bullcap with firearm in his hand. She went out of the house and shouted, "Ardin, why did you shoot my husband?" She was certain it was Ardin as she was familiar with his build, height, and profile of the body having known him for two years. Ardin also passed through a lighted place while he was running away.

Alicia added that prior to the incident, the victim uprooted a kalamunggay tree which angered Ardin. Ardin told a child that he would kill whoever uprooted the tree.

Margie Tambangan and Mark Inguito corroborated Alicia's testimony and testified they saw the accused-appellant Ardin wearing short pants, black jacket and cap walking fast.

Ardin testified that he was at their house when the shooting incident happened. Ardin's sister Corazon Cadampog and cousin Narciso Cuesta corroborated Ardin's testimony and testified that the witness was at home on the night of the incident.

The RTC ruled that Ardin is guilty of the crime of murder qualified by treachery as the attack was sudden and unexpected because Florencio was eating supper when Ardin shot him through the bamboo slats of the kitchen. The CA affirmed the ruling of the RTC and held that Alicia's positive and categorical testimony sufficiently established her identification of Ardin as the one who shot Florencio.

**ISSUE:**

Whether or not Ardin is guilty of murder. (YES)

**RULING:**

The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal. After examination of records, the Court is convinced that Alicia positively identified Ardin as the perpetrator.

First, Alicia recounted that Ardin passed by a place where there was illumination. Second, Alicia called him by name. Third, two other witnesses corroborated Alicia's description of the assailant's attire.

Ardin failed to establish that the prosecution witnesses were prompted by any ill motive to falsely testify or accuse him of murder. The absence of any evidence showing reason or motive for witnesses to perjure, their testimony should be given full faith and credit.

The killing was qualified by treachery. There is treachery when the offender commits any of the crimes against persons**, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime without risk to himself arising from the defense which the offended party might make.** The essence of treachery is **the sudden and unexpected attack** by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim.

In this case, the act of Ardin in shooting the victim through the bamboo slats constitutes treachery or aleviosa. The family was having supper when Florencio was shot. **He had no suspicion that he was to be assaulted**. The sudden, swift attack gave **him no opportunity to defend himself.** Therefore, the crime committed was murder.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus –GERRY AGRAMON, *Accused-appellant***

G.R. No. 212156, SECOND DIVISION, June 20, 2018, CAGUIOA, *J.*

*To qualify an offense, the following conditions must exist: (1) the assailant employed* ***means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate****; and (2) said means, methods or forms of execution were* ***deliberately or consciously adopted by the assailant.***

*The Court agrees with the CA that the prosecution fell short of proving that Gerry consciously and deliberately adopted means which would ensure that Pelita could not defend herself or seek help. As aptly noted by the CA, Pelita was* ***forewarned of the impending danger to her life.***

*With respect to the qualifying circumstance of* ***evident premeditation****, the Court cannot agree with the CA. The CA found that evident premeditation attended the killing of Pelita because of the lapse of time from the alleged intercalation between Gerry and Roger in the morning and the time when the criminal act was executed. Time and again, this Court has ruled that* ***mere lapse of time*** *is insufficient to establish evident premeditation. For evident premeditation to be appreciated, it is indispensable to show concrete evidence on* ***how and when the plan to kill was hatched*** *or* ***how much time had elapsed before it was carried out.***

**FACTS:**

The prosecution alleged that on December 24, 2005, at about 6:00 in the evening, Roger, who just came from the farm, was sitting inside his dwelling with Pelita Aboganda (Pelita), his common-law wife, when his brother, Gerry, who appeared to be drunk, came to their dwelling yelling "I will kill

you all." Gerry entered the house armed with an unsheathed bladed weapon and delivered a stab thrust against Roger, who was able to hold the weapon with his hand causing him to sustain four (4) wounds. Pelita, Roger's common law wife, who was then two (2) months pregnant, tried to cover Roger in order not to be hit again. Pelita was stabbed by Gerry on her left breast. When Roger was about to run, Gerry stabbed him and the weapon got stuck at his back. Gerry searched for another weapon inside the house and when the former saw the long bolo, he chased Roger who ran towards the barangay hall. Pelita died, while Roger was taken to the hospital.

Gerry, on the other hand, interposed self-defense. He asserted on that day, while he was on his way to work, he was chased by his brother Roger, who was then holding a long bolo. Roger was allegedly mad at him because his three (3) pigs destroyed Roger's plants the previous day.

Accused-appellant was charged with Murder, qualified by treachery and evident premeditation. RTC ruled against the accused. CA affirmed. However, CA found that only evident premeditation was clearly established. CA held that treachery cannot be appreciated because the attack on Pelita was not sudden and unexpected as Roger and Pelita were aware of the imminent danger to their lives. Hence, this appeal.

**ISSUE:**

Whether the CA erred in affirming Gerry's conviction for Murder despite the fact that the prosecution failed to establish his guilt for Murder beyond reasonable doubt. (YES)

**RULING:**

It is established that qualifying circumstances must be proved with the same quantum of evidence as the crime itself, that is, **beyond reasonable doubt**. Thus, for Gerry to be convicted of Murder, the prosecution must not only establish that he killed Pelita; it must also prove, beyond reasonable doubt, that the killing of Pelita was attended by **treachery** or **evident premeditation.**

There is **treachery** when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed **means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate**; and (2) said means, methods or forms of execution were **deliberately or consciously adopted by the assailant.**

The Court agrees with the CA that the prosecution fell short of proving that Gerry consciously and deliberately adopted means which would ensure that Pelita could not defend herself or seek help. As aptly noted by the CA, Pelita was forewarned of the impending danger to her life.

The prosecution also did not prove that Gerry intentionally sought Pelita for the purpose of killing her. In fact, Roger, on cross-examination, admitted that after Gerry delivered a stab thrust towards him, Pelita used herself as a shield to protect him from being hit again. Indeed, jurisprudence has set that treachery cannot be appreciated simply because the attack was sudden and unexpected. There must be proof that the accused **intentionally sought the victim for the purpose of killing him** or that **accused carefully and deliberately planned the killing** in a manner that would ensure his safety and success.

However, with respect to the qualifying circumstance of **evident premeditation**, the Court cannot agree with the CA. The CA found that evident premeditation attended the killing of Pelita because of the lapse of time from the alleged intercalation between Gerry and Roger in the morning and the time when the criminal act was executed. Time and again, this Court has ruled that **mere lapse of time** is insufficient to establish evident premeditation. For evident premeditation to be appreciated, it is indispensable to show concrete evidence on **how and when the plan to kill was hatched** or **how much time had elapsed before it was carried out.**

With the removal of the qualifying circumstances of treachery and evident premeditation, the crime committed is **Homicide** and not Murder.

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- FRANCISCO EJERCITO, *Appellant.***
G.R. No. 229861, SECOND DIVISION, July 2, 2018, PERLAS-BERNABE, *J.*

RA 8353 *amending the* RPC*should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of* RA 7610*. Indeed, while* RA 7610 *has been considered as a special law that covers the sexual abuse of minors,* RA 8353 *has expanded the reach of our already existing rape laws.Significant to the case of Ejercito, the provisions of* RA 8353 *already accounted for the circumstance of minority under certain peculiar instances. The consequence is a clear overlap with minority as an element of the crime of sexual intercourse against a minor under Section 5 (b) of* RA 7610*.*

*In instances where an accused is charged and eventually convicted of having sexual intercourse with a minor, the provisions on rape under* RA 8353 *amending the* RPC *should prevail over Section 5 (b) of RA 7610. As it has been established that Ejercito had carnal knowledge of AAA through force, threat, or intimidation. Hence, he should be convicted of rape under paragraph 1 (a), Article 266-A of the* RPC*, as amended by* RA 8353*.*

**FACTS:**

On October 10, 2001, AAA, then a 15-year-old high school student, was cleaning the chicken cage at the back of their house when suddenly, Ejercito pointed a gun at her asking her to come with him and threatening to kill AAA's parents if she does not follow. Thereafter, Ejercito dragged AAA to a nearby barn, removed her shorts and underwear, while he undressed and placed himself on top of her. He covered her mouth with his right hand and used his left hand to point the gun at her, as he inserted his penis into her vagina. Thereafter, Ejercito casually walked away and warned AAA not to tell anybody or else, her parents will get killed.

Wanting to start her life anew, AAA moved to the city to continue her schooling there. However, Ejercito was able to track AAA down, and made the latter his sex slave. From 2002 to 2005, Ejercito persistently contacted AAA, threatened and compelled her to meet him, and thereafter, forced her to take *shabu* and then sexually abused her. Eventually, AAA got hooked on drugs, portrayed herself as Ejercito's paramour, and decided to live together. When Ejercito's wife discovered her husband's relationship with AAA, the former filed a complaint against AAA before the barangay. By this time, even AAA's mother, BBB, found out the illicit relationship and exerted efforts

to separate them from each other. Finally, after undergoing rehabilitation, AAA finally disclosed to her parents that she was raped by Ejercito back in 2001 and reported the same to the authorities.

In his defense, Ejercito maintained that he had an illicit relationship with AAA. During the existence of their affair from 2002 to 2004, he and AAA had consensual sex.

Ejercito was charged with Rape under Article 266-A. in relation to Article 266-B, as amended by RA 8353. The RTC found Ejercito guilty of the crime charged. The CA affirmed the RTC's ruling with modification, convicting Ejercito of Rape under Article 335. Agreeing with the RTC's findings, the CA held that through AAA's clear and straightforward testimony, the prosecution had established that Ejercito raped her in 2001. On the other hand, it did not give credence to Ejercito's sweetheart defense, pointing out that assuming *arguendo* that he indeed eventually had a relationship with AAA, their first sexual encounter in 2001 was without the latter's consent and was attended with force and intimidation as he pointed a gun at her while satisfying his lustful desires.

**ISSUE:**

Whether or not Ejercito's conviction for the crime of Rape must be upheld. (YES, not under Article 335, but under Article 266-A)

**RULING:**

The Court observes that the CA, in modifying the RTC ruling, erroneously applied the old Rape Law, or Article 335 since the same was already repealed upon the enactment of RA 8353 in 1997. To recount, the crime happened on the **10th day of October 2001**. Hence, in convicting Ejercito of Rape, the **CA should have applied the provisions of RA 8353**, which enactment has resulted in the new rape provisions of the RPC under Article 266-A in relation to 266-B.

***Article 266-A***

For a charge of Rape by sexual intercourse under Article 266-A (1) of the RPC, as amended by RA 8353, to prosper, the prosecution must prove that: (a) the offender had carnal knowledge of a woman; and (b) he accomplished this act under the circumstances mentioned in the provision, e.g., through force, threat or intimidation. The gravamen of Rape is sexual intercourse with a woman against her will.

In this case, the prosecution was able to prove beyond reasonable doubt the presence of all the elements of Rape by sexual intercourse under Article 266-A (1), as amended by RA 8353. Through AAA's positive testimony, it was indeed established that in the evening of October 10, 2001, AAA, then just a 15-year old minor, was cleaning chicken cages at the back of her house when suddenly, Ejercito threatened her, removed her lower garments, covered her mouth, and proceeded to have carnal knowledge of her without her consent. The RTC, as affirmed by the CA, found AAA's testimony to be credible, noting further that Ejercito failed to establish any ill motive on her part which could have compelled her to falsely accuse him of the aforesaid act.

***Section 5(b), RA 7610***

The Court remains mindful that Section 5 (b) of RA 7610, which was passed prior to RA 8353 on June 17, 1992, equally penalizes those who commit sexual abuse, by means of either *(a)* **sexual**

**intercourse or** (b) lascivious conduct, **against "a child exploited in prostitution or subjected to other sexual abuse."**

In Quimvel v. People (Quimvel), the Court set important parameters in the application of Section 5 (b) of RA 7610, to wit:

> (1) A child is considered as one **"exploited in prostitution or subjected to other sexual abuse"** when the child indulges in sexual intercourse or lascivious conduct "under the coercion or influence of any adult;" (2) A violation of Section 5 (b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim **only once**;(3) For purposes of determining the proper charge, the term "coercion and influence" as appearing in the law is **broad enough to cover "force and intimidation" as used in the Information**.

Thus, the Court, in Quimvel, observed that although the Information therein did not contain the words "coercion or influence" (as it instead, used the phrase "through force and intimidation"), the accused may still be convicted under Section 5 (b) of RA 7610. Further, **following the rules on the Sufficiency of an Information or Focus of evidence**, the Court held that the Information need not even mention the exact phrase "exploited in prostitution or subjected to other abuse."

In this case, it has been established that Ejercito committed the act of sexual intercourse against and without the consent of AAA, who was only 15 years old at that time. As such, she is considered under the law as a child who is "exploited in prostitution or subjected to other sexual abuse;" hence, Ejercito's act may as well be classified as a violation of Section 5 (b) of RA 7610.

Between Article 266-A of the RPC, as amended by RA 8353, as afore-discussed and Section 5 (b) of RA 7610, the Court deems it apt to clarify that Ejercito should be convicted under the former.

> In Teves *v*. Sandiganbayan:
>
> It is a rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but **if there is any conflict, the latter shall prevail regardless of whether it was passed prior to the general statute**. Or where two statutes are of contrary tenor or of different dates but are of equal theoretical application to a particular case, **the one designed therefor specially should prevail over the other**.

After much deliberation, the Court observes that **RA 8353** amending the RPC**should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of RA 7610**. Indeed, while RA 7610 has been considered as a special law that covers the sexual abuse of minors, RA 8353 has expanded the reach of our already existing rape laws.Significant to this case, the provisions of RA 8353 already accounted for the circumstance of minority under certain peculiar instances. The consequence is a clear overlap with minority as an element of the crime of sexual intercourse against a minor under Section 5 (b) of RA 7610.

Notably, in the more recent case of People v. Caoili (Caoili), the Court encountered a situation wherein the punishable act committed by therein accused, i.e., lascivious conduct, may be prosecuted either under "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610" or "Lascivious Conduct under Section 5 (b) of RA 7610." In resolving the matter, the Court did not consider the "focus" of the evidence for the prosecution nor the gravity of the penalty imposed. Rather, it is evident that the **determining factor in designating or charging the proper offense,**

**and consequently, the imposable penalty therefor, is the nature of the act committed**. Thus, being the more recent case, it may be concluded that Caoili implicitly **abandoned** the "focus of evidence."

Based on the foregoing considerations, the Court therefore holds that in instances where an accused is charged and eventually convicted of having sexual intercourse with a minor, the provisions on rape under RA 8353 amending the RPC should prevail over Section 5 (b) of RA 7610. In this case, it has been established that Ejercito had carnal knowledge of AAA through force, threat, or intimidation. Hence, he should be convicted of rape under paragraph 1 (a), Article 266-A of the RPC, as amended by RA 8353.

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- ROGELIO BAGUION, A.K.A. "ROGEL", *Appellant.***
G.R. No. 223553, THIRD DIVISION, July 4, 2018, MARTIRES, *J.*

*To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant – AAA was 10 years and 8 months old during the commission of the crime; (b) the identity of the accused – AAA positively and straightforwardly identified Rogel as the one who raped her; and (c) the sexual intercourse between the accused and the complainant – Even if there was no full penile penetration of the victim's vagina as narrated by AAA herself. However, it is also undisputed that Rogel's erect penis touched the victim's labia majora as corroborated by the medical findings.*

**FACTS:**

AAA was at home alone and fast asleep when she was awakened by Rogelio Baguion (Rogel), who was a neighbor and whom she called "Tiyo Roel." With a machete in his hand, Rogel threatened AAA not to do anything, otherwise, he would kill her and her nephew. He then held AAA and forced her to go with him to his house.

At his house, Rogel undressed himself and AAA and thereafter he performed the push-and-pull motion on her, but his erect penis failed to fully penetrate AAA's genitalia. Despite the lack of full penetration, AAA still felt severe pain.
Thereafter, AAA, who was left behind, found a hole at the wash area, through which she went out and returned home. AAA did not immediately report the incident to her mother out of fear that accused-appellant would kill her and her nephew.

On 14 October 2009, Francisco Cabusas *(Cabusas)* and Rogel were drinking at AAA's house. Sometime during the drinking session, the two fought and they accused one another of molesting AAA. BBB, mother of AAA, then asked the latter who molested her. AAA, who was already crying at that time, told BBB that it was Rogel who threatened her with a machete and forcibly brought her to his house where she was raped

Rogel was charged with Statutory Rape in violation of Article 266-A, RPC as amended by RA 8353. The RTC found Rogel guilty of the crime charged. It ruled that AAA was credible as she positively identified Rogel as the one who raped her. The CA affirmed the RTC's conviction.

**ISSUE:**

Whether or not Rogel is guilty of Statutory Rape in violation of Article 266-A as amended by RA 8353. (YES)

**RULING:**

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.

As to the first element, AAA's age at the time of the commission of the offense is uncontroverted. Her birth certificate, which was duly presented and offered in evidence, shows that she was born on 17 January 1999, thus, she was only 10 years and 8 months old at the time she was raped.

As regards the second and third elements, AAA positively identified accused-appellant as the person who molested her. She clearly and straightforwardly narrated the incidence of rape.

During her examination of AAA, redness on the victim's labia majora was found by Dr. Cam. She opined that such injury was possibly caused by consistent rubbing through sexual abuse. Although such medical finding, left alone, was susceptible of different interpretations, AAA's testimonial narration about how Rogel had sexually assaulted her, including how his penis had only slightly penetrated her vagina, confirmed that he had carnal knowledge of her.

There is no dispute that there was no full penile penetration of the victim's vagina as narrated by AAA herself. However, it is also undisputed that accused-appellant's erect penis touched the victim's labia majora as corroborated by the medical findings. Thus, the Court finds no reason to reverse the conviction of accused-appellant of statutory rape.

AAA's testimony is sufficient to convict Rogel of statutory rape. The nature of the crime of rape often entails reliance on the lone, uncorroborated testimony of the victim, which is sufficient for a conviction, provided that such testimony is clear, convincing, and otherwise consistent with human nature.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. FIDEL G. LAGUERTA, accused-appellant.**
G.R. No. 233542, SECOND DIVISION, July 9, 2018, REYES, JR., J.

*Proof of the essential elements in a conviction for rape may rest on direct as well as circumstantial evidence. Notably, in cases where the victim cannot testify on the actual commission of the rape as she was rendered unconscious when the act was committed, the accused may be convicted based on circumstantial evidence, provided that more than one circumstance is duly proven and that the totality*

*or the unbroken chain of the circumstances proven lead to no other logical conclusion than the appellant's guilt of the crime charged.*

*The prosecution proved through AAA's testimony that: (i) Laguerta chanced upon her, poked a knife at her neck and threatened her; (ii) he covered her mouth with a handkerchief, which caused her head and nose to ache; (iii) she was rendered unconscious; and (iv) upon waking up, she found herself lying half-naked on the bed, with a sharp pain in her vagina and thighs, with her undergarment and shorts lain on the side. Added to this, AAA prematurely gave birth seven months after the rape incident. All these interwoven circumstances form an unbroken chain that unerringly point to Laguerta, and no other, as the man who had carnal knowledge against AAA.*

**FACTS:**

At around 2:30 p.m. of October 5, 2006, then 17-year-old AAA, after cleaning their house, decided to take a nap. While she was locking the front door of their house, somebody suddenly covered her mouth with a handkerchief. AAA looked behind her and saw a man whose face was covered with a black shirt. Immediately, she noticed the assailant's physical built, his fair skin and distinguishing marks on his feet as well as his voice. Instantly, she recognized the assailant as her Tiyo Fidel Laguerta.

Laguerta poked a bladed weapon on her neck and ordered her not to tell her parents about the incident, or else, he would do the same dastardly act on her sisters. Suddenly, AAA felt her head and nose start to ache, and she lost consciousness thereafter.

When AAA awoke, it was already dark, and she was lying half naked on the bed. She felt an excruciating pain in her private organ, as well as in her thighs. She did not report the matter to her parents out of fear.

Sometime in February 2007, AAA suddenly felt ill. It was discovered that she was pregnant. This prompted AAA to report the rape incident to her parents. AAA's baby was born prematurely after AAA's seventh month of pregnancy.

The RTC convicted Laguerta of the crime of rape under Article 266-A, paragraph 1(a) of the RPC.

The CA affirmed Laguerta's conviction for the crime of rape.

**ISSUE:**

Whether or not the prosecution sufficiently proved beyond reasonable doubt Laguerta's guilt for the crime of rape. (YES)

**RULING:**

To sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt, namely, (i) that the accused had carnal knowledge of the victim; and (ii) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.

Parenthetically, proof of the essential elements in a conviction for rape may rest on direct as well as circumstantial evidence. "Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience." Notably, in cases where the victim cannot testify on the actual commission of the rape as she was rendered unconscious when the act was committed, the accused may be convicted based on circumstantial evidence, provided that more than one circumstance is duly proven and that the totality or the unbroken chain of the circumstances proven lead to no other logical conclusion than the appellant's guilt of the crime charged.

The prosecution proved through AAA's testimony that: (i) Laguerta chanced upon her, poked a knife at her neck and threatened her; (ii) he covered her mouth with a handkerchief, which caused her head and nose to ache; (iii) she was rendered unconscious; and (iv) upon waking up, she found herself lying half-naked on the bed, with a sharp pain in her vagina and thighs, with her undergarment and shorts lain on the side. Added to this, AAA prematurely gave birth seven months after the rape incident. All these interwoven circumstances form an unbroken chain that unerringly point to Laguerta, and no other, as the man who had carnal knowledge against AAA.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ESMAEL GERVERO, FLORENCIO ARBOLONIO, DANILO CASTIGADOR, CELSO SOLOMON AND EDUARDO BAÑES, accused. ESMAEL GERVERO (deceased), DANILO CASTIGADOR, CELSO SOLOMON AND EDUARDO BAÑES, accused-appellants.**

G.R. No. 206725, THIRD DIVISION, July 11, 2018, MARTIRES, J.

*I. Mistake of fact applies only when the mistake is committed without fault or carelessness. The following requisites for such defense: (a) that the mistake be honest and reasonable; (b) that it be a matter of fact; and (c) that it negate the culpability required to commit the crime or the existence of the mental state which the statute prescribes with respect to an element of the offense.*

*In this case, not all the requisites are complied with. All the circumstances negate accused-appellants' claim of mistake of fact and point instead to a concerted action to eliminate the victims.*

*II. In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.*

*In this case, there is not doubt that the manner of execution was deliberately adopted by the accused who were all armed with heavily powered firearms. They positioned themselves in what they termed as "ambush position," at a distance where their victims could not easily see them, thereby ensuring that they hit and terminate their targets.*

**FACTS:**

In an Information, dated 27 March 1992, the accused were charged with multiple murder.

At around 6:30 p.m. of 25 November 1991, at Barangay Milan, Lemery, Iloilo, Roda was at the house of Barangay Civilian Volunteer Organization(CVO) Commander Hernando. After eating and while Roda was waiting for transportation bound for her residence at Ajuy, Hernando, CVO members Jose and Benito came out of Hernando's house. Citizens Armed Forces Geographical Unit (CAFGU) officers Bañes, Castigador, and their two companions, who were carrying firearms, approached Hernando and asked him for money. When Hernando gave them P20.00, Bañes remarked, "Is that the only amount you can give when you just received money from your wife?" Castigador took the money and said, "You just watch out." When the CAFGU officers left, Roda informed Hernando of Castigador's remark, which Hernando dismissed. Thereafter, Hernando, Jose, and Benito went back to Hernando's house and prepared to go to the wake of CVO member Saturnino's wife.

At around eight o'clock in the evening, while Delia was inside their house at Barangay Milan, Lemery, Iloilo, her husband Jose, together with Hernando and Benito, passed by. Delia peeped through the window, called Jose's attention, and told him not to stay long at the wake. With the area being illuminated by a light bulb, Delia saw the three walk along the national road and cross towards the rice field. A few minutes later, Isaac, Jose's younger brother and also a CVO member, passed by Delia's house together with Roda. Isaac shouted to call the attention of Hernando, who was then already in the middle of the rice field. Roda, Delia, and Isaac could hear the three CVOs laughing while they were traversing the rice field.

Suddenly, Delia, Roda, and Isaac heard a burst of gunfire from where Hernando, Jose, and Benito were walking. Jose, who was then wearing a pair of white pants, fell first. Delia heard someone shout, "This is Hernando, a CVO!" and someone replied, "Birahi na!" ("Shoot now!"). Delia, from her window, also saw Hernando attempting to turn back but was also gunned down. She also witnessed the group of armed men approach the three CVOs whom they fired upon at close range.

When they heard the gunfire, Isaac dropped to the ground and ran back to his house; Roda took cover among the rice paddies, looked at the direction of the gunshots, and saw persons with long firearms. When Roda reached Hernando's house, she saw Hernando's son Ronnie and told him that his father was shot but warned him not to go out as he might also be harmed. Delia and Isaac heard men pass by their houses thereafter. Isaac recognized some of the gunmen to be his friends and positively identified the accused as the armed men he saw.

Later that same night, Pilar Basulgan, wife of Brgy. Capt. Balinas, summoned Isaac. Together with Delia and Ronnie, Isaac went to the house of Brgy. Capt. Balinas. There they saw the accused who had already told Brgy. Capt. Balinas that they made a mistake in shooting Hernando, Jose, and Benito because they thought that the three were members of the New People's Army (NPA). Isaac asserted that misapprehension was impossible because the CAFGU officers personally knew the victims and the voices of the three CVO members were recognizable. Brgy. Capt. Balinas asked if the victims were able to shoot back, but the accused answered in the negative. Thereafter, Isaac, Delia and Ronnie proceeded to the crime scene and saw Hernando, Jose, and Benito lifeless on the ground.

The RTC found the accused guilty of murder. The CA affirmed the conviction of the accused but modified the amount of damages awarded. Hence, Gervero (deceased), Castigador, Solomon, and Eduardo (accused-appellants) appealed to the SC.

**ISSUES:**

I. Whether the trial court erred in not appreciating the defense of mistake of fact. (NO)

II. Whether the trial court erred in ruling that the aggravating circumstance of treachery qualified the killing to murder. (NO)

**RULING:**

***Mistake of fact finds no application in this case***

As early as in the case of People v. Oanis and Galanta, the Court has ruled that mistake of fact applies only when the mistake is committed without fault or carelessness.

In Yapyuco v. Sandiganbayan, the Court has laid down the requisites for such defense to prosper, to wit: (a) that the mistake be honest and reasonable; (b) that it be a matter of fact; and (c) that it negate the culpability required to commit the crime or the existence of the mental state which the statute prescribes with respect to an element of the offense.

In this case, not all the requisites are complied with. First, there was no reason for the accused not to recognize the victims because they were traversing an open area which was illuminated not only by moonlight, but also by a light bulb. In addition, the witnesses testified that the victims were conversing and laughing loudly. It must be borne in mind that it was not the first time that the accused had seen the victims. Second, when Jose fell down, Hernando identified himself. However, instead of verifying the identities of the victims, the accused continued to fire at them. Third, when the victims fell down, the accused approached their bodies. At that point, they could no longer claim that they didn't recognize the victims; and still not contented, they sprayed them with bullets such that Jose suffered 14 gunshot wounds, Hernando 16 gunshot wounds, and Benito 20 gunshot wounds. Fourth, contrary to their testimonies during trial to the effect that the victims were the first to fire their weapons, Brgy. Capt. Balinas testified that when he asked the accused whether the victims had fired at them, the accused answered him in the negative. Fifth, the accused would like the Court to believe that the victims knew the safe word "Amoy" which must be uttered in response to "Simoy" in order to easily determine whether they were members of the NPA. However, the victims could not have known the safe words as accused Gervero himself stated in his testimony that only he and his co-accused were present when their commanding officer briefed them about the safe words to be used in their operation. All these circumstances negate accused-appellants' claim of mistake of fact and point instead to a concerted action to eliminate the victims.

***Accused-appellants are guilty of murder qualified by treachery***

Generally, the elements of murder are: 1) That a person was killed; 2) That the accused killed him; 3) That the killing was attended by any of the qualifying circumstances mentioned in Art. 248; and 4) That the killing is not parricide or infanticide.

That Hernando, Jose, and Benito died and that the killing is neither parricide nor infanticide have already been established by the trial and appellate courts. What remains to be resolved is the appreciation of treachery as a qualifying circumstance.

In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape."

The witnesses were all consistent in declaring that accused-appellants suddenly fired at the three unsuspecting victims who never had a chance to mount a defense. The victims, who were on their way to attend a wake and happily conversing with one another, were caught off guard when all of a sudden, they were met with multiple gunshots. In such a rapid motion, accused-appellants shot the victims, affording the latter no opportunity to defend themselves or fight back. Without any doubt, the manner of execution was deliberately adopted by the accused who were all armed with heavily powered firearms. They positioned themselves in what they termed as "ambush position," at a distance where their victims could not easily see them, thereby ensuring that they hit and terminate their targets.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. JACINTO ANDES y LORILLA, accused-appellant.**

**G.R. No. 227738**, July 23, 2018, SECOND DIVISION, CAGUIOA, J.

*The two elements of rape — viz.: (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation — are both present as duly proven by the prosecution in this case.*

*It is established that the law does not impose on the rape victim the burden of proving resistance. In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.*

*AAA sufficiently explained that despite the fact that no weapon was poked at her body at the time the actual rapes were committed, she was of the belief that maybe Andes was still holding the weapon and that she could not ascertain where the weapon was because it was dark.*

**FACTS:**

At around 1:00 o'Clock in the morning, [BBB], while the private complainant, [AAA], was sleeping with her 4-year-old son, [DDD], in bed inside the room of their house, she was awakened when suddenly somebody covered her mouth, and told her not to shout and simultaneously poked a knife on her neck, saying, "don't shout, I will kill you and your son. While the inside of her house was then dark, she identified that person as the accused,], through his voice and the words he uttered.

She did not resist in doing what was commanded of her because she was thinking of the safety of her son as he could stab and kill him. She told him that she would accede to his request as long as he would not kill her son. After undressing, the accused then placed himself on top of her body. His penis was able to penetrate her vagina. The sexual intercourse lasted for about 30 minutes.

The accused was calling her anak because he was her stepfather. She told him: "PUTA KA!" "[I]f you treat me as your daughter, you will not do this to me." He told her that: "Even [EEE], I already did this to her because I am the one who send (sic) her to school and I have the right to do it." [EEE] is his 18-year-old daughter. After telling her about it, he was just on top of her using her, his penis inside her vagina.

RTC convicted Andes of the crime charged. CA affirmed the RTC's conviction of Andes.

Andes appealed alleging that that the element of intimidation was absent because (1) AAA testified that she was able to get hold of his knife; 14 and (2) she even told her abuser "[p]uta ka! If you treat me as your daughter, you will not do this to me" instead of begging for mercy.

**ISSUE: Whether or not intimidation was present (YES)**

**RULING:**

The two elements of rape — viz.: (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation — are both present as duly proven by the prosecution in this case.

AAA sufficiently explained that despite the fact that no weapon was poked at her body at the time the actual rapes were committed, she was of the belief that maybe Andes was still holding the weapon and that she could not ascertain where the weapon was because it was dark. It is established that the law does not impose on the rape victim the burden of proving resistance. In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.

Contrary to the Andes' contention, the above "admission" even strengthens the finding that there was force and intimidation rather than casts doubt on AAA's testimony. This "admission," taken with the established facts that the crime was committed in a dark place, *in the presence of AAA's son who was sleeping*, coupled with Andes' threat that he would kill the child if AAA would not give him what he wanted, all the more convinces the Court that intimidation was indeed present. As the CA correctly pointed out:

> In fact, this Court sees that the close proximity of her son, who shared the same bed where she was abused, may have actually forced private complainant to silently endure the rape. As a mother, private complainant's primary instinct is to protect her child. She knows that accused-appellant brought a knife and the latter threatened to kill her son if she would not give in to his bestial desires. Since she admittedly did not know where the knife was placed by accused-appellant during the entire time she was being abused and the room was pitch-dark, private complainant was understandably apprehensive that one wrong move from her might jeopardize her 4-year-old son's life.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. CAJETO CABILIDA, JR. y CANDAWAN, accused-appellant**

G.R. No. 222964, July 11, 2018 FIRST DIVISION, DEL CASTILLO, J

*Sweetheart theory does not negate the commission of rape*

*Besides, even if true, the existence of such relationship did not negate the commission of rape. Having a relationship with the victim is not a license to have sexual intercourse against her will, and will not exonerate the accused from the criminal charge of rape as "[b]eing sweethearts does not prove consent to the sexual act.*

**FACTS:** At around midnight, AAA and with her four minor children were all awake and awaiting the arrival of their father, when there was a knock on their door. Thinking it was their father, one of the children called out "Pang" but no one replied. AAA called out again, and then heard somebody replied "O" (yes). A[s] it was raining very hard, AAA mistook the voice she heard as that of her husband. When she opened the door, appellant was standing outside completely naked with Toto beside him. Before she could react, appellant immediately hugged AAA and kissed her as they both fell on the floor. Despite her resistance, appellant successfully removed AAA's panty, and inserted his penis inside her vagina. All this time, AAA tried to resist, was crying while being assaulted and repeatedly entreated for accused to stop. AAA cried as did her children who witnessed the alleged rape right before their eyes. While appellant was raping AAA, Toto remained standing by the door, holding a knife and a flashlight, directing its beam towards AAA and appellant.

In his defense, appellant claimed that the sexual intercourse were consensual and pre-arranged as they had an ongoing relationship for more than one year. To support the "sweetheart theory," the defense presented a friend of appellant,who testified that appellant and AAA had gone to his house twice; that they requested to stay in one of his rooms to rest; that he did not see what happened inside the room as it was covered by a curtain; and that he was surprised to hear about the charges against appellant because according to appellant, he and AAA had an ongoing relationship.

RTC rendered a Decision finding the appellant guilty of rape. CA denied the appeal affirming the RTC Decision.

**ISSUE:** Whether or not the defense of the accused is tenable (NO)

**RULING:**

**Sweetheart theory does not negate the commission of rape**

Appellant's defense that he and AAA were having an illicit affair and that it was AAA who asked him to come to her house that night so that they could have sex fails to inspire belief from the Court. Besides, even if true, the existence of such relationship did not negate the commission of rape. Having a relationship with the victim is not a license to have sexual intercourse against her will, and will not exonerate the accused from the criminal charge of rape as "[b]eing sweethearts does not prove consent to the sexual act.

**A medical certificate is not indispensable in the prosecution for rape**

The Court has consistently ruled that "[a] medical certificate is not necessary to prove the commission of rape and a medical examination of the victim is not indispensable in a prosecution for rape x x x [because] the expert testimony is merely corroborative in character and not essential to conviction." In fact, an accused may be convicted based on the sole testimony of the victim as long as her testimony is clear, positive, and convincing. In this case, the testimony of AAA was not only clear, positive, and convincing but was also corroborated by the testimony of her daughter BBB.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. XXX, accused-appellants.**

G.R. No. 225059, July 23, 2018 SECOND DIVISION, CAGUIOA, J

*The case of People v. Mingming instructs: [W]e do not believe that delay in reporting a rape should directly and immediately translate to the conclusion that the reported rape did not take place; there can be no hard and fast rule to determine when a delay in reporting a rape can have the effect of affecting the victim's credibility. The heavy psychological and social toll alone that a rape accusation exacts on the rape victim already speaks against the view that a delay puts the veracity of a charge of rape in doubt.*

*Here, Failure to resist and delay in reporting the crime does not negate BBB's credibility.considering that XXX is the father of BBB, his moral ascendancy was certainly more than enough to silence her, not to mention the normal tendency of rape victims to conceal their humiliation and shame resulting from the irrevocable violation of their honor*

**FACTS:**

"BBB" is the daughter of the accused, [XXX]. She is the only girl in the brood of three. Her mother is a manicurist while the accused is a pedicab driver. She recounted that on four different occasions, her father ravished her, inside their residence located at Valenzuela City.

It was in 2004 when she was still fourteen (14) years old that her very own father, the accused did the first horrid act of ravishing her. Her father went inside her room and began to undress her and made her lie down. He was naked and he went on top of her, inserted his penis to her vagina, caressed her thigh and made a pumping motion. She accounted that her father was then holding a knife and told her that if she would report what he did to her, he would kill her mother

The same bestial act of the accused towards her was repeated for the second time in 2005 at around 10:00 o'clock in the evening. Her father came home drunk. He was at that time holding a knife compelling her to succumb to his desire out of fear. He initially sat beside her, caressed her thighs, then, went on top of her, and inserted his penis to her vagina while doing a pumping motion.

About four (4) months had lapsed and she recalled that it was "holy week" in 2005 that she suffered the same fate in the hands of her father, the accused, once more.

On May 18, 2010, the accused repeated the same horrid act to her.

RTC found XXX guilty on all four (4) counts of rape. CA affirmed the RTC decision.

**ISSUE: Whether XXX's guilt for the four (4) counts of rape was proven beyond reasonable doubt (YES)**

**RULING:**

**The evidence is sufficient to prove XXX's guilt beyond reasonable doubt**

The Court has held on several occasions that when a rape victim's account is straightforward and candid and is further corroborated by the medical findings of the examining physician, such testimony is sufficient to support a conviction. As correctly pointed out in the questioned Decision, BBB was able to describe in clear detail how each incident of rape was committed by XXX. 30 Moreover, the RTC, after observing BBB's manner and demeanor firsthand during trial, was sufficiently convinced of her credibility and the truthfulness of her testimony.

In criminal prosecutions, "proof beyond reasonable doubt" does not mean such degree of proof, excluding possibility of error, that produces absolute certainly; only "moral certainty" is required, or that degree of proof which produces conviction in an unprejudiced mind.

Proceeding from the foregoing, the Court finds that XXX's guilt was proven beyond reasonable doubt by the evidence of the prosecution

**Failure to resist and delay in reporting the crime does not negate BBB's credibility.**

Delay, on its own, is open to many interpretations. Here, the Court takes note that the delay attributed to BBB together with her alleged failure to resist XXX's advances were fully explained in BBB's testimony. Her own narration adequately dispels whatever doubt XXX attempts to foster against BBB's credibility. Based on BBB's testimony, in all the incidents of rape, XXX was armed with a deadly weapon and he would, in several occasions, threaten BBB not to tell anyone of his acts. Thus, considering that XXX is the father of BBB, his moral ascendancy was certainly more than enough to silence her, not to mention the normal tendency of rape victims to conceal their humiliation and shame resulting from the irrevocable violation of their honor. On this score, the case of *People v.Mingming* instructs:

> [W]e do not believe that delay in reporting a rape should directly and immediately translate to the conclusion that the reported rape did not take place; there can be no hard and fast rule to determine when a delay in reporting a rape can have the effect of affecting the victim's credibility. The heavy psychological and social toll alone that a rape accusation exacts on the rape victim already speaks against the view that a delay puts the veracity of a charge of rape in doubt. The effects of threats and the fear that they induce must also be factored in. At least one study shows that the decisive factor for non-reporting and the failure to prosecute a rape is the lack of support — familial, institutional and societal — for the rape victim, given the unfavorable socio-cultural and policy environment."

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus-. JOEL JAIME alias "TORNING", *accused-appellant*.**
G.R. No. 225332, THIRD DVISION, July 23, 2018, MARTIRES, *J.*

*The finding of existence of the element of force, threat, and intimidation is not negated by the fact that accused-appellant was unarmed before and during the commission of the sordid act. In the case of People v. Battad, the Court said thus:*

> ***In rape, force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime**. As already settled in jurisprudence, not all victims react the same way. Some people may cry out; some may faint; some may be shocked into insensibility; others may appear to yield to the intrusion. Some may offer strong resistance, while others may be too intimidated to offer any resistance at all. Besides, **resistance is not an element of rape**. **A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her**. As long as force or intimidation was present, whether it was more or less irresistible, is beside the point.*

*It was found that the element of force, threat, and intimidation exists in this case. The victim did not board the vehicle of her own accord, but was forced to go with accused-appellant because of his threat to kill her parents. Also, right before penetrating the victim's vagina, accused-appellant made another threat, this time against the life of the victim. Accused-appellant also exerted physical force upon the victim to ensure consummation of the act. All these taken together satisfy the requirements to establish that indeed the victim was raped by accused-appellant.*

**FACTS**

At around eight o'clock in the evening, the victim, AAA, was on her way to buy medicine for her headache when the accused-appellant, who was then driving a tricycle, stopped by her and introduced himself as "Torning." Accused asked her to board the pedicab or he would kill her parents if she refused to do so. Gripped with fear, she boarded. When they arrived, accused-appellant stripped from the waist down, knelt on the victim's thighs while she was lying on her back, and removed her lower garment and panty, before forcibly inserting his penis into her vagina.

Meanwhile, barangay Deputy Larito De Ocampo, who was stationed at the barangay outpost, received a report from a fire volunteer that he saw a person atop another inside a pedicab. Together with two other barangay officers, De Ocampo went to investigate and at around five meters away from the pedicab, they saw it rocking. As De Ocampo was approaching the pedicab, accused-appellant and the victim got dressed and alighted therefrom. Accused-appellant told De Ocampo that he and his companion were just resting inside the pedicab. De Ocampo found out that the person with accused-appellant, AAA, was only 15 years old. Thinking that both were minors, De Ocampo brought them to the barangay outpost. There, the victim said that she was raped by accused-appellant. It was also at this point when they learned that the accused-appellant was already 20 years old.

RTC convicted the accused appellant of the crime of Rape in relation to R.A. No. 7610. CA found accused appellant of one count of Simple Rape under Art. 266-A, paragraph 1 (a) of the RPC.

**ISSUE**

Whether or not the CA erred in affirming the RTC decision finding accused-appellant guilty of the crime of rape (NO)

**RULING**

According to accused-appellant, the prosecution's evidence itself indicates that the commission of the crime is highly improbable. He argues that the pedicab could have easily tipped over if it is true that he was on his knees and exerting effort to penetrate the victim's vagina. **Accused-appellant also pointed out that he was not armed at the time of the incident; thus, he could not have posed an immediate threat to the life and safety of the victim** leaving her no choice but to submit to his advances. The Court is not convinced.

The elements of rape under Article 266-A, paragraph (1) (a) of the RPC, as amended, are: (1) the act is committed by a man; (2) that said man had carnal knowledge of a woman; and (3) that such act was accomplished through force, threat, or intimidation. Both the CA and the RTC found that these elements are present in this case. Accused-appellant had carnal knowledge of the victim through force, threat, and intimidation.

Accused-appellant's argument that the commission of the crime is highly improbable based on prosecution's evidence deserves scant consideration. Depraved individuals stop at nothing in order to accomplish their purpose. Perverts are not used to the easy way of satisfying their wicked cravings. Thus, it cannot be gainsaid that commission of the crime of rape was highly improbable because the pedicab could have easily tipped over if the accused-appellant was on his knees and exerting effort to penetrate the victim's vagina.

**The finding of existence of the element of force, threat, and intimidation is not negated by the fact that accused-appellant was unarmed before and during the commission of the sordid act**. In the case of People v. Battad, the Court said thus:

> **In rape, force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime**. As already settled in jurisprudence, not all victims react the same way. Some people may cry out; some may faint; some may be shocked into insensibility; others may appear to yield to the intrusion. Some may offer strong resistance, while others may be too intimidated to offer any resistance at all. Besides, **resistance is not an element of rape**. **A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her**. As long as force or intimidation was present, whether it was more or less irresistible, is beside the point.

It was found that the element of force, threat, and intimidation exists in this case. The victim did not board the vehicle of her own accord, but was forced to go with accused-appellant because of his threat to kill her parents. Also, right before penetrating the victim's vagina, accused-appellant made another threat, this time against the life of the victim. Accused-appellant also exerted physical force upon the victim to ensure consummation of the act. All these taken together satisfy the requirements to establish that indeed the victim was raped by accused-appellant.

Finding the accused guilty of the crime of rape, the appropriate penalty is reclusion perpetua as provided under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353. We, therefore,

sustain the penalty imposed by the CA. The CA sentenced accused-appellant "to suffer the penalty of reclusion perpetua.

**PEOPLE OF THE PHILIPPINES, *plaintiff -appellee*, -versus-. NESTOR "TONY" CALIAO, *accused-appellant*.**
G.R. No. 226392, THIRD DVISION, July 23, 2018, MARTIRES, *J.*

***Treachery cannot be appreciated from the mere fact that the attack was sudden and unexpected.*** *The Court has held that "the circumstance that an attack was sudden and unexpected on the person assaulted did not constitute the element of alevosia necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself.* ***Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself."***

*Here, there is no showing that accused-appellant consciously adopted the sudden attack to facilitate the perpetration of the killing. In fact, it was done in a public market, in the afternoon, with the victim's family and other vendors nearby who could have foiled accused-appellant's actions. Since no qualifying circumstance exists, accused-appellant may only be convicted of homicide.*

**FACTS**

Virginia and her husband William Fuentes, the victim in this case, owned a stall inside Taboan Market. Virginia testified that the victim and accused-appellant had an altercation on the night of 24 April 2004 because accused-appellant had placed garbage beside their store. The victim confronted accused-appellant who became angry and tried to strike the victim with a pipe. The victim secured a piece of wood to get back at accused-appellant, but Virginia stopped her husband from doing so.

At three in the morning of the next day, accused-appellant called out to the victim and challenged him to a fistfight, but Virginia did not allow her husband to go out. When the victim went outside at past four that same morning, he found that the tires of their bicycle had been punctured.

In the afternoon of 25 April 2004, Virginia was sleeping inside their store while her husband and their son Junnel were outside preparing pusó . Later on, the victim told his son that he was going to use the comfort room. As the victim approached their stall, Junnel saw accused-appellant suddenly appear and stab his father. When the victim went inside the store to get away, accused-appellant followed and attempted to stab him again, but the victim got hold of an electric fan that he used to fend off accused-appellant and to push him outside the store. Accused-appellant kept shouting, "I will kill you!"

The RTC found accused Nestor Caliao guilty of the crime of Murder qualified by treachery and evident premeditation. CA affirmed the conviction of the accused-appellant. However, it found that while treachery could be appreciated as a circumstance qualifying the crime to murder, evident premeditation could not be appreciated as an aggravating circumstance because it was not shown that accused-appellant had previously determined to kill the victim and that he had clung to said determination.

**ISSUE**

Whether or not accused-appellant's guilt for Murder has been proven beyond reasonable doubt. (NO)

**RULING**

Accused-appellant may only be convicted of homicide.

Treachery was not sufficiently proven. Treachery exists when the prosecution has sufficiently established the concurrence of the following elements: (1) the accused employed means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted. Bearing in mind that the qualifying circumstance of treachery must be indubitably proven as the crime itself, the Court finds that it was not sufficiently proven in this case.

**Treachery cannot be appreciated from the mere fact that the attack was sudden and unexpected.** The Court has held that "the circumstance that an attack was sudden and unexpected on the person assaulted did not constitute the element of alevosia necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. **Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself."**

The Court has also ruled that when aid was easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident, including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time.

Here, there is no showing that accused-appellant consciously adopted the sudden attack to facilitate the perpetration of the killing. In fact, it was done in a public market, in the afternoon, with the victim's family and other vendors nearby who could have foiled accused-appellant's actions. Since no qualifying circumstance exists, accused-appellant may only be convicted of homicide.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus-. SHERNIEL UNGRIANO ASCARRAGA, *accused-appellant*.**
G.R. No. 222337, FIRST DVISION, July 23, 2018, DEL CASTILLO, *J.*

*The fact that witness Dictado was wearing eyeglasses with prescription grade of more than 200 did not affect her positive identification of appellant considering that she was only more or less two arm's length away from the victim. Moreover, appellant seems to forget that witness Dictado was not the only witness who positively identified him as the assailant.*

*Thus, the Court finds no reason to doubt the positive identification of appellant by the prosecution's witnesses who have no ill motive to testify falsely against him. It bears stressing that **"the positive identification of the assailant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial."***

*In this case, the prosecution's eyewitnesses, witness BSDO Abendano and witness Dictado, both positively identified appellant as the assailant in open court.*

**FACTS**

The victim was the chief of Barangay Pansol Proper, Quezon City. On October 13, 2003, at around 7:45 in the morning, the victim, BSDO Abendano, the Barangay Staff, tanods, and others were gathered in front of the barangay hall for the Monday morning flag raising ceremony. After the flag rites, BSDO Abendano, who was the emcee, called on the victim to deliver a speech. As the victim was walking towards BSDO Abendano at the center of the plaza, an unidentified person appeared, pointed a gun at the victim and fired thrice. Another unidentified man was shooting indiscriminately to disperse the crowd. The malefactors retreated waving their guns. When the smoke cleared, BSDO Abendano approached the victim; when he felt no pulse, he declared the victim dead. Minutes later, police men, SOCO, and other city officials arrived. BSDO Abendano, the widow of the victim, and Dictado went to Camp Karingal to execute a sworn statement about the incident.

RTC rendered a Decision finding the appellant guilty of murder. The RTC appreciated the qualifying circumstance of treachery to have attended the commission of the crime. It pointed out that the victim was shot while walking in the middle of the grounds to make some announcements. The attack was sudden and unexpected and the victim was totally unaware of the impending harm to his life. CA affirmed the decision of the lower court.

**ISSUE**

Whether or not the witness, Dictado, is credibele in identifying the accused-appellant since Dictado could not have seen the face of the assailant considering that she was crawling out of the area and was wearing eyeglasses which had a prescription grade of more than 200. (YES)

**RULING**

The fact that witness Dictado was wearing eyeglasses with prescription grade of more than 200 did not affect her positive identification of appellant considering that she was only more or less two arm's length away from the victim. Moreover, appellant seems to forget that witness Dictado was not the only witness who positively identified him as the assailant. Aside from witness Dictado, the prosecution also presented as witness BSDO Abendano who was the emcee during the flag ceremony. He testified that he was only an arm's length or about a meter away from the victim; that he saw appellant approach and point a gun at the victim; and that the gun was fired at the victim's forehead.

Thus, the Court finds no reason to doubt the positive identification of appellant by the prosecution's witnesses who have no ill motive to testify falsely against him. It bears stressing that **"the positive identification of the assailant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.**

In this case, the prosecution's eyewitnesses, witness BSDO Abendano and witness Dictado, both positively identified appellant as the assailant in open court.

Appellant's lack of motive for killing the victim likewise has no bearing as jurisprudence consistently holds that "motive is generally x x x immaterial because it is not an element of the crime of murder."

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus-. VENERANDO GOZO y VELASQUEZ *accused-appellant*.**
G.R. No. 225605, THIRD DVISION, July 23, 2018, MARTIRES, *J.*

*In convicting the accused for statutory rape, the prosecution has the burden to prove the following elements: (1)* ***the age of the complainant;*** *(2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.*

*In* ***People v. Pruna (Pruna), the Court established the guidelines in appreciating age****, either as an element of the crime or as a qualifying circumstance, viz.:*

> *5.)* ***It is the prosecution that has the burden of proving the age of the offended party.*** *The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him;*

*In the present case, no documentary evidence such as a birth certificate or other authentic documents were offered to prove AAA's age and there was no explanation why none was presented. As outlined in Pruna, the prosecution has the burden to prove the age of the offended party and the lack of opposition to the testimonial evidence on the part of the accused should not be taken against him. It is noteworthy that in the present case, there was no testimonial evidence that Gozo could have objected to. In addition, the trial court is required to make a categorical finding of the victim's age. Here, however, the RTC simply opined, based on its observation, that AAA could not have been more than 12 years of age. Clearly, the prosecution failed to prove with sufficient andappropriate evidence that AAA was below 12 years of age. Thus, the designation of the crime Gozo committed should be corrected from statutory rape to simple rape, consistent with the Criminal Law principle that doubts should be resolved in favour of the accused.*

**FACTS**

AAA was staying in the restaurant where her father BBB worked as a stay-in cook. When it was time for her to sleep, she went up to the second floor of the restaurant. Thereafter, Gozo, who also worked in the restaurant as a stay-in janitor, decided to follow her inside the room. There, he began his advances and started molesting AAA. At first, Gozo inserted his fingers into AAA's vagina but because his lust was not satiated, he eventually inserted his penis into the victim's genitals. After he was through abusing her, he instructed AAA not to tell anyone because it would cause a fight between him and BBB.

Nevertheless, AAA immediately told BBB about the incident when he arrived. They then went to the police station to report what happened and proceeded to the hospital for physical examination. The genital physical examination revealed that AAA had fresh shallow lacerations in her hymen at the 3, 6, and 9 o'clock positions.

The RTC convicted Gozo of statutory rape. The trial court ruled that while the prosecution failed to prove AAA's age, Gozo was still guilty of statutory rape. It observed that AAA, who was presented in court, could not be more than 12 years of age. The Ca affirmed the RTC decision.

**ISSUE**

Whether or not the lower erred in convicting the accused-appellant for the crime of statutory rape. (YES)

**RULING**

The designation of the crime Gozo committed should be corrected from statutory rape to simple rape.

In convicting the accused for statutory rape, the prosecution has the burden to prove the following elements: (1) **the age of the complainant;** (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant. In turn, conviction may result on the basis of the victim's sole testimony, provided it is credible, natural, and consistent with human nature and the normal course of things.

In **People v. Pruna (Pruna), the Court established the guidelines in appreciating age**, either as an element of the crime or as a qualifying circumstance, viz.:

> 1.) The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party;
> 2.) In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age;
> 3.) If the certificate of live birth or authentic document is shown to have been lost, destroyed, or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
>
> > a.) If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
> > b.) If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
> > c. ) If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
>
> 4.) In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused;
> 5.) **It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him;** and
> 6. ) The trial court should always make a categorical finding as to the age of the victim.

**In the present case, no documentary evidence such as a birth certificate or other authentic documents were offered to prove AAA's age and there was no explanation why none was presented.** Neither was there testimonial evidence from the concerned individuals to establish her age as only the medico-legal testified as to AAA's age. While the medico-legal may have testified as to her age, he was not among the individuals enumerated in Pruna who may testify in case the birth certificate or authentic documents were lost or otherwise unavailable. In addition, his testimony as to AAA's age was hearsay as he had no personal knowledge because BBB merely relayed the said

information to him. Thus, it is readily apparent that the prosecution miserably failed to prove AAA's exact age.

**As outlined in Pruna, the prosecution has the burden to prove the age of the offended party and the lack of opposition to the testimonial evidence on the part of the accused should not be taken against him.** It is noteworthy that in the present case, there was no testimonial evidence that Gozo could have objected to. In addition, the trial court is required to make a categorical finding of the victim's age. Here, however, the RTC simply opined, based on its observation, that AAA could not have been more than 12 years of age. Clearly, the prosecution failed to prove with sufficient and appropriate evidence that AAA was below 12 years of age. Thus, the designation of the crime Gozo committed should be corrected from statutory rape to simplerape, consistent with the Criminal Law principle that doubts should be resolved in favour of the accused.

**PEOPLE OF THE PHILIPPINES**, *Plaintiff-Appellee*, *-versus-* **LEONARDO QUIAPO @ "LANDO"**, *Accused-Appellant*.

**G.R. No. 218804, FIRST DIVISION, August 06, 2018, DEL CASTILLO,** *J.*

*While it may appear that AAA was under twelve years old at the time appellant raped her, the same was not properly alleged in the Information. Consequently, due to the defect in the information charging appellant of rape, he can only be made liable for simple rape even if it was proven during trial that AAA was under 12 years old at the time of the commission of the crimes charged.*

*FACTS:*

*Appellant was charged with one count of attempted rape and six counts of rape committed against AAA and MMM.* AAA stayed with appellant Leonardo Quiapo, and Aunt BBB Quiapo at their residence BBB. While living with the spouses, AAA helped out in the daily household chores . While AAA was fetching water, Leonardo followed and beckoned her to come to him. At first, AAA did not respond to Leonardo's call. Eventually, AAA succumbed to appellant's unrelenting request and came near him. Immediately thereafter, Leonardo undressed AAA and threatened her not to shout.Terrified by the bolo hanging at the side of Leonardo and the threat of killing her, AAA yielded to her uncle's desire. Leonardo laid her on the grass and took out his penis and positioned himself on top of AAA. However, Leonardo was not able to fully insert his penis into AAA's vagina. The attempted rape, however, was consummated days after. While AAA was sleeping together with her aunt and cousins in the same room - which was dark because the lights were off - Leonardo advanced towards AAA. Despite AAA's shouts for help, her aunt and cousins did not wake up. Leonardo succeeded in penetrating her causing her severe pain and vaginal bleeding. She was sure that it was Leonardo because she recognized his voice.

On the part of MMM, she was invited by her Aunt BBB to stay in the latter's house to be a playmate to the latter's two children. MMM would be sleeping in a small room beside her Aunt BBB who was, in turn, lying beside Leonardo.MMM was sleeping inside her Aunt BBB and Leonardo's bedroom. At that time, her aunt was not around. While she was sleeping, appellant came to lie beside her. While MMM tried to move away, Leonardo pulled her towards him. Leonardo held her hand, then shoulders, covered her mouth and undressed her. MMM attempted to shout but Leonardo managed to cover her mouth.Eventually, after successfully pulling down MMM's panty, Leonardo removed

his own clothes and laid on top of her. MMM suddenly felt much pain when Leonardo inserted his penis into her vagina maintaining such position, Leonardo continued with a series of 'push and pull' movements until MMM felt something flowed inside her vagina. The RTC convicted the accused of his charges and the CA affirmed the conviction modified the crime to statutory rape for the two cases.

**ISSUE:**

Whether the accused should be held guilty in the crime of rape (YES)

**RULING:**

Apellant submitted that the dates of the commission of the crimes were wrong. The Court ruled, time and again that the date is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman. As such, the time or place of commission in rape cases need not be accurately stated.

Neither the delay of AAA and MMM in reporting the incidents undermines their credibility. We have already ruled that "delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim because delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant."

The courts below correctly rejected appellant's defenses of denial and alibi. Well established is the rule that "a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him." The same is true with his claim of alibi. As observed by the courts below, appellant failed to prove his physical impossibility to be at the crime scene during their alleged commissions.

Anent appellant's ascription of ill-motive in filing the charges against him, the Court already ruled that "motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.

The elements of statutory rape were present on two cases. Thus based on records, the prosecution had established the element of carnal knowledge through the testimony of MMM with her age of being under 12 years old supported by her Certificate of Live Birth. However, for the three cases, it cannot be done. While it may appear that AAA was under twelve years old at the time appellant raped her, the same was not properly alleged in the Information. Consequently, due to the defect in the information charging appellant of rape, he can only be made liable for simple rape even if it was proven during trial that AAA was under 12 years old at the time of the commission of the crimes charged.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee* –versus- CHARLIE FLORES, DANIEL FLORES AND SAMMY FLORES, *Accused-Appellants***

G.R. No. 228886, FIRST DIVISION, August 8, 2018, DEL CASTILLO, J.

*Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.*

**FACTS:**

The prosecution narrated that Larry and Eduardo were on their way home aboard a motorcycle when it ran out of gas. They stopped in front of a videoke bar. When they were about to enter the bar, they heard a commotion inside. Eduardo and Larry then climbed the stairs inside the videoke bar and tried to pacify the accused-appellants who were fighting. However, Rodel stabbed Larry which caused Eduardo to be outraged. The accused-appellants then tuned to Eduardo and took turns in punching him and Sammy tried to stab Eduardo but failed because he fell down the stairs. Accused-appellants went back to assaulting Larry by using double-bladed knives to stab him. When the assailants left the scene, Eduardo then sought the help of barangay tanods and brought Larry to the hospital, where he was pronounced dead on arrival after suffering five fatal stab wounds,

For the defense, they averred that they were at the house of their manager in a logging business. Sammy and Daniel, according to Sheryl, were at his house. Meanwhile, Charlie was said to be with his brother Jesus during the incident, which was corroborated by Charlie's wife. The RTC convicted the accused-appellants of murder, with the qualifying circumstance of abuse of superior strength. The CA affirmed the conviction..

**ISSUE:**

Whether the accused-appellants are guilty without reasonable doubt for the crime charged. (YES)

**RULING:**

To successfully prosecute the crime of murder under Article 248 of the Revised Penal Code (RPC), the following elements must be established: "(1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide."

In this case, the prosecution was able to clearly establish all the elements. The lone witness for the prosecution, Eduardo, was able to categorically identify accused-appellants.

At the time of the incident, the videoke bar was well lighted by three fluorescent lamps while a fourth lamp illuminated the counter.No ill motive was also shown for the lone prosecution eyewitness to

testify against accused-appellants. This Court thus finds no error in the affirmance by the appellate court of the trial court's finding of guilt of the accused-appellants based on the sole testimony of the prosecution witness who positively identified the perpetrators.

Meanwhile, the qualifying circumstance of abuse of superior strength was proven by the prosecution. Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.

In the instant case, the prosecution clearly established that the accused-appellants, taking advantage of their number, purposely resorted to holding Larry by the armpit so that all the knife-wielders would be free to stab him, albeit successively.

The Court *en banc* appreciated the qualifying circumstance of abuse of superior strength after finding that therein "accused-appellants, armed with a deadly weapon, immobilized the victim and stabbed him successively using the same deadly weapon." Moreover, in terms of numbers, Larry was with his lone companion, Eduardo, while the assailants, totaling five, participated in the attack. A disparity in strength and size was thus apparent.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – JEFREYCOLLAMAT A.K.A. "RICRIC", JIMBO SALADAGA and RONILO RONDINA, *Accused.***
G.R. No. 218200, FIRST DIVISION, August 15, 2018, DEL CASTILLO, *J.*

*There is **treachery** when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to **ensure its execution without risk to himself** arising from the defense which the offended party might make.*

*Clearly, the **victim's stabbing was attended by treachery**, considering that (a) the means of execution of the attack gave the victim **no opportunity to defend himself** or to retaliate; and (b) said means of **execution was deliberately adopted** by appellant and his co-accused.*

**FACTS:**

On January 13, 2002, at around 4:00 p.m., Benido Jumao-as (Benido) and the victim were having a drinking spree at Analyn's Store in Simborio, Liloan, Cebu, when Benido accidentally spilled a glass of beer on appellant's table. At the time, appellant, too, was drinking with Jimbo, Ronilo, and several others. The incident unfortunately resulted in a **fistfight between the two parties**. It was Ramon Judaya (Ramon) who interfered and **pacified both sides**, even offering a bottle of beer to appellant's group as a gesture of goodwill. Benido and the victim left Analyn's Store. Benido even said farewell to appellant's group. While they were walking along the national highway, Benido saw the victim

being **attacked by four persons** whom he identified later as the group he had an altercation with earlier that day at Analyn's Store. Thereafter, he witnessed Jimbo **stab the victim with an ice pick**.

RTC held that the victim's killing was attended by the **qualifying circumstance of treachery**.

**ISSUE:**

Whether the victim's stabbing was attended by the qualifying circumstance of treachery. (YES)

**RULING:**

There is **treachery** when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to **ensure its execution without risk to himself** arising from the defense which the offended party might make.

In this case, appellant and two others ***held the victim in place***, while Jimbo delivered the stabbing thrusts on the victim's body. And of the **five punctured wounds** sustained by the victim, three were fatal the victim's left and right lungs, as well as his thoracic cavity, were punctured during the stabbing incident. Clearly, the **victim's stabbing was attended by treachery**, considering that (*a*) the means of execution of the attack gave the victim ***no opportunity to defend himself*** or to retaliate; and (*b*) said means of **execution was *deliberately* adopted** by appellant and his co-accused.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – SONNY RAMOS Y BUENAFLOR, *Accused-Appellant.***
G.R. No. 210435, SECOND DIVISION, August 15, 2018, REYES, JR., *J.*

***Carnal knowledge*** *of a woman* ***against her will****, effected through* ***force and intimidation*** *is rape. Notably, the* ***absence of contusions and abrasions*** *in the woman's body* ***does not negate rape****.* ***Neither will the victim's failure to flee and scream imply consent*** *to the bestial act. Likewise, the* ***victim cannot be expected to act rationally*** *after suffering from a traumatic and harrowing ordeal. As such, the* ***victim's decision to suffer in silence should not render her testimony suspect and unworthy*** *of credence. Finally, the assailant's claim that the victim is his lover will not lie in the absence of compelling proof of such purported amorous relationship.*

**FACTS:**

Ramos and AAA were employees of a hotel located in Baguio City. They resided at the hotel compound, where the male and female employees stayed at separate quarters. AAA was trying to avoid Ramos. Upon arriving at the quarters, AAA saw Ramos leave the recreation room; thus, she went inside. The room was empty when she entered. While AAA was at the recreation room, she heard someone knock at the door. When she opened it, she saw Ramos. He told her that he wanted to watch television with her. Hearing this, she went to the table to collect her things and leave. Suddenly, Ramos pulled her hand and forced her to sit on the sofa where he was seated. AAA pushed Ramos and tried to leave. However, Ramos stood in front of her, and blocked her way. Then, Ramos carried her to the bed and placed himself on top of her. AAA fought back, but Ramos held her hand. Ramos unhooked the strap of her bra with his left hand. All the while, **AAA kept struggling and fighting back**. Thereafter, Ramos unzipped AAA's pants and pulled her pants and underwear down

to her knees. He tried to kiss her, but she continued to struggle against Ramos until she **lost all her strength**. She felt **terrified and frightened** and did not know what to do. All the time, she struggled and fought with Ramos, using her hands and legs, but Ramos pinned her down. Ramos placed himself on top of her and inserted his organ inside her vagina. His organ was inside her vagina for only a short while as AAA was able to gain her strength back and push him away. Ramos got up and went to the bathroom. Taking this as a chance to escape, AAA pulled up her underwear and pants, took her things and rushed out of the recreation room. On the same evening, AAA was called to the office of the hotel owner. She reported the rape incident.

On the other hand, Ramos vehemently denied the rape charge leveled against him. Ramos related that there have been instances in the past when he and AAA were alone. In fact, he claimed that he and AAA had sexual intercourse for the first time on August 3, 2007, and again engaged in a sexual tryst on August 12, 2007, both times at the same recreation room.

**ISSUE:**

Whether or not Ramos is guilty beyond reasonable doubt of the crime of rape. (YES)

**RULING:**

Essentially, to sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt, namely, **(i) that the accused had carnal knowledge of the victim;** and (ii) that said act was accomplished (a) **through the use of force or intimidation,** or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.

In the case at bar, the prosecution sufficiently established beyond reasonable doubt that Ramos had carnal knowledge with AAA on December 27, 2007, through force and intimidation by pushing and pinning her down, and inserting his penis into her vagina, against her will and without her consent.

It must be noted that the **absence of bodily injury does not negate the commission of rape.** Needless to say, it is a well-settled rule that the force used in the commission of rape need not be overpowering or absolutely irresistible. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her**. Resistance is not an element of rape.** What is essential is simply that the force employed was sufficient to enable the offender to consummate the lewd purpose which he had in mind. In the instant case, there is no question that Ramos succeeded in his brutish objective.

The workings of the human mind when placed under emotional stress is unpredictable. **Not every victim can be expected to act with reason** or conformably with the usual expectation of mankind. Certainly, it is **unfair to expect and demand a rational reaction or a standard behavioral response.** AAA's failure to report the matter was borne out of fear due to Ramos' threat to kill her should she relate the matter to anyone. Ramos also promised that he would never repeat the same offense. Moreover, AAA openly admitted in court that she decided to stay until after December, so she could receive her salary, and bonus, and earn money for coming home, and for her education. AAA should not be judged for her choice to stay.

Lastly it cannot be gainsaid that in cases where the accused raises the "**sweetheart defense**," there must be **proof by compelling evidence**, that the accused and the victim were in fact lovers, and that the victim consented to the alleged sexual relations. The second is as important as the first, because love is not a license for lust. Similarly, evidence of the relationship is required, such as tokens, love letters, mementos, photographs, and the like. Ramos' utter failure to present any iota of evidence to establish his purported amorous relationship with AAA, clearly renders his claim self-serving and of no probative value.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – BENJAMIN SALAVER Y LUZON, *Accused-Appellant.***
G.R. No. 223681, FIRST DIVISION, August 20, 2018, DEL CASTILLO, *J.*

***Rape is qualified** when the **victim is under eighteen (18) years of age** and the offender **is a parent, ascendant, step-parent, guardian, relative** by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.*

*The prosecution satisfactorily established the elements of qualified rape. The prosecution was able to prove that the private complainant, AAA, was only fifteen (15) years old at the time the incidents of rape took place by presenting the private complainant's Certificate of Live Birth also stating that her father was the accused.*

**FACTS:**

**AAA and his father, the appellant**, were then inside their house when the latter pulled her towards his bedroom; then, appellant told her to remove her shorts but she refused; appellant got angry and removed her shorts and panty after which, he laid her on the bed; then, appellant removed his shorts enabling her to see his erect sex organ; after instructing her to spread her legs, appellant inserted his sex organ into her private organ causing her to feel pain; she was not able to shout anymore because appellant warned her that he would do something bad if she did. After the incident, she left their house and spent the night with her mother. She informed her older brother about the incident but the latter ignored her; when she informed her mother about the incident, the latter told her not to sleep in their house anymore. Although her mother already told her not to sleep in their house anymore after the first rape incident, she still went back to their house after school because she intended to get something in their house; she did not expect that appellant would rape her for the second time. Appellant **threatened to kill** all of them if she shouts.

The RTC rendered a decision finding appellant guilty beyond reasonable doubt of **three (3) counts of qualified rape**. In the case at bar, the accused was being charged of the crime of qualified rape considering that at the time the rape incidents took place, the private complainant was only **fifteen (15) years of age** and the **daughter of the accused**.

**ISSUE:**

Whether the accused is guilty beyond reasonable doubt for the crime of qualified rape. (YES)

**RULING**

**Rape is qualified** when the **victim is under eighteen (18) years of age** and the offender **is a parent, ascendant, step-parent, guardian, relative** by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim. The prosecution satisfactorily established the elements of qualified rape.

The Court gives great weight to the findings of the lower courts on the credibility of AAA. It is settled jurisprudence that **testimonies of child victims** are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. **Youth and immaturity are generally badges of truth** and sincerity. Moreover, the inconsistency alluded to in AAA's testimony, with respect to whether or not she immediately reported the first rape incident to her mother, was trivial and should be liberally construed considering that it was not an essential element of the crime of rape. What is decisive is that appellant's commission of the crime charged has been sufficiently proved. Such **inconsistencies on minor details** are in fact **badges of truth, candidness, and the fact that the witness is unrehearsed.**

On another note, the failure or **delay in the reporting of rape** incidents cannot be taken against rape victims as they are oftentimes **overwhelmed with fear.** This Court has recognized the **moral ascendancy** and influence the father has over his child. Also, it had been ruled that it is **not indispensable that marks of external bodily injuries should appear on rape victims.**

Lastly, we are not persuaded by appellant's claim that the filing of the charges was ill-motivated and was impelled by the manipulation of "AAA's" uncle. The Court have reiterated time and time again that it is most **unlikely for a young girl**, or even her family, **to impute the crime of rape to no less than relatives and to face social humiliation**, if not to vindicate her honor. All told, the Court affirm the conviction of appellant for three counts of qualified rape.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* XXX,[*] *Accused-Appellant*.**

G.R. No. 205888, SECOND DIVISION, August 22, 2018, CAGUIOA, *J.*:

*It is well entrenched that a witness may only testify on facts derived from his own perception and not on what he has merely learned or heard from others. Hearsay evidence, or those derived outside of a witness' personal knowledge, are generally inadmissible due to serious concerns on their trustworthiness and reliability; such evidence, by their nature, are not given under oath or solemn affirmation and likewise have not undergone the benefit of cross-examination to test the reliability of the out-of-court declarant on which the relative weight of the out-of-court statement depends.*

*The following requisites must, thus, be satisfied for the exception to apply: (i) that the principal act, the res gestae, be a startling occurrence; (ii) that the statements were made before the declarant had the time to contrive or devise a falsehood; and (iii) that the statements must concern the occurrence in question and its immediate attending circumstances.*

*It is clear that at the time AAA uttered her statements to EEE — a few hours after the incidents — the effect of the occurrence on her mind still continued. Her demeanor, as narrated by EEE, showed that she was still suffering as a result of the violation of her person and honor by her father, herein accused-appellant XXX. Moreover, following the standard in Manhuyod, Jr., while the utterances were not made contemporaneous to the act described, the Court finds that they remained to be "so connected with it as to make the act or declaration and the main fact particularly inseparable." More importantly, the Court finds nothing on the records that would show an intervening event between the time of the rape incidents and the time of AAA's revelation to EEE that would indicate a restoration of her mental balance as in fact, she was still under distress when she arrived at EEE's home.*

**FACTS:**

In her direct testimony, [AAA] testified that the accused is her father, and she is the eldest of the three children. Her younger brother [BBB] is 13 years old, and the youngest, [CCC] is 7 years old. She recalled that in the evening of July 18, 1999, her mother was in Dumaguete City to sell mats, and when they settled for the night, she slept with her two younger brothers and her father, the accused. Later in the evening, she was awakened, and she found out that she had no more short pants and panty, and her father was beside and behind her, and felt that the penis of her father was directed to her anus. She managed to keep her legs together, and thus, accused was not successful in inserting his organ into her vagina. She was fourteen (14) years old at that time. Her father warned her not to tell her mother otherwise he would kill her.

[AAA] further testified that in the afternoon of April 15, 2001, she was in the house of her aunt, [DDD] when her father arrived and told her to go home with him as he told her that her mother was crying because she left home without permission. But, when she and her father arrived at their house, she found out that her mother was not there. Her father held and hugged her, and took off her short pants and panty, laid her down, and inserted his sexual organ into hers.

In the RTC Decision, XXX was found guilty only for the three (3) counts of Rape committed on April 15, 2001. On appeal the CA affirmed the ruling of the RTC.

**ISSUE:**

Whether XXX's guilt for the three (3) counts of Rape was proven beyond reasonable doubt. (Yes)

**RULING:**

In his appeal, XXX argues that he cannot be convicted based mainly on the testimonies of Calug and EEE, which he claims are purely hearsay evidence. Without the testimony of AAA identifying him as the perpetrator of all acts complained of, XXX claims that he can no longer be found guilty under the crimes charged.

It is well entrenched that a witness may only testify on facts derived from his own perception and not on what he has merely learned or heard from others.[30]Hearsay evidence, or those derived outside of a witness' personal knowledge, are generally inadmissible due to serious concerns on their trustworthiness and reliability; such evidence, by their nature, are not given under oath or solemn affirmation and likewise have not undergone the benefit of cross-examination to test the reliability of the out-of-court declarant on which the relative weight of the out-of-court statement depends.

Hence, as a general rule, hearsay evidence is inadmissible in courts of law. As an exception, however, Section 42 of Rule 130 allows the admission of hearsay evidence as part of the *res gestae*, to wit:

> Sec. 42. *Part of the res gestae*. — Statements made by a **person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof**, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance may be received as part of the *res gestae*.

Based on the foregoing account, it is clear that at the time AAA uttered her statements to EEE — a few hours after the incidents — the effect of the occurrence on her mind still continued. Her demeanor, as narrated by EEE, showed that she was still suffering as a result of the violation of her person and honor by her father, herein accused-appellant XXX. Moreover, following the standard in *Manhuyod, Jr.*, while the utterances were not made contemporaneous to the act described, the Court finds that they remained to be "so connected with it as to make the act or declaration and the main fact particularly inseparable."[40] More importantly, the Court finds nothing on the records that would show an intervening event between the time of the rape incidents and the time of AAA's revelation to EEE that would indicate a restoration of her mental balance as in fact, she was still under distress when she arrived at EEE's home.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* DOMINADOR ESPINOSA *Y* PANSOY, *Accused-Appellant*.**

G.R. No. 228877, FIRST DIVISION, August 29, 2018, DEL CASTILLO, *J.*:

*It is settled that "direct evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can sufficiently establish his guilt." Circumstantial evidence can be the basis for conviction if there is more than one circumstance, the facts from which the inferences are derived have been proven, and the combination thereof produces a conviction beyond reasonable doubt.*

*In the instant case, the circumstances already identified and enumerated by the appellate court bear restating. First, appellant was the only adult present at the time of the incident. Second, Junel suffered several hematomas and cigarette burns on different parts of his body which were inconsistent with the alleged accidental falling off the cradle. Third, the medico-legal report revealed that Junel had sustained injuries which could not have been caused by mere falling off the cradle.*

**FACTS:**

The prosecution presented the testimony of Edeltrudes Medina (Medina), the mother of the victim (Junel), and live-in partner of appellant. She narrated that on March 14, 2009, she left Junel, then six months old, under appellant's care as she went to help in her aunt's catering business. On March 15, 2009, while at her aunt's house, she received a phone call from appellant informing her that Junel had fallen off the cradle and died. Medina immediately went home where she found appellant seated before the lifeless body of Junel. Noting that Junel's mouth had injuries, his upper lips and chest had

cigarette burns and his chest had hematomas, she was unconvinced that Junel had really fallen off the cradle.

The prosecution also presented the testimony of Dr. Felimon C. Porciuncula, Jr. (Dr. Porciuncula) who conducted the autopsy on the body of the victim and issued Medico-Legal Report No. A-164-09. Dr. Porciuncula testified that Junel had several contusions on the lips, ear, head, lungs and lower back; abrasions on the lips, head, chest and lower back; and fractures on two different parts of the head – injuries which were not sustained merely from falling off a cradle. He concluded that the cause of death of the victim was the traumatic injuries sustained in the head and trunk.

The RTC found appellant guilty of parricide. On appeal the CA affirmed the ruling of the RTC in *toto.*

**ISSUE:**

Whether or not the guilt of the accused has been proven beyond reasonable doubt. (Yes)

**RULING:**

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of accused.[38] In the instant case, all the elements of the crime were clearly and sufficiently proved beyond reasonable doubt by the prosecution.

It is settled that "[d]irect evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can sufficiently establish his guilt."[39] Circumstantial evidence can be the basis for conviction if there is more than one circumstance, the facts from which the inferences are derived have been proven, and the combination thereof produces a conviction beyond reasonable doubt.[40]

In the instant case, the circumstances already identified and enumerated by the appellate court bear restating. *First*, appellant was the only adult present at the time of the incident. *Second*, Junel suffered several hematomas and cigarette burns on different parts of his body which were inconsistent with the alleged accidental falling off the cradle. *Third*, the medico-legal report revealed that Junel had sustained injuries which could not have been caused by mere falling off the cradle.

Thus, even if there was no direct evidence presented and even if the testimony of Medina pertaining to what the neighbors had told her was not given probative value, the attendant circumstances as enumerated all point to appellant as the guilty person. Moreover, it must be stressed that only moral certainty, and not absolute certainty, is required for a conviction. Here, based on the attendant circumstances, we are morally convinced that appellant's guilt for the crime of parricide has been proved beyond reasonable doubt.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* AQUIL PILPA Y DIPAZ, *Accused-Appellant.***
G.R. No. 225336, SECOND DIVISION, September 5, 2018, CAGUIOA, *J.*

*b. exMere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the assailants does not positively tend to prove that they thereby knowingly intended to*

*insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer. Specifically, it must clearly appear that the method of assault adopted by the aggressor was deliberately chosen with a view to accomplishing the act without risk to the aggressor.*

*In the case at bar, the testimonies of Leonila, Evangeline, and Carolina reveal that the assailants attacked the victim while the latter was having a seemingly random conversation with four friends in a public highway (Quirino Highway), and even in the presence of a barangay tanod, who later joined the group. Under these circumstances, the Court finds it difficult to agree that the assailants, including Pilpa, deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to themselves arising from the defense that the victim might offer. To repeat, the victim was with five persons who could have helped him, as they had, in fact, helped him repel the attack. The Court thus fails to see how the mode of attack chosen by the assailants supposedly guaranteed the execution of the criminal act without risk on their end.*

*In addition, the attack itself was frontal. In People v. Tugbo, Jr., the Court held that treachery was not present because the attack was frontal, and hence, the victim had opportunity to defend himself. While a frontal attack, by itself, does not negate the existence of treachery, when the same is considered along with the other circumstances as previously discussed, it already creates a reasonable doubt in the existence of the qualifying circumstance.*

**FACTS:**

On August 23, 2003, around 8:00 in the evening, prosecution eyewitness Barangay Tanod Leonila Abuel (Leonila) went to Quirino Highway, Pandacan, as she was assigned by her officer in charge to look for a certain Reynan. When she arrived at the highway, she saw a group of five persons which include the victim Dave Alde (Alde), Carol Asis (Carol) and Evangeline Abuel (Eva) and two other people the names of which she failed to remember. She approached the said group and asked if they knew the whereabouts of Reynan to which Carol answered in the negative.

While still talking to the group, another group of five men, which included one named "JR" and appellant Aquil Pilpa (Pilpa) arrived. At this point, "JR" stabbed Alde on the chest with a big knife while appellant was positioned at the back of Leonila. After "JR" stabbed Alde, Pilpa, who was a mere arms-length away from Leonila, poised to thrust Alde as well. At this point, witness Leonila tried to intervene by announcing her position as Barangay Tanod but appellant disregarded said intervention by uttering "wala kaming pakialam kahit Barangay Tanod ka[.]" Witness Leonila sustained injuries as she attempted to parry the thrusts. Appellant's attempts to stab Alde ultimately failed because "Choy" a companion of Alde, was able to parry the thrusts. Leonila then ordered Alde to run away which he was able to do despite his wounds, but appellant and his group gave chase. Thereafter, appellant and his group scampered away. Subsequently, Alde was brought to the Ospital ng Maynila to be given timely medical attention.

While Alde was brought to the hospital, tanod Leonila, accompanied by the police, one of them, PO3 Benedict Cruz, caught up appellant who was found in a house near the railroad. She identified appellant as one of the group. Appellant was then arrested and brought to the hospital as it is the standard operating procedure to provide medical attention to suspects. When appellant was brought to the hospital, the victim Alde positively identified appellant as one of those who stabbed him.

Alde underwent emergency surgery due to the stab wounds inflicted on him. He was then referred for further surgery. Unfortunately, twenty minutes after the operation, while in the recovery room, Alde went into cardiac arrest and succumbed to death.

Accused, on the other hand, maintained that he was not in the place of incident and denied that he was with alias JR when the stabbing incident happened. Pilpa further denied that he had participation in the killing of the victim and stressed that he was not familiar with the identities of the witnesses presented by the prosecution. Further, the accused clarified in court that he had no motive to attack or kill the victim as he did not even personally know Dave Alde.

RTC convicted Pilpa of the crime of Murder. The RTC found that the positive identification by the prosecution witnesses Leonila, Evangeline and Carolina deserved to be given greater evidentiary weight over the general denial by Pilpa that he was not at the place of the incident at the time it took place. The RTC held that Pilpa was liable - although it was only the certain "JR" who was able to inflict stab wounds on the victim - because there was conspiracy among the assailants of Alde.10 As conspiracy was present, the RTC ruled that all of the assailants were liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime perpetrated in furtherance of such conspiracy.

The RTC also found that treachery attended the killing of Alde, hence Pilpa was liable for Murder instead of Homicide. The RTC reasoned that "[t]he attack made by Pilpa and his group to the victim was so swift and unexpected affording the hapless and unsuspecting victim no opportunity to resist or defend himself."

CA affirmed. CA held that conspiracy may be deduced from the conspirators' conduct before, during and after the commission of the crime indicative of a joint purpose, concerted action and community of interests - and that the facts of the present case reveal such concerted action to achieve the purpose of killing Alde. The CA further held that treachery was present despite the fatal assault being a frontal attack, because the said attack was sudden and unexpected and the victim was unarmed.

**ISSUE:**

Whether accused Pilpa was correctly convicted of Murder by both the RTC and CA. (NO)

**RULING:**

SC notes that it was error for both the RTC and the CA to conclude that the killing was attended by the qualifying circumstance of treachery simply because the attack was "sudden," "unexpected," and "without any warning or provocation." It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery.

Mere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the assailants does not positively tend to prove that they thereby knowingly intended to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer. Specifically, it must clearly appear that the method of assault adopted by the aggressor was deliberately chosen with a view to accomplishing the act without risk to the aggressor.

In the case at bar, the testimonies of Leonila, Evangeline, and Carolina reveal that the assailants attacked the victim while the latter was having a seemingly random conversation with four friends in a public highway (Quirino Highway), and even in the presence of a barangay tanod, who later joined the group. Under these circumstances, the Court finds it difficult to agree that the assailants, including Pilpa, deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to themselves arising from the defense that the victim might offer. To repeat, the victim was with five persons who could have helped him, as they had, in fact, helped him repel the attack. The Court thus fails to see how the mode of attack chosen by the assailants supposedly guaranteed the execution of the criminal act without risk on their end.

In addition, the attack itself was frontal. In *People v. Tugbo, Jr.,* the Court held that treachery was not present because the attack was frontal, and hence, the victim had opportunity to defend himself. While a frontal attack, by itself, does not negate the existence of treachery, when the same is considered along with the other circumstances as previously discussed, it already creates a reasonable doubt in the existence of the qualifying circumstance. From the foregoing, the Court must perforce rule in favor of Pilpa and not appreciate the said circumstance. With the removal of the qualifying circumstance of treachery, the crime is therefore **Homicide** and not Murder.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- JELMER MATUTINA y MAYLAS and ROBERT ROMERO y BUENSALIDA, Accused-Appellants.**
G.R. No. 227311, THIRD DIVISION, September 26, 2018, PERALTA, J.

*The Court held that rape was consummated in this case. The absence of proof of hymenal laceration is inconsequential. It has been invariably held* ***that an intact hymen does not negate a finding that the victim was raped.*** *Penetration of the penis by entry into the lips of the vagina,* ***even the briefest of contacts and without rupture or laceration of the hymen****, is enough to justify a conviction for rape.*

*Based on the physical examination of the medico-legal officer,* ***the posterior fourchette of AAA was swollen and that the presence of abrasion therein would point to the blunt penetrating trauma caused by contact with a blunt and hard object.*** *When AAA testified that Matutina was unable to place his penis inside her private part, it could only mean that he was not able to place its full length inside AAA's vagina.*

**FACTS:**

AAA testified that she did not go to class and went in a billiard hall instead. She could not go home because Jelmer Matutina, Robert Romero, Jackson Lim, and a certain Oliver got her school stuff. They had a drinking spree at Oliver's house and as a result, AAA felt dizzy and did not know what she was doing. In the evening, she was taken by Matutina, Romero, and Lim at the back of a house and made her lie down in a stony area. Romero and Lim held her hands, kissed and touched her breasts, while Matutina took off her shorts and panty and forced his penis into her vagina. According to AAA, Matutina was not able to place it inside due to her resistance. Thereafter, the barangay captain and tanod came and were able to catch Matutina and Romero. AAA was brought to Camp Crame where she was examined by a medico-legal officer. The report showed clear evidence of blunt penetrating trauma to the posterior fourchette of AAA.

Matutina testified that he was not engaged in the drinking spree with them and does not know of any reason why AAA would accuse him of committing rape against her. Romero claimed that he also refused to have drinking session with them and denied having raped AAA.

The RTC found Matutina and Romero guilty beyond reasonable doubt as principals of the crime of rape under Art. 266-A of the Revised Penal Code. The CA affirmed the conviction of the RTC.

**ISSUES:**

1. Whether or not Matutina and Romero are guilty of the crime of rape. (YES)
2. Whether or not Matutina and Romero acted in conspiracy with each other. (YES)

**RULING:**

1. The elements of rape under Article 266-A, paragraph 1 (a) of the RPC has been sufficiently established by the prosecution. Based on AAA's unwavering assertions, Matutina, in conspiracy with Romero and Lim (who is at-large), had carnal knowledge of her against her will with the use of force.

   The records reveal that the accused brought AAA at the back of a house and made her lie down. Romero and Lim held AAA's hands as Matutina took off her shorts and panty. Then, Romero and Lim kissed and touched her breasts while Matutina forced his penis into her vagina. Because of AAA's resistance and the arrival of the barangay tanods, Matutina's penis was unable to penetrate inside but was able to touch her private part.

   The Court held that rape was consummated in this case. The absence of proof of hymenal laceration is inconsequential. It has been invariably held **that an intact hymen does not negate a finding that the victim was raped.** Penetration of the penis by entry into the lips of the vagina, **even the briefest of contacts and without rupture or laceration of the hymen**, is enough to justify a conviction for rape.

   Based on the physical examination of the medico-legal officer, **the posterior fourchette of AAA was swollen and that the presence of abrasion therein would point to the blunt penetrating trauma caused by contact with a blunt and hard object.** When AAA testified that Matutina was unable to place his penis inside her private part, it could only mean that he was not able to place its full length inside AAA's vagina.

2. The prosecution sufficiently showed that Matutina and Romero acted in a concerted manner. Each of them performed specific acts which indicate a common criminal design or purpose. The act of Romero, together with Lim, of holding AAA's hands allowed Matutina to succeed in having sexual intercourse with AAA.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- JIMMY EVASCO y NUGAY and ERNESTO ECLAVIA, *Accused,* JIMMY EVASCO y NUGAY, *Accused-Appellant.***
G.R. No. 213415, FIRST DIVISION, September 26, 2018, BERSAMIN, *J.*

*The following elements of treachery must be proved:* ***(1) the accused must employ means, method, or manner of execution that will ensure his safety from defensive or retaliating acts on the part of the victim, with no opportunity being given to the latter to defend himself or to retaliate; and (2) the accused must deliberately or consciously adopt such means, method, or manner of execution.***

*In this case, there was no evidence showing that Ernesto and Jimmy had deliberately chosen their particular mode of attack to ensure the accomplishment of their criminal intention. None had seen how the assault had commenced. Hence, treachery could not be held to have attended the assault.*

*In People v. Beduya, the Court ruled that abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime.* ***The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim.*** *The evidence must establish that the assailants* ***purposely sought*** *the advantage, or that they had* ***the deliberate intent*** *to use this advantage.* ***To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked.***

*In this case, the lower courts failed to calibrate the relative strengths of the aggressors and the victim. There were no witnesses who could describe how the assault had commenced so there was no indication of the assailants having deliberately taken advantage of their numerical superiority.*

*Considering that the numerical superiority of the assailants could not be considered as aggravating circumstance of abuse of superior strength and that treachery was not attendant,* ***the crime was homicide and not murder.***

**FACTS:**

According to Lorna Sasot, she went to the house of one Armando Braga to fetch her husband Wilfredo Sasot. When she arrived, she saw Ernesto Eclavia boxing Wilfredo. Thereafter, Jimmy Evasco hit Wilfredo's head with a stone. Wilfredo fell to the ground as a result but Ernesto and Jimmy still continued to box and hit him with a stone. Lorna further alleged that Jimmy was standing at the back of Wilfredo when he pounded a stone on Wilfredo's head many times. She brought Wilfredo to the hospital after the accused had walked away. Wilfredo was pronounced dead on arrival.

Joan Fernandez corroborated the testimony of Lorna. She also alleged that Jimmy and Ernesto simultaneously attacked Wilfredo who was unable to run because the two of them were holding him.

Dr. Haidee Lim testified that Wilfredo sustained a lacerated wound on his right ear which could have been caused by a blunt instrument or hard object. According to her, the cause of Wilfredo's death was brain injury secondary to mauling.

Jimmy testified that Ernesto and Wilfredo engaged in a fist fight. Jimmy was held by Armando and was told not to interfere. After the incident, Jimmy went home.

The RTC convicted Jimmy of the crime of murder. It held that the killing of Wilfredo was qualified by treachery and attended with abuse of superior strength. The CA affirmed the RTC's conviction but declared that treachery was not attendant.

**ISSUES:**

1. Whether or not conspiracy had existed between Jimmy and Ernesto. (YES)
2. Whether or not the killing was attended by treachery. (NO)
3. Whether or not the killing was attended by abuse of superior strength. (NO)

**RULING:**

1. Conspiracy **exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it.** Conspiracy must be established, not by conjecture, but by **positive and conclusive evidence, direct or circumstantial.**

   In the case at bar, although Jimmy and Ernesto's agreement concerning the commission of the felony, and their decision to commit it were not established by direct evidence, the records **showed that they acted in concert to achieve a common design which is to assault Wilfredo.**

   In Macapagal-Arroyo v. People, the Court held that conspiracy takes two forms. The first is the **express form**, which requires proof of an actual agreement among all the co- conspirators to commit the crime. The second form is the **implied conspiracy** which exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment.

**2.** The assault was not treacherous. Treachery exists when the **offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.** The following elements of treachery must be proved: **(1) the accused must employ means, method, or manner of execution that will ensure his safety from defensive or retaliating acts on the part of the victim, with no opportunity being given to the latter to defend himself or to retaliate; and (2) the accused must deliberately or consciously adopt such means, method, or manner of execution.**

   In this case, there was no evidence showing that Ernesto and Jimmy had deliberately chosen their particular mode of attack to ensure the accomplishment of their criminal intention. None had seen how the assault had commenced. Hence, treachery could not be held to have attended the assault.

3. The Court held that abuse of superior strength was not attendant in this case.

In People v. Beduya, the Court ruled that Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. **The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim.** The evidence must establish that the assailants **purposely sought** the advantage, or that they had the **deliberate intent** to use this advantage. **To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked.**

In this case, the lower courts failed to calibrate the relative strengths of the aggressors and the victim. There were no witnesses who could describe how the assault had commenced so there was no indication of the assailants having deliberately taken advantage of their numerical superiority.

Considering that the numerical superiority of the assailants could not be considered as aggravating circumstance of abuse of superior strength and that treachery was not attendant, **the crime was homicide and not murder.**

## H. Crimes against Personal Liberty and Security

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS, SSGT. EDGARDO L. OSORIO, *petitioner, -versus-* ASSISTANT STATE PROSECUTOR JUAN PEDRO C. NAVERA; ASSISTANT STATE PROSECUTOR IRWIN A. MARAYA; ASSOCIATE PROSECUTION ATTORNEY ETHEL RHEA G. SURIL OF THE DEPARTMENT OF JUSTICE, MANILA; COLONEL ROBERT M. AREVALO, COMMANDER, HEADQUARTERS AND HEADQUARTERS SUPPORT GROUP PHILIPPINE ARMY; COLONEL ROSALIO G. POMPA, INF (GSC), PA, COMMANDING OFFICER, MP BATALLION, HHSG, PA; AND CAPTAIN TELESFORO C. BALASABAS, INF PA, AND/OR ANY AND ALL PERSONS WHO MAY HAVE ACTUAL CUSTODY OVER THE PERSON OF SSGT. EDGARDO L. OSORIO, *respondents*.**

GR No. 223272, THIRD DIVISION, February 26, 2018, LEONEN, *J.*

*Kidnapping is not part of the functions of a soldier. Even if a public officer has the legal duty to detain a person, the public officer must be able to show the existence of legal grounds for the detention. Without these legal grounds, the public officer is deemed to have acted in a private capacity and is considered a "private individual". SSgt. Osorio's claim that he was charged with an "inexistent crime" because he is a public officer is incorrect.*

**FACTS:**

Staff Sergeant Edgardo Osorio was charged in two (2) Informations for allegedly kidnapping University of the Philippines students Karen E. Empeño and Sherlyn T. Cadapan filed before the Regional Trial Court. Osorio was arrested and was detained in the Philippine Army Custodial Center. He then filed a petition for a writ of habeas corpus.

Ssgt. Osorio argued that he is being illegally deprived of his liberty because he was charged with an inexistent offense. He further stated that he could not be charged with kidnapping and serious illegal detention because under Art. 267 of the Revised Penal Code, the felony may only be committed by a private individual, not a ranking officer of the Armed Forces of the Philippines.

The Court of Appeals countered that a public officer detaining a person without authority is acting in a private, not official, capacity. Hence, a public officer such as Ssgt. Osorio may be charged with kidnapping and serious illegal detention, him acting in a private capacity when he illegally detained the two victims.

**ISSUE:**

Whether or not a public officer may be charged with kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, considering that the provision speaks of "any private individual". (YES)

**RULING:**

Section 1 of RA No. 7055 provides that if the accused is a member of the Armed Forces of the Philippines and the crime involved is punishable under the Revised Penal Code, civil courts shall have jurisdiction over the matter. Save in cases where the offense is "service-connected" then courts-martial may assume jurisdiction.

Kidnapping is not part of the functions of a soldier. Even if a public officer has the legal duty to detain a person, the public officer must be able to show the existence of legal grounds for the detention. Without these legal grounds, the public officer is deemed to have acted in a private capacity and is considered a "private individual". The public officer becomes liable for kidnapping and serious illegal detention, not arbitrary detention.

Therefore, it is not impossible for a public officer to be charged and convicted of kidnapping. SSgt. Osorio's claim that he was charged with an "inexistent crime" because he is a public officer is incorrect.

**PEOPLE OF THE PHILIPPPINES, *plaintiff-appellee,* -versus- REYNANTE MANZANERO y HABANA A.K.A. "NANTE," MARIO TANYAG y MARASIGAN A.K.A. "TAGA," ANGELITO EVANGELISTA y AVELINO A.K.A. "LITO," ARTHUR FAJARDO y MAMALAYAN, MARIO EVANGELISTA A.K.A. "TIKYO," PATRICK ALEMANIA A.K.A. "REY," AND A.K.A. "MARLON", *accused,* ARTHUR FAJARDO y MAMALAYAN, *accused-appellant.***

G.R. No. 216065, THIRD DIVISION, April 18, 2018, MARTIRES, *J.*

*In order for the accused to be guilty of the crime of serious illegal detention, the following elements must concur: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or*

*(4) the person kidnapped or detained is a minor, female, or a public officer.*

*In the present case, there is sufficient evidence to establish that Fajardo and his co-accused had illegally deprived Tony of his liberty. They were able to do so by simulating public authority when they misrepresented themselves as NBI personnel. Further, Fajardo and his cohorts detained Tony for more than five (5) days because he was only able to escape captivity after 37 days.*

**FACTS:**

On November 23, 2003, private complainant Tony Chua was at the Metropolitan Building in Mabini playing mahjong with his friends. After playing, he decided to go home and proceeded to his car. However, three men who identified themselves as NBI agents handcuffed Tony Chua and pushed him into a van parked behind his car. On the same date, Tony's sister Cynthia Chua received a call from Avelino Belmonte and told her that he saw Tony forcibly taken by three unidentified men. Tony was brought to a safe house where his captors took his wallet, cellphone, and ring.

On November 2003, Cynthia received a call from a man informing her that they had Tony and demanded $3 million in exchange for Tony's liberty. Cynthia was referred to the PNP-PACER, where she was told that her family would stay in a safe house where the PNP-PACER would assist her and her family in negotiation with Tony's captors. On December 25, 2003, Cynthia received a call from a certain Ed Alvarez who identified himself as Tony's friend and told her that he would facilitate Tony's release but warned that she should not report it to the authorities.

On December 30, 2003, Tony was able to escape and went to Cubao. After he arrived in Cubao, he called his brother Edgar Chua, who relayed to Cynthia that Tony was in a restaurant at Cubao. The following day, Alvarez called Cynthia and said he helped Tony to escape. They agreed to meet at Festival Mall in order for her to repay him for his efforts. The PNP-PACER set up an operation for her meeting with Alvarez after Cynthia informed them about the meeting. The PNP-PACER later informed her that the persons responsible for the kidnapping were in their custody.

On January 8 and 17, 2004, the other persons who were responsible for the kidnapping surrendered to the Police. Fajardo denied any involvement and claimed that he became aware of the kidnapping only after his house was raided. Tanyag on his part, claimed that he was just riding his tricycle when police officers arrested him. Manzanero denied executing any affidavit and that he was surprised when police officers arrested him. Angelito and Mario claimed that they were tortured into admitting that they knew their co-accused.

The RTC found Fajardo and his co-accused guilty of kidnapping and serious illegal detention. The trial court noted that the interlocking admissions of Manzanero, Tanyag, Mario, and Angelito evinced the conspiratorial acts of the accused in kidnapping Tony Chua. Only Fajardo and Manzanero appealed before the Court of Appeals. On appeal, the Court of Appeals affirmed the decision of the trial court. Fajardo then appealed before the Supreme Court.

**ISSUE:**

Whether or not the accused-appellant is guilty beyond reasonable doubt of serious illegal detention.

(YES)

**RULING:**

In order for the accused to be guilty of the crime of Serious Illegal Detention or Kidnapping with Ransom, the following elements must be present:

1. If the kidnapping or detention shall have **lasted more than five days**;

2. If it shall have been committed by **simulating public authority**;

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made; or

4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was **committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned are present in the commission of the offense**

In the present case, Fajardo and his co-accused were able to forcibly abduct Tony by simulating public authority. They **represented themselves as NBI agent**s when they handcuffed Tony. Fajardo and his co-accused detained Tony for more than five days because he was held captive for a period of **37 days**. Cynthia also testified that Tony's abductors **demanded money** in exchange of his release. Tony positively identified Fajardo and his co-accused and he never wavered in identifying them despite the rigorous cross-examination by the defense counsel. The details he provided on his abduction strengthened the credibility of his testimony.

Conspiracy need not to be express as it can be inferred from the acts of the accused themselves when their overt acts indicate a joint purpose and design, concerted action and community of interests. Tony's testimony clearly illustrated how Fajardo and his cohorts acted together to achieve their common purpose of detaining him.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus-FRANCISCO DAMAYO y JAIME, *Accused-Appellant.***
G.R. No. 232361, THIRD DIVISION, September 26, 2018, PERALTA, *J.*

*If the victim is a **minor** and if the purpose of kidnapping **is to extort ransom**, the duration of his detention is immaterial. The curtailment of the victim's liberty **need not involve any physical restraint upon the latter's person** and it is **not** necessary that the offender **kept the victim in an enclosure or treated him harshly.** The crime of serious illegal detention is committed by detaining a person or depriving him in any manner of his liberty**. Its essence is the actual deprivation of the victim's liberty**, coupled with indubitable proof of the intent of the accused to effect such deprivation.*

*In the case at bar, the elements of kidnapping have been sufficiently proven. It is undisputed that Damayo is a private individual, that he took Jerome from his school on August 7, 2008 and brought him to his house in Pampanga, that he kept him there until he was recovered by his parents and police officers on August 9, 2008. Although it was not established that Jerome was placed inside an enclosure or was locked up, he was nonetheless deprived of his liberty because he cannot leave the place as Damayo constantly guarded him. Moreover, even if Jerome had the freedom to roam around the place of detention, he did not know the way home. This would still amount to deprivation of liberty as the child's freedom remains at the mercy and control of the abductor.*

*The qualifying circumstance of extortion of ransom being the purpose of Damayo in kidnapping Jerome has been sufficiently established by the prosecution. According to Edna, she received a call from Damayo who demanded from her P150,000.000 in exchange for the safe release of Jerome. Damayo never rebutted this testimony of Edna. The fact that no actual payment was received by Damayo is of no consequence.* ***Actual payment of ransom is not necessary for the crime to be committed****. It* ***is enough that the kidnapping was committed for the purpose of extorting ransom.***

**FACTS:**

Jerome Rosario (11-year-old), was approached by accused-appellant Francisco Damayo who was known to him as Kuya Frank, outside his school at 12:00 noon on August 7, 2008. Damayo said that he was there to fetch him as they were going somewhere. Since Damayo was familiar to Jerome, he went with him. Jerome's parents Edna and Jerry Rosario started to look for him when he had not returned from school. The next day, Edna received a call from a person who introduced himself as Jerome's classmate. The caller whom Edna recognized to be appellant Damayo said that he would let Jerome go provided that he will be given P150,000.00. He directed Edna to meet him at a terminal in Dau, Pampanga alone. On August 9, 2008, Edna and Jerry reported the matter to the police station. Together with the police officers, they proceeded to Dau terminal in Pampanga where they saw Damayo. The officers arrested Damayo and informed him of his constitutional rights. They were able to safely recover Jerome at Damayo's house where he was being kept.

Damayo denied the charge against him. According to him, he and Edna were living as common-law spouses in Pampanga. He testified that they had decided to transfer Jerome to a school in Pampanga. Edna instructed him to fetch Jerome from school and to meet her at the Pasay bus terminal thereafter. When Edna did not show up, Damayo decided to leave with Jerome and let Edna follow them to Pampanga. The next day, Edna informed Damayo that her husband learned of their plan and got mad so she told him to bring Jerome back. Then he received a call from Edna asking him to meet her at Dau terminal. Upon arriving thereat, he was suddenly handcuffed by two men in civilian clothes, accusing him of kidnapping Jerome.

The RTC found Damayo guilty beyond reasonable doubt of kidnapping and serious illegal detention. It gave credence to the prosecution evidence and rejected Damayo's defense as it was not substantiated by clear and convincing evidence. The CA affirmed the RTC's conviction.

**ISSUE:**

Whether or not Damayo is guilty of kidnapping for ransom. (YES)

**RULING:**

In order that the accused can be convicted of kidnapping and serious illegal detention, the prosecution must prove beyond reasonable doubt all the elements of the crime, namely: (a) the offender is **a private individual**; (b) he **kidnaps or detains** another, or in any manner **deprives the latter of his liberty**; (c) the act of detention or kidnapping must **be illegal**; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for **more than three days**; (2) it is **committed by simulating public authority**; (3) any **serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made;** or (4) the person kidnapped or detained is **a minor, female, or a public officer.**

If the victim is a **minor** and if the purpose of kidnapping **is to extort ransom**, the duration of his detention is immaterial. The curtailment of the victim's liberty **need not involve any physical restraint upon the latter's person** and it is **not** necessary that the offender **kept the victim in an enclosure or treated him harshly.** The crime of serious illegal detention is committed by detaining a person or depriving him in any manner of his liberty**. Its essence is the actual deprivation of the victim's liberty**, coupled with indubitable proof of the intent of the accused to effect such deprivation.

In the case at bar, the elements of kidnapping have been sufficiently proven. It is undisputed that Damayo is a private individual, that he took Jerome from his school on August 7, 2008 and brought him to his house in Pampanga, that he kept him there until he was recovered by his parents and police officers on August 9, 2008. Although it was not established that Jerome was placed inside an enclosure or was locked up, he was nonetheless deprived of his liberty because he cannot leave the place as Damayo constantly guarded him. Moreover, even if Jerome had the freedom to roam around the place of detention, he did not know the way home. This would still amount to deprivation of liberty as the child's freedom remains at the mercy and control of the abductor.

The qualifying circumstance of extortion of ransom being the purpose of Damayo in kidnapping Jerome has been sufficiently established by the prosecution. According to Edna, she received a call from Damayo who demanded from her P150,000.000 in exchange for the safe release of Jerome. Damayo never rebutted this testimony of Edna. The fact that no actual payment was received by Damayo is of no consequence. **Actual payment of ransom is not necessary for the crime to be committed**. It **is enough that the kidnapping was committed for the purpose of extorting ransom.**

The Court gave more credence to the testimonies of the prosecution witnesses compared to that of Damayo. The RTC described Jerome's testimony as "simple, straightforward and credible which was not toppled down in the cross examination." He declared that he and his mother Edna never stayed in Pampanga with Damayo and that he has never been in Pampanga before the kidnapping incident. Case law has it that testimonies of child victims are given full weight and credit. Moreover, Damayo's defense of denial was not corroborated by any competent and independent evidence testimony hence cannot be sustained in the face of Jerome's unwavering testimony.

## I. Crimes against Property

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- BELEN MEJARES *y* VALENCIA, *Appellant.***
G.R. No. 225735, THIRD DIVISION, January 10, 2018, LEONEN, *J.*

*The Court has been consistent in holding that "**intent to gain** or animus lucrandi is an internal act that is **presumed from the unlawful taking by the offender** of the thing subject of asportation. Thus, **actual gain is irrelevant as the important consideration is the intent to gain**." In this case, it is clear from the established facts that it was Mejares who opened the drawer in the masters' bedroom and took away the cash and valuables it contained. Therefore, the burden is on the defense to prove that intent to gain was absent despite accused-appellant's actual taking of her employer's valuables. It is precisely this burden that the defense failed to discharge.*

**FACTS:**

On May 22, 2012, according to Raquel Torres (Torres), one of the household helper of victims Spouses Mark Vincent and Jacqueline Gavino (Spouses Gavino), Belen Mejares y Valencia (Mejares) received a call. She hurried to the computer room and answered the call away from Torres. When Mejares returned, she was "pale, perspiring, and panicky." When Torres asked about the identity of the caller, Mejares did not answer. She told her instead that Jaqueline Gavino (Jackie) met an accident and instructed her to get something from a drawer in the master's bedroom. Since it was locked, Mejares was supposedly told to destroy it. When Mejares emerged from the bedroom, she was holding a plastic hamper that contained black wallet and envelopes and was talking to someone on her phone. Later on, Mejares told Torres that she was instructed by Jackie to also take a watch and jewelry since the cash was not enough to pay the driver in the accident who was threatening to sue. Mejares placed everything in a green bag and tried to leave the condominium, but Pedro Garcia (Garcia), condominium security guard, did not allow Mejares to leave in the absence of a gate pass signed by her employer. Instead of answering to Garcia's queries, Mejares rushed to to the elevator and afterwards asked Bonifacio Baluyot (Baluyot), the stay-in driver, to bring her to Greenhills Shopping Mall, allegedly on Jackie's order. He complied.

According to Jackie, she recalled that when she interviewed Mejares back in May 2011, Mejares stated that she was familiar with the operation of the *dugo-dugo* gang.

Respondent argued that she herself was a victim of the *dugo-dugo* gang. She stated that she only had second thoughts about what happened when she returned at the condominium. Torres stated to her that she might have been tricked. Further, she alleged that there could be no theft as there no intent to gain.

Spouses Gavino filed an information charging Mejares with qualified theft of cash and jewelry amounting to P1,556,308.00. After trial, the RTC found her guilty. The CA affirmed the RTC *in toto*.

**ISSUE:**

Whether or not Mejares is guilty of the crime charged. (YES)

**RULING:**

Mejares was a domestic helper who had been working for the Spouses Gavino for at least one year when she commited the crime. By this fact alone, the offense committed is qualified and warrants graver penalties, pursuant to Article 310 of the Revised Penal Code, as amended, qualified theft is present :

> Article 310. *Qualified theft*. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a **domestic servant**, or with **grave abuse of confidence**, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

The accused's allegation that there was no intent to gain is untenable. This Court has been consistent in holding that "**intent to gain** or *animus lucrandi* is an internal act that is **presumed from the unlawful taking by the offender** of the thing subject of asportation. Thus, **actual gain is irrelevant as the important consideration is the intent to gain**." In this case, it is clear that it was Mejares who opened the drawer in the masters' bedroom and took away the cash and valuables it contained. Therefore, the burden is on the defense to prove that intent to gain was absent despite accused-appellant's *actual* taking of her employer's valuables. It is precisely this burden that the defense failed to discharge.

Normal human experience, as well as the consistency in and confluence of the testimonies of prosecution witnesses lead to no other conclusion than that accused-appellant, taking advantage of her being a domestic helper of private complainant for approximately a year, committed the crime of qualified theft. If she honestly believed that her employer had met an accident and was genuinely worried for her, she could have easily sought the help of any of her co-workers in the household. When warned about the *dugo-dugo* gang, Mejares could have paused to re-assess the situation. She failed to do all these security measures with no convincing justification. Indeed, Mejares' persistence to leave the condominium with the valuables and her refusal to let the security guard talk to her employer further belie her position.

While grave abuse of trust and confidence *per se* does not produce the felony as an effect, it is a "circumstance which aggravates and qualifies the commission of the crime of theft;" hence, the imposition of a higher penalty is necessary.As explained in *Corpuz v. People of the Philippines*:

> The rationale for the imposition of a higher penalty against a domestic servant is the fact that in the commission of the crime, the helper will essentially gravely abuse the trust and confidence reposed upon her by her employer. After accepting and allowing the helper to be a member of the household, thus entrusting upon such person the protection and safekeeping of the employer's loved ones and properties, a subsequent betrayal of that trust is so repulsive as to warrant the necessity of imposing a higher penalty to deter the commission of such wrongful acts.

**CECILIA RIVAC, *petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *respondent*.**
G.R. No. 224673, SECOND DIVISION, January 22, 2018, PERLAS-BERNABE, *J*.

*The elements of Estafa under Article 315 (1) (b) of the RPC are as follows: (a) the offender's receipt of money, goods, or other personal property in trust or on commission, or for administration, or under any other obligation involving the duty to deliver or to return the same; (b) misappropriation or conversion or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the prejudice of another; and (d) demand by the offended party that the offender return the money or property received.*

*The facts clearly show the existence of all the elements of the crime charged, considering that: (a) Rivac received various pieces of jewelry from Fariñas on a sale-on-consignment basis; (b) Rivac was under the obligation to either remit the proceeds of the sale or return the jewelry after the period of seven days from receipt of the same; (c) Rivac failed to perform her obligation; and (d) Rivac failed to heed Fariñas' demand.*

**FACTS:**

The prosecution alleged that on August 4, 2007, Rivac went to the jewelry store owned by Fariñas where she received from Fariñas several pieces of jewelry in the aggregate amount of P439,500.00, which were meant for her to sell. Fariñas and Rivac agreed that after seven days, Rivac was obligated to either remit the proceeds of the sold jewelry or return the unsold jewelry to Fariñas should she fail to sell the same. However, despite the lapse of the aforesaid period, Rivac failed to perform what was incumbent upon her, causing Fariñas to send her a demand letter. This prompted Rivac to go to Fariñas's store and offer her a parcel of land as partial payment for the jewelry. However, Fariñas refused the offer as she discovered that the property was involved in a land dispute, and instead, reiterated her demand.

**ISSUE:**

Whether Rivac is guilty of Estafa. (YES)

**RULING:**

The elements of Estafa under Article 315 (1) (b) of the RPC are as follows: (a) the offender's receipt of money, goods, or other personal property in trust or on commission, or for administration, or under any other obligation involving the duty to deliver or to return the same; (b) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the prejudice of another; and (d) demand by the offended party that the offender return the money or property received.

The facts clearly show the existence of all the elements of the crime charged, considering that: (a) Rivac received various pieces of jewelry from Fariñas on a sale-on-consignment basis, as evidenced by the consignment document; (b) Rivac was under the obligation to either remit the proceeds of the sale or return the jewelry after the period of seven (7) days from receipt of the same; (c) Rivac failed to perform her obligation, prompting Fariñas to demand compliance therewith; and (d) Rivac failed to heed such demand, thereby causing prejudice to Fariñas, who lost the pieces of jewelry and/or their aggregate value of P439,500.00.

**PEOPLE OF THE PHILIPPINES,*plaintiff-appellee*, -versus- JOSELITO BRINGCULA y FERNANDEZ,*accused-appellant*.**

G.R. No. 226400, SECOND DIVISION, January 24, 2018, PERALTA *J.*

*Having established that the personal properties of the victim were unlawfully taken by the appellant, intent to gain was sufficiently proven. The prosecution was likewise able to establish that appellant raped private complainant on the occasion of the robbery.*

*To be convicted of robbery with rape, the following elements must concur:*

*(1) the taking of personal property is committed with violence or intimidation against persons;*

*(2) the property taken belongs to another;*

*(3) the taking is characterized by intent to gain or animus lucrandi; and*

*(4) the robbery is accompanied by rape*

*In robbery with violence and intimidation against persons, dwelling is aggravating because in this class of robbery, the crime may be committed without the necessity of trespassing the sanctity of the offended party's house*

**FACTS:**

Private complainant AAA was sleeping in her house together with her children, househelper and niece. She was awakened at early dawn by the barking of the dog and when she stood up to see if there was any one inside their house, she saw no one and went back to sleep. She was again awakened when a man wearing a mask touched her shoulder and poked a firearm at her neck. The man told her that it was a robbery and that she should keep quiet or else he would kill her. She was able to recognize the voice of the man to be that of appellant Bringcula. Then, she was ordered to lie face down and was hogtied using a shoelace. The appellant took AAA's two bracelets and wedding ring, and asked her where her money was. AAA pointed at her bag inside the *aparador* beside her bed, where she placed her money which the appellant also took

Appellant, thereafter, made AAA lie on her back and pulled her *pajama* and underwear. He also removed his own clothing including his mask. Appellant proceeded to lick AAA's vagina, kissed her neck, laid on top of her and inserted his penis into her vagina. AAA was unable to cry for help because appellant threatened to kill her if she does. After satisfying his lust, appellant dressed up and took AAA's necklace and two (2) cellular phones. When appellant left, AAA awakened her niece and told her to shout for help. A certain BBB, Barangay Captain CCC, Kagawad EEE and some neighbors arrived at AAA's house and when they asked who the culprit was, she opted not to immediately disclose appellant's identity.

**ISSUE:**

1. Whether the accused is guilty of the crime of Robbery with Rape. (YES)
2. Whether the aggravating circumstance of dwelling must be appreciated. (YES)

**RULING:**

1.

The elements of the crime of robbery with rape are present.

The crime of Robbery with Rape is penalized under Article 294 of the RPC as amended by Section 9 of Republic Act (R.A.) No. 7659. Robbery with Rape is a special complex crime under Article 294 of the RPC. It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime

Thus, to be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape

As to the first three (3) elements of the crime, The Court finds the same sufficiently established by the evidence on records. The prosecution was able to prove that appellant entered the house of private complainant and took her money, some pieces of jewelry and cellphones by means of violence and intimidation. Appellant barged into the house of the victim armed with a weapon, tied her down to immobilize her, and robbed her of some personal belongings. Private complainant saw the perpetrator leaving her house carrying the pieces of jewelry and other items taken from her.

Having established that the personal properties of the victim were unlawfully taken by the appellant, intent to gain was sufficiently proven.

The prosecution was likewise able to establish that appellant raped private complainant on the occasion of the robbery. Private complainant's account on what appellant did to her was straightforward, candid and carries a disturbing ring of sordid truth. She vividly recounted how appellant forced himself on her and succeeded in having carnal knowledge with her.

2.

The CA is correct in appreciating the aggravating circumstance of dwelling. Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor. In this particular case, robbery with violence was committed in the house of the victim without provocation on her part. **In robbery with violence and intimidation against persons, dwelling is aggravating because in this class of robbery, the crime may be committed without the necessity of trespassing the sanctity of the offended party's house.**

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- HERNANDO BONGOS, *accused-appellant*.**
G.R. No. 227698, SECOND DVISION, January 31, 2018, PERALTA, *J.*

*Robbery with rape is a special complex crime under Article 294 of the RPC. To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or animus lucrandi; and (4) the robbery is accompanied by rape. This special complex crime under Article 294 of the Revised Penal Code contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.*

*The prosecution's evidence established with certainty that accused-appellant, together with Dexisne, conspired with each other in stealing the money of BBB and CCC through violence and intimidation by pointing the gun and poking the knife on AAA who was then left alone in the house at the time of the incident. Furthermore, the prosecution was able to show that, on the occasion of the robbery, AAA was also raped. Thus, the original intent of Bongos and Dexisne was to take, with intent to gain, the personal effects of BBB and CCC, and rape was committed on the occasion thereof.*

**FACTS:**
At around 7 o'clock in the evening of June 8, 2010 AAA, helper of BBB and CCC, was left to tend the house. While AAA was washing dishes, two male persons entered the house through the kitchen. She identified them as Bongos and Dexisne. She knew them because they are neighbors of her employers. Bongos pointed a gun at her, while Dexisne pointed his knife. They forced her to enter the room where the money of her employer was and demanded her to open the drawer. Since it was locked, Dexisne forced it open using a steel. After they took the money, they forcibly dragged AAA outside the house until they reached the yard. Both accused threatened and ordered AAA to undress herself. When she refused to do so, Dexisne hit her chest near her left breast which caused her to lose consciousness.

When AAA woke up, she no longer had her clothes on and felt pain on her private part. She was afraid so she went to the grandfather of CCC and asked for help. Together with CCC, AAA reported the robbery incident to the authorities the following day. CCC testified that she immediately went to her house where she discovered that Php20,000 was missing from the drawer. CCC also testified that on June 12, 2010, AAA told her that she was likewise raped by the accused.

The prosecution charged Bongos and Dexisne with the complex crime of robbery with rape. RTC convicted the accused of the complex crime of robbery with rape giving credence and probative weight to AAA's testimony. CA affirmed the decision of RTC.

**ISSUE:**

Whether the trial court erred in finding the accused-appellant guilty of the crime charged. (NO)

**RULING:**

Robbery with rape is a special complex crime under Article 294 of the RPC. To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or animus lucrandi; and (4) the robbery is accompanied by rape.

For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed by reason or on the occasion of a robbery and not the other way around. This special complex crime under Article 294 of the Revised Penal Code contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.

The prosecution was able to establish that Bongos and Dexisne entered the house of the victims armed with a handgun and knife and took spouses BBB and CCC's money amounting to P20,000 without consent and by means of violence and intimidation.

Having established that the personal properties of the victims were unlawfully taken by the accused-appellant, intent to gain was sufficiently proven. Intent to gain, or animus lucrandi, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things. Thus, the first three elements of the crime were clearly established.

As to the last requirement, although AAA did not exactly witness the actual rape because she was unconscious at that time, circumstantial evidence shows that the victim was raped by the appellant and his co-accused. The prosecution presented circumstantial evidence that when analyzed and taken together, lead to the obvious conclusion that Bongos and Dexisne also raped AAA on the occasion of the robbery: first, after appellant took the money, they forcibly dragged AAA outside of the house's fence; second, appellant forced AAA to undress; third, when AAA refused, co-accused Dexisne got mad and hit her at her chest causing her to lose consciousness; fourth, when AAA regained consciousness, AAA had no longer clothes on; and fifth, she felt pain in her private part.

In view of the foregoing, the prosecution's evidence established with certainty that accused-appellant, together with Dexisne, conspired with each other in stealing the money of BBB and CCC through violence and intimidation by pointing the gun and poking the knife on AAA who was then left alone in the house at the time of the incident. Furthermore, the prosecution was able to show that, on the occasion of the robbery, AAA was also raped. Thus, the original intent of Bongos and Dexisne was to take, with intent to gain, the personal effects of BBB and CCC, and rape was committed on the occasion thereof.

**FACILITIES, INCORPORATED, *petitioner*, -versus- RALPH LITO W. LOPEZ, *respondent.***
G.R. No. 208642, FIRST DVISION, February 7, 2018, TIJAM, *J.*

*Lopez may likewise be held criminally liable under the RPC.* ***Paragraph 1, Article 316*** *of the RPC penalizes a person who pretends to be the owner of a real property and sells the same, reads:*

> *Art. 316. Other forms of swindling. —*
>
> ***(1) Any person who, pretending to be owner of any real property, shall convey, sell, encumber or mortgage the same.***

*Here, the records show that Lopez, on behalf of PPDC, misrepresented to Facilities that PPDC is the owner of the subject lots and that it has good and indefeasible title over them. These categorical statements led Facilities to enter into a MOA with PPDC and subsequently into a Contract to Sell and Contract of Lease.*

**FACTS:**
On July 23, 1999, a Memorandum of Agreement (MOA) was entered into between Facilities, Inc. (Facilities), represented by its President, Araneta III, and Primelink Properties and Development Corporation (PPDC) represented by its developer, President and CEO, Lopez. As stated in the MOA,

PPDC is the owner of three lots which it is developing into a residential subdivision; while Facilities is the registered owner of Units 1601 and 1602 (condominium units) of Summit One Office Tower. The parties executed a Contract to Sell over the subject lots and Contract of Lease over the condominium units.

The MOA provides for the so-called "swap arrangement" between Facilities and PPDC in the following manner: Facilities agreed to lease the condominium units for a period of four years to PPDC. As a consideration for the first twenty (21) months of the four-year lease, PPDC through Lopez, agreed to execute a deed of absolute sale covering the subject lots in favor of Facilities. PPDC also committed to deliver the transfer TCT covering the subject lots in Facilities' name within a period of 360 days. PPDC further bound itself to issue a certificate of ownership over the lots.

Facilities followed-up on PPDC's commitment to deliver the TCTs over the subject lots. Despite repeated demands, PPDC failed to comply with its obligation and instead vacated the leased premises. Later on, Facilities discovered that contrary to PPDC's representation, the title over the subject lots was still registered in the name of a certain Primo Erni. Consequently, Facilities, filed a Complaint-Affidavit alleging among others, that: **Lopez's false representations and act of selling the subject lots to the corporation makes him liable for the crime of estafa under paragraph 1, Article 316 of the Revised Penal Code (RPC).**

In its Counter-Affidavit (with Motion to Dismiss), PPDC through Mr. Lopez, argued that Lopez is not liable for the crime of estafa because PPDC was the real owner of the subject lots as evidence by the Deed of Absolute Sale executed by PPDC and the heirs of the registered owner, Prima Erni on October 12, 1998.

The OCP dismissed the complaint and ruled that the remedy is civil in nature. DOJ reversed the decision of the OCP. The CA in its decision ruled that there is no probable cause to warrant the prosecution of Lopez for the crime of estafa, since it is indubitable that his company is the owner of the subject lots.

**ISSUE:**
Whether or not there is probable cause to indict Lopez for the crime of estafa under paragraph 1, Article 316. (YES)

**RULING:**
Lopez may likewise be held criminally liable under the RPC. Paragraph 1, Article 316 of the RPC penalizes a person who pretends to be the owner of a real property and sells the same, reads:

> Art. 316. Other forms of swindling. — The penalty of arresto mayorin its minimum and medium period and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:
>
> (1) Any person who, pretending to be owner of any real property, shall convey, sell, encumber or mortgage the same.

Here, the records show that Lopez, on behalf of PPDC, misrepresented to Facilities that PPDC is the owner of the subject lots and that it has good and indefeasible title over them. These categorical statements led Facilities to enter into a MOA with PPDC and subsequently into a Contract to Sell and

Contract of Lease. As indicated earlier, Facilities complied with its obligation under the lease contract and allowed PPDC to occupy the condominium units which served as the consideration of the subject lots. PPDC, however, ignored its obligation to deliver the titles over the subject lots which was part of their agreement. Up until the filing of the criminal complaint, the subject lots remain in the name of Primo Erni; not PPDC; and certainly not Facilities.

As aptly observed by the Acting DOJ Secretary, in her Resolution:

> Evidence also shows that there was misrepresentation on the part of PPDC as regards the true status of the subject lots. Though Facilities was shown the deed of sale between PPDC and the heirs of the original owner thereof, the continued failure of PPDC to transfer the ownership thereof to Facilities within the stipulated period of time, and up to the filing of the case, only shows that there was bad faith on its part when it presented the deed of absolute sale to Facilities which appeared to be a forgery. Without the assurance from PPDC that the lots were in fact its property, Facilities could not have possibly agreed to the sale and in the process, part with the lease of their two (2) commercial units as payment for the full consideration of' the subject lots. Undoubtedly therefore, PPDC have acted in bad faith and committed deceit in deliberately concealing the true status of the subject lots.

Prescinding from the aforementioned discussion, there is probable cause sufficient to institute a criminal complaint against Lopez for the crime of estafa under paragraph 1, Article 316 of the RPC.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* -versus- JULIA REGALADO ESTRADA, *accused-appellant.***

GR No. 225730, THIRD DIVISION, February 28, 2018, MARTIRES, *J.*

*A conviction for illegal recruitment would not preclude conviction for estafa. Double jeopardy will not attach from the prosecution and conviction of the accused for both crimes because they are penalized under different laws and involved elements distinct from one another.*

**FACTS:**

Julia Estrada was charged with the crime of Illegal Recruitment in Large Scale under RA 8042 and Estafa under Article 315(2)(a) of the Revised Penal Code.

Julia met with three private complainants separately where she represented herself as having power and authority to deploy persons abroad for overseas employment. The private complainants paid for fees necessary for their overseas placement. However, Julia did not issue a single receipt on any of the transactions. After repeated promises, she failed to deliver on her promised deployment of the private complainants.

Both the Regional Trial Court and the Court of Appeals convicted her of illegal recruitment in large scale under RA 8042 and three counts of estafa under the Revised Penal Code.

**ISSUE:**

Whether or not a conviction for illegal recruitment would preclude conviction for estafa. (NO)

**RULING:**

A conviction for illegal recruitment would not preclude conviction for estafa. Double jeopardy will not attach from the prosecution and conviction of the accused for both crimes because they are penalized under different laws and involved elements distinct from one another.

Julia was convicted for illegal recruitment because: (1) she has no valid license or authority required by law to enable her to lawfully engage in the recruitment or placement of workers; and (2) she unlawfully promised and recruited private complainants for employment abroad for a fee, an activity punishable under the Labor Code and RA 8042.

Likewise, she was convicted for estafa under Article 315(2)(a) because: (1) by falsely representing herself as possessing power to deploy persons for overseas placement, she deceived the complainants into believing that she would provide them overseas jobs; and (2), complainants parted with their money which they thought are necessary for their deployment, resulting in damage to each of them.

Based on the foregoing, her conviction for the two offenses was grounded on different elements.

**AMANDO JUAQUICO, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent.***

G.R. No. 223998, FIRST DIVISION**,** March 05, 2018, TIJAM, *J.*

*In the crime of estafa by postdating or issuing a bad check, deceit and damage are essential elements of the offense and have to be established with satisfactory proof to warrant conviction.*

**FACTS:**

In 1991, petitioner went to Robert Chan's (private complainant) store in Juan Luna, Tondo, Manila and asked to exchange for cash 10 checks all issued by Home Bankers Trust. for P50,000. Considering that private complainant knew petitioner, being both his customer and godson, he accommodated the latter's request. On their maturity dates, however, the checks were all returned due to insufficient funds. Private complainant sent demand letters which were all unheeded by petitioner.

Petitioner, on the other hand, averred that he is engaged in the embroidery business. Since 1977, he purchased the threads and other accessories for his business with private complainant. At first, he paid in cash, but starting 1980, he paid in the form of checks issued to him by his customers.According to him, he did not receive cash from petitioner in exchange of the checks indorsed to him. He explained that the subject checks were issued to him by his customer, Ho Myong Ham (Ham), a Korean lady, which he subsequently indorsed as payment to private complainant for the materials he purchased from him. Upon learning that the checks bounced, he tried to search for the Korean but was unsucessful.

**ISSUE:**

Whether petitioner is guilty of the crime of estafa. (NO)

**RULING:**

In order for an accused to be guilty of estafa by postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check, the following requisites should be present: (i) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (ii) lack of or insufficiency of funds to cover the check; and (iii) the payee was not informed by the offender and the payee did not know that the offender had no funds or insufficient funds. As to the third element, the prosecution must prove that the accused had guilty knowledge of the fact that the drawer of the check had no funds in the bank at the time the accused indorsed the same. The prosecution failed to prove that the petitioner had knowledge of the insufficiency of funds of the check he indorsed.

Furthermore, in the crime of estafa by postdating or issuing a bad check, deceit and damage are essential elements of the offense and have to be established with satisfactory proof to warrant conviction. Private complainant was not deceived to accept the subject checks but did so out of a standard procedure which he and the petitioner developed over 16 years of business relationship and dealings between them.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- AL MADRELEJOS y QUILILAN, *Accused-Appellant*.**

G.R. No. 225328, FIRST DIVISION, March 21, 2018, TIJAM, *J.*:

*Jurisprudence enumerates four elements in order to be convicted of robbery with homicide:*

1. *the taking of personal property with the use of violence or intimidation against the person;*
2. *the property taken belongs to another;*
3. *the taking is characterized by intent to gain or animus lucrandi; and,*
4. *on the occasion of the robbery or by reason thereof the crime of homicide was committed*

*It is necessary that the robbery itself be proved as conclusively as any other essential element of the crime. For there to be robbery, there must be taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon things.*

*In this case, intention to rob was revealed as soon as the robbers announced the hold up. This was fortified when the robbers, particularly accused-appellant's companion started to take the passengers' belongings. It is likewise certain that Jovel was shot while he and accused-appellant's companion was struggling to get hold of Jovel's bag.*

**FACTS:**

That on or about the 22nd day of January 2008, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with a handgun with intent to gain, by means of force, threats, violence and intimidation employed upon the person of JOVEL FEDERESO JACABAN, did then and there wilfully, unlawfully and feloniously, take, rob and carry away, one (1) bag belonging to said Jovel Federeso Jacaban, and on the occasion of the said offense, said accused, with intent to kill, attack, assault and shot (sic) the said Joven (sic) Federeso Jacaban with the use of firearm, thereby inflicting upon him mortal wounds which were the direct cause of his death thereafter, to the damage and prejudice of the said Jovel Federeso Acaban (sic) with an undetermined amount.

The RTC, found accused-appellant guilty of robbery with homicide. However, the CA modified the RTC's Decision by convicting accused-appellant of the crime of attempted robbery with homicide.

**ISSUE:**

Whether or not they are guilty of the crime of Robbery with Homicide (YES)

**RULING:**

Jurisprudence enumerates four elements in order to be convicted of robbery with homicide:

1. the taking of personal property with the use of violence or intimidation against the person;
2. the property taken belongs to another;
3. the taking is characterized by intent to gain or animus lucrandi; and,
4. on the occasion of the robbery or by reason thereof the crime of homicide was committed.

It is necessary that the robbery itself be proved as conclusively as any other essential element of the crime. For there to be robbery, there must be taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon things.

In this case, intention to rob was revealed as soon as the robbers announced the hold up. This was fortified when the robbers, particularly accused-appellant's companion started to take the passengers' belongings. It is likewise certain that Jovel was shot while he and accused-appellant's companion was struggling to get hold of Jovel's bag.

We do not agree with the appellate court that the fact of asportation was not proven. Evidently, while it seems unclear from the records that the robbers were able to take Jovel's bag, it was established that the belongings of the other passengers were taken.

Even if this Court assumes that Jovel's bag was not taken, the same does not detract from the consistent assertion of the prosecution's witnesses that the belongings of the other passengers were successfully taken from them. As aforestated, it is immaterial that the victim of homicide is other than the victim of robbery, as long as homicide occurs by reason of the robbery or on the occasion thereof, the special complex crime of robbery with homicide is deemed to have been committed.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* ANTONIO LLAMERA y ATIENZA, *accused-appellant*.**

G.R. No. 218703, THIRD DIVISION, April 23, 2018, MARTIRES, *J.*

*To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property belongs to another; (3) the taking is characterized by intent to gain or animus lucrandi; (4) the robbery is accompanied with rape.*

*The prosecution established that accused-appellant and his co-accused barged into the house of the victims, armed with handguns, and demanded that they be given money and guns, and when BBB refused, he was hit in the head with an armalite. Further, the accused did not even deny that he sexually assaulted the victim.*

**FACTS:**

Antonio Llamera, together with his co-accused, were charged with Robbery with Rape. BBB, together with his nephew, CCC, were in their living room when suddenly, three armed men barged into the house. One of them ordered BBB to produce money and guns. When the latter refused, he was hit twice on the head with the armalite. Thereafter, Llamera's two co-accused searched BBB's office and ransacked the rooms of the house where they found money, pieces of jewelry and a shotgun. Llamera, on the otherhand, dragged AAA, BBB's niece, to the office of her uncle. Inside, he inserted his hands into her blouse and touched her breast. He ordered AAA to unbutton her pants, then he inserted his left hand into AAA's pants and used his finger to penetrate her vagina. The Regional Trial Court found Llamera guilty of robbery with rape, while his co-accused were convicted of robbery. It ruled that only Llamera may be held liable for robbery with rape because he alone perpetrated the crime of rape. The Court of Appeals affirmed this decision.

**ISSUE:**

Whether or not the accused is guilty of the crime of Robbery with Rape. (YES)

**RULING:**

The Supreme Court ruled that to be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; (4) the robbery is accompanied with rape.

In this case, the prosecution established that accused-appellant and his co-accused barged into the house of the victims, armed with handguns, and demanded that they be given money and guns, and when BBB refused, he was hit in the head with an armalite. Intent to gain, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things. Having established that there was unlawful taking, intent to gain is presumed, thus, the first three elements of the crime were clearly established. As regards the last element, the accused did not even deny that he sexually assaulted AAA. Under the law, rape by sexual assault is committed when, among others, the offender inserts any instrument or object into the genital or anal orifice of a person. This includes one's finger. Hence, he was convicted of the crime of Robbery with Rape.

**PO2 JESSIE FLORES y DE LEON, *petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *respondent*.**
G.R. No. 222861, THIRD DIVISION, April 23, 2018, GESMUNDO, *J.*

*Simple robbery is committed by means of violence against or intimidation of persons, but the extent of the violation or intimidation does not fall under paragraphs 1 to 4 of Article 294 of the RPC. For the successful prosecution of this offense, the following elements must be established: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things.*

*In robbery, there must be an unlawful taking, which is defined as the taking of items without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things. As ruled in a plethora of cases, taking is considered complete from the moment the offender gains possession of the thing, even if he did not have the opportunity to dispose of the same. Intent to gain or animus lucrandi, on the other hand, is an internal act that is presumed from the unlawful taking of the personal property belonging to another.*

*In the present case, there is no doubt that the prosecution successfully established all the elements of the crime charged. France, the private complainant categorically testified that that petitioner demanded and eventually received from him the amount of P2,000.00 in exchange for the release of his driver's license. When the marked money was placed inside petitioner's drawer, who counted it afterwards, he was deemed to have taken possession of the money. This amount was unlawfully taken by petitioner from France with intent to gain and through intimidation. As aptly observed by the CA, petitioner was a police officer assigned as an investigator at the Traffic Sector of Kamuning Police Station whose main duties and responsibilities included conducting inquiries involving traffic law violations and making reports of his investigation. While petitioner had the authority to confiscate the driver's license of traffic violators, nowhere in the law is he authorized to keep an offender's license and receive any payment for its return.*

**FACTS:**

On 26 June 2000, at around 6:00 o'clock in the evening, private complainant France figured in a vehicular collision with a passenger jeepney at the corner of E. Rodriguez and Aurora Blvd., Quezon City. Soon thereafter, a traffic enforcer arrived at the vicinity and prepared a sketch of the incident. Then, France and the jeepney driver proceeded to Station 10, Kamuning Police Station. At the station, PO2 Flores investigated the incident. The jeepney driver was told to go home while France was asked to remain at the station. He was told to return to the station after two days and prepare the amount of P2,000.00 so he can get back his driver's license. Because France could not raise the said amount in two days, he was told by PO2 Flores to just return on the third day in the evening because he was on a night shift duty then. Subsequently, a Traffic Violation Receipt *(TVR)* No. 1022911 was issued and signed by PO2 Flores who told France that the same would serve as the latter's temporary driver's license.

France became suspicious as he recalled that on a previous occasion when his driver's license was confiscated due to a traffic violation the same was claimed from the office of the Metro Manila Development Authority *(MMDA)* or City Hall and not from the officer who confiscated his license. Hence, France went to the headquarters of the Presidential Anti-Organized Crime Task Force *(PAOCTF)* in Camp Crame to file a complaint against PO2 Flores. Meanwhile, France was asked

to provide the amount of P2,000.00 which he heeded and four (4) 500-peso bills were dusted with ultraviolet fluorescent powder. Thereafter, France executed a *Sinumpaang Salaysay*.

Headed by PO2 Ilao, the PAOCTF team proceeded to Station 10, Kamuning Police Station for an entrapment operation together with France. When France entered the station, PO2 Flores asked him if he brought with him the money. After an hour, PO2 Flores called France to his table. He opened a drawer and told France to drop the money inside. PO2 Flores then counted the money inside the drawer using his left hand. As soon as France asked for his driver's license, the PAOCTF team suddenly materialized *(sic)* at the scene. They arrested PO2 Flores and confiscated the things inside his drawer including the marked money. The team subsequently proceeded to Camp Crame where PO2 Flores was turned over for ultraviolet examination. France was further asked to execute a *"Karagdagang Sinumpaang Salaysay"* regarding the incident. PO2 Menor also executed an affidavit in connection with the incident that lead to the arrest of Flores.

To exculpate himself from criminal liability, Flores interposed the defense of denial and "frame-up." He adduced his own testimony and the testimonies of Robert Pancipanci and photographer Toto Ronaldo which hewed to the following version of the facts:

On 26 June 2000, PO2 Flores received a report in his office that there was a vehicular collision in his area of assignment. Upon investigation, PO2 Flores determined that the accident was due to France's fault. He confiscated the driver's license of France, issued a citation ticket and told France that he could claim his driver's license from the Quezon City Redemption Center upon payment of the amount of P2,000.00. On 29 June 2000, PO2 Flores had no idea why France returned to his office in the evening. France was told to wait. He was, however, persistent in giving him the TVR with the enclosed money. On the third attempt, France convinced him to receive the TVR and money but PO2Flores refused to receive them. While PO2 Flores was at the comfort room, France took the chance to place the money inside PO2 Flores' drawer. When PO2 Flores returned, the operatives from the PAOCTF arrested him and brought him to Camp Crame.

RTC found petitioner guilty of simple robbery (extortion). It ruled that the prosecution established all the elements of the crime beyond reasonable doubt.

PO2 Flores appealed to the CA asserting that glaring from the evidence on record that the respondent miserably failed to establish his guilt beyond reasonable doubt. CA denied the appeal and affirmed the RTC decision modifying the penalty after appreciating the aggravating circumstance of abuse of authority.

**ISSUE:**

Whether the prosecution sufficiently established all the elements of the crime charged. (YES)

**RULING:**

Simple robbery is committed by means of violence against or intimidation of persons, but the extent of the violation or intimidation does not fall under paragraphs 1 to 4 of Article 294 of the RPC. For the successful prosecution of this offense, the following elements must be established: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that

the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things.

In robbery, there must be an unlawful taking, which is defined as the taking of items without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things. As ruled in a plethora of cases, taking is considered complete from the moment the offender gains possession of the thing, even if he did not have the opportunity to dispose of the same. Intent to gain or *animus lucrandi*, on the other hand, is an internal act that is presumed from the unlawful taking of the personal property belonging to another.

In the present case, there is no doubt that the prosecution successfully established all the elements of the crime charged. France, the private complainant categorically testified that that petitioner demanded and eventually received from him the amount of Two Thousand Pesos (P2,000.00) in exchange for the release of his driver's license. When the marked money was placed inside petitioner's drawer, who counted it afterwards, he was deemed to have taken possession of the money. This amount was unlawfully taken by petitioner from France with intent to gain and through intimidation. As aptly observed by the CA, petitioner was a police officer assigned as an investigator at the Traffic Sector of Kamuning Police Station whose main duties and responsibilities included conducting inquiries involving traffic law violations and making reports of his investigation. While petitioner had the authority to confiscate the driver's license of traffic violators, nowhere in the law is he authorized to keep an offender's license and receive any payment for its return.

The Court likewise agrees with the courts *a quo* that petitioner employed intimidation to obtain the amount of P2,000.00 from France as the act performed by the latter caused fear in the mind of the former and hindered the free exercise of his will. In the case of *People v. Alfeche, Jr.*, the court held:

> But what is meant by the word intimidation? It is defined in Black's Law Dictionary as "unlawful coercion; extortion; duress; putting in fear." To take, or attempt to take, by intimidation means "willfully to take, or attempt to take, by putting in fear of bodily harm." As shown in *United States vs. Osorio*, **material violence is not indispensable for there to be intimidation, intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient**. In an appropriate case, the offender may be liable for either (a) robbery under paragraph 5 of Article 294 of the Revised Penal Code if the subject matter is personal property and there is intent to gain or *animus furandi*, or (b) grave coercion under Article 286 of said Code if such intent does not exist.

Here, petitioner confiscated the driver's license of France after figuring in a vehicular accident. He then issued a TVR but demanded from France the amount of P2,000.00 for the return of his driver's license. When France could not produce the said amount, petitioner informed him to return on the evening of June 29, 2000 as he was then on night shift duty. For France whose daily living depends on his earnings from driving a taxi, the thought of not having his driver's license back and the possibility that he might not be able to drive a taxi and earn a living for his family prompted him to give the amount demanded. Petitioner succeeded in forcing France to choose between parting with his money or have his driver's license confiscated or cancelled.

**ILUMINADA BATAC, *Petitioner*, *v.* PEOPLE OF THE PHILIPPINES, *Respondent*.**
G.R. No. 191622, THIRD DIVISION, June 6, 2018, MARTIRES, *J.*

*Jurisprudence has consistently held that such estafa consists of the following elements: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded.*

*It has been settled in jurisprudence that in the above-defined form of estafa, it is not the nonpayment of a debt which is made punishable, but the criminal fraud or deceit in the issuance of a check. Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."*

*In People v. Reyes, the Court ruled that for estafa under the above provision to prosper, the issuance of the check must have been the inducement for the other party to part with his money or property, viz:*

*To constitute estafa under this provision, the act of postdating or issuing a check in payment of an obligation must be the efficient cause of the defraudation; as such, it should be either prior to or simultaneous with the act of fraud.* ***The offender must be able to obtain money or property from the offended party because of the issuance of the check, whether postdated or not.*** *It must be shown that the person to whom the check was delivered would not have parted with his money or property were it not for the issuance of the check by the other party. Stated otherwise,* ***the check should have been issued as an inducement for the surrender by the party deceived of his money or property and not in payment of a pre-existing obligation****.*

*The prosecution sufficiently demonstrated Batac's deceit when it established that the latter induced Frias into buying the checks at a rediscounted rate by representing to him that she had enough funds in her account to cover them. In an effort to support her misrepresentation and further persuade Frias to believe her, Batac conveyed to him that she was a school teacher, presumably as a guarantee of her good reputation. Batac also signed the postdated checks in Frias' presence, presumably as a measure of good faith and an assurance that the signature therein was genuine. All these induced Frias to part with his money.*

**FACTS:**

On 8 November 1998, Iluminada Batac (Batac) and one Erlinda Cabardo (Erlinda) went to Roger Frias' (Frias) store, located inside the public market of the Municipality of Malasiqui, Pangasinan, to have her checks rediscounted. When Batac assured Frias that the checks were hers and were duly funded, he was persuaded to buy a total of fourteen (14) checks at a rediscounted rate of five percent (5%) of the total aggregate amount. Batac thereafter affixed her signature on the face of the checks in the presence of Frias.

Upon the due dates stated on the checks, Frias attempted to deposit the checks to his bank accounts. However, the drawee bank – Prime Bank, Calasiao Branch, Poblacion West, Calasiao, Pangasinan – refused payment for the reason "Account Closed" and thus returned the checks to Frias. He then proceeded to Batac's house to demand from her payment of the equivalent amount of the said checks,

giving her five (5) days within which to complete payment. Batac failed to do so, prompting Frias to file the present case for estafa.

On the other hand, Batac maintains that it was Erlinda who issued and delivered the checks to Frias for rediscounting; and that she had never met nor transacted business with Frias. According to Batac, the proceeds being claimed still amounts to P103,500.00, the aggregate amount of the checks involved, when there should have been a rediscounting fee of 5%; thus casting doubt on whether there was a rediscounting transaction at all. Consequently, Batac asserts, there is reasonable doubt that she committed estafa. Furthermore, Batac claims that if she has any criminal liability at all, it would only be for violation of Batas Pambansa Blg. 22 (B.P. Blg. 22), or the Bouncing Checks Law, instead of estafa.

RTC found Batac guilty beyond reasonable doubt of the crime of estafa. CA affirmed Batac's conviction. The prosecution was able to establish all the elements of estafa under Article 315, paragraph 2(d) of the RPC. The CA ruled that it was Batac's representations that the checks were funded which induced Frias to buy them at a rediscounted rate, to his damage and prejudice; and that Batac's knowledge of the insufficiency of funds was clearly established by her express admission. The CA, however, modified the penalty imposed.

**ISSUE:**

Whether the accused should be liable under BP 22 and not for estafa under the RPC. (NO)

**RULING:**

Both the RTC and the CA correctly gave credence to Frias' testimony that Batac, together with Erlinda, personally met with him at his store and represented to him that the checks were funded. This was corroborated by his sister Ivy Luna Frias (Ivy), who testified that she was present during the transaction in question and that the exchange between Batac and Frias, as narrated by the latter, was consistent with Ivy's recollection.

To controvert Frias' positive identification, Batac merely offered the defense of denial, as in fact in her petition she merely insists that it was Erlinda, not she, who committed the crime, without laying any basis for such conclusion. The Court has held that "positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical." There is no reason to doubt the credibility of the identification made by Frias, as corroborated by Ivy.

Moreover, the finding by the RTC of such fact, especially since it has been affirmed by the CA, is binding upon this Court.
Jurisprudence has consistently held that such estafa consists of the following elements: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded.

It has been settled in jurisprudence that in the above-defined form of estafa, it is not the nonpayment of a debt which is made punishable, but the criminal fraud or deceit in the issuance of a check. Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by

false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."

In People v. Reyes, the Court ruled that for estafa under the above provision to prosper, the issuance of the check must have been the inducement for the other party to part with his money or property, viz:

> To constitute estafa under this provision, the act of postdating or issuing a check in payment of an obligation must be the efficient cause of the defraudation; as such, it should be either prior to or simultaneous with the act of fraud. **The offender must be able to obtain money or property from the offended party because of the issuance of the check, whether postdated or not.** It must be shown that the person to whom the check was delivered would not have parted with his money or property were it not for the issuance of the check by the other party. Stated otherwise, **the check should have been issued as an inducement for the surrender by the party deceived of his money or property and not in payment of a pre-existing obligation**.

The prosecution sufficiently demonstrated Batac's deceit when it established that the latter induced Frias into buying the checks at a rediscounted rate by representing to him that she had enough funds in her account to cover them. In an effort to support her misrepresentation and further persuade Frias to believe her, Batac conveyed to him that she was a school teacher, presumably as a guarantee of her good reputation. Batac also signed the postdated checks in Frias' presence, presumably as a measure of good faith and an assurance that the signature therein was genuine. All these induced Frias to part with his money.

Further highlighting Batac's deceit was her knowledge, at the time she issued the subject checks, that she had no sufficient funds in her account to cover the amount involved. During trial, she expressly admitted that at the time she issued them, she only had a little over one thousand pesos in her account. Moreover, when informed by Frias of the dishonor of the checks, Batac failed to pay the amounts thereon within the 5-day grace period given to her by Frias, prompting him to file the instant case.

There is thus no merit to Batac's contention that, at most, she can only be held liable for violation of BP 22. While sourced from the same act, i.e., the issuance of a check subsequently dishonored, estafa and violation of BP 22 are separate and distinct from each other because they pertain to different causes of action. The Court has held that, among other differences, damage and deceit are essential elements for estafa under Article 315 2(d) of the RPC, but are not so for violation under BP 22, which punishes the mere issuance of a bouncing check.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- BENJAMIN DOMASIG A.K.A. "MANDO" OR "PILIKITOT", *Accused-Appellant.***
G.R. No. 217028, THIRD DIVISION, June 13, 2018, MARTIRES, *J.*

*Robbery with homicide qualifies when a homicide is committed either by reason or on occasion of the robbery.* ***The prosecution must establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with animus lucrandi or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used in the generic sense, was committed.***

*The prosecution failed to prove that the killing was a mere incident to the robbery, the latter being the perpetrator's main purpose and objective. A mere presumption that the purpose of the author of the homicide was to rob is not sufficient. In the crime of robbery with homicide, the* ***prosecution must firmly establish the offender's intent to take personal property before the killing, regardless of the time when the homicide is actually carried out.***

*In the case at bar,* ***there was no evidence to show Domasig's primary motive was to rob the victim and that he was able to accomplish it.*** *Hence, the killing of the victim would not be classified as robbery with homicide but either as simple homicide or murder depending upon the presence or absence of any qualifying circumstances.*

**FACTS:**

Gerald Gloriana testified that he and the 14-year-old victim AAA were friends. The victim often slept on the streets. At around 11 in the evening, Gloriana went down a bridge to answer the call of nature. As he was climbing up from the bridge, he saw accused-appellant Domasig standing over AAA who was sleeping inside his cart. Domasig then stabbed the victim multiple times before running away. Gloriana went back under the bridge and hid there all night. The police officers found the victim's body the following morning. They recovered the plastic container from the cart, where AAA put all his earnings from buying and selling plastic bottles and scrap materials. However, the P300.00 earnings for the day inside the plastic container was missing. Gloriana testified that Domasig was approximately six to eight meters from the accident but he recognized him because the area was well-lit, because of the conspicuous tattoo on accused-appellant's right arm, and that he and AAA used to be friends with Domasig. Dr. Lee testified that AAA suffered four stab wounds, one on the chest causing instant death.

Domasig denied the allegations against him. He claimed that he was in Albay working as a caller in a bingo game at an amusement park on the day of the incident, that the workers were prohibited from leaving during work hours, and that he did not know AAA and Gloriana.

The RTC found Domasig guilty of robbery with homicide. The CA affirmed the ruling of RTC.

**ISSUE:**

Whether or not Domasig is guilty of robbery with homicide. (NO)

**RULING:**

Robbery with homicide qualifies when a homicide is committed either by reason or on occasion of the robbery. **The prosecution must establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with animus lucrandi or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used in the generic sense, was committed.**

In the case at bar, the testimony of Gloriana failed to prove that robbery had taken place. He merely saw accused-appellant Domasig stab the victim. He did not see accused-appellant take the money earned by AAA that day. The money which AAA had in his possession was based solely on Gloriana's

statement that AAA kept his earnings in a plastic container. Even assuming AAA had the money in his possession, it is not impossible that someone other than Domasig took the money. Gloriana merely presumed that AAA was killed because of the P300.00 he had in his possession. **Thus, Gloriana had no personal knowledge that AAA was robbed. The element of taking and the existence of money alleged to have been lost and stolen was not adequately established.**

The prosecution also failed to prove that the killing was a mere incident to the robbery, the latter being the perpetrator's main purpose and objective. A mere presumption that the purpose of the author of the homicide was to rob is not sufficient. In the crime of robbery with homicide, the **prosecution must firmly establish the offender's intent to take personal property before the killing, regardless of the time when the homicide is actually carried out.**

In the case at bar, **there was no evidence to show that Domasig's primary motive was to rob the victim and that he was able to accomplish it.** Hence, the killing of the victim would not be classified as robbery with homicide but either as simple homicide or murder depending upon the presence or absence of any qualifying circumstances.

Gloriana clearly and positively testified that Domasig stabbed the victim several times which caused the latter's death. This was corroborated by the findings of Dr. Lee. Domasig however failed to present any proof which would have supported his alibi. Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.

The information charged Domasig with the crime of robbery with homicide. The rule is the nature and character of the crime charged are determined not by the given designation of the specific crime but by the facts alleged in the information.

In this case, the elements relevant to the killing and the taking of property were properly alleged in the information, but the specific crime commited should be correctly made. There was no allegation of any circumstance which would qualify the killing to murder, hence Domasig should be held liable only for the **crime of homicide.**

**MARIA C. OSORIO, *Appellee,* -versus- PEOPLE OF THE PHILIPPINES, *Appellant.***
G.R. No. 207711, THIRD DIVISION, July 2, 2018, LEONEN, *J.*

*Osorio may be held criminally liable for **other deceits under Article 318**. The said provision is broad in application. It is intended as a catch-all provision to cover all other kinds of deceit not falling under Articles 315, 316, and 317.*

*Osorio, in soliciting private complainant's money, falsely represented that it would be invested in Philam Life and that its proceeds would be used to pay for Gabriel's insurance premiums. This false representation is what induced Gabriel to part with her funds and disregard the payment of her insurance premiums.*

**FACTS:**

Josefina Gabriel (Gabriel) was a proprietor of a stall in Paco Market, Manila. In December 2000, Maria Osorio (Osorio) visited Gabriel's store and introduced herself as an agent of the Philippine American Life and General Insurance Company (Philam Life). As proof, Osorio presented her company ID and calling card. During their meeting, Osorio offered insurance coverage to Gabriel. Gabriel availed Philam Life's Tri-Life Plan and Excelife Gold Package. Gabriel consistently paid the quarterly premiums from February 2001 to November 2001.

On November 19, 2001, Osorio offered Gabriel an investment opportunity with Philam Life Fund Management. The proposed investment would be placed under a time deposit scheme and would earn 20% annually. Osorio informed Gabriel that the proceeds of her investment may be channeled to pay for her insurance premiums. Enticed by the offer, Gabriel tendered P200,000.00 to Osorio, who in turn issued Philam Life receipts. However, Osorio should have not issued Philam Life receipts for Gabriel's P200,000 investment as they should only be issued for insurance premium payments.

A few months later, Gabriel discovered that her insurance policies had lapsed due to non-payment of premiums. When Gabriel confronted Osorio about the matter, Osorio assured Gabriel that she would take responsibility.

Meanwhile, in May 2002, Gabriel received a letter from Philippine Money Investment Asset Management (PMIAM), thanking her for investing in the company. In the same letter, PMIAM informed Gabriel that her investment would earn interest on a semi-annual basis starting June 20, 2002. Gabriel confronted Osorio on why her investment was diverted to PMIAM. Osorio explained that PMIAM investments would yield a higher rate of return. Displeased, Gabriel asked for a refund of her initial investment. Later on, Gabriel received P13,000.00 from PMIAM as evidenced by PMIAM Voucher No. 001854. In spite of this, Gabriel insisted on the refund. Later, PMIAM informed Gabriel that her initial investment and unpaid interest income would be released to her on May 14, 2004. Unfortunately, she was unable to recover it.

Osorio was charged with Estafa under Article 315 paragraph 2 (a). The RTC found Osorio guilty of the crime charged. It ruled that Gabriel was induced to part with her money through Osorio's misrepresentation that it would be invested in Philam Life, a company with an established reputation. The CA affirmed Osorio's conviction.

In her defense, Osorio asserted that not all elements of estafa under Article 315(2)(a) were established. Only damage on the part of Gabriel was proven. She argues that she did not employ any deceit in soliciting Gabriel's investment as nothing shows that she used fictitious name or that she pretended to possess power, agency, or certain qualifications.

**ISSUE:**
Whether or not Osorio's act constitutes estafa under Article 315(2)(a). (NO)

**RULING:**

In sustaining a conviction under Article 315(2)(a), the following elements must concur:

> (a) That there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.

In estafa by means of deceit under Article 315 (2)(a), the element of deceit consisting of the false pretense or representation must be proven beyond reasonable doubt. Otherwise, criminal liability will not attach. There are different modalities of committing the crime of estafa under Article 315 (2) (a). The false pretense or fraudulent representation referred to under the first element exists when the accused uses a fictitious name, pretends to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions, or when the accused commits other similar deceits.

There is no evidence to prove that Osorio committed any of these acts when she obtained Gabriel's money. There is also no proof that petitioner pretended to possess the authority to solicit investments for Philam Life. All that Fernandez stated was that the issuance of Philam Life receipts to Gabriel was improper because the receipts only cover insurance premium payments. Thus, in the absence of contrary evidence, it is presumed that petitioner was authorized to solicit money for investment purposes.

In this case, although there is no proof that petitioner used a fictitious name or pretended to possess power, influence, qualifications, property, credit, agency, or business in soliciting private complainant's money, petitioner should nevertheless be held criminally liable for misrepresenting to private complainant that the latter's money would be invested in Philam Life Fund Management and that its proceeds may be utilized to pay for private complainant's insurance premiums.

Nevertheless, Osorio may be held criminally liable for **other deceits under Article 318**. The said provision is broad in application. It is intended as a catch-all provision to cover all other kinds of deceit not falling under Articles 315, 316, and 317. To be held criminally liable under Article 318 the following elements must exist:

> (a) The accused makes a false pretense, fraudulent act or pretense other than those in Articles 315, 316, and 317; (b) such false pretense, fraudulent act or pretense must be made or executed prior to or simultaneously with the commission of the fraud; and (c) as a result, the offended party suffered damage or prejudice.

All the elements of Article 318 are present in this case. Osorio, in soliciting private complainant's money, falsely represented that it would be invested in Philam Life and that its proceeds would be used to pay for Gabriel's insurance premiums. This false representation is what induced Gabriel to part with her funds and disregard the payment of her insurance premiums. Since Osorio deviated from what was originally agreed upon by placing the investment in another company, private complainant's insurance policies lapsed.
Although petitioner was charged of estafa by means of deceit under Article 315 (2) (a) of the Revised Penal Code, she may be convicted of other deceits under Article 318 of the Revised Penal Code as the latter is necessarily included in the crime of estafa under Article 315 (2) (a).

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. RENATO CARIÑO Y GOCONG AND ALVIN AQUINO Y RAGAM, Accused-Appellants.**
G.R. No. 232624, SECOND DIVISION, July 09, 2018, REYES, JR., J.

I. *A conviction for robbery with homicide need not be proven solely through direct evidence of the malefactor's culpability. Rather, the offender's guilt may likewise be proven through circumstantial evidence, as long as the following requisites are present: (i) there must be more than one circumstance; (ii) the inference must be based on proven facts; and (iii) the combination of all circumstances produces a conviction beyond doubt of the guilt of the accused. Imperatively, all the circumstances taken together must form an unbroken chain of events leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime.*

*In the case at bar, the circumstances surrounding the fateful day of August 28, 2002, when the victim was robbed and killed, lead to an unbroken chain of facts, which establish beyond reasonable doubt the accused-appellants' culpability.*

II. *The elements of carnapping are: (i) the taking of a motor vehicle which belongs to another; (ii) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (iii) the taking is done with intent to gain.*

*In the case at bar, the prosecution proved the existence of all the elements of carnapping beyond reasonable doubt.*

**FACTS:**

On August 28, 2002, Advincula, who was driving an R&E Taxi with plate number TVH 298, was flagged down by Cariño. Cariño asked Advincula to take him to Ortigas. Upon arriving at Ortigas, Cariño asked Advincula to stop along the corner of Julia Vargas and Meralco Avenue. While parked thereat, a silver Nissan Sentra with plate number USD 666 arrived. Cariño alighted and approached the Nissan Sentra. Upon returning to the taxi, Cariño asked Advincula to follow the Nissan Sentra. After driving for a short distance, the Nissan Sentra entered Gate 1 of the Corinthian Gardens Subdivision in Quezon City.

Jimmy Caporado, a security guard, was manning Gate 1 of the said subdivision. Caporado noticed a Nissan Sentra with plate number USD 666, pass through Gate 1. Trailing behind the Nissan Sentra was an R&E taxi with plate number TVH 298. Upon passing through the gate, the driver of the Nissan Sentra, who Caporado recognized as Mirko Moeller, a resident of the said subdivision, opened the car window to inform the former that the passenger inside the taxi was his visitor. During this time, Caporado noticed that Moeller was with Aquino. Obeying Moeller's instructions, Caporado flagged down the taxi cab to take the driver's license, and then let the taxi pass. Caporado identified the passenger of the taxi as Cariño, who he pointed to in open court.

Meanwhile, Advincula dropped off Cariño at No. 11 Young Street, Corinthian Gardens Subdivision. Moeller alighted from the Nissan Sentra and approached the taxi to pay for Cariño's fare. Advincula drove away without a passenger.

Subsequently, at around 7:30 a.m. of August 29, 2002, Nena Taro, the housemaid of Moeller arrived at the latter's home. Upon entering the house, she was surprised to see dried blood on the wall beside the light switch. She walked to the backdoor leading to the swimming pool to look for Moeller. There, she was horrified to see him lying face down in front of the swimming pool. Shocked by what she had seen, she rushed out of the house to ask for help. Moments later, the security guards and the police arrived.

Months after the incident, SPO4 Jeresano, together with other police officers, arrested the accused-appellants in Bagaquin, Baguio City. They were tipped off by an informant about the whereabouts of the said accused-appellants. The police also tracked down the stolen Nissan Sentra in Isabela, after Cariño pointed to its location. Cariño also surrendered the keys of the Nissan Sentra.

The RTC convicted the accused-appellants for the crimes of Robbery with Homicide and Carnapping.

The CA affirmed the RTC's conviction against the accused-appellants.

**ISSUE:**

Whether or not the prosecution proved the guilt of the accused-appellants for the crimes of Robbery with Homicide and Carnapping. (YES)

**RULING:**

To sustain a conviction for robbery with homicide under Article 294 of the RPC, the prosecution must prove the existence of the following elements, namely, (i) "the taking of personal property is committed with violence or intimidation against persons; (ii) the property taken belongs to another; (iii) the taking is with animo lucrandi; and (iv) by reason of the robbery or on the occasion thereof, homicide is committed."

It is equally important to note that a conviction for robbery with homicide need not be proven solely through direct evidence of the malefactor's culpability. Rather, the offender's guilt may likewise be proven through circumstantial evidence, as long as the following requisites are present: (i) there must be more than one circumstance; (ii) the inference must be based on proven facts; and (iii) the combination of all circumstances produces a conviction beyond doubt of the guilt of the accused. Imperatively, all the circumstances taken together must form an unbroken chain of events leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime.

In the case at bar, the circumstances surrounding the fateful day of August 28, 2002, when the victim was robbed and killed, lead to an unbroken chain of facts, which establish beyond reasonable doubt the accused-appellants' culpability.

The fact that the accused-appellants were the last persons seen with Moeller prior to his demise was clearly confirmed through the testimony of the prosecution witnesses Caporado and Advincula.

Moreover, the accused-appellants' unexplained possession of the stolen articles gave rise to the presumption that they were the taker and the doer of the robbery. This presumption applies considering that (i) the property was stolen; (ii) the crime was committed recently; (iii) the stolen property was found in their possession; and (iv) they were unable to explain their possession satisfactorily. It must be noted that during their arrest, the police officers found Moeller's camera, video camera and charger in their hideout. They were unable to offer any satisfactory and believable explanation justifying their possession of the subject articles. All that they did to rebut this presumption was to question the ownership of the said articles. This defense fails considering that Taro identified the said items and confirmed that they indeed belonged to Moeller. Her familiarity with the said items cannot be doubted considering that she was the personal maid of the victim for several years, and had cleaned the said items on a regular basis.

The accused-appellants are also Guilty Beyond Reasonable Doubt for the Crime of Simple Carnapping. The elements of carnapping are: (i) the taking of a motor vehicle which belongs to another; (ii) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (iii) the taking is done with intent to gain.

Significantly, the taking of the motor vehicle is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.

In the case at bar, the prosecution proved the existence of all the elements of carnapping beyond reasonable doubt. The Nissan Sentra, which was owned by Moeller, was stolen by the accused-appellants from the victim's house, and brought to Isabela. To eradicate all traces of its previous ownership, the accused-appellants even changed the vehicle's plate number. However, despite their attempt to conceal their crime, the police discovered that the retrieved vehicle bore the same engine and chassis number as the victim's stolen vehicle.

Likewise, the police found the stolen vehicle in Isabela, no less from the information supplanted by Cariño himself. Certainly, Cariño's knowledge about the vehicle's exact location shows his complicity in its taking. Added to this, Cariño was in possession of the car keys, which he surrendered to the police.

**ROMEO IGDALINO AND ROSITA IGDALINO, *petitioners*, *vs.* PEOPLE OF THE PHILIPPINES, *respondent***

G.R. No. 233033, July 23, 2018 FIRST DIVISION, TIJAM, J.

*For the crime of theft to prosper, it must be established beyond doubt that the accused had the intent to steal personal property.The intent to steal is presumed from the taking of personal property without the consent of the owner or its lawful possessor. As in all presumptions, this may be rebutted by evidence showing that the accused took the personal property under a bona fide belief that he owns the property.*

*Clearly, jurisprudence has carved out an instance when the act of taking of personal property defeats the presumption that there is intent to steal — when the taking is open and notorious, under an honest and in good faith belief of the accused of his ownership over the property.*

*In the instant case, the unrebutted testimonial evidence for the defense shows that the Igdalinos had been cultivating and harvesting the fruits of the coconut trees from the plantation since the time of their*

*predecessor, Narciso in turn, had been cultivating and harvesting said coconut trees from the same plantation since Rosita was still a child. The harvesting of the coconuts were made by the Igdalinos openly and notoriously, as testified to by the other barangay residents*

**FACTS:** The evidence for the prosecution tends to establish that Lot No. 1609, the land on which the subject coconut trees were planted, is registered in the name Francisco and covered by Transfer Certificate of Title No. T-7296. Said land was allegedly acquired by Francisco through sale from one Mauricio Gabejan. Upon Francisco's death, his children, one of who is Avertino, inherited the property. A caretaker in the person of Felicisimo was hired by Avertino to oversee the land beginning 1985.

In the morning of June 29, 2000, Felicisimo saw the Igdalinos together with their two sons picking nuts from the coconut trees. The men climbed the trees while Rosita was on the ground gathering the coconuts. Allegedly, the Igdalinos gathered a total of 2,500 pieces of coconuts which were piled, with the husks removed and shells broken. Avertino's sister, Lilia Dabuet (Lilia), identified TCT No. T-7296 registered under her late father Francisco's name. Lilia was not personally aware that her father acquired lands.

For the defense, Rosita testified that the parcel of land was owned by her father Narciso Gabejan as shown in the Original Certificate of Title No. 1068 covering Lot No. 1609. She testified that her father tilled the land and harvested coconuts from the plantation every three months without anybody preventing him from doing it. She further testified that her father continued to till the land until she married Romeo. When her father died in 1985, she inherited the said property. Romeo also testified that he lived on the land beginning 1981 when he and Rosita got married. Since then, he helped on the farm and started planting coconut trees around 100 in all. By the time the coconut trees were already fruit-bearing, he started harvesting the coconuts.

RTC convicted the Igdalinos of the crime of qualified theft. The Igdalinos appealed to the CA and maintained that they merely exercised their rights as owners of the land and the cultivators of the coconut trees. The CA, however, rejected the Igdalinos' appeal

**ISSUE: Whether the Igdalinos' guilt beyond reasonable doubt has been established (NO)**

**RULING:** For the crime of theft to prosper, it must be established beyond doubt that the accused had the intent to steal personal property. This *animus furandi* pertains to the intent to deprive another of his or her ownership or possession of personal property, apart from but concurrent with the general criminal intent which is an essential element of dolo malus.

The intent to steal is presumed from the taking of personal property without the consent of the owner or its lawful possessor. As in all presumptions, this may be rebutted by evidence showing that the accused took the personal property under a bona fide belief that he owns the property.

Clearly, jurisprudence has carved out an instance when the act of taking of personal property defeats the presumption that there is intent to steal — when the taking is open and notorious, under an honest and in good faith belief of the accused of his ownership over the property.

In the instant case, the unrebutted testimonial evidence for the defense shows that the Igdalinos had been cultivating and harvesting the fruits of the coconut trees from the plantation since the time of their predecessor, Narciso. Narciso, in turn, had been cultivating and harvesting said coconut trees

from the same plantation since Rosita was still a child. The harvesting of the coconuts were made by the Igdalinos openly and notoriously, as testified to by the other barangay residents.

Contrary to the CA's observations, the Court finds that the Igdalinos' open and notorious harvesting of coconuts was made under their belief that they, in fact, owned the land where the plantation is situated. This belief is honest and in good faith considering that they held, in their favor, OCT No. 1068 covering the disputed land under Narciso's name. We find that this honest belief was not tarred by the adjudication in Avertino's favor of the civil case for quieting of title over the same land. Knowledge that the land was finally adjudicated in favor of Avertino came to the Igdalinos only when Rosita inquired from the Register of Deeds in 2002, or long after the complained harvest was made. Neither was there any showing that the civil court had already rendered a final decision in Avertino's favor at the time the coconuts were harvested by the Igdalinos. All these tend to show that the Igdalinos' claim of ownership over the disputed land is bona fide. In sum, the prosecution failed to establish the elements of unlawful taking and thus, reasonable doubt persists.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ALVIN J. LABAGALA and ROMEO LABAGALA, *Accused-Appellants*.**
G.R. No. 221427, FIRST DIVISION, July 30, 2018, DEL CASTILLO,J.

*For an accused to be convicted of robbery with homicide, the prosecution must prove the following elements: (a)* ***the taking of personal property with the use of violence of intimidation against the person;*** *(b)* ***the property taken belongs to another; (c) the taking is characterized by intent to gain;*** *and (d)* ***on the occasion or by reason of the robbery, the crime of homicide was committed.*** *In this case, the prosecution was able to prove all the elements of robbery with homicide. It is clear that* ***jewelry owned by the victim were taken by the accused-appellants with the use of violence and intimidation by poking a gun and whipping the victim with the gun.*** *Since there was taking,* ***intent to gain or animus lucrandi is presumed****. Jun also testified that when he entered the house after the commotion,* ***he saw that the victim was already dead.***

*The accused-appellants* ***acted in conspiracy*** *in committing the crime charged. In* ***People vs De Jesus****, an accused who participated as a principal in the commission of a robbery will also be held liable as a principal of robbery with homicide* ***even if he did not actually take part in the killing*** *that was committed by reason or on the occasion of the robber,* ***unless it is clearly shown that he tried to prove the same.*** *Since it was not shown that accused-appellants tried to prevent the victim's killing, they are all liable as principals of the crime of robbery with homicide.*

**FACTS:**

On June 12, 2002, at around 7:30 PM, Jun Alberto (Jun) was having dinner with Mario P. Legaspi Sr. (Victim) under a mango tree at the latter's residence when Salve Pascual (Salve) entered the yard to buy a pack of cigarettes. As the victim was attending to Salve, he noticed **four men enter the premises** which included Alvin Labagala and Romeo Labagala (accused-appellants). **Alvin poke a**

**gun at the victim and whip him with a gun** while the other three held Jun in place. **Alvin then took the victim's jewelry consisting of two rings, a necklace, and a wristwatch.** Afterwards, Jun witnessed the victim being dragged inside the house by Alvin. At the time, he was cornered at the backyard by one of Alvin's companions. There was a commotion inside the house and he heard someone moaning. Alvin and his companions immediately ran away. When he went inside the house, **he found the victim already dead.**

Accused-appellants along with Salve were charged with the crime of robbery with homicide before the RTC of Cabanatuan City. The RTC convicted the accused-appellants of the crime charged but acquitted Salve for failure of the prosecution to prove her guilt beyond reasonable doubt. It was noted that conspiracy and mutual aid to one another was crystal clear from the acts of appellants whose conduct during the commission of the crime clearly indicated that they had the same purpose and were united in its execution. The Court of Appeals affirmed the decision of the trial court in its entirety.

**ISSUE:**

Whether or not the prosecution was able to sufficiently prove the elements of the crime of robbery with homicide

**RULING:**

For an accused to be convicted of robbery with homicide, the prosecution must prove the following elements: (a) **the taking of personal property with the use of violence of intimidation against the person;** (b) **the property taken belongs to another; (c) the taking is characterized by intent to gain;** and (d) **on the occasion or by reason of the robbery, the crime of homicide was committed.** In this case, the prosecution was able to prove all the elements of robbery with homicide through the testimony of Jun. It is clear that **jewelry owned by the victim were taken by the accused-appellants with the use of violence and intimidation by poking a gun and whipping the victim with the gun.** Since there was taking, **intent to gain or animus lucrandi is presumed**. Jun also testified that when he entered the house after the commotion, **he saw that the victim was already dead.**

The accused-appellants **acted in conspiracy** in committing the crime charged. In **People vs De Jesus**, an accused who participated as a principal in the commission of a robbery will also be held liable as a principal of robbery with homicide **even if he did not actually take part in the killing** that was committed by reason or on the occasion of the robber, **unless it is clearly shown that he tried to prove the same.** Since it was not shown that accused-appellants tried to prevent the victim's killing, they are all liable as principals of the crime of robbery with homicide.

**HOME DEVELOPMENT MUTUAL FUND (HDMF) PAG-IBIG FUND, *Petitioner,* -versus-**
**CHRISTINA SAGUN, *Respondent*.**
G.R. No. 205698, EN BANC, July 31, 2018, BERSAMIN,J.

*For a charge of syndicated estafa to prosper, the following elements must concur: (1)* ***they must be at least five in number;*** *(2)* ***they must have formed or managed a rural bank, cooperative, samahang nayon, farmer's association or any other corporation or association that solicits funds from the general public*** *and; (3)* ***they formed or managed such association with the intention of carrying out an unlawful or illegal act, transaction, enterprise or scheme. First****, syndicated estafa must be committed by at least five persons but in this case, it is not present as* ***there are only four persons from Globe Asiatique which were charged with the offense.*** *Furthermore,* ***the association of the respondents did not solicit funds from the general public.*** *The funds supposedly misappropriated* ***did not belong to Globe Asiatique's stockholders or members, or to the general public, but to the HDMF.*** *There was also no allegation that Globe Asiatique was* ***incorporated to defraud its stockholders or members.***

*However, the respondents may be charged with the crime of simple estafa as there is sufficient basis to support a reasonable belief that the respondents were probably guilty of simple estafa. The provisions in the FCAs providing that the loan agreements which the Globe Asiatique assessed and approved were* ***existing and qualified*** *and the documents they have submitted are* ***valid*** *are reasons why the HDMF entered into the agreement.* ***Without such representations, the HDMF would not have entered into the FCA.*** *In addition,* ***it is probable for the respondents to use their own positions to facilitate a common criminal design to make it appear that Globe Asiatue had numerous qualified borrowers/buyers that would satisfy the HDMF's conditions for the loan takeouts.***

**FACTS:**

Globe Asiatique, through its president Delfin Lee, entered into a Window I - Contract to Sell (CTS) Real Estate Mortgage with Buy-back Guaranty take out mechanism with the Home Development Mutual Fund (HDMF), also known as the Pag-Ibig Fund, for its Xevera Bacolor Project in Pampanga. **Both parties also executed various Funding Commitment Agreements** (FCAs) **and Memorandum of Agreements** (MOAs).

Under the FCAs, Delfin Lee claimed that: (1) the loan agreements that Globe Asiatique would allow to pre-process, and whose housing loans it would approve, **were existing buyers of its real estate, and qualified to avail themselves of loans from HDMF** under the Pag-Ibig Fund; (2) that all documents submitted to the HDMF, on behalf of the applicants, were **valid, binding, and enforceable** and; (3) that any person or agent employed to Globe Asiatique had **not committed any act of misrepresentation.** More FCAs were executed between the parties and based on the data by the HDMF, the **aggregate amount of P 7,007,806,000.00 was released to Globe Asiatique in a span of two years from 2008 to 2010**, representing a total of 9,951 accounts.

However, the HDMF discovered some fraudulent transactions and false representations purportedly committed by Globe Asiatique and its officers. It found out that **some of the supposed borrowers who were processed and approved by Globe Asiatique were not aware of the loans they had supposedly signed**, and **some borrowers were neither members of the HDMF nor qualified to avail of a housing loan from the HDMF.** They also alleged that **other supposed borrowers could not be located or were unknown in the addresses they had provided in the loan agreements, or had indicated in the loan agreements.** Due to the alleged misrepresentations by Globe Asiatique and its officers and employees, the HDMF has incurred damages totalling P 1.04 Billion.

The Department of Justice (DOJ) conducted its own preliminary investigation and decided to file a criminal case for **syndicated estafa** before the Pampanga Regional Trial Court against **Delfin Lee, Dexter Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez** who were, respectively, the President/Chief Operating Officer of Globe Asiatique, Executive Vice President of Globe Asiatique, Head of the Documentation Department of Globe Asiatique, Head of the Accounting/Finance Department of Globe Asiatique, and Manager of the HDMF Foreclosure Department.

Following the respondents' motion to separately quash the information and to seek judicial determination of probable cause, the Pampanga RTC found probable cause for syndicated estafa and issued several warrants of arrest against the respondents. The respondents individually filed their Motions to Quash the warrants and Motion for Reconsideration but they were all denied. Each of the respondents filed their own petition for certiorari before the Court of Appeals as regards their denied motions which were granted by the Court of Appeals.

**ISSUE:**

Whether or not there was probable cause for the filing of the information for syndicated estafa, and for the issuance of the warrants of arrest against the respondents for syndicated estafa against respondents (NO)

**RULING:**

To resolve this issue, it is important to discuss the nature of syndicated estafa. For a charge of syndicated estafa to prosper, the following elements must concur: (1) **they must be at least five in number;** (2) **they must have formed or managed a rural bank, cooperative, samahang nayon, farmer's association or any other corporation or association that solicits funds from the general public** and; (3) **they formed or managed such association with the intention of carrying out an unlawful or illegal act, transaction, enterprise or scheme.**

**First**, syndicated estafa must be committed by at least five persons but in this case, it is not present as **there are only four persons from Globe Asiatique which were charged with the offense.**Atty. Alvarez cannot be considered as a part of a syndicate since **he was not related to Globe Asiatique either by employment or by ownership**, thus he cannot be considered as part of a syndicate

supposedly formed or managed to defraud its stockholders, members, depositors, or the public. Furthermore, **the association of the respondents did not solicit funds from the general public.** The funds supposedly misappropriated **did not belong to Globe Asiatique's stockholders or members, or to the general public, but to the HDMF.** There was also no allegation that Globe Asiatique was **incorporated to defraud its stockholders or members.** It must be noted that Globe Asiatique has been incorporated in 1994 as a legitimate real-estate developer.

However, the respondents may be charged with the crime of simple estafa as there is sufficient basis to support a reasonable belief that the respondents were probably guilty of simple estafa. The first three elements of estafa under Article 315(2)(a) are as follows: (a) **that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions;** (b) **that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud;** and (c) **that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property.**

The provisions in the FCAs providing that the loan agreements which the Globe Asiatique assessed and approved were **existing and qualified** and the documents they have submitted are **valid** are reasons why the HDMF entered into the agreement. **Without such representations, the HDMF would not have entered into the FCA.** In addition, **it is probable for the respondents to use their own positions to facilitate a common criminal design to make it appear that Globe Asiatue had numerous qualified borrowers/buyers that would satisfy the HDMF's conditions for the loan takeouts.**

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* -versus- JENNIE MANLAO y LAQUILA, *accused-appellant***

G.R. No. 234023, SECOND DIVISION, September 3, 2018, PERLAS-BERNABE, *J.*

*The elements of Qualified Theft are as follows:*

*(a) the taking of the personal property;*

*(b) the said property belongs to another;*

*(c) there is intent to gain;*

*(d) it be done without the consent of the owner*

*(e) it be accomplished without the use of violence or intimidation against persons, nor force upon things; and*

*(f) it be done under any of the circumstances enumerated in Article 310 of the RPC.*

*In the present case, that accused-appellant while employed as Carmel's housemaid, admitted that she took the latter's pieced of jewelry without Carmel's consent and authority. Intent to gain is presumed from her admission for taking the stolen items*

**FACTS**:

Accused-appellant in this case was a housemaid hired by the Villaraza spouses, Carmel and Alessandro. Upon hiring, Carmel briefed accused-appellant about the house's security, gave her a list of numbers to call in cases of emergency, cautioned her about scammers, and thoroughly explained and cautioned her to never entertain visitors or callers who will say that something happened to her employers. 2 months after, the spouses hired another housemaid, Geralyn Noynay.

Around 5:30 p.m. of 1 July 2011, as Geralyn was cooking, she noticed Jennie talking to someone over the house phone and crying. When asked, accused-appellant said that their employers met an accident. Geralyn saw accused-appellant going up and down the stairs. She followed accused-appellant upstairs and found the latter inside the bathroom of master's bedroom, and caught her in the act of opening the bathroom drawer using a knife, screwdriver, and hairpins. She asked accused-appellant why she destroyed the lock, accused respondent that Carmel instructed her to open the drawer, look for dollars, and to tell Geralyn not to interfere. Jennie went downstairs to talk over the phone then went back to the master's bedroom, took Carmel's jewelry then left the house with all the pieces of jewelry with her.

Then, day/s after, Carmel kept calling the phone to check on her son but the line was busy. She also called her 2 housemaids but no one answered at first, but Geralyn finally answered the house phone and explained that accused-appellant used it earlier and left the phone hanging. She added that accused-appellant left the house around 6 p.m., after taking Carmel's jewelry. Upon reaching home, Carmel received a call from the village guards that accused-appellant was with them, so the spouses immediately went there. Carmel admitted that she took Carmel's jewelry, but only because she was instructed by Carmel. She added that she brought the jewelry to a fair-skinned woman in Caloocan. The spouses then brought her to the police station.

RTC found accused-appellant guilty of qualified theft.

CA affirmed the RTC ruling.

**ISSUE**:

Whether or not the accused-appellant is guilty of qualified theft. (YES)

**RULING:**

All the elements of Qualified Theft are present in the case. The Court did not take cognizance of accused-appellant's defense that she was a naïve kasambahay, who was merely tricked in a modus operandi. She added that there was no intent to gain on her part because she still intended to return to her employer's residence and face prosecution.

In the eyes of the law and the Court, actual gain is irrelevant. It is sufficient that there is intent to gain - Jennie's *animus lucrandi* or intent to gain is presumed from her admission for taking the stolen items.

Prosecution was able to establish that accused-appellant while employed as Carmel's housemaid, admitted that she took the latter's pieced of jewelry without Carmel's consent and authority.

**ROSIEN OSENTAL, *petitioner*, *vs*. PEOPLE OF THE PHILIPPINES, *respondent*.** G.R. No. 225697, SECOND DIVISION, September 5, 2018, CARPIO, *J.*

*The four elements of estafa under paragraph 1 (b), Article 315 of the Revised Penal Code are:*

> *(1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return it;*
> *(2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;*
> *(3) that such misappropriation or conversion or denial is to the prejudice of another; and*
> *(4) there is demand by the offended party to the offender.*

*These elements were established beyond reasonable doubt in the present case. First, Osental received money in the amount of P262,225.00 from Te in trust for the purchase of RTW goods. Likewise, Osental promised Te that she would deliver the proceeds of the sale and/or the unsold goods on 21 October 2008 as evidenced by the trust receipt agreement duly executed and signed in the presence of Escobar who testified to attest to the validity and due execution of the trust receipt agreement. Second, there was denial on the part of Osental that she received P262,225.00 from Te. In her testimony, Osental specifically denied the existence and due execution of the trust receipt agreement with Te. Osental also denied receiving the money for the purchase of the RTW goods. Third, Te testified that she suffered actual damages in the amount of P262,225.00, moral damages, and litigation expenses. Moreover, the fact of prejudice was also established by the duly executed compromise agreement dated 28 August 2014 wherein Osental admitted that she owed Te P345,000.00 representing the principal amount as well as attorney's fees and litigation expenses. Fourth, as testified, a demand letter dated 23 April 2009 was sent by Te to Osental requiring the latter to return the P262,225.00 within 15 days which the latter did not comply with.*

**FACTS:**

Sometime during the first week of August 2008, Rosien Osental (Osental) approached Maria Emilyn Te (Te) and convinced her to sell ready-to-wear (RTW) goods in Roxas City. Osental claimed she had contacts in Manila and Iloilo City from whom she could acquire the RTW goods. On 21 August 2008, Te agreed and delivered P262,225.00 to Osental for the purchase of the RTW goods. On the same date, Te entered into a trust receipt agreement with Osental in which the latter agreed to deliver the proceeds of the sale on 21 October 2008.

On the trust receipt agreement's due date on 21 October 2008, Osental failed to present the RTW goods, deliver the proceeds of the sale of the RTW goods sold, or return the money that was given to her by Te. Te alleged that Osental made promises to return the money but did not do so. Te sent a demand letter to Osental requiring the return of the P262,225.00 delivered by her. Osental did not return the money despite repeated demands. On 15 June 2010, Te filed a Complaint against Osental. The complaint included an Affidavit, which was attested and signed by Escobar, stating that she witnessed the execution of the trust receipt agreement between Osental and Te.

Osental submitted her Counter-Affidavit in which she denied the genuineness and due execution of the trust receipt agreement. Osental denied being involved in the business of buying RTW goods. She likewise denied receiving P262,225.00 from Te. Instead, Osental claimed she purchased gift checks

from Te in the amount of P10,000.00 and has already paid Te P24,500.00. Osental claimed she was never given a receipt by Te as evidence of her payment of the P24,500.00. Osental claimed that Te was a businesswoman selling gift checks and that she loaned the gift checks from Te and the loan was payable in two months with five percent interest. Osental also claimed that her signature in the trust receipt agreement was forged. To prove that her signature was forged, Osental submitted identification cards and a copy of her daily time record containing her signature.

RTC found Osental guilty of estafa under Article 315, paragraph 1 (b) of the Revised Penal Code. The RTC ruled that the elements of estafa under Article 315, paragraph 1 (b) were proven by the prosecution. The RTC gave credence to the straightforward and positive testimonies of Te and Escobar. The RTC ruled that Osental's defense of denial was negative, self-serving, and unsubstantiated. The RTC ruled that Osental failed to prove that her signature in the trust receipt agreement was forged. The RTC ruled that Osental's signature in the trust receipt undertaking, when compared with the signature in the records of the RTC including the Motion to Reduce Bailbond, Notice of Hearing, Notification, Return Slip and Explanation, had a stark and marked similarity. The RTC ruled that forgery cannot be presumed and must be proved through clear and convincing evidence. CA affirmed.

**ISSUE:**

Whether petitioner Rosien Osental is guilty of estafa under paragraph 1 (b) of Article 315 of the Revised Penal Code, in relation to PD 115. (YES)

**RULING:**

Paragraph 1 (b), Article 315 of the Revised Penal Code provides:

**Article 315**. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

> 1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.
>
> xxx xxx xxx
>
> 1. With unfaithfulness or abuse of confidence, namely:
>
> xxx xxx xxx
>
> (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

The four elements of estafa under paragraph 1 (b), Article 315 of the Revised Penal Code are:

(1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return it;
(2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
(3) that such misappropriation or conversion or denial is to the prejudice of another; and
(4) there is demand by the offended party to the offender.

These elements were established beyond reasonable doubt in the present case. *First*, Osental received money in the amount of P262,225.00 from Te in trust for the purchase of RTW goods. Likewise, Osental promised Te that she would deliver the proceeds of the sale and/or the unsold goods on 21 October 2008 as evidenced by the trust receipt agreement duly executed and signed in the presence of Escobar who testified to attest to the validity and due execution of the trust receipt agreement. *Second*, there was denial on the part of Osental that she received P262,225.00 from Te. In her testimony, Osental specifically denied the existence and due execution of the trust receipt agreement with Te. Osental also denied receiving the money for the purchase of the RTW goods. *Third*, Te testified that she suffered actual damages in the amount of P262,225.00, moral damages, and litigation expenses. Moreover, the fact of prejudice was also established by the duly executed compromise agreement dated 28 August 2014 wherein Osental admitted that she owed Te P345,000.00 representing the principal amount as well as attorney's fees and litigation expenses. *Fourth*, as testified, a demand letter dated 23 April 2009 was sent by Te to Osental requiring the latter to return the P262,225.00 within 15 days which the latter did not comply with.

SC sustains the finding of the RTC and CA that the evidence adduced by Osental is insufficient to sustain her allegation of forgery. Forgery cannot be presumed and must be proved by clear and convincing evidence. The RTC and CA correctly ruled that there is a marked similarity between Osental's signature in the trust receipt agreement with Osental's sample signatures in her Pag-IBIG identification card and daily time record. Moreover, the RTC found Osental's signature in the RTC records including the Motion to Reduce Bailbond, Affidavit of Undertaking, Notice of Hearing, Notification, Return Slip and Explanation also had a marked similarity with her signature in the trust receipt agreement. In the present case, the CA did not err in upholding the finding of the RTC that the forgery of Osental's signature in the trust receipt agreement was not conclusively proved by Osental. Consequently, the testimonies of both Te and Escobar with regard to the validity and due execution of the trust receipt agreement must prevail over the negative and self-serving testimony of Osental.

SC, affirming the decision of the CA, found Rosien Osental guilty of violation of paragraph 1 (b), Article 315 of the Revised Penal Code, in relation to the pertinent provisions of Presidential Decree No. 115 with modification that petitioner shall suffer the indeterminate penalty of *arresto menor* or thirty (30) days, as minimum, to *prision correccional* or two (2) years and four (4) months, as maximum.

**JOMAR ABLAZA y CAPARAS, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent.***
G.R. No. 217722, FIRST DIVISION, September 26, 2018, DEL CASTILLO, *J.*

*In the case of People v. Concepcion,*

*x x x Article 293 of the [Revised Penal Code (RPC)] defines robbery as a crime committed by 'any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything.' x x x*

*Theft, on the other hand, is committed by any person who, with intent to gain* ***but without violence against or intimidation of persons nor force upon things,*** *shall take the personal property of another without the latter's consent. x xx*

*Applying this in the case at bar, Snyder's testimony is* ***bereft of any showing that Ablaza and Lauzon used violence or intimidation in taking her necklaces.*** *She merely stated that they grabbed her necklaces* ***without mentioning that they made use of violence or intimidation in grabbing them.*** *The word 'grab' means to take or seize by or as if by a sudden motion or grasp****. It does not suggest the presence of violence or physical force in the act.*** *The suddenness of the act of taking or seizing cannot be equated with the employment of violence or physical force. Here, Snyder did not allege that she was pushed or harmed by the persons who took her necklaces.*

**FACTS:**

According to the victim Rosario S. Snyder, she was using her cellphone while walking along Jolo Street, Barangay Barreto, Olongopo City when a motorcycle with two male persons on board stopped beside her. The backrider then suddenly grabbed her three necklaces. Before finally speeding away, the male persons looked back at her to check if all her necklaces were stolen. Snyder then went to the Police Station to report the incident. She identified Petitioner Jomar Ablaza as the driver of the motorcycle. She alleged that she had a good look at the robbers' faces when they looked back at her. When Snyder and a policeman went to the house of Ablaza, they found Jay Lauzon, who they earlier learned to be the backrider, hiding under the kitchen sink. Ablaza denied the allegations against him.

The RTC found Ablaza and Lauzon guilty of the crime of robbery under Article 294 (5) of the RPC. Ablaza contended that the RTC should have convicted him only of theft and not robbery. The CA affirmed the RTC's ruling and stated that the only way that the necklaces could have been taken from Snyder was through the use of violence and physical force.

**ISSUE:**

Whether or not Ablaza is guilty of robbery. (NO)

**RULING:**

The Court held that Ablaza should be held liable only for theft.

> In the case of People v. Concepcion,
>
> x x x Article 293 of the [Revised Penal Code (RPC)] defines robbery as a crime committed by 'any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything.' x x x
>
> Theft, on the other hand, is committed by any person who, with intent to **gain but without violence against or intimidation of persons nor force upon things,** shall take the personal property of another without the latter's consent. x xx

Applying this in the case at bar, Snyder's testimony **is bereft of any showing that Ablaza and Lauzon used violence or intimidation in taking her necklaces.** She merely stated that they grabbed her necklaces **without mentioning that they made use of violence or intimidation in grabbing them.** The word 'grab' means to take or seize by or as if by a sudden motion or grasp. **It does not suggest the presence of violence or physical force in the act.** The suddenness of the act of taking or seizing cannot be equated with the employment of violence or physical force. Here, Snyder did not allege that she was pushed or harmed by the persons who took her necklaces.

Moreover, the use of force is not an element of the crime of simple robbery under Article 294 (5) of the RPC. Article 294 of the RPC covers robbery with violence against or intimidation of persons.

In People v. Judge Alfeche, Jr., the Court held that there are five classes of robbery under the Article 294, namely: (a) robbery with homicide (par. 1); (b) robbery with rape, intentional mutilation, or the physical injuries penalized in subdivision 1 of Article 263 (par. 2); (c) robbery with physical injuries penalized in subdivision 2 of Article 263 (par. 3); (d) robbery committed with unnecessary violence or with physical injuries covered by subdivisions 3 and 4 of Article 263 (par. 4); and (e) robbery in other cases, or simply robbery (par. 5), where the violence against or intimidation of persons cannot be subsumed by, or where it is not sufficiently specified so as to fall under, the first four paragraphs.

Paragraphs one to four involve the use of violence against persons. Intimidation can only fall under paragraph five. For the requisite of violence to obtain in cases of simple robbery, the victim must have sustained less serious or slight physical injuries in the occasion of robbery. For there to be intimidation, intense fear must be produced in the mind of the victim which restricts or hinders the exercise of the latter's free will.

In this case, Snyder did not sustain any injury at all. There is no showing that she was pushed or otherwise harmed on the occasion of robbery. There is also no intimidation in this case. Based on Snyder's testimony, the act of the accused in grabbing her necklaces is so sudden, hence no fear could have been produced in Snyder's mind as to deprive her of the exercise of her will.

Accordingly, Ablaza must be held liable **only for the crime of theft, not robbery.**

## J. Crimes against Chastity

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- DENNIS MANALIGOD Y SANTOS, *Accused-Appellant*.**
G.R. No. 218584, THIRD DIVISION, April 25, 2018, MARTIRES, *J.*

*Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.*

*As evidenced by her Certificate of Live Birth,AAA was only eight (8) years old at the time she was sexually molested on 24 September 2007. Inside the courtroom, AAA identified accused-appellant as her rapist. Thus, the remaining element of statutory rape which needed to be established is carnal knowledge between accused-appellant and AAA. The Court finds no cogent reason to reverse the RTC's assessment of AAA's credibility, which was affirmed by the CA. Absent any evidence that the trial court's assessment was tainted with arbitrariness or oversight of a fact of consequence or influence – especially so when affirmed by the CA – it is entitled to great weight, if not conclusive and binding on the Court.*

*AAA's narration was likewise corroborated by Dr. Lorenzo's medical findings as to the existence of hymenal laceration. When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge.Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.*

**FACTS:**

On 24 September 2007, BBB asked her daughter, AAA, to borrow a cellphone charger at the videoke bar where she worked. When AAA came back, BBB saw that AAA had P20.00 in her possession. She asked AAA where it came from and the latter answered that accused-appellant a.k.a. "Kulot" gave it to her. BBB asked why Kulot would give her P20.00 but AAA refused to answer because Kulot told her not to tell anyone.Upon further questioning by her mother, AAA narrated that accused-appellant brought her to a room at the videoke bar where he removed her clothes and underwear, and then undressed himself. Afterwards, he repeatedly inserted his penis into AAA's vagina. Accused-appellant then told AAA not to tell her mother what had happened and gave her P20.00.
BBB called her employer and informed him of what accused-appellant did to AAA. Accompanied by her employer's wife, BBB reported the incident to the police and was advised to request a medical examination of AAA and to file a complaint against accused-appellant. BBB then brought AAA to the hospital for examination.Dr. Vilma G. Lorenzo (*Dr. Lorenzo*) performed the examination and found lacerations in AAA's vagina.

Accused-appellant, through his counsel, manifested that he would not present evidence for his defense.

RTC found accused-appellant guilty of statutory rape. It reasoned that the penetration of the penis through the labia of the vagina, even without rupture or laceration of the hymen, is enough to justify

a conviction of rape. The trial court ruled that medical findings of injuries or hymenal laceration in the victim's genitalia are not essential elements of rape, what is indispensable is that there was penetration by the penis, however slight, through the labia of the female organ.

CA affirmed the conviction of accused-appellant for statutory rape but modified the award of damages. It opined that AAA recounted her tragic experience, unflawed by inconsistencies or contradictions in its material points and unshaken by the tedious and gruelling cross-examination. The appellate court noted that AAA's declaration revealed each and every detail of the incident and gave no impression whatsoever that her testimony was a mere fabrication. It held that contrary to accused-appellant's contention that the medical findings did not prove sexual intercourse, Dr. Lorenzo found an old laceration at 7 o'clock position which she said may have been caused by the insertion of a blunt object that may not be too hard or too soft, and can possibly be caused by the insertion of a penis. Finally, the CA declared that even without the medical findings, AAA's testimony was sufficient to justify accused-appellant's conviction for the crime of statutory rape.

Accused-appellant asserts that there were inconsistencies in the testimonies of BBB and Dr. Lorenzo as to the time of the alleged rape; that BBB testified that the incident happened at around 11:00 A.M., while Dr. Lorenzo testified that she examined AAA at around 8:30A.M.; that the medical findings contradicted AAA's claim that she was raped because the latter underwent medical examination on the same day that she was raped but the medical findings revealed that she had an old hymenal laceration; and that his act of not leaving the place where the alleged rape was committed bolsters his innocence.

**ISSUE:**

Whether the guilt of accused-appellant has been proven beyond reasonable doubt. (YES)

**RULING:**

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.

As evidenced by her Certificate of Live Birth,AAA was only eight (8) years old at the time she was sexually molested on 24 September 2007. Inside the courtroom, AAA identified accused-appellant as her rapist. Thus, the remaining element of statutory rape which needed to be established is carnal knowledge between accused-appellant and AAA. The Court finds no cogent reason to reverse the RTC's assessment of AAA's credibility, which was affirmed by the CA. Absent any evidence that the trial court's assessment was tainted with arbitrariness or oversight of a fact of consequence or influence – especially so when affirmed by the CA – it is entitled to great weight, if not conclusive and binding on the Court.

AAA's narration was likewise corroborated by Dr. Lorenzo's medical findings as to the existence of hymenal laceration. When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge.Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.

Moreover, even if the Court disregards the medico-legal certificate, the same would still not be sufficient to acquit accused-appellant. It has been repeatedly held that the medical report is by no means controlling. A medical examination of the victim is not indispensable in the prosecution for rape, and no law requires a medical examination for the successful prosecution thereof. The medical examination of the victim or the presentation of the medical certificate is not essential to prove the commission of rape, as the testimony of the victim alone, if credible, is sufficient to convict the accused of the crime; it is merely corroborative in character.

Accused-appellant further contends that he should be acquitted on the flimsy reason that BBB and Dr. Lorenzo contradicted each other as regards the time when the rape incident took place. However, it is already well-settled that it is not necessary to state the precise time when the offense was committed except when time is a material ingredient of the offense. In statutory rape, time is not an essential element. In addition, the time of the commission of the crime assumes importance only when it creates serious doubt as to the commission of the rape or the sufficiency of the evidence for purposes of conviction. In this case, accused-appellant failed to impeach the credible and straightforward testimony of AAA considering that he did not even bother to present any evidence in his defense.

Lastly, accused-appellant's claim that his non-flight after the incident proves his innocence has no probative value so as to exculpate him from liability. While it is true that the Court has ruled in several cases that flight is evidence of guilt, "there is no law or dictum holding that staying put is proof of innocence, for the Court is not blind to the cunning ways of a wolf which, after a kill, may feign innocence and choose not to flee."

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. CCC, accused-appellant.**
G.R. No. 220492, THIRD DIVISION, July 11, 2018, MARTIRES, J.

*In appreciating the testimony of the victim, it must be remembered that rape is a painful experience. For some, however, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would not easily forget. To recall this unwanted episode in one's life, not to mention having to call on one's memory over and over again just to narrate what really happened, is something that has to be considered especially when it causes humiliation and mortification to the victim.*

*Here, the SC did not see any possible reason why AAA would falsely accuse her own father and at the same time divulge to the public that she had been sexually abused by the man who nurtured her as she was growing up. Worse, the accused failed to adduce evidence of ill motive against him. That a daughter would make up a story that would send her own father to jail is far beyond what the human conscience could take.*

**FACTS:**

In Criminal Case Nos. 3149-50, accused-appellant was accordingly charged in two (2) separate Informations.

The prosecution's evidence accounted three (3) episodes of rape committed by accused-appellant against AAA that all happened in 2011. As a result, AAA conceived. She alleged it was her father's child as she did not have any prior sexual experience with any other man. The child was born on 27 May 2012.

In her testimony, AAA narrated that the first time his father raped her was while she was in the bathroom outside their house. While she was about to take a bath, accused-appellant entered, removed her panty, and made her lie down. He held her feet down, mounted her, and inserted his penis into her vagina. After he was done, accused-appellant left, AAA continued to take a bath.

The second time AAA was raped happened inside her parent's bedroom. Accused-appellant pressed on AAA's thighs and removed her undergarments while she was lying down. Again, accused-appellant went on top of AAA and inserted his penis into her vagina. When he was done, accused-appellant left AAA inside the bedroom. While all this was happening, AAA's mother was out at the garden and her siblings were in school.

The last episode AAA narrated was when accused-appellant told her to fix the water fixture beside the palali tree near their house. As she did, accused-appellant followed AAA, grabbed her, and removed her undergarments. While he was doing this, he told AAA he would hurt her if she told anyone. After instructing her to lie down, accused-appellant inserted his penis into her vagina.

AAA never told anybody about what was happening until her sister, asked if she was pregnant. Upon her sister's insistence, AAA confided to her that their father had been raping her.

When AAA was brought to the proper authorities to file the complaint, she was made to undergo a physical examination. The medico-legal examiner testified that AAA had told her that she was raped; thus, she concluded that the lacerations she noted in her genitalia at 11 o'clock and 6 o'clock positions were caused by sexual abuse.

The RTC found accused-appellant guilty beyond reasonable doubt of three (3) counts of rape.

The CA affirmed the trial court's decision.

**ISSUE:**

Whether or not accused-appellant is guilty beyond reasonable doubt of three (3) counts of Rape. (NO, only two counts.)

**RULING:**

In rape cases where no other person could accurately account what happened, except for the victim and the accused-appellant, the witnesses' credibility plays a big factor. When it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. In this case, the

SC found no reason to deviate from the findings of the RTC and CA. Nothing in the records indicates that the RTC and CA overlooked or had failed to appreciate facts that, if considered, would change the outcome of the case.

In appreciating the testimony of the victim, it must be remembered that rape is a painful experience. For some, however, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would not easily forget. To recall this unwanted episode in one's life, not to mention having to call on one's memory over and over again just to narrate what really happened, is something that has to be considered especially when it causes humiliation and mortification to the victim.

Here, the SC did not see any possible reason why AAA would falsely accuse her own father and at the same time divulge to the public that she had been sexually abused by the man who nurtured her as she was growing up. Worse, the accused failed to adduce evidence of ill motive against him. That a daughter would make up a story that would send her own father to jail is far beyond what the human conscience could take.

The SC corrected, however, the number of counts of rape accused-appellant is convicted of. To recall, accused-appellant was charged under two (2) separate informations, but was convicted for three (3) counts of rape because AAA testified to three (3) accounts. Contrary to the understanding of the trial court, the informations filed against accused-appellant do not charge more than one offense which could be the subject of a motion to quash. Therefore, there is no basis for the third count of rape.

## K. Crimes against the Civil Status of Persons

**REDANTE SARTO y MISALUCHA, *petitioner,* -versus- PEOPLE OF THE PHILIPPINES, *respondent.***

GR No. 206284, THIRD DIVISION, February 28, 2018, MARTIRES, *J.*

*Before the divorce decree can be recognized by our courts, a copy of the divorce decree itself must be presented and admitted in evidence to be proved as a fact. A certificate of divorce is insufficient to rebut the bigamy charge because the divorce decree required is the judgment itself as rendered by the foreign court. Redante therefore is liable for bigamy for failing to prove that he had capacity to remarry when he contracted his subsequent marriage.*

**FACTS:**

Redante Sarto was charged with bigamy for allegedly contracting two marriages: the first with Socorro Negrete and the second, without having the first one legally terminated, with Fe Aguila.

During the subsistence of his first marriage, Socorro acquired Canadian citizenship and thereafter filed for divorce in Canada. The divorce was eventually granted. Years later, Redante met Fe to whom he admitted that he was previously married to Socorro but was already divorced. When their relationship turned sour, Fe filed a complaint for bigamy against Redante.

Redante admitted that he contracted two marriages but interposed the defense that his marriage with Socorro had been legally dissolved by a divorced obtained in a foreign country. He presented a certificate of divorce as evidence.

**ISSUE:**

Whether or not the presentation of the certificate of divorce legally terminated Redante's first marriage with Socorro. (NO)

**RULING:**

For a person to be convicted of bigamy, the following elements must concur: (1) the offender has been legally married; (2) the first marriage has not been legally dissolved or, in case of an absentee spouse, the absent spouse could not yet be presumed dead according to the Civil Code; (3) the offender contracts a second marriage; and (4) the second marriage has all the essential requisites for validity.

Before the divorce decree can be recognized by our courts, a copy of the divorce decree itself must be presented and admitted in evidence to be proved as a fact.

A certificate of divorce is insufficient evidence because the divorce decree required to prove the fact of divorce is the judgment itself as rendered by the foreign court. The type of divorce and whether such divorce capacitated Socorro to remarry could not be ascertained through the certificate of divorce. Redante therefore is liable for bigamy for failing to prove that he had capacity to remarry when he contracted his subsequent marriage.

## L. Crimes against Honor

**MARILOU PUNONGBAYAN-VISITACION, *Petitioner*, -versus-PEOPLE OF THE PHILIPPINES and CARMELITA P. PUNONGBAYAN, *Respondents*.**
G.R. No. 194214, THIRD DIVISION, January 10, 2018, MARTIRES, *J.*

*Administrative Circular No. 08-0818 was issued to embody the SC's preference, as espoused in previous jurisprudence, to impose only a fine for conviction of libel. Nevertheless, the courts may impose imprisonment as a penalty if, under the circumstances, a fine is insufficient to meet the demands of substantial justice or would depreciate the seriousness of the offense. Here, Visitacion is a first-time offender with no other criminal record under her name. Moreover, the degree of publication is not that widespread considering that the libelous letter was circulated only to a few individuals. Hence, the imposition of a fine, instead of imprisonment, is sufficient.*

**FACTS:**

Petitioner Marilou Punongbayan-Visitacion (Visitacion) was the corporate secretary and assistant treasurer of St. Peter's College of Iligan City. Acting on the advice of her counsel, she wrote a letter to private respondent Carmelita P. Punongbayan (Punongbayan). In the letter, Visitacion accused Punongbayan of criminal or improper conduct. Such accusations were made known not only to the

victim but also to other persons such as her staff and employees of a bank the school had transactions with.

The Regional Trial Court convicted Visitacion of libel and condemned her to suffer a straight prison term of one year.Aggrieved, Visitacion filed a petition for *certiorari* before the Court of Appeals (CA). The CA, however, dismissed the petition.

**ISSUE:**

Whether the CA acted contrary to law when it, in effect, brushed aside Visitacion's alternative plea for the application of preference of fine over imprisonment as penalty for libel. (YES)

**RULING:**

Administrative Circular No. 08-0818 was issued to embody the Supreme Court (SC)'s preference, as espoused in previous jurisprudence, to impose only a fine for conviction of libel. The said circular, however, does not remove the discretion of courts to sentence to imprisonment the accused in libel cases should the circumstances warrant. In other words, judicial policy states a fine alone is generally acceptable as a penalty for libel. Nevertheless, the courts may impose imprisonment as a penalty if, under the circumstances, a fine is insufficient to meet the demands of substantial justice or would depreciate the seriousness of the offense.

Here, Visitacion is a first-time offender with no other criminal record under her name. Moreover, the degree of publication is not that widespread considering that the libelous letter was circulated only to a few individuals. Hence, the imposition of a fine, instead of imprisonment, is sufficient.

**PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- AMADO "JAKE" P. MACASAET,* ENRIQUE P. ROMUALDEZ AND JOY P. DELOS REYES (DECEASED), *Respondents.***

G.R. No. 196094, SECOND DIVISION, March 05, 2018, CAGUIOA, J.

*If the circumstances as to where the libel was printed and first published are used by the offended party as basis for the venue in the criminal action, the Information must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers, magazines or serial publications. This pre-condition becomes necessary in order to forestall any inclination to harass.*

**FACTS:**

These are three consolidated petitions. The first petition provided that accused Macasaet is the Publisher and Chairman of Malaya, a newspaper of general circulation while Romualdez and Delos Reyes are the Executive Editor and Editor, respectively, of said publication. In the April 21, 1999 issue of Malaya, accused caused to be published an article entitled "Santiago's gambling habits". The article allegedly stated that, former Undersecretary of the Department of Interior and Local Government, Atty. Narciso "Jun" Y. Santiago, Jr. (Santiago) has a serious gambling habit which is widely known. The second petition provided that the RTC Manila, where the information was filed, has no jurisdiction over the case. The information allegedly did not provide that Port Area, Manila is where the article was written and first published. Instead, it only provided

that Port Area, Manila is the editorial and business address of Malaya. The third petition provided that in its 1 March 1999 issue, Malaya published an article written by Macasaet, entitled "NCA-UCAP Feud: Walang trabaho, personalan lang," which tackled a feud between the National Cockers Association (NCA) and a group organized by its former members, called the United Cockers Association of the Philippines (UCAP). The article depicted Santiago, husband of Senator Miriam Defensor-Santiago, then Governor Casimiro "Ito" M. Ynares, Jr., and Jorge Araneta of the Araneta Coliseum as the key players involved in the dirty campaign to undermine the operations of the UCAP. The accused is charged with the crime of libel.

**ISSUE:**

Whether the Information is sufficient in form and substance to charge Macasaet and Romualdezwith the crime of libel. (YES)

**RULING:**

Article 360 of the Revised Penal Code, as amended (RPC), provides thatwhether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published.

The Court finds the RTC Manila has jurisdiction over the case since that is where the article was first published. To the Court, it is clear that Port Area, Manila is where the defamatory article was written and published because that is the address of *Malaya*, an unquestionably printed newspaper, wherein the article appeared.

If the circumstances as to where the libel was printed and first published are used by the offended party as basis for the venue in the criminal action, the Information must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers, magazines or serial publications. This pre-condition becomes necessary in order to forestall any inclination to harass. The Information need not parrot the provisions of Article 360 of the RPC and expressly use the phrase "printed and first published." If there is no dispute that the place of publication indicated in the Information, which is Manila in the present case, is the place where the alleged defamatory article was "printed and first published," then the law is substantially complied with.

## M. Quasi-offenses (or Criminal Negligence)

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus - GIL RAMIREZ y SUYU, *Accused-Appellant.***
G.R. No. 218701, FIRST DIVISION, February 14, 2018, DEL CASTILLO, *J.*

*In criminal cases, "speculation and probabilities cannot take the place of proof required to establish the guilt of the accused beyond reasonable doubt. Suspicion, no matter how strong, must not sway judgment."*

**FACTS:**
Appellant Gil Ramirez (Ramirez) was charged in three (3) separate Informations of the crimes of Rape, violation of R.A. 7610, and Attempted Rape of his daughter, private complainant AAA.

According to the prosecution, sometime in 1989, when "AAA" was only seven years old, and while her mother, "BBB", was out of their house, appellant purposely made "AAA" inhale a certain substance which caused "AAA" to lose her consciousness. Upon regaining awareness, "AAA" noticed blood in her shorts and her underwear was no longer worn properly. She also felt pain in her sexual organ. On another occasion, "AAA" was at home when appellant started touching her breast and tried to insert his penis into her vagina. "AAA" fought back but appellant was stronger. Eventually, appellant was able to insert his penis into "AAA's" anus and vagina. Thereafter, appellant threatened "AAA" not to report to anyone what happened; otherwise, he would kill her and her mother. Also, sometime in 1991, while "AAA" was inside their house, appellant suddenly dragged and laid "AAA" on the bed. Armed with a knife, appellant threatened to kill "AAA" and all the members of their family if she would report anything to the authorities. The intended rape was not consummated because "BBB" suddenly arrived. Moreover, sometime in 1996, "AAA" was sleeping in their house when appellant suddenly pulled her out of bed. Appellant's obvious lewd intent was not accomplished because "AAA" was able to extricate herself from appellant's grip and run towards "BBB" who was outside their house at that time. For several years, "AAA" just suffered in silence because of fear for her own life as well as that of her family.

Appellant denied all the three charges filed against him. He claimed that during 1989, he sometimes did not go home for 10 to 15 days because he had to stay at his work.

The RTC found Ramirez guilty beyond reasonable doubt for the crimes of rape, violation of RA 7610, under Article III Section 5 (b), and attempted rape. The RTC, in finding testimony of "AAA" as straightforward and considering her consistent positive identification of the appellant, gave credence to the version of the prosecution and rejected appellant's defense of denial as well as the imputation of ill-motive on the private complainant. On the other hand, the CA affirmed the conviction of guilt of Ramirez for the crime of rape based on circumstantial evidence, but acquitted appellant for violation of RA 7610 and attempted rape on ground of reasonable doubt.

**ISSUE:**
Whether Ramirez is guilty beyond reasonable doubt for the crimes of Rape, violation of R.A. 7610, and Attempted Rape. (NO)

**RULING:**

As reflected in the assailed CA Decision, the conclusion finding appellant's guilt for rape was anchored on the following circumstantial evidence: "(1) "AAA" was sleeping in their house; (2) "AAA" was awakened when [appellant] forced [her] to smell a substance that caused her to lose consciousness; (3) "AAA" positively identified appellant as the only person she saw before she lost consciousness; (4) upon regaining consciousness, there was blood on "AAA's" shorts; (5) "AAA's" panty was also reversed; and, (6) "AAA" felt pain in her vagina."

To the mind of the Court, these circumstances did not establish with certainty the guilt of appellant as to convince beyond reasonable doubt that the crime of rape was in fact committed or that he was the perpetrator of the offense charged. Significantly, the testimonial account of "AAA" even created a glaring doubt as to whether rape was indeed committed and as regards the real identity of the culprit. Moreover, the testimony of AAA indubitably casts doubt on her credibility and the veracity of her narration of the incident considering that she was already 27 years old when she testified. There was

no allegation that appellant was actually seen inside the house before the alleged incident and the only occupant before she went to sleep. The circumstances relied upon by the CA in its assailed Decision failed to sufficiently link appellant to the crime. What is extant on record is that the allegation of sexual molestation on "AAA" by appellant was anchored principally on presumption. But in criminal cases, "speculation and probabilities cannot take the place of proof required to establish the guilt of the accused beyond reasonable doubt. Suspicion, no matter how strong, must not sway judgment."

## III. SPECIAL LAWS

**Punishable acts and circumstances affecting criminal liability of the following:**

**A. Anti-Arson Law (Secs. 1 to 5, PD 1613, as amended by PD 1744)**

**B. Anti-Child Pornography Act of 2009 (Secs. 3[a-c], 4, and 5, RA 9775)**

**C. Anti-Fencing Law of 1979 (Secs. 2 and 5, PD 1612)**

**IRENEO CAHULOGAN, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.**

G.R. No. 225695, SECOND DIVISION, March 21, 2018, PERLAS-BERNABE, *J.*:

*The essential elements of the crime of fencing are as follows: (a) a crime of robbery or theft has been committed; (b) the accused, who is not a principal or an accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the crime of robbery or theft; (c) the accused knew or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and (d) there is, on the part of one accused, intent to gain for oneself or for another.*

*Fencing is a malum prohibitum, and PD 1612 creates a prima facie presumption of Fencing from evidence of possession by the accused of any good, article, item, object or anything of value, which has been the subject of robbery or theft; and prescribes a higher penalty based on the value of the property.*

*In this case, it was shown that: (a) Lariosa sold to petitioner the subject items without authority and consent from his employer, Tan, for his own personal gain, and abusing the trust and confidence reposed upon him as a truck helper; (b) petitioner bought the subject items from Lariosa and was in possession of the same; (c) under the circumstances, petitioner should have been forewarned that the subject items came from an illegal source, as his transaction with Lariosa did not have any accompanying delivery and official receipts, and that the latter did not demand that such items be replaced with empty bottles, contrary to common practice among dealers of soft drinks; and (d) petitioner's intent to gain was made evident by the fact that he bought the subject items for just P50,000.00, lower than their value in the amount of P52,476.00.*

**FACTS:**

The prosecution alleged that private complainant Johnson Tan (Tan), a businessman engaged in transporting Coca-Cola products, instructed his truck driver and helper, Braulio Lopez (Lopez) and

Loreto Lariosa (Lariosa), to deliver 210 cases of Coca-Cola products (subject items) worth P52,476.00 to Demins Store. The next day, Tan discovered that contrary to his instructions, Lopez and Lariosa delivered the subject items to petitioner's store. Tan then went to petitioner and informed him that the delivery to his store was a mistake and that he was pulling out the subject items. However, petitioner refused, claiming that he bought the same from Lariosa for P50,000.00, but could not present any receipt evidencing such transaction.

Tan insisted that he had the right to pull out the subject items as Lariosa had no authority to sell the same to petitioner, but the latter was adamant in retaining such items. Fearing that his contract with Coca-Cola will be terminated as a result of the wrongful delivery, and in order to minimize losses, Tan negotiated with petitioner to instead deliver to him P20,000.00 worth of empty bottles with cases, as evidenced by their Agreement[8] dated January 18, 2011. Nonetheless, Tan felt aggrieved over the foregoing events, thus, prompting him to secure an authorization to file cases from Coca-Cola and charge petitioner with the crime of Fencing. He also claimed to have charged Lariosa with the crime of Theft but he had no update as to the status thereof.

The RTC found petitioner guilty and the CA affirmed petitioner's conviction.

**ISSUE:**

Whether or not the CA correctly upheld petitioner's conviction for the crime of Fencing. (YES)

**RULING:**

Section 2 of PD 1612 defines Fencing as "the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft."[23] The same Section also states that a Fence "includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing.

The essential elements of the crime of fencing are as follows: (*a*) a crime of robbery or theft has been committed; (*b*) the accused, who is not a principal or an accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the crime of robbery or theft; (*c*) the accused knew or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and (*d*) there is, on the part of one accused, intent to gain for oneself or for another.[25] Notably, Fencing is a *malum prohibitum*, and PD 1612 creates a *prima facie* presumption of Fencing from evidence of possession by the accused of any good, article, item, object or anything of value, which has been the subject of robbery or theft; and prescribes a higher penalty based on the value of the property.

In this case, the courts *a quo* correctly found that the prosecution was able to establish beyond reasonable doubt all the elements of the crime of Fencing, as it was shown that: (*a*) Lariosa sold to petitioner the subject items without authority and consent from his employer, Tan, for his own personal gain, and abusing the trust and confidence reposed upon him as a truck helper;[27] (*b*) petitioner bought the subject items from Lariosa and was in possession of the same; (*c*) under the

circumstances, petitioner should have been forewarned that the subject items came from an illegal source, as his transaction with Lariosa did not have any accompanying delivery and official receipts, and that the latter did not demand that such items be replaced with empty bottles, contrary to common practice among dealers of soft drinks;[28] and (*d*) petitioner's intent to gain was made evident by the fact that he bought the subject items for just P50,000.00, lower than their value in the amount of P52,476.00. "[T]he Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.

## D. Anti-Graft and Corrupt Practices Act (Sec. 3, RA 3019, as amended)

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner*, *vs.* OFFICE OF THE OMBUDSMAN, PLACIDO L. MAPA, JR., RECIO M. GARCIA, LEON O. TY, JOSE R. TENGCO, JR., ALEJANDRO MELCHOR, VICENTE PATERNO, RUBEN ANCHETA, RAFAEL SISON, HILARION M. HENARES, JR., CARMELINO G. ALVENDIA and GENEROSO F. TENSECO, *respondents*.**

G.R. No. 195962, SECOND DIVISION, April 18, 2018, CAGUIOA, *J.*

*Under the law, to be liable for the violation of the said Act, a person must have, among others, caused any undue injury to any party, including the Government, or gave any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.*

*The Court adopts with approval the OMB's findings on the failure of petitioner to point out with certainty and definiteness the specific acts of private respondents that constituted "manifest partiality," "evident bad faith," and "excusable negligence" as well as provide the basis for its conclusion that "unwarranted benefits" were accorded to and "manifest partiality" was bestowed by the DBP to PPRC.*

**FACTS:**

On 8 October 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans.Among the loan accounts investigated by the Committee was that of the Philippine Pigment and Resin Corporation (PPRC). In its *Seventeenth (17th) Fortnightly Report* to President Ramos dated 29 November 1993, the Committee reported that the loans/accommodations obtained by PPRC from the Development Bank of the Philippines (DBP) possessed positive characteristics of behest loans.On the strength of the Committee's findings, the complaint *a quo* was filed before [the] Office of the Ombudsman (OMB), accusing herein private respondents of *violation of Sections 3(e) and (g) of Republic Act 3019*, as amended, otherwise known as the *Anti-Graft and Corrupt Practices Act.*

The complaint *a quo* essentially alleges that PPRC was able to obtain two (2) foreign currency loans from DBP in the total amount of One Million Five Hundred Ninety Six Thousand Eight Hundred Twenty Two Dollars (US$1,596,822.00), or the equivalent of Eleven Million Nine Hundred Seventy

Six Thousand One Hundred Sixty Five Pesos (PhP11,976,165.00). Looking into the securities of the loan, it would appear that DBP's share on the aforesaid collaterals was valued at PhP17,615,685.00 and 64% thereof consisted of yet to be acquired assets. Moreover, it would be significant to note that at the time the loans were granted, PPRC's paid-up capital was only Php12,816,704.00.

Based on the examination of the loan amounts of PPRC, the Committee determined that such accounts are indeed behest loans and the same would have not been extended or granted to PPRC had it not been for the manifest partiality bestowed upon it by the Board of Governors of DBP.

**ISSUE:**

Whether or not the respondents are guilty of violation of the Anti-Graft and Corrupt Practices Act. (NO)

**RULING:**

Under the law, to be liable for the violation of the said Act, a person must have, among others, caused any undue injury to any party, including the Government, or gave any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

The Court adopts with approval the OMB's findings on the failure of petitioner to point out with certainty and definiteness the specific acts of private respondents that constituted "manifest partiality," "evident bad faith," and "excusable negligence" as well as provide the basis for its conclusion that "unwarranted benefits" were accorded to and "manifest partiality" was bestowed by the DBP to PPRC, stating reasons why the project was deserving of financial assistance.

It is thus not enough for the petitioner to simply say and sweepingly conclude that the Committee, based on the examination of the account of PPRC, had evaluated and determined the subject account and found it to be a "behest loan."As found by the OMB, to which the Court fully agrees, the elements of evident bad faith, manifest partiality and/or gross inexcusable negligence are lacking in the instant case; and petitioner failed to prove that the questioned foreign currency loans granted by the DBP to PPRC were grossly and manifestly disadvantageous to the government.

**GOVERNOR MARIA GRACIA CIELO M. PADACA*, Petitioner*,-versus- SANDIGANBAYAN, *Respondent***

GR No. 201800, SECOND DIVISION, August 08, 2018, REYES, JR., J

*A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.*

**FACTS:**

Santiago Respicio (Respicio) alleged that in January 2006, the Provincial Government of Isabela (Provincial Government) obtained a loan from the Development Bank of the Philippines (DBP), Ilagan, Isabela Branch, in the amount of P35 Million for the purpose of funding the Priority Agricultural Modernization Project of the province of Isabela. From the said amount, P25 Million was released to Economic Development for Western Isabela and Northern Luzon Foundation, Inc., (EDWINLFI), a private foundation headed by Municipal Councilor Servando Soriano (Soriano) as Chairman, Dionisio Pine (Pine) as Manager, and Provincial Government Legal Officer, Atty. Johnas Lamorena (Atty. Lamorena) as Director. The full amount of the loan, along with the interests and documentary stamp taxes, was paid using the Economic Development Fund of the province.

Respicio further stated that, to replenish the amount taken from the Economic Development Fund, Padaca caused the release of the same amount from the unreleased approved loans of the provincial government from the previous administration. Hence, the complaint against Provincial Administrator Ma. Theresa Flores, then Provincial Treasurer William Nicolas, Atty. Lamorena, Padaca, Soriano, and Pine for violation of Section 3 (e) of R.A. No. 3019, Illegal Use of Funds, and Malversation of Public Funds.

In her Counter-Affidavit, Padaca alleged that the Sangguniang Panlalawigan (SP) issued Resolution No. 061, which granted her authority to enter into a loan contract with the Land Bank of the Philippines under the hold-out on special savings deposit scheme from the DBP. This is to finance the Priority Agricultural Program of the province. She also claimed that the SP's subsequent ratification of the Memorandum of Agreement between the provincial government and EDWINLFI, is an express affirmation not only of the program's legality and propriety, but that it was carried out in accordance with the mandate of the SP.

Soriano and Pine, in their Joint Counter-Affidavitdenied Respicio's allegations. While Soriano admitted that he is a member of the Sangguniang Bayan, he claimed that he is not a member of the SP that ratified the transaction with EDWINLFI.For his part, Pine contended that he is a private individual who cannot be held as a conspirator in the absence of evidence proving the same.

Deputy Ombudsman Casimiro recommended that the information for the crime under RA 3019 be filed together with the information for Malversation of Public Funds. The Ombudsman then convicted the accused for the crimes she is charged and the Sandiganbayan affirmed the same.

Padaca argues that: a public bidding was not required under the circumstances and that the absence of the same did not result to undue injury to the Provincial Government nor did it create unwarranted benefits in favor of EDWINLFI and she acted within the bounds of her authority and in good faith.She also had no custody of the public funds, nor is she the accountable officer for the same; there is no showing that she derived any benefit from the loan proceeds;and there is no showing that she negligently caused or consented to any appropriation, taking, or misappropriation of public funds.

**ISSUE:**

Whether the Ombudsman and/or the Sandiganbayan committed any grave abuse of discretion amounting to lack or excess in jurisdiction in rendering the assailed resolutions finding probable cause to charge the petitioners with Violation of Section 3(e) of R.A. No. 3019 and Malversation of Public Funds (NO)

**RULING:**

As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman.As an exception however, "the Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction."

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

Based on its investigation, the Ombudsman found that Padaca engaged the services of EDWINLFI to manage Isabela's provincial rice program without due regard to the rules on government procurement and notwithstanding that the MOA was yet to be ratified by the SP.The Ombudsman also noted that the fact that EDWINLFI's officers include Soriano (Municipal Councilor) and Atty. Lamorena (Provincial Government's Legal Officer), engenders a suspicion as to the regularity of the transaction. Thus, the Ombudsman concluded that there is probable cause to believe that through manifest partiality, Padaca gave unwarranted preference and benefits to EDWINLFI in the discharge of her official function as governor of the Province of Isabela, which is penalized under Section 3(e) of R.A. No. 3019. Concomitantly, Soriano and Pine were charged based on their collaborative actions in the implementation of the Provincial Rice Program, which according to the Ombudsman, indicate the existence of common design to obtain unwarranted benefits at the expense of the Provincial Government.

The Ombudsman also found probable cause to charge the petitioners for Malversation of Public Funds. It discussed that based on Section 340 of the Local Government Code, Padaca is accountable for public funds through her individual participation in the use and application thereof. The Ombudsman held that Padaca's giving preference to EDWINLFI in the release of P25 Million without stipulations in the MOA as to the amount of the contract, the cost estimates, and terms of reference with respect to the scope of services for the implementation of the provincial rice program, including terms of repayment of the funds in favor of the provincial government and accountability of EDWINLFI for such funds, is as good as permitting, through abandonment or negligence, the latter to take such funds. Again, the charge against Soriano and Pine was due to their personal and deliberate participation in the transaction.

**FLORENCIA GARCIA-DIAZ, *Petitioner,* -versus- SANDIGANBAYAN, *Respondents.***

G.R. No. 193236, THIRD DIVISION, September 17, 2018, Leonen, *J.*

*Co-conspirators are liable collectively and equally for the common design of their criminal acts. When a contract that is grossly and manifestly disadvantageous to the government is entered into, the persons*

*involved—whether public officers or private persons—may be charged for violating the Anti-Graft and Corrupt Practices Act and suffer the same penalty if found guilty beyond reasonable doubt.*

*The Information filed in this case provides that Solicitor General Galvez, NAMRIA Administrator Solis, Officer-in-Charge Bonnevie, Assistant Director Fabian, and Remote Sensing Technologists Valencia and Viernes, all public officers, "conspiring, confederating and mutually helping one another, together with Florencia Garcia-Diaz, a private person," executed the Compromise Agreement that declared a part of Fort Magsaysay as outside the technical description provided in Presidential Proclamation No. 237. It obviously contains an allegation of conspiracy against petitioner Garcia-Diaz.*

**FACTS:**

Garcia-Diaz chose to amicably settle with the Republic with regard to a land registration case she filed which was opposed by the Republic on the ground that the title on which her claim was based was underliable. Through her counsel, then Atty. Fernando A. Santiago (Atty. Santiago), Garcia-Diaz submitted a draft Compromise Agreement dated May 16, 1997 to then Solicitor General Silvestre H. Bello III (Solicitor General Bello). Under the Compromise Agreement, the National Mapping and Resource Information Authority (NAMRIA) was authorized to conduct the final preliminary evaluation survey and to clarify the technical description of the reservation in Proclamation No. 237, specifically, to determine which portion of the property described in BL Plan II-6752 coincided with the actual ground location of Fort Magsaysay.

In his February 12, 1998 Letter, NAMFRIA Administrator Solis (Solis) essentially stated that the actual ground location of Fort Magsaysay did not match with the technical description as provided in Presidential Proclamation No. 237. Solis then recommended that Presidential Proclamation No. 237 be amended accordingly. Based on the findings stated in the Letter, the Republic, through Solicitor General Galvez, and Garcia-Diaz, through her counsel, then Atty. Santiago, signed and jointly filed a Motion for Approval of Amicable Settlement. In the Compromise Agreement, Garcia-Diaz agreed to withdraw her application for registration of the property covered by BL Plan II-6752 that was within Fort Magsaysay in exchange for the Republic's withdrawal of its opposition to the registration of the portion outside the reservation, a portion which was supposedly comprised of 4,689 hectares.

In the meantime, Secretary of Environment and Natural Resources Antonio Cerilles directed the new NAMRIA Administrator, Isidro S. Fajardo, to form a team to investigate the alleged anomaly involving the Compromise Agreement. The Investigating Committee then submitted a Memorandum to the Administrator where they declared inaccurate the statement of then Administrator Solis in his February 12, 1998 Letter that a portion of the property described in BL Plan II-6752 was outside the technical description of Fort Magsaysay as provided in Presidential Proclamation No. 237.

Public officers Solicitor General Galvez, NAMRIA officials Solis, Fabian, Bonnevie, Valencia, and Viernes, and private person Garcia-Diaz were charged for violating Section 3(g) of the Anti-Graft and Corrupt Practices Act before the Sandiganbayan which found Garcia-Diaz guilty as charged.

Garcia-Diaz alleges that she could not be prosecuted under RA 3019 as she was not a public officer.

**ISSUE:**

Whether or not Garcia-Diaz' conviction was correct (YES)

**RULING:**

It is true that Section 3 of RA 3019 speaks of corrupt practices of public officers. However, if there is an allegation of conspiracy, a private person may be held liable together with the public officer. This is consistent with the policy behind the statute, which, as provided in its first section, is "to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto." Thus, when an information alleges that a public officer "conspires," "confederates," "connives," or "colludes" with a private person, or when the "allegation of basic facts constituting conspiracy between the public officer and the private person is made in a manner that a person of common understanding would know what is intended,"108 then a private person may be convicted under Section 3 of RA 3019.

The Information filed in this case provides that Solicitor General Galvez, NAMRIA Administrator Solis, Officer-in-Charge Bonnevie, Assistant Director Fabian, and Remote Sensing Technologists Valencia and Viernes, all public officers, "***conspiring, confederating and mutually helping one another***, together with Florencia Garcia-Diaz, a private person," executed the Compromise Agreement that declared a part of Fort Magsaysay as outside the technical description provided in Presidential Proclamation No. 237. It obviously contains an allegation of conspiracy against petitioner Garcia-Diaz.

Having been charged and tried under a valid Information, petitioner Garcia-Diaz was validly convicted of Section 3(g) of RA 3019. This is despite her being a private person.

**FAROUK B. ABUBAKAR, ULAMA S. BARAGUIR, DATUKAN M. GUIANI, *Petitioners,* -versus- PEOPLE OF THE PHILIPPINES, *Respondent.***

G.R. No. 202408, THIRD DIVISION, June 27, 2018, LEONEN, *J.*

*The application of the doctrine is subject to the qualification that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care. In a number of cases, this Court refused to apply the Arias doctrine considering that there were circumstances that should have prompted the government official to inquire further.*

**FACTS:**

The case involves three consolidated petitions for review on certioriari concerning the Sandiganbayan judgments that previously declared petitioners Farouk B. Abubakar (Abubakar), Ulama S. Baraguir (Baraguir) and Datukan M. Guiani (Guiani) guilty beyond reasonable doubt of several counts of violation of Section 3(e) of Republic Act No. 3019, which punishes a public officer who causes "any undue injury to any party, including the Government" or gives "any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence."

Their case was with regards to their alleged anomalies in the implementation of infrastructure projects within the Autonomous Region of Muslim Mindanao (ARMM) during their time as public officials of the Department of Public Works and Highway. Throughout their pleadings, petitioners invoke good faith as a defense. They claim that they relied on the representations and assurances of

their subordinates who were more versed on technical matters. Guiani, in particular, asserts that the Sandiganbayan should have applied the *Arias doctrine* in this case, where the accused should not have been penalized for relying on the acts of their subordinates that were presumed to be done in accordance with law.

**ISSUE:**

Whether or not petitioners Farouk B. Abubakar, Ulama S. Baraguir, and Datukan M. Guiani should be exonerated from criminal liability based on the Arias doctrine. (NO)

**RULING:**

The ruling in *Arias v. Sandiganbayan* cannot exonerate petitioners from criminal liabilty. *Arias* laid down the doctrine that heads of offices may, in good faith, rely to a certain extent on the acts of their subordinates "who prepare bids, purchase supplies, or enter into negotiations." This is based upon the recognition that heads of offices cannot be expected to examine every single document relative to government transactions.

The application of the doctrine is subject to the qualification that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care. In a number of cases, this Court refused to apply the *Arias* doctrine considering that there were circumstances that should have prompted the government official to inquire further.

In the present case, the *Arias* doctrine cannot exonerate petitioners Abubakar, Baraguir, or Guiani from criminal liability as there were circumstances that should have prompted them to make further inquiries on the transactions subject of this case, such as the apparent irregularity on the face of the certificates of mobilization that bore dates earlier than scheduled public bidding, as well as the patently illegal stipulation in the Contract of Survey Work used as the primary supporting document for the disbursement of the 30% mobilization fee.

The rules on public bidding and on public funds disbursement are imbued with public interest. The positions and functions of petitioners Abubakar, Baraguir, and Guiani impose upon them a greater responsibility in ensuring that rules on these matters are complied with. They are expected to exercise a greater degree of diligence.

The Supreme Court denied the consolidated petitions. Abubakar was found guilty beyond reasonable doubt of ten (10) counts of violation of Section 3(e) of Republic Act No. 3019, while Baraguir and Guiani were found guilty beyond reasonable doubt of seventeen (17) counts of violation of Section 3(e) of Republic Act No. 3019.

**CARMENCITA O. REYES, *Petitioner,* -versus- SANDIGANBAYAM (FIRST DIVISION), OFFICE OF THE SPECIAL PROSECUTOR, OFFICE OF THE OMBUDSMAN, AND THE PEOPLE OF THE PHILIPPINES, *Respondents.***

G.R. Nos. 203797-98, SECOND DIVISION, June 27, 2018, REYES, JR., *J.*

*In a petition for certiorari, the public respondent acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps its authority as determined by law. There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be said to be equivalent to lack of jurisdiction. Mere abuse of discretion is not enough.*

**FACTS:**

The case stems from the investigation of various transactions of the fertilizer fund involving public officers from the Department of Agriculture (DA). This included petitioner Carmencita Reyes (Reyes), who was charged for alleged violation of Article 220 (Illegal Use of Public Funds or Property, commonly known as Technical Malversation) of the Revised Penal Code and Section 3(e) and (g) of Republic Act (R.A.) No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," both of which were allegedly committed during her incumbency as Provincial Governor of Marinduque.

**ISSUE:**

Whether or not the respondent court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the assertion of the petitioner that no probable cause exists for either case. (NO)

**RULING:**

The Supreme Court denied Reyes' petition and affirmed the Resolutions of the Sandiganbayan because the contentions are matters of defense that should be resolved in a trial.

Public respondent also correctly contended that Reyes not only had a direct hand in the questioned transactions, but also initiated the transactions in question as borne out of their respective letter requests and purchase request, which are enough to engender a well-founded belief that the crime charged may have been committed by Reyes and that any assertion that negates the complication of the documents are a matter of defense.

Additionally, the Requisition and Issue Slip dated May 5, 2004, would show that petitioner Reyes had categorically mentioned the brand name "TORNADO" Brush Chipper/Shredder, which was the brand claimed to be exclusively distributed by LCV Design and Fabrication Corporation. On this score, said connections can also establish probable cause which the Sandiganbayan may disprove during the trial. Therefore, a judicious reading of the arguments propounded by the accused-movants reveal that they are matters of defense which should be ventilated during the trial proper.

In a petition for certiorari, the public respondent acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps its authority as determined by law. There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic

manner in the exercise of its judgment as to be said to be equivalent to lack of jurisdiction. Mere abuse of discretion is not enough, but here there is no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan when it denied Reyes's assertion that no probable cause exists for both cases. There was also no grave abuse of discretion on the part of the Ombudsman when it found probable cause to file the Information against the accused in these cases, because aside from its own exhaustive investigation, the Office of the Ombudsman also referred to the Senate Blue Ribbon Committee Report to supplement its findings of probable cause, on the basis of which the investigating prosecutors were able to determine that an offense had probably been committed and that the accused probably perpetrated it.

**MELITA O. DEL ROSARIO, *Petitioner,* -versus- PEOPLE OF THE PHILIPPINES, *Respondent.***

G.R. No. 199930, THIRD DIVISION, June 27, 2018, BERSAMIN, *J.*

*R.A. No. 6713 does not expressly state the prescriptive period for the violation of its requirement for the SALNs. Hence, Act No. 3326 – the law that governs the prescriptive periods for offenses defined and punished under special laws that do not set their own prescriptive periods – is controlling.*

**FACTS:**

The Office of the Ombudsman brought a complaint charging Melita O. Del Rosario with the violation of Section 8 of R.A. No. 6713; dishonesty; grave misconduct; and conduct prejudicial to the best interest of the service. This was after the accused, a government employee holding the position of Chief Valuation and Classification Division-Office of the Commissioner in the Bureau of Customs, Port Area, Manila, failed to file her Sworn Statement of Assets, Liabilities and Net Worth (SALN) for the years 1990 and 1991.

Petitioner Del Rosario later filed a Motion to Quash on the ground of prescription of the offenses that was granted by the MeTC and upheld by the RTC.

Consequently, the State elevated the case to the Sandiganbayan arguing that the RTC had erred in ruling that the eight-year prescriptive period for violation of Section 8 of R.A. No. 6713 commenced to run on the day of the commission of the violations, not from the discovery of the offenses. The Sandiganbayan applied the discovery rule and reversed the decisions of the MeTC and RTC accordingly.

**ISSUE:**

Whether or not the eight-year prescriptive period for the offense committed in violation of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) should be reckoned from the discovery of the non-filing of the detailed SALN. (NO)

**RULING:**

The Supreme Court reversed the decision by the Sandiganbayan and affirmed the decision rendered by the RTC upholding the quashal of the Informations in the criminal cases filed against Del Rosario.

In applying the discovery rule, the Sandiganbayan relied on the rulings handed down in the so-called Behest Loans Cases, whereby the prescriptive period was reckoned from the date of discovery of the offenses, as it would be difficult for the Office of the Ombudsman to know on the required dates of filing of the failure to file the SALNs on the part of the erring public officials or employees. However, the Sandiganbayan erred in applying the discovery rule to Del Rosario's cases.

R.A. No. 6713 does not expressly state the prescriptive period for the violation of its requirement for the SALNs. Hence, Act No. 3326 – the law that governs the prescriptive periods for offenses defined and punished under special laws that do not set their own prescriptive periods – is controlling. The Section 1of Act No. 3326 provides that violations penalized by specialized by special acts shall, unless otherwise provide in such acts prescribe xxx (c) after eight years for those punished by imprisonment for two years or more, but less than six years.

The relevant legal provision on the reckoning of the period of prescription is Section 2 of Act No. 3326. Under Section 2, there are two modes of determining the reckoning point when prescription of an offense runs. The first, to the effect that prescription shall "run from the day of the commission of the violation of the law," is the general rule. The Supreme Court has declared in this regard that the fact that any aggrieved person entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises does not prevent the running of the prescriptive period. The second mode is an exception to the first, and is otherwise known as the discovery rule.

The complaint charging the petitioner with the violations was filed only on October 28, 2004, or 13 years after the April 30, 1991 deadline for the submission of the SALN for 1990, and 12 years after the April 30, 1992 deadline for the submission of the SALN for 1991. With the offenses charged against the petitioner having already prescribed after eight years in accordance with Section 1 of Act No. 3326, the informations filed against the petitioner were validly quashed.

Conformably with the foregoing, the Supreme Court cannot apply the discovery rule or the blameless ignorance doctrine to the criminal charges against the Del Rosario because when there are reasonable means to be aware of the commission of the offense, the discovery rule should not be applied. To prosecute an offender for an offense not prosecuted on account of the lapses on the part of the Government and the officials responsible for the prosecution thereof or burdened with the duty of making sure that the laws are observed would have the effect of condoning their indolence and inaction.

Furthermore, the Sandiganbayan's opinion that it would be burdensome and highly impossible for the CSC, the Office of the Ombudsman and any other concerned agency of the Government to come up with a tracking system to ferret out the violators of R.A. No. 6713 on or about the time of the filing of the SALNs is devoid of persuasion and merit.

**E. Anti-Hazing Act of 2018 (Secs. 2 and 3, RA 8049, as amended by RA 11053)**

**F. Anti-Hijacking Law (Secs. 1 and 3, RA 6235)**

**G. Anti-Photo and Video Voyeurism Act of 2009 (Secs. 3 [a, b, d, f] and 4, RA 9995)**

**H. Anti-Plunder Act (Secs. 1 and 2, RA 7080, as amended by RA 7659)**

**I. Anti-Sexual Harassment Act of 1995 (Sec. 3, RA 7877)**

**J. Anti-Torture Act of 2009 (Secs. 3 [a, b], 4, and 5, RA 9745)**

**K. Anti-Trafficking in Persons Act of 2003 (Secs. 3, 4, and 6, RA 9208, as amended)**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- EVANGELINE DE DIOS y BARRETO, *Accused-Appellant.***

G.R. No. 234018, SECOND DIVISION, June 6, 2018, Reyes, Jr. *J.*

*It did not matter that there was no threat, force, coercion, abduction, fraud, deception or abuse of power that was employed by De Dios when she involved AAA in her illicit sexual trade. AAA was still a minor when she was exposed to prostitution by the prodding, promises and acts of De Dios. Trafficking in persons may be committed also by means of taking advantage of the persons' vulnerability as minors, a circumstance that applied to AAA, was sufficiently alleged in the information and proved during the trial.*

**FACTS:**

The National Bureau of Investigation Anti-Human Trafficking Division (NBI-AHTRAD) received information that herein accused-appellant Evangeline De Dios (De Dios) was peddling minors for sexual trade under the bridge at Marikina River Park. Thus, one evening, Rugelito Gay (Gay) and two other male customers were approached by De Dios and asked if they wanted a "gimik" which meant having sex with a girl for P500.00. Gay agreed to the proposal and thereafter, De Dios called three girls who were standing by the steel railings. Gay was allowed to choose from among the girls, and then selected AAA. It turns out that Gay and his companions were mere poseur customers, and that De Dios was the subject of an entrapment operation.

AAA testified that she knew De Dios through her best friend, Nicole, who also worked for De Dios in the latter's illegal activity. Sometime in May 2012, AAA had her first "gimik" with De Dios' male customer who brought her to a hotel in Antipolo City and there he had sexual intercourse with her. From then on, AAA worked for De Dios and had sex with several other male customers. She received P400.00 from De Dios for every transaction.

The RTC found De Dios guilty of Qualified Trafficking in Persons under Section 3(a) in relation to Section 6(a) of RA 9208 as amended by RA 10364. The CA affirmed the RTC decision.

**ISSUE:**

Whether or not De Dios is guilty of qualified trafficking in persons (YES)

**RULING:**

In *People vs. Hirang*, the Supreme Court reiterated the following elements of the offense, as derived from Section 3(a) of R.A. No. 9208: (1) The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (2) The *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception or abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (3) The *purpose* of trafficking is exploitation which

includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."

AAA directly explained the participation of De Dios in her prostitution even prior to the subject entrapment. De Dios convinced her to join the "gimiks" for the money. She was first lured to prostitution in May 2012, when De Dios offered her to a male customer and paid her P400.00 for the transaction. Several other transactions transpired thereafter. De Dios would transact with the customers and then pay AAA each time for her service.

It did not matter that there was no threat, force, coercion, abduction, fraud, deception or abuse of power that was employed by De Dios when she involved AAA in her illicit sexual trade. AAA was still a minor when she was exposed to prostitution by the prodding, promises and acts of De Dios. Trafficking in persons may be committed also by means of taking advantage of the persons' vulnerability as minors, a circumstance that applied to AAA, was sufficiently alleged in the information and proved during the trial. This element was further achieved through the offer of financial gain for the illicit services that were provided by AAA to the customers of De Dios.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- GLORIA NANGCAS, *Accused-Appellant.***
G.R. No. 218806, THIRD DIVISION, June 13, 2018, MARTIRES, *J.*

*The crime committed* ***was qualified trafficking, as it was committed in a large scale and three of Nangcas's victims were under 18 years of age****. The information filed against Nangcas sufficiently alleged the recruitment and transportation of the four girls for forced labor or services, with Nangcas taking advantage of the vulnerability of the young girls through her assurance and promises of good salary, accessibility of place, and weekly day off.*

*Actual fraud and deception are present in this case when Nangcas induced the recruits to go with her, promising them that they would be working as house helpers in Cagayan de Oro City and would be having a weekly day off. She specifically* ***employed deceptive tactics*** *to lure the parents and the victims into agreeing to serve as house helpers in Cagayan de Oro City. The records showed that Nangcas's intention to bring the victims to Marawi was already planned and her failure to notify the parents of their whereabouts strengthens the allegation that it was really her intention to conceal the fact that the work was actually in Marawi City.*

**FACTS:**

Gloria Nangcas approached (19)-year-old Judith Singane, (14)-year-old AAA, (13)-year-old BBB and (17)-year-old CCC who was AAA's sister, asked if they wanted to work as house helper at Camella Homes in Cagayan de Oro City. Enerio, Judith's father, although adamant at first, later on gave his consent because the location of the employer was only nearby. AAA and CCC's father rejected the idea and their mother was apprehensive that their daughters might be brought to Marawi. Nangcas

assured the parents that that the children would only work at the nearby Camella Homes, so the parents eventually agreed.

Nangcas brought the children to Camella Homes but the alleged employer was not there. Nangcas told them that they had to go to Cogon. Upon reaching Cogon, they boarded a van going to Iligan City where the alleged employer was. It was only upon reaching Iligan City that Nangcas told them that they would be working as house helpers in Marawi. The girls complained but they did not have any money for going back to Cagayan de Oro. Nangcas brought AAA and CCC to work for one Baby Abas in Marawi and Judith and BBB to Baby's sister.

The girls worked in Marawi for more than a month. They testified that they were not paid their salaries, they were made to eat leftover rice, and were threatened not to escape as the solders would kill them since they were Christians.

When Enerio called up Nangcas to ask about his daughter, Nangcas did not tell him about his daughter's present whereabouts. With the help of the neighbor's kasambahay, Judith was able to call and inform Enerio about her situation. Enerio sought assistance from the police officers and they successfully rescued the four girls.

**ISSUE:**

Whether or not Nangcas was guilty of the crime of Qualified Trafficking in Persons of RA 9207. (YES)

**RULING:**

**Section 3. Definition of Terms**

> (d) Forced Labor and Slavery — refer to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception.

**Section 4. Acts of Trafficking in Persons. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:**

> (a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

**Section 6. Qualified Trafficking in Persons. — The following are considered as qualified trafficking:**

> (a) When the trafficked person is a child;
>
> xxx xxx xxx

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;

The crime committed **was qualified trafficking, as it was committed in a large scale and three of Nangcas's victims were under 18 years of age**. The information filed against Nangcas sufficiently alleged the recruitment and transportation of the four girls for forced labor or services, with Nangcas taking advantage of the vulnerability of the young girls through her assurance and promises of good salary, accessibility of place, and weekly day off.

Actual fraud and deception are present in this case when Nangcas induced the recruits to go with her, promising them that they would be working as house helpers in Cagayan de Oro City and would be having a weekly day off. She specifically **employed deceptive tactics** to lure the parents and the victims into agreeing to serve as house helpers in Cagayan de Oro City. The records showed that Nangcas's intention to bring the victims to Marawi was already planned and her failure to notify the parents of their whereabouts strengthens the allegation that it was really her intention to conceal the fact that the work was actually in Marawi City.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. XXX and YYY, accused-appellants.**
G.R. No. 235652, SECOND DIVISION, July 9, 2018, PERLAS-BERNABE, J.

*Section 3 (a) of RA 9208 defines the term "Trafficking in Persons" as the "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." The crime of "Trafficking in Persons" becomes qualified under, among others, the following circumstances:*

*Section 6. Qualified Trafficking in Persons. — The following are considered as qualified trafficking:*
*(a) When the trafficked person is a child;*
*xxx xxx xxx*
*(d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;*
*xxx xxx xxx*

*In this case, accused-appellants are guilty beyond reasonable doubt of three (3) counts of Qualified Trafficking in Persons under Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208 as the prosecution had established beyond reasonable doubt that: (a) they admittedly are the biological parents of AAA, BBB, and CCC, who were all minors when the crimes against them were committed; (b) they made their children perform acts of cybersex for different foreigner customers, and thus, engaged them in prostitution and pornography; (c) they received various amounts of money in*

*exchange for the sexual exploitation of their children; and (d) they achieved their criminal design by taking advantage of their children's vulnerability as minors and deceiving them that the money they make from their lewd shows are needed for the family's daily sustenance.*

**FACTS:**

This case stemmed from various Informations filed before the RTC, charging accused-appellants and a certain John Doe of the crime of Qualified Trafficking in Persons, among others.

The prosecution claimed that AAA, BBB, and CCC are the minor children of spouses XXX and YYY. AAA claimed that, when she was just 13 years old, her mother XXX brought her to a hotel in Makati to meet with a certain John Hubbard who proceeded to have sexual intercourse with her. AAA further alleged that from 2008 to 2011, XXX ordered her to engage in cybersex for three (3) to four (4) times a week in pornographic websites. For their part, BBB and CCC corroborated AAA's statements, both averring that from 2010-2011, XXX ordered them to dance naked in front of the computer while facilitating the webcam sessions and chatting with a certain "Sam," their usual client. BBB and CCC alleged that during those sessions, their father YYY would be outside the room or fixing the computer. The children all claimed that they were made to do sexual activities to earn money for their household expenses which were collected by YYY in remittance centers.

Sometime in February 2011, AAA sought the assistance of the Department of Social Welfare and Development (DSWD). AAA was then taken by the DSWD Social Worker, who then coordinated with the NBI. After making an investigation and a technical verification of the pornographic websites which revealed photos and transactions of AAA, the NBI applied for and was granted a search warrant. Subsequently, the law enforcement authorities implemented the search warrant, resulting in the rescue of AAA, BBB, and CCC, the confiscation of the computer units and paraphernalia connected with the alleged crimes, and the arrest of both XXX and YYY.

The RTC found accused-appellants guilty beyond reasonable doubt of four (4) counts of Qualified Trafficking in Persons as defined and penalized under RA 9208. All other charges against them were dismissed for being superfluous as they are deemed subsumed under the crimes for which they were convicted.

The CA affirmed accused-appellants' conviction but reduced to three (3) counts YYY's conviction of Qualified Trafficking in Persons.

**ISSUE:**

Whether or not XXX and YYY are guilty beyond reasonable doubt of four (4) and three (3) counts, respectively, of Qualified Trafficking in Persons. (YES)

**RULING:**

Section 3 (a) of RA 9208 defines the term "Trafficking in Persons" as the "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent

of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." The same provision further provides that "[t]he recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph." The crime of "Trafficking in Persons" becomes qualified under, among others, the following circumstances:

> Section 6. Qualified Trafficking in Persons. — The following are considered as qualified trafficking:
> (a) When the trafficked person is a child;
> xxx xxx xxx
> (d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
> xxx xxx xxx

Accused-appellants were charged of three (3) counts each of Qualified Trafficking in Persons under Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208. XXX was further charged with another count of the same crime under Section 4 (a) also in relation to Section 6 (a) and (d) of the same law.

As correctly ruled by the courts a quo, accused-appellants are guilty beyond reasonable doubt of three (3) counts of Qualified Trafficking in Persons under Section 4 (e) in relation to Section 6 (a) and (d) of RA 9208 as the prosecution had established beyond reasonable doubt that: (a) they admittedly are the biological parents of AAA, BBB, and CCC, who were all minors when the crimes against them were committed; (b) they made their children perform acts of cybersex for different foreigner customers, and thus, engaged them in prostitution and pornography; (c) they received various amounts of money in exchange for the sexual exploitation of their children; and (d) they achieved their criminal design by taking advantage of their children's vulnerability as minors and deceiving them that the money they make from their lewd shows are needed for the family's daily sustenance.

In the same manner, the courts a quo likewise correctly convicted XXX of one (1) count of the same crime, this time under Section 4 (a) in relation to Section 6 (a) and (d) of RA 9208, as it was shown that XXX transported and provided her own minor biological child, AAA, to a foreigner in Makati City for the purpose of prostitution, again under the pretext that the money acquired from such illicit transaction is needed for their family's daily sustenance.

In light of the foregoing, the Court found no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case.

## L. Anti-Violence Against Women and their Children Act of 2004 (Secs. 3, 5, and 26, RA 9262)

**AAA, *Appellee,* -versus- BBB,*Appellant.***
G.R. No. 212448, FIRST DIVISION, January 11, 2018, TIJAM, *J.*

*While the psychological violence as the means employed by the perpetrator is certainly an indispensable element of the offense,* ***equally essential also is the element of mental or emotional anguish which is personal to the complainant****. Section 7 of R.A. No. 9262 contemplates that acts of violence against women and their children may manifest as* ***transitory or continuing crimes The court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case.***

**FACTS:**

AAA (wife) and BBB (husband) were married and have two children: CCC and DDD. In 2007, BBB started working in Singapore as chef. It was alleged by AAA that BBB sent **little to no financial support**, and only sporadically. This allegedly compelled her to fly extra hours and take on additional jobs to augment her income as a flight attendant. There were also allegations of **virtual abandonment, mistreatment** of her and their son CCC, and **physical and sexual violence**. To make matters worse, BBB supposedly started **having an affair** with a Singaporean woman with whom he allegedly has been living in Singapore.

AAA filed an Information which charged respondent BBB under **Section 5 (i) of R.A. No. 9262** - ***Causing mental or emotional anguish****, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children.* BBB filed a motion to quash which was granted by the RTC stating that the acts complained of him had **occurred in Singapore**. Dismissal of this case is proper since the Court enjoys no jurisdiction over the offense charged, it having **transpired outside the territorial jurisdiction** of this Court.

AAA then sought direct resort to the SC via Petition for the issuance of *writ of certiorari* under Rule 45 of the Rules of Court. AAA argues that **mental and emotional anguish is an essential element** of the offense charged against BBB, which is **experienced by her wherever she goes, and not only in Singapore where the extra-marital affair takes place**; thus, the RTC where she resides can take cognizance of the case. In support of her theory, she raised Sec. 7, R.A. No. 9262 which provides, "xxx the case shall be filed in the Regional Trial Court where the crime **or any of its elements** was committed xxx."

**ISSUE:**

Whether or not the Philippine courts may exercise jurisdiction over an offense constituting psychological violence under R.A. No. 9262 committed through marital infidelity, when the alleged illicit relationship occurred or is occurring outside the country. (YES)

**RULING:**

As jurisdiction of a court over the criminal case is **determined by the allegations in the complaintor information,** threshing out the essential elements of psychological abuse under R.A.

No. 9262 is crucial. In *Dinamling v. People*, the Court enumerated the elements of psychological violence under Section 5 (i) of R.A. No. 9262, as follows:

(1) The offended party is a woman *and/or* her child or children;
(2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;
(3) **The offender causes on the woman and/or child mental or emotional anguish;** and
(4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions.

Psychological violence is an element of violation of Section 5(i) just like the mental or emotional anguish caused on the victim. Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused to or the damage sustained by the offended party. What R.A. No. 9262 criminalizes is not the marital infidelity *per se* but the psychological violence causing mental or emotional suffering on the wife.

In Section 7 of R.A. No. 9262, venue undoubtedly pertains to jurisdiction. As correctly pointed out by AAA, Section 7 provides that the case may be filed where the crime or any of its elements was committed at the option of the complainant. While the psychological violence as the means employed by the perpetrator is certainly an indispensable element of the offense, **equally essential also is the element of mental or emotional anguish which is personal to the complainant**.

Section 7 of R.A. No. 9262 contemplates that acts of violence against women and their children may manifest as **transitory or continuing crimes**; meaning that some acts material and essential thereto and requisite in their consummation occur in one municipality or territory, while some occur in another. In such cases, **the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case**

In the present scenario, the offended wife and children of respondent husband are residents of Pasig City since March of 2010. Hence, the RTC of Pasig City may exercise jurisdiction over the case.

**CELSO M.F.L. MELGAR, *Petitioner,* -versus - PEOPLE OF THE PHILIPPINES, *Respondent.***
G.R. No. 223477, SECOND DIVISION, February 14, 2018, PERLAS-BERNABE, *J.*

*Taking into consideration the variance doctrine which allows the conviction of an accused for a crime proved which is different from but necessarily included in the crime charged — the courts a quo correctly convicted Melgar of violation of Section 5 (e) of RA 9262 as the deprivation or denial of support, by itself and even without the additional element of psychological violence, is already specifically penalized therein.*

**FACTS:**
In an Information, petitioner Celso Melgar (Melgar) was charged of economic abuse against AAA and her minor son, BBB, by depriving them of financial support, which caused mental or emotional anguish, public ridicule or humiliation, to AAA and her son. After arraignment wherein Melgar

pleaded not guilty to the charge against him, he and AAA entered into a compromise agreement on the civil aspect of the case. After the RTC's approval of the compromise agreement, the criminal aspect of the case was provisionally dismissed with Melgar's conformity. However, one (1) year later, the prosecution moved to set aside the compromise agreement and to revive the criminal action, on the ground that Melgar sold the property, which was supposed to, among others, answer for the support-in-arrears of his son, BBB, pursuant to their compromise agreement. Consequently, the RTC revived the criminal aspect of the case and allowed the prosecution to present its evidence.

The RTC found Melgar guilty beyond reasonable doubt of violating Section 5 (e) of RA 9262, which the CA affirmed. The appellate court ruled that he committed economic abuse under Section 5 (e) of RA 9262 and that Melgar's acts "has clearly caused mental or emotional anguish, public ridicule or humiliation to AAA and her child, BBB."

Undaunted, Melgar moved for reconsideration, which was, however, denied; hence, this petition. Melgar argues, inter alia, that he was charged of violation of Section 5 (i) of RA 9262 as the Information alleged that the acts complained of "caused mental or emotional anguish, public ridicule or humiliation to AAA and her son, BBB." As such, he contends that he cannot be convicted of violation of Section 5 (e) of RA 9262.

**ISSUE:**
Whether or not the CA correctly upheld Melgar's conviction for violation of Section 5 (e) of RA 9262. (YES)

**RULING:**
Section 5 (i) of RA 9262, a form of psychological violence, punishes the act of "causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children." Notably, "psychological violence is an element of violation of Section 5 (i) just like the mental or emotional anguish caused on the victim. Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused to or the damage sustained by the offended party. To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5 (i) or similar acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party." Thus, in cases of support, it must be first shown that the accused's denial thereof — which is, by itself, already a form of economic abuse — further caused mental or emotional anguish to the woman-victim and/or to their common child.

In this case, while the prosecution had established that Melgar indeed deprived AAA and BBB of support, no evidence was presented to show that such deprivation caused either AAA or BBB any mental or emotional anguish. Therefore, Melgar cannot be convicted of violation of Section 5 (i) of RA 9262. This notwithstanding — and taking into consideration the variance doctrine which allows the conviction of an accused for a crime proved which is different from but necessarily included in the crime charged — the courts a quo correctly convicted Melgar of violation of Section 5 (e) of RA 9262 as the deprivation or denial of support, by itself and even without the additional element of psychological violence, is already specifically penalized therein.

The courts a quo correctly found that all the elements of violation of Section 5 (e) of RA 9262 are present, as it was established that: (a) Melgar and AAA had a romantic relationship, resulting in BBB's birth; (b) Melgar freely acknowledged his paternity over BBB; (c) Melgar had failed to provide BBB support ever since the latter was just a year old; and (d) his intent of not supporting BBB was made more apparent when he sold to a third party his property which was supposed to answer for, among others, his support-in-arrears to BBB. Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case.

**s**

**PENSION AND GRATUITY MANAGEMENT CENTER (PGMC), GHQ, AFP, CAMP AGUINALDO, QUEZON CITY, REPRESENTED BY ITS CURRENT CHIEF,** *petitioner* **-versus- AAA (CA-GR SP NO. 04359-MIN),** *respondent.*

GR No. 201292, FIRST DIVISION, 01 August 2018, DEL CASTILLO, J.

*The Court held in Republic v. Yahon that PGMC may be ordered to automatically deduct a portion from the retirement benefits of its member-recipients for direct remittance to the latter's legal spouse notwithstanding the prohibition under laws governing the retirement and separation of military personnel. Such deduction serves as way of support in compliance with a protection order issued by the trial court, pursuant to the provisions of the Anti-Violence Against Women and Their Children Act of 2004 (RA 9262).*

*Section 8 of RA 9262 itself explicitly authorizes the courts to order the withholding of a percentage of the income or salary of the defendant or respondent by the employer, which shall be remitted directly to the plaintiff or complainant - other laws to the contrary notwithstanding.*

**FACTS:**

AAA filed an action for support against her husband, BBB – a retired military person, before the Regional Trial Court of Isabela. The trial court ruled in favor of AAA and issued a Permanent Protection Order. It also ordered the withholding of BBB's monthly pension by PGMC of the Armed Forces of the Philippines and its direct remittance to AAA.

PGMC argued that it may not legally release any portion of BBB's monthly pension to AAA because the law prohibits the release and distribution of monthly pensions of retired military personnel to any person other than the retiree himself. It also alleged that pensions are public funds and may not be appropriated for a purpose not intended by law.

**ISSUE:**

Whether or not PGMC may be validly ordered by the court to withhold half of BBB's pension for direct remittance to AAA. (YES)

**RULING:**

*Republic v. Yahon falls squarely to this case.*The Court held in Yahon that PGMC may be ordered to automatically deduct a portion from the retirement benefits of its member-recipients for direct remittance to the latter's legal spouse notwithstanding the prohibition under laws governing the retirement and separation of military personnel. Such deduction serves as way of support in compliance with a protection order issued by the trial court, pursuant to the provisions of the Anti-Violence Against Women and Their Children Act of 2004 (RA 9262).

Further, it was explained that RA 9262, a special law which addresses one form of violence which is economic violence, should be construed as an exception to the general rule that retirement benefits are exempt from execution. Section 8 of RA 9262 itself explicitly authorizes the courts to order the withholding of a percentage of the income or salary of the defendant or respondent by the employer, which shall be remitted directly to the plaintiff or complainant - **other laws to the contrary notwithstanding.**

**M. Bouncing Checks Law (Sec. 1, BP 22)**

**N. Comprehensive Dangerous Drugs Act of 2002 (Secs. 5, 11, 15, and 21, RA 9165, as amended by RA 10640)**

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- ALEXANDER ALVARO *y* DE LEON and ROSALIE GERONIMO *y* MADERA, *Appellants.***
G.R. No. 225596, SECOND DIVISION, January 10, 2018, PERLAS-BERNABE, *J.*

*To obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must* ***be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the corpus delicti.*** *The team of apprehending officers failed to show an unbroken chain of custody over those items seized and those presented in court as there were inconsistencies with the testimonies of the officers regarding the place of marking of the evidence, the presence of witness requires, the required photograph of the seized items, the markings on the sachet, and the possession of the seized items.*

**FACTS:**

On June 5, 2008, after receiving a tip from a confidential informant about the drug peddling activity of Rosalie Geronimo y Madera (Geronimo), a team composed of Makati Anti-Drug Abuse Council (MADAC) and Station Anti-Illegal Drugs – Special Operation Task Force (SAID-SOTF) operative proceeded to Laperal Compound, Brgy. Guadalupe Viejo, Makati City. MADAC Operative Siborboro was designated as the poseur-buyer, while the rest of the team composed of PO3 Castillo, PO2 Orante, Jr., and PO1 Mendoza.

At the target area, Siborboro was introduced to Geronimo, who asked the former how much he intended to buy. Siborboro then handed the marked money worth P500 bill to Geronimo, who, in turn gave the same to her companion Alexander Alvaro (Alvaro). Thereafter, Geronimo took out two

plastic sachets of suspected *shabu*, and handed one to Siborboro. Upon receipt, he gave signal to the back-up officers to rush in and arresr Geronimo and Alvaro.

Siborboro confiscated the remaining sachet, while PO3 Castillo recovered the buy-bust money from Alvaro. Siborboro immediately marked he sachet subject of the sale with "JSJR" and the other recovered from Geronimo with "JSJR-1." He also prepared an inventory of the seized items which were allegedly signed by PO3 Castillo and Brgy. Chairman Bobier as witnesses. The seized items were transmitted to PO1 Santos who prepared the request for laboratory examination. After the laboratory examination, the specimen tested positive for *shabu.*

In her defense, Geronimo alleged that there were inconsistencies and numerous lapses in complying with the procedures.

**ISSUE:**

Whether or not the accused are guilty of violating Sections 5 and 11, Article 2 of RA 9165. (NO)

**RULING:**

Accused-appellants were charged with illegal sale of dangerous drugs under Section 5, Article II of RA 9165, and in addition, Geronimo was charged with illegal possession of dangerous drugs. In order to secure a conviction for the foregoing crimes, it remains essential that the identity of the confiscated drugs be established beyond reasonable doubt. To obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must **be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.**

**Section 21, Article II of RA 9165 provides the chain of custody rule**, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his 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 of the same; also, the seized drugs must be turned over to the PNP Crime Laboratory within twenty four (24) hours from confiscation for examination.

Non-compliance **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. However, for this saving clause to apply, **the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**

The Court concurs with Geronimo and Alvaro that there are numerous lapses and even inconsistencies in handling the subject confiscated drugs.

***First.*** With respect to the place of marking, Siborboro's testimony that he immediately marked and inventoried the seized items at the place of arrest was contradicted by PO3 Castillo who said that

they did not prepare the inventory at the place of the arrest instead, they conducted the inventory along EDSA, at the trunk of the service vehicle.

***Second***. The prosecution failed to show that the inventory was made in the presence of the accused as required by law. The presence of the required witnesses was also not established. While records show that Brgy. Chairman Bobier had signed the inventory receipt, based on Siborboro's own statement, the former was not present when the same was prepared and that it was only brought to his office for signature. For his part, PO3 Castillo testified that the apprehending team immediately returned to their office right after the inventory and preservation marking, without passing by any other place. He also contradicted his previous statement that the inventory was made along EDSA, when he later stated that Brgy. Chairman Bobier signed the inventory receipt at the place of arrest.

***Third***. The prosecution failed to show that the seized items were photographed. PO3 Castillo testified that the items were photographed by a designated photographer. Unfortunately, the records do not support PO3 Castillo's claim as the prosecution did not offer the photographs of the seized items as evidence.

***Fourth***. The sachet subject of the sale was purportedly marked by Siborboro as "JSJR" and the other sachet confiscated from Geronimo was marked as "JSJR-1." However, the crime laboratory's report shows that the forensic chemist, examined two (2) sachets, one marked "**JSJRND**" and the other "**JSJR-1**." Instead of presenting PO1 Santos — as the receiving investigator — and S/Insp. Mangalip, the prosecution stipulated upon and dispensed with their testimonies. The stipulation was, in fact, limited to the fact "that the white crystalline substance contained in a transparent plastic sachet with markings 'JSJR and JSJR-1' were submitted to the PNP Crime Laboratory Office together with the Request for Laboratory Examination." Consequently, no witness could explain the provenance of the sachet "JSJRND" and the whereabouts of the sachet "JSJR" after the same were left to the custody of PO1 Santos. Neither did the prosecution justify if the said discrepancy was a mere typographical error.

***Fifth***. The records reveal that the request for laboratory examination was not delivered by PO1 Santos but by a certain Serrano. Siborboro and PO3 Castillo both failed to explain how Serrano came to possess the seized items, while PO2 Orante's testimony shows that he had no personal knowledge of the arrest and what transpired thereafter. With PO1 Santos's testimony stipulated upon and dispensed with, no witness was able to explain how Serrano came to have custody over the seized items.

In view of the unaccounted gap in the chain of custody and the multiple unrecognized and unjustified departures of the police officers from the established procedure set under Section 21, Article II of RA 9165 and its Implementing Rules and Regulations, the Court therefore concludes that the integrity and evidentiary value of the subject drugs had been compromised.

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- MARILOU HILARIO *y* DIANA, *Appellant.***
G.R. No. 210610, FIRST DIVISION, January 11, 2018, LEONARDO-DE CASTRO, *J.*

*It is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed. PO1 de Sagun could not explain how there were*

*two sachets of shabu even though he testified that the items seized from the buy-bust operation were in his custody the entire time.*

**FACTS:**

PO1 de Sagun, PO2 Magpantay with other police officers, conducted a buy-bust operation. PO1 de Sagun acted as a poseur-buyer and was able to buy shabu for P500 from Marilou Hilario and effected the arrest by himself. PO1 de Sagun marked the P500 bill with "NBS-1" and the shabu seized with "NBS-2." Lalaine Guadayo ran away, but PO2 Magpantay chase and was able to caught her up. He was able to recover another sachet of shabu and marked it with "AAM-1." PO1 de Sagun also claimed to have prepared an inventory of the seized items in the presence of a certain "Mrs. Orlina" and a Sims Garcia, both DOJ representatives, and the media. Hilario was charged with violation of Sec. 5 and 11, RA 9165; while Guadayo was chared with violation of Sec. 11 of the same act.

During the direct examination, a brown envelope which contained two sachets of shabu was presented to PO1 de Sagun. The latter claimed that only the sachet with the "NBS-1" was the one seized from Hilario. However, during the cross-examination, PO1 de Sagun reiterated that it was the P500 bill marked with "NBS-1" and the shabu seized was marked with "NBS-2."

The RTC convicted the two of the crimes charged. The CA affirmed Hilario's conviction for illegal sale of prohibited drugs stating that the prosecution was able to prove the elements of illegal sale of prohibited drugs and presumption of regularity in PO1 de Sagun's performance of duties, but acquitted Hilario and Guadayo's conviction for illegal possession of prohibited drugs. No evidence was shown that she was further apprehended in possession of another quantity of prohibited drugs not covered by or included in the sale and possession of dangerous drugs is generally inherent in the crime of sale.

Hilario argued that the prosecution failed to establish the elements of illegal sale of dangerous drugs, as PO1 de Sagun only made a blanket declaration that he was able to buy *shabu* from Hilario and his testimony lacked clear and complete details of the supposed buy-bust operation.

**ISSUE:**

Whether or not Hilario is guilty of violation of Sec. 5, RA 9165. (NO)

**RULING:**

In *People v. Ismael*, the Court pronounced:

> To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (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. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.
>
> xxx xxx xxx
>
> In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense.

> Thus, it is **of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved.** "**The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed**."

PO1 de Sagun's testimonies were all generalizations which lacked material details, riddled with inconsistencies, and uncorroborated — failed to establish the elements of the offense charged with proof beyond reasonable doubt.

PO1 de Sagun failed to describe how he came to know that Hilario was selling *shabu*; where Hilario was and what she was doing that time; how he approached her and asked to buy *shabu* from her; how they came to agree on the purchase price for the *shabu*; where Hilario got the sachet of *shabu* she handed to him; and what his pre-arranged signal was to show the other police officers that the sale had been consummated and Hilario could already be arrested — details which police officers who carried out legit buy-bust operations should be able to provide readily and completely.The lack of specific details on the planning and conduct of the buy-bust operation casts serious doubts that it actually took place and/or that the police officers carried out the same in the regular performance of their official duties.

Furthermore, the prosecution failed to present during the trial the *corpus delicti*.PO1 de Sagun was insistent that he seized only one sachet of *shabu* from Hilario; and that he marked the P500.00-bill used in the buy-bust operation as "NBS-1" and the sachet of *shabu* from Hilario as "NBS-2." Yet, confronted with two sachets of *shabu*, marked as "NBS-1" and "NBS-2," he identified the sachet marked as "NBS-1" as the one he bought from Hilario.PO1 de Sagun could not explain how there were two sachets of *shabu* even though he testified that the items seized from the buy-bust operation were in his custody the entire time. Clearly, the identity and integrity of the sachet of *shabu* allegedly seized by PO1 de Sagun from Hilario were not preserved.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- ROLANDO SANTOS y ZARAGOZA, *accused-appellant*.**
G.R. No. 223142, THIRD DIVISION, January 17, 2018, MARTIRES, *J.*

*The Court has explained in a catena of cases the four (4) links that should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered; second, the turnover of the illegal drug to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist; and fourth, the submission of the marked illegal drug to the court.*

*On the first link, Saul testified that after he gathered the drug paraphernalia and the marijuana, he prepared the inventory and marked the seized items in the presence of the accused Santos, and the respective representatives of the DOJ, media, and the barangay. Anent the second and third links, after the service of the search warrant, Saul forthwith prepared the disposition form for the turnover of the seized items to the FCD. The seized items were received by the FCD which issued a certification confirming that the confiscated items yielded positive results for the presence of methamphetamine hydrochloride and positive results for marijuana. On the fourth link, the testimony of Cruz was dispensed with after the parties had agreed to stipulate on certain facts.*

*As opposed therefore, to the claim of Santos, there was no significant gap in the chain of custody of the seized items.*

**FACTS:**

Accused-appellant Santos was charged before the RTC with three (3) counts of violation of certain provisions of R.A. 9165.

The prosecution tried to prove its cases through the testimony of Special Investigator Saul, Agents Bomediano, Kanapi and Atty. Liwalug, all from the Reaction, Arrest and Interdiction Division *(RAID)* of the National Bureau of Investigation*(NBI)*, and Cruz, Jr. *(Cruz)*, of the NBI Forensic Chemistry Division *(FCD)*.

The RAID-NBI received information from their confidential informant that there was a group of individuals at Tagaytay St., Caloocan City, selling drugs and using minors as runners. After Atty. Liwalug interviewed the informant, she, along with an NBI team and the technical staff of *Imbestigador*, a GMA Channel 7 investigative program, went to the reported area to conduct surveillance. During the first test-buy, Bomediano was able to buy shabu from Santos alias "Rolando Tabo." Two informants were used by the NBI for the surveillance. The informants were able to buy drugs from Santos and to use them inside his house.

On 21 August 2009, Kanapi, Saul, Bomediano, and SI Malaluan proceeded to the house of Santos. The NBI team broke open the door of Santos' house. Saul, Bomediano, Malaluan, and the *Imbestigator* team proceeded to the second floor where they found Rolando Santos. Saul told Santos that the team was from the NBI and that they were to serve a search warrant on him, which copy was actually shown to Santos. The team waited for the representatives from the DOJ and the barangay before conducting the search.

During the conduct of the search at the living room on the second floor of the house, Saul found inside the bedroom and beside the bed of Santos several foil strips either crumpled or rolled, the size of a cigarette stick. The foil strips, numbering fourteen, were found inside a baby powder container. He also found unused small plastic sachets. Saul placed the foil and plastic sachets on the center table in the living room. When Saul frisked Santos, he found marijuana leaves wrapped in paper on the right pocket of his pants. Saul informed Santos of his constitutional rights and placed the marijuana leaves on top of the center table. Saul searched the rooms on the second floor but found nothing. From a trash can in the kitchen, Saul found used small transparent sachets which he also placed on the center table. Loquinario-Flores, who was caught on video selling to the informant aluminum foil to be used with drugs, and two minor children were found on the first floor of the house.

Santos, Assistant City Prosecutor Darwin Cañete, Kagawad Magno Flores, and media representative Eugene Lalaan of *Imbestigador* witnessed the inventory of the seized items by Saul and when he marked them. When Saul returned to the NBI office after the operation, he submitted the seized items to the NBI forensic chemist.

The testimony of Cruz, the forensic chemist, was dispensed with after the parties agreed to stipulate on the matters he would testify and after a short cross-examination by the defense.

The RTC held Rolando Santos y Zaragoza guilty beyond reasonable doubt for violation of Sections 6, 11 and 12, Article II of R.A. 9165.

The CA, however, ruled that the prosecution failed to present any witness who had personal knowledge and who could have testified that Santos' house was a drug den. Hence, it declared Santos as not guilty of violating Sec. 6 of R.A. 9165. As to the violation of Secs. 11 and 12 (Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia) the CA held that the prosecution was able to show the guilt of Santos beyond reasonable doubt.

**ISSUE:**

Whether the trial court gravely erred in convicting Santos despite the prosecution's failure to prove his guilt beyond reasonable doubt. (NO)

**RULING**:

***There was an unbroken chain in the custody of the seized drugs and paraphernalia.***

The Court has explained in a catena of cases the four (4) links that should be established in the chain of custody of the confiscated item: *first*, the seizure and marking of the illegal drug by the apprehending officer; *second*, the turnover of the illegal drug by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist; and *fourth*, the submission of the illegal drug from the forensic chemist to the court.

On the first link, consistency with the 'chain of custody' rule requires that the 'marking' of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation.

Saul testified that after he gathered the drug paraphernalia and the marijuana which he confiscated from Santos, he prepared the inventory and marked the seized items in the presence of Santos, and the respective representatives of the DOJ, media, and the barangay.

Anent the second and third links, after the service of the search warrant, Saul forthwith prepared the disposition form for the turnover of the seized items to the FCD. The seized items were received by the FCD which issued a certification confirming that the confiscated items yielded positive results for the presence of methamphetamine hydrochloride and positive results for marijuana.

On the fourth link, the testimony of Cruz was dispensed with after the parties had agreed to stipulate on certain facts.

As opposed therefore, to the claim of Santos, there was no significant gap in the chain of custody of the seized items.

***The prosecution was able to fully discharge its burden of proving beyond reasonable doubt its charges against Santos.***

In Crim. Case No. C-82010, Santos was convicted of violation of Sec. 11, Art. II of R.A. No. 9165, the elements of which are as follows: (1) the accused is in possession of an item or object, which is identified to be prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

Saul testified that when he frisked Santos, he found marijuana in the right pocket of his pants. Santos did not offer any explanation on why he was in possession of the marijuana or if he was authorized by law to possess the dangerous drug. Based on the Dangerous Drugs Report No. DDM-09-08, the dried crushed leaves and seeds wrapped in newspaper and contained in the transparent plastic tea bag gave a positive result for marijuana.

In Crim. Case No. C-82011, Santos was convicted of violation of Sec. 12, Art. II of R.A. No. 9165, its elements being as follows: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

Saul testified that when he served the search warrant on Santos, he found thereat several strips of used aluminum foil in a transparent plastic bag, several pieces of used plastic sachet in a transparent tea bag, and a plastic tube intended for sniffing shabu. Similar to the marijuana, Santos failed to justify his possession of these items. Significantly, Dangerous Drugs Report No. DD-09-47 showed that the examination made on the washings of these confiscated items yielded positive results for the presence of methamphetamine hydrochloride.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- GERALD ARVIN ELINTO RAMIREZ AND BELINDA GALIENBA LACHICA, *accused-appellants*.**
G.R. No. 225690, THIRD DIVISION, January 17, 2018, MARTIRES, *J.*

*In People v. Sanchez, the SC ruled that marking should be done in the presence of the apprehended violator **immediately upon confiscation** to truly ensure that they are the same items that enter the chain of custody.*

*In this case, the SC cannot say that IO1 Bautista's failure to mark the two plastic sachet immediately after confiscation was excusable. The SC considered the fact that there were more than enough PDEA agents at that moment to ensure that the area was secure for IO1 Bautista to mark the confiscated items. Instead, IO1 Bautista marked the confiscated items in Quezon City, almost one (1) hour away from the crime scene.*

**FACTS:**

Lachica and Ramirez were charged before the RTC for violation of Sec. 5, in relation to Sec. 26, Article II of R.A. 9165.

The prosecution's evidence can be summarized as follows:

On 30 October 2008, a confidential informant went to the Philippine Drug Enforcement Agency *(PDEA)* Metro Manila Regional Office and reported that a certain "Linda" was engaged in

illegal drug activity in Parañaque City and in Pasay City. Intelligence Officer 1 Magdurulang instructed the informant to call this person so that they could meet. The informant then called Linda and made arrangements for them to meet the following day at SM Bicutan.

Immediately thereafter, IO1 Magdurulang organized a team. IO1 Bautista, who acted as the poseur-buyer, was given the boodle money consisting of two genuine pre-dusted P500.00 bills.

The following day, the team proceeded to the target area. IO1 Bautista and the informant waited inside a vehicle, while the rest of the team were positioned around the parking lot. At about 5:00 P.M., the informant called Linda who replied that she was on her way. Almost half an hour later, two persons started to approach their vehicle. The informant confirmed that one of them was Linda.

Linda asked for the payment but IO1 Bautista told her that he needed to see the items first. Linda complied and went inside the vehicle together with Ramirez. IO1 Bautista then showed Linda the buy-bust money, so Linda instructed Ramirez to hand the shabu to IO1 Bautista. Ramirez gave IO1 Bautista a cigarette pack which contained two heat-sealed transparent plastic sachets containing crystalline substances. Thereafter, IO1 Bautista gave the buy-bust money to Linda, while he tapped the informant to give the pre-arranged signal.

The rest of the team quickly arrived and arrested Linda and Ramirez. They identified themselves as PDEA agents and apprised them of their constitutional rights. Thereafter, they all proceeded to Barangay Pinyahan in Quezon City, where the physical inventory and the taking of photographs of the seized items were done before Barangay Kagawad Melinda Z. Gaffud.

Linda and Ramirez were then brought to the PDEA along with the seized drugs and the inventory documents. After IO1 Magdurulang prepared the request for laboratory examination, IO1 Bautista brought the seized drugs to the PDEA laboratory. The chemistry report showed that the two heat-sealed plastic sachets contained shabu.

The RTC found Lachica and Ramirez guilty as charged. The CA affirmed *in toto* the trial court's decision.

**ISSUE:**

Whether the court *a quo* gravely erred in convicting the accused-appellants despite the prosecution's failure to prove their guilt beyond reasonable doubt. (YES)

**RULING:**

It is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt, and that it must be proven that the item seized during the buy-bust operation is the same item offered in evidence. As the drug itself constitutes the very *corpus delicti* of the offense, its preservation is essential to sustain a conviction for illegal sale of dangerous drugs.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and *added a saving clause* in case the procedure is not followed.

In *People v. Beran*, the SC made a distinction based on R.A. No. 9165 and its IRR as to when the physical inventory and photography shall be conducted. In seizures covered by search warrants, the physical inventory and photograph must be conducted at the place where the search warrant was served. On the other hand, in case of warrantless seizures, the physical inventory and photography shall be done at the nearest police station or office of the apprehending officer. However, R.A. No. 9165 is silent on when and where marking should be done. Thus, in *People v. Sanchez*, the SC ruled that marking should be done in the presence of the apprehended violator **immediately upon confiscation** to truly ensure that they are the same items that enter the chain of custody.

In the instant case, IO1 Bautista was in possession of the two (2) heat-sealed transparent plastic sachets from the time Ramirez handed him the cigarette pack containing these until the time it was marked at the barangay hall.

From his testimony, the SC gathered that IO1 Bautista claims that it was not safe that the marking, physical inventory, and photography be done at the parking lot of SM Bicutan. Contrary to the position taken by the lower courts, the SC cannot say that IO1 Bautista's failure to mark the two sachet immediately after confiscation was excusable. The SC took note of the fact that there were more than enough PDEA agents at that moment to ensure that the area was secure for IO1 Bautista to mark the confiscated items.

Instead, IO1 Bautista admitted that he marked the confiscated items in Quezon City, almost one (1) hour away from the crime scene. Even granting that IO1 Bautista did mark the sachets, breaks in the chain of custody had already taken place: (1) when he confiscated the sachets without marking them at the place of apprehension; and (2) as he was transporting them to Quezon City, thus casting serious doubt upon the value of the said links to prove the *corpus delicti*.

Under these circumstances, the SC cannot apply the presumption of regularity of performance of official duty. The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered.

In sum, the gaps in the prosecution's evidence create reasonable doubt as to the existence of the *corpus delicti* for the illegal sale of shabu.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- NIÑO FLOR *y* MORA, *accused-appellant*.**
G.R. No. 216017, FIRST DIVISION, January 19, 2018, DEL CASTILLO, *J.*

*For an accused to be convicted of illegal sale of dangerous drugs, the prosecution must establish the following elements: "(1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment." Time and again the Court has stressed that, "[w]hat is material is the proof that the transaction actually took place, coupled with the presentation before the court of the prohibited drug or the corpus delicti."*

*In this case, the prosecution was able to show that Niño was positively identified by PO1 Coldas as the seller of shabu and the person who received the P400.00 marked money. It is clear from the testimony of PO1 Coldas that he had witnessed first-hand the drug transaction. He was also able to see the object of the transaction.*

**FACTS:**

An Information was filed charging accused-appellant Niño Flor y Mora with illegal sale of dangerous drugs in violation of Sec. 5, Article II of RA 9165.

The evidence of the prosecution established that on May 23, 2008, a team of police officers conducted a buy-bust operation against Niño after a police asset reported that Niño was engaged in selling *shabu* in San Francisco, Iriga City, Camarines Sur.

The buy-bust team proceeded to the site. Upon locating Niño, PO1 Coldas positioned himself about a meter away from the asset and Niño and was able to witness the entire exchange of money and a plastic sachet of *shabu* between the asset and Niño. After the transaction, the asset turned over the sachet to PO1 Coldas, who discreetly made a call to SPO4 Belleza to signal the consummation of the transaction.

Soon, the back-up team arrived. Sensing that he was a target of a buy-bust operation, Niño immediately ran away. The police officers were able to apprehend him. SPO4 Belleza informed Niño of his constitutional rights and the reason for his arrest. While at the scene of the arrest, PO1 Coldas handed over the sachet to SPO4 Belleza who marked it with his initials, "APB," in the presence of Niño.

While Niño was being arrested, SPO4 Belleza chanced upon Iluminado Acosta (Acosta), who was previously arrested for illegal possession of *shabu*. SPO4 Belleza then directed PO1 Coldas to apprehend Acosta in order to investigate his involvement in the drug transaction. However, Acosta resisted and a shoot-out transpired. Acosta was shot and was brought by the police officers to the hospital. Thereafter, the police officers returned to the police station and conducted a body search on Niño which yielded four marked P100.00 bills. The inventory and photographs were taken at the police station due to the shooting incident. Thereafter, PO1 Coldas personally brought the sachet to the crime laboratory for examination which revealed that the seized item tested positive for methamphetamine hydrochloride.

The RTC rendered judgment finding Niño guilty as charged. The CA affirmed the RTC's Judgment.

**ISSUE:**

Whether appellant is guilty beyond reasonable doubt of illegal sale of *shabu*. (YES)

**RULING:**

For an accused to be convicted of illegal sale of dangerous drugs, the prosecution must establish the following elements: "the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment." Time and again the Court has stressed that, "what is

material is the proof that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*."

In this case, the prosecution was able to show that Niño was positively identified by PO1 Coldas as the seller of a sachet containing *shabu* and the person who received the P400.00 marked money. PO1 Coldas testified that the asset bought *shabu* from Niño during a buy-bust operation. It is clear from his testimony that he had witnessed first-hand the drug transaction. He was also able to see the object of the transaction.

In the absence of any evidence of imputed malice or ill-will against PO1 Coldas to falsely testify against the appellant, the Court found no reason to doubt the credibility of PO1 Coldas whose testimony the RTC found to be "categorical and straightforward."

With regard to the alleged failure of the police officers to comply with the procedure required in seizure of drugs, the records show that the prosecution was able to establish an unbroken chain of custody over the seized drugs.

The arresting officers were not able to take an inventory immediately after the arrest because of two intervening events: 1) Niño ran away from the police officers upon seeing SPO4 Belleza; and 2) a shooting incident transpired where Acosta was shot and had to be taken to the hospital. The appellant did not dispute the fact of the shooting at the time of the arrest. Hence, the failure of the police officers to immediately take an inventory of the seized *shabu* is not fatal to the prosecution of the case.

**JORGE DABON, a.k.a. GEORGE DEBONE @ GEORGE, *petitioner*, -versus- THE PEOPLE OF THE PHILIPPINES, *respondent*.**
G.R. No. 208775, FIRST DIVISION, January 22, 2018, TIJAM, *J.*

*A search warrant issued in accordance with the provisions of the Revised Rules of Criminal Procedure does not give the authorities limitless discretion in implementing the same. One of the parameters set by law is Section 8 of Rule 126, to wit:*

> *Section 8. Search of house, room, or premise to be made in presence of two witnesses. — No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.*

*The law is mandatory to ensure the regularity in the execution of the search warrant.*

*In this case, the hierarchy among the witnesses as explicitly provided under the law was not complied with. For one, the lawful occupants of the premises were not absent when the police authorities implemented the search warrant. Even so, the two-witness rule was not complied with as only one witness was present when the search was conducted.*

**FACTS:**

Law enforcement agents applied for a search warrant after the surveillance and test-buy operations conducted by the operatives of the PNP-Criminal Investigation and Detection Group (CIDG) in Bohol, which confirmed that Dabon was engaged in illegal drug activity. Search Warrant No. 15 was issued.

On July 26, 2003, at about 5:30 a.m., P/Insp. Mallari, SPO2 Maglinte, SPO1 Triste, PO3 Basalo, PO3 Enterina, PO2 Datoy and PO2 Bihag of the Bohol CIDG proceeded to an apartment unit at Boal District, Tagbilaran City where the residence of Dabon is situated.

The group entered the house and the CIDG, together with Brgy. Kagawad Angalot and SK Chairman Angalot, went to the second floor. They found Eusubio Dumaluan in the living room while Dabon was inside one of the bedrooms.

After P/Insp. Mallari handed the copy of the search warrant to Dabon, the CIDG operatives searched the kitchen where PO2 Datoy and PO2 Enterina found, in the presence of Brgy. *Kagawad* Angalot, drug paraphernalia. The police officers then frisked Dumaluan and recovered from his pocket, a coin purse, a lighter, a metal clip, three empty decks of suspected *shabu*, two pieces of blade and crumpled tin foil.

The police officers proceeded to search one of the bedrooms where PO2 Datoy and PO2 Enterina, in the presence of Brgy. *Kagawad* Angalot, found three plastic sachets containing suspected *shabu*,. They also recovered the drug paraphernalia.

The three plastic sachets and the drug paraphernalia found in the bedroom of Dabon and the drug paraphernalia recovered from Dumaluan were turned over to SPO1 Triste who inventoried and placed them in evidence bags in the presence of Councilor Angalot, Brgy. Kagawad Angalot, SK Chairman Angalot, media representative Responte and DOJ representative Castro. Thereafter, the seized items were turned over to P/Insp. Tan, a Forensic Chemical Officer.

The examination conducted by P/Insp. Tan on the seized items yielded positive results for the presence of methylamphetamine hydrochloride.

Two Information were filed against Dabon for violation of Secs. 11 and 12, Article II of R.A. 9165. An information for violation of Sec. 12, Article II of R.A. 9165 was filed against Dumaluan.

The RTC found Dabon guilty beyond reasonable doubt of violation of Secs. 11 and 12, Art. II of R.A. 9165 and Dumaluan guilty beyond reasonable doubt of violation of Sec. 12, Art. II of R.A. 9165.

Only Dabon filed an appeal before the CA. The CA, however, affirmed the conviction of Dabon.

**ISSUE:**

Whether the evidence obtained against Dabon is admissible. (NO)

**RULING:**

No less than the 1987 Constitution provides for the protection of the people's rights against unreasonable searches and seizures. The State and its agents cannot conduct searches and seizures without the requisite warrant. It must, however, be clarified that a search warrant issued in

accordance with the provisions of the Revised Rules of Criminal Procedure does not give the authorities limitless discretion in implementing the same. One of the parameters set by law is Section 8 of Rule 126 which states that no search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

The law is mandatory to ensure the regularity in the execution of the search warrant.

In *People v. Go*, the SC rendered inadmissible the evidence obtained in violation of this rule and stressed that the Rules of Court clearly and explicitly establishes a hierarchy among the witnesses in whose presence the search of the premises must be conducted.

In this case, it is undisputed that Dabon and his wife were actually present in their residence when the police officers conducted the search in the bedroom where the drugs and drug paraphernalia were found. It was also undisputed that only Brgy. Kagawad Angalot was present to witness the same.

Here, the hierarchy among the witnesses as explicitly provided under the law was not complied with. For one, the lawful occupants of the premises were not absent when the police authorities implemented the search warrant. Even so, the two-witness rule was not complied with as only one witness, Brgy. *Kagawad* Angalot, was present when the search was conducted.

Failure to comply with the safeguards provided by law in implementing the search warrant makes the search unreasonable. Thus, the exclusionary rule applies, *i.e.*, any evidence obtained in violation of this constitutional mandate is inadmissible in any proceeding for any purpose.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- BOBBY S. ABELARDE, *accused-appellant*.**
G.R. No. 215713, FIRST DIVISION, January 22, 2018, DEL CASTILLO, *J.*

*A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the corpus delicti. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the corpus delicti, must definitely be shown to have been preserved.*

*In this case, the SC found that the members of the Miscellaneous Team of the Cebu City PNP which allegedly conducted the "buy-bust" operation miserably failed to establish the four critical linkages in the chain of custody.*

**FACTS:**

On April 4, 2005, the Office of the City Prosecutor of Cebu City charged the accused-appellant Bobby S. Abelarde with violation of Section 5, Article II of RA 9165.

The next day, the Office of the City Prosecutor of Cebu City filed another Information against him this time for violation of Section 11, Article II of RA 9165.

SPO1 Selebio, a member of the so-called "Miscellaneous Team" of the Cebu City PNP which arrested the Bobby testified that on the afternoon of March 24, 2005, he received a call from a concerned citizen that a certain person was engaged in the trading of illegal drugs, somewhere in Garfield, interior portion of Suba, Pasil in Cebu City; that upon receipt of the call, he and his fellow police officers held a "briefing" for the purpose of conducting a "buy-bust" operation. After they reached the site, their civilian poseur-buyer approached Bobby and struck up a conversation with the latter. From a distance, SPO1 Selibio saw their poseur-buyer give to Bobby the pre-marked P100.00 in exchange for something. At this point, the poseur-buyer signaled that the transaction had been consummated, so he and the members of his team rushed toward Bobby and arrested him. He and his teammates frisked Bobby and were able to recover from him a packet of *shabu*. Further search of Bobby's body yielded yet another six packets of *shabu*.

The packets of *shabu* were then marked and later sent to the PNP Crime Laboratory for examination. The chemical analysis disclosed that the specimens were positive for the presence of methamphetamine hydrochloride.

The RTC held that the prosecution proved all the elements of the crime of Sale under Sec. 5, Art. II, RA 9165. All the elements of possession of the dangerous drugs are likewise present.

The appellate court rejected the appeal, but made a slight modification in the penalty.

**ISSUE:**

Whether the prosecution established the four critical linkages in the chain of custody. (NO)

**RULING:**

Almost on all fours to the present Petition is *People v. Denoman*, where the Court speaking through Justice Arturo D. Brion, said:

> A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved.
>
> Section 21, paragraph 1, Article II of RA No. 9165 and Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA No. 9165 give us the procedures that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. As indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case.

Turning to the cases under review: the SC found that the members of the Miscellaneous Team miserably failed to establish the four critical linkages in the chain of custody, because specifically, with reference to the critical links in the chain of custody, the SC found in these two cases that —

(a) The ***first link*** started with the seizure of the seven packets of *shabu*. Here, the very frugal and abbreviated testimony of SPO1 Selibio was glaringly silent as regards the handling and disposition of the seven packets of alleged *shabu* and their contents after the accused-appellant's arrest. Neither did SPO1 Selibio make any effort to identify the person who had care or custody of these alleged seven packets of *shabu* from the time these were allegedly confiscated from the accused-appellant to the time these were delivered to PNP Crime Laboratory.

(b) The ***second link*****,** consisting in the turnover of the seized seven packets of *shabu* from the buy-bust team to the police investigator was not supported by any evidence.

(c) The ***third link*** requires evidence respecting the custody of the seized seven packets of *shabu* at the said PNP Crime Laboratory. Once again, no testimony of any kind was given by SPO1 Selibio relative to the custody of the seven packets of the alleged *shabu* at the PNP Crime Laboratory.

(d) The ***fourth link*** is connected to Sections 3 and 6, paragraph 8 of the Dangerous Drugs Board Regulation No. 2, Series of 2004, which make it obligatory for laboratory personnel to document the chain of custody each time a specimen is handled or transferred, until its disposal; the board regulation also requires identification of the individuals in this part of the chain. Here, no evidence of any kind has been adduced to attest to the fact that this Board Regulation No. 2 has ever been complied with.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- LAWRENCE GAJO y BUENAFE and RICO GAJO y BUENAFE, *accused-appellants.***

G.R. No. 217026, FIRST DIVISION,January 22, 2018, DEL CASTILLO, *J.*

*To convict Lawrence and Rico, it is primordial that the corpus delicti or the confiscated illegal drugs had been proved beyond reasonable doubt. This means that the same illegal drugs possessed and sold by the accused must be the same ones offered in court. As such, the required unbroken chain of custody under Section 21, Article II of RA 9165 comes into play to ensure that no unnecessary doubt is created on the identity of the seized illegal drugs.*

*Generally, there are four links in said chain of custody:*

*1)The seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer;*

*2) The turnover of the seized drug by the apprehending officer to the investigating officer;*

*3) The turnover by the investigating officer of said item to the forensic chemist 'for examination; and,*

*4) The turnover and submission thereof from forensic chemist to the court.*

**FACTS:**

On March 23, 2007, PO3 Justo (Justo), PO1 Sangahin (Sangahin), and PO1 San Pedro (San Pedro) planned to conduct a buy-bust operation against Lawrence based on the details given by a civilian informant.

At about 11:20 p.m. of even date, Justo, Sangahin and San Pedro arrived at their target area. P03 Justo saw Lawrence standing near a lamp post and approached him. Justo told Lawrence, *"pakuha ng* dos," handing the latter ₱200.00. Lawrence took the money, and replied, *"sandali lang, asa bahay."* And thereafter, he entered his house. After a while, a man, who the police later on identified as Rico, came out of Lawrence's house and handed Justo a small plastic sachet containing suspected *shabu.* Consequently, Justo removed his cap, the police's pre-arranged signal that PO3 Justo already bought *shabu.*

PO3 Justo thereafter held Rico's arm directing Rico to bring out the contents of his pocket Upon doing so, Justo saw from Rico's pocket two plastic sachets suspected to contain *shabu.* Meanwhile San Pedro and Sangahin entered the house of Lawrence.There, San Pedro recovered the marked money and one plastic sachet of[2] suspected *shabu* from Lawrence.

In the Police Station, P03 Justo placed the markings GMJ, GMJ-1, and GMJ-2 on the three sachets he recovered from Rico. He also marked and placed his initials, GMJ-3, on the plastic sachet that PO1 San Pedro recovered from Lawrence. PO3 Justo marked all the seized items in the presence of PO1 San Pedro and PO1 Sangahin. According to PO1 San Pedro, at the time of the marking, the accused was already inside the jail.

Consequently, an information for illegal possession of *shabu* and Illegal sale of *shabu* was filed against Lawrence and Rico

**ISSUE**:

Whether the prosecution failed to establish their guilt beyond reasonable doubt because of non-observance of the chain of custody requirement under Section 21, Article II of RA 9165 in the case. (YES)

**RULING:**

To convict Lawrence and Rico, it is primordial that the *corpus delicti* or the confiscated illegal drugs had been proved beyond reasonable doubt. This means that the same illegal drugs possessed and sold by the accused must be the same ones offered in court. As such, the required unbroken chain of custody under Section 21, Article II of RA 9165 above-quoted comes into play to ensure that no unnecessary doubt is created on the identity of the seized illegal drugs

Generally, there are four links in said chain of custody: 1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist 'for examination; and, 4) the turnover and submission thereof from forensic chemist to the court.

As stated, *the first* link requires seizure and marking of the illegal drugs. To stress, marking must be done immediately upon the seizure of the illegal drugs and in the presence of the apprehended

violator of law. Such prompt marking is important because the. Subsequent handlers of the seized items will use the marking as reference.

In this case, however, the apprehending officer did not make a proper marking of the *seized shabu.* PO3 Justo confirmed that he marked the seized items upon arrival at the Police Station. Since there was no commotion that transpired after the seizure of *shabu,* there was nothing that would prevent Justo from marking the *shabu* immediately after confiscation. Moreover, Justo marked it without the presence of Lawrence and Rico. San Pedro declared that "[the accused] was already inside the jail" when Justo marked the recovered items.

In *People* v. *Ismael,* the Court stressed that the failure to mark the illegal drugs immediately after confiscation from the accused casts doubt on the prosecution's evidence and warrants the acquittal of the accused on reasonable doubt. Also, in *Ismael,* the Court ruled that the requirement that the marking be done in the presence of the accused is not a mere technicality as it assures the preservation of the identity and integrity of the illegal drugs. As such, the non-compliance with this requirement is fatal to this case against Lawrence and Rico.

In addition, the *second* link was not complied with here. To establish an unbroken chain of custody, every person who touched the seized illegal drug must describe how and from whom it was received; its condition upon receipt, including its condition upon delivery to the next link in the chain.

Here, Justo supposedly turned over the confiscated *shabu* PC/Insp. Benzon, the investigating officer. Nevertheless, the prosecution did not present PC/Insp. Benzon to testify on the matter. Such non-presentation undeniably constitutes another gap in the chain of custody of the seized prohibited drugs.

Similarly, the *third* link in the chain of custody was also infirm. This is because the Request for Laboratory Examination indicated a certain Cruz as the person who delivered the specimens to the crime laboratory for examination. Nevertheless, like in the case of PC/Insp. Benzon. the prosecution did not present Cruz to testify on his receipt of the seized *shabu.* Evidently, this non-presentation of a necessary witness constituted another gap in the chain of custody.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus-BRIAN VILLAHERMOSO, *Accused-Appellant.***

G.R. No. 218208,FIRST DIVISION, January 24, 2018,Del Castillo, *J.*

*.Jurisprudence has consistently held that "prior surveillance is not a prerequisite for the validity of an entrapment operation especially if the buy-bust team is accompanied to the target area by their informant."*

*As to the Chain of Custody Rule, the Court, taking into consideration the difficulty of complete compliance with the said rule, has considered substantial compliance sufficient as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers. In the instant case the policemen were justified in marking the sachets of shabu at their office as Appellant*

*was struggling and trying to get away from the police. They would have had difficulty, if not impossibility, in marking the corpus delicti at that the scene of the crime considering that the appellant was quite out of control.*

**FACTS:**
PCI Fermin Armendarez III formed a buy-bust team to counter the selling of *shabu* by one Brian Villahermoso .Upon dispatch at the scene, the civilian informant contacted Villahermoso and went with the latter to a small house where PO2 Villaester, the poseur-buyer was waiting. PO2 Villaester then exhibited a bundle of money purporting to be ₱32,000.00 but was in truth just boodle money. Villahermoso handed to PO2 Villaester two big sachets of *shabu* after seeing the money.As the buying and selling had been consummated, PO2 Villaester then introduced himself as a police officer effected the arrest through the assistance of the team.
The RTC and CA find the appellant guilty of the information charged. The appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt, putting in issue the alleged failure of the police to conduct prior surveillance and to comply with the Chain of Custody Rule as the seized items were not properly marked, inventoried, and photographed.

**ISSUES:**
1. Whether lack of prior surveillance is fatal to the validity of the entrapment operation. (NO)
2. Whether the Chain of Custody Rule has been complied with. (YES)

**RULING:**
1.
Jurisprudence has consistently held that "prior surveillance is not a prerequisite for the validity of an entrapment operation x x x especially if the buy-bust team is accompanied to the target area by their informant." Such is the situation in this case. PO2 Villaester, who was designated as the poseur buyer, was assisted by the confidential informant, who contacted the appellant to inform the latter that there was a prospective buyer *of shabu.*

2.

Taking into consideration the difficulty of complete compliance with the said rule, has considered substantial compliance sufficient "as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers.

In this case, although the marking of the evidence was done at the police station, the policemen were justified in marking the sachets of *shabu* at their office. Defense witness testified that Appellant was struggling and trying to get away from the police. They would have had difficulty, if not impossibility, in marking the *corpus delicti* at that the scene of the crime considering that the appellant was quite out of control.

Likewise, the absence of a physical inventory and the lack of a photograph of the seized items are not sufficient justifications to acquit the appellant as the Court in several cases has affirmed convictions despite the failure of the arresting officers to strictly comply with the Chain of Custody Rule as long as the integrity and identity of the *corpus delicti* of the crime are preserved

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- PHILIP MAMANGON y ESPIRITU, *accused-appellant*.**

G.R. No. 229102, SECOND DIVISION, January 29, 2018, PERLAS-BERNABE, *J.*

*Non-compliance with the requirements of Section 21 of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.*

*In People v. Almorfe, the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in People v. De Guzman, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.*

**FACTS:**

A buy-bust operation was organized in coordination with PDEA, and the buy-bust team went to the target area at around 8:40 in the evening. Upon arriving thereat, the informant, together with PO3 Guzman, the designated poseur-buyer, approached Mamangon and ordered P300.00 worth of *shabu* from him. Subsequently, Mamangon handed over (1) piece of plastic sachet containing *shabu* to PO3 Guzman, who simultaneously paid the former using the marked money. Shortly after, PO3 Guzman removed his cap, which was the pre-arranged signal for the police to come in, and consequently, Mamangon was apprehended. PO3 Guzman then recovered the marked money from Mamangon and ordered him to empty his pockets, which purportedly contained another plastic sachet of *shabu*.

After securing the additional plastic sachet, PO3 Guzman marked it alongside the other seized item in the presence of Mamangon. Thereafter, the team went to the barangay hall but immediately left since no one was around. The team then proceeded to Police Station 7, where PO3 Guzman turned over Mamangon, as well as the seized items, to PO2 Dela Cruz, the investigator on duty. PO2 Dela Cruz then conducted the requisite inventory, while PO3 Guzman took photographs of the confiscated items in the presence of Mamangon and the other arresting officers.

The RTC and CA found Mamangon guilty of the information charged.

**ISSUE**:

Whether or not the procedural lapses committed by police officers militate against the conviction of the accused. (YES)

**RULING:**

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.

Under the said section, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 — provide that **The said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.

In *People v. Almorfe*, the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in People v. De Guzman, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

After a judicious study of the case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Mamangon Records reveal that while the requisite inventory and photography of the confiscated drugs were conducted in the presence of Mamangon and the other apprehending officers, the same were not done in the presence of an elected public official and any representative from the DOJ and the media.

To make matters worse, the prosecution did not proffer a plausible explanation in order for the saving clause to apply. Records fail to disclose that the police officers even attempted to contact and secure the presence of an elected public official, as well as a representative from the DOJ and the media, when they were already at the police station

Verily, procedural lapses committed by the police officers, which were unfortunately unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.

**PEOPLE OF THE PHILIPPINES,*plaintiff-appellee*, -versus- ALVIN JUGO y VILLANUEVA,*accused-appellant*.**

G.R. No. 231792, SECOND DIVISION, January 29, 2018,PERLAS-BERNABE, *J.*

*The breaches of procedure committed by the police officers militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the corpus delicti had been compromised.*

*It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. Perforce, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21, Article II of RA 9165, as amended by RA 10640, as well as its IRR, acquittal is in order.*

**FACTS:**

Sometime in 2011, members of the San Fabian Police Station conducted surveillance for three (3) months to verify the reports that Jugo was engaged in illegal drug activities. In the afternoon of August 5, 2011, the team conducted a buy-bust operation in which they recovered from the appellant the subject plastic sachet containing white crystalline substance.

After the buy-bust operation, the team returned to the police station with the confiscated sachet to avoid any untoward incident as people were approaching the team. Thereat, PO2 Romero marked the subject plastic sachet with "FMR," took photographs of the drug and motorcycle, and prepared the request for laboratory examination, Joint Affidavit of Arrest, and Confiscation Receipt.

The RTC and CA found Jugo liable for the crime of Illegal Sale of Dangerous Drugs. Jugo appealed his conviction contending that there were various deviations from the chain of custody rule.

**ISSUE:**

Whether or not Jugo's conviction for violation of Section 5, Article II of RA 9165 must be upheld. (NO)

**RULING:**

In order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti.*

As may be gleaned from the foregoing, the preparation of the inventory, *i.e.*, Confiscation Receipt, and taking of photographs were ***NOT*** done in the presence of: (*a*) the accused or his representative; (*b*) an elected public official; and (*c*) a representative from the DOJ or the media, contrary to the express provisions of Section 21, Article II of RA 9165, as amended by RA 10640. In such instances, the prosecution must provide a credible explanation justifying the non-compliance with the rule as the presence of these individuals is not just a matter of procedure.

By and large, the breaches of procedure committed by the police officers militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised. It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. Perforce, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21, Article II of RA 9165, as amended by RA 10640, as well as its IRR, Jugo's acquittal is in order.

In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said**

**procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- JOVENCITO MIRANDA *Y* TIGAS, *Accused-Appellant*.**

G.R. No. 229671, SECOND DIVISION,January 31, 2018, PERLAS-BERNABE, *J.*

*Under Section 21, Article II of RA 9165, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination*

*The breaches of procedure committed by the police officers militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the corpus delicti had been compromised.*

*It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. Perforce, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21, Article II of RA 9165, as amended by RA 10640, as well as its IRR, acquittal is in order..*

*Records reveal that while the seized items were marked by Encarnacion in the presence of Miranda and an elected public official, the same was not done in the presence of any representative from the DOJ and the media. The law requires the presence of an elected public official, as well as a representative from the DOJ and the media in order to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence. Despite the non-observance of this requirement, the prosecution did not even proffer a plausible explanation therefor.*

**FACTS:**

A buy-bust operation was organized in coordination with the PDEA, and the team, together with the informant, proceeded to the target area along Infanta Street at ten (10) o'clock in the evening. Upon arriving, the informant introduced Encarnacion, the designated poseur-buyer, to Miranda as the buyer of *shabu* worth P300.00. Encarnacion then gave the marked money to Miranda, while the latter

simultaneously handed over one (1) transparent sachet of suspected *shabu*. After inspecting the item, Encarnacion executed the pre-arranged signal by wiping his face with a white towel, prompting the buy-bust team to rush towards the scene and arrest Miranda.

Subsequently, a body search was conducted on Miranda, whose pockets purportedly yielded another plastic sachet of *shabu* and the buy-bust money. Since Miranda allegedly resisted and attempted to escape, the team was constrained to pull out from the site and bring him to the barangay hall of Barangay Olympia. Thereat, Encarnacion markedand inventoried the seized sachets of *shabu* in the presence of Miranda and Barangay Kagawad. Photos of the seized drugs, together with the witnesses, were likewise taken.

RTC found Miranda guilty of violating Sections 5 and 11, Article II of RA 9165. The CA affirmed Miranda's conviction for the crime charged.

**ISSUE:**

Whether or not deviation from the prescribed chain of custody rule militate against the conviction of Miranda. (YES)

**RULING:**

In this case, Miranda was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165.

In both instances, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpusdelicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

In this case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Miranda.

Records reveal that while the seized items were marked by Encarnacion in the presence of Miranda and an elected public official, the same was not done in the presence of any representative from the DOJ and the media.

The law requires the presence of an elected public official, as well as a representative from the DOJ and the media in order to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence. Despite the non-observance of this requirement, the prosecution did not even proffer a plausible explanation therefor. No practicable reasons were given by the police officers, such as a threat to their safety and security or the time and distance which the other witnesses might need to consider. Thus, considering the police officers' unjustified non-compliance with the prescribed procedure under Section 21 of RA 9165, the integrity and evidentiary value of the confiscated drugs are clearly put into question.

Therefore, as the requirements are clearly set forth in the law, then the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused,

regardless of whether or not the defense raises the same in the proceedings a quo; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- RONALDO PAZ y DIONISIO, *accused-appellant*.**

G.R. No. 229512, SECOND DIVISION, January 31, 2018, PERLAS-BERNABE, *J.*

*Under Section 21, Article II of RA 9165, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination*

*The breaches of procedure committed by the police officers militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the corpus delicti had been compromised. .*

*An examination of the records reveals that while the marking and inventory of the seized items were conducted in the presence of Paz and the other apprehending officers, the same were not done in the presence of an elected public official and a representative from the media and the DOJ.In addition, records reveal that the prosecution did not present any photographs of the supposed conduct of inventory during trial.*

*Perforce, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21, Article II of RA 9165, as amended by RA 10640, as well as its IRR, acquittal is in order.*

**FACTS:** At about 11:35 in the evening, the buy-bust team, together with the informant, proceeded to the target area. Upon arriving thereat, the informant saw Paz and introduced him to PO1 Agbunag, the designated poseur-buyer. Paz then handed over a plastic sachet containing a white crystalline substance to PO1 Agbunag, who, after inspecting the said item, paid Paz using the marked money. Shortly after, PO1 Agbunag introduced himself as a police officer and arrested Paz. PO1 Agbunag instructed Paz to empty his pockets, which yielded three (3) more heat-sealed plastic sachets of white crystalline substance, the marked money, and three (3) 100-peso bills.

PO1 Agbunag then signalled PO3 Balagasay for assistance, as there were two (2) other persons who were purportedly sniffing shabu inside the shop. When PO3 Balagasay entered the thrift shop, he immediately arrested both persons and seized the drug paraphernalia they were using.

The RTC held that all the elements of the crimes for illegal sale and illegal possession of dangerous drugs were satisfactorily proven to convict Paz of the said crimes. The CA affirmed the RTC .

Paz ultimately prayed for his acquittal in view of the police officers' non-compliance with Section 21, Article II of RA 9165 and its IRR, as well as their failure to proffer a plausible explanation therefor. In particular, he claims that there were no elected public official and a representative from the media and the DOJ to witness the requisite inventory of the seized items; and that there were no photographs taken during the conduct of the same.

**ISSUE:**

Whether or not the acquittal of Paz is in order. (YES)

**RULING:**

In this case, Paz was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165.

In both circumstances, the prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.

Under Section 21, Article II of RA 9165, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination

An examination of the records reveals that while the marking and inventory of the seized items were conducted in the presence of Paz and the other apprehending officers, the same were not done in the presence of an elected public official and a representative from the media and the DOJ. As the Court observed in the case of *People v. Geronimo*, there is nothing in the law which exempts the apprehending officers from securing the presence of an elected public official and a representative from the media and the DOJ, particularly in instances when they are not equipped with a search warrant.

In addition, records reveal that the prosecution did not present any photographs of the supposed conduct of inventory during trial. More apparent is the failure of the witnesses to state or mention whether or not any photographs were indeed taken.

Observably, the procedural lapses committed by the police officers, which were unfortunately unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the corpus delicti had been compromised. It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.

As such, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21, Article II of RA 9165, as well as its IRR, Paz's acquittal is perforce in order.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- JOSHUA QUE Y UTUANIS, *accused-appellant*.**

G.R. No. 212994, THIRD DIVISION, January 31, 2018, LEONEN, *J.*

*When the identity of corpus delicti is jeopardized by non-compliance with Section 21, critical elements of the offense of illegal sale and illegal possession of dangerous drugs remain wanting. It follows then, that this non-compliance justifies an accused's acquittal.*

*There is no showing that a proper inventory and taking of pictures was done by the apprehending officers. The marking of the sachets of shabu supposedly obtained from accused-appellant was conducted at a police station without accused-appellant, or any person representing him, around. There was not even a third person, whose presence was required by Section 21 (1) prior to its amendment — "a representative from the media and the Department of Justice (DOJ), and any elected public official."*

**FACTS:**

Acting on a report of an informant, P/C Insp. Muksan organized a buy-bust operation with PO3 Lim as poseur-buyer. PO3 Lim and the informant then left for the area of Fort Pilar. There, the informant introduced PO3 Lim to Que. PO3 Lim then told Que that he intended to purchase P100.00 worth of shabu. Que then handed him shabu inside a plastic cellophane. In turn, PO3 Lim handed Que the marked P100.00 bill and gave the pre-arranged signal to have Que arrested.

After the arrest, the marked bill and another sachet of shabu were recovered from Que. Que was then brought to the police station where the sachets of shabu and the marked bill were turned over to the investigator, SPO4 Eulogio Tubo (SPO4 Tubo), who then marked these items with his initials. He also prepared the letter request for laboratory examination of the sachets' contents. Arresting officer SPO1 Jacinto also testified to the same circumstances recounted by PO3 Lim.

RTC found Que guilty as charged.

CA affirmed RTC's ruling *in toto*.

**ISSUE:**

Whether or not accused-appellant Joshua Que's guilt for violating Sections 5 and 11 of the Comprehensive Dangerous Drugs Act of 2002 was proven beyond reasonable doubt. (NO)

**RULING:**

In *People v. Morales*, the Court explained that failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implies a concomitant failure on the part of the prosecution to establish the identity of the corpus delicti." It produces doubts as to the origins of the seized paraphernalia.

Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. Non-compliance with them tarnishes the credibility of the corpus delicti around which prosecutions

under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed.

This case is tainted with grave, gratuitous violations of Section 21 (1).

There is no showing that a proper inventory and taking of pictures was done by the apprehending officers. The marking of the sachets of shabu supposedly obtained from accused-appellant was conducted at a police station without accused-appellant, or any person representing him, around. There was not even a third person, whose presence was required by Section 21 (1) prior to its amendment — "a representative from the media and the Department of Justice (DOJ), and any elected public official."

This Court is left with absolutely no guarantee of the integrity of the sachets other than the self-serving assurances of PO3 Lim and SPO1 Jacinto. This is precisely the situation that the Comprehensive Dangerous Drugs Act seeks to prevent. The very process that Section 21 requires is supposed to be a plain, standardized, even run-of-the-mill, guarantee that the integrity of the seized drugs and/or drug paraphernalia is preserved. All that law enforcers have to do is follow Section 21's instructions. They do not even have to profoundly intellectualize their actions.

An admitted deviation from Section 21's prescribed process is an admission that statutory requirements have not been observed. This admitted disobedience can only work against the prosecution's cause**.**

When the identity of corpus delicti is jeopardized by non-compliance with Section 21, critical elements of the offense of illegal sale and illegal possession of dangerous drugs remain wanting. It follows then, that this non-compliance justifies an accused's acquittal.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- GLENN DE GUZMAN*, accused-appellant.***

G.R. No. 219955, FIRST DVISION, February 5, 2018, DEL CASTILLO, *J.*

*In People v. Denoman, the Court explained: A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime xxx Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.*

*In this case, the records show that the buy-bust team had failed to strictly comply with the prescribed procedure under Section 21, par, 1. Although the seized items were marked at the police station, there is nothing on record to show that the marking had been done in the presence of appellant or his representatives. Clearly, this constitutes a major lapse that, when left unexplained, is fatal to the prosecution's case.*

**FACTS:**

The Anti-Illegal Drugs Special Unit of Olongapo City, in coordination with PDEA, conducted an entrapment operation against appellant. Prior surveillance had confirmed numerous reports that

appellant was indiscriminately selling marijuana within the neighbourhood. PO1 Reyes was designated as poseur-buyer, SPO1 Delos Reyes as case investigator and back-up, PO2 David Domingo as spotter, and three other policemen as perimeter security.

At the target area, appellant approached PO1 Reyes and asked if he wanted to buy marijuana. PO1 Reyes accepted the offer and handed the P100.00 marked money to appellant who, in turn, gave him a sachet of marijuana. Once the exchange was completed, PO1 Reyes grabbed appellant's right hand which served as the pre-arranged signal that the transaction had been consummated. SPO1 Delos Reyes rushed to the scene and assisted PO1 Reyes in conducting a body search on appellant. SPO1 Delos Reyes recovered the P100.00 marked money, four sachets of marijuana and one plastic pack containing a small brick of marijuana fruiting tops.

The entrapment team immediately brought appellant to the police station. At the police station, PO1 Reyes marked the sachet that was the subject of the buy-bust operation with his initials "LR"

SPO1 Delos Reyes then prepared the Inventory Receipt. Notably, **only two barangay officials** were present during the conduct of a physical inventory of the seized items — there were no representatives from both the Department of Justice (DOJ) and the media.

RTC found appellant guilty of violating Sections 5 and 11, Article II of RA 9165. CA affirmed the assailed RTC Decision. It upheld the RTC's findings that the prosecution was able to sufficiently establish all the elements of both the illegal sale and possession of dangerous drugs.

**ISSUE:**
Whether the chain of custody over the seized items had remained unbroken despite the officers' failure to strictly comply with the requirements under Section 21, Article II of RA 9165 (NO)

**RULING:**
For prosecutions involving dangerous drugs, the dangerous drug itself constitutes as the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction.

Note, however, that the presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs alone is insufficient to secure or sustain a conviction under RA 9165. In **People v. Denoman**, the Court explained:

> A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime xxx Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the **illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant**; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.

In this case, the records show that the buy-bust team had failed to strictly comply with the prescribed procedure under Section 21, par, 1. Although the seized items were marked at the police station, there is nothing on record to show that the marking had been done in the presence of appellant or

his representatives. Clearly, this constitutes a major lapse that, when left unexplained, is fatal to the prosecution's case.

In simpler terms, **the following links must be established in order to ensure that the identity and integrity of the seized items had not been compromised**: first, 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.

PNP Crime Laboratory agreed to turn over custody of the seized items to an unnamed receiving person at the City Prosecutor's Office before they were submitted as evidence to the trial court. It should be emphasized that the City Prosecutor's Office is not a part of the chain of custody of seizeddangerous drugs. It has absolutely no business in taking custody of dangerous drugs before they are brought before the court. The failure of the prosecution to establish an unbroken chain of custody over the seized marijuana is fatal to its cause.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- ABDULWAHID PUNDUGAR, *accused-appellant.***
G.R. No. 214779, FIRST DVISION, February 7, 2018, DEL CASTILLO, *J.*

*Appellant capitalizes on the failure of the apprehending officers to mark and make an inventory of the seized illicit items at the crime scene immediately upon his arrest and not at the police station as what the officers did. In essence, appellant asks for a strict compliance with the prescribed procedures.*

*Marking of the seized items at the police station will not dent the case of the prosecution. As held in People v. Resurreccion marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team Thus, as the law now stands, the apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately at the place where the drugs were seized, or at the nearest police station, or at the nearest office of the apprehending officer, whichever is the most practical or suitable for the purpose. In this case, the apprehending officers found it more practicable to mark, inventory, and photograph the seized drugs at the police station.*

**FACTS:**
A team was formed to conduct a buy-bust operation with PO2 Julaton as the designated poseur-buyer. PO2 Julaton went to the target area while PO2 Ocampo was assigned as "back-up." From a distance, they saw appellant conversing with two companions. Upon approaching them, the informant introduced PO2 Julaton to appellant as a seaman who wanted to score. After PO2 Julaton gave the buy-bust money, appellant in turn gave a sachet of shabu. PO2 Julaton scratched the back of his head as the prearranged signal to his back-up that the sale transaction had been consummated. When PO2 Ocampo arrived, PO2 Julaton immediately held the hand of appellant, introduced himself as a police officer and arrested him. PO2 Julaton ordered appellant to bring out the contents of his pocket. Appellant obliged and PO2 Julaton retrieved four more sachets containing white crystalline substance and the buy-bust money. PO2 Ocampo arrested appellant's companions and confiscated

from them two pieces of plastic sachets. Appellant and his companions together with the confiscated items were brought to the police station for investigation.

PO2 Julaton immediately placed a mark for the item sold and items retrieved from appellant's pocket. He took photographs of the items in front of appellant and an inventory of the drugs seized was made. Thereafter a request for laboratory examination and brought appellant to PNP Crime Laboratory together with the confiscated drugs and the request for laboratory examination. PSI Ballesteros, Forensic Chemist in Camp Crame personally received the specimen from PO2 Julaton together with the request for laboratory examination. In his Chemistry Report by PSI Ballesteros the specimen recovered from appellant gave positive result shabu. Appellant was thereafter charged for violation or Sections 5 and 11, Article II of RA 9165.

RTC found appellant guilty as charged. CA affirmed the decision of RTC.

**ISSUE:**
Whether or not there was non-compliance by the apprehending police officers with Section 21 of RA 9165 and its Implementing Rules and Regulations resulting in a broken chain of custody over the confiscated drugs. (NO)

**RULING:**
*Chain of custody unbroken;integrity and evidentiary value of the seized drugs preserved.*

**Appellant capitalizes on the failure of the apprehending officers to mark and make an inventory of the seized illicit items at the crime scene immediately upon his arrest** and not at the police station as what the officers did. In essence, appellant asks for a strict compliance with the prescribed procedures.

It is settled that failure to strictly comply with the prescribed procedures in the inventory (and marking) of seized drugs does not render an arrest of the accused illegal or the items seized/confiscated from him inadmissible. What is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The primordial concern, therefore, is the preservation of the integrity and evidentiary value of the seized items which must be proven to establish the corpus delicti.

Marking of the seized items at the police station will not dent the case of the prosecution. As held in **People v. Resurreccion** marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team. In fact, the Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640 provides that:

> A.1.3. In warrantless seizures, the marking, physical inventory and photograph of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at thenearest police station or nearest office of the apprehending officer/team, whichever is practicable.

Thus, as the law now stands, the **apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately at the place where the drugs were**

**seized, or at the nearest police station, or at the nearest office of the apprehending officer**, whichever is the most practical or suitable for the purpose. In this case, the apprehending officers found it more practicable to mark, inventory, and photograph the seized drugs at the police station.

Next, there is no dispute that the seized illegal drugs were marked, inventoried, and photographed in the presence of appellant. However, appellant claims that the absence of representatives from the media, the DOJ and an elective government official during the conduct of the inventory and taking of photograph is fatal to the prosecution's cause.

To be sure, strict compliance with this requirement is not mandated. In fact, the law itself provides a saving mechanism, to wit:

> x x x 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.

The prosecution also explained that they were not able to invite representatives from the media, the DOJ, or an elected public official because they could not find anyone available and that they were pressed for time.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- JESUS DUMAGAY y SUACITO, *accused-appellant.***

G.R. No. 216753, FIRST DVISION, February 7, 2018, DEL CASTILLO, *J.*

*The Court has consistently ruled that each link in the chain of custody rule must be sufficiently proved by the prosecution and examined with careful scrutiny by the court. The prosecution has the burden to show "every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence." Failure to strictly comply with rules of procedure, however, does not ipso facto invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved."*

*However in this case, no testimonies or stipulations, however, were made on the details of the turnover of the seized vials from the police station to the crime laboratory, and the turnover and submission of the same from the crime laboratory to the court. These gaps in the chain of custody create doubt as to whether the corpus delicti of the crime had been properly preserved. Accordingly, the Court is constrained to acquit appellant based on reasonable doubt.*

**FACTS:**

PO3 Jimenea testified that a confidential informant (CI) informed him that a certain "Buboy," later identified as appellant was selling morphine. During the briefing, PO3 Jimenea was given the buy-bust money, which was placed inside a white envelope. On the day of the operation, appellant contacted him and informed him that the morphine was ready for delivery at noon time in the vicinity of WESMINCOM. When appellant arrived, appellant approached him and brought him to a corner so as not to be seen by passersby. When appellant asked for the money, he gave him the white envelope

containing the marked money. Appellant, in turn, took from his pocket the morphine placed inside a plastic bag. After checking if the 20 vials were indeed morphine, he immediately made a "thumbs up" sign. SPO4 Rosales and PO3 Lamberte and the other operatives immediately ran towards them to arrest appellant. Appellant tried to escape and drew his gun. SPO4 Rosales confiscated the .45 pistol and the marked money from the pocket of appellant. He informed appellant of the reason for his arrest and advised him of his constitutional rights; and later, brought him to their office in Camp. At the PNP office, he marked the seized items with his initials "JRCJ" and turned them over to SPO1 Gallego, their investigating officer.

SPO4 Rosales further testified that, after arresting appellant, they proceeded to the office, where he placed his initials on the marked money which he later submitted to their investigator as shown in the Certificate of Inventory, signed by PI Domingo, the representatives from the media and the DOJ, and appellant himself; that these items were photographed then brought to the PNP Regional Crime Laboratory Office- on the same day for laboratory examination; that the contents of the 20 vials seized from appellant were subjected to laboratory examination at the PNP Regional Crime Laboratory Office by Forensic Chemist PCI Diestro; that the Chemistry Report confirmed that the vials contained morphine; and that as a result, an Investigation Report was prepared, recommending the filing of cases in court against appellant for violation of Section 5, Article II of RA 9165 and of RA 8294.

The RTC rendered a Decision finding appellant guilty of the crime charged. The CA rendered a Decision affirming the RTC Decision.

**ISSUES:**
Whether or not there was a valid buy-bust operation. (YES)
Whether or not the police officers failed to comply with the Chain of Custody Rule. (YES)

**RULING:**
***There was a valid Buy-Bust Operation***

There is instigation when "the accused is lured into the commission of the offense charged in order to prosecute him." On the other hand, "there is entrapment when law officers employ ruses and schemes to ensure the apprehension of the criminal while in the actual commission of the crime." A buy-bust operation is a form of entrapment used to apprehend drug peddlers. It is considered valid as long as it passes the "objective test," which demands that "the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, i.e., the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale."

In the instant case, the CA correctly found that there was a valid buy-bust operation as the prosecution was able to establish details of the transaction from the initial contact of the poseur-buyer and the appellant up to the consummation of the sale by the delivery of the morphine.

***However, the Prosecution failed to establish an unbroken chain of custody of the seized items***

Chain of custody is "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."

The Court has consistently ruled that each link in the chain of custody rule must be sufficiently proved by the prosecution and examined with careful scrutiny by the court. The prosecution has the burden to show "every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence." Failure to strictly comply with rules of procedure, however, does not ipso facto invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved."

However in this case, no testimonies or stipulations, however, were made on the details of the turnover of the seized vials from the police station to the crime laboratory, and the turnover and submission of the same from the crime laboratory to the court.. These gaps in the chain of custody create doubt as to whether the corpus delicti of the crime had been properly preserved. Accordingly, the Court is constrained to acquit appellant based on reasonable doubt.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- CHRISTIAN KEVIN GUIEB y BUTAY, *accused-appellant.***

G.R. No. 233100, SECOND DVISION, February 14, 2018, PERLAS-BERNABE, *J.*

*To reiterate, the law requires the presence of the enumerated witnesses — namely, an elected official, as well as a representative from the DOJ and the media — to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence. Thus, considering the police officers' unjustified non-compliance with the prescribed procedure under Section 21, Article II of RA 9165, the integrity and evidentiary value of the seized drugs are seriously put into question.*

*Records reveal that while the requisite inventory and photography of the confiscated drugs were indeed conducted, a reading of the Certificate of Inventory shows that only an elected official, i.e., Brgy. Capt. Bagay, was present and that there were no representatives from the DOJ and the media. To make matters worse, the prosecution did not proffer a plausible explanation as to why there was a complete absence of an elected official and a representative from the DOJ and the media in order for the saving clause to apply.*

**FACTS:**

The prosecution alleged that at around 11:30 in the morning and upon the report of an informant, the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) organized a buy-bust team operation with the objective of apprehending Guieb, who was verified to be number four (4) in PAIDSOTG, as well as in the PDEA's lists of drug personalities. Upon arrival at the carinderia where the buy-bust was to be held, the poseur-buyer, PO2 Rarangol, and the informant were approached by Guieb. PO2 Rarangol gave the marked money to Guieb, who in turn, gave the former a plastic sachet containing a white crystalline substance. When the transaction was consummated, PO2 Rarangol performed the pre-arranged signal, prompting backups PO2 Agtang and PO1 Waga to rush to the scene and arrest Guieb. Upon frisking Guieb, PO1 Waga recovered another sachet containing white crystalline substance, which he gave to PO2 Rarangol. The buy-bust team then brought Guieb and the

seized items to the Police Station. Thereat, PO2 Rarangol conducted the marking, inventory, and photography of the seized items in the presence of Guieb and Barangay Captain Francisco Bagay, Sr. Thereafter, PO2 Rarangol brought the seized sachets to the crime laboratory where a qualitative examination of the contents revealed that the same were positive for methamphetamine hydrochloride or shabu.

RTC found Guieb guilty of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The CA affirmed the ruling of RTC.

**ISSUE:**
Whether or not the CA correctly upheld Guieb's conviction for the crime charged. (NO)

**RULING:**
Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

In the case of **People v. Mendoza** , the Court stressed that without the insulating presence of the representative from the media or the DOJ, or any elected public official during the seizure and marking of the seized drugs, the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972 ) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the said drugs that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.

The Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Guieb. First, records reveal that while the requisite inventory and photography of the confiscated drugs were indeed conducted, a reading of the Certificate of Inventory shows that only an elected official, i.e., Brgy. Capt. Bagay, was present and that there were no representatives from the DOJ and the media. To make matters worse, the prosecution did not proffer a plausible explanation as to why there was a complete absence of an elected official and a representative from the DOJ and the media in order for the saving clause to apply. To reiterate, the law requires the presence of the enumerated witnesses — namely, an elected official, as well as a representative from the DOJ and the media — to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence. Thus, considering the police officers' unjustified non-compliance with the prescribed procedure under Section 21, Article II of RA 9165, the integrity and evidentiary value of the seized drugs are seriously put into question.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- RAMIL GALICIA y CHAVEZ, *Accused-Appellant.***
G.R. No. 218402, FIRST DIVISION, February 14, 2018, DEL CASTILLO, *J.*

*For an accused to be convicted of maintenance of a drug den, the prosecution must establish with proof beyond reasonable doubt that the accused is maintaining a den where any dangerous drug is administered, used, or sold. It must be established that the alleged drug den is a place where dangerous drugs are regularly sold to and/or used by customers of the maintainer of the den. It is not enough that the dangerous drug or drug paraphernalia were found in the place.*

*Illegal possession of dangerous drugs absorbs the use of dangerous drugs.*

**FACTS:**
The Anti-Illegal Drugs Special Operations Task Force (AIDSOTF) received a report from Arnel Tugade (Tugade), a camera man of the television program "Mission X," of rampant selling and use of shabu within a certain compound in Pasig City. Tugade showed the PNP Chief Director and other officers of the AIDSOTF a 15-minute video showing several persons selling and using shabu inside shanties found within the compound. Acting on the report, the police officers conducted few surveillance of the area, tests-buy of shabu, and laboratory examinations of the shabu. When the reported selling and use of shabu in the compound were confirmed, a search warrant was applied by the police officers, and then subsequently issued by the RTC. According to the prosecution, a police officer presented the search warrant to appellant who was then found inside the shanty designated as Target No. 8, together with his pregnant wife. Appellant attempted to flee but the team was able to place him under control. The team then proceeded to search the premises with the presence of the appellant and his wife.

In the course of their search, the team found appellant's driver's license inside a wallet, stating the address of the appellant, which was the same as the address of Target No. 8. The team likewise noticed that the appellant had a picture of himself inside the house although the same was not seized since it was not listed in the search warrant. Also, the team was able to find and seize from the appellant plastic sachets containing crystalline substances, weighing scale, cellphone, assorted lighters, wallet containing dollars and a few coins, aluminum foil, and assorted cutters and scissors.

For his defense, appellant claimed that he and his wife were about to board a tricycle during that time when men in uniform who looked like soldiers stopped them and ordered them to go inside the Mapayapa Compound. Inside the compound, appellant was ordered to join a group of men who were arrested and were lying face down on the ground. His wife was brought to an area inside the compound where she joined several other females who were also arrested. They were all brought to Camp Crame and were thereafter processed and were charged with various violations under RA 9165.

Thereafter, both the RTC and the CA found appellant guilty as charged. Both were convinced that the prosecution, through the testimonies of the arresting officers who conducted the search, was able to establish the guilt of appellant beyond reasonable doubt.

**ISSUE:**
1. Whether appellant is guilty of maintenance of a drug den, and use of dangerous drugs. (NO)
2. Whether appellant is guilty of illegal possession of dangerous drugs and drug paraphernalia. (YES)

**RULING:**
The appeal is partly meritorious.

The prosecution failed to prove that appellant was guilty of maintenance of a drug den. For an accused to be convicted of maintenance of a drug den, the prosecution must establish with proof beyond reasonable doubt that the accused is maintaining a den where any dangerous drug is administered, used, or sold. It must be established that the alleged drug den is a place where dangerous drugs are regularly sold to and/or used by customers of the maintainer of the den. It is not enough that the dangerous drug or drug paraphernalia were found in the place. In this case however, the prosecution failed to allege and prove an essential element of the offense — that dangerous drugs were being sold or used inside the shanty located at Target No. 8. Thus, appellant may not be held liable for violation of Section 6, Article II, RA 9165 on maintenance of a drug den.

Likewise, the Court dismissed the charge against appellant on use of dangerous drugs as the same is absorbed by Section 11 on illegal possession of dangerous drugs. Section 15 does not apply when a person charged with violation of Section 15, Article II, RA 9165 on use of dangerous drugs, is also found to have possession of such quantity of drugs provided under Section 11 of the same law. Illegal possession of dangerous drugs absorbs the use of dangerous drugs. This is especially true in this case since appellant was not caught in the act of using drugs. Instead he was caught in the act of possessing drugs and drug paraphernalia.

The Court affirmed the decision of the RTC and CA, finding appellant guilty of illegal possession of dangerous drugs and drug paraphernalia. The Court finds that the prosecution sufficiently established appellant's possession of drugs and drug paraphernalia based on the testimonies of the police officers who categorically declared that they found the drugs and the drug paraphernalia in the possession of the appellant during the course of the implementation of the search warrant.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- RAUL MANANSALA y MANING, *Accused-Appellant.***
G.R. No. 229092, SECOND DIVISION, February 21, 2018, PERLAS-BERNABE, *J.*

*The prosecution has the duty to show an unbroken chain of custody over the seized drugs and account for such link in the chain of custody.* ***Section 21, Article II of RA 9165*** *outlines the procedure which the police officers must follow when handling the seized drugs to preserve their integrity and evidentiary value. It is required that the apprehending team, among others, immediately after seizure and confiscation,* ***shall conduct physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official*** *who shall be required to sign copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four hours from confiscation for examination.*

*In this case,* ***the Court found that the police officers committed unjustified deviations from the prescribed chain of custody rule. The police officers failed to show that the marking of the seized items were done in the presence of any elected public official, as well as a representative from the DOJ and the media.*** *The police officers said that the commotion already happened which is why they just made a blotter and that they did not have a camera at that time cannot be considered as*

*justifiable grounds contemplated by the law.* ***The barangay blotter, which is merely a recording of the incident, is not equivalent to or a substitute for a physical inventory that accounts and lists down in detail the items confiscated from the accused.***

**FACTS:**

On 7 March 2009, **a buy-bust team** composed of Calamba City police officers were formed in response to an information given by a confidential agent that Raul Manansala was selling shabu at Barangay Parlan, Calamba City. The buy-bust team proceeded to the target area. As soon as Manansala was identified by the police officers, PO2 Renato Magadia, the designated poseur-buyer, approached Manansala, and asked if he could purchase shabu. PO2 Magadia gave Manansala the marked P 500.00 bill, while Manansala simultaneously handed him one plastic sachet of suspected shabu. After inspecting the sachet, PO2 Magadia introduced himself as a police officer and arrested Manansala. Manansala was asked to empty his pocket where another plastic sachet of suspected shabu was discovered.

Upon confiscation and marking of the items at the place of arrest, PO2 Magadia brought Manansala to the Parlan Barangay Hall where **a blotter of the incident was made.** Thereafter, Manansala was **taken to a hospital for medical examination, and then to a police station where PO2 Magadia prepared a request of the laboratory examination of the seized items**. After securing such request, **PO2 Magadia delivered the items to the crime laboratorywhere it was received by a forensic chemist who confirmed that they tested positive for the presence of methamphetamine hydrochloride.**

Manansala was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs defined and punished under Sections 5 and 11, Article II of RA 9165 or the Comprehensive Dangerous Drugs Act of 2002. The RTC of Calamba City found Manansala guilty of the crimes charged holding that the prosecution sufficiently established all the elements of Illegal Sale and Illegal Possession of Dangerous Drugs. Furthermore, the RTC declared the integrity and evidentiary value of the seized items were properly preserved from the time of their seizure until their turnover to the crime laboratory.

Manansala appealed to the Court of Appeals which affirmed the accused's conviction for the crimes charged likewise ruling that all elements of Illegal Sale and Illegal Possession of Dangerous Drugs were duly proven by the prosecution. But more importantly, it held that even if the police officers failed to perfectly comply with the requirements set forth by the law as regards to the rule on chain of custody, considering the absence of representatives from the media, the Department of Justice (DOJ), and any elected public official during the inventory and photography of the seized drugs, the integrity and evidentiary value of such were shown to have been duly preserved as PO2 Magadia was its custodian from the time of their confiscation until preservation and presentation in court as evidence.

**ISSUE:**

Whether or not the Court of Appeals correctly held the conviction of Manansala from the crimes of Illegal Sale and Possession of Dangerous Drugs (NO)

**RULING:**

**Jurisprudence states that it is essential that the identity of the prohibited drug be established with moral certainty considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime.** The prosecution has the duty to show an unbroken chain of custody over the seized drugs and account for such link in the chain of custody. Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs to preserve their integrity and evidentiary value. It is required that the apprehending team, among others, immediately after seizure and confiscation, shall conduct physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four hours from confiscation for examination. In *People vs Mendoza*, the Court stressed that without the insulating presence of the representative from the media or the DOJ, or any elected public official during the seizure and marking of the seized drugs, the evils of switching, "planting", or contamination of the evidence that had tainted the buy-busts conducted to negate the integrity and credibility of the seizure and confiscation of the said drugs that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.

The Supreme Court, however, has held in some cases that non-compliance with the rules on chain on custody, if under justifiable grounds, will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team provided that the prosecution satisfactorily proves that: (a) **there is justifiable ground for non compliance**; and (b) **the integrity and evidentiary value of the seized items are properly preserved.** In *People vs De Guzman*, the Court emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

In this case, **the Court found that the police officers committed unjustified deviations from the prescribed chain of custody rule,** thereby putting into question the integrity and evidentiary value of the items purportedly seized from Manansala. **The police officers failed to show that the marking of the seized items were done in the presence of any elected public official, as well as a representative from the DOJ and the media.** The police officers said that the commotion already happened which is why they just made a blotter and that they did not have a camera at that time cannot be considered as justifiable grounds contemplated by the law. **The barangay blotter, which is merely a recording of the incident, is not equivalent to or a substitute for a physical inventory that accounts and lists down in detail the items confiscated from the accused.**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ALVIN VELASCO y HUEVOS, *Accused-Appellant.***

G.R. No. 219174, THIRD DIVISION, February 21, 2018. BERSAMIN, *J.*

***Section 21, Article II of RA 9165*** *outlines the procedure which the police officers must follow when handling the seized drugs to preserve their integrity and evidentiary value. It is required that the apprehending team, among others, immediately after seizure and confiscation,* ***shall conduct physical inventory and photograph the seized items in the presence of the accused or the person from***

***whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official*** *who shall be required to sign copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four hours from confiscation for examination.*

*The procedures provided for by the law and the IRR for the Comprehensive Dangerous Drugs Act were not followed by the members of the apprehending team. They did not mark and photograph the seized drugs, or make an inventory of the seized drugs immediately upon confiscation* ***at the place of the buy-bust operation and in the presence of Velasco, a representative from the media, and the Department of Justice, and an elected public official*** *who should then have signed copies of the inventory and be given a copy thereof.*

**FACTS:**

A **buy-bust operation** was planned due to a report by a police asset that Alvin Velasco (Velasco) and Vevir Diaz (Diaz) were selling shabu in Calapan City. Calapan City Police Station verified this information through a surveillance operation that lasted for at least two weeks. The police asset contacted Velasco and Diaz and arranged a sale of shabu. PO2 Radel Alcano, the designated poseur-buyer, and the police asset proceeded to the agreed meeting place while the other police officers were hidden nearby inside a vehicle. When Velasco and Diaz arrived, PO2 Alcano and the police asset approached both of them and gave them three P 500.00 bills which were prepared as marked money and then **Velasco took out a small plastic sachet containing a white crystalline substance suspected to be shabu and gave it to PO2 Alcano.** On the other hand, Diaz just watched the entire exchange and e**ven attempted to sell more shabu to the buyers**. After seeing the sale, the other police officers who were in the vehicle alighted and proceeded to apprehend Diaz and Velasco. They were searched for more illegal drugs and found three more small sachets containing white crystalline substance suspected to be shabu.

Diaz and Velasco, together with the seized items, were brought to the police station and **were photographed in the presence of a Barangay Captain.** The seized items **were marked** and an I**nventory of Confiscated Items was prepared** by PO2 Alcano which was **attested to by the same Barangay Captain present.** Requests for laboratory examination were prepared which was subsequently approved. **The four plastic sachets recovered from Velasco and Diaz were personally turned over to the forensic chemist of the Crime Laboratory Service on the same day of arrest.** Examinations were conducted thereon and results yielded positive for shabu.

Both of them were charged with the crime of Illegal Possession of Dangerous Drugs but only Diaz was charged with the crime of Illegal Sale of Prohibited Drugs. The RTC rendered a joint decision after trial and convicted Velasco and Diaz of the crimes they were charged with. The RTC observed that the elements of illegal possession and illegal sale of dangerous drugs were sufficiently established by the prosecution. Diaz and Velasco were caught in flagrante delicto selling shabu during the buy-bust operation which rendered the evidence presented against them admissible and that the apprehending police officers properly preserved the integrity and evidentiary value of the seized items by complying with the law. The Court of Appeals affirmed the convictions of Diaz and Velasco by upholding the findings of the RTC. Only Velasco appealed the decision of the appellate court.

**ISSUE:**

Whether or not the Court of Appeals erred in finding Velasco guilty beyond reasonable doubt of the crimes charged (YES)

**RULING:**

To establish the crime of illegal sale of dangerous drugs, the following elements must concur: (a) **the identity of the buyer and the seller, object and consideration of the sale**; and (b) **the delivery of the thing sold and the payment for it.** The prosecution must prove that the transaction or sale of dangerous drugs actually took place, coupled with presentation in court of evidence of the thing sold which is the corpus delicti. The requirement for ensuring the chain of custody becomes essential as it ensures that unnecessary doubts respecting the identity of the evidence are thereby minimized or removed.

**The procedures provided for by the law and the IRR for the Comprehensive Dangerous Drugs Act were not followed by the members of the apprehending team.They did not mark and photograph the seized drugs, or make an inventory of the seized drugs immediately upon confiscation at the place of the buy-bust operation and in the presence of Velasco, a representative from the media, and the Department of Justice, and an elected public official who should then have signed copies of the inventory and be given a copy thereof.**

Although non-compliance to the procedures would not automatically invalidate the seizure and custody of the dangerous drugs recovered or seized, there must be a justification for such non-compliance. Otherwise, the failure to render the justification will create doubt aS to the identity and the evidentiary value of the drugs presented as evidence in court. **The apprehending officers failed to justify their non-compliance with the procedure thus, it could only mean that the important links in the chain of custody were absent, and this constituted a fatal flaw in the incrimination of Velasco.** It is also noteworthy that the police officers have the sufficient time to ensure the presence of a media representative and the DOJ since they had been conducting surveillance operation for at least two weeks. The regularity of the performance of official duty on the part of the arresting officers during the buy-bust operation and its aftermath cannot be presumed when the records do not contain any explanation as to why they failed to comply with the procedures outlined by the law.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellant*, -versus- NAMRAIDA ALBOKA Y NANING @ "MALIRA", *Accused-Appellant.***

G.R. No. 212195, THIRD DIVISION, February 21, 2018, MARTIRES, *J.*

*There is a broken chain of custody in this case. The four links of chain of custody must be established: (1)* ***the seizure and marking of the illegal drug recovered from the accused by the apprehending officer;*** *(2)* ***the turnover of the illegal drug seized to the apprehending officer to the investigating officer;*** *(3)* ***the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination;*** *and (4)* ***the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.*** *The prosecution failed to establish such links.*

***First****, the prosecution* ***failed to prove where and when the markings were placedand if they were placed in the presence of the accused-appellant nor did the physical inventory of the seized items***

***was conducted in the presence of the accused-appellant, a representative from the media, the DOJ, and any elected public official, and that the items were photographed.Second****, Lagos claims that* ***he turned over the seized items to De Lima for the preparation of the request for the laboratory examination and even admitted that he was not aware where De Lima had taken the seized items*** *since he just roamed around the headquarters after handing the items to De Lima.* ***Third****, n****o explanation was offered by the prosecution on why Lagos and Turingan were the ones who brought the seized items to the crime laboratory instead of De Lima.Finally****, the prosecution also miserably failed to show who brought the seized items before the trial court.***

While the Supreme Court is mindful on the presumption of regularity in the performance of duties by public officers, it must be emphasized that the presumption can be overturned if evidence is presented to prove either of the two things namely: (1) **that they were not properly performing their duty;** or (2) t**hat they were inspired by any improper motive**. In this case, **the records sufficiently show that the serious and irreparable gaps in the chain of custody of evidence just proves the fact that the police officers did nor properly perform their duty.**

**FACTS:**

The Southern Police District (SPD) of Taguig City received information from its informant that a certain alias "Bobby" was involved in drugs. After sending a coordination form and a pre-operation report to the PDEA, they commenced the operation. The informant called Bobby to finalize the transaction. It was instructed that the item ordered has been passed to a certain Malira (accused-appellant) and told the informant that he along with PO2 Lagos, the assigned poseur-buyer, should proceed to the residence of one alias Monta who would bring them to Malira. They followed the instructions and as agreed upon, Monta brought them to Malira who told them that she had the items. PO2 Lagos handed them two marked P 200.00 bill and in exchange, Malira handed a sachet to Lagos. Seeing that the sale was already consummated, Lagos introduced himself as a police officer and she was arrested for selling drugs, Malira and Monta were frisked **which yielded to two plastic sachets of shabu and one plastic sachet, respectively.**

Lagos placed markings on the sachets of shabu. Monta and Malira were then brought to the SPD where their respective identities were determined as Montasir Satol and Namraida Alboka. Lagos was in possession of the seized items and the marked money from the time that he left the scene of the crime until he reached the SPD. On the same night, **Lagos turned over the seized items to SPO3 Salvio de Lima for the preparation of the request for laboratory examination.Lagos and another police officer, Rommel Turingan (Turingan), brought the seized items to the SPD crime laboratory.The laboratory report showing that the seized items were positive for methamphetamine hydrochloride was released on the same day.** Both Lagos and Turingan executed their joint affidavit of arrest detailing the conduct of the buy-bust operation.

Accused-appellant was charged before the RTC of Muntinlupa for the crimes of Illegal Sale and Possession of Dangerous Drugs. The RTC convicted the accused-appellant of the crimes charged

noting that Lagos substantially complied with the requirements provided for by the law. The Court of Appeals agreed with the findings of the RTC holding that although the requirements of the law were not faithfully observed, as long as the chain of custody remains unbroken, the guilt of the accused would not be affected. Moreover, the accused-appellant **failed to overcome the presumption that the police officers handled the seized items with regularity.**

**ISSUE:**

Whether or not the trial court gravely erred in convicting the accused-appellant of the crimes charged (YES)

**RULING:**

As a general rule, the findings of trial courts are generally viewed as correct and entails the highest respect because it is more competent to conclude so having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave testimonies. However, this cannot be had if the trial and appellate courts have overlooked facts and circumstances which would have affected the resolution of the cases filed against the accused-appellant which is the case here.

Contrary to the decision of the RTC and CA, **there was a broken chain of custody of evidence.** The prosecution has the burden to prove that the evidence presented in court is the same drugs which were seized from the accused. The corpus delicti in cases involving dangerous drugs is the presentation of the dangerous drugs itself. As a general rule, **the four links of chain of custody must be established**: (1) **the seizure and marking of the illegal drug recovered from the accused by the apprehending officer;** (2) **the turnover of the illegal drug seized to the apprehending officer to the investigating officer;** (3) **the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination;** and (4) **the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.**

In this case, **first**, the prosecution **failed to prove where and when the markings were placedand if they were placed in the presence of the accused-appellant nor did the physical inventory of the seized items was conducted in the presence of the accused-appellant, a representative from the media, the DOJ, and any elected public official, and that the items were photographed.Second**, Lagos claims that **he turned over the seized items to De Lima for the preparation of the request for the laboratory examination and even admitted that he was not aware where De Lima had taken the seized items**since he just roamed around the headquarters after handing the items to De Lima. **Third**, n**o explanation was offered by the prosecution on why Lagos and Turingan were the ones who brought the seized items to the crime laboratory instead of De Lima.Finally**, **the prosecution also miserably failed to show who brought the seized items before the trial court.**

While the Supreme Court is mindful on the presumption of regularity in the performance of duties by public officers, it must be emphasized that the presumption can be overturned if evidence is presented to prove either of the two things namely: (1) **that they were not properly performing their duty;** or (2) t**hat they were inspired by any improper motive**. In this case, **the records sufficiently show that the serious and irreparable gaps in the chain of custody of evidence just proves the fact that the police officers did nor properly perform their duty.**

To summarize, the prosecution, in this case, failed to overcome the presumption of innocence which the accused-appellant enjoy, prove the corpus delicti of the crime, establish an unbroken chain of custody of the seized drugs; and offer any explanation why the procedures set forth by the law were not complied with.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,*-versus-ALLAN BUGTONG y AMOROSO, *accused-appellant*.**

GR No. 220451, FIRST DIVISION, February 26, 2018, DEL CASTILLO, *J.*

*As starting point of the chain of custody, the immediate marking of the specimen is necessary because it serves as reference for and by the subsequent handlers of the item. The purpose of placing a mark is to distinguish it from similar items and to indicate that said item had been under her temporary custody. It must be done in the presence of the apprehended violator of law, and immediately upon his or her apprehension. Here, the evidence shows that SPO1 Puasan who acted as poseur-buyer did not mark the seized sachet at the outset.*

**FACTS:**

According to the prosecution, a team of police officers conducted a buy-bust operation on Allan Bugton. SPO1 Puasan acted as the poseur-buyer. During the operation, SPO1 Puasan gave Bugton the marked money and in turn, Bugton gave SPO1 Puasan a sachet of shabu. After doing the pre-assigned signal, Bugton was arrested and SPO1 Puasan immediately placed the marking "AB" on the item sold to her. She personally brought the seized item to the PNP Crime Laboratory and turned over the same to P/Supt. Angela Baldevieso, then forensic chemist.

SPO1 Puasan identified in court the marked money and the sachet of shabu. She stressed that the sachet was the one she bought from Bugton as it bore her marking "AB". However, Bugtong argued that there was a gap in the chain of custody because of the failure to properly mark the seized item immediately after the confiscation, in violation of section 21, RA 9165 or the Dangerous Drugs Act.

**ISSUE:**

Whether or not there was a failure to properly mark the seized item immediately after confiscation. (YES)

**RULING:**

As a rule, there are four links in the chain of custody: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) its turnover by the

apprehending officer to the investigating officer; (3) the investigating officer's turnover thereof to the forensic chemist for examination; and, (4) its submission by the forensic chemist to the court.

As starting point of the chain of custody, the immediate marking of the specimen is necessary because it serves as reference for and by the subsequent handlers of the item. The purpose of placing a mark was to distinguish it from similar items and to indicate that said item had been under her temporary custody. It must be done in the presence of the apprehended violator of law, and immediately upon his or her apprehension.

Both SPO1 Puasan and P/Supt. Beldevieso claimed to have placed the markings "AB" on the sachet but records did not indicate that there were two "AB" markings on the specimen. It is logical to conclude that Beldevieso placed the "AB" marking, considering it was her initials. It would be rather odd for P/Supt. Baldevieso to use a mark similar to the one that was already placed in the seized item. Here, the evidence shows that SPO1 Puasan who acted as poseur-buyer did not mark the seized sachet at the outset.

**ROMMEL RAMOS y LODRONIO, *petitioner,*-versus- PEOPLE OF THE PHILIPPINES,*respondents.***

GR No. 227336, THIRD DIVISION, February 26, 2018, GESMUNDO, *J.*

*Compliance with the requirement under sec. 21 of RA 9165 forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. It is essential that the identity of the seized drug or paraphernalia be established with moral certainty. The lack of the inventory signed by petitioner or by his representative as well as by the representative of media, the DOJ, and the elected official as required by law could very well be held to mean that no dangerous drug had been seized from petitioner.*

**FACTS:**

Upon knowledge from an informant that Ramos and his co-accused Rodrigo Bautista were selling drugs, Caloocon Chief of Police formed a buy-bust team. Poseur-buyer PO1 Madronero handed the marked money to Bautista, who in turn gave him two plastic sachets. Thereafter, PO1 Madronero performed the pre-arranged signal and arrested Bautista and Ramos. PO3 Modina frisked Ramos and recovered from him two plastic sachets. The marked bills, the seven plastic sachets, and the accused were turned over to PO3 dela Cruz, Investigating Officer. The specimens were personally brought to the crime laboratory by PO3 dela Cruz where a positive result of marijuana yielded. Rommel Ramos was charged with illegal possession of dangerous drugs under section 11, Article II of RA 9165.

Ramos argued that the apprehending officers did not know his full name at the time of the arrest, hence, it was impossible to mark the confiscated items using his initials. Further, the police officer did not properly secure the seized items and no inventory and photograph of the items took place.

**ISSUE:**

Whether or not the prosecution was able to prove that the two plastic sachets of marijuana were the very same items confiscated. (NO)

**RULING:**

The prosecution completely failed to present in evidence the inventory and the photographs of the seized items because the apprehending team did not bother to conduct the same. It is essential that the identity of the seized drug or paraphernalia be established with moral certainty.

The lack of the inventory signed by petitioner or by his representative as well as by the representative of media, the DOJ, and the elected official as required by law could very well be held to mean that no dangerous drug had been seized from petitioner.

First, the markings were marred by dubious circumstances. The drugs were marked with the initials of the arresting officer and the complete name of the accused, but it was impossible for the officers to do so because they only knew their aliases at the time of their arrest. Also, the records are bereft of the photographic copies of the seized items; the only photographs taken were that of the marked bills.

Second, the seized items were not properly secured upon confiscation. Instead of being placed in an envelope or evidence bag, it was only put inside the pocket of the arresting officer.

Third, the prosecution failed to establish who delivered the drugs to the investigating officer, this breaking the second link in the chain of custody: transfer of the seized items by the apprehending officer to the investigating officer.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* -versus- ROY MAGSANO y SAGAUINIT, *accused-appellant.***

G.R. No. 231050, SECOND DIVISION, February 28, 2018, PERLAS-BERNABE, *J.*

*It is essential that the identity of the prohibited drugs be established beyond reasonable doubt, considering that the prohibited drug itself forms an integral part of the corpus delicti of the crime. The prosecution must show an unbroken chain of custody over the dangerous drugs to obviate any unnecessary doubts on its identity on account of switching, "planting", or contamination of evidence. In this case, the failure to conduct the inventory of the seized drugs in the presence of representative from the media or the DOJ breaks the chain of custody.*

**FACTS:**

Roy Magsano was charged with the crimes of illegal sale and illegal possession of dangerous drugs in violation of RA 9165.

Acting on an information that a certain "Taroy", later identified as Magsano, was engaged in illegal drug activities, the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) organized a buy-bust operation. PO3 Marcelo was the designated poseur-buyer.

During the operation, PO3 Marcelo bought P500 worth of shabu from Magsano who in turn took out three plastic sachets of white crystalline substance and asked PO3 Marcelo to choose one. After examining the same, PO3 Marcelo executed the pre-arranged signal. Police officers frisked Magsano which yielded two more sachets of suspected shabu. Magsano was taken to the barangay hall where

the seized drugs were marked and inventoried in the presence of the barangay kagawad. PO3 Marcelo delivered the seized items to the PNP Crime Laboratory which was received by the police chief inspector. The specimen of drugs contained the presence of *methamphetamine hydrochloride,* a dangerous drug.

**ISSUE:**

Whether or not the prosecution established an unbroken chain of custody. (NO)

**RULING:**

It is essential that the identity of the prohibited drugs be established beyond reasonable doubt, considering that the prohibited drug itself forms an integral part of the corpus delicti of the crime. The prosecution must show an unbroken chain of custody over the dangerous drugs to obviate any unnecessary doubts on its identity on account of switching, "planting", or contamination of evidence.

Section 21, Article II of RA 9165, as amended by RA 10640, mandates that the apprehending team shall immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, with an elected public official **and** a representative from the National Prosecution Services (which falls under the DOJ) **or** the media.

However, failure to strictly comply with the procedure does not ipso facto render the seizure and custody over the said items as void, provided, the prosecution satisfactorily proves that (a) there is justifiable ground for non-compliance; and(b) the integrity and evidentiary value of the seized items are properly preserved.

While the inventory of the seized drugs was conducted in the presence of Magsano and the barangay kagawad, the same was not done in the presence of a representative from the media or the DOJ. The prosecution did not provide any justifiable reason as to why the presence of these required witnesses was not procured. In this case, the failure to conduct the inventory of the seized drugs in the presence of representative from the media or the DOJ breaks the chain of custody, thereby acquitting Magsano.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* -versus- WILSON RAMOS y CABANATAN, *accused-appellant.***

G.R. No. 233744, SECOND DIVISION, February 28, 2018, PERLAS-BERNABE, *J.*

*The identity of the prohibited drug must be proved with moral certainty, as the dangerous drug itself forms an integral part of the corpus delicti of the crime. Accordingly, the prosecution must be able to account for each link of the chain from the moment the drugs are seized up to their presentation in court as evidence of the crime, required by section 21 of RA 9165, as amended by RA 10640*.

*In this case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Ramos.*

**FACTS:**

Wilson Ramos was charged with sale of illegal drugs in violation of section 5, Article II of RA 9165.

The PDEA organized a buy-bust operation targeting Wilson Ramos who was known to be a notorious drug pusher. After the exchange of five sachets containing the suspected shabu and the marked money during the operation, IO1 Dealagdon performed the pre-arranged signal. Ramos was arrested and was brought to the police station. Thereat, PDEA operatives conducted the inventory and photography of the seized items in the presence of a barangay kagawad. The seized items were brought to the PDEA crime laboratory where the contents yielded positive of methamphetamine hydrochloride.

The Regional Trial Court and the Court of Appeals found Ramos guilty of illegal sale of dangerous drugs, having proved the existence of the transaction, the corpus delicti or the illicit drug presented as evidence, and the identity of both buyer and seller.

**ISSUE:**

Whether or not the prosecution established an unbroken chain of custody. (NO)

**RULING:**

The identity of the prohibited drug must be proved with moral certainty, as the dangerous drug itself forms an integral part of the corpus delicti of the crime. Accordingly, the prosecution must be able to account for each link of the chain from the moment the drugs are seized up to their presentation in court as evidence of the crime as required by section 21 of RA 9165, as amended by RA 10640.

In this case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Ramos.

First, although the marking of the seized items was done in the presence of the accused himself and an elected public official, the same was not done in the presence of any representative from the DOJ and the media. Second, there was a discrepancy of 0.0528 in the weight during the first examination and the re-examination. The PDEA operatives were unable to state justifiable reasons for these procedural lapses and failed to establish the integrity and evidentiary value of the seized items.

**PEOPLE OF THE PHILIPPINES*, Plaintiff-Appellee,* -versus- TENG MONER y ADAM, *Accused-Appellant.***

G.R. No. 202206, FIRST DIVISION, March 5, 2018, LEONARDO-DE CASTRO, *J.*

*"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. Noncompliance with the chain of custody rule is excusable as long as there exist justifiable grounds which prevented those tasked to follow the same from strictly conforming to the said directive.*

**FACTS:**

The following events are the version of the prosecution. The police operatives of Las Pinas arrested Joel Taudil for possession of illegal drugs. Taudil informed them that the drugs allegedly came from Teng Moner. Police Chief Inspector Jonathan Cabal formed a team that would conduct a buy-bust operation for the apprehension of accused-appellant. The team was composed of himself, SP04 Arnold Alabastro, SPO1 Warlie Hermo, PO3 Junnifer Tuldanes, PO3 Edwin Lirio, PO2 Rodel Ordinaryo, PO1 Erwin Sabbun and PO2 Joachim Panopio. The marked and boodle money were given to PO2 Panopio who acted as the poseur-buyer. Panopio and Taudil went to accused-appellants' house and Taudil introduced Panopio as a friend who wants to buy 5 grams of shabu. Accused-appellant informed them that it costs P8000 and the former returned to his house to get the shabu after assuring that Panopio has money with him. Panopio then gave the marked money to accused-appellant in exchange for the drugs. Panopio then identified himself as a police officer and the accused-appellant tried the arrest but was unsuccessful. After the arrest, the team proceeded to the Las Piñas City Police Station. The items confiscated were turned over by PO2 Panopio to PO3 Dalagdagan who marked them in the presence of the police operatives, accused-appellant and his co-accused. PO3 Dalagdagan prepared the corresponding inventory of the confiscated items. The specimens were then brought to the police crime laboratory for testing. The specimens yielded positive to the test for methylamphetamine hydrochloride or *shabu.* Petitioner was charged with illegal sale of dangerous drugs.

The following are the contention of the defense: the accused is inside his house and was preparing for the wedding of Abubakar to be held the following day. Then several armed persons wearing civilian clothes entered and announced that they were police officers. They searched the whole house and gathered all of them in the living room. The police officer who was positioned behind accused-appellant and Abubakar dropped a plastic sachet. The former asked accused-appellant and Abubakar who owns the plastic sachet. When accused-appellant .denied its ownership, the police officer slapped him and accused him of being a liar. Thereafter, they were all frisked and handcuffed and were brought outside the house. Their personal effects and belongings were confiscated by the police officers. Then they boarded a jeepney and were brought to Las Piñas Police Station.

**ISSUE:**

Whether the prosecution successfully proved the guilt of the accused. (YES)

**RULING:**

For a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or ·sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. A perusal of

the records of this case would reveal that the aforementioned elements were established by the prosecution. The illegal drugs and the marked money were presented and identified in court. More importantly, Police Officer (PO) 2 Joachim Panopio (PO2 Panopio), who acted as poseur-buyer, positively identified Moner as the seller of the *shabu* to him for a consideration of ₱8,000.00. The accused-appellant's contention that the prosecution's failure to present the informant in court diminishes the case against him is unavailing. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit arrested through his efforts. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded. In the present case, as the buy-bust operation was duly witnessed by SPO2 Aro and PO3 Pera, their testimonies can take the place of that of the poseur-buyer.

The contention of the accused that the chain of custody rule has not been properly complied with has no merit. "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. Noncompliance with the chain of custody rule is excusable as long as there exist justifiable grounds which prevented those tasked to follow the same from strictly conforming to the said directive. Both object and testimonial evidence demonstrate that the apprehending officers were able to mark the dangerous drugs seized and to prepare a physical inventory of the same at the Las Piñas Police Station which was the place where Moner and his co-accused were brought for processing.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- JOEY SANCHEZ Y LICUDINE, *Accused-Appellant***

G.R. No. 231383, SECOND DIVISION, March 07, 2018, PERLAS-BERNABE, J.

*The law requires the presence of an elected public official, as well as representatives from the DOJ and the media during the actual conduct of inventory and photography to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. As such, the apprehending officers are compelled not only to state reasons for their non-compliance, 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.*

**FACTS:**

Two cases were filed against accused charging him with illegal sale and illegal possession of dangerous drugs punishable under Sections 5 and 11 of RA 9165. Members of the Philippine Drug Enforcement Agency (PDEA) and the Philippine National Police organized a buy bust operation which

led to the arrest of accused. Investigation Officer Tabuyo was designated to be a poseur-buyer who met with the accused. Tabuyo then handed the money to accused after the negotiation and the latter handed the former a plastic sachet with crystalline substance. After IO1 Tabuyo examined the contents of the plastic sachet, he executed the pre-arranged signal, thus prompting the other members of the buy-bust team to rush to the scene and arrest Sanchez. The buy-bust team searched Sanchez and found two (2) other plastic sachets also containing a white crystalline substance.

The buy-bust team then conducted the markings, inventory, and photography on site before proceeding to their office for documentation purposes.Thereat, the team was met with representatives from the Department of Justice (DOJ) and the media, both of whom signed the Certificate of Inventory. The seized plastic sachets were then taken to the PNP Crime Laboratory where it was confirmedthat their contents are indeed methamphetamine hydrochloride.

In his defense, appellant narrated that, before the arrest, he was in front of the public market collecting bets for *jueteng*, when two (2) men unknown to him suddenly approached him and gave their numbers; and that when they were about to pay, they handcuffed and arrested him for allegedly selling drugs. Sanchez then insisted that when he was frisked, the men were only able to find money from the bets he collected and that they only made it appear that they recovered sachets containing *shabu* from him. The trial court convicted the accused of the crime charged and the Court of Appeals affirmed the conviction.

**ISSUE:**

Whether the Court of Appeals erred in affirming the conviction in the trial court. (YES)

**RULING:**

The law requires the presence of an elected public official, as well as representatives from the DOJ and the media during the actual conduct of inventory and photography to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. As such, the apprehending officers are compelled not only to state reasons for their non-compliance, 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.

While it appears that representatives from the DOJ and the media were present during the conduct of the inventory as evidenced by their signatures on the Certificate of Inventory, a more careful scrutiny of the records shows that the buy-bust team conducted the marking, inventory, and photography where the arrest was made,and merely made the aforesaid representatives sign the Certificate of Inventory upon the buy-bust team's arrival at their office. Moreover, the said procedures were not done in the presence of any elected public official. In this case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution. For instance, in an attempt to justify the absence of any elected public official during the conduct of inventory and photography, IO1 Tabuyo stated on cross-examination that they failed to coordinate with any barangay official because it was a rush operation. There were no earnest efforts made by the apprehending officers to coordinate with barangay officials and there were no serious attempts to look for other representatives. For failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression — as in fact the only reason given was that they were conducting a "rush operation" — the Court is constrained to conclude that

the integrity and evidentiary value of the items purportedly seized from Sanchez have been compromised.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee* -versus- CRISPIAN MERCED LUMAYA, *Accused-Appellant.***
G.R. No. 231983, SECOND DIVISION, March 07, 2018, PERLAS-BERNABE, J.

*Non-compliance with the requirements of Section 21 of RA 9165—under justifiable grounds— will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. The Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. The justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.*

**FACTS:**

The police received a tip that accused Crispian is selling dangerous drugs. Acting on the said tip, the police organized a buy bust operation to arrest Crispian. PO1 Dumaguit acted as a poseur-buyer. After negotiation between Dumaguit and Crispian, the former handed a marked P500 bill to the latter and the latter handed a sachet containing crystalline substance to the former. Dumaguit then introduced himself as a police officer which prompted Crispian to run away. He was accosted and 10 sachets were seized from him. Dumaguit conducted the requisite marking and inventory of all the seized items in the presence of the accused, as well as an elected public official and representatives from the Department of Justice (DOJ) and media.Concurrently, PO2 Paclauna took photos, apparently showing 18 sachets of *shabu*. After the operation, the team went back to the police station and prepared the letter-request for laboratory examination.Subsequently, PO1 Dumaguit brought the said letter-request, together with only 11 seized sachets of shabu, to the PNP Negros Oriental Crime Laboratory, where they were received by Police Chief Inspector Llena. PCI Llena then examined and confirmed that the same contained *methamphetamine hydrochloride*, a dangerous drug.

In his defense, accused Derek alleged that at around 8:00 o'clock in the evening of March 4, 2013, he was in the house of his live-in partner when he received a text message from his cousin, Crispian, inviting him for dinner. At around 9:30p.m., he fetched Crispian and proceeded to Nilo's *tocino* joint on a motorcycle. After dinner, the accused were on their way to the house of Crispian's friend when it started to rain; they decided to let the rain pass at the house of Crispian's other friend. When the rain stopped, they then proceeded to continue their trip, and on the way Derek saw a drunk man wobbling on the road, so he stopped the motorcycle. The man, however, suddenly grabbed him, introduced himself as a police officer, and took out a gun. Crispian attempted to escape, but the other police officers arrived, fired their guns, and accosted him. They then arrested the accused and effected a body search on them.

Accused was charged with illegal sale of dangerous drugs together with his co-accused Derek Lumaya. Accused Crispian also has another information charging him with illegal possession of

dangerous drugs and drug paraphernalia. The trial court convicted the accused of the crime charged and the Court of Appeals affirmed the decision.

**ISSUE:**

Whether the accused should be convicted of the crime charged. (NO)

**RULING:**

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.Under the said section, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination. Non-compliance with the requirements of Section 21 of RA 9165—under justifiable grounds— will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. The Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. The justifiable ground for non-compliance must be proven as a fact because the Court cannot presume what these grounds are or that they even exist.

While it appears that the apprehending officers in this case did conduct a physical inventory and photography of the drugs allegedly seized from the accused, it is, nonetheless, baffling that the number of sachets shown in the photographs taken (*i.e.*, 18) do not correspond with the number of sachets for which the accused, as per the subject Information and inventory report, were herein charged (*i.e.*, 11). This discrepancy - if left unaccounted for - clearly renders suspect the integrity and evidentiary value of the seized drugs because not only would it be difficult to determine the actual identity of the drugs for which the accused are charged (that is, which 11 among the 18 sachets displayed in the photos taken were the charges based on), but a numerical variance would also arouse suspicions of planting and/or switching. Indeed, when the law requires that the drugs be physically inventoried and photographed immediately after seizure, it follows that the drugs so inventoried and photographed should as a general rule be the self-same drugs for which the charges against a particular accused would be based. The obvious purpose of the inventory and photography requirements under the law is precisely to ensure that the identity of the drugs seized from the accused are the drugs for which he would be charged. Any discrepancy should therefore be reasonably explained; otherwise, the regularity of the entire seizure procedure would be put into question.

**PEOPLE OF THE PHILIPPINES, *Petitioner,* -versus – PO1 JOHNNY K. SULLANO, *Respondent.***
G.R. No. 228373, THIRD DIVISION, March 12, 2018, GESMUNDO, *J.*

*The **wording of Section 15, Article II of R.A. No. 9165 pre-supposes that accused was arrested or apprehended committing a crime** and therefore should be subjected to a drug examination. An analysis of the construction of the sentence yields no other conclusion. Section 15 is unambiguous: the **phrase "apprehended or arrested" immediately follows "a person," thus qualifying the subject person**. It necessarily follows that only apprehended or arrested persons found to be positive for use of any dangerous drug may be prosecuted under the provision.*

*"A person apprehended or arrested" cannot literally mean any person apprehended or arrested for any crime. The phrase must be read in context and understood in consonance with R.A. 9165. **Section 15 comprehends persons arrested or apprehended for unlawful acts listed under Article II of the law. To make the provision applicable to all persons arrested or apprehended for any crime not listed under Article II is tantamount to unduly expanding its meaning.***

**FACTS:**

Senior Superintendent Nerio T. Bermudo (P/SSupt Bermudo), the City Director of the Butuan City Police Office, ordered **fifty (50) randomly selected police officers to undergo drug testing** pursuant to **Section 36, Article III of R.A. No. 9165**. Among those who underwent testing was respondent, a police officer at Butuan City Police Station 5.

The **test conducted on respondent's urine specimen gave a positive result for the presence of methamphetamine. The confirmatory test likewise yielded the same results**. P/SSupt. Bermudo filed a Complaint Affidavit **against respondent for violation of Section 15, Article II of R.A. No 9165**. The respondent pleaded the dismissal of the case against him on the ground that the State failed to adduce sufficient evidence to prove his guilt beyond reasonable doubt; that the essential elements of the crime were not proven as it was **never asserted that respondent was apprehended or arrested or actually caught using any dangerous drug.** Respondent filed a Demurrer to Evidence after the trial had ensued.

RTC granted the demurrer to evidence by relying on the wording of Sec 15, Article II of R.A. No. 9165 that it pre-supposes that accused was arrested or apprehended committing a crime and therefore should be subjected to a drug examination, considering that this could be alleged as an aggravating circumstance in any criminal case filed against him. CA denied the State's petition for certiorari. **Petitioner maintains that Section 15 should be read in conjunction with Section 36 which provides that arrest or apprehension of the accused is not required prior to the submission to drug examination.** Random drug tests are allowed under certain circumstances, which include the instant case.

**ISSUE:**

Whether Section 15, Article II of R.A. No. 9165 requires the apprehension or arrest of a person for the latter to be considered as violating the provision. (YES)

**RULING:**

"A person apprehended or arrested" cannot literally mean any person apprehended or arrested for any crime. The phrase must be read in context and understood in consonance with R.A. 9165. **Section 15 comprehends persons arrested or apprehended for unlawful acts listed under Article II of the law. To make the provision applicable to all persons arrested or apprehended for any crime not listed under Article II is tantamount to unduly expanding its meaning.** Note that accused appellant here was arrested in the alleged act of extortion. A charge for violation of Section 15 of R.A. 9165 is seen as expressive of the intent of the law to rehabilitate persons apprehended or arrested for the unlawful acts enumerated above instead of charging land convicting them of other crimes with heavier penalties.

Furthermore, making the phrase "a person apprehended or arrested" in Section 15 applicable to all persons arrested or apprehended for unlawful acts, not only under R.A. 9165 but for all other crimes, is tantamount to a mandatory drug testing of all persons apprehended or arrested for any crime. To overextend the application of this provision would run counter to our pronouncement in *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*, to wit:

> . . .**[M]andatory drug testing can never be random and suspicionless**. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When **persons suspected of committing a crime are charged, they are singled out and are impleaded against their will.The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy.** To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, contrary to the stated objectives of RA 6195. Drug testing in this case would violate a person's right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused persons are veritably forced to incriminate themselves. . .

The above ruling, in not extending the phrase "apprehended or arrested," is instructive. The **Court recognized that only apprehended or arrested persons for the specified offenses fall within the provisions of the law** and the Court already narrowly interpreted the terms of the statute, as it should be. **Section 15 is thus already limited in scope and coverage.**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – AL SHIERAV AHMAD Y SALIH, *Accused-Appellant.***
G.R. No. 228955, SECOND DIVISION, March 14, 2018, REYES, JR., *J.*

*Applying the ruling in People v. Mendoza, the manner and timing of the marking of the seized drugs or related items are crucial in proving the chain of custody. Certainly, the* ***marking after seizure by the arresting officer,*** *being the starting point in the custodial link, s****hould be made immediately upon the seizure****, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances.* ***This stricture is essential because the succeeding handlers of the contraband would use the markings as their reference to the seizure. The marking further serves to separate the marked seized drugs from all other evidence from the time of seizure from the accused until the drugs are disposed of upon the termination of the criminal proceedings.*** *The deliberate taking of these identifying steps is statutorily aimed at obviating*

*switching, "planting" or contamination of the evidence. Indeed, the preservation of the chain of custody vis-a-vis the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence.*

**FACTS:**

On April 16, 2012, at around 3:00 p.m., **a confidential informant went to the Philippine Drug Enforcement Agency (PDEA)** Regional Office X. The confidential informant allegedly told IO Aguilar, who was on duty at that time, that **a certain Love-Love was selling shabu** in Vamenta Subdivision, Barra, Opol, Misamis Oriental. On the instruction of the PDEA Regional Director, **a team of officers was organized to conduct a buy-bust operation**.

When they were near the area, IO Aguilar and the confidential informant approached the house of Love-Love on foot, while the rest of the team positioned themselves near the target area. Upon the arrival of IO Aguilar and the confidential informant at the house, the confidential informant called Love-Love from outside who came out to invite them in. He was later identified as Ahmad, who also goes by the name Love-Love.

They proceeded to the second floor of the house, and entered the room where Ahmad was. The confidential informant introduced IO Aguilar to Ahmad, and told him that IO Aguilar intends to buy shabufor Php 500.00. Ahmad asked for the money first, before handing over to IO Aguilar a sachet of suspected shabu from his pocket. IO Aguilar briefly examined the sachet and determined that it contained a prohibited drug she believed was shabu. She placed this sachet inside her own jean pocket and excused herself. IO Aguilar gave the pre-arranged signal by dropping a call on IO Orcales' phone. The buy-bust team went inside the house and introduced themselves as PDEA officers. Ahmad and the two (2) other individuals in the house were subsequently arrested.

As the area **was allegedly dangerous so the PDEA team decided to conduct the inventory and marking in their office**. In their office, IO Aguilar marked the sachet she received from Ahmad during the buy-bust operation with her initials, "RLA-BB," then turned the evidence over to IO Orcales. IO Orcales also marked the sachet obtained from Ahmad with his initials, "VCMO-R1. The aluminum foil strips taken from the two (2) other individuals in the house were also marked by IO Orcales with his initials, "VCMO-R2." The **marking and the inventory were made in the presence of Ahmad, the other PDEA agents, and a representative of the ABS-CBN Network.**

The **marked items were sent to the Philippine National Police (PNP) Crime Laboratory for examination**. The items seized from Ahmad, which were marked as "RLA-BB" and "VCMO-R1" **tested positive for the presence of methamphetamine** hydrochloride, a dangerous drug. But the aluminum foil strips marked as "VCMO-R2" tested negative for methamphetamine hydrochloride.

**ISSUE:**

Whether the guilt of Ahmad was proven beyond reasonable doubt. (NO)

**RULING:**

**The prosecution failed to establish the identity and integrity of the *corpus delicti*.**

**In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense.** Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The **chain of custody rule** performs this function as it **ensures that unnecessary doubts concerning the identity of the evidence are removed**.

In other words, the **prosecution bears the burden of proving that the dangerous drugs presented before the trial court are the same items confiscated from the accused**. **Section 21 of R.A. No. 9165**, particularly paragraph 1, provides that the a**pprehending officers must *immediately* conduct a physical inventory and to photograph the seized items in the presence of the following**: (a) the **accused** or the person from whom the items were confiscated, or his representative or counsel; (b) a **representative from the media**; (c) a **representative from the Department of Justice (DOJ)**; and (d) any **elected public official**. They should also sign the inventory and be given a copy thereof. In line with this, jurisprudence requires the apprehending officers to immediately mark the seized items upon its confiscation, or at the "earliest reasonably available opportunity," because this serves as the fundamental reference point in establishing the chain of custody. While **non-compliance with these requirements is excusable**, this **only applies when the integrity and the evidentiary value of the seized items were properly preserved.** The **prosecution must also provide a credible justification for the arresting officers' failure to comply with the procedure** under Section 21 of R.A. No. 9165.

In the case at bar, it is readily apparent from the records that the arresting officers committed several lapses in the prescribed procedure for the handling of the seized illegal drugs. The marking and inventory of the items confiscated from Ahmad were not conducted immediately after Ahmad's arrest. The marking of the sachet containing suspected shabu was made only after they had returned to the PDEA office. IO Orcales, the team leader of the buy-bust team, justified this failure by stating that the target area was dangerous but failed to provide substantial details regarding this claim. The **prosecution cannot simply bypass the requirements under Section 21 of R.A. No. 9165 through a bare and unsupported allegation** that the area was dangerous.

Furthermore, the arresting officers did not conduct the inventory and take photographs of the seized items in the presence of a DOJ representative and an elected public official. Only Arnulfo, the media representative from ABS-CBN, was present. Arnulfo, however, arrived at the PDEA office only after Ahmad's arrest, with the confiscated items already laid out on top of a table. Thus, Arnulfo relied purely on the representation of the PDEA officers that the items on the table were the same items seized from Ahmad. His presence could not have obviated any evidence planting, tampering, or contamination.

In light of the prosecution's failure to justify its non-compliance with the mandatory requirements under the law, which in the process, tainted the integrity and evidentiary value of the seized illegal drugs, the acquittal of Ahmad based on reasonable doubt is in order.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – CLOVER A. VILLARTA, *Accused-Appellant.***
G.R. No. 217887, FIRST DIVISION, March 14, 2018, DEL CASTILLO, *J.*

*Because it is **indispensable** that the **substance confiscated from the accused be the very same substance offered in court**, the Court has adopted the **chain of custody rule**, a method of authenticating evidence which requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.*

*We reiterate that "while this Court in certain cases has **tempered the mandate of strict compliance with the requisite under Section 21 of RA 9165**, such liberality, as stated in the Implementing Rules and Regulations can be **applied only when the evidentiary value and integrity of the illegal drug are properly preserved.***

**FACTS:**

A confidential agent told PO2 Bugtai and his fellow police officers that a certain Jake was engaged in illegal drug activities in Sanciangko Street; hence, he and his fellow police officers planned a buy-bust operation. PO2 Bugtai narrated that when they reached Sanciangko Street at around 12:30 a.m. of April 3, 2010, Jake approached them. Jake delivered the item to him and he gave Jake the buy-bust money. Thereafter, he flashed the pre-arranged signal by touching his hair with his left hand; that his companions then rushed towards them. At that point, he arrested Jake; and as a matter of procedure, he conducted a body search upon Jake for any deadly weapon; and that he recovered two packs of *shabu* from the right pocket of Jake's short pants.

PO2 Bugtai further recounted that he was in custody of the subject dangerous drugs from the place of the incident and back to the IDMB office; that the buy-bust team failed to bring a container to seal the seized dangerous drugs; that as the buy-bust team had no marking paraphernalia at the time, he **marked at the police station** the dangerous drugs subject of the sale as "CAV-BB', while the two items recovered during the body search were marked as "CAV" and "CAV-1"; that he also delivered the subject seized dangerous drugs to the crime laboratory; that PO3 Dela Victoria took pictures of the subject seized dangerous drugs; that it was SPO1 Petallar who signed the inventory that he (PO2 Bugtai) prepared, with a notation stating that **"no *barangay* official available to sign the inventory receipt"**; and that **no representative from the media and from the Department of Justice (DOJ)** signed the inventory because of difficulty in getting their presence early in the morning.

**ISSUE:**

Whether the guilt of the accused was proven beyond reasonable doubt. (NO)

**RULING:**

In cases of illegal sale and illegal possession of dangerous drugs, the **dangerous drug seized from the accused constitutes the *corpus delicti* of the offense**. Thus, it is of **utmost importance** that the integrity and identity of the seized drugs must be shown to have been duly preserved. The **chain of custody** rule performs this function as it **ensures that unnecessary doubts concerning the identity of the evidence are removed.**

As a general rule, the prosecution must endeavor to establish **four links** in the chain of custody of the confiscated item: first, 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**.

This Court finds that the prosecution miserably failed to establish an unbroken chain of custody of the confiscated items. The first link in the chain of custody in the instant case, PO2 Bugtai testified that he seized the illegal drugs and did not mark them immediately, but marked the same only after he got to the police station because he failed to bring a marking pen at the place of arrest and seizure. Also, the requirements of physical inventory and photograph-taking of the seized drugs were not observed, This noncompliance raises doubts whether the illegal drug items used as evidence in both the cases for violation of Section 5 and Section 13 of [RA] 9165 were the same ones that were allegedly seized from appellants.

We reiterate that "while this Court in certain cases has **tempered the mandate of strict compliance with the requisite under Section 21 of RA 9165**, such liberality, as stated in the Implementing Rules and Regulations can be **applied only when the evidentiary value and integrity of the illegal drug are properly preserved** which is, however, not present in the instant case.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – EDWIN SANCHEZ Y SALVO, A.K.A. "DADA", *Accused-Appellant.***
G.R. No. 216014, THIRD DIVISION, March 14, 2018, LEONEN, *J.*

*In cases of illegal sale and illegal possession of dangerous drugs, the **dangerous drug seized from the accused constitutes the corpus delicti of the offense**. Thus, it is of **utmost importance** that the integrity and identity of the seized drugs must be shown to have been duly preserved. The **chain of custody** rule performs this function as it **ensures that unnecessary doubts concerning the identity of the evidence are removed.***

*Discrepancies in testimonies on where the seized items were marked is acceptable as long as it **did not affect the integrity or evidentiary value of the corpus delicti**.*

**FACTS:**

On August 10, 2008, the Philippine Drug Enforcement Agency Regional Office IV-B organized a **buy-bust operation** after receiving a tip that a certain "Dada" from Laguna was selling "shabu". At the target area in Sitio Calawang, Barangay Lumangbayan, IO1 Diocampo and the confidential informant positioned themselves in front of a bungalow. The rest of the buy-bust team were in the nearby parked Toyota Revo. At about 3:30p.m., "Dada" arrived and approached the confidential informant and IO1 Diocampo, disguised as the **poseur-buyer**. The man then asked for the money first and so IO1 Diocampo reached for her pocket and showed the man the marked P500.00 bills. The man then handed IO1 Diocampo a **heat-sealed transparent plastic sachet** containing a **white crystalline**

**substance**. IO1 Diocampo then paid the man with the **marked money** and executed the pre-arranged signal to the buy-bust team by putting on sunglasses.

Accused Sanchez was then brought to the **barangay hall where the seized items were marked** "1KCD" and "2KCD" by IO1 Diocampo, "KCD" being her initials. The seized items were then inventoried in the presence of Punong Barangay.

Accused-appellant Sanchez maintains that the prosecution failed to prove his guilt beyond reasonable doubt. He specifically **assails the inconsistent testimonies** of IO1 Diocampo and IO1 Riñopa on where the seized items were marked. IO1 Diocampo testified that the sachets were marked at the barangay hall, while IO1 Riñopa recalled marking the sachets at the place of the arrest. With this discrepancy, the prosecution allegedly failed to establish the very crucial first link in the **chain of custody of the *corpus delicti***, impairing its integrity and evidentiary value.

**ISSUES:**

Whether the prosecution has established the elements of the crimes of sale and possession of dangerous drugs. (YES)

Whether or not an unbroken chain of custody of the seized items was established considering the differing testimonies on where the items were marked. (YES)

**RULING:**

The elements of the crime of selling dangerous drugs are: first, "the identity[ies] of the buyer and the seller, the object, and the consideration; and [second,] the delivery of the thing sold and the payment thereof.

The elements of possession of dangerous drugs are: first, "the actual possession of an item or object which is identified to be a prohibited drug"; second, "such possession is not authorized by law"; and third, "the accused freely or consciously possessed the said drug.

The **prosecution has established beyond reasonable doubt all the elements of both crimes charged**. As for the sale of dangerous drugs, IO1 Diocampo recounted how she posed as buyer and bought a sachet of shabu from accused-appellant Sanchez in exchange for money. Thus, her testimony establishes the elements of: the identities of the buyer, the seller, and the object and the consideration; and the delivery of the shabu and the payment for it.

In addition, although the testimonies differed on where the seized items were marked, the prosecution has sufficiently demonstrated that this **discrepancy did not affect the integrity or evidentiary value of the *corpus delicti***. IO1 Diocampo testified that she marked the items with "1KCD" and "2KCD" in the presence of accused-appellant Sanchez. This testimony was corroborated by IO1 Riñopa. The inventory of the items was done in the presence of Punong Barangay Mendoza and Department of Justice representative Magnaye. IO1 Diocampo then personally brought the seized items to the Philippine National Police Crime Laboratory where the items tested positive for methamphetamine hydrochloride. The apprehending officers more than substantially complied with the chain of custody rule under Section 21 of Republic Act No. 9165.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – BONIFACIO GAYLON Y ROBRIDILLO, A.K.A. "BONI", *Accused-Appellant.***
G.R. No. 219086, THIRD DIVISION, March 19, 2018, DEL CASTILLO, *J.*

*The presence of the so-called **insulating witnesses** required under Section 21, Article II of RA 9165 should also **either be present during marking or their absence should be with a valid justification**. Otherwise, a lapse with respect thereto would also result in a gap in the chain of custody.*

**FACTS:**

A confidential informant (CI) arrived at their office and reported an ongoing illegal trade of drugs in MRR Street, Brgy. Pineda, Pasig City, involving "*alias Boni*" herein appellant. A buy-bust group was formed. At around 6:50 p.m., PO1 Nervar, together with the CI and three other police officers, arrived at the target area. The CI introduced PO1 Nervar to appellant as a buyer of *shabu*. Appellant then asked how much PO1 Nervar was going to buy to which lie replied, "*isang kasang tres lang*" which meant P300,00. After receiving the P300.00 **buy-bust money**, appellant got from his left pocket a **plastic sachet that contained a white crystalline substance** suspected to be *shabu* and gave the same to PO1 Nervar, who thereupon, removed his cap to signal that the transaction, was consummated. The rest of the buy-bust team immediately arrived. They **arrested appellant** and recovered from him the buy-bust money. PO1 Nervar marked the sachet and **prepared the inventory**; however, appellant refused to sign the same. Thereafter, they brought appellant, to their office. PO1 Nervar also brought the seized sachet to the crime laboratory, together with a request for laboratory examination.

The defense pointed to the **failure of the police officers to coordinate with the Philippine Drug Enforcement Agency (PDEA).** It argued that the supposed coordination form should not be given any weight because it was faxed from a residential house and not from the PDEA.

**ISSUES:**

Whether the coordination of the buy-bust operation with PDEA is necessary. (NO)

Whether the guilt of the accused-appellant was proven beyond reasonable doubt. (NO)

**RULING:**

RTC brushed aside as irrelevant the argument interposed by the defense that the fax copy of the coordination form came from a residential house as it had nothing to do with the elements of the offense charged; moreover, the RTC held that a buy-bust operation is not invalidated by mere non-coordination with the PDEA claiming that a buy-bust operation is just a form, of an *in flagrante* arrest.

RTC and the CA failed to take into consideration the buy-bust team's non-compliance with Section 21, Article II of RA 9165. In particular, (1) the prosecution's **failure to show that the Inventory of Seized Properties/Items was prepared in the presence of a media representative**, a **DOJ representative**, and **any elected public official** who should have signed the same and received copies thereof; (2) the prosecution **did not offer as evidence any photograph of the seized *shabu***;

and (3) **no explanation for such non-compliance** was proffered by the prosecution. In short, the prosecution failed to show that the non-compliance with the requirements was upon justifiable grounds, and that the evidentiary value of the seized items was properly preserved by the apprehending team.

To stress, the presence of the so-called **insulating witnesses** required under Section 21, Article II of RA 9165 should also ei**ther be present during marking or their absence should be with a valid justification**. Otherwise, a lapse with respect thereto would also result in a gap in the chain of custody.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – RICHAEL LUNA Y TORSILINO, *Accused-Appellant.***
G.R. No. 219164, SECOND DIVISION, March 21, 2018, CAGUIOA, *J.*

*The plain import of the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be performed immediately* ***at the place of apprehension****. And, in case this is not practicable, then the inventory and photographing may be done as soon as the apprehending team reaches the nearest police station or office of the apprehending officer/team. Necessarily,* ***this could only mean that the three (3) witnesses should already be physically present at the time of apprehension.***

**FACTS:**

A **buy-bust operation** was organized by the Marikina City Police Station based on a tip from a confidential informant (CI), implicating accused-appellant Luna for suspected drug-related activities. After coordinating with the Philippine Drug Enforcement Agency (PDEA), the buy-bust team, together with the CI, proceeded to accused-appellant Luna's residence. Accused-appellant Luna then approached both of the. When asked how much worth of *shabu* he would like to buy, SPO1 Soriano answered "*tres lang brod*," while handing accused-appellant Luna the three (3) marked bills. In turn, accused-appellant Luna retrieved from his front pocket two (2) **sealed plastic sachets containing suspected *shabu***, but handed only one (1) piece to SPO1 Soriano. Accused-appellant Luna then returned the other sachet in his pocket.

After the exchange, SPO1 Soriano checked the contents of the sachet using a flashlight, which was then the pre-arranged signal to the buy-bust team. Immediately after, the other members of the buy-bust team approached accused-appellant Luna and arrested him after introducing themselves as police officers. SPO1 Soriano then retrieved the marked bills from accused-appellant Luna and also confiscated the other sachet that the latter placed in his front pocket. Thereafter, **SPO1 Soriano marked the two (2) sachets** and **accomplished an Inventory of Confiscated Evidence in the presence of accused-appellant Luna at the place of his arrest**. The Inventory of Confiscated Evidence was subsequently signed by Barangay Kagawad Oscar Frank Rabe at the Barangay Hall, while a certain Danny Placides, a **representative from the media, signed the same at the police station**. Likewise, at the police station, accused-appellant Luna was photographed holding the plastic sachets supposedly recovered from his person.

**ISSUE:**

Whether the guilt of the accused-appellant was proven beyond reasonable doubt. (NO)

**RULING:**

The law puts in place requirements of time, witnesses and proof of inventory with respect to the custody of seized dangerous drugs, to wit:

1. The initial custody requirements must be done **immediately after seizure** or confiscation;
2. The **physical inventory and photographing** must be done **in the presence of**:
    a. The **accused** or his representative or counsel;
    b. The **required witnesses**: a representative from the **media** and the **Department of Justice (DOJ), and any elected public official**

The plain import of the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be performed immediately **at the place of apprehension**. And, in case this is not practicable, then the inventory and photographing may be done as soon as the apprehending team reaches the nearest police station or office of the apprehending officer/team. Necessarily, **this could only mean that the three (3) witnesses should already be physically present at the time of apprehension.**

In other words, in case of warrantless seizures, while the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable," this does **not** dispense with the requirement of having the DOJ or media representative and an elected public official to be **physically present at the time of apprehension**.

In the case at bar, **none of the witnesses required under Section 21 was present at the time the plastic sachets were allegedly recovered from accused appellant Luna. Neither were they present during the preparation of the inventory at the place of seizure.**

In the same vein, the police officers also failed to photograph the seized drugs immediately after and at the place of seizure, as required under Section 21. Instead, it was only at the police station that accused-appellant Luna was photographed while holding the plastic sachets supposedly recovered from his person. Hence, considering that the buy-bust team was able to accomplish the Inventory of Confiscated Evidence at the place of seizure, **there was no compelling reason for them to defer the photographing requirement until their return to the police station**.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ALSARIF BINTAIB Y FLORENCIO A.K.A. "LENG," *Accused-Appellant*.**

G.R. No. 217805, THIRD DIVISION, April 02, 2018, MARTIRES, *J.*

*Mere signature or presence of the insulating witness **at the time of signing** is not enough to comply with what is required under Section 21 of R.A. No. 9165. What the law clearly mandates is that they be present while the actual inventory and photographing of the seized drugs are happening. If we were to allow such circumvention of this requirement, we would open the floodgates to more mistaken drug convictions especially when planting evidence is a common practice.*

*In the instant case, the prosecution failed to satisfy both conditions. First, the prosecution did not offer any kind of evidence explaining why the insulating witnesses were not present during the actual inventory or, at least, clarify that they were indeed there and witnessed everything. Instead, what came out of IO2 Abdulgani's testimony was that the media representative, DOJ representative, and elected public official only signed the certificate of inventory without saying they had actually witnessed the process. Second, the prosecution failed to establish an unbroken chain of custody over the confiscated item*

**FACTS:**

On 11 November 2008, at around 3:00 P.M., a confidential asset came to the PDEA Regional Office at Upper Calarian, Zamboanga City, and reported that a certain "Leng" was actively engaged in illegal drug transactions within the city. He also said that he had just recently bought shabu from Leng who agreed to sell the same to him again. Acting on this information, a buy-bust team was organized, among whom IO2 Abdulgani was designated as the poseur-buyer and IO1 Belo was to act as immediate back up and/or arresting officer.

At about 6:00 P.M., the buy-bust team proceeded to the target area where IO2 Abdulgani and the confidential asset waited for this certain Leng to arrive. Shortly thereafter, Bintaib approached them and spoke to the confidential informant in the *Tausug language*. The confidential informant then introduced IO2 Abdulgani to Bintaib and said: "*Ito ang kaibigan ko, bibili*." After Bintaib told IO2 Abdulgani to wait, he boarded a tricycle and left.

More than an hour later, Bintaib returned and handed IO2 Abdulgani a transparent plastic sachet containing a white crystalline substance. Suspecting the contents to be *shabu*, IO2 Abdulgani scratched his head to signal IO1 Belo and the rest of the PDEA operatives to aid in the arrest. Bintaib and the plastic sachet suspected to contain shabu were then brought to the PDEA Regional Office.

Upon arrival at their office, IO2 Abdulgani marked the plastic sachet with his initials "ASA" and then turned over the same to Intelligence Officer 3 Thessa B. Albaño (*IO3 Albaño*), who also marked the sachet with her initials "TBA." Afterwards, IO3 Albaño conducted the physical inventory and took a photograph of Bintaib with the confiscated plastic sachet. Representatives from the media, the Depatment of Justice, and the local government signed the certificate of inventory. IO3 Albaño also prepared the letter-request for laboratory examination which she brought with her, together with the seized item, to the crime laboratory.

In the chemistry report, the forensic chemist declared that the contents of the transparent plastic sachet contained 0.0344 grams of methamphetamine hydrochloride, otherwise known as *shabu*, a dangerous drug.

RTC found accused guilty which the CA affirmed in toto.

**ISSUE:**

Whether or not Section 21 of RA 9165 was strictly followed. (NO)

**RULING:**
Under paragraph (1) of Section 21, the apprehending team shall, immediately after confiscation, conduct a physical inventory and photograph the seized items *in the presence of* the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official.

While the law allows the physical inventory and photographing to be done at the nearest police station, the presence of the insulating witnesses during this step is vital. Without the insulating presence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items.

In the present case, it appears that the media representative, DOJ representative, and the elected public official were only present during the time the certificate of inventory was prepared.

Mere signature or presence of the insulating witness **at the time of signing** is not enough to comply with what is required under Section 21 of R.A. No. 9165. What the law clearly mandates is that they be present while the actual inventory and photographing of the seized drugs are happening. If we were to allow such circumvention of this requirement, we would open the floodgates to more mistaken drug convictions especially when planting evidence is a common practice.

Hence, since the apprehending team failed to comply with Section 21 of R.A. No. 9165, the presumption of regularity cannot work in their favor. This presumption arises only upon compliance with Section 21 of R.A. No. 9165, or by clearly or convincingly explaining the justifiable grounds for noncompliance.[16]Anything short of observance and compliance by the arresting officers with what the law required means that the former did not regularly perform their duties.[17] Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.

In the instant case, the prosecution failed to satisfy both conditions. *First*, the prosecution did not offer any kind of evidence explaining why the insulating witnesses were not present during the actual inventory or, at least, clarify that they were indeed there and witnessed everything. Instead, what came out of IO2 Abdulgani's testimony was that the media representative, DOJ representative, and elected public official only signed the certificate of inventory without saying they had actually witnessed the process. *Second*, the prosecution failed to establish an unbroken chain of custody over the confiscated item.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* -versus-. DINA CALATES y DELA CRUZ, *accused-appellant.***

G.R. No. 214759, THIRD DIVISION, April 4, 2018, BERSAMIN, *J.*

*The dangerous drug itself is the very corpus delicti of the violation of the law prohibiting the illegal sale or possession of dangerous drug. Chain of custody refers to the duly recorded authorized movement and custody of seized drugs, controlled chemicals or plant sources of dangerous drugs or laboratory equipment, from the time of seizure or confiscation to the time of receipt in the forensic laboratory, to the safekeeping until presentation in court as evidence and for the purpose of destruction. The lack of*

*any justification tendered by the arresting officers for any lapses in the documentation of the chain of custody of confiscated dangerous drugs warrants the acquittal of the accused in a prosecution for the illegal sale of dangerous drugs on the ground of reasonable doubt. The accused has no burden to prove her innocence.*

*In the present case, PO1 Sonido did not mark the evidence in the presence of Dina. The lack of the inventory and his professed uncertainty about the taking of photographs in the presence of Dina could mean that the procedure prescribed under R.A. 9165 has not been complied with.*

**FACTS:**

Insp. Jonathan Lorilla received an information that alias "Dangdang" Calates is engaged in sale of illegal drug activities. Insp. Lorilla formed a team to conduct a buy-bust operation. The team proceeded to the meet-up location. The asset and PO1 Sonido, who was acting as poseur-buyer, went ahead of the group. A woman with "semi-calbo" and sporting blond hair met the two and asked if they would buy shabu. The two wiped their nostrils with their right finger which means that their answer is yes. The accused extended her left hand to receive the marked money and she took a small sachet of suspected shabu from her right pocket and gave it to PO1 Sonido.

PO1 Sonida immediately arrested the accused, identified himself as police officer, informed her of the reason of her apprehension and her rights to remain silent and counsel. The marked money was recovered and the sachet of shabu was marked "ASS" which stands for Alain S. Sonido. The incident was recorded in the police blotter and the plastic sachet of shabu was brought to the PNP Crime Laboratory. The RTC convicted the accused for violation of Section 5, Article II of R.A. No. 9165. On Appeal, the Court of Appeals affirmed the conviction. Hence, the accused appealed before the Supreme Court.

**ISSUE:**

Whether or not the procedure under R.A. 9165 was complied with. (NO)

**RULING:**

The State bears the burden of proving the elements of the offenses of sale and illegal possession of dangerous drug and proving the corpus delicti, in prosecutions for violation of Section 5 of R.A. 9165. The dangerous drug itself is the very corpus delicti of the violation of the R.A. 9165. The State does not comply with the indispensable requirement of proving the corpus delicti. When the drug is missing or when substantial gaps occur in the chain of custody of the seized drugs, it raises doubts as to the authenticity of the evidence presented in court. The proper handling of the confiscated drug is paramount in order to ensure the chain of custody, a process essential to preserving the integrity of the evidence of the corpus delicti.

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

> 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.

The Implementing Rules and Regulations of Section 21 (a) of R.A. No. 9165 have reiterated the statutory safeguards, thus:

(a) The apprehending office/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

The documentation of the movement and custody of the seized items should include the identity and signature of the person or persons who held temporary custody thereof.

In the present case, a review of the records reveals that the non-compliance with the procedural safeguards prescribed by law left serious gaps in the chain of custody of the confiscated dangerous drug. First, PO1 Sonido did not make the marking in the presence of Dina. Second, the testimony of P/Insp. Jonathan Lorillo claiming that an inventory of the confiscated drug had been conducted, did not corroborate the records. The lack of the inventory and his professed uncertainty about the taking of photographs in the presence of Dina could mean that the procedure prescribed under R.A. 9165 has not been complied with.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- RENANTE COMPRADO Y BRONOLA, *Accused-Appellant***

G.R. No. 213225, THIRD DIVISION, APRIL 4, 2018, MARTIRES, *J.:*

*Paragraph (a) of Section 5 of Rule 113 of the Rules of Criminal Procedure is commonly known as an in flagrante delicto arrest. For a warrantless arrest of an accused caught in flagrante delicto to be valid, two requisites must concur: (l) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.On the other hand, the elements of an arrest effected in hot pursuit under paragraph (b) of Section 5 (arrest effected in hot pursuit) are: first, an offense has just been committed; and second, the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.*

*Here, without the tip provided by the confidential informant, accused-appellant could not be said to have executed any overt act in the presence or within the view of the arresting officers 'Which would indicate that he was committing the crime of illegal possession of marijuana. Neither did the arresting officers have personal knowledge of facts indicating that accused-appellant had just committed an offense. Again, without the tipped information, accused-appellant would just have been any other bus passenger who was minding his own business and eager to reach his destination. It must be remembered that warrantless arrests are mere exceptions to the constitutional right of a person against unreasonable searches and seizures, thus, they must be strictly construed against the government and its agents.*

**FACTS:**

On July 15, 2011, at more or less eleven o'clock in the evening, along the national highway, Puerto, Cagayan de Oro City, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there, wilfully, unlawfully and criminally have in his possession, control and custody 3,200 grams of dried fruiting tops of suspected marijuana, which substance, after qualitative examination conducted by the Regional Crime Laboratory, Office No. 10, Cagayan de Oro City, tested positive for marijuana, a dangerous drug, with the said accused, knowing the substance to be a dangerous drug.

The RTC found accused-appellant guilty of illegal possession of marijuana. The CA affirmed the conviction of accused-appellant.

**ISSUES:**

Whether accused-appellant's arrest was valid. (NO)

Whether the seized items are admissible in evidence. (NO)

**RULING:**

As regards search incidental to a lawful arrest, it is worth emphasizing that a lawful arrest must precede the search of a person and his belongings; the process cannot be reversed. Thus, it becomes imperative to determine whether accused-appellant's warrantless arrest was valid.

Paragraph (a) of Section 5 is commonly known as an *in flagrante delicto* arrest. For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (l) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. On the other hand, the elements of an arrest effected in hot pursuit under paragraph (b) of Section 5 (arrest effected in hot pursuit) are: first, an offense has just been committed; and second, the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.

Here, without the tip provided by the confidential informant, accused-appellant could not be said to have executed any overt act in the presence or within the view of the arresting officers 'Which would indicate that he was committing the crime of illegal possession of marijuana. Neither did the arresting officers have personal knowledge of facts indicating that accused-appellant had just committed an offense. Again, without the tipped information, accused-appellant would just have been any other

bus passenger who was minding his own business and eager to reach his destination. It must be remembered that warrantless arrests are mere exceptions to the constitutional right of a person against unreasonable searches and seizures, thus, they must be strictly construed against the government and its agents. While the campaign against proliferation of illegal drugs is indeed a noble objective, the same must be conducted in a manner which does not trample upon well-established constitutional rights. Truly, the end does not justify the means.

Any evidence obtained in violation of the right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. This exclusionary rule instructs that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.

Without the confiscated marijuana, no evidence is left to convict accused-appellant. Thus, an acquittal is warranted, despite accused-appellant's failure to object to the regularity of his arrest before arraignment. The legality of an arrest affects only the jurisdiction of the court over the person of the accused. A waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.

**SALIC MAPANDI y DIMAAMPAO, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent.***

G.R. No. 200075, THIRD DIVISION, APRIL 4, 2018, MARTIRES, *J.:*

*In People v. Kamad the Court held that the following links must be established in the chain of custody:*

> *First, 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.*

*Without having to consider the other three (3) links, we can already conclude that the chain of custody was not preserved in this case because the prosecution failed to prove the most important and crucial link - marking the seized drug.*

**FACTS:**

On or about the Tenth (10th) day of November 2007, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully, and knowingly sell, deliver, and give away to

another person P500.00 (SN CV441949) worth of Methamphetamine Hydrochloride, otherwise known as "shabu" which is a dangerous drug, in one (1) heat sealed transparent plastic sachet weighing sixteen grams and one-tenth of a gram (16.1).

The RTC found the accused guilty for violation of Section 5, RA 9165. The CA affirmed in toto the RTC's decision.

**ISSUE:**

Whether or not the accused is guilty beyond reasonable doubt. (NO)

**RULING:**

To prove the existence of the *corpus delicti* in drug cases, the prosecution must establish that the identity and the integrity of the dangerous drug itself were preserved. Thus, to remove any doubt and uncertainty, Section 21 of R.A. No. 9165 must be strictly followed.

The provision dictates that the apprehending team shall, **immediately after confiscation,** conduct a physical inventory and photograph the seized items ***in the presence of*** the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official.

Since there had been non-compliance with Section 21 of R.A. No. 9165, the saving clause in the IRR (now incorporated as an amendment into R.A. No. 9165) operates. However, we have to be careful in using this as its language requires closer inspection. As a general rule, strict compliance with Section 21 of R.A. No. 9165 is mandatory. The Court only excuses non-compliance when: (1) there exist justifiable grounds to allow departure from the rule, **and** (2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending team. If these two (2) elements are present, the seizures and custody over the confiscated items shall not be doubted.

In *People* v. *Kamad,* the Court held that the following links must be established in the chain of custody:

*First,* 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.

Without having to consider the other three (3) links, we can already conclude that the chain of custody was not preserved in this case because the prosecution failed to prove the most important and crucial link - marking the seized drug.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee* -versus- PASTORLITO V. DELA VICTORIA, *Accused-appellant.***

G.R. NO. 233325, SECOND DIVISION, April 16, 2018, PERLAS-BERNABE, *J.*

*The identity of prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the* ***corpus delicti*** *of the crime. Hence, to deviate from unnecessary doubt on its identity, prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody* ***from the moment the drugs are seized up to their presentation in court as evidence to the crime.***

*Section 21, Article II of RA 9165 outlines the procedure which police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. The procedure:*

> *1. The apprehending team shall, immediately after the seizure and confiscation, conduct a physical inventory and photograph the seized items* ***in the presence of the accused*** *or the person whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected official, who shall be required to sign the copies of the inventory and be given a copy of the same.*
>
> *2. The seized drugs must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination.*

**FACTS**:

On 8 October 2008, a police asset informed the Philippine Drug Enforcement Agency (PDEA) Regional Office that Dela Victoria, who was on the PDEA's watchlist of drug personalities, was selling drugs at Langihan Road corner On Yiu Road, Bulacan City. After conducting surveillance, a buy-bust team was formed; IO1 Ibarra was designated as poseur-buyer and IO1 Daguman as the arresting officer.

On 9 October 2008, the buy-bust team, together with the asset, proceeded to the target area. Dela Victoria then approached the asset and the asset introduced IO1 Ibarra as a cousin interested in buying shabu. Dela Victoria asked if he had the money and IO1 Ibarra replied, "aw-matic", giving the marked P500.oo bill, while Dela Victoria simultaneously handed over one plastic sachet of suspected shabu. IO1 Ibarra then made a missed call to IO1 Daguman, the pre-arranged signal, by which time, Dela Victoria started to walk away. However, the operatives caught up to him and arrested him in front of a tinsmisth's shop.

Dela Victoria was then vrought inside the PDEA vehicle, where initial search was conducted and the marked money was recovered. They then when to the PDEA Regional Office where IO1 Ibarra marked the confiscated sachet, prepared the inventory, and took pictures, while Dela Victoria was still inside the vehicle until Brgy. Captain Florencio Cañete arrived. Once letter-request was secured, IO1 Ibarra delivered the sachet to the PNP Crime Laboratory, where it was received by Police Chief Inspector Banogon, who confirmed that the substance was positive as a dangerous drug.

RTC found Dela Victoria guilty of violating Section 5, Article II of RA 9165, or Illegal Sale of Dangerous Drugs. CA confirmed Dela Victoria's conviction.

**ISSUE**:

Whether or not Dela Victoria is guilty of illegal sale of dangerous drugs. (NO)

**RULING**:

In order to properly secure conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment. Moreover, prosecution has to show an unbroken chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

As a rule, the apprehending team must, among others: immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOH, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs be turned over to the PNP Crime Laboratory within twenty-four hours from confiscation for examination. Without insulating the presence of the representative of media, or elected public official during the seizure and marking of the seized drugs, then it will negate the integrity and credibility of such seizure and confiscation of said drugs that were evidence of the corpus delicti.

Exceptions to this are only (1) when there is justifiable ground for non-compliance, and (b) the integrity and evidentiary value of the seized items are preserved.

In this case, the Court found that PDEA operatives committed unjustified deviations from the prescribed chain of custody rule. First, IO1 Ibarra failed to mark the confiscated sachet in the presence of the accused since the accused was being held inside the PDEA vehicle while waiting for the barangay captain to arrive. Second, there was no DOJ representative during the conduct of the inventory and no justification was given for the absence.

Thus, the decisions of the RTC and CA are reversed.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* -versus- RAMONCITO CORNEL y ASUNCION, *accused-appellant.***

G.R. No. 229047, SECOND DIVISION, April 16, 2018, PERALTA, *J.*

*In People v. Gatlabayan, 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. The chain of custody carries out the purpose of ensuring that the integrity and evidentiary value of the confiscated drugs are properly preserved. The illicit drugs confiscated from the accused comprise the corpus delicti of the charges.*

*In this case, the identity of the dangerous drug had not been established. PO1 Angulo testified that the inventory was conducted at the Barangay Hall of East Rembo instead of at the place of the arrest. The*

*police officers did not also give any valid reason for the absence of a representative from the media and the Department of Justice during the inventory of the item seized.*

**FACTS:**

On December 15, 2013, a buy-bust operation was conducted against accused-appellant Ramoncito Cornel. A coordination was made with the District Anti-Illegal Drugs and Philippine Drug Enforcement Agency. A one thousand peso bill was provided and marked for use in the operation. At around 7:30 in the evening, the team arrived to Barangay East Rembo, Makati City. PO1 Angulo proceeded together with the regular informant. The informant introduced him to the subject as a "tropa". Appellant took the buy bust money from PO1 Angulo then brought out the item from the same pocket and handed it over to PO1 Angulo. PO1 Angulo then gave the signal, by means of removing his cap, to the rest of the team. He grabbed the appellant and introduced himself as a police officer. The team immediately arrested the appellant and they were able to recover the marked money used. The inventory for the seized items and photographs were conducted at a barangay hall. After the inventory, the seized items were turned over to PO2 Michelle Gimena for the necessary referrals. Appellant used denial as a defense. He argued that he was on his way home when he was arrested by two police officers.

The RTC convicted appellant for violation of Section 5, Article II of R.A. 9165. The RTC ruled that the integrity and evidentiary value of the seized items were properly preserved. On appeal, the Court of Appeals affirmed the decision of the RTC. Hence, the accused appealed before the Supreme Court.

**ISSUE:**

Whether or not the accused-appellant is guilty despite the broken chain of custody of the allegedly confiscated shabu. (NO)

**RULING:**

The chain of custody carries out the purpose of ensuring that the integrity and evidentiary value of the confiscated drugs are properly preserved. The illicit drugs confiscated from the accused comprise the corpus delicti of the charges**.** In People v. Gatlabayan, 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. The illegal drug recovered from the suspect must be the very same substance produced before the court as evidence. R.A. 9165 and its IRR which were amended by R.A. No. 10640, provides for the procedure to ensure that the chain of custody of the confiscated drugs is unbroken. R.A. No. 10640

In the present case, since the alleged crime was committed before the amendment, the old provisions of Section 21 of R.A. 9165 and its IRR shall apply.To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

> 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 give a copy thereof.

In this case, the police officers failed to comply with the said procedure. PO1 Angulo testified that the inventory was conducted at the Barangay Hall of East Rembo instead of at the place of the arrest. PO1 Angulo explained that the reason why the item seized was marked at the target place was because a commotion ensued. However, the Court finds the said explanation as unjustifiable because the team who arrested the appellant was composed of eight police officers. They could have easily contained a commotion and proceed with the inventory of the seized item immediately. The police officers did not also give any valid reason for the absence of a representative from the media and the Department of Justice during the inventory of the item seized. Failure to establish the identity of the seized item results in acquittal of the accused.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. JAYCENT MOLA y SELBOSA a.k.a. "OTOK", *accused-appellant*.**

G.R. No. 226481, SECOND DIVISION, April 18, 2018, PERALTA, *J.*

*The presence of the three witnesses must be secured not only during the inventory but more importantly* ***at the time of the warrantless arrest****. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug.The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.*

**FACTS:**

Accused, Jaycent Mola, was charged withillegal sale of Methamphetamine Hydrochloride, commonly known as *shabu*, in violation of Section 5, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002.* SPO4 Columbino testified that: he was assigned as an Intelligence Operative at the Dagupan City Police Station; acting on a confidential information, he conducted a buy-bust operation on January 14, 2012 against Mola in *Sitio* Kamanang, Bonuan Tondaligan, Dagupan City; that after the arrest, he marked the seized items and prepared the confiscation/inventory receipt; they proceeded to the Dagupan City Police Station, where he turned over Mola, the sachet of shabu, the buy-bust money, and the confiscation/inventory receipt to Duty Investigator SPO3 Marmolejo; the following day, he got back the sachet of *shabu* from SPO3 Marmolejo and brought it to the PNP Crime Laboratory in Lingayen, Pangasinan, on the basis of the letter-request prepared by SPO3 Marmolejo; and he returned to Cayabyab's store to ask him to sign the confiscation/inventory receipt, which the latter did by printing his name on it.PO2 Fulido attested to the fact that he was the Blotter Book Custodiansince the one who recorded the incident,

had retired from service. After he read the contents of the Blotter Book, the defense counsel admitted that the Certification attached to the case records is a faithful reproduction of the entries in the Blotter Book.

The accused however, argues that, the prosecution failed to comply with Section 21 (1), Article II of R.A. No. 9165. In particular: (1) SPO4 Columbino did not immediately mark the seized sachet of *shabu*even if he could have easily done so at the place of arrest; (2) the confiscation report shows that no representatives from the Department of Justice *(DOJ)*, the local government, and the media attended the marking and inventory of the seized items; (3) together with the seized illegal drugs, SPO4 Columbino went back to Cayabyab's house for the latter's signing of the confiscation receipt; (4) after turning over the plastic sachet and inventory receipt to the investigating officer, SPO4 Columbino once again took possession of the alleged *shabu* for the purpose of bringing the same to the forensic chemist; and (5) there is no testimony or a stipulation to the effect that the forensic chemist received the seized article as marked, properly sealed and intact, that she resealed it after examination of the content, and that she placed her own marking on the same to ensure that it could not be tampered pending trial.

**ISSUE:**

Whether or not the accused's guilt is proven beyond reasonable doubt (NO)

**RULING:**

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.

A review of the records yielded no justifiable reason for the prosecution's non-compliance with the first link in the chain of custody of evidence, *i.e.*, the marking by the apprehending officer of the dangerous drug seized from the accused. The one advanced by SPO4 Columbino as to why it was impractical for him to conduct the marking and inventory of the sachet of alleged *shabu* at the place of arrest and seizure is unconvincing. His assertion that he opted to go to the PCP Tondaligan, which was the nearest police station, because he was "only one" and "there were many persons" is but a hollow excuse. The insinuation that the safety and security of his person or of the items seized was under immediate or extreme danger was self-serving as it was not substantiated or corroborated by evidence. To note, it appears that his claim is contrary to his statement during the direct examination that he was with the civilian asset and his companions from the PCP Tondaligan when he proceeded to *Sitio* Kamanang for the buy-bust operation.

Likewise, the only person who claimed to have seen the sachet of alleged *shabu* at the time it was seized from Mola was Cayabyab. Obviously, he is not one of the persons required by law to observe

the marking and inventory-taking. The prosecution was silent on why the required witnesses were unavailable. It was never alleged and proved, to cite a few, that their attendance was impossible because the place of arrest was a remote area; that their safety during the inventory and photograph of the seized illegal drugs were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his or her behalf; or that the elected officials themselves were involved in the punishable acts sought to be apprehended.

The illegal drugs being the *corpus delicti*, it is essential for the prosecution to establish with moral certainty and prove beyond reasonable doubt that the illegal drugs presented and offered in evidence before the trial court are the same illegal drugs lawfully seized from the accused, and tested and found to be positive for dangerous substance. At bar, evidence at hand do not support the conclusion that the integrity and evidentiary value of the subject sachet of *shabu* were successfully and properly preserved and safeguarded through an unbroken chain of custody.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* BASHER TOMAWIS y ALI, *accused-appellant*.**

G.R. No. 228890, SECOND DIVISION, April 18, 2018,CAGUIOA, *J.*

*The presence of the witnesses from the DOJ, media, and from public electiveoffice is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.*

*In the case at bar, there was no compliance with the three-witness rule. There were no witnesses from the DOJ or the media. Only two witnesses who were elected barangay officials were present. It thus becomes evident that the buy-bust team did not prepare or bring with them any of the required witnesses at or near the place of the buy-bust operation and the witnesses were a mere afterthought.*

**FACTS:**

Alejandro, one of the apprehending officers, testified that a walk-in confidential informant appeared in their office and reported that a certain alias Salim was engaged in illegal drug activities and operated in Muntinlupa, Alabang. She called her team leader and an anti-buy *(sic)* bust operation was coordinated. On August 21, 2008, their team leader conducted a briefing on the buy-bust operation. Alejandro was assigned as the poseur buyer and was given two genuine five hundred peso bills which she marked with her initials MCA as buy bust money.|Thereafter, they went to Metropolis [Starmall], Alabang to meet with alias Salim. The confidential informant introduced Alejandro to alias Salim and she told him that she wanted to buy shabu. Alias Salim, who was later identified as Tomawis, said that he wanted to see the money first so she showed him the money. He told her that he will get the shabu somewhere and will meet her in the food court. After ten to fifteen minutes, Tomawis returned and they simultaneously exchanged the money for the shabu.They then proceeded to arrest Tomawis. A commotion occurred during the arrest because bystanders inside the food court wanted to help Tomawis who shouted *"Tulungan niyo ako papatayin nila ako."* They were not able to put

markings on the evidence in the vicinity because of the commotion. After Tomawis was arrested, he was read of his constitutional rights and brought together with the evidence to Brgy. Pinyahan, Quezon City.|Upon reaching Brgy. Pinyahan, they immediately conducted the inventory which was done before the barangay officials of the said barangay. Alejandro handed the seized item to Alfonso Romano who was the inventory officer, but she was present during the inventory process.

The Regional Trial Court ruled against Tomawis. On appeal to the CA, Tomawis argued that the prosecution failed to prove the identity and integrity of the alleged seized drugs due to the following irregularities in the conduct of the buy-bust operation: (1) failure to present the testimony of IO1 Romano Alfonso (IO1 Alfonso), who received the *shabu* from IO1 Alejandro; (2) failure to immediately mark the *shabu* at the time of seizure and initial custody; and (3) the conduct of the inventory and marking at the barangay hall.

**ISSUE:**

Whether or not the chain of custody was broken (YES)

**RULING:**

The Court ruled that there was a failure to establish the chain of custody of the seized drugs. Section 21, Article II of RA 9165 outlines the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. In addition, the inventory must be done **in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official**, who shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

The buy-bust team in this case utterly failed to comply with these requirements. There are police stations closer to Starmall, Alabang, in Muntinlupa City and the office of the PDEA is also in Pinyahan, Quezon City. And yet, the inventory was conducted in the barangay hall of Pinyahan, Quezon City — which is not one of the allowed alternative places provided under Section 21 of the IRR.More importantly, there was no compliance with the three-witness rule. There were no witnesses from the DOJ or the media. Only two witnesses who were elected barangay officials were present. It thus becomes evident that the buy-bust team did not prepare or bring with them any of the required witnesses at or near the place of the buy-bust operation and the witnesses were a

mere afterthought. Based on the testimonies of barangay councilors Burce and Gaffud, they were not present during the seizure of the drugs. They were only called to go to the barangay hall of Pinyahan, Quezon City — after the arrest and seizure that had been done in Starmall, Alabang — to "witness" the inventory made by the PDEA at the barangay hall.

Furthermore, there are gaps in the chain of custody of the seized drugs. There were glaring inconsistencies in the testimonies of the buy-bust team. It is unclear as to who actually recovered the seized drugs from Tomawis and who held custody of the drugs from the place of the arrest in transit to Brgy. Pinyahan. There is also no testimony as to who held the drugs from the time of inventory at Brgy. Pinyahan to the PDEA office; from the PDEA office until it was delivered to the laboratory; and until its presentation in court as evidence of the *corpus delicti*.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* MALOU ALVARADO *y* FLORES, ALVIN ALVAREZ *y* LONQUIAS and RAMIL DAL *y* MOLIANEDA, *accused-appellants*.**

G.R. No. 234048, THIRD DIVISION, April 23, 2018, GESMUNDO, *J.*

*The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody. We have noted in several cases that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed. In the present case, not only have the prescribed procedures not been followed, but also (and more importantly) the lapses not justifiably explained.*

*In this case, however, only a barangay kagawad was present during the inventory and photographing of the seized items. Absent any justifiable grounds for the non-compliance, the Court acquitted the appellants.*

**FACTS:**

The appellant was charged with the violation of RA 9165. An Informant reported to the Parañaque City Police Station Anti-Illegal Drug Special Operations Task Group (SAIDSOTG) about the illegal drug activity of certain *[Betsy]* and *Malou*. The police immediately formed a team, to conduct a buy-bust operation against the suspects, with PO2 Rolly Burgos (PO2 Burgos) as *poseur* buyer and PO3 Eric Sarino (PO3 Sarino), and PO3 [Edwin] Plopinio as back-up. The Team Leader provided PO2 Burgos with [buy]-bust money consisting of 5 pieces of P100.00 bills, which were marked with "RB" on the upper left portion of the bills. After the arrest of the appellants, P/Sr. Insp. Tome contacted the barangay authorities and thus, in the presence of *Barangay Kagawad* Noel Azarcon and the four suspects, PO2 Burgos placed markings on the seized items at the scene of the arrest. While SPO2 Burgos was preparing the inventory of the seized item, PO2 Julaton took photographs of the arrested suspects and the seized items. Thereafter, the team brought the accused-appellants to the police station for documentation and to submit the confiscated items to the PNP Crime Laboratory for examination.

The accused contend that their conviction must not be upheld because of the police officers' non-compliance with procedural safeguards prescribed by Section 21 of RA 9165. They assert that no evidence was presented showing that the inventory and photographing of the seized items were conducted in their presence and/or their representative, and representatives from the media and the DOJ.

**ISSUE:**

Whether or not the chain of custody is broken (YES)

**RULING:**

What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. Nonetheless, the Court has ruled that even when the illegal sale of a dangerous drug was proven by the prosecution, the latter is still burdened to prove the integrity of the *corpus delicti*. Thus, even if there was a sale, the *corpus delicti* is not proven if the chain of custody was defective. The *corpus delicti* is the body of the crime that would establish that a crime was committed. In cases involving the sale of drugs, the *corpus delicti* is the confiscated illicit drug itself, the integrity of which must be preserved. The apprehending team is required to "document the chain of custody each time a specimen is handled, transferred or presented in court until its disposal, and every individual in the chain of custody shall be identified following the laboratory control and chain of custody form."

To ensure an unbroken chain of custody, Section 21 (1) of RA 9165, together with its IRR, specifies that 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.

In this case, however, only a *barangay kagawad* was present during the inventory and photographing of the seized items. The buy-bust operation was arranged and scheduled in advance. The police officers formed an apprehending team, coordinated with the Philippine Drug Enforcement Agency *(PDEA)*, prepared the buy-bust money, and held a briefing. Yet, they failed to ensure that a DOJ representative and a media practitioner, would witness the inventory and photographing of the seized drugs.Securing the presence of these persons is not impossible. Absent any justifiable grounds for the non-compliance, the Court acquitted the appellants.

(Note: Section 21 of RA 9165 has already been repealed by RA 10640, however, the old provision was used in this case because it was only repealed in 2014)

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. ANGELITA REYES y GINOVE and JOSEPHINE SANTA MARIA y SANCHEZ, *accused-appellants*.**

G.R. No. 219953, SECOND DIVISION, April 23, 2018, PERALTA, *J.*

*In illegal sale of dangerous drugs, it is necessary that the procured object is property presented as evidence in court and is shown to be the same drugs seized from the accused. The illicit drugs confiscated from the accused comprise the corpus delicti of the charges, and it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt. One of the ways to ensure this is to see to it that the chain of custody was not broken. The law provides for the procedure to be followed in this cases, however, in the case at bar, only Kagawad Balignasan signed the making of the Inventory, and the seized item was marked and inventoried, and with appellants, photographed, without the presence of counsel. Clearly, the requirements stated in Section 21 of R.A. 9165 have not been followed.*

**FACTS:**

Acting on a report from a confidential informant about the activities on an alias "Babang", the chief of police dispatched some policemen to confirm the veracity of the information, conduct a surveillance and a buy-bust operation. Babang was later identified as appellant Angelita Reyes. The informant introduced PO2 Talosig to Reyes as a buyer of shabu. When Reyes asked him how much he will buy, he replied P200.00. Appellant Sta. Maria, who was standing beside Reyes, asked for the money. After the completion of the transaction, the other back-ups went on and introduced themselves, and placed the appellants under arrest. PO2 Talosig kept the sachet in his possession. They then brought the appellants to the police station, where the sachet was placed in another plastic and was marked by Talosig. An inventory of the seized items were prepared, and a photo of the appellants and the evidence was made. Thereafter, the evidence was brought for examination to the Quezon City Police District Crime Laboratory.

**ISSUE:**

Whether or not there was a broken chain of custody of the recovered drugs (YES)

**RULING:**

The Court finds that the prosecution failed to prove appellant's guilt beyond reasonable doubt. Under Article II, Section 5 of RA 9165, 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 things sold and the payment therefor. In illegal sale of dangerous drugs, it is necessary that the procured object is property presented as evidence in court and is shown to be the same drugs seized from the accused. The illicit drugs confiscated from the accused comprise the corpus delicti of the charges, and it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt.

To ensure an unbroken chain of custody, Section 21 (1) of RA 9165, together with its IRR, specifies that 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.

In this case, only Kagawad Balignasan signed the making of the Inventory, and the seized item was marked and inventoried, and with appellants, photographed, without the presence of counsel. Clearly, the requirements stated in Section 21 of R.A. 9165 have not been followed. There was no representative from the media and the National Prosecution Service present during the inventory and no justifiable ground was provided as to their absence. It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided. If doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should nonetheless rule in favor of the accused, lest it betray its duty to protect individual liberties within the bounds of law.Absent therefore any justifiable reason in this case for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized item has not been established beyond reasonable doubt. As such, this Court finds it apt to acquit the appellant.

(Note: Section 21 of RA 9165 has already been repealed by RA 10640, however, the old provision was used in this case because it was only repealed in 2014.)

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- JAY SUAREZ y CABUSO, *accused-appellant*.**

G.R. No. 223141, FIRST DIVISION, June 6, 2018, DEL CASTILLO, *J.*

*Although it is true that "non-compliance with the prescribed procedures does not, as it should not, automatically result in an accused's acquittal," the saving mechanism provided only operates "under justifiable grounds, and as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team."*

*It is therefore incumbent upon the prosecution to: a) recognize and explain the lapse or lapses committed by the apprehending team; and b) demonstrate that the integrity and evidentiary value of the evidence seized had been preserved, despite the failure to follow the procedural safeguards under RA 9165.*

*The following links must be established by the prosecution: "[first,] 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."*

*Prosecution failed to establish the first link upon failure to mark the drugs immediately after they were allegedly seized from appellant. The items were marked only at Police Station A which is not the nearest station. The third link also was not established because the prosecution failed to disclose the identities of: (a) the person who had custody of the seized items after its turnover by SPO2 Delos Reyes, (b) the*

*person who tuned over the items to Forensic Chemist Dascil, and (c) the person who had custody thereof after they were examined by the forensic chemist and before they were presented in court. Lastly, the fourth link was not established when the specimen was turned over to the Prosecutor's Office which has no authority to take custody of dangerous drugs before they are brought before the court.*

**FACTS:**

Appellant was charged with the illegal sale and possession of dangerous drugs under Sections 5 and 11, Article II of RA 9165 in two Informations.

On March 3, 2010, at around 6:00 p.m., the City Anti-Illegal Drugs Special Operations Team of Olongapo City, in coordination with the Philippine Drug Enforcement Agency (PDEA), conducted a buy-bust operation against appellant along Pepsi Road corner Manggahan Street, Sta. Rita, Olongapo City.

The buy-bust team was composed of seven members including P/Sr. Inspector Julius A. Javier (PSI Javier) as team leader, SPO2 Allan Delos Reyes (SPO2 Delos Reyes) as case investigator, PO1 Sherwin Tan (PO1 Tan) as poseur-buyer, and PO1 Zaira Mateo (PO1 Mateo) as immediate back-up.

Upon reaching the target area, a confidential agent introduced PO1 Tan, the buy-bust team's poseur-buyer, to appellant as a marijuana user. Appellant then engaged PO1 Tan in a short conversation about his name and other personal circumstances before offering to sell a sachet of marijuana worth P200.00. PO1 Tan readily agreed to appellant's offer and accepted the sachet of suspected marijuana. In return, he handed to appellant two pieces of marked P100.00 bills. Once the exchange was completed, PO1 Tan placed his hands on his waist which served as the pre-arranged signal that the transaction had already been consummated.

The other members of the buy-bust team immediately rushed to the scene. PO1 Tan arrested appellant. PO1 Mateo conducted a body search on appellant which yielded the marked money from the latter's right pocket and 11 sachets of suspected marijuana from the left pocket.

The buy-bust team then decided to bring appellant to the police station due to a commotion at the place of arrest. At the police station, PO1 Tan marked the sachet that was the subject of the buy-bust sale with his initials "S.T." and turned it over to SPO2 Delos Reyes who placed his initials "ADR" thereon. PO1 Mateo also marked the 11 sachets she confiscated from appellant during the body search with her initials "Z.M." and handed them over to SPO2 Delos Reyes who, again, placed his initials "ADR" on said sachets.

SPO2 Delos Reyes thereafter prepared an Inventory Receipt and Chain of Custody and a Letter Request for Laboratory Examination and Drug Test. Photographs of the marked money and confiscated items were also taken. Later, SPO2 Delos Reyes personally turned over the seized items to the Regional Crime Laboratory in Olongapo City to determine the presence of dangerous drugs; they tested positive for the presence of marijuana.

Appellant raised the defenses of denial and frame-up. He narrated that, while waiting for his companion at the corner of Manggahan Street, some men alighted from a van and asked for the whereabouts of a certain "Bunso." When he answered that he did not know "Bunso," he was

handcuffed and brought to the police station where he was told that he was arrested for using and selling marijuana.

RTC found appellant guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165. CA affirmed *in toto*.

**ISSUE:**

Whether the chain of custody over the seized items was sufficiently established, given the prosecution's failure to present a detailed account as regards the handling of said items from the time they were confiscated up to their presentation in court during the trial. (NO)

**RULING:**

For prosecutions involving dangerous drugs, SC have consistently held that "the dangerous drug itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt." In other words, "the identity of the dangerous drug [must] be established beyond reasonable doubt. Such proof requires an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that [was] seized from him."

However, "the presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs alone is insufficient to secure or sustain a conviction under RA 9165." Given the unique characteristics of dangerous drugs which render them not readily identifiable, it is essential to show that the identity and integrity of the seized drugs have been preserved.

Section 21, Article II of RA 9165 provides the procedural safeguards that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. "As indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case."

> 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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, x x x 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 persons 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.

The buy-bust team failed to strictly comply with the prescribed procedure under Section 21, par. 1. While the amendment of RA 9165 by RA 10640 now allows the conduct of physical inventory at the nearest police station, the buy-bust team, in this case, brought the appellant and the seized items to Police Station A instead of Police Station 5 which was the closest police station to the place of arrest, per the instruction of their team leader, PSI Javier.

Although it is true that "non-compliance with the prescribed procedures does not, as it should not, automatically result in an accused's acquittal," the saving mechanism provided only operates "under justifiable grounds, and as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team."

It is therefore incumbent upon the prosecution to: a) recognize and explain the lapse or lapses committed by the apprehending team; and b) demonstrate that the integrity and evidentiary value of the evidence seized had been preserved, despite the failure to follow the procedural safeguards under RA 9165.

Unfortunately, the prosecution failed not only to recognize and explain the buy-bust team's non-compliance with Section 21, particularly on the immediate marking of the seized items, but also to adduce evidence establishing the chain of custody over said items that would unequivocally demonstrate that the illegal drugs presented in court were the same illegal drugs actually recovered from appellant during the buy-bust operation.

The following links must be established by the prosecution: "[first,] 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."

In this case, the prosecution failed to establish the first link in the chain of custody. As previously discussed, there was a failure to mark the drugs immediately after they were allegedly seized from appellant. The items were marked only at Police Station A, and the prosecution offered no reasonable explanation as to (a) why the items were not immediately marked after seizure — PO1 Mateo merely stated in passing that there was a commotion because it was a public place; 47 and (b) why the buy-bust team brought the seized items to Police Station A instead of Police Station 5 which was closer to the place of arrest.

The prosecution's evidence relating to the third link in the chain of custody also has loopholes. The prosecution failed to disclose the identities of: (a) the person who had custody of the seized items after its turnover by SPO2 Delos Reyes, (b) the person who tuned over the items to Forensic Chemist Dascil, and (c) the person who had custody thereof after they were examined by the forensic chemist and before they were presented in court.

The fourth link in the chain of custody likewise presents a highly irregular circumstance in the prosecution's evidence. The forensic chemist testified that upon the request of the Prosecutor['s] Office[,] the specimen subject matter of these cases were turned over by the Evidence Custodian of the PNP Crime Laboratory, Olongapo City to the Prosecutor['s] Office.

In People v. De Guzman, SC ruled that the City Prosecutor's Office has no authority to take custody of dangerous drugs before they are brought before the court. "It should be emphasized that the City Prosecutor's Office is not, nor has it ever been, a part of the chain of custody of seized dangerous drugs. It has absolutely no business in taking custody of dangerous drugs before they are brought before the court."

At this point, the chain of custody was obviously broken, not only because of the PNP Crime Laboratory's flagrant deviation from the prescribed procedure in turning over the seized items to the City Prosecutor's Office, but also due to the dire lack of information as to the handling and safe-keeping of the said items from the time they were received by a certain "Ligaya Lopez," the receiving clerk in the City Prosecutor's Office, up to the time they were presented in court. Prosecution fell short in proving beyond reasonable doubt that appellant was indeed guilty of the crimes charged, appellant is acquitted.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- MANUEL FERRER Y REMOQUILLO A.K.A. "KANO," KIYAGA MACMOD Y USMAN A.K.A. "KIYAGA" AND DIMAS MACMOD Y MAMA A.K.A. "DIMAS," *Accused-Appellants*.**
G.R. No. 213914, THIRD DIVISION, June 6, 2018, MARTIRES, *J.*

*In conjunction with Sec. 21, Art. II of R.A. No. 9165, jurisprudence dictates the four links in the chain of custody of the confiscated item that must be established by the prosecution: first, 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.*

*On the first link, the prosecution was able to establish that Viernes marked the confiscated heat-sealed transparent plastic sachets with the markings Exhibits "A" and "B" and his initials "BFV" and the date "08-12-06" in the presence of the accused-appellants. It must be stressed however, that equally required pursuant to Sec. 21, Art. II of R.A. No. 9165 is that the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same.*

*While it would appear from the certificate of inventory that the inventory was witnessed by "Ding Bermudez" (Bermudez) of the Press Corps and barangay kagawad "Artemio P. Torres" (Torres), the prosecution never tried to elicit from Viernes how and when these witnesses to the inventory affixed their respective signatures on the certificate. Neither were Bermudez and Torres called to the witness stand to testify on the manner by which they signed the certificate. The Court cannot close its eyes on this glaring flaw as it has repeatedly stressed that "[w]ithout the insulating presence of the*

*representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A No. 642567 again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."*

*Additionally, the prosecution was not able to prove that the seized items were inventoried and photographed in the presence of the accused appellants and that copies thereof were furnished them. Indeed, the records do not show any photograph depicting the confiscated items. Worse, the certificate of inventory was not even signed by the accused-appellants or their representatives which would only lend truth to the probability that, in actuality, the inventory was never done in their presence. Viernes also never mentioned in his affidavit that the confiscated items were inventoried at the police station. For sure, if the inventory and the taking of pictures of the seized items had actually taken place in accordance with the prescribed procedure under Sec. 21 of R.A. No. 9165, Viernes would not have failed to state the same in his affidavit.*

**FACTS:**

On 11 August 2006, a confidential informant (*CI*) came to the PDEA Calabarzon Office, and informed the Regional Director that she was to deal with Manuel alias "Kano" in the sale of a hundred grams of shabu amounting to P500.000.00; that the transaction would take place at the parking lot of Festival Mall (*mall*), Muntinlupa City. Consequently, the Regional Director tasked Police Inspector Gregorio Caraig (*Caraig*) to lead a ten-member team with Viernes as the poseur-buyer and PO1 Carla Mayo (*Mayo*) as the backup arresting officer. As a prearranged signal that the sale was consummated, Viernes was to call Mayo's cellphone.

On 12 August 2006, armed with the proper authority to conduct their operation, the team proceeded to the transaction area. When they arrived at the mall at about 12:30 p.m., the CI contacted Manuel who later arrived with Kiyaga and Dimas (*spouses Macmods*). The accused-appellants approached the vehicle and boarded it with Manuel. After introducing Viernes to the accused appellants, the CI alighted from the vehicle to serve as lookout.

When Manuel asked Viernes if he had the money, Viernes replied that he had and showed the former a paper bag containing the boodle money with the two real P500.00 bills on top. Viernes then demanded the shabu. Manuel ordered Kiyaga to give Viernes the shabu. Kiyaga got two transparent plastic sachets from her pocket and handed these to Viernes who in turn handed the money to Dimas as told to do so by Manuel. With the transaction consummated, Viernes called Mayo's cellphone. Before Dimas could discover that the paper bag contained boodle money, Viernes introduced himself as a PDEA police operative and arrested Manuel, while the rest of the team arrested Kiyaga and Dimas.

After the accused-appellants were arrested, Viernes marked the heat-sealed transparent plastic sachets as Exhs. "A"and "B" with his initials "BFV." The accused-appellants were informed of their constitutional rights and thereafter were brought to Camp Lim. Viernes was in possession of the confiscated plastic sachets from the time they left the mall until they reached Camp Lim.

Upon arriving at their office, Viernes prepared the certificate of inventory of the confiscated items, and the booking sheet and arrest report for Manuel, Kiyaga, and Dimas. Viernes prepared the requestfor the laboratory examination of the confiscated two pieces of transparent sealed sachets, and the requests[26] for the drug testing and physical/medical examination of the accused-appellants. On the same day, at 5:45 p.m., Viernes and Mayo brought to the laboratory the documents pertinent to the requests and the two pieces of transparent sachets. It yielded positive result to the test for presence of Methamphetamine hydrochloride, a dangerous drug. As to the drug tests, the laboratory found Manuel positive for shabu and the spouses Macmods negative for the same.

RTC found that the testimony of Viernes, the lone witness for the prosecution, was straightforward, unwavering, direct, and truthful in all aspects. It ruled that all the elements for the successful prosecution for illegal selling of prohibited drugs have been proven, *viz*: the identity of the buyer, who was Viernes; the identity of the sellers, who were the accused-appellants; the object of the sale, which was the 98.9 grams of methamphetamine hydrochloride, a prohibited drug; the consideration, which was the marked buy-bust money consisting of two P500.00 bills; the delivery of the items from Kiyaga to Viernes; and the receipt of the money by Dimas from Viernes.

The RTC held that the chain of custody was never broken because the drug items were in the possession of Viernes from the time of confiscation to their transfer to the laboratory for examination; and that the markings and inventory of the drug items properly insured their integrity and purity.

According to the RTC, the concerted overt actions of the three accused-appellants led to the conclusion that they conspired in selling and delivering the drug items to the poseur-buyer. Moreover, the denial of the accused-appellants pales in comparison to the direct and unwavering testimony of Viernes. Hence, it found accused appellants guilty of Violation of Sec. 5 of Republic Act No. 9165. CA affirmed.

**ISSUE:**

Whether the prosecution failed to prove that the apprehending team complied with Sec. 21 of R.A. No. 9165. (YES)

**RULING:**

Jurisprudence is consistent as to the elements that the prosecution needs to prove beyond reasonable doubt in order to secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, *viz*: (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. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.

In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established beyond reasonable doubt to prove its case against the accused. In order to preclude, therefore, any doubt on the identity of the dangerous drugs, the prosecution has the burden to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*. In other words, it must be established

with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. Equally significant, therefore, as establishing all the elements of violation of R.A. No. 9165 is proving that there was no hiatus in the chain of custody of the dangerous drugs and paraphernalia. The Court has unfailingly explained the need to establish the identity of the seized drugs. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.

R.A. No. 9165 provides for the specific procedure to guide the police officers in preserving the integrity and evidentiary value of the seized items from the accused, *viz*:

> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
>
> (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;
>
> x x x x

In conjunction with Sec. 21, Art. II of R.A. No. 9165, jurisprudence dictates the four links in the chain of custody of the confiscated item that must be established by the prosecution: first, 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.

On the first link, the prosecution was able to establish that Viernes marked the confiscated heat-sealed transparent plastic sachets with the markings Exhibits "A" and "B" and his initials "BFV" and the date "08-12-06" in the presence of the accused-appellants. It must be stressed however, that equally required pursuant to Sec. 21, Art. II of R.A. No. 9165 is that the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same.

While it would appear from the certificate of inventory that the inventory was witnessed by "Ding Bermudez" (Bermudez) of the Press Corps and barangay kagawad "Artemio P. Torres" (Torres), the prosecution never tried to elicit from Viernes how and when these witnesses to the inventory affixed their respective signatures on the certificate. Neither were Bermudez and Torres called to the witness stand to testify on the manner by which they signed the certificate. The Court cannot close its eyes on this glaring flaw as it has repeatedly stressed that "[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A No. 642567 again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."

Additionally, the prosecution was not able to prove that the seized items were inventoried and photographed in the presence of the accused appellants and that copies thereof were furnished them. Indeed, the records do not show any photograph depicting the confiscated items. Worse, the certificate of inventory was not even signed by the accused-appellants or their representatives which would only lend truth to the probability that, in actuality, the inventory was never done in their presence. Viernes also never mentioned in his affidavit that the confiscated items were inventoried at the police station. For sure, if the inventory and the taking of pictures of the seized items had actually taken place in accordance with the prescribed procedure under Sec. 21 of R.A. No. 9165, Viernes would not have failed to state the same in his affidavit.

Also truly surprising was that even Viernes was not sure that he was the one who prepared the certificate of inventory. During direct examination, Viernes admitted that he was the one who prepared the certificate. However, on cross-examination, Viernes wavered in his testimony stating that it was the investigator who prepared the certificate but thereafter claimed to have prepared this document upon being confronted with his statements during the direct examination.

Court had ruled that under varied field conditions, strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible. The Court clarifies that with the effectivity of R.A. No. 10640, Sec. 21 of R.A. No. 9165, noncompliance with the requirements of Sec. 21 of R.A. No. 9165 on justifiable grounds shall not render void and invalid the seizure and custody of the confiscated items

as long as the integrity and the evidentiary value of the items had been properly preserved by the apprehending team. The burden therefore is with the prosecution to prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.

The record, however, is bereft of any showing that the prosecution was able to establish the justifiable ground on why the apprehending team did not comply with the guidelines set forth in Sec. 21, R.A. No. 9165, and to prove that the integrity and value of the seized evidence had nonetheless been preserved. Since the justifiable ground for noncompliance was not proven as a fact, the Court cannot presume what these grounds are or that they even exist. Unquestionably, the first link in the chain of custody in this case was inherently weak causing it to irreversibly break from the other links. With the absence of the first link, there can no longer be a chain of custody to speak of; hence, it becomes immaterial to dwell on the succeeding links. The Court, therefore, has no option but to acquit.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- NORJANA SOOD Y AMATONDIN, *Accused-Appellant*.**
G.R. No. 227394, SECOND DIVISION, June 6, 2018, CAGUIOA, *J.*

*The buy-bust team admittedly failed to comply with the foregoing requirements. First, the conduct of the inventory was not conducted immediately at the place of seizure and apprehension; indeed, the police officers even contradicted each other as to where the inventory was supposedly conducted. Second, even assuming an inventory had been conducted, the prosecution failed to comply with the requirement that the photographing be also done at the place of arrest. Finally, and most revealing as to whether or not a buy-bust actually took place is the prosecution's abject and complete failure to comply with the requirement of bringing along the required three witnesses from the media, the DOJ, and any elected public official.*

*In addition, there are serious gaps in the chain of custody of the seized drugs which create reasonable doubt as to its identity and integrity.*

*First, the glaring inconsistencies in the testimonies of the buy-bust team members make it unclear as to whether the buy-bust team went directly to the police station after the seizure of the drugs or whether they still went to the barangay hall and then proceeded to the police station. Second, although there was testimony as to the turnover of the seized drugs from the buy-bust team to the laboratory, there was no testimony on the safekeeping of the seized items after the laboratory testing. Last, there was no testimony as to the retrieval of the seized drugs from the laboratory for presentation in court as evidence.*

**FACTS:**

On 28 January 2009, a certain "Florence" was apprehended in a buy-bust operation conducted by police operatives belonging to the Station Anti-Illegal Drugs-Special Operation Task Group, Kamuning Police Station (PS-10), Quezon City Police District. Upon their return to the police station, they were informed by the confidential informant that the dealer of the alleged drugs, accused-appellant, was due to arrive from Caloocan City that afternoon.

The Chief of SAID-SOTG, thereafter allowed the continuous police operation for the arrest of accused-appellant. After a briefing for accused-appellant's apprehension, the CI called the latter through a mobile phone on loudspeaker. Pretending to be Florence, the CI asked accused-appellant if they could buy more. The CI and accused- appellant agreed to meet later that day at the place where they usually do their drug transactions.

The police operatives and the CI proceeded to the target area. SPO1 Regato approached accused-appellant and asked her: "ikaw ba si Norjana, pinapasundo ka pala ni Florence." Accused-appellant replied in the affirmative and added, "ah sige, kuya puwede kayo na magbigay kay Ate Florence kasi nagmamadali ako." She then took from her right pocket two (2) transparent plastic sachets containing white crystalline substance believed to be methamphetamine hydrochloride, commonly known as "shabu" and handed them to SPO1 Regato, who thereafter introduced himself as a police officer. Accused-appellant was then arrested and apprised of her constitutional rights. Before leaving the target area, SPO1 Regato placed the markings "AR1-28 JAN09" and "AR2-28 JAN09" on the plastic sachets.

Accused appellant was then taken to the barangay hall. SPO1 Regato prepared the Inventory of Seized Properties/Items and the inventory was conducted before Kgd. Manette P. Salazar and Rey Argana, a media representative. Both Kgd. Salazar and Argana signed the certificate of inventory for the two (2) transparent plastic sachets. Afterwards, accused-appellant was brought to the police station. SPO1 Regato turned over the confiscated items to their investigator, PO3 Cortes, who prepared a Request for Laboratory Examination of the subject specimens. Thereafter, SPO1 Regato submitted the evidence to the crime laboratory for examination, which gave positive results to the tests for shabu.

Accused appellant vehemently denied the prosecution's version of the events which occurred on 28 January 2009. She testified that on the same day, she was laying out her merchandise on the Luzon Overpass, being a sidewalk vendor, when she was apprehended by two (2) men who she thought were officers of the Metro Manila Development Authority. She was taken to the police station where allegedly, the apprehending officers demanded thirty five thousand (P35,000.00) pesos for her release, but she did not file any case against them. Accused-appellant denied selling shabu at the time of her arrest.

Nonetheless, RTC convicted accused-appellant under section 5, R.A. 9165. The RTC found that Section 21 of RA 9165 was not complied with when the inventory was not conducted on site, but excused the same on the ground that the police officers were able to explain or justify the lapses. The RTC likewise ruled that the defense evidence failed to overcome the presumption of regularity in the performance of official duty on the part of the police officers. CA affirmed.

**ISSUE:**

Whether accused-appellant's guilt was proven beyond reasonable doubt for violating Section 5, Article II of RA 9165. (NO)

**RULING:**

Section 21, Article II of RA 9165 states the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. This section was

amended by RA 10640 which imposed less stringent requirements in the procedureAs the crime in this case was committed on January 28, 2009, the original version of Section 21 is applicable, thus:

> SEC. 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[.]

Both RTC and the CA found that the prosecution failed to comply with Section 21 of RA 9165. To be sure, the findings of the CA show an utter failure on the part of the police to conduct the inventory at the place of seizure of the drugs. In this regard, the CA pointedly observed that the testimonies of the police officers were conflicting as to whether the purported inventory was conducted, whether at the barangay office or at the police station. SPO1 Armand Q. Regato (SPO1 Regato) testified that the inventory was done in the barangay hall while PO1 Andrew B. Hega (PO1 Hega) testified that the documentation after accused-appellant's arrest was done in the police station.

Unquestionably, the prosecution failed to prove that the three required witnesses were present during the inventory and photographing of the seized drugs. As the RTC itself found, only the barangay official and media representative were present during the inventory, and they were called in only after the arrest and seizure had already happened — which may have been at the barangay hall or at the police station.

The buy-bust team admittedly failed to comply with the foregoing requirements. First, the conduct of the inventory was not conducted immediately at the place of seizure and apprehension; indeed, the police officers even contradicted each other as to where the inventory was supposedly conducted. This creates a very serious doubt in the Court's mind as to whether an inventory was actually even conducted. If the members of the buy-bust team have markedly different versions of what transpired after the seizure of the items, the Court cannot rely on their testimonies on the conduct of the inventory and photographing.

Second, even assuming an inventory had been conducted, the prosecution failed to comply with the requirement that the photographing be also done at the place of arrest. The prosecution's excuse of not having a camera is flimsy as they had planned the operation. In the 1999 Philippine National Police Drug Enforcement Manual, the buy-bust team is required to bring a camera in the conduct of buy-bust operations. The reason that the buy-bust team did not have a camera is thus exposed to be nothing more than a convenient excuse that is belied by the foregoing requirements that the team

ought to have followed. What makes this reason to be more incredible is that in 2009, mobile phones with cameras were already widely available. Thus, the buy-bust team's failure to even take photographs of the seized drugs at the scene of their seizure gives credence to the assertions of the accused-appellant that no buy-bust had actually taken place, and that the charge against her was completely fabricated.

Finally, and most revealing as to whether or not a buy-bust actually took place is the prosecution's abject and complete failure to comply with the requirement of bringing along the required three witnesses from the media, the DOJ, and any elected public official. To be certain, these witnesses should already have been present at the time of apprehension and the drugs' seizure, as this is a requirement the buy-bust team could easily have complied with given the nature of a buy-bust operation as a planned activity.

Supplementing RA 9165, Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) states that in cases of non-compliance with the procedure for inventory and photographing, the IRR imposed the twin requirements of, first, there should be justifiable grounds for the non-compliance, and second, the integrity and the evidentiary value of the seized items should be properly preserved. Failure to show these two conditions renders void and invalid the seizure of and custody of the seized drugs.

The prosecution's reason for not conducting the inventory in the place of seizure was that they supposedly wanted to avoid any commotion at the area because there would be vehicular traffic. It hardly qualifies as sufficient justification for not complying with the requirements of Section 21 as to the conduct of the inventory and photographing at the place of seizure. As buy-bust operations are planned, the team could have easily ensured that the conduct of the inventory and photographing would cause minimal disruption to the area. Further, and more importantly, the records fail to show any reason for the prosecution's failure to comply with the presence of the three witnesses during the inventory and photographing of the seized drugs.

In light of the foregoing, it is no longer necessary to determine the second requirement of whether the prosecution had been able to prove that the evidentiary value of the seized items had been properly preserved. Nonetheless, and if only to highlight the grave errors of the buy-bust team, the Court will show that even the evidentiary value of the seized items had not been preserved.

In addition, there are serious gaps in the chain of custody of the seized drugs which create reasonable doubt as to its identity and integrity.

First, the glaring inconsistencies in the testimonies of the buy-bust team members make it unclear as to whether the buy-bust team went directly to the police station after the seizure of the drugs or whether they still went to the barangay hall and then proceeded to the police station. Second, although there was testimony as to the turnover of the seized drugs from the buy-bust team to the laboratory, there was no testimony on the safekeeping of the seized items after the laboratory testing. Last, there was no testimony as to the retrieval of the seized drugs from the laboratory for presentation in court as evidence.

Thus, contrary to the findings of the RTC and CA, the prosecution actually failed to establish the unbroken chain of custody. The inconsistencies in the testimony of the buy-bust team and lack of

information at specific stages of the seizure, custody, and examination of the seized drugs create doubt as to the identity and integrity thereof. Accused-appellant is therefore acquitted.

**LENIZA REYES y CAPISTRANO, *Petitioner,* -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.**
G.R. No. 229380, SECOND DIVISION, June 6, 2018, Perlas-Bernabe, *J.*

*Section 21, Article II of RA 9165, prior to its amendment by RA 10640, requires, among others, that the apprehending team shall immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. In this case, only the Barangay Captain was present during the marking and inventory of the seized items and the records do not show nor indicate any effort on the part of the police officers to secure the presence of the other necessary personalities under the law or provide any justification for their absence, which could have excused their leniency in strictly complying with the said procedure.*

**FACTS:**

At around 8:00 p.m. on November 6, 2012, a group of police officers which included Police Officer 1 (PO1) Jefferson Monteraas (PO1 Monteras) was approached by two (2) teenagers and informed them that a woman with long hair and a dragon tattoo on her left arm had just bought shabu in Barangay Mambog. Thereafter, a woman, who was later found to be herein petitioner Leniza Capistrano Reyes (Reyes), which matched the description passed by the police officers and reeked of liquor. The police officers then asked Reyes if she had just bought *shabu* and ordered her to take it out. Reyes answered, *"Di ba bawal kayong magkapkap ng babae?"* and at that point, turned her back, pulled something out from her breast area and held a small plastic sachet on her right hand. PO1 Monteras immediately confiscated the sachet and brought it to the police station where he marked it with "LRC-1." Thereat, he prepared the necessary documents, conducted the inventory and photography before Barangay Captain Manolito Angeles. Thereafter, PO1 Monteras proceeded to the Rizal Provincial Crime Laboratory and turned over the seized item for examination to Police Senior Inspector Beaune Villaraza (PSI Villaraza), who confirmed that the substance inside the sachet tested positive for 0.04 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.

Reyes denied the charges, and averred that the incident happened on November 5, 2012, and not on November 6. Moreover, Reyes averred that on the said date, she just came from a drinking spree and was about to board a jeepney, when a man approached and asked if she knew a certain person. After answering in the negative, she rode the jeepney until it was blocked by two (2) civilian men in motorcycles whom she identified to be one PO1 Dimacali. The latter ordered her to alight and bring out the *shabu* in her possession which she denied
having. She was then brought to the police station where the police officers extorted from her the amount of P35,000.00 in exchange for her freedom. But since she failed to give the money, the police officers took her to Taytay for inquest proceedings.

The RTC found Reyes guilty beyond reasonable doubt of illegal possession of 0.11 gram of *shabu* defined and penalized under Section 11, Article II of RA 9165. The RTC ruled that the prosecution was able to prove that Reyes was validly arrested and thereupon, found to be in possession of *shabu*, which she voluntarily surrendered to the police officers upon her arrest. Likewise, it observed that the chain of custody of the seized item was sufficiently established through the testimony of PO1 Monteras, which was not ill-motivated. The CA affirmed Reyes' conviction and found that the search made on Reyes's person yielding the sachet of shabu was valid as she was caught in flagrante delicto in its possession and was legally arrested on account thereof.

**ISSUE:**

Whether or not Reyes's conviction for Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 should be upheld. (NO)

**RULING:**

The police officers failed to abide by the prescribed chain of custody rule under Sec. 21, Art. II or RA 9165. Section 21, Article II of RA 9165, prior to its amendment by RA 10640, requires, among others, that the apprehending team shall immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. In this case, only the Barangay Captain was present during the marking and inventory of the seized items and the records do not show nor indicate any effort on the part of the police officers to secure the presence of the other necessary personalities under the law or provide any justification for their absence, which could have excused their leniency in strictly complying with the said procedure. It is well-settled that unjustified non-compliance with the chain of custody procedure would result in the acquittal of the accused, as in this case.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- JENNIFER GA-A y CORONADO, *Accused*, AQUILA "PAYAT" ADOBAR, *Accused-Appellant*.**

G.R. No. 222559, SECOND DIVISION, June 6, 2018, Caguioa, *J.*

*Sec. 21 (1) of RA 9165 mandates that the physical inventory and photographing of the drugs immediately after seizure at the place of apprehension/seizure, whenever practicable, shall be done in the presence of (1) any elected public official; (2) a representative from the media; and (3) the DOJ who shall be required to sign an inventory and given copies thereof. The reason is simple -- it is at the time of arrest or at the time of the drugs' "seizure and confiscation" that the presence of the three (3) witnesses is most needed. It is their presence at that point that would insulate against the police practice of planting evidence.*

*In the present case, none of these three (3) witnesses under Section 21 were present at the time the subject drugs were allegedly confiscated from Adobar. The testimony given by Punong Barangay Acenas even reveals that he has been summoned only sometime after the attempted arrest of Adobar and the alleged confiscation of the subject drugs from his person. Upon the other hand, only two (2) of the three*

*(3) were summoned by the team and were actually present during the physical inventory and photographing of the seized items.*

**FACTS:**

The PDEA Regional Office X Agents, Cagayan De Oro City (buy-bust team) organized a buy-bust operation against accused Aquila Adobar (Adobar) and his live-in partner. Assignments were made as follows: IO1 Siglos as poseur-buyer, IO3 Tablate as apprehending and investigating officer and the rest of the agents as back-up. IO1 Siglos was given a buy-bust money of one (1) piece of Five Hundred Pesos (P500.00) bill. After the briefing, the buy-bust team went to the residence of Adobar. The confidential informant (CI), after reaching Adobar's residence, introduced IO1 Siglos to Adobar as a friend who was interested to buy *shabu* (subject drugs). Adobar asked IO1 Siglos how much worth of *shabu* she wanted to buy and the latter answered P500.00, while handing the buy-bust money to Ado bar. Upon receipt of the money, Adobar excused himself to get the "item" inside the house. In less than a minute, Adobar came back and handed to IOI Siglos one heat-sealed transparent sachet containing white crystalline substance suspected to be *shabu*. After examining the sachet, IO1 Siglos rubbed the back of her head, signaling her colleagues to respond to the scene.

The team responded and rushed towards Adobar, with IO3 Tablate shouting *"dapa, dapa[,] PDEA!"* Adobar ran inside his house and locked the front door behind him. The buy-bust team forced open the door, cleared the ground floor then proceeded to the second floor where IO3 Tablate found Ga-a who claimed to be Adobar's live-in partner. Near her were seventeen (17) pieces of transparent sachets containing suspected *shabu* together with other drug paraphernalia on top of a table. After "clearing" Adobar's house, IO3 Tablate called for Camaman-an Punong Barangay Acenas, media representative Rondie Cabrejas of Magnum Radyo (media representative) and an unidentified representative from the Department of Justice (DOJ). Thereafter, the sachets of suspected *shabu*, including the subject drugs, were marked with IO3 Tablate's initials, "AMT." After the marking, IO3 Tablate proceeded with the inventory of the seized items (including the subject drugs) on the table where the seventeen (17) sachets were found, and prepared the Inventory of Seized Items/Confiscated Non-Drugs (Inventory) in the presence of Ga-a. Photographs of the seized drugs, the room where they were found and the accomplishment of the Inventory were then taken. It appears from the prosecution's submissions that among the three (3) witnesses summoned, only Punong Barangay Acenas and the media representative arrived at Adobar's house and witnessed and signed the Inventory.

The trial court found Adobar guilty and acquitted Ga-a but there was no discussion as to the compliance by the PDEA team with the required procedures under relevant laws, rules and regulations particularly, Section 21, Article II of RA 9165. The CA affirmed the trial court ruling *in toto* and held that the failure of the PDEA agents to comply with Section 21, Article II of RA 9165 did not render the subject drugs seized inadmissible as the prosecution had duly shown that its integrity and evidentiary value were preserved.

**ISSUE:**

Whether or not accused-appellant Adobar is guilty of sale of illegal drugs penalized under Sec. 5, Article II of RA 9165. (NO)

**RULING:**

It is important that the State establish with moral certainty the integrity and identity of the illicit drugs sold as the same as those examined in the laboratory and subsequently presented in court as evidence. This underscores the importance of Sec. 21 of RA 9165 as a critical means to ensure the establishment of the chain of custody. Sec. 21 (1) of RA 9165 mandates that the physical inventory and photographing of the drugs immediately after seizure at the place of apprehension/seizure, whenever practicable, shall be done in the presence of (1) any elected public official; (2) a representative from the media; and (3) the DOJ who shall be required to sign an inventory and given copies thereof. The reason is simple -- it is at the time of arrest or at the time of the drugs' "seizure and confiscation" that the presence of the three (3) witnesses is most needed. It is their presence at that point that would insulate against the police practice of planting evidence.

In the present case, none of these three (3) witnesses under Section 21 were present at the time the subject drugs were allegedly confiscated from Adobar. The testimony given by Punong Barangay Acenas even reveals that he has been summoned only sometime after the attempted arrest of Adobar and the alleged confiscation of the subject drugs from his person. Upon the other hand, only two (2) of the three (3) were summoned by the team and were actually present during the physical inventory and photographing of the seized items.

Nevertheless, while strict compliance with Sec. 21 of RA 9165 is the rule, RA 9165's Implementing Rules and Regulations (IRR) allow for an exception as provided in the saving clause which requires the prosecution to first, acknowledge and credibly justify the non-compliance, and second, show that the integrity and evidentiary value of the seized item were properly preserved.

With regard to the first requirement, the prosecution failed miserably to show and even acknowledge non-compliance, specifically why none of the insulating witnesses was present at the time of seizure and confiscation of the subject illegal drugs. Neither do the records show any justification as to why no DOJ representative was secured to witness the photographing and physical inventory of the seized drugs. With regard to the second requirement, there was failure to mark the seized illegal drugs immediately after confiscation due to the palpable gap between the confiscation of the drugs to its subsequent marking which the prosecution utterly failed to explain as evidenced by IO1 Siglos' conflicting testimonies as to her whereabouts after she confiscated the subject drugs from Adobar. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating, switching, "planting," or contamination of evidence.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- BERNIE DELOCIEMBRE y ANDALES, *Accused-Appellant.***

G.R. No. 226485, SPECIAL FIRST DIVISION, June 6, 2018, Perlas-Bernabe, *J.*

*The procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. In this case, the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from accused-appellants. While the requisite inventory of the seized drugs was*

*conducted in the presence of accused--appellants and an elected public official, the same was not done in the presence of the representatives from the media and the DOJ.*

**FACTS:**

A buy-bust team was organized which composed of Senior Officer II Macairap (SOII Macairap), Inspector Officer I Junef Avenido (IO1 Avenido), and IO1 Renata Reyes (IO1 Reyes) in order to conduct an entrapment operation against Bernie, alias "Axe" who was reportedly operating within Quezon City. Upon arriving, the informant introduced IO1 Avenido, the designated poseur-buyer, to Bernie and his companion, Dhats who handed a folded cardboard paper with a Lotto 6/49 logo containing white crystalline substance to IO1 Avenido. After IO1 Avenido signaled his team, Bernie and Dhats were apprehended. Shortly after, the team left the area and proceeded to the Philippine Drug Enforcement Agency (PDEA) office. Thereat, the requisite marking and inventory were done in the presence of Barangay Kagawad Jose Ruiz, Jr. and accused-appellants, while SOII Macairap took pictures of the same. Subsequently, IO1 Avenido delivered the seized drugs to the PDEA laboratory where they were received by Forensic Chemical Officer Jappeth Santiago (FCO Santiago) who confirmed that they tested positive for *methamphetaminehydrochloride* and *meferonex,* a dangerous drug.

The RTC found accused-appellants guilty of violating Sec. 5, Art. II of R.A. 9165 which was affirmed *in toto* by the CA finding that the non-compliance with Sec. 21 of RA 9165 was excused by the prosecution's unbroken chain of custody of the seized drugs, which were preserved from the time of seizure to receipt by the forensic laboratory to safekeeping up to presentation in court. Moreover, the CA ruled that a DOJ representative was no longer necessary as there was an elected official present during the inventory.

**ISSUE:**

Whether or not accused-appellants are guilty of violating Sec. 5, Art. II of RA 9165. (NO)

**RULING:**

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. The exception to the rule on compliance with Sec. 21 is found in the Implementing Rules and Regulations of RA 9165 which requires that the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.

In this case, the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from accused-appellants. While the requisite inventory of the seized drugs was conducted in the

presence of accused--appellants and an elected public official, the same was not done in the presence of the representatives from the media and the DOJ. More significantly, the apprehending officers failed to proffer a plausible explanation therefor. The procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects**.**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- DELIA CALLEJO y TADEJA and SILVERIA ANTOQUE y MOYA alias "INDAY", *Accused-Appellants.***

G.R. No. 227427, SECOND DIVISION, June 6, 2018, Caguioa, *J.*

*In order to trigger the saving clause provided in the Implementing Rules and Regulations of RA 9165, specifically Sec. 21 thereof, the noncompliance with the procedure must be justified and the integrity and the evidentiary value of the seized items properly preserved by the apprehending officer/team. The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same is duly established.*

*In this case, while PO3 Ramos testified that he turned over the seized items to PO3 Castillo for investigation and referral after physical inventory and photographing, PO3 Castillo was not even presented in trial nor was there any other testimony to explain how the seized items were passed on and placed in the hands of PO3 Castillo or how the integrity of said items were preserved while they remained in their custody. Thus, the prosecution failed to establish each link in the chain of custody as required by Section 21. Such failure casts doubt on the identity and integrity of the seized items which cannot be excused through the expedience of invoking presumption of regularity.*

**FACTS:**

Accused-appellants were subject of a buy-bust operation led by Police Chief Inspector Jonathan B. Villamor [PCI Villamor]. PO3 Ramos was designated as poseur-buyer and [PO1 Gimena] as his immediate back-up. Both Delia Callejo (Callejo) and Silveria Antoque (Antoque) knew the informant who was accompanying PO3 Ramos. When they reached the target area, Antoque approached the informant and told him, *"May ibibigay ako sayo."* After which, the informant introduced PO3 Ramos to Antoque and Callejo. Antoque offered the dangerous drug to PO3 Ramos. After PO3 Ramos handed the marked P500.00 bill to Antoque, Callejo gave him a plastic sachet containing *shabu*. PO3 Ramos lit a cigarette as a signal to his companions that the transaction had been completed. He introduced himself to the two women as a police officer and arrested and apprised them of their constitutional rights.

PO3 Ramos confiscated the marked money from Antoque and took custody of the plastic sachet subject of the sale. PO1 Gimena recovered another plastic sachet from Callejo. At the place of arrest, PO3 Ramos marked the two sachets with Callejo's initials "DTC-1" and "DTC-2." A member of the back-up team went to see Kagawad Bernal to ask him to assist in the inventory of the confiscated items. The accused and the seized items were presented to Bernal who later watched as PO3 Ramos prepared the Inventory Receipt Bernal signed the Inventory Receipt after ascertaining that the items listed were the items actually shown to him. The entire process was photographed by PO1 Gimena.

PO3 Ramos then turned over the items and the Inventory Receipt to PO3 Rafael Castillo (PO3 Castillo), the Investigator on Case.

The RTC convicted Antoque of violating Sec. 5, Art. II of RA 9165 holding that the integrity of the *corpus delicti* which was that sachet (DTC-1) purchased from Callejo had been safeguarded as to be reliable. Callejo was convicted of violating Sec. 11 for having in his possession the plastic sachet which PO1 Gimena recovered. The CA affirmed the RTC decision.

**ISSUE:**

Whether or not accused-appellants Antoque and Callejo are liable for violating Secs. 5 and 11, Art. II of RA 9165, respectively. (NO)

**RULING:**

In cases involving dangerous drugs, the drug itself constitutes the *corpus delicti* of the offense. Thus, it is of paramount importance that the prosecution prove that the identity and integrity of the seized drugs are preserved. Each link in the chain of custody of the seized drugs must be established. Section 21, Article II of RA 9165 prescribes the procedure to be followed by the apprehending officers in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. The said section prescribes that the physical inventory and photographing must be done in the presence of: (a) the accused or his representative or counsel; (b) a representative from the media; (c) a representative from the Department of Justice (DOJ); and (d) any elected official.

As confirmed by the testimonies presented by the prosecution, Kagawad Bernal was called to the place of arrest only *after* the apprehension of the appellants and the alleged seizure of drugs from their possession. In fact, Kagawad Bernal even testified that he did not even know that a buy-bust operation was about to take place. Further, no explanation was offered as to the absence of the two other insulating witnesses from the DOJ and the media.

Moreover, in order to trigger the saving clause provided in the Implementing Rules and Regulations of RA 9165, specifically Sec. 21 thereof, the noncompliance with the procedure must be justified and the integrity and the evidentiary value of the seized items properly preserved by the apprehending officer/team. The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same is duly established.

In this case, while PO3 Ramos testified that he turned over the seized items to PO3 Castillo for investigation and referral after physical inventory and photographing, PO3 Castillo was not even presented in trial nor was there any other testimony to explain how the seized items were passed on and placed in the hands of PO3 Castillo or how the integrity of said items were preserved while they remained in their custody. Thus, the prosecution failed to establish each link in the chain of custody as required by Section 21. Such failure casts doubt on the identity and integrity of the seized items which cannot be excused through the expedience of invoking presumption of regularity.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- MARVIN MADRONA y OTICO, *Accused-Appellant.***

G.R. No. 231133, SECOND DIVISION, June 6, 2018, Caguioa, *J.*

*For a conviction of the crime of illegal sale of dangerous drugs to stand,the prosecution has the onus to prove beyond reasonable doubt that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the corpus delicti. This onus can be discharged by the prosecution only by clearly and adequately showing the details of the purported transaction, starting from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale.*

*In this case, the prosecution's proof that the "transaction actually took place" consists of the "eyewitness" accounts of police officers PO1 Villasurda and PO3 Saquibal, neither of whom was the poseur-buyer, and who were admittedly 10 meters away from where the poseur-buyer allegedly transacted with Otico. PO3 Saquibal's testimony is incredible. Given the distance of 10 meters, it is unbelievable that a very small or tiny plastic sachet can be seen being handed from one person to another. PO1 Villasurda's version that he saw the handing of "money" from the civilian asset to Otico is too tentative given the fact that he used "something" as his initial description.*

**FACTS:**

On the strength of the report from their surveillance conducted around 1:00 o'clock in the afternoon on 21 April 2011, it was confirmed that a certain Marvin Madrona Otico, a.k.a. "Pare" (Otico) was engaged in the sale of illegal drugs or *shabu* in Barangay Looc, Oslob, Cebu. Thus, a buy-bust team was organized with P03 Saquibal designated as the team leader, a civilian agent assigned as the poseur-buyer, and PO1 Villasurda as the immediate back-up.

When they were at the target area, Otico approached the civilian poseur buyer which was seen by PO3 Saquibal and PO1 Villasurda who were 10 meters away. PO1 Villasurda saw the poseur-buyer give the money to Otico, who, in exchange, handed to the latter a plastic sachet. When the signal was given, PO3 Saquibal immediately held Otico and announced his authority as a police officer while PO1 Villasurda took the plastic sachet from the poseur-buyer.

At the police station, PO1 Villasurda conducted an inventory of the seized items in the presence of (Otico) and Municipal Councilor Guillermo Zamora. The items were photographed by PO2 Nelson Mendaros and then marked by PO1 Villasurda. The seized plastic sachet was marked "MMO-1" and the marked money, "MMO-2," the initials referring to (Otico's) complete name, Marvin Madrona Otico. PO3 Saquibal then prepared the Certificate of Inventory, a spot report and a letter-request for laboratory examination. PO1 Villasurda personally delivered the request and the specimen to the PNP Crime Laboratory for laboratory examination.

Both police officers, PO1 Villasurda and PO3 Saquibal, had testified that they were 10 meters away from Otico and the purported civilian agent, who acted as the poseur-buyer. PO1 Villasurda saw them "exchanging something" with the poseur-buyer handing first the money and the subject also handing something to the poseur buyer. PO3 Saquibal saw that the poseur buyer handed to Otico the P500.00

bill buy-bust money and in exchanged sic, Otico gave the plastic sachet containing white crystalline substance to the poseur buyer.

The RTC found Otico guilty of violating Sec. 5, Art. II of RA 9165. The CA affirmed the ruling of the RTC.

**ISSUE:**

Whether or not Otico is guilty of violating Sec. 5, Art. II of RA 9165. (NO)

**RULING:**

Basic is the rule that, for a conviction of the crime of illegal sale of dangerous drugs to stand, the prosecution should have proven the following elements beyond reasonable doubt: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. The prosecution has the onus to prove beyond reasonable doubt that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*. This onus can be discharged by the prosecution only by clearly and adequately showing the details of the purported transaction, starting from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale.

In this case, the prosecution's proof that the "transaction actually took place" consists of the "eyewitness" accounts of police officers PO1 Villasurda and PO3 Saquibal, neither of whom was the poseur-buyer, and who were admittedly 10 meters away from where the poseur-buyer allegedly transacted with Otico. The civilian agent, who was assigned as the poseur-buyer, was never presented as a witness. PO3 Saquibal's testimony is incredible. Given the distance of 10 meters, it is unbelievable that a very small or tiny plastic sachet can be seen being handed from one person to another. PO1 Villasurda's version that he saw the handing of "money" from the civilian asset to Otico is too tentative given the fact that he used "something" as his initial description. Also, the use of the word "something" in describing what Otico handed to the civilian agent creates reasonable doubt because the description is equivocal.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* NARCISO SUPAT Y RADOC ALIAS "ISOY", *Accused-Appellant*.**
G.R. No. 217027, SECOND DIVISION, June 6, 2018, CAGUIOA, *J.*

**FACTS:**
Narciso was charged in 2 separate Informations dated October 24, 2005, before the RTC, docketed as Crim. Case Nos. 5434-SPL and 5435-SPL. In the former, Narciso was charged with the crime of illegal sale of dangerous drugs. In the latter, Narciso was charged with the crime of illegal possession of dangerous drugs.

Upon his arraignment, Narciso pleaded not guilty to the foregoing charges.During the pre-trial, the identity of Narciso and the jurisdiction of the trial court over his person were admitted.

The Prosecution presented as witnesses PO3 Alexander Rivera y Amata, SPO4 Melchor Dela Peña y Peruel and SPO1 Alejandro Ame y Dimandal. During the trial, Narciso admitted the existence and due execution of the following documents: (1) Laboratory Request for Examination dated October 8, 2005; (2) Chemistry Report No. D-1127-05; (3) Final Chemistry Report No. D-1127-05; (4) Chemistry Report Findings; (5) Conclusion; and (6) Name and signature of Donna Huelgas.

On November 24, 2011, the RTC rendered judgmentfinding Narciso guilty beyond reasonable doubt for the crimes of (1) violation of Section 5 of RA 9165, sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00 and to pay the costs; and (2) violation of Section 11 of RA 9165. The trial court gave full credence to the testimony of the prosecution witnesses on the reason that, as police officers, they are presumed to have regularly performed their duties and official functions.

Aggrieved, Narciso appealed his case to the CA claiming that the identity of the seized drugs was not proven in violation of Section 21 of RA 9165. However, the CA affirmed Narciso's conviction and held that the prosecution was able to prove the *corpus delicti* of the crimes charged and all the other elements of illegal sale and illegal possession of drugs.

Undaunted, Narciso filed his Notice of Appeal. Consequently, the CA required the parties to file their respective supplemental briefs within 30 days from notice. Narciso and the OSG filed their respective manifestations dated September 11, 2015 and September 23, 2015 stating that they will no longer file supplemental briefs.

Hence, the present petition.

**ISSUE:**
Whether Narciso's guilt for violation of Sections 5 and 11 of RA 9165 was proven beyond reasonable doubt. (NO)

**RULING:**
After a review of the records, the Court resolves to acquit Narciso as the prosecution **utterly failed** to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165 and to establish the unbroken chain of custody of the seized drugs.

To sustain a conviction for illegal possession of dangerous drugs the following elements must be established: (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. On the other hand, for a successful prosecution of the offense of illegal sale of drugs, the following elements must be proven: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and the seller were identified.

In both cases, the confiscated drug constitutes the very *corpus delicti* of the offenseand the fact of its existence is vital to sustain a judgment of conviction.It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime. Each link to the chain of custody must be accounted for. Relevantly, Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) filled in the details as to place of inventory and photographing of the seized items and added a saving clause in

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

In the present case, the buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug - which thus created reasonable doubt as to the identity and integrity of the drugs and, consequently, reasonable doubt as to the guilt of the accused.

To start with, no photographs of the seized drugs were taken at the place of seizure or at the police station where the inventory was conducted. Photographs provide credible proof of the state or condition of the illegal drugs and/or paraphernalia recovered from the place of apprehension to ensure that the identity and integrity of the recovered items are preserved. More importantly, there was no compliance with the three-witness rule. The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect and guard against the possibility of planting, contamination, or loss of the seized drug. The presence of the three witnesses must be secured not only during the inventory but, more importantly, **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug.

**JEROME R. CANLAS, *Petitioner,* -versus- GONZALO BENJAMIN A. BONGOLAN, *Respondent.***

G.R. No. 199625, THIRD DIVISION, June 6, 2018, Leonen, *J.*

*The law requires that the contract contemplated by Sec. 3 (g) of RA 3019 must be grossly and manifestly disadvantageous to the government or that it be entered into with malice. It does not find guilt on the mere entering of a contract by mistake.*

*In the case at bar, respondents held a public bidding twice before it agreed to the bid price of Wong. The price falls within the amount that it is authorized to sell. They also sought the clearance of the Office of the Government Corporate Counsel before pushing through with the sale. Their acts show that they exercised due diligence and sound business judgment before executing the sale. There is likewise no showing that they violated any rule or process in granting the sale of the properties to Wong. And although it is not an element to the offense, the sale does not seem to be tainted with any partiality, bad faith, or negligence.*

**FACTS:**

On March 19, 1993, the National Housing Authority (NHA)and R-II Builders, Inc. (R-II) executed a Joint Venture Agreement (JVA) to implement the Smokey Mountain Development and Reclamation Project (the Project), with the former as government implementing agency and the latter as developer. To support the Project's securitization and to make the security instruments more appealing to investors, NHA and R-II engaged Home Guaranty Corporation (Home Guaranty), a

government-owned-and-controlled corporation to act as guarantor. NHA, R-II, and the Philippine National Bank entered into the Smokey Mountain Asset Pool Formation Trust Agreement (Trust Agreement), which provided for the mechanics to implement the JVA. Under this method, Philippine National Bank, as the trustee of the asset pool, would issue to investors Regular Smokey Mountain Asset Pool Participation Certificates (Participation Certificates). These Participation Certificates were subject to government redemption and interest, and were guaranteed by Home Guaranty. The assets in the asset pool were used as securities for the Participation Certificates. On the same day, they also executed a contract of guaranty wherein the trustee of the asset pool was authorized to execute a Deed of Assignment and Conveyance of the entire asset pool in favor of Home Guaranty should the latter be called to pay the total outstanding value of the matured Participation Certificates.

The Participation Certificates matured. Because of the asset pool's inability to pay for the Participation Certificates, Planters Bank, the trustee then, called on Home Guaranty's guaranty. Planters Bank transferred the entire asset pool properties to Home Guaranty through a Deed of Assignment and Conveyance. To recover its exposure, Home Guaranty published a Notice of Saleon July 21, 2006 in the Philippine Daily Inquirer, seeking to sell the properties in the asset pool.In response to this Notice of Sale, Alfred Wong King Wai (Wong) proposed to purchase two (2) lots in the asset pool located in Manila Harbour Centre and offered to pay P14,000.00 per square meter which was reduced to P13,300.00 per square meter because Home Guaranty allowed a 5% cash discount as an incentive for spot cash purchases. Home Guaranty's Board of Directors deferred action on Wong's proposal. It again published another Notice of Sale however, no one else came forward with a proposal. Thus, Home Guaranty sold the lots to Wong for P384,715,800.00, or P13,300.00 per square meter.

Canlas then filed a complaint against Home Guaranty's officers for violating Sec. 3 (g) of RA 3019 alleging that the lots were sold below their actual or appraised fair market value, and that the government suffered damages in the amount ranging from P121,489,200.00 to P309,508,200.00. Canlas compared the purchase price of the sold lots to the prices of other properties in the same area. He alleged that in 1999, Philippine National Bank sold an adjoining 20,000-square-meter lot for P440,000,000.00, or for P22,000.00 per square meter. Based on this, the sold lots allegedly should have been worth at least P636,372,000.00 as of January 1999. Moreover, Canlas presented an Appraisal Report dated July 2008 prepared by EValue Philippines, Inc. (EValue), which concluded that four (4) adjoining lots inside Harbour Centre had a fair market value of P24,000.00 per square meter. Based on this, he asserted that the sold lots should have been worth at least P694,224,000.00.

The Home Guaranty officers argued that they sought the favorable opinion of the Office of the Government Corporate Counsel before executing the sale and that the sale was not grossly disadvantageous to the government because the purchase price exceeded the latest zonal valuation of the property, which was P9,750.00 per square meter.

The Ombudsman dismissed both the administrative and the criminal case filed by Canlas. On appeal after the Ombudsman denied Canlas' Motion for Reconsideration, the CA affirmed the Ombudsman's findings and held that the purchase price of P13,300.00 was reasonable considering that the Bureau of Internal Revenue zonal value of the lots is only P9,750.00 per square meter and that there is no law prohibiting the parties from using the Bureau of Internal Revenue zonal value as its reference for the purchase price. It found that there was no fixed standard in determining fair market value, and

Home Guaranty, as the seller, had the discretion to determine what it deemed as a reasonable price under the circumstances.

**ISSUE:**

Whether respondents Home Guaranty Officers are liable for violating Sec. 3(g) of RA 3019. (NO)

**RULING:**

In *Froilan v. Sandiganbayan,* the Supreme Court enumerated the elements of Sec. 3(g) of RA 3019 as follows: (a) that the accused is a public officer; (b) that he [or she] entered into a contract or transaction on behalf of the government; and (c) that such contract or transaction is grossly and manifestly disadvantageous to the government.

In the case at bar, respondents held a public bidding twice before it agreed to the bid price of Wong. The price falls within the amount that it is authorized to sell. They also sought the clearance of the Office of the Government Corporate Counsel before pushing through with the sale. Their acts show that they exercised due diligence and sound business judgment before executing the sale. There is likewise no showing that they violated any rule or process in granting the sale of the properties to Wong. And although it is not an element to the offense, the sale does not seem to be tainted with any partiality, bad faith, or negligence.

The law requires that the contract must be grossly and manifestly disadvantageous to the government or that it be entered into with malice. It does not find guilt on the mere entering of a contract by mistake. Thus, it cannot be said that the contract was grossly disadvantageous to the government.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- VICENTE SIPIN y DE CASTRO, *Accused-Appellant.***

G.R. No. 224290, SECOND DIVISION, June 11, 2018, Peralta, *J.*

*The links that must be established in the chain of custody in a buy-bust situation, are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turn-over of the illegal drug seized to the investigating officer; (3) the turn-over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turn-over and submission of the illegal drug from the forensic chemist to the court.*

*Here, the prosecution failed to establish beyond reasonable doubt the third link in the chain of custody. There is an unreconciled conflict between the testimonies of PO1 Diocena and PO1 Gorospe as to who actually gave PO1 Diocena the specimens before they were brought to the crime laboratory for examination. Investigating Officer PO1 Gorospe testified that he gave PO1 Diocena the specimens for laboratory examination, whereas PO1 Diocena stated that it was PO1 Raagas who gave him the specimens for delivery to the crime laboratory. Moreover, serious inconsistencies marred the testimonies of the police officers.*

**FACTS:**

Pursuant to an information given by an informant to the police that a certain alias *Enteng* was selling *shabu* at Barangay Calumpang, the police formed a buy-bust team. Upon arrival of the team at Barangay Calumpang, PO1 Raagas and the asset went into the alley, while PO1 Diocena stayed around 3 to 6 meters away from where he could see everything. SPO3 Delos Reyes stayed in the police vehicle, while PO1 Gorospe who served as back-up was around 20 meters away. Alias *Enteng* then approached the asset and PO1 Raagas, and asked if they would buy or "*i-score*." When PO1 Raagas replied that he would, Enteng pulled out something out of his pocket and handed it to PO1 Raagas, who gave Enteng the marked P100 bill. Thereafter, PO1 Raagas revealed himself as a police officer and removed his hat as pre-arranged signal. Upon seeing the signal, PO1 Diocena approached, ordered Enteng to take out the contents of his pocket, placed him under arrest, and read him his rights. PO1 Diocena confiscated the marked money and the plastic containing shabu, then turned them over to PO1 Raagas who marked the item he bought and the other plastic container confiscated by PO1 Diocena with the markings "VDS-1" and "VDS-2" in the presence of the accused, PO1 Diocena and PO1 Gorospe.

From the place of the incident to the police station, PO1 Raagas took custody and hand-carried the specimens wrapped in a bond paper, then turned them over to PO1 Gorospe, who prepared the booking sheet, the arrest report and the request for laboratory examination of the specimens. PO1 Gorospe also took pictures of *Enteng* and the specimens in the presence of PO1 Raagas and PO1 Diocena. The specimens were then given to PO1 Diocena who brought them to the crime laboratory. P/Insp. Ballesteros personally received the request for laboratory examination and the subject specimens, which later tested positive for *shabu.*

The RTC found accused-appellant *Enteng* guilty of illegal sale of 0.02 gram of *shabu* and illegal possession of 0.02 gram of *shabu*. The CA affirmed the RTC ruling.

**ISSUE:**

Whether or not accused-appellant is guilty of illegal sale and illegal possession of *shabu,* a dangerous drug under RA 9165. (NO)

**RULING:**

Since the *corpus delicti* in dangerous drugs cases constitutes the dangerous drugs itself, proof beyond reasonable doubt that the seized item is the very same object tested to be positive for dangerous drugs and presented in court as evidence is essential in every criminal prosecution under R.A. No. 9165. The links that must be established in the chain of custody in a buy-bust situation, are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turn-over of the illegal drug seized to the investigating officer; (3) the turn-over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turn-over and submission of the illegal drug from the forensic chemist to the court.

Here, the prosecution failed to establish beyond reasonable doubt the third link in the chain of custody. There is an unreconciled conflict between the testimonies of PO1 Diocena and PO1 Gorospe as to who actually gave PO1 Diocena the specimens before they were brought to the crime laboratory

for examination. Investigating Officer PO1 Gorospe testified that he gave PO1 Diocena the specimens for laboratory examination, whereas PO1 Diocena stated that it was PO1 Raagas who gave him the specimens for delivery to the crime laboratory. Moreover, serious inconsistencies marred the testimonies of the police officers.

Lastly, the police officers failed to comply with the requirements set forth under Sec. 21 of RA 9165, specifically the 3-witness rule requiring the presence of (a) a representative from the media, and (b) the DOJ; and (c) any elected public official who shall be required to sign copies of the inventory and be given a copy thereof. 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.

The police officers testified that there was an inventory prepared by PO1 Gorospe at the police station, but failed to submit in evidence the said document, and that they did not have any barangay official or media person with them during the operation. Even so, the prosecution proffered no justifiable reason why the police officers dispensed with the requirements of taking of photograph and conduct of physical inventory of the accused and the seized items in the presence of representatives from the DOJ and the media, and an elected public official, not just at the crime scene but also at the police station.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- RICO DE ASIS Y BALQUIN, *Accused-Appellant.***
G.R. No. 225219, FIRST DIVISION, June 11, 2018, DEL CASTILLO, *J.*

***The following elements of the crime of illegal sale of dangerous drugs were fully established: (a) the identity of the seller (Rico de Asis) and the buyer (Agent Gacus); (b) the consideration of the sale (P500.00 marked money); and (c) the delivery of the thing sold (shabu) and its payment to the seller.***

*Agents Gacus and Taghoy positively identified Rico as the person who sold shabu to Agent Gacus during the buy-bust operation. The marked money used in the transaction was immediately recovered from the pocket of appellant. There was also no showing that Agents Taghoy and Gacis acted with malice in testifying against Rico.*

***Rico was also guilty of illegal possession of prohibited drugs.*** *As incident of buy-bust, four sachets of shabu were found in his pocket and such possession was not authorized by law. He freely and consciously possessed them in violation of Section 11, Article II of RA 9165.*

**FACTS:**
Rico de Asis, a.k.a. Ikong, was charged in three separate informations for illegal sale, possession of dangerous drugs, and possession of drug paraphernalia. A buy-bust operation was conducted based

on the information given by a civilian informant. Agents Gacus and Taghoy were designated as poseur-buyer and arresting and back-up officer respectively. Upon entering appellant's house, the informant introduced Agent Gacus to Rico as a drug user who would buy P500.00 worth of shabu from him. Agent Gacus gave him the marked money in return of one sachet of suspected shabu. After examining the sachet, she "missed call" Agent Taghoy and the buy-bust team thereafter entered the house of appellant. Agent Taghoy informed Rico of his rights and violations and frisked him. He recovered from him the marked money and four sachets of suspected shabu. While inside the Rico's house and in the presence of a barangay kagawad and a media representative, Agent Taghoy marked the items, made an inventory as well as the drug paraphernalia found on a table inside appellant's house. Agent Gacus took photographs of the items, the taking of the inventory, and the signing of the inventory by the kagawad and the media representative. The items remained in custody of Agent Taghoy until they were brought to the PNP Crime Laboratory. PCI Esber conducted the examination thereof. The report showed that the items tested positive for the presence of methamphetamine hydrochloride or shabu.

The RTC convicted Rico of illegal sale of dangerous drugs, illegal possession of dangerous drugs but acquitted him of illegal possession of drug paraphernalia for lack of showing that he possessed or used the same. It also held that there was due compliance to the chain of custody requirement. The CA affirmed the decision of the RTC.

**ISSUE:**
Whether or not Rico is guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs. (YES)

**RULING:**
The following elements of the crime of illegal sale of dangerous drugs were fully established: (a) the identity of the seller (Rico de Asis) and the buyer (Agent Gacus); (b) the consideration of the sale (P500.00 marked money); and (c) the delivery of the thing sold (shabu) and its payment to the seller.

Agents Gacus and Taghoy positively identified Rico as the person who sold shabu to Agent Gacus during the buy-bust operation. The marked money used in the transaction was immediately recovered from the pocket of appellant. There was also no showing that Agents Taghoy and Gacis acted with malice in testifying against Rico.

Rico was also guilty of illegal possession of prohibited drugs. As incident of buy-bust, four sachets of shabu were found in his pocket and such possession was not authorized by law. He freely and consciously possessed them in violation of Section 11, Article II of RA 9165.

The chain of custody requirements were fully complied with.

The essential aspects of the chain of custody are: (1) the immediate marking, inventory, and taking of photographs of the recovered items; (2) the examination of the Forensic Chemist attesting that the seized items yielded positive results for the presence of illegal drugs; and, (3) the presentationof the same evidence in court. Agent Gacus turned over the bought item to Agent Tagohoy and the **latter immediately marked it** as well as the four recovered sachets from appellant at the place where the buy-bust operation transpired. Agent Taghoy thereafter made an inventory of the seized items in the

presence of a barangay kagawad and a media representative. Then Agent Gacus took photographs of these items, the taking of the inventory, the signing of the inventory by the kagawad and the media representative. Lastly, PCI Esber personally received the suspected sachets of shabu at the Crime Laboratory and confirmed that they were positive of shabu. Agents Gacus and Taghoy identified and attested that those items seized from Rico, which were duly marked, inventoried, and photographed at the crime scene, and later on, examined in the Crime Laboratory, were the same ones presented in court.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- EVELYN SEGUIENTE y RAMIREZ, *Accused-Appellant.***
G.R. No. 218253, FIRST DIVISION, June 20, 2018, DEL CASTILLO, *J.*

***The procedure set forth in Section 21 of RA 9165 was not properly complied with by the prosecution. The procedure is intended precisely to ensure the identity and integrity of dangerous drugs seized. This provision requires that upon seizure of illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof.***

*In the case at bar, while there was testimony about the marking of the seized substance at the police station, there was* ***no mention that the marking was done in the presence of Lyn.***

*In People v. Salonga, the Court ruled that the marking* ***"must always be done in the presence of the accused or his representative.***

*There was also non-compliance with the photograph and physical inventory requirements. The prosecuton admitted that the Certificate of Inventory was not complete since the only signature appearing thereon was that of SPO1 Himor. There is no mention whether the inventory was done in the presence of Lyn or her representative or counsel, a representative from the media and the DOJ and any elected public official.*

**FACTS:**

SPO1 Samuel Jacinto received an information from a confidential informant that a certain "Lyn" was selling shabu on Love Drive, Lower Calarian, Zamboanga City. A buy-bust team was formed composing of SPO1 Jacinto as a poseur-buyer with SPO1 Rammel Himor and PO1 Julmin Ismula as back-up officers. SPO1 Jacinto was introduced by the CI to Lyn as an interested buyer. When asked by Lyn how much shabu he wanted to buy, SPO1 answered P100.00 worth. SPO1 Jacinto then gave the pre-arranged signal. PO1 Ismula searched Lyn and recovered from her the P100.00 marked money. He also recovered another sachet of shabu in Lyn's possession when she was frisked. Lyn was brought to the Zamboanga City Mobile Office where SPO1 Jacinto and PO1 Ismula marked the two sachets of shabu with initials STJ and JHI respectively. The seized items were turned over to PO2 Hassan after an inventory of the items and were brought by the latter to the PNP Crime Laboratory

where they were received by PO3 Rachel Pidor. The seized items were tested positive for Methamphetamine Hydrochloride or shabu.

The RTC found Lyn guilty for violating Section 5 (Illegal Sale of Shabu) and Section 11 (Illegal Possession of Shabu) Article II of the Comprehensive Dangerous Drugs Act of 2002. It ruled that the prosecution clearly showed that the sale of shabu did take place, that the subject shabu was brought and indentified in court, and that another shabu was found in her possession when frisked. It also held that the chain of custody of the subject drugs was not broken. The CA affirmed the RTC;s decision.

**ISSUE:**

Whether or not the procedure under RA 9165 was properly complied with. (NO)

**RULING:**

**The prosecution was able to prove the identity of the buyer, seller, object and consideration; the delivery of the thing sold and the payment thereof in *the illegal sale of drugs under Section 5, Article II of RA 9165*. What is material if proof that the transaction or sale actually took place, coupled with the presentation in court of the substance seized in evidence.**

In the case, Lyn was positively identified as the seller of the drugs to the poseur-buyer SPO1 Jacinto for a sum of P100.00. The subject drug which yielded positive for shabu was identified as the shabu sold and delivered by Jacinto.

**The prosecution was also able to *prove illegal possession of regulated of prohibited drugs*. The following elements were established: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and, (3) the accused freely and consciously possessed the drug."**

Lyn was caught in possession of shabu and she failed to show that she was authorized to possess the same. By her mere possession of the drug, there is already a prima facie evidence of knowledge which she failed to rebut.

**However, the procedure set forth in Section 21 of RA 9165 was not properly complied with by the prosecution. The procedure is intended precisely to ensure the identity and integrity of dangerous drugs seized. This provision requires that upon seizure of illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof.**

In the case at bar, while there was testimony about the marking of the seized substance at the police station, there was no mention that the marking was done in the presence of Lyn.

In People v. Salonga, the Court ruled that the marking **"must always be done in the presence of the accused or his representative.**

There was also non-compliance with the photograph and physical inventory requirements. The prosecuton admitted that the Certificate of Inventory was not complete since the only signature appearing thereon was that of SPO1 Himor. There is no mention whether the inventory was done in the presence of Lyn or her representative or counsel, a representative from the media and the DOJ and any elected public official.

There was also the **failure to take photographs of the seized items which was admitted by the prosecution.** "The photographs were intended by law as another means to confirm the chain of custody of the dangerous drugs."

Indeed, Section 21 (a)of the IRR, as amended by RA 10640,provides a saving clause in the procedure outline under Section 21 (1) of RA 9165**. However, before this saving clause to apply, the prosecution is bound to recognize the procedural lapses, provide justifiable grounds for its non-compliance and thereafter to establish the preservation of the integrity and evidentiary value of the items seized.** In this case, the prosecution offered no explanation why the procedure was not followed or whether there was a justifiable ground for failing to do so.

Hence, the Court rendered Lyn acquitted for failure of the prosecution to prove her guilt beyond reasonable doubt.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- MANUEL GAMBOA y FRANCISCO, *Accused-Appellant.***
G.R. No. 233702, SECOND DIVISION, June 20, 2018, PERLAS-BERNABE, *J.*

*Strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. RA 10640 provides that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR* ***does not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.***

*In the case at bar, the Court found that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items seized from Gamboa. Based on the records, the seized items were properly marked by PO2 Nieva immediately upon confiscation at the place of the arrest and in the presence of Gamboa and a media representative****, however this was not done in the presence of any elected public official, as well as a representative from the DOJ.*** *The absence of these representatives* ***does not per se render the confiscated items inadmissible****.* ***A justifiable reason however*** *for such failure* ***or a showing of any genuine and sufficient effor****t to secure the required witnesses must be adduced.*

*In this case, the prosecution failed to provide justifiable grounds or show that special circumstances exist which would excuse their transgression.*

**FACTS:**

Manuel Gamboa was charged with two informations of Illegal Sale and Illegal Possession of Dangerous Drugs. According to the prosecution, a buy-bust operation was organized against accused-appellant Manuel Gamboa who was allegedly engaged in selling of Shabu in Tondo, Manila. The team was composed of PO2 Richard Nieva as poseur-buyer, PO3 Brigido Cardiño and PO3 Noel Benitez as back-ups. The informant introduced PO2 Nieva as a buyer of shabu to Gamboa. PO2 Nieva handed P200.00 buy-bust money to Gamboa. In turn, Gamboa gave PO2 Nieva a plastic sachet containing white crystalline substance. Then PO2 Nieva gave his pre-arranged signal to the back-up officers prompting them to rush towards the scene and arrest Gamboa. They recovered another plastic sachet and the buy-bust money when they conducted a preventive search on him. PO2 Nieva immediately marked the two plastic sachets and inventoried them at the place of the arrest in the presence of Gamboa and a media representative named Rene Crisostomo. Photographs of the items were taken by PO3 Benitez during the marking and inventory. PO2 Nieva delivered the seized drugs to the PNP Crime Laboratory and inspected by Police Chief Inspector Erickson Calabocal. The seized items were positive for methamphetamine hydrochloride or shabu.

The RTC held that the prosecution sufficiently established all the elements of the crimes of Illegal Sale and Possession of Dangerous Drugs, and that there was no break in the chain of custody of the seized drugs. The CA affirmed the RTC's ruling.

**ISSUE:**

Whether or not the procedures prescribed in Section 21, Article II of RA 9165 were properly complied with. (NO)

**RULING:**

In order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution **has to show an unbroken chain of custody** over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.

Under Section 21, Article II of RA 9165 prior to its amendment by RA 10640, the apprehending team shall immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

In People v. Mendoza, the Court stressed that "without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the seized drugs, the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the said drugs that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."

However, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. RA 10640 provides that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR**does not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.**

In People v. Almorfe, the Court explained that for the above-saving clause to apply, **the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**. Also, in People v. De Guzman, it was emphasized that the justifiable ground for non-compliance **must be proven as a fact**, because the Court cannot presume what these grounds are or that they even exist.

In the case at bar, the Court found that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items seized from Gamboa. Based on the records, the seized items were properly marked by PO2 Nieva immediately upon confiscation at the place of the arrest and in the presence of Gamboa and a media representative**, however this was not done in the presence of any elected public official, as well as a representative from the DOJ.**

PO2 Nieva stated that there were no barangay officials present. **The law requires the presence of an elected public official, as well as the representatives from the DOJ or the media** to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting or contamination of evidence.

The absence of these representatives **does not per se render the confiscated items inadmissible**. **A justifiable reason however** for such failure **or a showing of any genuine and sufficient effor**t to secure the required witnesses must be adduced.

In this case, the prosecution failed to provide justifiable grounds or show that special circumstances exist which would excuse their transgression.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus –MELANIE B. MERCADER, *Accused-appellant.***

G.R. No. 233480, SECOND DIVISION, June 20, 2018, PERLAS-BERNABE, *J.*

*The Court, however, clarified that under varied field conditions, strict compliance with the requirements of **Section 21, Article II of RA 9165** may not always be possible.*

*In **People v. Almorfe**, the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. Also, in **People v. De Guzman**, it was emphasized*

*that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.*

*In this case, **first**, records reveal that the marking of the seized items was not done in the presence of any elected public official, as well as a representative from the DOJ and the media. Despite the failure to observe this requirement, **no justifiable ground was given to explain such lapse.** In fact, there is actually no mention of these required witnesses in this case.*

***Second**, no physical inventory, as well as photography, of the seized items were taken. PO1 Anos admitted the lack of inventory.*

**FACTS:**

The prosecution alleged that at around five (5) o'clock in the afternoon of September 8, 2003, the Philippine National Police (PNP) of Marikina City received a report from a confidential informant that Mercader and her husband, alias "Tisoy," were selling drugs at their house located in Corazon Compound, Cogeo, Antipolo City. Acting upon this report, a buy-bust team was formed. After conducting a pre-operation procedure and coordinating with the Philippine Drug Enforcement Agency (PDEA) and the PNP of Antipolo, the buy-bust team together with the confidential informant, proceeded to the target area. As soon as the informant saw Mercader, he approached her, introduced PO1 Anos as a buyer from Marikina, and asked if the latter could purchase shabu. Mercader asked how much PO1 Anos wanted and the latter replied "Dos lang, pang-gamit namin" as he handed to her the marked money. In turn, Mercader took from her right pocket a plastic sachet of suspected shabu. Upon receipt of the same, PO1 Anos tied his shoe lace, which was the pre-arranged signal, and the other police officers rushed in to arrest Mercader. At that point, Tisoy tried to come near them, but was warned by Mercader to run away. Subsequently, a preventive search was conducted on Mercader which yielded two (2) more plastic sachets of suspected shabu.

For her part, Mercader denied the charges against her, claiming that at around seven (7) o'clock in the evening of September 8, 2003, she was on her way home with her two (2) children when a police officer suddenly held her hand and accused her of selling drugs. Despite not finding drugs on her, she was forcibly taken to the police station of Marikina City where the police officers extorted money from her.

RTC ruled against the accused. CA affirmed. Hence, this appeal.

**ISSUE:**

Whether the CA correctly upheld Mercader's conviction for illegal sale and illegal possession of dangerous drugs. (NO)

**RULING:**

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others,

immediately after seizure and confiscation conduct a **physical inventory and photograph** the seized items in the **presence of the accused** or the **person from whom the items were 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.

In ***People v. Almorfe***, the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. Also, in ***People v. De Guzman***, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

Guided by the foregoing, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Mercader.

**First**, records reveal that the marking of the seized items was not done in the presence of any elected public official, as well as a representative from the DOJ and the media. Despite the failure to observe this requirement, no justifiable ground was given to explain such lapse. In fact, there is actually no mention of these required witnesses in this case.

**Second**, no physical inventory, as well as photography, of the seized items were taken. PO1 Anos admitted the lack of inventory.

Case law states that the mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, fails to approximate compliance with the mandatory procedure under Section 21, Article II of RA 9165. It is well-settled that the procedure in Section 21 of RA 9165 is a matter of **substantive law**, and cannot be brushed aside as a simple procedural technicality.

In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21[Article II] of RA 9165, as amended. As such, they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus –REY ANGELES y NAMIL, *Accused-appellant.***

G.R. No. 218947, THIRD DIVISION, June 20, 2018, MARTIRES, *J.*

*Before substantial compliance with the procedure is permitted, not only must the integrity and evidentiary value of the drugs seized be preserved, there must be a* ***justifiable ground for its noncompliance*** *in the first place. The prosecution has a two-fold duty of identifying any lapse in procedure and proving the existence of a sufficient reason why it was not strictly followed.*

*In this case, PO2 Saez merely claims that due to the **urgency of the operation** they were unable to secure the presence of representatives from the media and the DOJ, and of a barangay official. The Court finds such explanation **vague** as it was never clarified to what extent was the operation urgent such that there was no time to contact them.*

*If it was shown through the intelligence gathered by the authorities that the drug pusher operated in a particular area, they would have had **sufficient time to plan the buy-bust operation**, which includes ensuring that representatives from the media and the DOJ, and a barangay official are present during the same.*

**FACTS:**

A confidential informant (CI) informed PO2 Saez and his team leader Inspector Amendalan that Angeles was selling shabu. The CI, together with another police officer, conducted a surveillance which confirmed Angeles' illegal drug activities.

Inspector Amendalan formed a buy-bust team. Once there, the CI spotted Angeles about 80 meters away from where the team was positioned. After identifying Angeles, the CI and PO2 Saez approached him while the other team members stayed behind to witness the transaction. The CI introduced PO2 Saez to Angeles as a seaman in search of shabu.

After Angeles was convinced of PO2 Paez's purported identity, he agreed to sell him shabu and proposed a simultaneous exchange. Angeles handed a sachet of shabu to PO2 Paez who, in turn, gave him P500.00. When he received the drugs, PO2 Saez lit a cigarette to alert the rest of the team that the transaction had been consummated. Consequently, the buy-bust team approached them but when Angeles sensed their presence. PO2 Paez immediately grabbed him and introduced himself as a police officer. Once Angeles was arrested, PO2 Saez marked the sachet he received from the accused with his initials and then made an inventory of the evidence on site.

Angeles argues that he had just finished taking a bath when the armed men barged into his house and immediately handcuffed him. Angeles was thereafter brought to the police station where he was asked to admit that he was selling drugs — he was put in jail due to his refusal to do so.

RTC ruled against Angeles. CA affirmed. Hence, this appeal.

**ISSUE:**

Whether the accused Angeles was guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. (NO)

**RULING:**

For the successful prosecution of a violation of Section 5, Article II of R.A. No. 9165, the following elements must concur: (a) **identity of the buyer and the seller, the object and the consideration**; and (b) **the delivery of the thing sold and the payment**. In other words, not only must the transaction be proved but the identity of the object, i.e., the prohibited drugs, must likewise be ascertained. There must be a showing that the **integrity and evidentiary value** of such seized items must have been preserved in that the drugs presented in court as evidence against the accused must

be the same as those seized from the culprit. If the integrity of the drugs seized is compromised, the courts are without any other recourse but to acquit the accused.

In order to prevent evidence in drugs cases from being contaminated, the following procedure should be observed by law enforcement in accordance with Section 21 of R.A. No. 9165:

1. The apprehending team/officer having custody and control of the drugs shall immediately after seizure and confiscation, **physically inventory and photograph**;
2. The same must be done in the **presence of the accused**, or the **person/s from whom the items were covered**, or **his representative or counsel**; and
3. A **representative from the media** and **the Department of Justice**, and **any elected public official** must likewise be present, who shall also sign the copies of the inventory and receive a copy thereof.

Generally, strict compliance with the above-mentioned procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. However, the Court in numerous instances had allowed substantial compliance with the procedure provided that the integrity of the drugs seized is preserved.

In short, before substantial compliance with the procedure is permitted, not only must the integrity and evidentiary value of the drugs seized be preserved, there must be a **justifiable ground for its noncompliance** in the first place. The prosecution has a two-fold duty of identifying any lapse in procedure and proving the existence of a sufficient reason why it was not strictly followed.

PO2 Saez merely claims that due to the urgency of the operation they were unable to secure the presence of representatives from the media and the DOJ, and of a barangay official. The Court finds such explanation vague as it was never clarified to what extent was the operation urgent such that there was no time to contact them.

For example, it may be understandable that the said individuals were no longer secure because the suspect was in transit, placing him at a higher risk of escaping or evading arrest. On the other hand, if it was shown through the intelligence gathered by the authorities that the drug pusher operated in a particular area, they would have had sufficient time to plan the buy-bust operation, which includes ensuring that representatives from the media and the DOJ, and a barangay official are present during the same.

Even assuming that there exist justifiable grounds for the relaxation of the procedures, substantial compliance was still unwarranted because the **integrity and evidentiary value of the drugs seized from Angeles were not preserved.**

According to PO2 Saez, he turned over the drugs to the PNP Crime Laboratory and was received by a certain Relos. Curiously, the identity of the person who received it for the PNP Crime Laboratory was never made clear and was identified only as the receiving clerk.

Clearly, the third and fourth links in the chain of custody are sorely lacking. PO2 Saez's lone testimony leaves several questions unanswered. What happened to the drugs from the time Relos received it from PO2 Saez until it was eventually transmitted to the forensic chemist for examination?

What makes the observance of the chain of custody even more crucial to the present case is that the drugs recovered from Angeles were only 0.02 grams. In People v. Holgado, the Court cautioned that the minuscule amount of drugs recovered should alert authorities to be more observant of the procedures.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus –ROBERTO ANDRADA y CAAMPUED, *Accused-appellant.***

G.R. No. 232299, SECOND DIVISION, June 20, 2018, PERALTA, *J.*

***"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.*

*There are different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely: first, the* ***seizure and marking****, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the* ***turnover*** *of the illegal drug seized by the* ***apprehending officer to the investigating officer****; third, the* ***turnover*** *by the* ***investigating officer*** *of the illegal drug* ***to the forensic chemist*** *for laboratory examination; and fourth, the* ***turnover and submission*** *of the marked illegal drug seized by the* ***forensic chemist*** *to the* ***court****.*

*A perusal of the dorsal portion of the Request for Laboratory Examination, however, reveals that a certain PO2 Camaclang — and not PO3 Uypala — delivered such request and presumably, the seized plastic sachet as well. This immediately puts into question how PO2 Camaclang obtained possession of the confiscated narcotic, which was neither explained by the prosecution through its testimonial and documentary evidence, nor sufficiently addressed by the courts a quo.*

*In addition, the prosecution was silent as to how the specimen was subsequently received at the crime laboratory. Lastly, it was not shown how the specimen was handled, preserved and manage before FC Dechitan conducted an examination thereon.*

**FACTS:**

On December 21, 2011, at around 4:15 o'clock in the afternoon at the Dasmariñas Police Station, an information through a confidential informant was received that an alias Botchok was selling shabu in Barangay San Miguel I. Upon receiving this information, P/Supt. Ulysses Gasmen Cruz ordered the conduct of surveillance operations and a pre-operation report was prepared. PO2 Allan Villanueva thereafter went to the house of appellant Botchok. After the surveillance, they went back to the police station. They set the buy-bust operation. They went back to the house of appellant together with the informant. PO2 Villanueva told appellant that he will buy shabu. Appellant asked how much and PO2 Villanueva responded Five Hundred Pesos (P500.00). PO2 Villanueva handed to him the money and

appellant gave to him a small plastic sachet. PO2 Villanueva then introduced himself as a police officer and arrested him. PO2 Villanueva marked the small plastic sachet with "RAC" pertaining to the initials of appellant. Thereafter, he gave the seized items to PO3 Uypala who brought it to the PNP Crime Laboratory.

On the other hand, the defense alleged that on December 21, 2011, at around 3:00 o'clock in the afternoon, accused Andrada was inside his house preparing milk for his child. PO2 Sagucio appeared at their door, pointed a gun at him and asked him if he knows a certain "Botchok." When he asked "Bakit po Sir," PO2 Sagucio ordered him to lie face down on the ground and told him "Nagbebenta ka ng shabu." Andrada denied the allegation against him and asked PO2 Sagucio whether he has a warrant. The latter pointed his gun at him and stated that it is his warrant.

RTC ruled against the accused. CA affirmed. Hence, this appeal.

**ISSUE:**

Whether the guilt of the accused Andrada was proved beyond reasonable doubt. (NO)

**RULING:**

After an assiduous review of the records, the Court finds that the prosecution failed to establish the identity and integrity of the 0.03 gram of shabu allegedly confiscated from Andrada due to **broken linkages in the chain of custody** which thus militates against the finding of guilt beyond reasonable doubt.

In People v. Salvador, the Court wrote:

"The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established." **"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. Such record of movements and custody of seized item shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.

There are different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely: first, the **seizure and marking**, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the **turnover** of the illegal drug seized by the **apprehending officer to the investigating officer**; third, the **turnover** by the **investigating officer** of the illegal drug **to the forensic chemist** for laboratory examination; and fourth, the **turnover and submission** of the marked illegal drug seized by the **forensic chemist** to the **court**. In order to prove the identity of the dangerous drug beyond reasonable doubt, the prosecution must be able to account for each link in the chain of custody over the same, from the moment it was seized from the accused up to the time it was presented in court as proof of the corpus

delicti. It is quite regrettable though that the prosecution in the instant case fell short in satisfying this standard when it opted to present only one witness, PO2 Villanueva.

A perusal of the dorsal portion of the Request for Laboratory Examination, however, reveals that a certain PO2 Camaclang — and not PO3 Uypala — delivered such request and presumably, the seized plastic sachet as well. This immediately puts into question how PO2 Camaclang obtained possession of the confiscated narcotic, which was neither explained by the prosecution through its testimonial and documentary evidence, nor sufficiently addressed by the courts a quo. No document or testimony was offered to clarify who PO2 Camaclang is and what was his participation in the chain of custody of the seized shabu. The absence of any adequate explanation on this score creates a substantial gap in the chain of custody of the plastic sachet seized from Andrada.

In addition, the prosecution was silent as to how the specimen was subsequently received at the crime laboratory. No details were offered as to the identity of the person who received the specimen on behalf of the crime laboratory or if the specimen was directly received by Forensic Chemist PSI Oliver B. Dechitan (FC Dechitan) for examination. Lastly, it was not shown how the specimen was handled, preserved and manage before FC Dechitan conducted an examination thereon. The foregoing has undoubtedly compromised the integrity and evidentiary value of the corpus delicti of the crime charged.

Further, the apprehending officers in the instant case failed to observe **Section 21, Article II of R.A. No. 9165** which requires that a representative from the media and the Department of Justice, and any elected public official be present during the conduct of a physical inventory and taking of photograph of the seized item/s, and who shall be required to sign copies of the inventory and shall each be given a copy thereof.

Here, PO2 Villanueva admitted, during his cross-examination, that no barangay officer or any member of the media was present during the inventory. He likewise testified that the photographing of the seized item was made by PO3 Uypala, who is not a member of the apprehending team. Despite non-observance, the prosecution did not concede such lapse, and did not even tender any token of justification or plausible explanation for it.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus –LULU BATTUNG y NARMAR, *Accused-appellant.***

G.R. No. 230717, SECOND DIVISION, June 20, 2018, PERALTA, *J.*

*Under the original provision of **Section 21** of RA 9165 and its **IRR**, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) **a representative from the media**, **and** (b) the **DOJ**, **and**; (c) **any elected public official** who shall be required to sign copies of the inventory and be given copy thereof.*

*Admittedly, **there was no physical inventory of the seized item**. Without such inventory, a doubt is created whether the shabu was really taken from appellant. **There were also no photographs taken***

***of the inventory in the presence of appellant or his representative or counsel and the required witnesses under Section 21 of R.A. No. 9165.***

*It has been held that the mere marking of the seized item without the required physical inventory and photographs of the same in the presence of the witnesses mentioned under Section 21 was not enough compliance with the law.*

**FACTS:**

Evidence of the prosecution revealed that a confidential informant (CI) went to the Western Police District and reported the illegal drug selling activity of appellant along Bambang Street, Tondo, Manila. SPO2 Rolando del Rosario immediately planned a buy bust operation and formed a team. The buy-bust team, together with the CI, proceeded to Bambang Street. A few minutes later, appellant arrived and met with the CI who introduced PO1 Juaño as his friend. Appellant asked PO1 Juaño how much he was buying to which the latter replied, "dos lang." PO1 Juaño handed the two P100 bills to appellant who took out from her short pants pocket a plastic sachet containing white crystalline substance and gave it to the former. PO1 Juaño then held appellant's hand, introduced himself as a police officer and placed her under arrest, while the other team members rushed towards them. Appellant was apprised of her constitutional rights and was brought to the police station. An examination was done and it was found out that the white crystalline substance weighing 0.022 grams was positive for methamphetamine hydrochloride or shabu.

Appellant denied the charge and claimed that at 6 o'clock in the evening of December 2, 2004, she was at home cooking dinner when she was told by her daughter that Mercy Sacramento was looking for her. She went outside and was talking with Mercy when six armed men in civilian clothes arrived on board a gray colored car and forced her to get inside the car, leaving Mercy in the street. They asked her of the whereabouts of a certain Ruben to which she replied that she did not know, and she was then brought to the police station and detained unless she would give them P50,000.00. She learned the names of the arresting officers when she saw their name plates in their uniforms the following day. She admitted being arrested in 2003 for illegal possession of drugs but was out on bail.

RTC ruled against the accused. CA affirmed. Hence, this appeal. Appellant argues that her guilt was not proved beyond reasonable doubt.

**ISSUE:**

Whether the appellant's guilt was proved beyond reasonable doubt. (NO)

**RULING:**

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the corpus delicti or the illicit drug as evidence. The existence of corpus delicti is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established.

It is not amiss to state that R.A. No. 10640, 34 which amended Section 21 of R.A. No. 9165, now only requires two (2) witnesses to be present during the conduct of the physical inventory and taking of

photograph of the seized items, namely: (a) an elected public official; and (b) either a representative from the National Prosecution Service or the media.

However, under the original provision of **Section 21** and its **IRR**, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) **a representative from the media**, **and** (b) the **DOJ**, **and**; (c) **any elected public official** who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."

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. 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.

An examination of the records showed that the prosecution totally failed to comply with the procedures outlined under Section 21 of R.A. No. 9165.

Admittedly, **there was no physical inventory of the seized item**. Without such inventory, a doubt is created whether the shabu was really taken from appellant. **There were also no photographs taken of the inventory in the presence of appellant or his representative or counsel and the required witnesses under Section 21 of R.A. No. 9165.** In fact, it was not established at all that the police officers exerted any effort to secure the presence of the required witnesses. The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody. The marking of the seized item by PO1 Juaño at the police station is not sufficient to establish the chain of custody. It has been held that the mere marking of the seized item without the required physical inventory and photographs of the same in the presence of the witnesses mentioned under Section 21 was not enough compliance with the law.

While the last paragraph of Section 21 (a) of the IRR of R.A. No. 9165 provides that non-compliance with the requirements of Section 21 will not render void and invalid the seizure and custody of the seized items, it was made clear that this is so under justifiable ground and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, 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.

**RICKY ANYAYAHAN y TARONAS, *Petitioner*, -versus –PEOPLE OF THE PHILIPPINES, *Respondent.***

G.R. No. 229787, SECOND DIVISION, June 20, 2018, PERLAS-BERNABE, *J.*

*Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, immediately after seizure and confiscation conduct a* ***physical inventory and photograph of the seized items*** *in the presence of the* ***accused or the person from whom the items were seized****, or his* ***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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.*

*Records failed to show that SPO1 Monte conducted the requisite inventory in the presence of an elected official, a media representative, and a DOJ representative. In his testimony during trial, he admitted that* ***it was only after he had finished the Inventory of Evidence that he proceeded to the Barangay Hall and procured the signatures of the barangay official and the media representative, without, however, mentioning the presence of any representative from the DOJ.***

**FACTS:**

Petitioner Anyayahan was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The prosecution alleged that the Philippine National Police (PNP) in Marikina City received a report from a confidential informant that a certain alias "Ricky," later identified as Anyayahan, was selling drugs in his house. In response thereto, a buy-bust team was formed. Thereafter, the buy-bust team, accompanied by the informant, proceeded to the target area where they saw Anyayahan. SPO1 Monte and the informant approached Anyayahan, and the informant introduced SPO1 Monte as the buyer of shabu worth P300.00. SPO1 Monte then handed over three (3) marked one hundred-peso (P100.00) bills as payment, afterwhich, Anyayahan told SPO1 Monte to wait as he entered his house. Upon his return, Anyayahan pulled out from his right pocket **two (2) small pieces of transparent plastic sachet containing white crystalline substance**, and gave one (1) sachet to SPO1 Monte, while he returned the other sachet inside his pocket. SPO1 Monte then introduced himself as a police officer, arrested Anyayahan, and ordered the latter to bring out the contents of his pocket from where the other plastic sachet of suspected shabu, together with the buy-bust money, was recovered. Upon confiscation, marking, and photography conducted at the place of arrest, an inventory was prepared which was **later on signed** by **Kagawad Ernie Arigue** and a **media representative named Edwin Moreno.**

For his part, Anyayahan denied the charges against him, narrating that at around 7:30 in the evening of the same date, he and his live-in partner, Dina Gonzales (Dina), were walking to a store when they passed by four (4) men, one of whom asked if he was "Ricky." Anyayahan answered "[y]es," and as they were about to cross the street, one of them suddenly grabbed his collar, introduced themselves as policemen and frisked him. He was thereafter brought to Barangay Tanguile Taas where the said policemen brought out three (3) pieces of P100.00 bills and two (2) plastic sachets of shabu which were allegedly recovered from him.

RTC acquitted Anyayahan for Illegal Sale of Dangerous Drugs, and convicted him for Illegal Possession. CA affirmed Anyayahan's conviction for the crimes charged in the two criminal cases. Hence, this appeal.

**ISSUE:**

Whether the CA correctly upheld Anyayahan's conviction for Illegal Possession of Dangerous Drugs. (NO)

**RULING:**

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, immediately after seizure and confiscation conduct a **physical inventory and photograph of the seized items** in the presence of the **accused or the person from whom the items were seized**, or his **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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

The Court, however, clarified that under varied field conditions, **strict compliance** with the requirements of Section 21, Article II of RA 9165 **may not always be possible.**

In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) **there is justifiable ground for non-compliance**; and (b) the **integrity and evidentiary value of the seized items are properly preserved.**

In this case, the Court finds that the police officers unjustifiably deviated from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Anyayahan.

Records failed to show that SPO1 Monte conducted the requisite inventory in the presence of an elected official, a media representative, and a DOJ representative. In his testimony during trial, he admitted that **it was only after he had finished the Inventory of Evidence that he proceeded to the Barangay Hall and procured the signatures of the barangay official and the media**

**representative, without, however, mentioning the presence of any representative from the DOJ.**

It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality. While non-compliance is allowed, the same ought to be justified. Therefore, it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure as to convince the Court that the attempt to comply was reasonable under the given circumstances. Since this was not the case here, the Court is impelled to conclude that there has been an unjustified breach of procedure and hence, the integrity and evidentiary value of the corpus delicti had been compromised. Consequently, Anyayahan's acquittal is in order.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus- BENEDICTO VEEDOR, JR. y MOLOD a.k.a "BRIX", *Accused-appellant.***

G.R. No. 223525, FIRST DIVISION, June 25, 2018, DEL CASTILLO, *J.*

*To show an **unbroken chain of custody**, the prosecution's evidence must include testimony about every link in the chain, from the moment the dangerous drug was seized to the time it is offered in court as evidence. "It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused."*

*The totality of these circumstances — the failure to mark the 323 plastic sachets supposedly containing marijuana, the discrepancy in the description of the seized dangerous drugs, and the prosecution's failure to disclose the identities of the persons who had custody of said items after they were turned over by SI Escurel — broke the chain of custody and tainted the integrity of the seized marijuana ultimately presented as evidence before the trial court. Given the prosecution's failure to prove the indispensable element of corpus delicti, appellant must necessarily be acquitted on the ground of reasonable doubt.*

**FACTS:**

The prosecution alleged that on September 2, 2004, at around 9:00 a.m., a search warrant was served on appellant at the latter's house located along an alley near Patria Street, Balut, Tondo, Manila.

After explaining the nature of the search warrant to appellant, the NBI agents searched the house and found a shopping bag containing suspected marijuana inside a cabinet at the first floor. They also found 323 small plastic sachets of suspected marijuana in seven transparent plastic bags, several empty transparent plastic sachets, an electric sealer and a pair of scissors.

SI Escurel marked the seized items with his initials and prepared the Inventory of Seized Property. Photographs of the items found in the premises were also taken. The NBI operation was witnessed by ABS-CBN's Jesus Alcantara, Barangay Chairman Nonny Francisco (Brgy. Chairman Francisco), and Barangay Councilor Randy Almalvez.

On the other hand, the defense raised an alibi and narrated that at around 11:20 am on September 2, 2004, NBI agents arrested him. Barangay officials came only after his arrest. He denied any knowledge on the one (1) kilo of marijuana. He stated that he does not know the whereabouts of Jeric and Jeff but he trusted them and let them watch DVD at his home even at midnight because these two (2) boys are poor but own the DVDs to be watched.

RTC ruled against the appellant. CA affirmed. Hence, this appeal.

**ISSUE:**

Whether the corpus delicti of the offense charged was proven beyond reasonable doubt considering the inconsistency in the description of the dangerous drugs seized. (NO)

**RULING:**

It must be stressed that "the presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs alone is **insufficient** to secure or sustain a conviction under RA 9165." Given the unique characteristics of dangerous drugs which render them not readily identifiable and easily susceptible to tampering, alteration or substitution, it is essential to show that the **identity and integrity of the seized drugs have been preserved.**

It is in this context that we highlight the utmost significance of the **chain of custody** requirement under Section 21, Article II of RA 9165, as amended by Republic Act No. 10640, in drug-related prosecutions.

To show an **unbroken chain of custody**, the prosecution's evidence must include testimony about every link in the chain, from the moment the dangerous drug was seized to the time it is offered in court as evidence. "It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused."

The first and most crucial step in proving an unbroken chain of custody in drug-related prosecutions is the marking of the seized dangerous drugs and other related items thereto, as it is "the starting point in the custodial link that succeeding handlers of [said items] will use as a reference point."

In this case, we find that the prosecution failed to establish the first link in the chain of custody for failure of the NBI agents to properly conduct the inventory and marking of the seized items.

We note, in this regard, the NBI agent's failure to account for and mark the three hundred twenty-three (323) plastic sachets supposedly contained in the seven plastic bags marked as **MEE-2 to MEE-8** which, curiously, only surfaced in the Certification dated September 3, 2004 issued by Forensic Chemist Aranas.

We consider, too, the **inconsistency in the description** of the seized dangerous drugs in the records — in the Joint A davit of Arrest and the Spot Report, the seized drugs were described as **'dried**

**marijuana leaves'** while the forensic chemist, in her Certification dated September 3, 2004, referred to the same **as 'crushed dried marijuana flowering tops.'** Regrettably, this inconsistency was not clarified by the prosecution.

Finally, we note the serious evidentiary gaps in the second, third and fourth links in the chain of custody over the seized dangerous drugs. Based on the records, the seized evidence was turned over by SI Escurel to the Forensic Chemistry Division of the NBI for a quantitative and qualitative examination on September 2, 2004, at 6:30 p.m. In this regard, the prosecution failed to disclose the identities of: (a) **the person who had custody of the seized items after they were turned over by SI Escurel;** (b) **the person who turned over the items to Forensic Chemist Aranas;** and (c) **the person who had custody thereof after they were examined by the forensic chemist and before they were presented in court.**

The totality of these circumstances — the failure to mark the 323 plastic sachets supposedly containing marijuana, the discrepancy in the description of the seized dangerous drugs, and the prosecution's failure to disclose the identities of the persons who had custody of said items after they were turned over by SI Escurel — broke the chain of custody and tainted the integrity of the seized marijuana ultimately presented as evidence before the trial court. Given the prosecution's failure to prove the indispensable element of corpus delicti, appellant must necessarily be acquitted on the ground of reasonable doubt.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- EVANGELNE ABELLA and MAE ANN SENDIONG, *Accused-Appellants.***

G.R. No. 213918, THIRD DIVISION, June 27, 2018, MARTIRES, *J.*

*Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him. On the other hand, entrapment is the employment of ways and means in order to trap or capture a lawbreaker. Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer. In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes.*

**FACTS:**

Evangeline Abella and Mae Ann Sendiong were charged with violation of Section 5 and Section 11, Article II of Republic Act No. 9165, respectively, as they allegedly sold and delivered one heat-sealed transparent plastic sachet containing an approximate weight of 0.01 gram of Methamphetamine Hydrochloride, commonly called "shabu," a dangerous drug.

The Prosecution alleged that they conducted a buy-bust operation but according to the accused-appellants, they were searched, and nothing was found but they were arrested and were not informed of their constitutional rights.

The RTC later held that the prosecution had successfully proven all the elements necessary for the conviction of Abella and Sendiong and the accused-appellants were found guilty beyond reasonable doubt. The CA affirmed the decision in toto.

**ISSUE:**

Whether the prosecution failed to establish the accused-appellants' guilt by proof beyond reasonable doubt. (YES)

**RULING:**

The Supreme Court found no merit in the appeal of Abella and Sendiong and dismissed it accordingly, affirming the decision of the Court of Appeals in toto.

According to the Court, the elements of the crimes charged against the accused-appellants were established beyond reasonable doubt by the prosecution. There was also no instance of instigation on the part of the police officers, as averred by Abella.

Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him. On the other hand, entrapment is the employment of ways and means in order to trap or capture a lawbreaker. Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer. In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes. In instigation, the law enforcers act as active co-principals. Instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction.

The records unmistakably prove that Tubio merely convinced the accused-appellants that he would be buying shabu but never told them that he would be buying it from them. Apparently, the criminal intent or design to sell shabu originated in the mind of the accused-appellants because they voluntarily and knowingly transacted with Tubio to sell him a sachet of shabu at the price of P300.00. This conclusion is supported by the synchronized acts of the accused- appellants in receiving the payment and in handing the shabu to the poseur-buyer. Moreover, the fact that Sendiong already had in her possession two heat-sealed transparent sachets containing shabu confirmed the probability that in actuality both of them were engaged in selling shabu. In fact, during the verification operation previously done, the police officers were able to witness the accused-appellants openly selling shabu. Obviously, the buy-bust team merely facilitated the apprehension of the criminals by employing ploys and schemes. The proof that the accused-appellants were engaged in the illegal trade of selling shabu was only fortified by the buy-bust operation which, in a series of cases, has been held as a form of entrapment used to apprehend drug peddlers.

Furthermore, the corpus delicti was established by proof that the identity and integrity of the subject matter of sale, the shabu, has been preserved and there was an unbroken chain of custody of the seized items. The prosecution was able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the corpus delicti.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- ARNULFO BALENTONG BERINGUIL, *Accused-Appellant.***

G.R. No. 220141, THIRD DIVISION, June 27, 2018, MARTIRES, *J.*

*It is a settled rule that discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not actually touching upon the central fact of the crime, or the basic aspects of "the who, the how, and the when" of the crime committed, do not impair their credibility because they are but natural and even enhance their truthfulness as they wipe out any suspicion of a counseled or rehearsed testimony; and minor contradictions among witnesses are to be expected in view of differences of impressions, vantage points, memory, and other relevant factors.*

**FACTS:**

Accused-appellant Arnulfo Balentong Beringuil was found guilty beyond reasonable doubt for violating Section 5, Article II of R.A. No. 9165 for the illegal sale of one brick of cocaine, a dangerous drug.

Evidence of the prosecution showed that Beringuil was caught in a buy-bust operation with a certain Sammy Macajeto, who was able to escape. Beringuil pleaded not guilty and claimed that the whole incident was a frame-up.

The RTC found Beringuil guilty beyond reasonable doubt of the illegal sale of dangerous drugs, which was affirmed by the CA in toto.

Beringuil now contends that the prosecution is inconsistent as to: (1) the time of the arrival at the area of the operation, (2) where the buy-bust team met the informant, and (3) who communicated with him. He also argues that the specimen examined was allegedly not the same item that was confiscated from him.

**ISSUE:**

Whether or not Beringuil is guilty beyond reasonable doubt for violating Section 5, Article II of R.A. No. 9165 despite the prosecution's inconsistencies. (YES)

**RULING:**

The Supreme Court agreed with the conclusions of the lower courts and denied Beringuil's appeal for lack of merit.

The Court held that in the prosecution of illegal sale of drugs, what is material is proof that the transaction actually took place, coupled with the presentation in court of the corpus delicti as evidence. In the present case, the prosecution clearly showed that the sale for one brick of cocaine actually took place and that the authorities seized it; which thereafter passed through the proper custodial chain until it was identified and submitted to the court as evidence. Significantly, the present appeal raises only minor inconsistencies too trivial for us to disturb the findings and conclusions of the lower courts.

It is a settled rule that discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not actually touching upon the central fact of the crime, or the basic aspects of "the

who, the how, and the when" of the crime committed, do not impair their credibility because they are but natural and even enhance their truthfulness as they wipe out any suspicion of a counseled or rehearsed testimony; and minor contradictions among witnesses are to be expected in view of differences of impressions, vantage points, memory, and other relevant factors.

As for the evidentiary value of the confiscated item, the Supreme Court noted that at no time during the trial did the defense question the integrity of the evidence: by questioning either the chain of custody or the evidence of bad faith or ill will on the part of the police, or by proof that the evidence had been tampered with. Under these circumstances, the presumption of regularity in the handling of the exhibits by the buy-bust team and the presumption that they had properly discharged their duties should apply.

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- MERCINDO BOBOTIOK, JR. *y* LONTOC, *Appellant.***
G.R. No. 237804, THIRD DIVISION, July 4, 2018, VELASCO, *J.*

*Chain of custody is defined as 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.*

*The conduct of the inventory still suffered from a major procedural lapse since it was not done in the presence of any elected public official, a representative of the National Prosecution Service, or the media. While such requirement, under justifiable reasons, shall not render void the seizure of the subject item, the prosecution must nonetheless explain its failure to abide by such procedural requirement, and show that the integrity and evidentiary value of the seized item was preserved.*

**FACTS:**

At around 9 am of February 1, 2011, a confidential informant went to the office of the Station Anti-Illegal Drug Special Operation Task Group (SAID SOTG) of Taguig City Police Station to report the illegal drug activities of a certain Zenell Cruz in Tipas, Taguig City.

The confidential informant arranged through text messages the meeting with Zenell Cruz. Upon receiving the go signal from Zenell Cruz sometime around 6:45 that night, the buy-bust team proceeded to the meeting place and arrived at the area at around 7:00 p.m. Before they could make a turn into an alley to meet Zenell Cruz, Mercindo Bobotiok, approached and asked them if they were the ones whom Zenell Cruz were texting with, to which the confidential informant replied in the affirmative. Bobotiok told them,*"Wala si Zenell. May pinuntahang importante,"* then he handed a small transparent plastic sachet containing white crystalline substance to PO1 Balbin. PO1 Balbin pinched the plastic sachet to find out if it was brittle. Upon verification of the contents, PO1 Balbin scratched the back of his head prompting PO2 Medrano to rush towards the crime scene. PO1 Balbin immediately grabbed Bobotiok, introduced himself as a police officer, and apprised Bobotiok of his constitutional rights. PO1 Balbin then marked the plastic sachet with "JVB-010211," while in the presence of Bobotiok. The buy bust team then brought Bobotiok and the confiscated dangerous drugs to their office.

In the police station, PO1 Balbin made the inventory in the presence of Bobotiok and the buy-bust team, then accomplished the Chain of Custody Form and the Turnover of Arrested Suspect. He thereafter turned over the confiscated drugs to investigator PO2 Vergelio P. del Rosario PO2 Del Rosario also took photographs of the seized dangerous drugs, as witnessed by PO1 Balbin.

PO2 del Rosario, accompanied by PO1 Balbin and in the presence of Bobotiok, personally delivered the letter-request and the confiscated item to the PNP Crime Laboratory.The specimen was turned over to the Forensic Chemical Officer, PCI Mangalip and conducted a laboratory examination on one heat-sealed transparent plastic sachet marked as "JVB-010211" containing 0.13 gram of white crystalline substance and showed that the specimen gave a positive result for the presence of methylamphetamine hydrochloride or *shabu*.

Bobotiok was charged with violation of Section 5, paragraph 1, Article 2 of RA 9165 (illegal sale). The RTC found him guilty of the illegal sale of dangerous drugs. The trial court ruled that all elements of illegal sale of dangerous drugs were present in this case. It found credibility in the testimony of prosecution witnesses PO1 Balbin and PO3 Medrano, that Bobotiok, whose identity was then unknown to them, sold to PO1 Balbin and the confidential informant an illegal drug contained in a transparent plastic sachet. Also, the trial court found that the prosecution was able to establish that the chain of custody of the seized drugs remained unbroken. The CA affirmed RTC's conviction, but on a different ground. Bobotiok cannot be convicted of illegal sale of dangerous drugs since PO1 Balbin failed to effect payment and no sale was consummated. Instead, the CA declared that accused-appellant may still be convicted for the illegal delivery of shabu under the same provision of law.

**ISSUE:**

Whether or not Bobotiok is guilty under Section 5, Article 2, RA 9165. (NO)

**RULING:**

As correctly found by the CA, Bobotiok could not be charged or convicted for the illegal sale of dangerous drugs due to the fact that the poseur-buyer, **PO1 Balbin, failed to effect payment** for the drugs handed to him by accused-appellant. It appears that PO1 Balbin was caught off-guard when it was Bobotiok who approached them and handed over the plastic sachet the shabu, when he was expecting a person named Zenell Cruz. In the confusion, PO1 Balbin immediately executed the pre-arranged hand signal and proceeded to arrest the accused-appellant without giving the latter the opportunity to ask for payment or to receive the marked money as payment.

Nevertheless, the SC agreed with the findings of the CA that Bobotiok's actions may still be prosecuted under Section 5 as the **prohibited act of delivering or distributing prohibited drugs**. The elements of illegal delivery of dangerous drugs are: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Thus, delivery may be committed even without consideration.

In the present case, the prosecution was able to establish that Bobotiok knowingly delivered the *shabu* to the poseur-buyer without any authorization by law and that the police operatives confiscated the same. The CA was correct in ruling that crime of illegal delivery of dangerous drugs

under Section 5, Article II of RA 9165 was committed by accused-appellant. However, this Court finds that there were missing links in the chain of custody of the seized items.

***Compliance with the chain of custody rule was not established.***

Chain of custody is defined as 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.

Section 21, Article II of RA 9165 outlines the procedural safeguards that police officers must follow in handling seized illegal drugs to preserve their identity, integrity, and evidentiary value, the pertinent portions of which read:

> 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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> > (1) The apprehending team having initial custody and control of the dangerous drugs x x x 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 persons 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 this case, the records show that the buy-bust team had failed to strictly comply with the prescribed procedure. As stated by PO1 Balbin, only the team leader, the suspect, the investigator, and their teammates where the ones present during the inventory and not other media representatives, elective officials or DOJ representatives were present. The prosecution justified the conduct of the inventory and photograph of the seized item at the police station instead of the place of the buy-bust operation by raising the issue of security. However, a reading of the transcript of PO1 Balbin's testimony reveals that this justification is a mere afterthought since his initial reason is the darkness of the place of arrest. It was only after the diligent prodding by the public prosecutor that PO1 Balbin mentioned the risk of security.

Even assuming *arguendo* that the buy-bust team's act of conducting the inventory and photographing of the seized drugs at the police station was justified, it still suffered from a major procedural lapse since it was not done in the presence of any elected public official, a representative of the National Prosecution Service, or the media. While such requirement, under justifiable reasons, shall not render void the seizure of the subject item, the prosecution must nonetheless explain its failure to abide by such procedural requirement, and show that the integrity and evidentiary value of the seized item was preserved.

When asked the reason for the non-compliance with the requirement of witnesses, PO1 Balbin reasoned that his team leader called the Barangay and the media, but no one arrived despite waiting for their arrival for 30 minutes.

However, the buy-bust team had more than thirty minutes to secure the attendance of the required witnesses during the inventory and photographing of the seized items. As testified by PO1 Balbin, the confidential informant arrived at the SAID-SOTG office as early as 9:00 o'clock in the morning of February 1, 2011. However, the actual buy-bust operation was conducted at 7:00 o'clock in the evening of the same day. Thus, they had at least ten hours from the time they received the tip until the buy-bust team proceeded to the agreed location. This appears to be more than enough time for the buy-bust team to contact and request for the presence of the required witnesses.

Thus due to the missing links and irregularities in the chain of custody, Bobotiok was acquitted of the charge.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. GERALD TAMAYO CORDOVA and MARCIAL DAYON EGUISO, accused-appellants.**
G.R. No. 231130, SECOND DIVISION, July 9, 2018, PERLAS-BERNABE, J.

*Under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 provide that non-compliance with the requirements — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.*

*After a judicious study of the case, the Court found that the deviations from the prescribed chain of custody rule were unjustified.*

**FACTS:**

An Information was filed before the RTC accusing Cordova of Illegal Sale of Dangerous Drugs, and two (2) Informations charging Cordova and Eguiso of Illegal Possession of Dangerous Drugs.

The prosecution alleged that members of the City Anti-Illegal Drug-Special Operation Task Group (CAID-SOTG) received information that a certain Bobot Cordova was engaged in selling of illegal drugs and hosting pot sessions at the place rented by his sister in Purok Sigay, Barangay 2, Bacolod City. After surveillance, members of the CAID-SOTG decided to conduct a buy-bust operation.

PO3 Sebastian and the asset went to Cordova's place and were met at the door by Cordova, with Eguiso beside him holding an elongated plastic sachet containing a white crystalline substance. Cordova asked what they wanted and the asset introduced PO3 Sebastian as a buyer of shabu. Cordova asked how much they will buy and PO3 Sebastian answered that they want P200.00 worth of shabu. PO3 Sebastian then gave the marked money to Cordova, who then went to the kitchen and got something from the sole of his slippers. Cordova went back to PO3 Sebastian and handed him a plastic sachet containing suspected shabu.

Thereafter, PO3 Sebastian made a missed call to his colleagues, who then rushed to the scene, and announced that they are police officers. Subsequently, PO3 Sebastian frisked Cordova, which yielded five (5) more plastic sachets of suspected shabu, empty plastic sachets, and the marked money. The team further searched the kitchen and confiscated drug repacking paraphernalia. PO3 Sebastian also collected one (1) plastic sachet containing white crystalline substance from Eguiso.

Accused-appellants were arrested and PO3 Sebastian marked his initials on the confiscated sachets and prepared an inventory of the seized items in their presence. After the arrest, barangay officials were informed of the buy bust operation and went to the scene. Cordova and Eguiso were later brought to the barangay hall where PO3 Sebastian took photographs of the seized items and accused-appellants. PO3 Sebastian took custody of the items and kept it in his locker at their office on April 8, 2005 since allegedly there was no evidence custodian in their police station, which hence, prompted him to deliver the same on April 11, 2005 where it was received by a non-uniformed personnel of the crime laboratory. PSI Guinanao later confirmed that the plastic sachets submitted by PO3 Sebastian all yielded positive for shabu.

The RTC found Cordova liable for the crime of Illegal Sale of Dangerous Drugs. It also found Cordova and Eguiso guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs.

The CA affirmed the RTC's ruling.

**ISSUE:**

Whether or not the CA correctly upheld accused-appellants' conviction for the crimes charged. (NO)

**RULING:**

Case law states that in Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same.

Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the IRR of RA

9165 provide that non-compliance with the requirements — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.

After a judicious study of the case, the Court found that the deviations from the prescribed chain of custody rule were unjustified.

*First*. Section 21, Article II of RA 9165 requires that the apprehending team shall immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of, among others, the accused or the person from whom the items were seized. However, as admitted by PO3 Sebastian, Eguiso, who is one of the accused-appellants, was not present during the required photography of the seized items as shown by his absence in the photos taken.

*Second*. Records also fail to disclose that the other required witnesses, i.e., the representatives from the DOJ and the media, were present during the required inventory and photography of the seized items as required by law.

*Finally*. It appears that the chain of custody of the seized items was actually tainted by irregular circumstances. In particular, records show that the time of apprehension on April 8, 2005 was at 1:50 p.m. As disclosed by PO3 Sebastian during trial, the said items were not delivered to the crime laboratory immediately because there was no chemist present in the afternoon of April 8, 2005, a Friday.

Based on the testimony of PSI Guinanao, there was an agreement between the crime laboratory and the police drug unit with respect to the procedure on apprehensions made on Fridays to Sundays that if ever there are apprehensions on Friday the police officers must give to them their cellphone number so that they can reach them and open their office.

However, this agreement was not followed by the police officers. Instead, the items seized from Cordova and Eguiso were merely stored in the locker of PO3 Sebastian. To note, the prosecution failed to explain what security measures were employed to ensure that the integrity and evidentiary value of the items seized would not be compromised during the interim.

Accordingly, the plurality of the breaches of procedure committed by the police officers, which were glaringly unjustified by the State, militate against a finding of guilt beyond reasonable doubt against the accused-appellants, as the integrity and evidentiary value of the corpus delicti had been compromised. As such, the Court found accused-appellants' acquittal in order.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ALEXIS DINDO SAN JOSE y SUICO, *Accused-Appellant*.**

G.R. No. 179148. THIRD DIVISION, July 23, 2018, BERSAMIN,J.

*The process essential to proving the corpus delicti calls for the preservation and establishment of the chain of custody which refers to the documented various movements and custody of the subjects of the offense from the moment of seizure or confiscation to the time of receipt in the forensic laboratory, to their safekeeping until their presentation in court as evidence and their eventual destruction.* ***The***

***safeguards of marking, inventory, and photographing are all essential in establishing that such substances and articles seized or confiscated were the very same ones being delivered to and presented as evidence in court.*** *However, in this case,* ***no inventory and accounting of the confiscated substances were made at the time and at the scene of seizure.*** *Based from the testimonies of the police officers, the marking of the seized substances was admittedly done* ***only at the police office*** *which broke the chain of custody of the corpus delicti.*

*There is* ***no separate crime of illegal possession of firearms if another crime has been committed****. In* ***People vs Ladjaalam****, the Supreme Court affirmed that there could be no offense of illegalpossession of firearms and ammunition if another crime was committed.*

**FACTS:**

A confidential informant known as "Bong" reported to the Regional Mobile Group located at Camp Bagong Diwa, Taguig, Metro Manila, that an illicit drug trade was conducted by two drug pushers known as "Dodong Diamond" and Evita Ebora. SPO1 Edwin Anaviso accompanied by Bong went inside a condominium unit to purchase shabu from Alexis Dindo San Jose (Accused-Appellant). Two days after, **a buy-bust operation** was conducted with SPO1 Anaviso as poseur buyer in the same condominium unit. Two small plastic bags, suspected to contain shabu, were sold by accused-appellant to SPO1 Anaviso, immediately after which accused-appellant was arrested. **Two guns were seized** in addition to another plastic sachet of shabu found inside accused's drawer were also seized. In addition, accused could not produce pertinent documents as to the lawful possession of the firearms. A forensic examination of the substance seized was conducted and it was found that the specimen submitted all contained shabu.

The defense claimed that he was framed alleging that ht was engaged in the business of buying and selling used cars and was at the crime scene only because he was selling a car to one Mr. Ong. **He stated that he was arrested with Mr. Ong, who was the original suspect but was later released.**

The accused-appellant was charged with the crimes of illegal sale and possession of dangerous drugs and illegal possession of firearms. The RTC of Pasig City convicted accused-appellant of the crimes charged which the Court of Appeals affirmed in its entirety.

**ISSUE:**

(1) Whether or not the guilt of the accused-appellant was established beyond reasonable doubt (NO)

(2) Whether or not the charge of the crime of illegal possession of firearms against accused-appellant is proper (NO)

**RULING:**

(1) The crimes of illegal sale and possession of dangerous drugs **were not sufficiently established by the prosecution** in proving the guilt of the accused beyond reasonable doubt. In drug cases, the confiscated substances and articles constitute the corpus delicti of the crime. The process essential to proving the corpus delicti calls for the preservation and establishment of the chain of custody which refers to the documented various movements and custody of the subjects of the offense from the moment of seizure or confiscation to the time of receipt in the forensic laboratory, to their safekeeping until their presentation in court as evidence and their eventual destruction. **The safeguards of marking, inventory, and photographing are all essential in establishing that such substances and articles seized or confiscated were the very same ones being delivered to and presented as evidence in court.** However, in this case, **no inventory and accounting of the confiscated substances were made at the time and at the scene of seizure.** Based from the testimonies of the police officers, the marking of the seized substances was admittedly done **only at the police office** which broke the chain of custody of the corpus delicti. The State failed to establish that the substances presented during the trial had been safeguarded from tampering or substitution in subsequent phases of the custodial chain.

In addition, **the incrimination of the accused was highly doubtful.** It was very strange for him to be apprehended in the course of the buy-bust operation conducted inside the premises of the residential unit of one Benjamin Ong **without Ong himself implicated.**

(2) There is **no separate crime of illegal possession of firearms if another crime has been committed**. In **People vs Ladjaalam**, the Supreme Court affirmed that there could be no offense of illegal possession of firearms and ammunition if another crime was committed. Section 1 of R.A. 8294 is also clear in providing such which states:

> Sec. 1. Unlawful manufacture, sale, acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition. - The penalty of prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture,deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, **That no other crime was committed.**
>
> The penalty of prision mayor in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-firemagnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, **That no other crime was committed by the person arrested.**

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- BONG BARRERA y NECHALDAS, *Accused-Appellant*.**
G.R. No. 232337, FIRST DIVISION, August 1, 2018, TIJAM,J.

***Section 21, RA 9165*** *clearly provides that the apprehending team should* ***mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media.*** *that the apprehending team should* ***mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media.***

*However, failure to comply does not ipso facto invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In this case,* ***no justifiable ground for non-compliance was proven as a fact. It was markedly absent thus it cannot be said that accused-appellant is guilty beyond reasonable doubt considering that the integrity and evidentiary value of the corpus delicti had been compromised.***

**FACTS:**

Based on a report made by a confidential informant that a certain "Bong" was selling drugs in Barangay Damayan , Quezon City, a **buy-bust operation** was organized on August 9, 2008. SPO2 Purisimo Angeles was designated as the poseur-buyer and was given a marked P500 bill. The operation was coordinated with the Philippine Drug Enforcement Agency. SPO2 Angeles and the informant proceeded to the agreed place of sale where they met with Bong Barrera (accused-appellant). The informant introduced SPO2 Angeles as the buyer. **Accused-appellant drew a plastic sachet from his right pocket and gave it to SPO2 Angeles, who in turn, handed to accused-appellant the marked P500 bill.** After which, accused-appellant was arrested and brought to the police station.

The confiscated item remained in SPO2 Angeles' possession from the crime scene up to the police station. Upon arrival at the station, **SPO2 Angeles affixed his initials on the plastic sachet.SPO2 Angeles conducted an inventory of the confiscated items and prepared a draft inventory** that was finalized by PO1 Jonathan Rodriguez (PO1 Rodriguez). PO1 Rodriguez made the request for laboratory examination and SPO2 Angeles brought the specimen to the Crime Laboratory, where it was tested positive for methamphetamine hydrochloride. There were **no representatives from the media, Department of Justice, and barangay officials when the inventory was prepared.**

Accused-appellant was charged with the crime of illegal sale of dangerous drugs before the RTC of Quezon City. The RTC convicted the accused-appellant holding that all the elements of the crime for

illegal sale of dangerous drugs was established. It further found that the prosecution was able to establish the integrity of the corpus delicti and unbroken chain of custody. The Court of Appeals sustained the conviction of the accused-appellant agreeing with the trial court that all the elements of illegal sale of dangerous drugs are present and although the police officers did not comply with the procedures set forth by the law, it was negligible considering that the prosecution was able to preserve the integrity and evidentiary value of the items.

**ISSUE:**

Whether or not the RTC and the CA erred in convicting the accused-appellant considering that the police officers failed to comply with the procedures set forth by the law (YES)

**RULING:**

Non-compliance with the requirements of Section 21, RA 9165 casts doubt on the integrity of the seized item and created reasonable doubt on the guilt of the accused-appellant. The rules clearly provide that the apprehending team should **mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media.** that the apprehending team should **mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media.**

However, failure to comply does not ipso facto invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In these cases, the prosecution must be able to explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved because the Court cannot presume that these grounds exist. In this case, **no justifiable ground for non-compliance was proven as a fact. It was markedly absent thus it cannot be said that accused-appellant is guilty beyond reasonable doubt considering that the integrity and evidentiary value of the corpus delicti had been compromised.**

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee* **-versus- RYAN MARALIT y CASILANG,** *accused-appellant.*

GR No. 232381, SECOND DIVISION, 01 August 2018, REYES, JR., J.

*Section 5, Article II of RA 9165 is not limited to illegal sale of drugs. It also punishes the trade, delivery, distribution, and giving away of any dangerous drug to another. The presence (or absence) of*

*consideration in exchange for the delivery of dangerous drugs is not material in the act of giving away, transporting, or delivery of dangerous drugs because such acts are punishable in itself.*

*In People v. dela Cruz, the act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration, consummates the offense. Thus, even if the money given to dela Cruz was not presented in court, the crime could have been consummated by the mere delivery of the prohibited drugs. What the law proscribes is not only the act of selling but also, albeit not limited to, the act of delivering.*

**FACTS:**

Ryan Maralit was charged with the offense of illegal trade, transport, and delivery of dangerous drugs punishable under Section 5, Article II of RA 9165.

Following the receipt of information that a certain "Ram" – later known as Maralit – was a dealer of marijuana in Dagupan City, PDEA officers planned a buy-bust operation. IO1 Efren Esmin exchanged text messages with Maralit and thereafter the latter agreed to deliver two bricks of marijuana for Php 5 300 each.

During the operation, Maralit approached IO1 Esmin while he (Maralit) was holding a paper bag. He asked IO1 Esmin to confirm if he was the one in the text messages. IO1 Esmin affirmed. Maralit then handed over the paper bag and when IO1 Esmin saw that it contained marijuana, he arrested Maralit.

Maralit pointed out that the money used for the entrapment was neither marked nor presented before the trial court, negating the presence of a consideration for the sale of the drugs – an essential element of section 5, article II of RA 9165.

**ISSUE:**

Whether or not Maralit is guilty of violating section 5, Article II of RA 9165. (YES)

**RULING:**

Section 5, Article II of RA 9165 is not limited to illegal sale of drugs, although it is the usual violation of an accused. It also punishes the trade, delivery, distribution, and giving away of any dangerous drug to another. **The presence (or absence) of consideration** in exchange for the delivery of dangerous drugs is **not material** in the act of giving away, transporting, or delivery of dangerous drugs because such acts are punishable in itself.

In People v. dela Cruz, the presentation of the marked money and the fact that money was paid in exchange for the delivery of the dangerous drugs were unnecessary to consummate the crime. **The act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration, consummates the offense.** Thus, even if the money given to dela Cruz was not presented in court, the crime could have been consummated by the mere delivery of the prohibited drugs. What the law proscribes is not only the act of selling but also, albeit not limited to, the act of delivering.

In this case, Maralit could not be accused of illegal sale of dangerous drugs because the element of the delivery of the money from IO1 Esmin to Maralit did not take place. Nevertheless, his

mere act of delivering and conveying the marijuana bricks to IO1 already constitutes a violation of section 5.

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee* **-versus- ROSE EDWARD OCAMPO y EBESA,** *accused-appellant.*

GR No. 232300, SECOND DIVISION, 01 August 2018, PERALTA, J.

*Section 21(a) of the IRR of RA 9165 provides that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team, shall not render void and invalid such seizures of and custody over said items.*

*In People v. Angelita Reyes, et al.,there are instances where the absence of the required witnesses may be justified such as, but not limited to the following: 1) media representatives are not available at that time or police operatives had no time to alert the media due to the immediacy of the operation, especially if it is done in more remote areas; 2) police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) police officers, due to time constraints brought about by the urgency of the operation and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.*

**FACTS:**

Edward Ocampo was charged with illegal sale and illegal possession of drugs under sections 5 and 11 of RA 9165.

A group of police officers in Valenzuela City formed a team to validate reports on rampant solvent abuse in the area. A confidential informant said that a certain "alias ER", herein Ocampo, was engaged in illegal trade of marijuana. The police officers then planned a buy-bust operation.

During the opearation, poseur-buyer PO1 Llacuna met with Ocampo who was at that time repacking marijuana leaves. PO1 Llacuna said he was going to buy 500-peso worth of marijuana. When he handed the money, Ocampo pulled out five sachets containing suspected marijuana leaves. Afterwards, PO1 Llacuna motioned the pre-arranged signal and arrested Ocampo. 58 sachets containing marijuana leaves were also recovered from him.

The team conducted an inventory at the place of arrest, in the presence of Ocampo and a barangay official. The conduct of the inventory was also photographed. Afterwards, the seized items, sealed and labeled, were turned over to the crime laboratory for examination. As a result, the same items yielded positive for marijuana.

Ocampo argued that the prosecution failed to establish an unbroken chain of custody.

**ISSUE:**

Whether or not the chain of custody is sufficiently proved. (YES)

**RULING:**

To ensure an unbroken chain of custody, Section 21(1) of RA 9165 specifies: 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.

In addition, Section 21(a) of the IRR of RA 9165 provides 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 or team, shall not render void and invalid such seizures of and custody over said items.

In *People v. Angelita Reyes, et al.,*there are instances where the absence of the required witnesses may be justified such as, but not limited to the following: 1) media representatives are not available at that time or police operatives had no time to alert the media due to the immediacy of the operation, especially if it is done in more remote areas; 2) police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) police officers, due to time constraints brought about by the urgency of the operation and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

In this case, although the requirements in Section 21 were not strictly followed, the prosecution was able to prove a justifiable ground for doing so. **The refusal of the members of the media to sign the inventory of the seized items can be considered by the Court as a valid ground to relax the requirement**. Besides, if from the examples of justifiable grounds in non-compliance with the requirements in Section 21, the presence of the required persons can be dispensed with, there is more reason to relax the rule in this case because the media representatives were present, but they simply refused to sign the inventory.

**DOMINGO AGYAO MACAD,** *petitioner* **-versus- PEOPLE OF THE PHILIPPINES,** *respondent*

GR No. 227366, THIRD DIVISION, 01 August 2018, GESMUNDO, J.

*The IRR of RA 9165 provides an exception that the physical inventory and photography of the seized items may be conducted at the nearest police station or the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures. Therefore, provided it is practicable, the marking of the seized items may also be conducted at the nearest police station.*

*In People v. Bautista,the Court held that the failure to mark the seized items at the place of arrest does not itself impair the integrity of the chain of custody. Marking upon "immediate" confiscation can reasonably cover marking done at the nearest police station or office of the apprehending team, especially when the place of seizure could draw unpredictable reactions from its surroundings.*

**FACTS:**

Domingo Macad was charged with violating section 5, Article II of RA 9165.

PO1 Falolo, who was off-duty, boarded a bus bound for Bontoc, Mountain Province. He sat at the top of the bus. Later, Macad boarded the same and sat on top, two meters away from PO1 Falolo. When Macad threw his carton box, PO1 Falolo already suspected it contained marijuana because of its distinct smell and irregular shape.

Macad alighted first while PO1 Falolo went down to buy load for his phone to inform other police officers. Unable to find a store, he hailed a tricycle and asked to be brought where Macad alighted. Incidentally, Macad hailed and rode inside the same tricycle.

When they reached their destination, PO1 Falolo asked if Macad could open his baggage to which the latter agreed. However, he suddenly ran away. Police officers chased him and was able to apprehend him. He, with his seized baggage, was brought to the police station.

At the police station, the seized items were marked, photographed, and inventoried in the presence of Macad, the barangay chairman, a prosecutor, and a media representative. The seized items tested positive for marijuana, after undergoing a forensic examination in the crime laboratory.

Macad argued that the police officers should have immediately marked the seized items upon his arrest and should not have left the baggage in the tricycle, thus breaking the chain of custody.

**ISSUE:**

Whether or not the marking and inventory was properly made even though it was not done at the place of the arrest. (YES)

**RULING:**

As a rule, under the IRR of RA 9165, the physical inventory and photograph of the seized items shall be conducted at the place where the search warrant is served. The marking should also be done upon immediate confiscation. As its exception, the physical inventory and photography of the seized items may be conducted at the nearest police station or the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**. Therefore, provided it is practicable, the marking of the seized items may also be conducted at the nearest police station.**

In *People v. Bautista*,the Court held that the failure to mark the seized items at the place of arrest does not itself impair the integrity of the chain of custody. Marking upon "immediate" confiscation can reasonably cover marking done at the nearest police station or office of the apprehending team, especially when the place of seizure could draw unpredictable reactions from its surroundings.

In this case, it was reasonable for the police officers not to conduct the marking immediately at the place of the arrest and seizure. Evidently, Macad is a flight risk and to conduct the marking in

an unsecured location may result in his escape. It would also be impractical, if not dangerous, for two police officers to conduct the marking of such drugs in broad daylight and in open public, without the assistance and security of other police officers.

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee* **-versus- DOMINGO ASPA, JR. y RASIMO,** *accused-appellant.*

GR No. 229507, SECOND DIVISION, 06 August 2018, PERALTA, J.

*While the prosecution did not explain why the police operatives failed to secure the presence of a DOJ representative, such omission shall not render Aspa's arrest as illegal or the seized items as inadmissible in evidence.*

*In People v. Dasigan,the Court held that the chain of custody is not established solely by compliance with the prescribed physical inventory and photographing of the seized drugs in the presence of the enumerated persons. In said case, no photographs were taken by the police officers, and the inventory was not made in the presence of selected public officials, yet the judgment of conviction was sustained. The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.*

**FACTS:**

Domingo Aspa, Jr. was charged with illegal sale of dangerous drugs in violation of section 5, Article II of RA 9165.

Upon receipt of an information that a certain Domingo Aspa, Jr. was selling marijuana, police officers conducted a buy bust operation. PO1 Italin acted as the poseur-buyer and accompanied the confidential informant.

During the buy-bust operation, PO1 Italin saw Aspa giving three plastic sachets, allegedly containing marijuana, to the informant. In turn, the informant handed over to Aspa the buy-bust money worth Php300. After the transaction, the pre-arranged signal was motioned then Aspa was immediately arrested.

At the crime scene, the seized items were inventoried and marked in the presence of Aspa, PO1 Italin, media representatives, and a city councilor. Thereafter, the items were photographed. Aspa was turned over to the investigation section. The seized items were then brought to the crime laboratory which yielded positive results of marijuana, a dangerous drug.

Aspa argued that the police officers failed to comply with the procedure under section 21 of RA 9165 because no representative from the DOJ was present during the inventory of the seized items. Hence, he should be acquitted.

**ISSUE:**

Whether or not the absence of a DOJ representative during the inventory breaks the chain of custody requirement. (NO)

**RULING:**

While the prosecution did not explain why the police operatives failed to secure the presence of a DOJ representative, such omission shall not render Aspa's arrest as illegal or the seized items as inadmissible in evidence.

In *People v. Dasigan,*the Court held that the chain of custody is not established solely by compliance with the prescribed physical inventory and photographing of the seized drugs in the presence of the enumerated persons. In said case, no photographs were taken by the police officers, and the inventory was not made in the presence of selected public officials, yet the judgment of conviction was sustained. The Court further explained that while the chain of custody should ideally be perfect, in reality it is not, "as it is almost always impossible to obtain an unbroken chain." **The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.**

In this case, the presence of a media man and a barangay kagawad during the conduct of the physical inventory and photograph of the confiscated drugs protected the credibility and trustworthiness of the buy-bust operation. The identity and probative value of the seized marijuana leaves were compromised in court. The prosecution adequately showed the continuous and unbroken possession and subsequent transfers of the plastic sachets of marijuana leaves, based on the police officers' testimonies.

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee* **-versus- MARICEL PATACSIL y MORENO,** *accused-appellant.*

GR No. 234052, SECOND DIVISION, 06 August 2018, PERLAS-BERNABE, J.

*The absence of the required witnesses under Section 21, Article II of RA 9165 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** *must be adduced. In this case, PO3 Meniano himself admitted that no public elected official was present during the inventory because "they were not around" and that he simply forgot to let the media representatives sign the inventory receipt because he "forgot" to do so. These flimsy excuses do not justify the non-compliance of the chain of custody requirement.*

**FACTS:**

Maricel Patacsil was charged with the crimes of illegal sale and illegal possession of dangerous drugs in violation of sections 5 and 11, Article II of RA 9165.

Acting upon a tip of an asset that Patacsil purported illegal drug activities, police officers organized a buy-bust operation. PO3 Meniano acted as the poseur-buyer. During the operation, PO3 Meniano handed over the marked money to Patacsil and in turn, the latter took out one plastic sachet containing suspected shabu and gave the same to PO3 Meniano. The pre-arranged signal was motioned and Patacsil was arrested.

During the arrest, five more sachets were recovered. The buy-bust team took Patacsil and the seized items first to the hospital for medical examination then to the police station for the marking

and inventory procedures. While media men witnessed the inventory, no such representative signed the document. Further, no public elected official was present when such inventory was made.

Finally, the seized items were brought to the crime laboratory where they yielded a positive result of methamphetamine hydrochloride or shabu.

**ISSUE:**

Whether or not the marking and conduct of inventory complied with the chain of custody requirement. (NO)

**RULING:**

The failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is justifiable ground for non-compliance; **and** *(b)* the integrity and evidentiary value of the seized items are properly preserved.

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, Article II of RA 9165 must be adduced.Mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.

In this case, PO3 Meniano himself admitted that no public elected official was present during the inventory because "they were not around" and that he simply forgot to let the media representatives sign the inventory receipt because he "forgot" to do so. These flimsy excuses do not justify the non-compliance of the chain of custody requirement.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *-versus-* RANDY TALATALA GIDOC, *Accused-Appellant***

G.R. No. 230553, FIRST DIVISION, August 13, 2018, TIJAM, *J.*

*A buy-bust operation necessitates a stringent application of the procedural safeguards specifically crafted by Congress in R.A. 9165 to counter potential police abuses. The prosecution must adduce evidence that these procedures have been followed in proving the elements of the defined offense. Noncompliance with the required procedure will not necessarily result in the acquittal of the accused if: (1) the noncompliance is on justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.*

**FACTS:**

The prosecution evidence established that, on October 14, 2006, a confidential informant went to the Calauan Police Station and relayed to Chief of Police Rolando Bagonghasa about the trading activity of illegal drugs by the appellant in Calauan, Laguna.Immediately after the information was received,

the Chief of Police called SPO1 Victor Mortel (SPO1 Mortel) and instructed the latter to form a team to conduct a buy-bust operation in order to arrest the appellant. Prior to their dispatch, the police operatives prepared and marked P100.00 bill as buy-bust money.As earlier planned, the informant, who acted as the *poseur*-buyer, approached appellant and asked him if he has *shabu*, to which appellant answered in the negative. The informant forthwith handed to appellant the P100.00 bill, who, in turn, gave to the informant one plastic sachet of suspected *shabu*. At that instance, the informant took off his cap as a pre-arranged signal that the transaction was consummated.SPO1 Mortel witnessed and heard the transaction between appellant and the informant. Immediately, the team approached and arrested the appellant. They informed the appellant of his rights and the reason for his arrest.When appellant was subjected to a preventive search, the police officers recovered from his pocket another small plastic sachet containing a suspected *shabu. SPO1 Mortel marked the sachet before the same was transferred to PNP Crime Laboratory. The result of the test came out positive.*

Appellant denied the charges against him claiming that he was in San Pablo, Laguna on October 15, 2006. When he boarded a jeepney on his way home, the jeepney was flagged down in front of the Municipal Hall of Calauan by four armed men in civilian clothes. Thereafter, he was arrested for allegedly selling illegal drugs. The RTC found the accused guilty beyond reasonable doubt of violating RA 9165 and the Court of Appeals affirmed the conviction.

**ISSUE:**

Whether the Court should upheld the conviction of the accused (NO)

**RULING:**

At the outset, it bears stressing that the ruling in *People vs. Lafaran*, as cited by the CA in its decision, will not apply in the present case. In *Lafaran*, the police operatives have prepared, and the prosecution offered, as evidence, (i) the Pre-operation Report sent to the PDEA thru fax machine; (ii) the Inventory of Confiscated Items; and (iii) the accomplished Spot Report and photograph of the accused with the confiscated items. In short, in *Lafaran*, the prosecution sufficiently showed compliance with the safeguards in RA 9165 as regards the conduct of a buy-bust operation. Such is not the case here. The CA, therefore, misapplied the ruling in *Lafaran* in this case.

In this case, the prosecution failed to prove the legitimacy of the buy bust operation simply because it failed to proffer any documentary proof of the same. The testimony of SPO1 Mortel during cross-examination reveals that there was no coordination report submitted with the PDEA prior to the buy-bust operation.

The Court also reiterated that the nature of a buy-bust operation necessitates a stringent application of the procedural safeguards specifically crafted by Congress in R.A. 9165 to counter potential police abuses. The prosecution must adduce evidence that these procedures have been followed in proving the elements of the defined offense. Noncompliance with the required procedure will not necessarily result in the acquittal of the accused if: (1) the noncompliance is on justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

The record is bereft of any showing that the police operatives, headed by SPO1 Mortel, have complied with the procedural safeguards under RA 9165. Given SPO1 Mortel's testimony, the police operatives

committed not just an error that constitute a simple procedural lapse but also errors that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law. We cannot brush aside the apparent lack of coordination with the PDEA and the failure of the police operatives, having initial custody and control of the drugs, to physically inventory and photograph the same immediately after seizure and confiscation. What is particularly disturbing is that no prosecution witness did ever explain why these procedures were not followed.

**KENNETH SANTOS Y ITALIG, *Accused-Appellant*–versus- PEOPLE, *Plaintiff-Appellee***

GR No. 232950, SECOND DIVISION, August 13, 2018, PERLAS-BERNABE, J.

*As a general rule, the apprehending team must strictly comply with the foregoing procedure. However, failure to do so will not render the seizure and custody over the items as void and invalid provided: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.For the saving clause to apply, it is important that the prosecution should explain the reasons behind the procedural lapses and that the integrity and value of the seized evidence had been preserved.Further, the justifiable ground for non-compliance must be proven as a fact, as the Court cannot presume what these grounds are or that they even exist.*

**FACTS:**

The prosecution alleges that the team of police officers led by one Police Chief Inspector Mendoza and consisting of Police Officer (PO) 3 Jeffred Pacis (PO3 Pacis), Senior Police Officer (SPO) 1 John Bombase (SPOl Bombase), a certain PO3 Ablaza, and PO2 Joel Rosales (PO2 Rosales) conducted a routine patrol along Caloocan City. Thereafter, PO3 Pacis and SPO1 Bombase rested for a while in front of a store. PO3 Pacis noticed petitioner, standing at a street comer and removing something from his pocket. PO3 Pacis saw that it was a plastic sachet, prompting him to alert SPO1 Bombase. Discreetly, they approached petitioner to further scrutinize what he was holding in his hands. At a distance of an arm's length, PO3 Pacis saw that petitioner was holding a plastic sachet containing *marijuana*. PO3 Pacis conducted a search on the body of petitioner after Bombase informed the accused of his rights. The search yielded another twelve plastic sachets of *marijuana* from petitioner's pocket. PO3 Pacis marked the seized plastic sachets, after which, they returned to the Station Anti-Illegal Drugs, Samson Road, Caloocan City, and turned over the confiscated plastic sachets and the person of petitioner to the investigator. Subsequently, petitioner and the confiscated sachets were brought to the crime laboratory for examination. While petitioner tested negativefor drug use, the specimens found in the plastic sachets tested positive for *marijuana*, a dangerous drug.

For his defense, petitioner claimed that he was watching a basketball game when five men approached him and invited him to the police station. When he asked what his violation was, they merely told him to go with them. He was first brought to the Diosdado Macapagal Medical Center (now Caloocan City Medical Center) where he was examined and thereafter, to the police station where he was frisked and the police recovered his cellphone and wallet. Subsequently, two persons, who introduced themselves as "Tanod" and "Ex-O," arrived and claimed to be the victims of a robbery-snatching incident. However, they denied that petitioner was the perpetrator thereof. After

they left, the police asked petitioner for P10,000.00; otherwise, they would file a criminal case against him. When petitioner replied that he had no money, they showed him an ice bag containing dried *marijuana* leaves, which they threatened to use as evidence against him. The following day, he was subjected to inquest proceedings.

**ISSUE:**

Whether the accused is guilty beyond reasonable doubt of violating RA 9165 (NO)

**RULING:**

Notwithstanding the validity of petitioner's warrantless arrest, however, the Court wants to acquit him on the basis of the non-observance of the stringent requirements under the IRR of RA 9165 which provides that there should be a physical inventory and photograph in the presence of a representative from the DOJ or media, an elected public official.

As a general rule, the apprehending team must strictly comply with the foregoing procedure. However, failure to do so will not render the seizure and custody over the items as void and invalid provided: (*a*) there is justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.For the saving clause to apply, it is important that the prosecution should explain the reasons behind the procedural lapses and that the integrity and value of the seized evidence had been preserved.Further, the justifiable ground for non-compliance must be proven as a fact, as the Court cannot presume what these grounds are or that they even exist.

As the records disclose, there were unjustified deviations committed. by the police officers in the handling of the confiscated items after petitioner's arrest in breach of the chain of custody procedure as discussed above. First, while it is true that a physical inventoryof the seized items was prepared by the investigating officer, SPO3 Fernando Moran (SPO3 Moran), no photographs thereof were taken. Second, although it appears that the physical inventory had been prepared in the presence of petitioner who merely refused to sign, it was not shown that a representative from the media and the Department of Justice (DOJ), as well as an elected public official had been present during the inventory. If any of them had been present, they should have signed the physical inventory itself and been given a copy thereof.

The mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, as in this case, fails to approximate compliance with the mandatory procedure under Section 21 of RA 9165.

To make matters worse, no practicable reasons were given by the arresting officers, such as a threat to their safety and security or the time and distance which the other witnesses might need to consider, for such non-compliance. It is well-settled that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality. Therefore, it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure so as to convince the Court that the failure to comply was reasonable under the given circumstances.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – HENRY BANQUILAY Y ROSEL, *Accused-Appellant.***
G.R. No. 231981, FIRST DIVISION, August 20, 2018, PERALTA, *J.*

*The Court held that "**if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to the inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case**." The Court further held that r**equirements of marking of the seized items, conduct of inventory, and taking of photographs in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance.***

***However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence**, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.*

**FACTS:**

Several Philippine Drug Enforcement Agency (*PDEA*) agents received instructions from their superior to conduct a buy-bust operation. Upon reaching the town proper, IO1 Katangkatang and the informant proceeded to the pharmacy store as agreed. The informant approached Banquilay and introduced IO1 Katangkatang as the buyer, and the latter asked if the "item" was available. Banquilay, in response, asked if they had the money. After handing the marked P1,000.00 bill to Banquilay, he handed one (1) heat-sealed sachet containing a white crystalline substance which he suspected to be "*shabu*." After receiving the sachet, IO1 Katangkatang initiated the agreed upon signal by sending a missed call to IO3 Tablate.

IO3 Tablate and PO2 Vivero saw that Banquilay was heading towards the bus terminal and they ordered him to stop announcing that they were PDEA agents and arrested Banquilay thereafter. Banquilay was then brought to the Caibiran Police Station wherein the inventory was then conducted in the presence of Banquilay, the elected official, and the media representative. IO1 Katangkatang placed his initials "FYK" on the plastic sachet. Past midnight, PO1 Canaleja received a transparent plastic sachet containing a white crystalline substance and marked with "FYK" for laboratory examination. After receipt, he placed the same in a locker that only he could access. In the morning, he turned over the sachet to PSI Malibago for examination. Based on PSI Malibago's examination, the white crystalline substance tested positive for *methamphetamine hydrochloride* otherwise known as "*shabu*."

On appeal, Banquilay argued that the Court of Appeals failed to consider that there were **two (2) simultaneous buy-bust operations** that were conducted on that particular day, **which utilized the same poseur-buyer.** Hence, the **integrity of the seized *shabu*** was compromised as there was no evidence to prove that it was still in the hands of the poseur-buyer IO1 Katangkatang, who went to participate in the other buy-bust operation. He also argues that the prosecution failed to establish the **unbroken chain of custody** of the seized item since the **marking and inventory of the same was done in the police station two (2) hours after the buy-bust operation, and not in the place of seizure as required by law.**

**ISSUE:**

Whether the guilt of the accused was established beyond reasonable doubt. (YES)

**RULING**

Banquilay failed to provide an explanation as to the positive testimony of the witnesses that the marked P1,000.00 bill was retrieved from his person, which IO1 Katangkatang handed to him in exchange for one (1) plastic sachet containing white crystalline substance. It is important to note that, despite Banquilay's claims that the integrity of the evidence seized was compromised when IO1 Katangkatang proceeded to the other buy-bust operation, the marked P1,000.00 bill remained in his person while he was brought to the Caibiran Police Station.

Furthermore, the chain of custody did not suffer from serious flaws. The Court held that "**if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to the inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case**." The Court further held that r**equirements of marking of the seized items, conduct of inventory, and taking of photographs in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance.**

**However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence**, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

The testimony of IO1 Katangkatang was well corroborated in its material points by the operation team leader IO3 Tablate, and the back-up arresting officer, PO2 Vivero, and that the plastic sachet of *shabu* was positively identified by IO1 Katangkatang during trial. These facts persuasively prove that the plastic sachet of *shabu* presented in court was the same item sold by Banquilay to IO1 Katangkatang during the buy-bust operation. Therefore, the integrity and evidentiary value thereof was duly preserved. The integrity of the evidence is presumed to be preserved unless there is showing of bad faith, ill-will, or proof that the evidence has been tampered with.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus – BENJAMIN FERIOL Y PEREZ, *Accused-Appellant.***
G.R. No. 232154, SECOND DIVISION, August 20, 2018, PERALTA, *J.*

*Section 21, Article II of RA 9165 requires that the apprehending team shall, among others,* ***immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official****. However,* **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**

**FACTS:**

The Makati City Police received an information from a confidential info ant (CI) that a certain "Allan," who was later on identified as Feriol, was engaged in illegal drug activities along Sampaloc Street, Barangay Cembo, Makati City. Acting on the information, a buy-bust team was organized. The team, together with the CI, proceeded to the target area where the latter introduced MADAC Encarnacion to Feriol as buyer of *shabu.* MADAC Encarnacion handed over the marked money in the amount of P500.00 to Feriol who, in turn, gave him a small plastic sachet containing white crystalline substance. MADAC Encarnacion then executed the pre-arranged, signal, causing PO1 Angulo to rush and assist him in arresting Feriol. The buy-bust team conducted a body search upon Feriol and recovered from the latter's left pocket the marked money. Due to security reasons, the buy-bust team brought Feriol and the seized items to the barangay hall, where the required inventory and photography were conducted in the presence of Feriol and the Barangay Kagawad. Shortly after, the said letter request and the plastic sachet were given to MADAC Encarnacion, who delivered the same to the crime laboratory for examination, during which the substance recovered from Feriol tested positive for the presence methamphetamine hydrochloride, a dangerous drug.

**ISSUE:**

Whether the guilt of the accused was established beyond reasonable doubt. (NO)

**RULING**

Section 21, Article II of RA 9165 outlines the procedure which the apprehending officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official**. **Without the insulating presence of the required witnesses, the evils of switching, 'planting' or contamination of the evidence remains which negates the integrity and credibility of the seizure and confiscation of the said drugs.**

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**

In this case, while the, inventory and the photography of the seized items were made in the presence of Feriol and an elected public official, the **records do not show that the said inventory and photography were done before any representative from the DOJ and the media.** The apprehending officers did not bother to acknowledge or explain such lapse, as the records even fail to disclose that there was an attempt to contact or secure these witnesses' presence.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* CHRISTOPHER BAPTISTA Y VILLA, *Accused-Appellant*.**

G.R. No. 225783, SECOND DIVISION, August 20, 2018, PERLAS-BERNABE, *J.*:

*The apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police Crime Laboratory within twenty-four (24) hours from confiscation for examination.*

*In this case while the inventory and photography of the seized plastic sachet were conducted in the presence of Baptista and a representative from the media, the same were not done in the presence of an elected public official and a representative from the DOJ as required by the rules prevailing at that time.*

**FACTS:**

On October 3, 2011, a confidential informant (CI) told Intelligence Officer 1 (IO1) Dexter D. Regaspi (IO1 Regaspi) that a certain Christopher Baptista alias "Toti" was selling *shabu* at Brgy. 8, San Nicolas, Ilocos Norte and other nearby barangays. The CI and IO1 Regaspi then arranged a meet-up with Baptista who, however, could not sell them *shabu* worth P500.00 at the time because he had no available stock. As such, IO1 Regaspi and the CI returned to the office where they planned a buy-bust operation.

At around seven (7) o'clock in the evening, the buy-bust team went to the transaction area. IO1 Regaspi gave the marked money to Baptista, who, in turn, handed over one (1) heat-sealed plastic sachet. After examining the same, IO1 Regaspi executed the pre-arranged signal by removing his ball cap and immediately declared his authority as a Philippine Drug Enforcement Agency (PDEA) agent, while Police Officer 3 Joey P. Aninag (PO3 Aninag) and the rest of the buy-bust team rushed to the scene.[8] IO1 Regaspi then marked the plastic sachet with his initials "DDR," but since it was about to rain, the requisite inventory could not be conducted. Thus, the team went back to the PDEA Office wherein IO1 Regaspi prepared the inventory[9] of the seized items in the presence only of a media representative, while IO1 Ranel Cañero took photographs[10] of the same.[11] After the requests for laboratory[12] and medical examinations[13] were made, the apprehending officers proceeded to the Ilocos Norte Police Provincial Crime Laboratory Office, where they were informed that there was no chemist available.

The RTC found Baptista guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs. On appeal the CA affirmed *in toto* the ruling of the RTC.

**ISSUE:**

Whether or not Baptista's conviction for the crime of Illegal Sale of Dangerous Drugs should be upheld (NO)

**RULING:**

The prosecution has to show an unbroken chain of custody over the dangerous drug so as to obviate any unnecessary doubts on the identity of the dangerous drug on account of switching, "planting," or

contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment the illegal drugs are seized up to their presentation in court as evidence of the crime.

In this regard, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[32] Under the said section, prior to its amendment by RA 10640,[33] the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police Crime Laboratory within twenty-four (24) hours from confiscation for examination.

Records disclose that while the inventory and photography of the seized plastic sachet were conducted in the presence of Baptista and a representative from the media, the same were not done in the presence of an elected public official and a representative from the DOJ as required by the rules prevailing at that time.

In this case, IO1 Regaspi did not provide a sufficient explanation why no barangay official was present during the requisite inventory and photography. Simply stating that the witnesses were invited, without more, is too plain and flimsy of an excuse so as to justify non-compliance with the positive requirements of the law. Worse, the police officers had no qualms in admitting that they did not even bother contacting a DOJ representative, who is also a required witness. Verily, as earlier mentioned, there must be genuine and sufficient efforts to ensure the presence of these witnesses, else non-compliance with the set procedure would not be excused.

**PEOPLE, *Plaintiff-Appellee*, v. JOSEPH PONTIJOS LIBRE, *Accused-Appellant*.**

GR No. 235980, Second Division, August 20, 2018, BERNABE, *J.*:

*According to jurisprudence, the law requires the presence of an elected public official, as well as representatives from the DOJ and the media in order to remove any suspicion of tampering, switching, planting or contamination of evidence which could considerably affect a case, and thus, ensure that the chain of custody rule is observed. Since the police actions relative to the handling of the drugs seized in this case were committed in 2012, and thus prior to RA 9165's amendment by RA10640, the presence of all three witnesses during the conduct of inventory and photography is required.*

*While the prosecution was able to show that the seized item was inventoried and photographed by the police officers in the presence of the accused, representatives from the media, and barangay councilor Quintana, records fail to disclose that said inventory and photography were conducted in the presence of a representative from the DOJ as required by law.*

**FACTS:**

On June 5, 2012, the Regional Anti-Illegal Drug Special Operations Task Group 7 (RAIDSOTG-7), Cebu City received a report from a confidential informant that Leonila and a cohort, later identified as

Joseph, were engaged in selling *shabu* in Cebu City and neighboring cities and municipalities. Acting upon the report, Police Officer 1 Julius Codilla (PO1 Codilla), together with the confidential informant, proceeded to Colonade Mall at Colon St., Cebu City, where he was introduced to the accused as buyer of *shabu*. It was agreed that a sale of 25 grams of *shabu* for P100,000.00 would take place between twelve (12) o'clock that midnight and one (1) o'clock in the morning of the next day at a designated place along Pelaez Extension, Barangay Sta. Cruz, Cebu City.

PO1 Codilla and the informant waited along the road for the accused's arrival, carrying with them the boodle money. Soon after, the accused arrived, got out from their car, and approached PO1 Codilla. Joseph then took out a medium-sized transparent plastic sachet of suspected *shabu*from the right pocket of his maong pants and handed the same to PO1 Codilla, who inspected it and gave the marked money to Leonila, who demanded payment. At that point, PO1 Codilla reversed his ball cap – the pre-arranged signal – which prompted the other members of the buy-bust team to rush towards the scene, informed the accused of their constitutional rights, and arrested them. The team recovered the marked money from Leonila and likewise seized the accused's vehicle, ignition key, and cellphones.

PO1 Codilla marked the confiscated plastic sachet with "JPL/LPL-BB 06/06/12" and conducted an actual physical inventory at the crime scene. The inventory was witnessed by representatives from the media and a councilor of Barangay Sta. Cruz. Photographs of the seized items, the accused, and the witnesses signing the inventory were taken. Subsequently, the accused were brought to the RAIDSOTG-7 and eventually detained at Station 3, Cebu City Police Office holding cell; while the marked sachet was submitted to the Philippine National Police (PNP), Regional Crime Laboratory Office 7 for examination, and later tested positive for the presence of methamphetamine hydrochloride.

The RTC found the accused guilty beyond reasonable doubt of violating Section 5, in relation to Section 26, Article II of RA 9165. On appeal the CA affirmed the accused's conviction *in toto.*

**ISSUE:**

Whether or not the conviction of the accused for violation of Section 5, Article II of RA 9165 should be upheld. (NO)

**RULING:**

As part of the procedure, the apprehending team shall, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person/s from whom the items were 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 of the same, and, within twenty-four (24) hours from confiscation, the seized drugs must be turned over to the PNP Crime Laboratory for examination.

According to jurisprudence, the law requires the presence of an elected public official, as well as representatives from the DOJ and the media in order to remove any suspicion of tampering, switching, planting or contamination of evidence which could considerably affect a case, and thus, ensure that the chain of custody rule is observed. Since the police actions relative to the handling of the drugs seized in this case were committed in 2012, and thus prior to RA 9165 's amendment by

RA 10640, the presence of all three witnesses during the conduct of inventory and photography is required.

Applying the above principles, the Court finds that the police officers in this case committed unexplained and unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the item purportedly seized from the accused.

While the prosecution was able to show that the seized item was inventoried and photographed by the police officers in the presence of the accused, representatives from the media, and *barangay* councilor Quintana, records fail to disclose that said inventory and photography were conducted in the presence of a representative from the DOJ as required by law.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* CELSO PLAZA Y CAENGLISH ALIAS JOBOY PLAZA, JOSEPH GUIBAO BALINTON ALIAS JOABS, *Accused-Appellants*.**

G.R. No. 235467, THIRD DIVISION August 20, 2018, GESMUNDO, *J.*:

*As to the chain of custody, the Court has consistently ruled that the following links must be established:*

*First, 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.*

*It has been held that there is a gap or break in the fourth link of the chain of custody where there is absence of evidence to show how the seized shabu was handled, stored, and safeguarded pending its presentation in court.[20] In some instances, when the stipulation failed to identify who received the shabu at the crime laboratory and who exercised custody and possession before and after it was examined, the Court similarly considered that there was a gap in the chain of custody.*

**FACTS:**

That at more or less 7:05 o'clock in the evening of March 28, 2011 at Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver one (1) sachet of methamphetamine hydrochloride, otherwise known as shabu weighing zero point zero five two four (0.0524) gram, a dangerous drug to a poseur buyer for a consideration of five hundred ([P]500.00) pesos.

The RTC found that the elements for proving violation of Section 5, Article II of R.A. No. 9165 were sufficiently shown. On appeal, the CA affirmed the ruling of the RTC in *toto.*

**ISSUE:**

Whether there was compliance with the requirements under Section 21 of R.A. No. 9165. (NO)

**RULING:**

As to the chain of custody, the Court has consistently ruled that the following links must be established:

*First*, 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.[14]

In this case, accused-appellants question the inability of PDEA Agent Subang to mark, inventory, and photograph the sachet of *shabu* immediately after its seizure, and the lack of proof on the necessary steps taken to ensure that the sachet presented to the RTC was the same that was allegedly marked. Accused-appellants also raise the point that there was no testimony as to how the alleged sachet was handled and stored to preserve its integrity. These arguments are well-taken.

The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and there was no opportunity for someone not in the chain to have possession of the same.[19]

It has been held that there is a gap or break in the fourth link of the chain of custody where there is absence of evidence to show how the seized *shabu* was handled, stored, and safeguarded pending its presentation in court.[20] In some instances, when the stipulation failed to identify who received the *shabu*at the crime laboratory and who exercised custody and possession before and after it was examined, the Court similarly considered that there was a gap in the chain of custody.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* ANTHONY MADRIA Y HIGAYON, *Accused-Appellant*.**

G.R. No. 233207, FIRST DIVISION August 20, 2018, TIJAM, *J.*:

*While a buy-bust operation has been proven to be "an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, it has a significant downside that has not escaped the*

*attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion." Thus, courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Accordingly, specific procedures relating to the seizure and custody of drugs have been that the prosecution must adduce evidence that these procedures have been followed in light with the chain of custody rule in drug cases.*

*Based on IO1 Siglos' testimony, it can be deduced, that at the outset, even before the buy-bust team initiated its operation on Madria and De Ala, no arresting officer was so minded to mark or even take a photo of the possible contraband that they may recover from both accused. This is manifested by the fact that none of them had a ball pen, sign pen, masking tape and camera - basic tools that can be used to mark the seized items. To put it differently, the allegation regarding the arresting officers' supposed security being compromised was already predetermined. Obviously, right from the start, the arresting officers had no intention to comply with the law by marking the seized items in the presence of the accused and immediately upon confiscation.*

*Due to this break in the chain of custody, it was possible that the seized item subject of the sale transaction was swapped with the seized items subject of the illegal possession case, while the contraband was being transported from the crime scene to the PDEA office.*

**FACTS:**

At around 6:00 p.m., IO2 Pimentel and IA5 Atila rode on separate vehicles and proceeded to the area of operation in Justo Ramonal Street, Brgy. 29, Cagayan de Oro City. Thereafter, the CI and IO1 Siglos rode on a taxi and followed them. Upon arrival at the area, the CI alighted from the taxi and approached Madria and De Ala who were standing outside a store. They followed the CI toward the place where the taxi was parked. Madria stood at the right side of the taxi's door, while De Ala stood at the left side. When the right side door of the taxi opened, De Ala asked IO1 Siglos, who was still inside the taxi, as to how much she was going to buy, but IO1 Siglos insisted to see the shabu first. De Ala turned to Madria, who then handed to him a small heat-sealed transparent plastic sachet. De Ala in turn gave it to IO1 Siglos. After examining the sachet, IO1 Siglos gave the buy-bust money to De Ala, who then passed it to Madria. Immediately, IO1 Siglos "missed-called" IO2 Pimentel, as the pre-arranged signal that the sale had already been consummated. IO2 Pimentel and the rest of the buy-bust team rushed in and arrested appellant Madria and De Ala. IO2 Pimentel bodily searched Madria and De Ala and recovered six (6) heat-sealed plastic sachets from Madria, including the marked money, but nothing was recovered from De Ala.

Thereafter, they proceeded to the PDEA office, where IO2 Pimentel marked with his initial the confiscated items, *i.e.*, one (1) heat-sealed plastic sachet and six (6) heat-sealed plastic sachets; prepared the inventory receipts; and took pictures thereof.

The RTC found the accused guilty beyond reasonable doubt of the offense defined and penalized under Section 5 and 11, Article II of R.A. 9165. The CA affirmed the ruling of the RTC in *toto.*

**ISSUE:**

Whether or not the prosecution proved the guilt of the accused beyond reasonable doubt. (NO)

**RULING:**

While a buy-bust operation has been proven to be "an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, it has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion." Thus, courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Accordingly, specific procedures relating to the seizure and custody of drugs have been that the prosecution must adduce evidence that these procedures have been followed[21] in light with the chain of custody rule in drug cases.

Based on IO1 Siglos' testimony, it can be deduced, that at the outset, even before the buy-bust team initiated its operation on Madria and De Ala, no arresting officer was so minded to mark or even take a photo of the possible contraband that they may recover from both accused. This is manifested by the fact that none of them had a ball pen, sign pen, masking tape and camera - basic tools that can be used to mark the seized items. To put it differently, the allegation regarding the arresting officers' supposed security being compromised was already predetermined. Obviously, right from the start, the arresting officers had no intention to comply with the law by marking the seized items in the presence of the accused and immediately upon confiscation.

Due to this break in the chain of custody, it was possible that the seized item subject of the sale transaction was swapped with the seized items subject of the illegal possession case, while the contraband was being transported from the crime scene to the PDEA office. This is material considering that the imposable penalty for illegal possession of *shabu* depends on the quantity or weight of the seized drug. The Court has previously held that, "failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence warranting an acquittal on reasonable doubt." In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee* -versus- HASHIM ASDALI y NASA, *accused-appellant***

G.R. No. 219835, FIRST DIVISION, August 29, 2018, TIJAM, *J.*

*The corpus delicti in cases of illegal sale and illegal possession of dangerous drugs is the dangerous drug itself; the prosecution has the burden to prove guilt beyond reasonable doubt by presenting in evidence the corpus delicti of the case. Prosecution must show strict compliance on the conditions laid down in Section 21(a) of RA 9165.*

*It is a statement of procedure for compliance with the imperative that the thing presented as proof of violation of RA 9165 is precisely that which was confiscated from the accused. When it is not followed without any justifiable reason, it will result in an acquittal of the accused.*

*Section 21(a) of RA 9165 demands that integrity and evidentiary value of the dangerous drug be properly preserved. Further, the chain of custody requirement ensures that unnecessary doubt respecting the identity of the evidence are removed are at the very least, minimized.*

*In the present case, the prosecution failed to prove that the two conditions, (1) that the deviation as called for, and (2) that the identity and integrity of the evidence could not have been, at any stage, compromised.*

**FACTS**:

On 6 September 2004, in Zamboanga City Police Station, a civilian informant (CI) reported to Senior Police Officer 1 Amado Mirasol (SPO1 Mirasol), team leader of the Anti-Illefal Drugs Special Operation task Force, the illegal drug pushing activities of Hashim Asdali. SPO1 Mirasol gathered his team members, including CI, conducted a briefing for the entrapment of Hashim Asdali. PO1 Bobon was designated as poseur-buyer, and was instructed to buy 2 sachets of shabu worth 200 pesos.

At 11:00 a.m. of the same day, the entrapment team proceeded to with their plan. Once CI spotted Hashim, CI inquired from him if he still had some shabu, pointing to PO1 Bobon as the buyer. Hashim asked for money from PO1 Bobon, who then gave the 200-peso marked money to Hashim. Then, Hashim pulled out two plastic sachets containing white crystalline substance and handed it over to PO1 Bobon.

PO1 Bobon instantly grabbed Hashim's right arm and called his other team members per their pre-arranged signal, introduced himself to Hashim as a police officer, then handcuffed Hashim.

Hashim was then frisked. The team recovered the marked money and 16 more sachets of shabu inside a cigarette pack. Hashim was brought to the police station where PO1 Bobon and SPO1 Rivera marked their initials on the 2 sachets that were the subject of the buy-bust operation. They also marked the 16 sachets they seized during the search. The sachets were further handed over PO3 Allan Benasig who also placed his own initials. PO3 Benasing then prepared the request for the laboratory examination and personally delivered the marked specimens to the PNP Crime Laboratory. The specimens tested positive for shabu, a dangerous drug.

RTC found Hashim guilty for the sale and illegal possession of dangerous drugs.

CA affirmed his conviction.

**ISSUE**:

Whether or not the accused-appellant is guilty of illegal sale and illegal possession of dangerous drugs. (NO)

**RULING:**

There is insufficient basis for a finding of guilt on the accused-appellant. First, the marking of the sachets allegedly recovered from accused-appellant was conducted at the police station, without any statement that the marking was done in the presence of the accused-appellant, nor was there any reason given as to why it was not done in the vicinity of the arrest. Second, there was no inventory made, nor photographs taken of the seized evidence. Third, there were no media representative, elected official, or representative from the DOJ. Last, no justifiable reasons were given as to why the team deviated from the proper procedure.

> SEC. 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:
>
> (a) The apprehending office/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.

The prosecution failed to prove that the two conditions, (1) that the deviation as called for, and (2) that the identity and integrity of the evidence could not have been, at any stage, compromised. These two are the very spirit and intent of the chain of custody requirement. The chain of custody requires a strict compliance, not a mere substantial compliance because of the unique characteristic of illegal drugs being susceptible of tampering, altering, and/or substitution.

Since the integrity of the *corpus delicti* of the crams charged has not been established, accused-appellant is acquitted.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* -versus- DANNY LUMUMBA y MADE, *accused-appellant.***

G.R. No. 232354, FIRST DIVISION, August 29, 2018, TIJAM, *J.*

*The rules clearly provide that the apprehending team should mark and conduct a physical inventory of the seized items, and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media.*

*The law mandates that the insulating witnesses be present during the marking, the actual inventory, and taking of photographs of the seized items to deter possible planting of evidence.*

*In the present case, the inventory receipt was not signed by the accused-appellant and only the media representative was present and signed the said inventory receipt. The police officers failed to present any representative from the DOJ and from the barangay*

**FACTS:**

On September 19, 2008, a confidential informant went to the QCPD to report the illegal drug activities of accused-appellant. Police Inspector Romeo Rabuya directed PO1 Franklin Gadia and PO1 Erwin Bautista to validate the report and conduct surveillance. They were able to confirm that accused-appellant was selling illegal drugs and conducted a buy-bust operation. The operation was successful and the seized item were inventories and photographed in the presence of the accused-appellant, other police operatives, and media representative.

During trial, PO1 Gadia claimed that the inventory and photographs were taken at the actual site, however, PO1 Bautista claimed otherwise. The accused-appellant denied the allegations against him and claimed that he was only invited by the two police officers to go to the precinct. He claimed that the marijuana was planted on him.

The RTC convicted accused-appellant for violation of R.A. 9165. On appeal, the Court of Appeals affirmed the decision of the lower court. Hence, the accused appealed before the Supreme Court.

**ISSUE:**

Whether or not there was an unbroken chain of custody (NO)

**RULING:**

R.A. 9165, as amended by R.A. 10640 requires that the apprehending team should mark and conduct a physical inventory and photographs of the seized items immediately after confiscation. It should be done in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media. It was intended to ensure that the integrity and evidentiary value of the seized drugs are preserved.

In case of non-compliance, the prosecution must be able to explain the reason behind the procedural lapses. The prosecution may show that (a) there is justifiable ground for the non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.

In the present case, the inventory receipt was not signed by the accused-appellant and only the media representative was present and signed the said inventory receipt. The police officers failed to present any representative from the DOJ and from the barangay. The Court also noted the disparity in the testimonies of PO1 Gadia and PO1 Bautista as to where the photographs were taken.

The breaches in the procedure committed by the police officers showed that the integrity and evidentiary value of the corpus delicti had been compromised.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* -versus- YASSER ABBAS ASJALI, *accused-appellant***

G.R. No. 216430, FIRST DIVISION, September 3, 2018, LEONARDO-DE CASTRO, *C.J.*

*In cases of illegal sale and illegal possession of dangerous drugs, the State bears the burden of proving the elements of the sale and illegal possession, and proving the corpus delicti of the crime. The corpus delicti is the dangerous drug itself; it is the body or substance of the crime.*

*The corpus delicti is established by proof that the identity and integrity of the prohibited drug seized or confiscated has been preserved. The prosecution must account for each link in the chain of custody over the dangerous drug from the moment it was seized up to its presentation in court as evidence. Simply put, the dangerous drug presented in court as evidence must be the very same thing that was seized.*

**FACTS**:

On 19 August 2003, SPO1 Jacinto received an information from his confidential informant that accused-appellant was illegally peddling dangerous drugs at their local wharf in Zamboanga. SPO1 organized a buy-bust team, where PO2 Seril was designated as the poseur-buyer, The team and the confidential informant proceeded with their plan so they went to the local wharf at around 5 p.m.

Upon arrival of the accused-appellant, confidential informant and PO2 Seril approached him. Confidential informant introduced PO2 Seril, then accused-appellant agreed to sell shabu to PO2 Seril for P100. After handing over the marked P100-bill and receiving a packet of shabu in return, PO2 scratched his head, signifying their pre-arranged signal that the sale had consummated.

SPO1 Jacinto and SPO2 Lahaman approached accused-appellant and identified them as police officers, then arrest him for illegally selling dangerous drugs. SPO1 Jacinto searched accused-appellant's body and recovered the marked money and 2 more sachets of shabu.

Thereafter, accused-appellant was brought to the police station. PO2 Seril kept with him the packet of shabu sold to him, while SPO1 Jacinto kept the marked P100-bill and the 2 sachets of shabu he fount in accused-appellant's possession.

At the police station, PO2 Seril and SPO1 Jacinto turned over the marked money and the sachets of shabu to P/Insp. Tubo, who then marked the packets, requested and submitted said items for forensic analysis. The examination yielded a positive result for the presence of shabu, a dangerous drug.

RTC found accused-appellant guilty of illegal sale and illegal possession of dangerous drugs.

CA affirmed his conviction.

**ISSUE**:

Whether or not the accused-appellant is guilty of illegal sale and illegal possession of dangerous drugs. (NO)

**RULING:**

The prosecution's evidence failed to establish that the buy-bust team complied with the directives under RA 9165 and its IRR.

(1) The markings on the 3 sachets of shabu was not done by any of the members of the buy-bust team, but by P/Insp. Tubo, at the police station where accused-appellant was subsequently brought after his arrest.

(2) There is no proof that the markings were done in the presence of the accused-appellant.

(3) There is neither proof that a physical inventory was done nor photographs of the seized drugs taken immediately upon accused-appellant's arrest or at the police station.

(4) There is no showing that representatives from the media and DOJ, and an elected public official were present at the place of arrest or in the police station.

(5) Noncompliance with the chain of custody rule by the buy-bust team was not explained or justified by the prosecution.

Section 2, Article II of the IRR of RA 9165 provides:

> SEC. 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:
>
> (a) The apprehending office/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.

Hence, the prosecution has not established the corpus delicti in the case. Accused-appellant is therefore acquitted.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* -versus- WILT SAM BANGALAN y MAMBA, *accused-appellant.***

G.R. NO. 232249, SECOND DIVISION, September 3, 2018, PERLAS-BERNABE, *J.*

*It is essential that the identity of the dangerous drug be established with moral certainty because the dangerous drug itself is the corpus delicti of the crim. The law requires the presence of certain witnesses to ensure the establishment of the chain of custody. Under the said law, if prior to the amendment of R.A. 9165 by R.A. 10650,* ***a representative from the media AND the Department of Justice*** *and* ***any elected public official*** *is required.*

*In the present case, the inventory of the seized item was not conducted in the presence of any representative of the DOJ and the media.*

**FACTS:**

On July 27, 2012, a team composed of members of the PNP Tuguegarao City Police Station counducted a buy-bust operation against Bangalan. A 8.12 grams of dried marijuana leaves were recovered from him. The team proceeded to the Tuguegarao City Police Station and the seized item was marked, photographed, and inventoried in the presence of Barangay Kagawad Cabildo.

In his defense, Bangalan denied the charges against him and claimed that he was framed up by the police.

The RTC convicted Bangalan of the crim of Illegal Sale of Dangerous Drugs. On appeal, the Court of Appeals affirmed the decision of the lower court. Hence, the appeal before the Supreme Court.

**ISSUE:**

Whether or not the prosecution established an unbroken chain of custody. (NO)

**RULING:**

It is essential that the identity of the dangerous drug be established with moral certainty because the dangerous drug itself is the corpus delicti of the crime. Failure to prove the intergrity of the corpus delicti renders the evidence insufficient to prove the guilt of the accused. Hence, it warrants an acquittal.

The law requires that the said inventory and photography be done in the presence of the accused or from whom the items were seized, or his representative or counsel. The law also requires certain witnesses, if prior to the amendment of R.A. 9165 by R.A. 10650, **a representative from the media AND the Department of Justice** and **any elected public official** is required. If the crime was committed after the amendment of R.A. 9165, the law requires an elected public official and a representative of the National Prosecution Service or the media.

The law requires the presence of these witnesses to ensure the establishment of the chain of custody.

In the present case, the inventory of the seized item was not conducted in the presence of any representative of the DOJ and the media. PO2 Albert Caranguian claimed that he failed to remember if such witnesses were present during the inventory. Such an excuse is not within the saving clause of R.A. 9165. The prosecution failed to establish that there was an unbroken chain of custody.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* ROMY LIM y MIRANDA, *accused-appellant*.**

G.R. No. 231989, EN BANC, September 4, 2018, PERALTA, *J.*

*The absence of the 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. Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance.*

*In this case, IO1 Orellan testified that no members of the media and barangay officials arrived at the crime scene because it was late at night and it was raining, making it unsafe for them to wait at Lim's house. The Court held that these justifications are unacceptable as there was no genuine and sufficient attempt to comply with the law.*

**FACTS:**

Based on a report of a confidential informant *(CI)* that a certain "Romy" has been engaged in the sale of prohibited drugs, hence, the proper officials conducted a buy-bust operation. Upon arrest, the accused, Lim, together with a certain Gorres, were ordered to put their hands on their heads and to squat on the floor. The Miranda rights were recited to them. Thereafter, a body search was conducted on both. When Lim was frisked, no deadly weapon was found, but something was bulging in his pocket. He was ordered to pull it out. Inside the pocket were the buy-bust money and a transparent rectangular plastic box about 3x4 inches in size. They could see that it contained a plastic sachet of a white substance. As for Gorres, no weapon or illegal drug was seized. IO1 Orellan took into custody the P500.00 marked money, the plastic box with the plastic sachet of white substance, and a disposable lighter. While in the house, IO1 Orellan marked the two plastic sachets. The officials testified that despite exerting efforts to secure the attendance of the representative from the media and *barangay* officials, nobody arrived to witness the inventory-taking.

**ISSUE**:

Whether or not Lim is guilty beyond reasonable doubt for violation of RA 9165 or the Comprehensive Dangerous Drugs Act of 2002 (NO)

**RULING**:

Section 21(1) of RA 9165 provides that 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.

Evident, however, is the absence of an elected public official and representatives of the DOJ and the media to witness the physical inventory and photograph of the seized items. In fact, their signatures do not appear in the Inventory Receipt. In cases of violation of RA 9165, 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 justifiable reason/s. Earnest effort to secure the attendance of the necessary witnesses must be proven. Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance.

In this case, IO1 Orellan testified that no members of the media and barangay officials arrived at the crime scene because it was late at night and it was raining, making it unsafe for them to wait at Lim's house. It was also similarly declared that the inventory was made in the PDEA office considering that it was late in the evening and there were no available media representative and barangay officials despite their effort to contact them. The Court held that these justifications are unacceptable as there was no genuine and sufficient attempt to comply with the law. The prosecution did not only failed to

present why they were not able to present witnesses but they also failed to establish the details of an earnest effort to coordinate with and secure presence of the required witnesses.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* EMMA T. PAGSIGAN, *accused-appellant*.**

G.R. No. 232487, FIRST DIVISION, September 3, 2018, TIJAM, *J*

*The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence. Non-compliance is tantamount to failure in establishing identity of corpus delicti, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused. Here, there was failure all together by the police to conduct the inventory and photograph the same before the insulating witnesses. Despite the attempts to clarify the lack of compliance with insulating witnesses, however, the fact remains that no inventory and photographs were taken or made even when the markings were made at the barangay hall.*

**FACTS:**

Based on an information from a confidential informant, a buy-bust team operation was conducted to apprehend the accused. Upon arrest, the accused was ordered to empty her pocket, and another plastic sachet of *shabu* and the marked money were recovered from accused-appellant. She was then brought to the barangay hall where the seized plastic sachets were marked by PO2 Constantino in the presence of barangay officials. The seized drugs were then turned over to the assigned investigator, who prepared the request for laboratory examination. PO3 Santos also delivered the plastic sachets to the Regional Crime Laboratory Office for forensic examination which were received by a certain PO2 Villar. The examination yielded positive results for methylamphetamine hydrochloride, or *shabu*. It was also testified that the conduct of the buy bust operation was conducted in a short period of time to prevent the escape of accused-appellant and that they were unable to take photographs because they had no camera, cellular phone and no resources to list evidence. He claimed that they did not have time to grab a piece of paper, pen and camera.

Accused-appellant questions her conviction and submits that the prosecution failed to prove beyond reasonable doubt the *corpus delicti* of the crime on account of substantial gaps in the chain of custody and points out the various non-compliance with Section 21 of R.A. No. 9165, *i.e.*, failed to have any inventory, confiscation receipt or photographs of the drugs allegedly seized, failed to present evidence to prove that they contacted any member of the media and the DOJ to witness the marking. She stresses that no justifiable ground to explain their failure to comply with the law was offered.

**ISSUE:**

Whether or not accused is guilty beyond reasonable doubt for violation of RA 9165 or the Comprehensive Dangerous Drugs Act of 2002 (NO)

**RULING**:

The rules provide that the apprehending team should mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence

of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence.

Here, there was failure all together by the police to conduct the inventory and photograph the same before the insulating witnesses.

In case of non-compliance, the prosecution must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are or that they even exist." Also, "the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist."

Here, we cannot accept the grounds or reasons cited by the police officers as justifiable to explain their non-compliance. We note that both police officers have been members of the force for more than five years and have stated that they are familiar with the rules set forth in R.A. No. 9165. Despite the same, the glaring non-compliance and seemingly nonchalant attitude in their attempts to comply with the said requirements appalls the Court. Had these police officers truly understood the utmost significance of the said requirements and what it seeks to protect, they would surely have found time to bring provisions to prepare an inventory, take photographs and ensure the presence of the insulating witnesses.

The Court ruled that non-compliance with the requirements of Section 21 of R.A. No. 9165 casts doubt on the integrity of the seized items and creates reasonable doubt on the guilt of the accused-appellant.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* RICARDO GUANZON y CENETA, *accused-appellant*.**

G.R. No. 233653, FIRST DIVISION, September 5, 2018, TIJAM, *J.*

*Time and again, this Court has consistently held that in prosecutions for illegal sale and illegal possession of dangerous drugs, the corpus delicti, apart from the elements of the offense, must be established beyond reasonable doubt. In illegal drug cases, the corpus delicti is the illegal drug itself. In other words, proving the existence of all the elements of the offense does not suffice to sustain a conviction. It must be proven that the chain of custody was not broken. Since the prosecution miserably failed to establish the first two links in this case, there is no more need to discuss the subsequent links. The totality of the evidence presented failed to prove the circumstances surrounding the marking of the seized drugs and the identity of the individual handling the same from the place of arrest, up to the police station.*

**FACTS:**

Acting on an information from a confidential informant that accused-appellant was selling drugs, the PNP immediately coordinated with the Philippine Drug Enforcement Agency (PDEA) and planned a buy-bust operation against Guanzon. Upon arrest, Guanzon was frisked. Recovered from him was the marked money and another plastic sachet of white crystalline substance. Thereafter, they informed Guanzon of his constitutional rights and brought him, together with the confiscated sachets, to their

office. At the office, PO2 Hernandez marked the sachet bought from Guanzon as specimen "A", and the sachet recovered from Guanzon as specimen "B". Thereafter, the sachets were delivered by PO2 Hernandez to the PNP Crime Laboratory Service for chemical examination. Both plastic sachets of white crystalline substance yielded positive results for the presence of Methamphetamine Hydrochloride or *shabu* based on the Chemistry Report, dated July 28, 2003, executed by Forensic Chemist.

**ISSUE**:

Whether or not Guanzon is guilty beyond reasonable doubt of violating RA 9165 or the Comprehensive Dangerous Drugs Act of 2002 (NO)

**RULING**:

Time and again, this Court has consistently held that in prosecutions for illegal sale and illegal possession of dangerous drugs, the *corpus delicti*, apart from the elements of the offense, must be established beyond reasonable doubt. In illegal drug cases, the *corpus delicti* is the illegal drug itself. In other words, proving the existence of all the elements of the offense does not suffice to sustain a conviction.

Although the incident in this case happened in 2003, the amendatory law, which bolsters the rule on chain of custody, should retroactively apply to Guanzon as it is more favorable to him. The rules provide that the apprehending team should mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media.

In the case at bar, the testimonial evidence adduced by the prosecution, on its own, clearly failed to establish the chain of custody of both drug specimens. Although the seized drugs were marked, circumstances surrounding the marking, such as the author, the time, and the place of marking, were not clearly established. Guanzon was also not present during the said marking.

Taking into consideration the absence of the accused during the marking, and the lack of a categorical statement by PO2 Hernandez that he is the author of the marking, we find that the first link in the chain of custody is broken. With regard to the second link, the contradicting testimonies of PO3 Paulos and SPO2 Abalos on the identity of the officer who had custody of the seized drugs from the place of arrest to the police station already cast serious doubts on whether the drugs brought to the police station is the same drugs seized from Guanzon at the place of arrest.

Since the prosecution miserably failed to establish the first two links in this case, there is no more need to discuss the subsequent links. The totality of the evidence presented failed to prove the circumstances surrounding the marking of the seized drugs and the identity of the individual handling the same from the place of arrest, up to the police station. The broken links in the chain of custody, taken together with the absence or non-submission of inventory and photographs to the court, show an utter lack of effort on the part of the police officers to comply with the mandatory procedures under the law.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* MARCELO SANCHEZ Y CALDERON, *Accused-Appellant*.** G.R. No. 221458, THIRD DIVISION, September 5, 2018, GESMUNDO, *J.*

*In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the corpus delicti of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."*

*Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, 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.*

*In the Joint Affidavit of Arrest executed by affiants PO1 Ignacio and PO1 Flores, they claimed that the specimen was marked with "AI-MS." However, PO1 Ignacio – the poseur-buyer and apprehending officer who marked the sachet of shabu – testified that he marked the specimen with his initials "AI" which means Aldrin Ignacio.*

*The Court cannot, however, treat the matter lightly because the identity and integrity of the corpus delicti becomes uncertain. There is now doubt whether the sachet marked with "AI," as testified to by the very witness who placed the said marking, was the same sachet marked with "AI-MS" which was brought to the crime laboratory and ultimately presented in court*

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*There are four (4) links in the chain of custody, to wit: first, 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.*

*The first link is crucial in proving the chain of custody. It is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. The value of marking of the evidence is to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until disposition at the end of criminal proceedings, obviating switching, "planting" or contamination of evidence. Thus, even if, as in this case, the seized item was immediately marked and the succeeding links have been established, the chain of custody is still deemed broken when reasonable doubt exist concerning the very marking placed on the specimen which could have successfully established the identity of the corpus delicti.*

*To reiterate, unexplained discrepancy in the markings of the seized dangerous drug, resulting in the uncertainty that said item was the exact same item retrieved from the appellant when he was arrested, is not a mere trivial matter, but a major lapse that is fatal to the prosecution's case.*

**FACTS:**

On December 14, 2006 at around 4:30 PM, Police Inspector Alberto Gatus (PI Gatus) directly received an information from a male informant, who appeared at the Galas Police Station, that a certain "Kiting" was engaged in the illegal drug trade. Thereafter, PI Gatus assigned PO1 Bautista to coordinate with the Philippine Drug Enforcement Agency (PDEA) and to prepare the necessary documentation for the conduct of a buy-bust operation.

In the briefing for the buy-bust operation, PO1 Ignacio was designated as the poseur-buyer and PO1 Flores as his backup. PI Gatus also provided PO1 Ignacio with two (2) one hundred peso bills marked with initials "AI."

At 7:00 o'clock in the evening of even date, the buy-bust team arrived at the place of operation. PO1 Ignacio and the informant alighted from the vehicle, and the latter pointed to a man whom he called "Kiting" standing in front of a house. They approached him and the informant introduced PO1 Ignacio. Kiting then asked PO1 Ignacio how much he would buy, to which the latter replied "Dalawang Piso" (which meant P200.00 worth). PO1 Ignacio handed the buy-bust money to Kiting who, in turn, placed the money inside his right pocket and, thereafter, gave PO1 Ignacio the plastic sachet. PO1 Ignacio then lit a cigarette, the pre-arranged signal, prompting PO1 Flores to approach them. When PO1 Ignacio saw the other policemen closing in on them, he immediately grabbed Kiting while PO1 Flores recovered the buy-bust money from Kiting's right side pocket. PO1 Ignacio showed the plastic sachet to PI Gatus and placed it inside another plastic sachet of suspected shabu and marked the same with his initials "AI." After the arrest, the buy-bust team proceeded to take the pictures of Kiting and the plastic sachet of suspected shabu.

At the police station, investigator PO1 Bautista booked Kiting and asked the latter to identify himself to which he answered, "Marcelo Sanchez." PO1 Bautista also received the buy-bust money and the plastic sachet of suspected shabu from PO1 Ignacio. He then prepared the inventory of the seized items and the requests for laboratory examination and drug dependency examination. He endorsed them to PO1 Ignacio, who brought the letter-requests and the specimen to the crime laboratory for examination. Engr. Jabonillo, a forensic chemical officer, received the letter-requests and the specimen which tested positive for methylamphetamine hydrochloride, a dangerous drug.

The appellant denied the charge that he was arrested in a legitimate buy-bust operation. He claimed that he was resting inside his house at around 5:00 PM of December 14, 2006 when the police officers suddenly barged into his house and searched for somebody. When the police officers did not find the person they were looking for, they arrested him instead. When they did not find anything, they got appellant's cellphone and wallet which contained P200.00. Thereafter, appellant was brought to the police station where he was told that if he could bring out the person they were looking for, he would be released. Later on, he was referred for inquest proceedings and was informed that a charge for selling illegal drugs would be filed against him.

RTC rendered the assailed judgment convicting the appellant of the crime charged. CA affirmed. It found no sufficient reason to depart or interfere with the findings of the court a quo on the credibility

of witnesses. The prosecution had amply proven all the elements of the drug sale beyond moral certainty. The CA also stressed that appellant's denial was not substantiated by clear and convincing evidence. There were no witnesses presented to substantiate his claim. Ultimately, the CA was convinced that the prosecution was able to prove appellant's guilt beyond reasonable doubt.

**ISSUE:**

Whether or not the guilt of the accused for the crime charged has been proven beyond reasonable doubt. (NO)

**RULING:**

To secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, the prosecution must establish the following elements: (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. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the appellant.

In this case, the identities of the buyer and the seller were duly established. The marked buy-bust money retrieved from the appellant during the entrapment operation was likewise identified. The prosecution witnesses had shown that appellant handed over the illegal drugs to PO1 Ignacio, who, in turn, gave the marked buy-bust money, thus, completing the drug deal.

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, 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.

The prosecution has the duty to prove every link in the chain, from the moment the dangerous drug was seized from the appellant until the time it is offered in court as evidence. The marking of the seized item, the first link in the chain of custody, is crucial in proving an unbroken chain of custody as it is the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point.

In the Joint Affidavit of Arrest executed by affiants PO1 Ignacio and PO1 Flores, they claimed that the specimen was marked with "AI-MS." Similarly, the Inventory of the Seized Items, Initial Laboratory Report, Request for Laboratory Examination, and Chemistry Report No. D-544-2006, all showed that the specimen had the markings "AI-MS" on it. PO1 Bautista also testified during his direct examination that the sachet of shabu was marked with "AI-MS." Interestingly, however, PO1 Ignacio – the poseur-buyer and apprehending officer who marked the sachet of shabu – testified that he marked the specimen with his initials "AI" which means Aldrin Ignacio.

Nowhere in the testimony, either during the direct or cross- examination, of PO1 Ignacio did he ever mention marking the specimen with "AI-MS." Nothing in the records would show that the prosecution attempted to reconcile the seeming discrepancy between PO1 Ignacio's testimony and the specimen submitted to the crime laboratory for examination relating to the alleged markings made by PO1 Ignacio. In fact, the prosecution merely brushed it aside and considered the same as trivial and inconsequential because it was not even raised during the trial.

The Court cannot, however, treat the matter lightly because the identity and integrity of the *corpus delicti* becomes uncertain. There is now doubt whether the sachet marked with "AI," as testified to by the very witness who placed the said marking, was the same sachet marked with "AI-MS" which was brought to the crime laboratory and ultimately presented in court.

There are four (4) links in the chain of custody, to wit: first, 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.

The first link is crucial in proving the chain of custody. It is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. The value of marking of the evidence is to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until disposition at the end of criminal proceedings, obviating switching, "planting" or contamination of evidence. Thus, even if, as in this case, the seized item was immediately marked and the succeeding links have been established, the chain of custody is still deemed broken when reasonable doubt exist concerning the very marking placed on the specimen which could have successfully established the identity of the *corpus delicti*.

To reiterate, unexplained discrepancy in the markings of the seized dangerous drug, resulting in the uncertainty that said item was the exact same item retrieved from the appellant when he was arrested, is not a mere trivial matter, but a major lapse that is fatal to the prosecution's case.

It is to be stressed that in drug cases, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. SC acquitted appellant Marcelo Sanchez y Calderon based on reasonable doubt. The decision of the CA, which affirmed the decision of the RTC, is reversed and set aside.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- JIMBOY SUICO y ACOPE, *Accused-Appellant.***

G.R. No. 229940, FIRST DIVISION, September 10, 2018, Del Castillo, *J.*

*As the law now stands, the apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately at the place where the drugs were seized, or at the nearest police station, or at the nearest office of the apprehending officer, whichever is the most practicable or suitable for the purpose. In this case, the apprehending officers found it more practicable to mark, inventory, and photograph the seized drugs at the police station. The marking at the place of confiscation, which was a checkpoint, was rather difficult considering that it was in the middle of a public road.*

**FACTS:**

An Alert Team composed of five police officers, namely: the Chief of Police of Cabanglasan, Bukidnon, Police Inspector Erwin R. Naelga (PINSP Naelga), PO3 Joevin Paciente (PO3 Paciente), PO2 Rowland Linaban, PO1 Nelber Berdon (PO1 Berdon), and PO1 Christopher Sibayan were at Purok 12, Brgy. Poblacion, Cabangsalan, Bukidnon to set-up and man a checkpoint to implement a 'no plate, no travel' policy. PINSP Nealga received a text message from an informant saying that there is an approaching red *Motorstar* motorcycle with a black and gray color combination driven by a person carrying a backpack and a yellow sack containing marijuana. At around 9:30 in the morning, the members of the team saw a motorcycle approaching the checkpoint. Upon seeing the checkpoint, the motorcycle immediately made a u-turn, however, the driver of the motorcycle fell down. The driver then disembarked from the motorcycle and then attempted to run. However, one of the members of the team was able to hold the backpack of the driver after he fell down and the other members of the team requested him to open it. Subsequently, the driver admitted that he was carrying marijuana. He thereafter opened the backpack, which contained 2 bundles of fresh marijuana, and the yellow sack, which also contained two bundles of fresh marijuana.

After confiscating the backpack and the sack containing marijuana, the driver of the motorcycle was apprised of his Constitutional rights and thereafter taken to the police station where an inventory of the seized items was made. The preparation of the said inventory was witnessed by the Municipal Mayor of Cabanglasan, Bukidnon. Photographs were taken after the inventory of the confiscated items. After making the inventory, the members of the Team turned over the confiscated items to the duty investigator at that time, [PO3 Agpalza], who after marking them, brought the items to the Provincial Crime Laboratory together with the members of the apprehending team. At around 3:30 in the afternoon, [PCI Avanzado] received a request for a crime laboratory examination signed by PINSP Naelga together with specimens contained in the backpack and yellow sack brought by PO3 Agpalza. After conducting a qualitative examination on the specimens, all four gave a positive result for being marijuana.

**ISSUE:**

Whether or not accused is guilty of illegal transportation of dangerous drugs (YES)

**RULING:**

The essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another. Here, it was well established during trial that appellant was caught carrying a backpack and sack with bundles of marijuana when he was flagged down on board his motorcycle. The prosecution had proven in the trial the fact of transportation of dangerous drugs. Appellant's denial and defense of frame-up cannot be given credence. The Court has ruled that defenses, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted. Appellant's unsubstantiated lone testimony cannot prevail over the positive testimonies of the police officers in view of the presumption of regularity in the performance of their duty and in the absence of any improper motive.

Sec. 21, par. 1 of RA 9165 also provides that the apprehending team having initial custody and control of the dangerous drugs, 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 persons 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.

Here, the physical inventory was made at the police station by the apprehending officers/arresting team as shown by their signatures in the Receipt/Inventory of Property Seized. As the law now stands, the apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately at the place where the drugs were seized, or at the nearest police station, or at the nearest office of the apprehending officer, whichever is the most practicable or suitable for the purpose. In this case, the apprehending officers found it more practicable to mark, inventory, and photograph the seized drugs at the police station. The marking at the place of confiscation which was a checkpoint was rather difficult considering that it was in the middle of a public road.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appelle,* -versus- HILARIO NEPOMUCENO y VISAYA alias "BOK", *Accused-Appellant.***

G.R. No. 216062, FIRST DIVISION, September 19, 2018, Bersamin, *J.*

*The last sentence of paragraph (a) of Section 21 excuses lapses in the arresting officer's compliance with the requirements only if a justifiable reason is advanced for the lapses. Here, although the failure to mark the confiscated substances upon arrest of the accused could be excusable in light of the testimony of PO2 Baladjay that a neighbor of the accused had started a commotion during the arrest proceedings that rendered the immediate marking in that place impractical, the non-compliance with the requirements for the physical inventory and for photographing of the confiscated drug being taken "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" was not explained at all by the arresting officers.*

**FACTS:**

A confidential informant reported to the head of Station Anti-Illegal Drugs (SAID) in Police Station 3 that an alias "Bok" was selling drugs in Felix Huertas St., Sta. Cruz, Manila. The head instructed PO2

Boy Nino Baladjay and PO2 David Gonzales to take the confidential informant with them and conduct surveillance on the target. After confirming the information, Gonzales prepared a pre-operation report and a coordination form with the PDEA to conduct buy-bust operation on the next day.

Guiagi briefed Baladjay, SPO3 Morales and PO1 Cabocan on the conduct of the buy-bust operation. Baladjay was designated as poseur buyer. They left the police station and proceeded to Felix Huertas St., near Fabella Hospital. Upon arrival, the confidential informant pointed to appellant and together with Baladjay, they approached the target. Baladjay was introduced to appellant by the informant as a buyer. Appellant asked Baladjay, "*magkano?*" to which he replied three hundred pesos (Php300.00). Appellant then pulled from his pocket two (2) small plastic sachets containing white crystalline substance and asked Baladjay to pick one. After Baladjay picked one (1) sachet, he gave the marked bills to appellant and executed the pre-arranged signal. Baladjay then introduced himself as a police officer and arrested appellant. Baladjay recovered the other sachet and the marked money. Several persons tried to prevent the arrest hence they had to first bring appellant to the police station before marking the sachets and the money

Subsequent laboratory examination of the sachets' contents confirmed it was methylamphetamine hydrochloride, otherwise known as *shabu*.

The RTC convicted the appellant of violating Sections 5 and 11 of RA 9165. His conviction was affirmed by the CA.

**ISSUE:**

Whether or not accused-appellant's conviction was proper (NO)

**RULING:**

Section 21 of R.A. No. 9165, as amended, sets specific procedures in the handling of the confiscated substance. The apprehending team having initial custody and control of the dangerous drugs, 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.

The accused could not be protected from tampering, alteration or substitution of the incriminatory evidence unless the Prosecution established that the arresting or seizing officer complied with the requirements set by Section 21 of R.A. No. 9165. Yet, the records herein reveal that the police officers did not mark the confiscated drugs at the place of the arrest but only upon their arrival at the police station; and did not conduct the physical inventory of the confiscated drug and did not take pictures thereof as required by Section 21. The last sentence of paragraph (a) of Section 21 excuses lapses in the arresting officer's compliance with the requirements only if a justifiable reason is advanced for the lapses. Here, although the failure to mark the confiscated substances upon arrest of the accused could be excusable in light of the testimony of PO2 Baladjay that a neighbor of the accused had started

a commotion during the arrest proceedings that rendered the immediate marking in that place impractical, the non-compliance with the requirements for the physical inventory and for photographing of the confiscated drug being taken "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" was not explained at all by the arresting officers.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- JANET PEROMINGAN y GEROCHE, *Accused-Appellant.***
G.R. No. 218401, FIRST DIVISION, September 24, 2018, BERSAMIN, *J.*

*The procedural safeguards covering the seizure, custody and disposition of the confiscated dangerous drugs are defined under Section 21 of RA No. 9165. It has been reiterated by the Implementing Rules and Regulations which provides that:*

> *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.*

*Based on the records, the police officers did not follow the procedural safeguards prescribed by the law, and thereby created serious gaps in the chain of custody of the confiscated dangerous drug.* ***They did not coordinate with any media representative, DOJ representative or elected official during the physical inventory.*** *It was also* ***not shown*** *that the* ***marking and the inventory*** *of the seized dangerous drugs were done* ***in the presence of the accused-appellant Janet or her representative****. There was also* ***no*** *proof that* ***any photograph was taken*** *to document the evidence.*

**FACTS:**

SPO3 Rolando Del Rosario testified that their office received a telephone call from unidentified caller informing them that a woman in black blouse and maong shorts, who was selling illegal drugs, was at the house of a certain pusher named Onin.

PO1 Arturo Ladia proceeded to the reported area on the very same day. At the target area, Ladia saw a woman in black blouse and maong shorts. When he passed in front of the woman whose identity he later came to know as Janet Peromingan, the latter asked him "Kukuha ka?", and he replied: "Yes" and pulled out P200.00 bill from his pocket. Janet in turn handed to him a plastic sachet containing

white crystalline substance. After receiving the sachet, Ladia immediately arrested Janet and identified himself as a police officer. He then apprised Janet of her constitutional rights, informed her of her violation and brought her to the police station. He recovered the buy-bust money from Janet and marked the seized item at the police station. After marking, he turned it over to their investigator SPO1 Antonio Marcos who delivered the item to the Crime Laboratory Unit of the SOCO. The specimen yielded positive result to Methylamphetamine Hydrochloride or Shabu. He further testified that they did not coordinate with the Barangay Officials in the place of the arrest because nobody wanted to witness the apprehension; that they did not prepare any document before proceeding to the reported area nor coordinated with the PDEA; and that the photographs of the items were taken and in the custody of the investigator. SPO1 Antonio Marcos testified that he prepared the Inventory of the Seized Item among others.

The RTC held Janet guilty beyond reasonable doubt of the crime of Violation of Section 5, RA No. 9165 (Illegal Sale of Dangerous Drugs). The CA affirmed the ruling of the RTC. It held that without any contrary evidence and showing of ill will on the part of the police officers, they were presumed to have performed their duties in a regular manner.

**ISSUE:**

Whether or not Janet is guilty of Illegal Sale of Dangerous Drugs. (NO)

**RULING:**

For violation of Section 5 of RA No. 9165, the State bears the burden of proving the elements of the offense of sale of dangerous drugs, which constitute the corpus delicti, or the body of the crime. The State must present the seized drugs, along with proof that there were no substantial gaps in the chain of custody thereof as to raise the evidence presented in court.

The procedural safeguards covering the seizure, custody and disposition of the confiscated dangerous drugs are defined under Section 21 of RA No. 9165. It has been reiterated by the Implementing Rules and Regulations which provides that:

> 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.

Based on the records, the police officers did not follow the procedural safeguards prescribed by the law, and thereby created serious gaps in the chain of custody of the confiscated dangerous drug. **They did not coordinate with any media representative, DOJ representative or elected official**

**during the physical inventory.** It was also **not shown** that the **marking and the inventory** of the seized dangerous drugs were done **in the presence of the accused-appellant Janet or her representative**. There was also **no** proof that **any photograph was taken** to document the evidence.

Further, the Inventory of Seized Items allegedly prepared by SPO1 Antonio Marcos had not been signed by him, or by accused-appellant Janet, or by any of the personalities required by law to witness the inventory and photographing of the confiscated dangerous drugs (namely: the media representative, the representative from the DOJ, and an elective official).

The absence of SPO1 Marcos' signature from the document engendered doubts about the proper custody and handling of the dangerous drug after leaving the hands of SPO3 Del Rosario. Indeed, there was no way of ascertaining whether or not SPO1 Marcos had truly received the dangerous drug from SPO3 Del Rosario unless there was evidence from which to check such information.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus –EDGARDO DELA ROSA y EMPAMANO, CRISELDA HUERTO y DOCOT, and RONALDO HUERTO y DOCOT, *Accused-appellant.***

G.R. No. 238338, SECOND DIVISION, October 1, 2018, PERLAS-BERNABE, *J.*

*As part of the **chain of custody procedur**e, the law requires that the apprehending team, immediately after seizure and confiscation, conduct a **physical inventory** and **photograph** the seized items. The law further requires that the said inventory and photography be done in the presence of the **accused** or the **person from whom the items were seized**, or his **representative** or **counsel**, as well as certain **required witnesses**, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media AND the Department of Justice (DOJ), and any elected public official"; or (b) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service OR the media."*

*Records show that although the inventory of the seized items was conducted in the presence of Brgy. Captain Cruz (an elected public official), no representatives from the DOJ and the media were present to witness the same. Neither do the records reflect that these witnesses were present during the photography of the seized items, which process is usually conducted contemporaneously with the inventory thereof.*

**FACTS:**

The prosecution alleged that on April 26, 2014, a buy-bust team composed of members of the Station Anti-Illegal Drugs (SAID) Special Operations Task Group of Makati City was formed to respond to a tip regarding a male and a female peddling illegal drugs along Makati Avenue, Barangay Poblacion, Makati City. After coordinating with the Philippine Drug Enforcement Agency (PDEA), the team, together with their asset, proceeded to the target area where Edgardo, whom the asset called "Mang Boy," sold a plastic sachet containing suspected shabu to the designated poseur-buyer. Also present during the buy-bust transaction and arrested together with Edgardo were Edgardo's wife, Criselda,

and brother-in-law, Ronaldo. A search on the person of Edgardo yielded four (4) more plastic sachets containing suspected shabu. Thus, after accused-appellants were apprised of their rights, the arresting officers brought them and the seized items to the barangay hall where the items were marked, photographed, and inventoried in the presence of Barangay Captain Benhur Cruz (Brgy. Captain Cruz). Thereafter, the confiscated items were brought to the crime laboratory for examination and tested positive for Methamphetamine Hydrochloride. Consequently, all three (3) accused-appellants were charged with violation of Section 5, Article II of RA 9165 for Illegal Sale of Dangerous Drugs (0.10 gram), while Edgardo was further charged with violation of Section 11, Article II of RA 9165 for Illegal Possession of Dangerous Drugs (0.41 gram).

In defense, Edgardo and Criselda denied the charges and claimed that on April 25, 2014, they, together with Ronaldo, were inside a bingo boutique along Makati Avenue when police officers suddenly took them outside and eventually, handcuffed them. They were detained for three (3) days and were asked to confess to their crimes and further, shown plastic sachets allegedly recovered from them.

RTC ruled against the accused-appellants. CA affirmed. Hence, this appeal.

**ISSUE:**

Whether CA gravely erred in affirming the accused-appellants' conviction for the crimes charged. (YES)

**RULING:**

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, it is essential that the **identity of the dangerous drug** be established with moral certainty, considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime. Failing to prove the integrity of the corpus delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the **chain of custody procedur**e, the law requires that the apprehending team, immediately after seizure and confiscation, conduct a **physical inventory** and **photograph** the seized items. The law further requires that the said inventory and photography be done in the presence of the **accused** or the **person from whom the items were seized**, or his **representative** or **counsel**, as well as certain **required witnesses**, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media AND the Department of Justice (DOJ), and any elected public official"; or (b) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service OR the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a **justifiable**

**ground for non-compliance**; and (b) the **integrity and evidentiary value of the seized items are properly preserved.**

Records show that although the inventory of the seized items was conducted in the presence of Brgy. Captain Cruz (an elected public official), no representatives from the DOJ and the media were present to witness the same.

Neither do the records reflect that these witnesses were present during the photography of the seized items, which process is usually conducted contemporaneously with the inventory thereof. As earlier discussed, the prosecution is put to task to justify the absence of the required witnesses during the conduct of inventory and photography or, at the very least, show that the arresting officers exerted genuine and sufficient efforts to secure their presence. Unfortunately, no such justification or demonstration was even proffered in this case.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus – NORMAN BARADI y VELASCO, *Accused-appellant.***

G.R. No. 238338, SECOND DIVISION, October 1, 2018, PERLAS-BERNABE, *J.*

*The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a)* ***the identity of the buyer and the seller, the object, and the consideration****; and (b)* ***the delivery of the thing sold and the payment****; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (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.*** *Here, the courts a quo correctly found that all the elements of the crimes charged are present, as the records clearly show that Baradi was caught in flagrante delicto selling shabu to the poseur-buyer, SPO1 Andulay, during a legitimate buy-bust operation by the CAID-SOTG of San Fernando City, La Union; and that another plastic sachet containing shabu was recovered from him during the search made incidental to his arrest.*

*Further, the Court notes that the buy-bust team had sufficiently complied with the* ***chain of custody rule*** *under* ***Section 21, Article II of RA 9165.*** *In this case, it is glaring from the records that after Baradi was arrested during the buy-bust operation and subsequently searched, the poseur-buyer, SPO1 Andulay, immediately took custody of the seized plastic sachets and conducted the marking, inventory, and photography thereof in the presence of a public elected official, a DOJ representative, and a media representative right at the place where Baradi was arrested.*

**FACTS:**

This case stemmed from two (2) Informations charging Baradi of violating Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around 12:00 noon of July 11, 2014, operatives of the City Anti Illegal Drug-Special Operation Task Group (CAID-SOTG) of San Fernando City, La Union conducted a buy-bust operation against Baradi, during which: (a) he allegedly sold a plastic sachet containing 0.5890 gram of suspected methamphetamine hydrochloride or shabu; and (b) during his arrest, another sachet containing 0.0245 gram of suspected methamphetamine hydrochloride or shabu was recovered from him. Immediately after Baradi's arrest, the apprehending officers conducted the marking, inventory, and photography in the presence of a **barangay official, a**

**Department of Justice (DOJ) representative, and a media representative** at the place where the buy-bust operation took place. For his part, Baradi denied the charges against him and invoked the defense of denial and frame-up.

RTC found Baradi guilty beyond reasonable doubt of the crimes charged. CA affirmed. Hence, this appeal.

**ISSUE:**

Whether the appeal seeking that Baradi's conviction be overturned has merit. (NO)

**RULING:**

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) **the identity of the buyer and the seller, the object, and the consideration**; and (b) **the delivery of the thing sold and the payment**; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (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.** Here, the courts a quo correctly found that all the elements of the crimes charged are present, as the records clearly show that Baradi was caught in flagrante delicto selling shabu to the poseur-buyer, SPO1 Andulay, during a legitimate buy-bust operation by the CAID-SOTG of San Fernando City, La Union; and that another plastic sachet containing shabu was recovered from him during the search made incidental to his arrest.

Further, the Court notes that the buy-bust team had sufficiently complied with the **chain of custody rule** under **Section 21, Article II of RA 9165.**

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime. Failing to prove the integrity of the corpus delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

In this case, it is glaring from the records that after Baradi was arrested during the buy-bust operation and subsequently searched, the poseur-buyer, SPO1 Andulay, immediately took custody of the seized plastic sachets and conducted the marking, inventory, and photography thereof in the presence of a public elected official, a DOJ representative, and a media representative right at the place where Baradi was arrested. Thereafter, SPO1 Andulay secured the seized plastic sachets and delivered the same to the forensic chemist at the crime laboratory, who in turn, personally brought the items to the RTC for identification. In view of the foregoing, the Court holds that there is sufficient compliance with the chain of custody rule, and thus, the integrity and evidentiary value of the corpus delicti have been preserved. Perforce, Baradi's conviction must stand.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus – CEASAR CONLU y BENETUA, *Accused-appellant.***

G.R. No. 225213, SECOND DIVISION, October 3, 2018, CARPIO, *J.*

*In **Sindac v. People**, the Court, in acquitting the accused, took into account the distance between the police officers and the site of the alleged drug transaction. The Court invalidated the inflagrante delicto arrest and warrantless search on the ground that no criminal overt act could be attributed to the accused as to result in suspicion in the mind of the arresting officers.*

*In **People v. Andaya**, the Court reversed the Court of Appeals' conviction of the accused since the prosecution failed to prove the illegal sale of the dangerous drug beyond reasonable doubt. There, the prosecution did not present the poseur-buyer to describe how exactly the transaction between him and the accused had taken place.*

*In this case, there is serious doubt that the sale of the 0.01 gram of methamphetamine hydrochloride or shabu between appellant and the poseur-buyer ever took place. The poseur-buyer, whose testimony would have clearly established that the illegal transaction occurred, was not presented before the court. While the prosecution argues that the non-presentation of the poseur-buyer was not fatal to its case because there were eyewitnesses, we deem otherwise. The **ten or seven meter distance** between the police officers waiting for the pre-arranged signal from the poseur-buyer and the appellant made it difficult for the supposed eyewitnesses to see (and hear) what exactly was happening between appellant and the poseur-buyer.*

**FACTS:**

Based on reports of rampant drug pushing in various areas in Silay City, Negros Occidental, the Chief of Police of Silay City PNP ordered the conduct of surveillance and monitoring in order to confirm such reports. To verify the report that appellant and his brother are known to be drug pushers, the police conducted a test buy operation in their area through their asset, who was able to buy a small sachet of a white crystalline substance which when tested was positive for shabu.

The prosecution alleged that the police operatives followed and went to the location of the operation after fifteen (15) minutes. Police officers Libo-on and Bernil were located **approximately fifty (50) meters** from where the asset and appellant were supposed to conduct their transaction when the poseur-buyer then called up the police operatives and told them to get ready. The police then moved toward the site, **approximately ten (10) meters** from where their asset and appellant were about to meet.

The poseur-buyer at that moment approached appellant and gave the latter the marked money. Appellant then put the marked money in the right front pocket of his cargo short pants, and then pulled out a small sachet containing crystalline substance and gave it to the poseur-buyer. The operatives immediately rushed to the scene to arrest appellant.

When the barangay officials came, appellant was searched by Kagawad Rojo but was stopped after a resident carrying a bladed weapon caused a commotion. Police and local authorities brought appellant to the police station where the search was continued in a separate room where only the police and barangay officials were present. The body search yielded more sachets of shabu.

On the other hand, Appellant averred that on 18 April 2012 at around 9:00 o'clock in the morning, he was inside the compound of the house of his father when suddenly two armed persons barged into the compound and handcuffed him. The apprehending team forced appellant to go outside the compound and made him sit on a long bench. Thereafter, they waited for the barangay officials who would conduct the search as appellant's father insisted that it be the barangay officials who should make the body search and not the police officers. Subsequently, a body search was conducted by Kagawad Rojo who recovered nothing when the former inspected the six pockets of the short pants which appellant was wearing. Appellant was brought later on to the police station despite the fact that no items were recovered from him.

RTC ruled against the accused-appellant. CA affirmed. Hence, this appeal.

**ISSUE:**

Whether CA gravely erred in affirming the decision of RTC. (YES)

**RULING:**

For an accused to be convicted for illegal sale of dangerous drugs, the following elements must concur: (1) **that the transaction or sale took place between the accused and the poseur-buyer**; and (2) **that the dangerous drug subject of the transaction or sale is presented in court as evidence of the corpus delicti.**

In this case, there is serious doubt that the sale of the 0.01 gram of methamphetamine hydrochloride or shabu between appellant and the poseur-buyer ever took place. The poseur-buyer, whose testimony would have clearly established that the illegal transaction occurred, was not presented before the court. While the prosecution argues that the non-presentation of the poseur-buyer was not fatal to its case because there were eyewitnesses, we deem otherwise. The **ten or seven meter distance** between the police officers waiting for the pre-arranged signal from the poseur-buyer and the appellant made it difficult for the supposed eyewitnesses to see (and hear) what exactly was happening between appellant and the poseur-buyer.

In **Sindac v. People**, the Court, in acquitting the accused, took into account the distance between the police officers and the site of the alleged drug transaction. The Court invalidated the inflagrante delicto arrest and warrantless search on the ground that no criminal overt act could be attributed to the accused as to result in suspicion in the mind of the arresting officers.

Moreover, the prosecution's failure to present the poseur-buyer proved fatal to its case. In **People v. Andaya**, the Court reversed the Court of Appeals' conviction of the accused since the prosecution failed to prove the illegal sale of the dangerous drug beyond reasonable doubt. There, the prosecution did not present the poseur-buyer to describe how exactly the transaction between him and the accused had taken place.

It must also be noted that, as appellant maintains, the buy-bust item was only 0.01 gram in weight which is minuscule in amount for PO2 Libo-on and PO2 Bernil to clearly see the alleged illegal transaction that took place.

Furthermore, there is serious doubt that the chain of custody of the dangerous drug, from the time it was allegedly recovered from appellant up to the time it was presented in court, was unbroken.

In this case, as stated, there was uncertainty whether the dangerous drug allegedly purchased by the poseur-buyer was actually handed over by the poseur-buyer to PO2 Bernil since PO2 Libo-on's testimony did not clearly establish that he saw the hand over. Thus, there is no testimony on the precise moment the dangerous drug was allegedly turned over to PO2 Bernil. Accordingly, the unbroken chain of custody of the dangerous drug, which is required in the successful prosecution of illegal drug cases, was not established.

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus – JEROME PASCUA y AGOTO a.k.a. "OGIE", *Accused-appellant.***

G.R. No. 227707, FIRST DIVISION, October 8, 2018, DEL CASTILLO, *J.*

*In the recent case of **People v. Lim** the Court stressed the importance of the presence of the three witnesses (i.e., **any elected public official** and the **representative from the media** and the **DOJ**) during the physical inventory and the photograph of the seized items.*

*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.*

*Here, the prosecution failed to prove both. Under RA 9165, the law prevailing at that time, the physical inventory and photography must be witnessed by three necessary witnesses. In this case, PO2 Sulmerin conducted an inventory of the seized items in the presence of appellant, **Manilyn**, **media person Curameng**, and **Chief Tanod Bugaoisan**, who, as aptly pointed out by Justice Bernabe, was not even an elected public official. There was also no DOJ representative present at the time. Thus, strictly speaking, there was only one valid witness, media person Curanmeng, who signed the Receipt of Properties/Article Seized. The Court has carefully reviewed the records and found that no explanation was also offered by the prosecution to explain the absence of the DOJ representative and an elected public official, nor did it show that earnest efforts were exerted to secure the presence of the same.*

**FACTS:**

At around 2:00 p.m. of March 31, 2011, the Office of the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) received an information or "tip" from a female informant regarding the rampant selling of shabu by appellant.

When PO2 Sulmerin and the confidential informant reached the house of appellant, the confidential informant knocked on the door. Appellant opened the door and asked the confidential informant who she was with, referring to PO2 Sulmerin. She said that PO2 Sulmerin was her companion who wanted to buy "stuff." Appellant then invited them inside the living room of the house. PO2 Sulmerin then told appellant his desire to buy shabu worth P1,000.00 and gave appellant the marked money. Appellant placed the marked money inside his front pocket and went inside one of the rooms. When he came back, he handed PO2 Sulmerin one heat-sealed plastic sachet containing white crystalline substance. PO2 Sulmerin then called PO2 Pola's cellphone. PO2 Pola and PO2 Aninag immediately rushed into the house and announced their authority as police officers. Appellant was handcuffed, apprised of his constitutional rights, and frisked. Recovered from him was the marked P1,000.00 bill.

He was then asked to sit in the living room while the team searched the room from where he got the shabu.

PO2 Sulmerin then placed the seized items together with the marked money and the plastic sachet of shabu on the table in the living room for marking and inventory in the presence of appellant, **Manilyn, media person Juvelyn Curameng (Curameng) of the DZEA media station, and Chief Tanod Atanacio Bugaoisan (Chief Tanod Bugaoisan).**

Appellant testified that he was boxed by one of the police officers; that he was allowed to sit at the living room; that he saw a glass tube being placed on the table in the living room; that he and his girlfriend Manilyn were boarded in a van and brought to Camp Juan; that when they were already at the camp, the police officers boxed him on the stomach and asked him where he placed the shabu and from whom was he getting the shabu; and that he denied any knowledge of what they were asking him.

RTC found the appellant guilty of the crime of illegal sale of shabu. CA affirmed. Hence, this appeal.

**ISSUE:**

Whether the appeal has merit. (YES)

**RULING:**

In the recent case of **People v. Lim** the Court stressed the importance of the presence of the three witnesses (i.e., **any elected public official** and the **representative from the media** and the **DOJ**) during the physical inventory and the photograph of the seized items.

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 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."

Simply put, under prevailing jurisprudence, in case the presence of the necessary witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance.

Here, the prosecution failed to prove both. Under RA 9165, the law prevailing at that time, the physical inventory and photography must be witnessed by three necessary witnesses. In this case, PO2 Sulmerin conducted an inventory of the seized items in the presence of appellant, **Manilyn**, **media person Curameng**, and **Chief Tanod Bugaoisan**, who, as aptly pointed out by Justice Bernabe, was not even an elected public official. There was also no DOJ representative present at the time. Thus, strictly speaking, there was only one valid witness, media person Curanmeng, who signed the Receipt of Properties/Article Seized. The Court has carefully reviewed the records and found that no explanation was also offered by the prosecution to explain the absence of the DOJ representative

and an elected public official, nor did it show that earnest efforts were exerted to secure the presence of the same. In view of the foregoing, the Court is constrained to reverse the conviction of the appellant due to the failure of the prosecution to provide a justifiable reason for the non-compliance with the Chain of Custody Rule, which creates doubt as to the integrity and evidentiary value of the seized plastic sachet of shabu.

## O. Comprehensive Firearms and Ammunition Regulation Act (Secs. 28 and 29, RA 10591)

**MARCELO G. SALUDAY, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.**

G.R. No. 215305, EN BANC, April 3, 2018, CARPIO, *J.:*

*Petitioner assails his conviction for illegal possession of high-powered firearm and ammunition under PD 1866, and illegal possession of explosive under the same law. The elements of both offenses are as follows: (1) existence of the firearm, ammunition or explosive; (2) ownership or possession of the firearm, ammunition or explosive; and (3) lack of license to own or possess. As regards the second and third elements, the Court of Appeals concurred with the trial court that petitioner was in actual or constructive possession of a high-powered firearm, ammunition, and explosive without the requisite authority.*

*The Court on several occasions ruled that either the testimony of a representative of, or a certification from, the Philippine National Police (PNP) Firearms and Explosive Office attesting that a person is not a licensee of any firearm would suffice to prove beyond reasonable doubt the second element of possession of illegal firearms. The prosecution more than complied when it presented both.*

**FACTS:**

SCAA Buco checked all the baggage and personal effects of the passengers, but a small, gray-black pack bag on the seat at the rear of the bus caught his attention. He lifted the bag and found it too heavy for its small size. SCAA Buco then looked at the male passengers lined outside and noticed that a man in a white shirt (later identified as petitioner) kept peeping through the window towards the direction of the bag. Afterwards, SCAA Buco asked who the owner of the bag was, to which the bus conductor answered that petitioner and his brother were the ones seated at the back. SCAA Buco then requested petitioner to board the bus and open the bag. Petitioner obliged and the bag revealed the following contents: (1) an improvised .30 caliber carbine bearing serial number 64702; (2) one magazine with three live ammunitions; (3) one cacao-type hand grenade; and (4) a ten-inch hunting knife. SCAA Buco then asked petitioner to produce proof of his authority to carry firearms and explosives. Unable to show any, petitioner was immediately arrested and informed of his rights by SCAA Buco.

Petitioner was then brought for inquest before the Office of the City Prosecutor for Davao City. In its Resolution dated 7 May 2009, the latter found probable cause to charge him with illegal possession of high-powered firearm, ammunition, and explosive under PD l 866.

The trial court declared him to be in actual or constructive possession of firearm and explosive without authority or license. The CA affirmed the RTC ruling.

**ISSUE:**

Whether or not petitioner is guilty beyond reasonable doubt. (YES)

**RULING:**

Here, petitioner assails his conviction for illegal possession of high-powered firearm and ammunition under PD 1866, and illegal possession of explosive under the same law. The elements of both offenses are as follows: (1) existence of the firearm, ammunition or explosive; (2) ownership or possession of the firearm, ammunition or explosive; and (3) lack of license to own or possess. As regards the second and third elements, the Corn1: of Appeals concurred with the trial court that petitioner was in actual or constructive possession of a high-powered firearm, ammunition, and explosive without the requisite authority. The Decision dated 26 June 2014 reads in pertinent part:

In the present case, the prosecution proved the negative fact that appellant has no license or permit to own or possess the firearm, ammunition and explosive by presenting NUP Daniel Tabura (Tabura), a representative of the Firearms and Explosives Division (FED) of the PNP. He identified the Certification issued by the Chief. Records Section. FED of the PNP, stating that appellant "is not a licensed/registered holder of any kind and caliber per verification from records of this office."

Appellant, however, questions the competence of Tabura to testify on the veracity or truthfulness of the Ce1tification. He claims that the officer who issued it should have been the one presented so he would not be denied the right to confront and cross-examine the witnesses against him.

There is no merit to petitioner's claim. The Court on several occasions ruled that either the testimony of a representative of, or a certification from, the Philippine National Police (PNP) Firearms and Explosive Office attesting that a person is not a licensee of any firearm would suffice to prove beyond reasonable doubt the second element of possession of illegal firearms. The prosecution more than complied when it presented both.

**P. Cybercrime Prevention Act of 2012 (Secs. 4 to 6, RA 10175)**

**Q. Human Security Act of 2007 (Secs. 3 to 6, RA 9372)**

**R. New Anti-Carnapping Act of 2016 (Secs. 3 to 4, RA 10883)**

**MELKY CONCHA and ROMEO MANAGUELOD, *Petitioners,* -versus – PEOPLE OF THE PHILIPPINES , *Respondent.***

G.R. No. 208114, THIRD DIVISION, October 3, 2018, LEONEN, *J.*

*Before the prosecution concerns itself with the existence of the elements of a crime, it must first discharge the burden of proving that an accused is correctly identified.*

*In People v. Gamer, this Court stressed:*

*[I]t is not merely any identification which would suffice for conviction of the accused. It must be* ***positive identification made by a credible witness or witnesses****, in order to attain the level of acceptability and credibility to sustain moral certainty concerning the person of the offender.*

*First, Macutay failed to provide descriptions of his attackers when he reported the incident to the police. Second, Macutay was admittedly scared and confused, which reduced his degree of attention. Third,* ***it was not shown how certain Macutay was in his identification of petitioners.*** *Finally, the out-of-court identification was tainted with improper suggestion. To reiterate,* ***the police in Cabagan Police Station showed Macutay only four (4) persons to be identified.***

**FACTS**:

The prosecution alleged that as Macutay's group was traversing the road between Lallauanan and Liwanag, the motorcycle had a flat tire. The group decided to push the motorcycle. While doing so, they chanced upon a parked white car on the highway. As they got near the car, four (4) armed persons emerged from it and one of them pointed a gun at Macutay and declared "holdup." The armed men then took his Seiko watch, t- shirt, and wallet, which contained P400.00 in cash and his license. They told Macutay to run. When Macutay was near the edge of the road, he jumped. Macutay and his group then hid as the armed men took his motorcycle and left the sidecar behind. One of the armed men drove the motorcycle while the others returned to the white car and left.

On the other hand, Concha testified that on February 19, 2006, at around 10:00 a.m., he was walking alone on his way home from the field when police officers in a van stopped him near a bridge at the highway. They told him to board the van and invited him to Cabagan Police Station. On the way to Cabagan, they met some Tumauini police officers. When they reached Cabagan Police Station, they locked him inside a cell and intimidated him to sign a document.

RTC ruled against the accused. CA affirmed. Hence, this appeal. Petitioners contended that only the four (4) accused were presented to Macutay for identification. By doing so, the police grossly suggested to the witness that the persons shown to him were the perpetrators of the crime charged. They also contended that Macutay failed the totality of circumstances test which is used to determine if an out-of-court identification is admissible.

**ISSUE:**

Whether petitioners Melky Concha and Romeo Managuelod are guilty beyond reasonable doubt of the crime of carnapping. (NO)

**RULING:**

Before the prosecution concerns itself with the existence of the elements of a crime, it must first discharge the burden of proving that an accused is correctly identified.

The out-of-court identification of petitioners could have been disregarded altogether since it was not shown that they were assisted by counsel. However, this Court recognizes that the "probative weight of an in-court identification is largely dependent upon an out-of-court identification." Thus, it is necessary to determine if the conduct of the latter is above suspicion.

As to whether the out-of-court identification of petitioners satisfied the **totality of circumstances test,** this Court finds that it did not. Although there was no significant lapse of time from the day of

the incident up to the day when Macutay identified his supposed assailants, his identification fell short on the remaining factors.

First, Macutay failed to provide descriptions of his attackers when he reported the incident to the police. Despite insisting that the place was illuminated at the time of the carnapping and claiming that he was able to observe his assailants when he hid after jumping from the edge of the road, **Macutay did not describe them as to their height, skin color, clothes, or any distinguishing mark that could have made them stand out.** Without any of these descriptions, any group of four (4) men is susceptible of being identified as the perpetrators.

Second, Macutay was admittedly scared and confused, which reduced his degree of attention. His disorientation was apparent when he gave his watch, wallet, and even his t-shirt to his assailants as soon as he heard "holdup." **He did not even wait for them to tell him what they needed from him.**

Third, **it was not shown how certain Macutay was in his identification of petitioners.** Without any prior description, the basis of his identification is questionable. It also remains uncertain whether the t-shirt that petitioner Concha wore during the police show-up was the same t-shirt that Macutay gave to his assailants, since he failed to describe that piece of clothing in his report before the police.

Finally, the out-of-court identification was tainted with improper suggestion. To reiterate, **the police in Cabagan Police Station showed Macutay only four (4) persons to be identified.**

In People v. Gamer, this Court stressed:

[I]t is not merely any identification which would suffice for conviction of the accused. It must be **positive identification made by a credible witness or witnesses**, in order to attain the level of acceptability and credibility to sustain moral certainty concerning the person of the offender.

**S. Obstruction of Justice Law (Sec. 1, PD 1829)**

**T. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act (Secs. 3[a], 5, and 10, RA 7610)**

**PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- CEFERINO VILLACAMPA *y* CADIENTE @ "Daddy Gaga", *Appellant.***
G.R. No. 216057, SECOND DIVISION, January 8, 2018, CARPIO, *J.*

*As held in People v. Caoili, the guide for the proper nomenclature of the crime and penalties for lascivious conduct under Section 5 (b) of RA 7610 are:*

1. *The age of the victim;*
2. *If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." – AAA and BBB were both below 12 years of age*
3. *If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be*

*designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610." – CCC was 14 years of age.*

**FACTS:**

The case arose from 12 consolidated criminal cases against Ceferino Villacampa y Cadiente @ "Daddy Gaga" (Villacampa) where he was accused of 11 counts of Rape and one Acts of Lasciviousness in relation to Republic Act No. 7610 (RA 7610). Villacampa is the common-law husband of the mother of the four minors AAA, BBB, CCC, and DDD. Sometime in March 2006, all the four siblings had incidents with Villacampa.

In the FC Criminal Case Nos. 1359-1361, on three separated days of March 2006, Villacampa, during the first incident, inserted his fingers into AAA's vagina and tried to insert his penis, but failed to do so as AAA's mother and sisters timely knocked on the door. On the second and third incident, Villacampa inserted his fingers into AAA's vagina and licked the same. AAA reported the incidents to her mother who ignored her. AAA confided with her father who was very furious with Villacampa's sexual abuse of AAA.

In FC Criminal Case Nos. 1368 and 1269, on two separate days of March 2006, Villacampa, during the first incident, kissed CCC, then 14 years old, on her lips and inserted his fingers into her vagina. On the second incident, Villacampa undressed CCC and kissed her on the lips, and forcibly inserted his penis into her vagina. Two months after, CCC found out that she was pregnant and subsequently gave birth to a daughter, XXX, who, upon Villacampa's own application for her birth certificate, followed his surname. CCC denied having any romantic relationship with Villacampa.

In FC Criminal Case No. 1370,On 25 March 2006, at around midnight, DDD, then 13 years old, was asleep in the living room of their house with her sister, BBB. Villacampa roused DDD from her sleep, covered her mouth and removed her shorts and underwear and spread her legs. He inserted his penis into her vagina.

Villacampa argues that the victims' testimonies were not credible and thus not enough to warrant his conviction. He posits that the victims were instructed by their father and Aunt MMM to file the cases against him. For CCC, he claims that he courted her and had a daughter with her.

The RTC found Villacampa guilty in Criminal Case Nos. 1359-1369, but acquitted him in Criminal Case No. 1370. The CA affirmed the RTC.

**ISSUE:**

Whether or not Villacampa is guilty of nine counts of rape through sexual assault in relation to Section 5(b) of RA 7610, one count of simple rape under the RPC, and one count of sexual abuse under Section 5(b) of RA 7610. (NO)

**RULING:**

In FC Criminal Case 1368, the crime involved is that of simple rape under Article 266-A(1). Villacampa had carnal knowledge of CCC, who bore his child as a result. Further, Criminal Case Nos. 1359-1367 involved rape through sexual assault as described under Article 266-A(2) because

Villacampa inserted his finger into the vagina of his victims. On the other hand, Criminal Case No 1369 charges Villacampa with Acts of Lasciviousness or sexual abuse as he is kissing the lips, face, and neck of the victim. It is to be noted that in all these cases, minors at the time of the commission of the crimes. Thus, the provisions of RA 7610 are relevant, specifically those on sexual abuse:

> Section 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> xxx xxx xxx
>
> (b) **Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse**; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of RA 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period;
>
> xxx xxx xxx

The following elements of sexual abuse under Section 5, Article III of RA 7610 must be established:

1. The accused commits the act of sexual intercourse or lascivious conduct.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child, whether male or female, is below 18 years of age.

In the present cases, all the elements of sexual abuse under RA 7610 have been met. The first element is the act of sexual intercourse or lascivious conduct. Lascivious conduct is defined in Section 2 (h) of the Implementing Rules and Regulations of RA 7610 as "the **intentional touching**, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the **introduction of any object into the genitalia, anus or mouth, of any person**, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person."As found by the lower courts, Villacampa inserted his finger into the vagina of his minor victims in FC Criminal Case Nos. 1359-1367. In FC Criminal Case No. 1369, Villacampa kissed CCC on the lips, face, and neck against her will. Villacampa even inserted his finger into CCC's vagina, even though this was not included in the Information against him. Thus, it is evident that Villacampa committed an act of lascivious conduct against each of his victims.

Next, the second element is that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. To meet this element, the child victim must either be exploited in prostitution or subjected to other sexual abuse. In *Quimvel v. People,* the Court held that the fact that a **child is under the coercion and influence of an adult** is sufficient to satisfy this second element and will classify the child victim as one subjected to other sexual abuse.

Finally, the third element, that the child is below 18 years of age, has been sufficiently proven during the trial of the case for all of the victims.

*Proper Nomenclature*

In *People v. Caoili,* it was reiterated that the proper nomenclature of the crime and penalties for lascivious conduct under Section 5 (b) of RA 7610. We provided the necessary guidelines for designating the proper offense, *viz.*:

1. The **age of the victim** is taken into consideration in designating or charging the offense, and in determining the imposable penalty.
2. If the victim is **under twelve (12) years of age**, the nomenclature of the crime should be "**Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610**."
3. If the victim is **exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition**, the crime should be designated as "**Lascivious Conduct under Section 5(b) of R.A. No. 7610**."

AAA and BBB were both under twelve (12) years of age while CCC was then fourteen (14) years old when the incidents occurred. Accordingly, Villacampa should be held guilty for the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610 for FC Criminal Case Nos. 1359-1367, instead of rape through sexual assault in relation to RA 7610, as designated by the lower courts. For FC Criminal Case No. 1369, instead of acts of lasciviousness or sexual abuse in relation to RA 7610,Villacampa should be held guilty for the crime of Lascivious Conduct under Section 5 (b) of RA 7610. In FC Criminal Case No. 1368, as there was actual penal penetration, Villacampa was correctly held guilty for the crime of simple rape under the RPC.

**EDMISAEL C. LUTAP, *plaintiff*, -versus- PEOPLE OF THE PHILIPPINES, *respondent.***
G.R. No. 204061, FIRST DVISION, February 5, 2018, TIJAM, *J.*

*People v. Mendoza explains that for a charge of rape by sexual assault with the use of one's fingers as the assaulting object, as in the instant case, to prosper, there should be evidence of at least the slightest penetration of the sexual organ and not merely a brush or a graze of its surface, being that rape by sexual assault requires that the assault be specifically done through the insertion of the assault object into the genital or anal orifices of the victim. Mere touching of a female's sexual organ, by itself, does not amount to rape nor does it suffice to convict for rape at its attempted stage. Instead, petitioner's lewd act of fondling AAA's sexual organ consummates the felony of acts of lasciviousness.*

*It is likewise undisputed that at the time of the commission of the lascivious act, AAA was six (6) years old which calls for the application of Section 5 (b) of Republic Act No. 7610 defining sexual abuse of children. Apropos, Section 2 (h) of the rules implementing R.A. 7610 defines lascivious conduct as: "The intentional touching, either directly or through clothing, of the genitalia xxx."*

**FACTS:**

At the time of the incident, AAA was only six (6) years. Petitioner, also known as "Egay," frequently visits the house of AAA's family. On April 27, 2004, AAA and her younger siblings, BBB and CCC, were

watching television in their sala, together with petitioner. Meanwhile, their mother DDD was cooking dinner in the kitchen. AAA was then wearing short pants and was sitting on the floor with her legs spread apart while playing with "text cards." Petitioner then touched AAA's vagina. AAA reacted by swaying off his hand. BBB saw petitioner using his middle finger in touching AAA's vagina. Upon seeing this, BBB said "Kuya Egay, bad iyan, wag mong kinikiliti ang pepe ni Ate." BBB then went to DDD and told her that petitioner is tickling AAA's vagina. DDD then called AAA and asked her if it were true that petitioner tickled her vagina. DDD asked AAA how many times have petitioner tickled her vagina and AAA answered, "many times in petitioner's house" and that he also "let her go on the bed, remove her panty, open her legs and lick her vagina."

In defense, petitioner denied the accusations against him. Petitioner testified that he merely pacified AAA and BBB who were quarrelling over the text cards.

The RTC found petitioner guilty of rape by sexual assault. The RTC gave full credit to AAA's and BBB's candid testimonies that petitioner inserted his finger in the vagina of AAA. CA found that there was no insertion of petitioner's finger into AAA's vagina as it was merely slightly touched or touched without too much pressure by petitioner. The CA went on to conclude that since petitioner's finger merely touched AAA's vagina and that there was no penetration, petitioner can only be held liable for attempted rape.

**ISSUE:**
Whether or not the CA erred in convicting petitioner for the crime of attempted rape. (YES)

**RULING:**
The act of touching a female's sexual organ, standing alone, is not equivalent to rape, not even an attempted one. At most, therefore, petitioner's act of touching AAA's sexual organ demonstrates his guilt for the crime of **acts of lasciviousness**, an offense subsumed in the charge of rape by sexual assault.

Rape, under Article 266-A can be committed in two ways: Article 266-A paragraph 1 refers to rape through sexual intercourse, the central element of which is carnal knowledge which must be proven beyond reasonable doubt; and Article 266-A paragraph 2 refers to rape by sexual assault which must be attended by any of the circumstances enumerated in sub-paragraphs (a) to (d) of paragraph 1.

The direct examination of AAA and BBB, as well as the questions interposed by the RTC, while convincingly prove that there was malicious touching of AAA's sexual organ, nevertheless invite doubts as to whether petitioner indeed inserted his finger inside AAA's vagina. Thus, absent any showing that there was actual insertion of petitioner's finger into AAA's vagina, petitioner cannot be held liable for consummated rape by sexual assault. **People v. Mendoza,** explains that for a charge of **rape by sexual assault with the use of one's fingers** as the assaulting object, as in the instant case, to prosper, **there should be evidence of at least the slightest penetration of the sexual organ and not merely a brush or a graze of its surface**, being that **rape by sexual assault requires that the assault be specifically done through the insertion of the assault object into the genital or anal orifices of the victim.**

What was established beyond reasonable doubt in this case was that petitioner touched, using his middle finger, AAA's sexual organ which was then fully covered by a panty and short pants. However, such is insufficient to hold petitioner liable for attempted rape by sexual assault. Mere touching of a female's sexual organ, by itself, does not amount to rape nor does it suffice to convict for rape at its attempted stage. Instead, petitioner's lewd act of fondling AAA's sexual organ consummates the felony of acts of lasciviousness.

Pursuant to Article 336 of the RPC, acts of lasciviousness is consummated when the following essential elements are present: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age. As thus used, lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity; or that which is carried on a wanton manner. All of these elements are present in the instant case.

It is likewise undisputed that at the time of the commission of the lascivious act, AAA was six (6) years old which calls for the application of Section 5 (b) of Republic Act No. 7610 defining sexual abuse of children:

> Section 5. Child Prostitution and Other Sexual Abuse. — xxx xxx xxx
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the [victim] is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; x x x

Apropos, Section 2 (h) of the rules implementing R.A. 7610 defines lascivious conduct as: "The intentional touching, either directly or through clothing, of the genitalia xxx"

Conclusively, the elements of acts of lasciviousness under Article 336 of the RPC and of lascivious conduct under R.A. 7610 were established in the present case. Petitioner should be convicted of the offense designated as acts of lasciviousness under Article 336 of the RPC in relation to Section 5 of R.A. 7610 since the minor victim in this case is below 12 years old.

**PEDRO PEREZ, *Petitioner,* -versus- PEOPLE OF THE PHILIPPINES, *Respondent.***

G.R. No. 201414, THIRD DIVISION, April 18, 2018, LEONEN, *J.*

*Article 3, Section 5(b) of RA 7610 provides and explains: "(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or* ***subjected to other sexual***

***abuse**" encompasses children who indulge in sexual intercourse or lascivious conduct for money, profit or any other consideration; or **under the coercion or influence of any adult**, syndicate or group.*

*Hence, the law punishes acts pertaining to and connected with child prostitution wherein a child is abused primarily for profit. In addition, the same paragraph (b) also punishes those acts committed on a child subjected to other sexual abuse through coercion, intimidation, or influence.*

**FACTS**:

AAA testified that she met Perez for the first time on 6 November 1998 when she attended her cousin BBB's birthday party. The next day, she saw Perez again when she visited her friend CCC at her house. At that time, AAA, Perez, CCC and their other companions were inside the house. During that day, AAA was wearing a sleeveless blouse, a skirt, and cycling shorts underneath.

AAA went to the kitchen to drink water, she saw Perez follow her. After she drank, Perez kissed her on her nape and he told her to keep silent. Then, Perez slid his finger in her vagina while mashing her breasts. AAA felt pain when Perez inserted his finger. She attempted to remove his hands but he forced himself; she got afraid, thus, she failed to fight back. The sexual advances lasted for around 10 seconds. Perez told her not to tell anybody about what happened.

AAA, later on, narrated to her cousin FFF what happened. FFF then disclosed the incident to AAA's parents, who then reported it to the barangay officials. After interviewing AAA (by SPO4 Billones), AAA undergone further medical examination that yielded results stating that there were signs of physical abuse.

Perez denied abusing AAA. According to him, he met AAA on 17 October 1998, AAA informed him that she was already 16 years old. He testified that he was not romantically involved with AAA. Furthermore, he narrated that on the day of the incident, he and his aunt went to a school in New Manila, but left her aunt around 6:00 in the afternoon, and went straight home.

RTC held Perez guilty of Violation of Section 5(b) R.A. 7610 or "Special Protection of Children against Child Abuse, Exploitation and Discrimination Act" CA dismissed the appeal, and affirmed to conviction of Perez.

Perez then filed a Petition for Review before the Supreme Court and asserted that the situation created by AAA was improbable and not in line with human experience, because the clothes AAA were wearing that day was tight-fitting. Her attire was restricting and the time needed to consummate the alleged act was enough for her to ask for help from her companions. The alleged crime occurred in close proximity of other persons, it is impossible that nobody noticed what was happening.

Further, he contended that assuming a crime was committed, it should only be acts of lasciviousness since the prosecution failed to establish and prove beyond reasonable doubt the presence of the elements of child abuse.

**ISSUE:**

Whether Perez is guilty of violation of RA 7610 or Special Protection of Children against Child Abuse, Exploitation and Discrimination Act. (YES)

**RULING:**

Perez' assertion that his crime must only be acts of lasciviousness is mistaken. The elements of sexual abuse are:

(1) the accused commits the act of sexual intercourse or lascivious conduct;

(2) the said act is performed with a child exploited in prostitution or subjected to sexual abuse; and

(3) the child, whether male or female, is below 18 years of age.

The first and third elements are already established. Perez admitted during the pre-trial that AAA was only 12 years old at the commission of the crime. In addition, Perez already conceded that if he were liable, he is liable only for acts of lasciviousness.

In further explanation of the second element, the Court illustrated the case of *People v. Villacampa*. The case pointed out:

> "Exploited in prostitution or subject to other sexual abuse" encompasses children who indulge in sexual intercourse or lascivious conduct (a) for money, for profit, or any other consideration; or (b) **under the coercion or influence of any adult**, syndicate, or group.

By analogy with the ruling in *Villacampa,* children who are likewise coerced in lascivious conduct are deemed "exploited in prostitution and other sexual abuse." When petitioner inserted his finger into the vagina of AAA, a minor, with the use of threat and coercion, he is already liable for sexual abuse.