

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENNY GO, APPELLANT.

G.R. No. 144639. September 12, 2003

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-144639/>

CARPIO MORALES, J.:

On direct appeal before this Court is the Decision of the Regional Trial Court of Manila, Branch 41, in Criminal Case No. 99-174439 finding appellant Benny Go guilty of violating Section 16, Article III in relation to Section 2 (e-2), Article I of Republic Act No. 6425,[1] as amended, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P1,000,000.00.

The Information filed against appellant charged as follows:

That on or about June 14, 1999, in the City of Manila, Philippines, the said accused without being authorized by law to possess or use any regulated drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) knot tied transparent plastic bag containing TWO HUNDRED FOUR (204) grams of white crystalline substance known as "Shabu" containing methamphetamine hydrochloride, a regulated drug, without the corresponding license or prescription thereof.

Contrary to law.[2]

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to the offense charged.[3] Subsequently, at the pre-trial conference on August 10, 1999, the parties stipulated that "(1) the subject Search Warrant is valid; and (2) the Forensic Chemist conducted only a qualitative examination on the subject specimen." [4]

The prosecution presented the following witnesses: (1) Police Inspector Edwin Zata, Forensic Chemical Officer of the Philippine National Police (PNP) Crime Laboratory; (2) PO2 Gerardo Abulencia (PO2 Abulencia); (3) SPO1 Edgardo G. Fernandez (SPO1 Fernandez); and (4) SPO1 Ver M. Serqueña (SPO1 Ver Serqueña) whose testimonies sought to establish the following facts:

On April 28, 1999, SPO1 Fernandez, SPO1 Serqueña and a confidential informant conducted a "test buy" operation at the residence of appellant at 1480 General Luna Street, Ermita, Manila during which they purchased from him P1,500.00 worth of methamphetamine hydrochloride or "shabu." [5] The police officers did not immediately arrest him, however. Instead, they applied for a Search Warrant for appellant's residence from the Regional Trial Court (RTC) of Pasay City [6] based on their firm belief that there was a large quantity of illegal drugs in his house. [7]

On June 14, 1999, a raiding team composed of SPO1 Fernandez and SPO1 Serqueña, together with PO2 Abulencia, PO3 Noel Adtu and PO2 Gerardo Jimenez, [8] proceeded to appellant's above-said residence armed with Search Warrant No. 99-0038 [9] issued by Br. 109 of the RTC of Pasay City commanding them to "make an immediate search anytime of the day or night" of appellant's residence and to seize and take possession of "METAMPHETAMINE HYDROCHLORIDE (Shabu), weighing scale, other drug paraphernalias and proceeds

of the above crime."

Soon after the police officers arrived at appellant's residence at around 6:00 in the evening,[10] they, to enable them to gain entry to the two-storey house, "sideswept (sinagi) a little" appellant's Toyota Corolla GLI car which was parked outside.[11] Jack Go, appellant's son and the only one present at the house at the time, thereupon opened the door of the house and the policemen at once introduced themselves, informed him that they had a warrant for the search of the premises, and promptly handcuffed him to a chair. SPO1 Fernandez, SPO1 Serqueña and PO2 Abulencia entered the house, while PO3 Adtu and PO2 Jimenez remained outside. [12]

On instruction of SPO1 Fernandez, SPO1 Serqueña left to summon barangay officials to witness the search. SPO1 Serqueña returned five minutes later with Barangay Kagawads Gaspar Lazaro (Kagawad Lazaro) and Emmanuel Manalo (Kagawad Manalo) who were advised by SPO1 Fernandez to be witnesses to the search and to afterwards sign the inventory receipt and affidavit of orderly search.

As instructed, the two barangay kagawads proceeded to the upper floor of appellant's house with SPO1 Serqueña and PO2 Abulencia.[13] While SPO1 Fernandez, who remained downstairs in the sala,[14] instructed the handcuffed Jack Go to witness the search, the latter refused since "there will be no more left in the sala of the house anyway there is a barangay official." [15]

In the course of the search of the premises which took place from 6:00 to 11:00 in the evening,[16] Kagawad Lazaro and PO2 Abulencia recovered "one knot tied transparent plastic bag containing white crystalline substance"[17] from the drawer of a cabinet.

Also seized from the residence of appellant were the following: (a) "one plastic bag containing yellowish substance"[18] found by SPO1 Serqueña;[19] (b) a weighing scale discovered by SPO1 Fernandez; (c) assorted documents; (d) passports; (e) bank books; (f) checks; (g) a typewriter; (h) a check writer; (i) several dry seals and (j) stamp pads;[20] (k) Chinese and Philippine currency;[21] (l) and appellant's Toyota Corolla GLI[22] car (the car).

The plastic bag containing the white crystalline substance was marked by SPO1 Fernandez as "EGF-A-1," while the plastic bag with the yellowish substance was marked as "EGF-A-2." [23]

With the exception of the car, all the seized items were brought to the dining table on the ground floor of appellant's house for inventory.[24]

In the meantime, appellant's wife Shi Xiu Ong and his friends Samson Go and Peter Co arrived one after the other at the house.[25] Appellant himself arrived at 9:30 in the evening when the search was almost through.[26]

After the inventory had been taken, SPO1 Fernandez prepared a handwritten Inventory Receipt[27] and a document captioned "Affidavit of Orderly Search,"[28] the contents of which he read to appellant. On instruction of SPO1 Fernandez, Jack Go also explained the contents of the documents to appellant who then signed them as did kagawads Manalo and Lazaro and Jack Go as witnesses.[29]

The police officers then brought appellant, his wife, son and friends, along with the seized items, to Camp Bagong Diwa, Bicutan, Taguig, Metro Manila for "verification" and investigation.

Appellant was detained while the others were eventually released. [30] The arresting officers jointly prepared an Affidavit of Arrest dated June 15, 1999[31] which, among other things, contained an enumeration of the seized items identical to that in the handwritten Inventory Receipt. And SPO1 Fernandez prepared a Return of Search Warrant 99-0038 dated June 18, 1999 and a referral paper – "1[st] Indorsement"[32] – with the same enumeration of seized items.

Also on June 15, 1999, SPO1 Serqueña brought the plastic bag containing the white crystalline substance (Exhibit "A") and the plastic bag containing the yellowish substance (Exhibit "B") to the PNP Crime Laboratory[33] together with a request for laboratory examination.[34] Upon examination, Exhibit "A" was found to contain 204 grams of white crystalline substance containing methamphetamine hydrochloride, a regulated drug.[35] Exhibit "B," on the other hand, was found negative for any prohibited and/or regulated drug.[36]

Meanwhile, the seized documents, passports, dry seals and stamp pads were brought to the Bureau of Immigration and Deportation,[37] while the bank books were forwarded to the corresponding banks for verification.[38]

The prosecution presented in evidence the Yamato weighing scale,[39] claimed to have been recovered by SPO1 Fernandez from the top of appellant's refrigerator,[40] although it was not among those listed in the handwritten Inventory Receipt, Affidavit of Arrest or Return of the Search Warrant.[41] Also presented by the prosecution, as a hostile witness, to corroborate in part the foregoing facts was Kagawad Lazaro. He claimed, however, that the first page of the handwritten Inventory Receipt submitted in evidence had been substituted with another, asserting that he and the other witnesses affixed their signatures on the left-hand margin of the first page of the handwritten Inventory Receipt which they were asked to sign whereas that submitted in court did not bear their signatures.[42]

Kagawad Lazaro further claimed that the first entry on the first page of the Inventory Receipt, whereon he and his co-witnesses affixed their signatures, reading "Chinese Medicine" had been replaced with "undetermined quantity of white crystalline granules;"[43] that what was recovered from the room of Jack Go by PO2 Abulencia was Exhibit "B," the plastic bag containing the yellowish powder, and not Exhibit "A," the plastic bag containing the suspected shabu; and that Exhibit "A" was not even among the items seized and inventoried.[44]

The defense, which adopted the testimony of Kagawad Lazaro, presented appellant, his son Jack Go, and Kagawad Manalo whose version of the facts of the case follows:

In November 1998, while appellant was walking along Gen. Luna Street, he was accosted by SPO1 Serqueña and another police officer who accused him of manufacturing shabu and divested him of money amounting to more than P5,000.00. He was later released as the policemen could not charge him with anything.[45]

On July 14, 1999 at around 5:30 in the afternoon, Jack Go opened the door of their house after hearing somebody shout that the car had been bumped. Five armed policemen then entered the house, one of whom handcuffed him while two went up to the upper floor of the house and searched for about thirty (30) minutes. [46]

At past 6:00 p.m., as the two kagawads entered the house which was already in disarray, SPO1 Fernandez formed two groups to conduct the search at the second floor: (1) that of PO2 Abulencia, with Kagawad Lazaro to serve as witness, and (2) that of SPO1 Serqueña, with Kagawad Manalo to serve as witness.[47]

PO2 Abulencia, together with Kagawad Lazaro, searched the room of Jack Go. SPO1 Serqueña, accompanied by Kagawad Manalo, searched the study room where he seized documents, passports and assorted papers.

SPO1 Serqueña and Kagawad Manalo then proceeded to the room of appellant followed by PO2 Abulencia and Kagawad Lazaro. From the room of appellant, the policemen seized documents, passports, bankbooks and money.[48]

After the search, the policemen and barangay kagawads went down with three boxes containing passports, money and assorted Chinese medicine.[49]

When appellant's wife arrived at around 7:30 p.m.,[50] SPO1 Fernandez ordered her to open the safe ("kaha de yero") inside appellant's room where the police officers seized money, passports, bankbooks, Chinese currency and pieces of jewelry.[51]

The seized items were placed on appellant's table on the first floor of the house where they were inventoried by SPO1 Fernandez[52] during which the barangay kagawads did not see either Exhibit "A," the plastic bag containing the suspected shabu, or the weighing scale.[53]

After SPO1 Fernandez prepared a two-page Inventory Receipt and Affidavit of Orderly Search, he asked Jack Go to sign the receipt. While Jack Go initially refused, he eventually did sign both documents without having read them completely after he was hit by the policemen. The two barangay kagawads also signed both pages of the Inventory Receipt as witnesses.[54]

When appellant arrived at around 8:30 p.m., he was handcuffed and likewise made to sign the Inventory Receipt without having been able to read its contents.[55] Jack Go was prevented from explaining its contents to him.[56]

The first page of the handwritten Inventory Receipt presented in court, which includes an "undetermined quantity of white crystalline granules placed inside a transparent plastic envelope" as among those seized from the residence of appellant, does not bear the signatures of appellant, the kagawads and Jack Go, hence, it is not the same first page of the handwritten Inventory Report on which they affixed their signatures.[57] In fact the policemen did not leave a copy of this Inventory Receipt with either appellant or the barangay kagawads.[58]

The policemen continued to search appellant's residence until around 11:00 p.m. when they brought appellant, Jack Go, Shi Xiu Ong, Samson Go and Peter Co, together with the seized items, to Bicutan.[59]

On the way to Bicutan, PO2 Abulencia, who boarded the same vehicle as appellant, told the latter that the policemen wanted P10,000,000.00 from him or he would be charged with possession of illegal drugs. The amount demanded was later reduced to P5,000,000.00, then to P2,000,000.00, and finally to P500,000.00. Appellant refused, however, to heed the policemen's demands since he did not commit any crime.[60]

Finding for the prosecution, the trial court rendered the appealed Decision on June 7, 2000, the dispositive portion of which reads:

WHEREFORE, judgment is hereby ordered rendered finding the accused Benny Go guilty of the offense charged in the information and sentencing him to suffer the penalty of reclusion perpetua and a fine of One Million Pesos (P1,000,000.00).

The subject shabu is hereby ordered forfeited in favor of the government and the Clerk of Court is hereby directed to deliver and/or cause the delivery of the said shabu to the Dangerous Drugs Board for proper disposition, upon the finality of this Decision.

SO ORDERED.[61]

His Motion for Reconsideration[62] of the decision having been denied by Order of July 24, 2000,[63] appellant lodged the present appeal. In his Brief,[64] he assigns the following errors:

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN ACCORDING THE POLICE OFFICERS THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY IN IMPLEMENTING THE SEARCH WARRANT BASED ON THEIR TESTIMONIES, THERE BEING CONVINCING PROOFS TO THE CONTRARY.

SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN HOLDING THAT 204 GRAMS OF SHABU WAS RECOVERED FROM THE HOUSE OF ACCUSED-APPELLANT ON JUNE 14, 1999 BASED ON THE TESTIMONY OF PO1 GERARDO ABULENCIA AND THE SUPPORTING INVENTORY RECEIPT, BOTH OF WHICH WERE COMPLETELY CONTRADICTED BY THE PROSECUTION WITNESS BARANGAY KAGAWAD

GASPAR LAZARO AS WELL AS BY DEFENSE WITNESSES.

THIRD ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN RENDERING JUDGMENT FINDING ACCUSED-APPELLANT GUILTY OF ILLEGAL POSSESSION OF TWO HUNDRED FOUR (204) GRAMS OF SHABU AS CHARGED IN THE INFORMATION AND SENTENCING HIM TO SUFFER THE (sic) PENALTY OF RECLUSION PERPETUA AND A FINE OF ONE MILLION PESOS (P1,000,000.00), INSTEAD OF ACQUITTING ACCUSED-APPELLANT FOR FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[65] (Emphasis supplied)

During the pendency of the appeal, appellant filed a verified Motion for Return of Personal Documents, Vehicle and Paraphernalia dated September 10, 2001[66] praying for the release of the following seized properties:

- several pcs. transparent plastic envelopes
- one (1) unit Toyota Corolla GLI with PN UTT 658
- Cash amounting to Fifty Two Thousand Seven Hundred Sixty Pesos (P52,760.00) in different denominations
- Twenty-Five Thousand Chinese Yuan (CY25,000.00)
- Sixty-Seven (67) pieces of Chinese passports
- Twenty-Eight (28) pieces of assorted bankbooks
- Two Hundred Eighty Five (285) pieces of assorted checks
- Fifty-Three (53) pcs. rubber stamp and related paraphernalia
- One (1) piece "Underwood" typewriter with SN 9861952
- One (1) piece check writer
- Two (2) pieces of dry seal
- Five (5) boxes of assorted documents
- Three (3) bags of assorted documents[67]

This Court is thus called upon to determine (1) whether appellant's guilt has been proven beyond reasonable doubt; and (2) whether the items enumerated in appellant's Motion for Return of Personal Documents, Vehicle and Paraphernalia, which items are allegedly not among those particularly described in Search Warrant No. 99-0038, should be returned to him. These issues shall be resolved in seriatim.

Illegal Possession of 204 Grams of Shabu

As appellant questions the legality of the search of his residence, the actions of the police officers, as agents of the State, must be carefully considered in light of appellant's right against unreasonable searches and seizures guaranteed by Sections 2 and 3, Article III of the Constitution.[68]

What constitutes a reasonable or unreasonable search or seizure is a purely judicial question determinable from a consideration of the attendant circumstances including the purpose of the search, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.[69]

Since no presumption of regularity may be invoked by an officer to justify an encroachment of rights secured by

the Constitution,[70] courts must cautiously weigh the evidence before them. As early as in the 1937 case of *People v. Veloso*,[71] this Court held:

A search warrant must conform strictly to the requirements of the constitutional and statutory provisions under which it is issued. Otherwise, it is void. The proceedings upon search warrants, it has rightly been held, must be absolutely legal, "for there is not a description of process known to law, the execution of which is more distressing to the citizen. Perhaps there is none which excites such intense feeling in consequence of its humiliating and degrading effect." The warrant will always be construed strictly without, however, going the full length of requiring technical accuracy. No presumptions of regularity are to be invoked in aid of the process when an officer undertakes to justify under it.[72] (Emphasis supplied; citations omitted)

Indeed, a strict interpretation of the constitutional, statutory and procedural rules authorizing search and seizure is required, and strict compliance therewith is demanded because:

x x x Of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books, and papers from the inspection and scrutiny of others. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.[73]

In arriving at the appealed decision, the trial court placed greater weight on the testimony of the police officers to whom it accorded the presumption of regularity in the performance of duty, viz:

Coming to the first issue raised, the Court gives credence to the testimonies of the police officers and accords them the presumption of regularity in the performance of their duty. The Court has observed the demeanor of the witnesses and finds the prosecution witnesses more credible than the defense witnesses. x x x

On the other hand, there is no showing that the police officers had ill motive when they applied for and secured the Search Warrant, raided the house of the accused and arrested him. Accused is a Chinese national who appeared to have no quarrel with the arresting police officers and thus the police officers had no reason to fabricate or trump up charges against him. Hence, there appears to be no reason the police officers should not be accorded the presumption of regularity in the performance of their duty. As held by the Supreme Court, "(L)aw enforcers are presumed to have regularly performed their official duty, in the absence of the evidence to the contrary. x x x We see no valid obstacle to the application of the ruling in *People vs. Capulong*, (160 SCRA 533 {1988}) that credence is accorded to the testimonies of the prosecution witnesses who are law enforcers for it is presumed that they have regularly performed their duty in the absence of convincing proof to the contrary. The appellant has not shown that the prosecution witnesses were motivated by any improper motive other than that of accomplishing their mission." (*People of the Philippines, Plaintiff-appellee, vs. Said Sariol Y Muhamading, accused-appellant*, 174 SCRA 238).[74] (Emphasis supplied)

At the same time, the trial court based its finding that the search of appellant's residence was proper and valid on the so-called "Affidavit of Orderly Search."

On the second issue raised, the validity of the Search Warrant is clearly shown by the Affidavit of Orderly Search signed by the accused and his son Jack Go and his witnesses Salvador Manalo and Gaspar Lazaro. Such Affidavit of Orderly Search coupled with the testimonies of the police officers have clearly established the propriety and validity of the search."[75] (Emphasis supplied)

The rule that a trial court's findings are accorded the highest degree of respect, it being in a position to observe the demeanor and manner of testifying of the witnesses,[76] is not absolute and does not apply when a careful review of the records and a meticulous evaluation of the evidence reveal vital facts and circumstances which the trial

court overlooked or misapprehended and which if taken into account would alter the result of the case.[77]

In the case at bar, an examination of the testimonies of the police officers brings to light several irregularities in the manner by which the search of appellant's residence was conducted.

By PO2 Abulencia's own account, in order to enter the premises to be searched, the police officers deliberately side-swiped appellant's car which was parked alongside the road, instead of following the regular "knock and announce" procedure as outlined in Section 7 (formerly Section 6), Rule 126 of the Rules of Court.[78]

Q

Mr. Witness, how did you enter the house of Benny Go?

A

It's really heard (sic) to enter the house. Before the door, there was a still (sic) supporting the door and they will not allow us to enter because they don't know us. Then, in order that we could enter the house, we side swept (sinagi) a little the vehicle that was parked in front of their house. And their neighbor knocked at the house of the subject and that's the time that we were able to enter.[79] (Emphasis supplied)

Since the police officers had not yet notified the occupant of the residence of their intention and authority to conduct a search and absent a showing that they had any reasonable cause to believe that prior notice of service of the warrant would endanger its successful implementation, the deliberate sideswiping of appellant's car was unreasonable and unjustified.

Also by PO2 Abulencia's own account, upon entry to appellant's residence, he immediately handcuffed Jack Go to a chair. Justifying his action, PO2 Abulencia explained that not only was he unfamiliar with Jack Go and unsure of how the latter would react, but it was a standard operating procedure:

Pros. Rebagay:

Now, what happened on June 14, 1999 at 6:00 p.m. when you were armed with the Search Warrant issued by Judge Lilia Lopez?

A

We entered inside the house of the subject and we were able to see (nadatnan naming) Jack Go, the son of Benny Go, sir.

x x x

Q

And what was the reaction of Jack Go, if any?

A

We introduced ourselves as police officers and we have a Search Warrant to conduct a search to the above subject place and also we handcuffed Jack Go to the chair, sir.

Q

Why did you do that, Mr. witness?

A

"Hindi naming kakilala iyong mga tao, sir kaya ganoon ang ginawa namin para hindi kami maano, eh hindi naming kabisado iyong ugali," sir.

Pros. Rebagay:

And is that an (sic) standard operating procedure Mr. witness, when you are serving a search warrant?

A

Yes, sir.[80] (Emphasis supplied)

There is no showing, however, of any action or provocation by Jack Go when the policemen entered appellant's residence. Considering the degree of intimidation, alarm and fear produced in one suddenly confronted under similar circumstances, the forcible restraint of Jack Go all the more was unjustified as was his continued restraint even after Barangay Kagawads Lazaro and Manalo had arrived to justify his forcible restraint.

While Search Warrant No. 99-99-0038 authorized the immediate search of appellant's residence to seize "METAMPHETAMINE HYDROCHLORIDE (Shabu), weighing scale, other drug paraphernalias and proceeds of the above crime," the policemen, by SPO1 Fernandez's admission, seized numerous other items, which are clearly unrelated to illegal drugs or illegal drug paraphernalia:

Q

In the presence of the barangay officials, what are those items which you seized or your raiding team seized, if any?

A

With the permission of the Honorable Court, Your Honor, can I take a look at my notes.

Court

Proceed.

Witness

Thank you very much.

A

Seized or confiscated from the said residence are: (1) undetermined quantity of white crystalline granules placed inside the transparent plastic envelope, (2) undetermined quantity of yellowish powder placed inside the transparent plastic envelope; (3) several pieces of transparent plastic envelopes; (4) one unit Toyota Corolla GLI with Plate No. UPT-658; (5) P52,760.00 in different denominations; (6) 25,000.00 Chinese Yuan; (7) 67 pieces of Chinese passports; (8) 28 pieces of assorted bank book; (9) 285 pieces of assorted checks; (10) 53 pieces rubber stamps and related paraphernalia; (11) one piece Underwood typewriter with Serial No. 9861952; (12) one piece checkwriter; (13) two pieces dry seals; (14) 5 boxes of assorted documents; (15) 3 bags of assorted documents; and I will add another one Your Honor, a weighing scale.[81]

While an inventory of the seized items was prepared, also by SPO1 Fernandez's admission, it did not contain a detailed list of all the items seized, particularly the voluminous documents:

Q

Why is it that you did not make a detailed inventory or receipt of the passports? Why did you not give any detailed receipt or inventory on the passports.

A

There were lots of documents during the time on the table, voluminous documents that I was not able to make a listing of the said passports.

Q

And it was only this October 8, 1999 or four months after that you made a detailed receipt of those seized items, am I right?

A

Yes, sir.

x x x

Q

Is it your standard operating procedure that when there are voluminous seized items you will not (sic) longer made (sic) an inventory report, am I right?

A

It's not an SOP.

Q

Why did you not make a detailed inventory or receipt?

A

As I've said earlier, it's voluminous. [82] (Emphasis supplied)

In *Asian Surety And Insurance Co., Inc. v. Herrera*,^[83] this Court stressed the necessity for a detailed receipt of the items seized in order to adequately safeguard the constitutional rights of the person searched:

Moreover, as contended by petitioner, respondents in like manner transgressed Section 10 of Rule 126 of the Rules for failure to give a detailed receipt of the things seized. Going over the receipts (Annexes "B" "B-1", "B-2", "B-3" and "B-4" of the Petition) issued, We found the following: one bordereau of reinsurance, 8 fire registers, 1 marine register, four annual statements, folders described only as Bundle gm-1 red folders; bundle 17-22 big carton folders; folders of various sizes, etc., without stating therein the nature and kind of documents contained in the folders of which there were about a thousand of them that were seized. In the seizure of two carloads of documents and other papers, the possibility that the respondents took away private papers of the petitioner, in violation of his constitutional rights, is not remote, for the NBI agents virtually had a field day with the broad and unlimited search warrant issued by respondent Judge as their passport.^[84] (Emphasis and underscoring supplied)

After the inventory had been prepared, PO2 Abulencia presented it to appellant for his signature^[85] without any showing that appellant was informed of his right not to sign such receipt and to the assistance of counsel. Neither was he warned that the same could be used as evidence against him. Faced with similar circumstances, this Court in *People v. Gesmundo*^[86] stated:

It is true that the police were able to get an admission from the accused-appellant that marijuana was found in her possession but said admission embodied in a document entitled "PAGPATUNAY" previously prepared by the police, is inadmissible in evidence against the accused-appellant for having been obtained in violation of her rights as a person under custodial investigation for the commission of an offense. The records show that the accused-appellant was not informed of her right not to sign the document; neither was she informed of her right to the assistance of counsel and the fact that the document may be used as evidence against her.^[87] (Emphasis and underscoring supplied, citations omitted)

In *People v. Policarpio*,^[88] this Court held that such practice of inducing suspects to sign receipts for property allegedly confiscated from their possession is unusual and violative of the constitutional right to remain silent, viz:

What the records show is that appellant was informed of his constitutional right to be silent and that he may refuse to give a statement which may be used against him, that is why he refused to give a written statement unless it is made in the presence of his lawyer as shown by the paper he signed to this effect. However, he was made to acknowledge that the six (6) small plastic bags of dried marijuana leaves were confiscated from him by signing a receipt and to sign a receipt for the P20.00 bill as purchase price of the dried marijuana leaves he sold to Pat. Mangila.

Obviously the appellant was the victim of a clever ruse to make him sign these alleged receipts which in effect

are extra-judicial confessions of the commission of the offense. Indeed it is unusual for appellant to be made to sign receipts for what were taken from him. It is the police officers who confiscated the same who should have signed such receipts. No doubt this is a violation of the constitutional right of appellant to remain silent whereby he was made to admit the commission of the offense without informing him of his right. Such a confession obtained in violation of the Constitution is inadmissible in evidence.[89] (Emphasis supplied)

The Inventory Receipt signed by appellant is thus not only inadmissible for being violative of appellant's custodial right to remain silent; it is also an indicium of the irregularity in the manner by which the raiding team conducted the search of appellant's residence.

At the same time, it is unclear whether appellant was furnished a copy of the Inventory Receipt as mandated by Sec. 11, Rule 126 of the Rules of Court.[90]

Q

Now, while you were making an inventory of that, am I right, that you did not give a copy to Benny Go, am I right?

A

I gave them a xerox copy. I remember I gave them a xerox copy.

Q

Is there any proof that they received an inventory report?

A

Nothing, sir.[91]

Moreover, an examination of Exhibit "Z," the Return of Search Warrant No. 99-0038 submitted by SPO1 Fernandez to Br. 109 of the RTC of Pasay City was not verified under oath,[92] as required by Section 12 (a) (formerly Section 12), Rule 126 of the Rules of Court.[93]

The delivery of the items seized to the court which issued the warrant together with a true and accurate inventory thereof, duly verified under oath, is mandatory in order to preclude the substitution of said items by interested parties.[94] Under Section 12 of Rule 126,[95] the judge which issued the search warrant is mandated to ensure compliance with the requirements for (1) the issuance of a detailed receipt for the property received, (2) delivery of the seized property to the court, together with (3) a verified true inventory of the items seized. Any violation of the foregoing constitutes contempt of court.

Given the foregoing deviations from the normal and prescribed manner of conducting a search, as disclosed by the members of the raiding team themselves, the reliance by the trial court on the disputable presumption that the police officers regularly performed their official duty was evidently misplaced.

The "Affidavit of Orderly Search" is not of any help in indicating the regularity of the search. Not having been executed under oath, it is not actually an affidavit, but a pre-prepared form which the raiding team brought with them. It was filled up after the search by team leader SPO1 Fernandez who then instructed appellant to sign it as he did instruct Jack Go, Kagawad Manalo and Kagawad Lazaro to sign as witnesses.

More importantly, since the "Affidavit of Orderly Search" purports to have been executed by appellant, the same cannot establish the propriety and validity of the search of his residence for he was admittedly not present when the search took place, he having arrived only when it was "almost through."

Q

And while your officers and the barangay kagawad were searching the house Mr. Benny Go is not yet present in that house, am I right?

A

Yes, sir.

Q

And you made to sign Benny Go in the inventory receipt when the search was already over, am I right?

A

He was already present when I was making the inventory. He arrived at around 9:30.

Q

Yes, and the search was already finished, am I right?

A

Almost through.[96]

In fine, since appellant did not witness the search of his residence, his alleged "Affidavit of Orderly Search," prepared without the aid of counsel and by the very police officers who searched his residence and eventually arrested him, provides no proof of the regularity and propriety of the search in question.

On the contrary, from the account of the police officers, their search of appellant's residence failed to comply with the mandatory provisions of Section 8 (formerly Section 7), Rule 126 of the Rules of Court, viz:

SEC. 8. Search of house, room, or premises, 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. (Underscoring supplied)

As pointed out earlier, the members of the raiding team categorically admitted that the search of the upper floor, which allegedly resulted in the recovery of the plastic bag containing the shabu, did not take place in the presence of either the lawful occupant of the premises, i.e. appellant (who was out), or his son Jack Go (who was handcuffed to a chair on the ground floor). Such a procedure, whereby the witnesses prescribed by law are prevented from actually observing and monitoring the search of the premises, violates both the spirit and letter of the law:

Furthermore, the claim of the accused-appellant that the marijuana was planted is strengthened by the manner in which the search was conducted by the police authorities. The accused-appellant was seated at the sala together with Sgt. Yte when they heard someone in the kitchen uttered "ito na". Apparently, the search of the accused-appellant's house was conducted in violation of Section 7, Rule 126 of the Rules of Court which specifically provides 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, in the presence of two (2) witnesses of sufficient age and discretion residing in the same locality. This requirement is mandatory to ensure regularity in the execution of the search warrant. Violation of said rule is in fact punishable under Article 130 of the Revised Penal Code.

As we have ruled in *Eduardo Quintero vs. The National Bureau of Investigation, et al.* a procedure, wherein members of a raiding party can roam around the raided premises unaccompanied by any witness, as the only witnesses available as prescribed by law are made to witness a search conducted by the other members of the raiding party in another part of the house, is violative of both the spirit and letter of the law.[97] (Emphasis and underscoring supplied)

That the raiding party summoned two barangay kagawads to witness the search at the second floor is of no moment. The Rules of Court clearly and explicitly establishes a hierarchy among the witnesses in whose presence the search of the premises must be conducted. Thus, Section 8, Rule 126 provides that the search should be witnessed by "two witnesses of sufficient age and discretion residing in the same locality" only in the absence of either the lawful occupant of the premises or any member of his family. Thus, the search of appellant's residence clearly should have been witnessed by his son Jack Go who was present at the time. The police officers were without discretion to substitute their choice of witnesses for those prescribed by the law.

The claim of SPO1 Fernandez and PO2 Abulencia that Jack Go voluntarily waived his right to witness the search, allegedly because there would be no one left in the sala and anyway barangay officials were present, cannot be accepted. To be valid, a waiver must be made voluntarily, knowingly and intelligently.[98] Furthermore, the presumption is always against the waiver of a constitutionally protected right.[99]

While Jack Go was present from the time the raiding team entered the premises until after the search was completed, he was, however, handcuffed to a chair in the sala. [100] All alone and confronted by five police officers who had deprived him of his liberty, he cannot thus be considered to have "voluntarily, knowingly and intelligently" waived his right to witness the search of the house. "Consent" given under such intimidating, coercive circumstances is no consent within the purview of the constitutional guaranty.[101]

The search conducted by the police officers of appellant's residence is essentially no different from that in *People v. Del Rosario*[102] where this Court observed:

We thus entertain serious doubts that the shabu contained in a small canister was actually seized or confiscated at the residence of accused-appellant. In consequence, the manner the police officers conducted the subsequent and much-delayed search is highly irregular. Upon barging into the residence of accused-appellant, the police officers found him lying down and they immediately arrested and detained him in the living room while they searched the other parts of the house. Although they fetched two persons to witness the search, the witnesses were called in only after the policemen had already entered accused-appellant's residence (pp. 22-23, tsn, December 11, 1991), and, therefore, the policemen had more than ample time to plant the shabu. Corollary to the Constitutional precept that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved (Sec. 14 (2), Article III, Constitution of the Republic of the Philippines) is the rule that in order to convict an accused the circumstances of the case must exclude all and each and every hypothesis consistent with his innocence (*People vs. Tanchoco*, 76 Phil. 463 [1946]; *People vs. Constante*, 12 SCRA 653 [1964]; *People vs. Jara*, 144 SCRA 516 [1986]). The facts of the case do not rule out the hypothesis that accused-appellant is innocent.[103] (Emphasis supplied)

The raiding team's departure from the procedure mandated by Section 8, Rule 126 of the Rules of Court, taken together with the numerous other irregularities attending the search of appellant's residence, tainted the search with the vice of unreasonableness, thus compelling this Court to apply the exclusionary rule and declare the seized articles inadmissible in evidence. This must necessarily be so since it is this Court's solemn duty to be ever watchful for the constitutional rights of the people, and against any stealthy encroachments thereon.[104] In the oft-quoted language of Judge Learned Hand:

As we understand it, the reason for the exclusion of evidence competent as such, which has been unlawfully acquired, is that exclusion is the only practical way of enforcing the constitutional privilege. In earlier times the action of trespass against the offending official may have been protection enough; but that is true no longer. Only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will that wrong be repressed.[105] (Emphasis supplied)

In all prosecutions for violation of The Dangerous Drugs Act, the existence of the dangerous drug is a condition sine qua non for conviction since the dangerous drug is the very corpus delicti of the crime.[106] With the exclusion of Exhibit "A," the plastic bag containing the shabu allegedly recovered from appellant's residence by the raiding team, the decision of the trial court must necessarily be reversed and appellant acquitted.

What is more, a thorough evaluation of the testimonies and evidence given before the trial court fails to provide the moral certainty necessary to sustain the conviction of appellant.

In particular, Barangay Kagawads Lazaro and Manalo, the two witnesses to the search chosen by the police officers in substitution of Jack Go, both categorically testified under oath that no shabu was recovered from appellant's residence by the police. Thus, Kagawad Lazaro testified that the plastic bag containing white crystalline granules, later found positive for shabu, was not recovered from the room of Jack Go:

Atty. Reyes:

You were shown a while ago by the prosecution of (sic) an Inventory Receipt allegedly prepared by Officer Fernandez which includes the list of the items seized from the premises of Benny Go, now, you said that there's no white crystalline granules included in that list which you signed during the inventory?

A

Yes, sir.

Q

Can you recall what was the first item included in that list which you signed in the first page?

A

Chinese medicine, sir.

Q

Now, you also testified that you were with Officer Abulencia when you conducted the search inside the room of Jack Go, now, did you recover anything from the room of Jack Go?

A

PO2 Abulencia recovered one small plastic in the drawer of Jack Go and Naphthalene balls, sir.

x x x

Atty. Reyes:

If that small plastic will be shown to you, will you be able to identify it?

A

Yes, sir.

Atty. Reyes:

I have here a plastic which contained yellowish powder. Could you go over this and tell us if this was the one recovered from the room of Jack Go?

A

This is the one, sir.

Q

I have here another plastic containing white crystalline substance marked by the prosecution as Exh. "A". Will you tell us if this is also recovered from the room of Jack Go?

A

No, this was not recovered from the room of Jack Go, sir.

Q

During the preparation of the inventory of the seized items, was this also included?

A

I did not see that, sir.[107] (Emphasis supplied)

Similarly, Kagawad Manalo testified that neither the plastic bag of shabu nor the weighing scale was among the seized items inventoried by the raiding team:

Q

You said that you were present during the time when SPO1 Fernandez was preparing the inventory of all the items taken from the premises of Benny Go, can you recall what are these items?

A

Yes sir, assorted Chinese medicines, assorted documents, papers, passports, stamp pad, bankbooks and checks and it was placed in five (5) boxes and three (3) ladies bag.

Q

What about a weighing scale? Is there a weighing scale, Mr. Witness?

A

I did not see any weighing scale, sir.

Q

How about drugs or shabu contained in a plastic pack?

A

I did not see any also.[108] (Emphasis supplied)

On rebuttal, SPO1 Fernandez alleged that the two barangay kagawads were lying when they claimed that no shabu was recovered from appellant's residence, and implied that they had been asked to falsify their testimonies in court:

Pros. Rebagay:

Mr. witness, when Salvador Manalo testified before this Honorable Court when he was confronted with Exh. "B" which is the inventory receipt the said witness denied that the first page of Exh. "B" was genuine on the fact that his signature and likewise [that of] his co-colleague did not appear on the first page of the said inventory receipt, what can you say to that statement made by Salvador Manalo?

A

Well, it has not been our practice to let the witness sign on the first page of the 2-page inventory receipt and with regards to the said inventory receipt that he signed on June 4, it is the same inventory receipt that I prepared, sir.

x x x

Q

Likewise, Mr. witness, the said witness Salvador Manalo also denied that the shabu which is the subject of this case has never been recovered by them, what can you say to that?

A

Well, it's a lie, sir.

Q

Why do you say that?

A

Because when the illegal drug was found by PO2 Abulencia, he was accompanied by Gaspar Lazaro at that time. Then he called my attention and he also called the attention of SPO2 Serqueña as well as the attention of Mr. Salvador Manalo. When I went upstairs, they were already inside the said room so the five of us saw the illegal drugs, sir.

x x x

Pros. Rebagay:

Mr. witness, when Salvador Manalo testified here on cross-examination, he mentioned that after the search of the house of Benny Go, a certain investigator, a policeman pretended that he is making a follow-up with respect to the search made by you and your team, will you please tell us if immediately after the incident or after the investigation conducted by the City Prosecutor's Office when you had an occasion to meet Salvador Manalo after that?

A

Yes, sir.

Q

And what happened to that meeting with Salvador Manalo after the preliminary investigation?

Witness:

Because during the preliminary investigation, we were surprised why our witness has taken side, it is on the side of the accused Benny Go so I decided to pay him a visit that day after that confrontation on June 23 and I asked him what happened, "tinanong ko siya kung ano ang nangyari bakit mukhang nakampi na siya roon sa kabila." Ang sagot niya sa akin "ang sabi sa amin ni Atty. Galing kakausapin ka rin niya." That is the exact words.

Atty. Reyes:

We will object to that for being hearsay. May we move that the latter portion be stricken off the record.

Court:

Let it remain

Pros. Rebagay:

And will you please tell us exactly when this incident occur (sic), Mr. witness?

A

That was after June 23, sir.

Q

Where?

A

At his store in A. Linao Street, Paco, sir.

Q

And what was your response after you heard that answer from Salvador Manalo, if any, Mr. witness?

Witness:

"Siyempre nagtaka ako, bakit ganoon ibig sabihin implied baka nagka-aregluhan na, iyan ang iniisip ko," sir.[109] (Emphasis supplied)

Regrettably, no further evidence, aside from the foregoing allegations and suspicions of SPO1 Fernandez, was ever presented to substantiate the claim that the two kagawads had deliberately falsified their testimonies. On the contrary, it appears that the police officers did not actively pursue their complaint for obstruction of justice against the two kagawads with the Department of Justice. Moreover, to completely discount the testimonies of kagawads Lazaro and Manalo would be tantamount to having no witnesses to the search of appellant's residence at all except the police officers themselves, a situation clearly contrary to the tenor and spirit of Section 8 of Rule 126.

The prosecution's attempt to introduce the weighing scale, supposedly seized during the search, only casts more doubt on its case. Said weighing scale was conspicuously absent from the enumeration of seized items in the handwritten Inventory Receipt, the Return of the Search Warrant and the Affidavit of Arrest prepared by the police officers. SPO1 Fernandez's claim that the omission was an honest mistake, to wit:

Pros. Rebagay

Q

Mr. Witness, a while ago you added another item which was not included in the inventory list and this was the weighing scale. Please tell us, why is it only now that you are adding it to the list of those items that you seized?

A

Well, with all honesty Your Honor, I cannot offer any alibi except to say that I committed an honest mistake when I did not include that weighing scale in the inventory receipts.[110]

does not inspire credence. Neither does SPO1 Serqueña's explanation:

Q

What was the search warrant all about? It commands you to search and seize what items?

A

Regarding drugs, drug paraphernalias and proceeds of the crime, sir.

Atty. Reyes:

Atty. Reyes:

A

Weighing scale, sir.

Q

Weighing scale is included in the search warrant. So the warrant specifically commands you to seize drugs, drug paraphernalias and weighing scale?

A

Yes, sir.

Q

And you read this Affidavit of Arrest before you signed this. Did you notice that the weighing scale is not included here?

A

Yes, sir. Now I noticed.

Q

No, during the time that you signed this?

A

No, sir.

Q

You did not notice that?

A

No, sir.

Q

As well as the time when Officer Fernandez was preparing this Inventory, you did not call his attention that there are some items missing in that Inventory?

A

I did not call his attention. Honestly speaking... (unfinished)

x x x

A

Honestly speaking, we confiscated so many evidence including papers, boxes, voluminous quantity of evidence recovered and only one officer is conducting the Inventory. We cannot conduct Inventory two at a time or three at a time, only one. Because maybe, you see, he's only one. Maybe he did not list it because of that so many evidence confiscated.

Atty. Reyes:

But the weighing scale is not a small item, is that correct? It's a big item?

A

Yes, sir.

Q

Do you want to tell us that you missed that item?

A

I was not the one who missed it, sir.

Q

How about your Affidavit of Arrest?

A

Officer Fernandez prepared that Affidavit, sir.

Q

So you are not the one who prepared this? You merely signed it?

A

I signed it in their presence, sir.[111]

The foregoing explanations are improbable and far from persuasive. Considering that a weighing scale was among the items particularly described in Search Warrant No. 99-0038, it would be expected that the police officers would be actively searching for it and, if found, they would take care to include it in the inventory and the return of the search warrant. But while numerous seals, stamps, checks and documents not described in the search warrant were seized and carefully inventoried by the raiding team, none of the five police officers bothered to point out that the weighing scale had not been included in the inventory.

The implausibility of the story put forward by the police officers leads to no other conclusion than that the weighing scale was introduced as an afterthought in order to bolster the case against appellant.

With the persistence of nagging doubts surrounding the alleged discovery and seizure of the shabu, it is evident that the prosecution has failed to discharge its burden of proof and overcome the constitutional presumption of innocence. It is thus not only the accused's right to be freed; it is, even more, this Court's constitutional duty to acquit him. [112] Apropos is the ruling in *People v. Aminnudin*,[113] viz:

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. As Justice Holmes, again, said "I think it is less evil that some criminals should escape than that the government should play an ignoble part." It is simply not allowed in the free society to violate a law to enforce another, especially if the law violated is the Constitution itself. [114]

Return of Seized Property Not Described in the Search Warrant

Turning now to the Motion for Return of Personal Documents, Vehicle and Paraphernalia, the general rule is that only the personal properties particularly described in the search warrant may be seized by the authorities. Thus, in *Tambasen v. People*,[115] this Court held:

Moreover, by their seizure of articles not described in the search warrant, the police acted beyond the parameters of their authority under the search warrant. Section 2, Article III of the 1987 Constitution requires that a search warrant should particularly describe the things to be seized. "The evident purpose and intent of the requirement is to limit the things to be seized to those, and only those, particularly described in the search warrant – to leave the officers of the law with no discretion regarding what articles they should seize, to the end that unreasonable searches and seizures may not be made and that abuses may not be committed" (*Corro v. Lising*, 137 SCRA 541, 547 [1985]; *Bache & Co. [Phil.], Inc. v. Ruiz*, 37 SCRA 823 [1971]; *Uy Kheytn v. Villareal*, 42 Phil. 886 [1920]).[116] (Emphasis supplied)

There are, however, several well-recognized exceptions to the foregoing rule. Thus, evidence obtained through a warrantless search and seizure may be admissible under the following circumstances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in plain view; and (5) when the accused himself waives his right against unreasonable searches and seizures.[117]

To be valid, therefore, the seizure of the items enumerated in appellant's Motion for Return of Personal Documents, Vehicle and Paraphernalia must fall within the ambit of Search Warrant No. 99-0038 or under any of the foregoing recognized exceptions to the search warrant requirement.

In this regard, the raiding team sought to justify the seizure of the car, the Fifty Two Thousand Seven Hundred Sixty Pesos (P52,760.00) in different denominations, and the Twenty Five Thousand Chinese Yuan (CY25,000.00) as either "proceeds of the offense" or "means of committing an offense" within the purview of the warrant. Thus PO2 Abulencia testified:

Q

And how about the money, Mr. witness? Why did you confiscate the money?

A

It's considered as proceed of the crime, sir.

Q

How about the vehicle, Mr. witness? Why did you took (sic) custody of the vehicle when it was not listed in the search warrant?

A

This is part and parcel of the evidence, sir. Because it's being used in transporting drugs, sir.[118]

Similarly, with respect to the car, SPO1 Fernandez stated:

Q

This vehicle, Toyota Corolla GLI with Plate No. PNU-TT-658, where was it during the time that you. . . (unfinished)

A

It was parked in front of the house of Benny Go.

Q

And you seized it?

A

Yes, sir.

Q

Why?

A

Because during the surveillance operation we saw some known pusher riding in that car?

Q

Who are these drug pushers?

A

One of those guys is Mr. Peter Co, also a subject of our investigation.

Q

Which (sic) you released after the arrest, after he was invited for investigation in your office on June 14, 1999?

A

Yes, sir.[119]

The foregoing rationalizations are unacceptable. Admittedly, neither the money nor the car was particularly described in the search warrant. In seizing the said items then, the police officers were exercising their own discretion and determining for themselves which items in appellant's residence they believed were "proceeds of the crime" or "means of committing the offense." This is absolutely impermissible. It bears reiterating that the purpose of the constitutional requirement that the articles to be seized be particularly described in the warrant is to limit the things to be seized to those, and only those, particularly described in the search warrant – to leave the officers of the law with no discretion regarding what articles they should seize. A search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to a crime. [120]

At the same time, the raiding team characterized the seizure of the assorted documents, passports, bankbooks, checks, check writer, typewriter, dry seals and stamp pads as "seizure of evidence in plain view." [121]

Under the plain view doctrine, objects falling in the "plain view" of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence.[122] This Court had the opportunity to summarize the rules governing plain view searches in the recent case of *People v. Doria*, supra, to wit:

The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of

evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent. (Underscoring supplied; citations omitted)[123]

Measured against the foregoing standards, it is readily apparent that the seizure of the passports, bankbooks, checks, typewriter, check writer, dry seals and stamp pads and other assorted documents does not fall within the "plain view" exception. The assertions of the police officers that said objects were "inadvertently" seized within their "plain view" are mere legal conclusions which are not supported by any clear narration of the factual circumstances leading to their discovery. PO2 Abulencia could not even accurately describe how the raiding team came across these items:

Q

This Box "A" marked as Exhibit "G", in what part of the room did you recover this?

A

We recovered all the evidence within our plain view, sir. The evidence were scattered in his house. I cannot remember whether Box "A" or Box "B", but all the evidence were within our plain view that's why we confiscated them, sir.

Q

What do you mean by plain view?

A

"Nakikita namin, sir. Yung kitang-kita namin."

Q

Where in the premises of Benny Go did you see all these documents?

A

Ground floor and upstairs but mostly in the ground floor, on the table and on the floor, sir.

Atty. Reyes:

This Box "A" marked as Exh. "G" contains what documents again?

A

Can I see my notes, sir?

Atty. Reyes:

Go ahead.

A

Box "A" contains different bundle of pieces of document, NBI and BI clearances, Application of Chinese National, different papers, sir.

Q

Can you remember where in particular did you recover these documents?

A

I cannot remember, sir.

Q

All of these documents were recovered primarily on the ground floor and on the second floor?

A

Yes, sir.

Q

Where in particular at the second floor, there are three to four rooms there?

A

"Sir, nandoon sa mesa lahat iyan eh don sa taas rin may mesa din doon at saka doon naming nakuha ang ibang mga dokumento."

Q

Is (sic) that room belongs (sic) to Jack Go?

A

I don't know, sir, but all these (sic) evidence were recovered from the house of Benny Go.[124]

SPO1 Fernandez's account of how he came across the dry seals, rubber stamps and papers is just as opaque:

Q

For how long have you been inside the house of Benny Go when you noticed these dry seals?

A

I think more than an hour, I don't exactly remember the time.

Q

But during the time you have not yet noticed the documents which you brought to this Court, what call (sic) your attention was these dry seals first?

A

Well, actually the dry seals and the rubber stamps were all placed atop the table and as well as the documents because the box where the documents were placed are half opened. They are opened actually that's why I saw them.

Q

So, you first saw the rubber stamps and the dry seals, is that correct? Because they are atop the table?

A

Yes, sir.

Q

And then later on you also saw the documents?

A

Yes, sir it's beside the table.

Q

Contained in a box half opened?

A

Yes, sir.

Q

Which did you touch first, the rubber stamps, the dry seals or the documents?

A

I did not touch anything, I only inventoried that when the searching team were through with what they are doing. Now, all the evidence were placed atop the dining table, located also at the sala of the house or at the dining area. Then, that's when I asked some of my co-members to place all those document and the other confiscated items atop the table also.[125]

The foregoing testimonies are clearly evasive and do not establish how the police officers became aware of the seized items which were allegedly within their "plain view."

Finally, it appears from the testimony of SPO1 Fernandez that the supposed illegal character of the items claimed to have been seized within the "plain view" of the policemen was not readily and immediately apparent. Rather, the suspicions of the policemen appear to have been aroused by the presence of the numerous passports and immigration documents which they discovered in the course of their search. After they confirmed that appellant was not operating a travel agency, they concluded that his possession of said documents and passports was illegal even though they could not identify the alleged law supposedly violated.[126]

To be sure, the policemen also filed a complaint against appellant for alleged possession of instruments or implements intended for the commission of falsification under paragraph 2 of Article 176 of the Revised Penal Code on the basis of dry seals and rubber stamps also found in appellant's residence.[127]

However, the illegal character of said dry seals and stamp pads cannot be said to have been immediately apparent. For SPO1 Fernandez had to first make an impression of the dry seal on paper before he could determine that it purported to be the seal of the Bureau of Immigration and Deportation. [128] The counterfeit nature of the seals and stamps was in fact not established until after they had been turned over to the Chinese embassy and Bureau of Immigration and Deportation for verification. It is, therefore, incredible that SPO1 Fernandez could make such determination from a "plain view" of the items from his vantage point in the sala.

In sum, the circumstances attendant to the case at bar do not warrant the application of the "plain view" doctrine to justify the seizure and retention of the questioned seized items. The things belonging to appellant not specifically mentioned in the warrants, like those not particularly described, must thus be ordered returned to him.[129]

Be that as it may, considering that the two (2) dry seals and eight (8) of the rubber stamps have been certified to be counterfeit by the Bureau of Immigration and Deportation,[130] they may not be returned and are hereby declared confiscated in favor of the State to be disposed of according to law.[131] Moreover, the various bankbooks and passports not belonging to appellant may not be ordered returned in the instant proceedings. The legality of a seizure can be contested only by the party whose rights have been impaired thereby, and the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties.[132]

WHEREFORE, the decision of the Regional Trial Court of Manila, Branch 41, convicting appellant Benny Go of violation of Section 16, Article III in relation to Section 2 (e-2) Article I of Republic Act No. 6425, as amended, is

REVERSED and SET ASIDE.

Appellant Benny Go is ACQUITTED of the crime charged and is hereby ordered immediately RELEASED from confinement, unless he is lawfully held in custody for another cause.

The Director of the Bureau of Corrections is ORDERED to forthwith IMPLEMENT this Decision and to INFORM this Court, within ten (10) days from receipt hereof, of the date appellant was actually released from confinement.

Appellant's Motion For Return of Personal Documents, Vehicle and Paraphernalia is GRANTED IN PART, and the trial court is hereby ordered to return to him those items seized from the subject premises which belong to him as listed in said Motion.

The subject shabu is ORDERED forfeited in favor of the State and the trial court is hereby directed to deliver and/or cause its delivery to the Dangerous Drugs Board for proper disposition.

The two (2) dry seals and eight (8) of the rubber stamps certified to be counterfeit by the Bureau of Immigration and Deportation are likewise ORDERED forfeited in favor of the State for proper disposition.

SO ORDERED.

Panganiban, (Acting Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.
Puno, (Chairman), J., on leave.

[1] The Dangerous Drugs Act of 1972.

[2] Records at 1.

[3] Id. at 77.

[4] Pre-Trial Order, id. at 88.

[5] TSN, November 4, 1999 at 40-41.

[6] Id. at 41.

[7] Id. at 84.

[8] TSN, November 4, 1999 at 48.

[9] Exhibit "II," Records at 239

[10] TSN, October 12, 1999 at 12.

[11] TSN, November 4, 1999 at 21.

[12] TSN, October 12, 1999 at 14.

[13] Id. at 15-17; TSN, November 4, 1999 at 109-110.

[14] TSN, November 4, 1999 at 87.

[15] Id. at 111.

[16] TSN, October 12, 1999 at 20.

- [17] Exhibit "A."
- [18] Exhibit "B."
- [19] TSN, October 12, 1999 at 20.
- [20] Id. at 22.
- [21] TSN, November 3, 1999 at 13.
- [22] Id. at 17.
- [23] TSN, November 4, 1999 at 52-54.
- [24] TSN, December 1, 1999 at 31.
- [25] TSN, November 4, 1999 at 69.
- [26] Id. at 111.
- [27] Exhibits "V" and "V-1," Records at 222-223.
- [28] Exhibit "W," Records at 224.
- [29] TSN, November 3, 1999 at 19-24.
- [30] TSN, November 4, 1999 at 70-73.
- [31] Exhibit "CC," Records at 230-231.
- [32] Exhibit "Z," Records at 227.
- [33] TSN, November 4, 1999 at 52; TSN, December 1, 1999 at 13-15.
- [34] Exhibit "C," Records at 219.
- [35] TSN, September 28, 1999 at 4; Exhibit "D," Records at 220; Exhibit "E," Records at 221.
- [36] Exhibit "E."
- [37] TSN, November 3, 1999 at 35; TSN, November 4, 1999 at 52, 94.
- [38] TSN, November 4, 1999 at 95-96.
- [39] Exhibit "F."
- [40] TSN, November 4, 1999 at 28.
- [41] TSN, November 3, 1999 at 37.
- [42] TSN, November 19, 1999 at 10.
- [43] Id. at 11.
- [44] Id. at 20.
- [45] Id., at 17-18.
- [46] TSN, December 6, 1999 at 8-10.
- [47] TSN, January 19, 2000 at 7-9.

[48] Id. at 10-13.

[49] TSN, December 6, 1999 at 11-12.

[50] Id. at 15.

[51] TSN, January 19, 2000 at 18.

[52] TSN, December 6, 1999 at 12; TSN, January 19, 2000 at 19.

[53] Vide note 44; TSN, December 6, 1999 at 19-20; TSN, January 19, 2000 at 20.

[54] TSN, December 6, 1999 at 12-16; TSN, January 19, 2000 at 20.

[55] TSN, December 8, 1999 at 8.

[56] TSN, December 6, 1999 at 15-16.

[57] Vide note 42; TSN, December 8, 1999 at 7-9; TSN, January 19, 2000 at 21.

[58] TSN, November 19, 1999 at 11; TSN, December 8, 1999 at 31; TSN, January 19, 2000 at 24.

[59] TSN, December 6, 1999 at 17.

[60] TSN, December 8, 1999 at 11-13.

[61] Rollo at 44.

[62] Records at 426.

[63] Id. at 474.

[64] Rollo at 79-125.

[65] Appellant's Brief, Rollo at 82-83.

[66] Rollo at 131-147.

[67] Id. at 143.

[68] SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

SEC. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when the public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[69] *Rodriguez v. Villamiel*, 65 Phil. 230, 237-238 (1937).

[70] *People v. Salanguit*, 356 SCRA 688, 702 (2001); see also *Mata v. Bayona*, 128 SCRA 388, 394 (1984).

[71] 48 Phil. 169 (1925).

[72] Id. at 176.

[73] *Alvarez v. Court of First Instance of Tayabas*, 64 Phil. 33, 41-42 (1937) (citations omitted).

[74] *Rollo* at 41-42.

[75] *Id.* at 43.

[76] *People v. Capulong*, 160 SCRA 433, 537 (1988); *Espano v. Court of Appeals*, 288 SCRA 559, 563 (1998); *People v. Enriquez*, 281 SCRA 103, 114 (1997); *People v. Lua*, 256 SCRA 539, 546 (1996).

[77] *People v. Villagonzalo*, 238 SCRA 215, 223-224 (1994); *People v. Laxa*, 361 SCRA 622, 627 (2001); *People v. De Los Santos*, 314 SCRA 303 (1999); *People v. Dismuke*, 234 SCRA 50, 59 (1994); see also *People v. Jumamoy*, 221 SCRA 333 (1993); *Tabuena v. Court of Appeals*, 196 SCRA 650 (1991); *People v. Salcedo*, 195 SCRA 345 (1991).

[78] SEC. 7. Right to break door or window to effect search. - The officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein. (Emphasis supplied)

[79] TSN, November 4, 1999 at 20-21.

[80] TSN, October 12, 1999 at 14-15.

[81] TSN, November 4, 1999 at 50-51.

[82] *Id.* at 112-114.

[83] 54 SCRA 312 (1973).

[84] *Id.* at 319-320.

[85] TSN, November 3, 1999 at 19.

[86] 219 SCRA 743 (1993).

[87] *Id.* at 752.

[88] 158 SCRA 88 (1988).

[89] *Id.* at 89-90; see also *People v. Mauyao*, 207 SCRA 732 (1992); *People v. Ang Chun Kit*, 251 SCRA 660 (1995).

[90] SEC. 11. Receipt for the property seized. – The officer seizing property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in which he found the seized property.

[91] TSN, November 4, 1999 at 112.

[92] TSN, November 16, 1999 at 27-28.

[93] SEC. 12. Delivery of property and inventory thereof to court; return and proceedings thereon. – (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

x x x

[94] *People v. Gesmundo*, supra, at 752.

[95] SEC. 12. Delivery of property and inventory thereof to court; return and proceedings thereon. – x x x

(b) Ten (10) days after issuance of the search warrant, the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. If the return has been made, the judge shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.

(c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result, and other actions of the judge.

A violation of this section shall constitute contempt of court.

[96] TSN, November 4, 1999 at 110-111.

[97] *People v. Gesmundo*, supra at 751-752.

[98] *People v. Caguioa*, 95 SCRA 2, 10 (1980).

[99] *People v. Jara*, 144 SCRA 516, 531 (1986).

[100] TSN, November 4, 1999 at 111-112.

[101] *People v. Pasudag*, 357 SCRA 487, 495 (2001); *People v. Encinada*, 280 SCRA 72, 91 (1997) *Aniag, Jr. v. Commission on Elections*, 237 SCRA 424, 436-437 (1994).

[102] 234 SCRA 246 (1994).

[103] *Id.* at 252-253.

[104] *Boyd vs. U.S.*, 116 U.S. 616 (1886) cited in *People v. Francisco*, G.R. No. 129035, August 22, 2002; *Castro v. Pabalan*, 70 SCRA 477, 483 (1976).

[105] *Stonehill v. Diokno*, 20 SCRA 383, 394 (1967); see also *People v. Compacion*, 361 SCRA 540 citing *People v. Aruta*, 288 SCRA 626, 652 (1998); *Paper Industries Corp. of the Phils. v. Asuncion*, 307 SCRA 253, 274 (1999).

[106] *People v. Simbahon*, G.R. No. 132371, April 9, 2003; *People v. Mendiola*, 235 SCRA 116, 120 (1994).

[107] TSN, November 19, 1999 at 18-20.

[108] TSN, January 19, 2000 at 20-21.

[109] TSN, February 29, 2000 at 4-9.

[110] TSN, November 4, 1999 at 50-57.

[111] TSN, December 1, 1999 at 34-36.

[112] *People v. Mejia*, 275 SCRA 127, 151 (1997); citations omitted.

[113] 163 SCRA 402 (1988).

[114] Id. at 410-411; also cited in *People v. Doria*, 301 SCRA 668, 717 (1999) and *People v. Flores*, 165 SCRA 71, 85 (1988).

[115] 246 SCRA 184 (1995).

[116] Id. 190; see also *Del Rosario v. People*, 358 SCRA 373, 392 (2001); *Uy v. Bureau of Internal Revenue*, 344 SCRA 36 (2000); *Roan v. Gonzales*, 145 SCRA 687 (1986).

[117] *People v. Doria*, supra at 704-705.

[118] TSN, November 3, 1999 at 25.

[119] TSN, November 4, 1999 at 101-102.

[120] *People v. Del Rosario*, supra at 253.

[121] TSN, November 3, 1999 at 25; TSN, November 4, 1999 at 74-75.

[122] *People v. Musa*, 217 SCRA 597, 610 (1993); citing *Harris v. United States*, 390 U.S. 192, 72 L. ed. 231 (1927).

[123] supra at 711.

[124] TSN, November 3, 1999 at 31-32.

[125] TSN, November 16, 1999 at 29-32.

[126] TSN, November 4, 1999 at 88-99.

[127] Id. at 99-100.

[128] TSN, November 16, 1999 at 32-33.

[129] *Uy v. Bureau of Internal Revenue*, supra, at 66.

[130] Exhibits "WW" to "AAA"; Records at 241-244.

[131] *Castro v. Pabalan*, supra.

[132] *Uy v. Bureau of Internal Revenue*, supra, at 67 citing *Stonehill v. Diokno*, supra; *Nasiad v. Court of Tax Appeals*, 61 SCRA 238 (1974); and *Lim v. Ponce De Leon*, 66 SCRA 299 (1975).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.