



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 225503

Present:

CARPIO, J., *Chairperson,*
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, *JJ.*

- versus -

JERRY DAGDAG A.K.A. "TISOY",
Accused-Appellant.

Promulgated:

26 JUN 2019
[Handwritten Signature]

x-----x

DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by the accused-appellant Jerry Dagdag a.k.a. "Tisoy" (Dagdag), assailing the Decision² dated December 1, 2014 (assailed Decision) of the Court of Appeals (CA)³ in CA-G.R. CR-HC No. 05817, which affirmed the Judgment⁴ dated October 16, 2012 rendered by the Regional Trial Court of Pasig City, Branch 164 (RTC) in Criminal Case Nos. 16032-D and 16033-D, entitled *People of the Philippines v. Jerry Dagdag a.k.a. "Tisoy,"* finding Dagdag guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁵ otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

¹ See Notice of Appeal dated December 23, 2014, *rollo*, pp. 13-14.
² Id. at 2-12. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca De Guia Salvador and Leoncia Real-Dimagiba, concurring.
³ Third Division.
⁴ CA *rollo*, pp. 88-98. Penned by Presiding Judge Jennifer A. Pilar.
⁵ Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425. OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (2002).

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision, and as culled from the records of the instant case, the essential facts and antecedent proceedings of the instant case are as follows:

[Dagdag] was charged for violation of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002” upon separate Informations, the accusatory portions of each read as follows:

Criminal Case No. 16032-D

“On or about December 20, 2007, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to PO1 Christopher Millanes, a police poseur buyer, one (1) heat-sealed transparent plastic bag containing seven (7) centigrams (0.07 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.”

Criminal Case No. 16033-D

“On or about December 20, 2007, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control two (2) heat-sealed transparent plastic sachets containing seven (7) centigrams (0.07 gram) with a total weight of fourteen (14) decigrams (0.14 gram) of white crystalline substance, which were found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.”

Arraigned on both charges on 31 January 2008, [Dagdag], assisted by counsel *de officio*, entered pleas of “not guilty.” Pre-trial was terminated also on 31 January 2008, after which, trial ensued.

Based on the Brief submitted by the Office of the Solicitor General, the facts are as follows:

“On December 20, 2007, a confidential informant went to the Pasig City Police Station Drug Enforcement Unit Anti-Illegal Drugs Special Operation Task Force to inform P/Insp. Dennis David that one alias “Tisoy,” who was later identified as [accused-appellant] Jerry Dagdag,



was rampantly selling illegal drugs along V. Pozon St., Barangay Bambang, Pasig City. In response to that information, P/Insp. David formed a buy bust team and prepared all the necessary documents in the conduct of the entrapment operation like the pre-marked money consisting of two (2) one hundred peso bills with Serial Numbers RM 940869 and RM940870, among others. Designated to act as the poseur-buyer was PO1 Christopher Millanes with PO2 Peter Joseph Villanueva as his back-up, while PO1 Millanes was tasked to give the pre-arranged signal by using his cellular phone to prompt that the transaction had already taken place.

At around 10:30 o'clock in the evening that same day, the team proceeded to the target area located at V. Pozon St., Barangay Bambang, Pasig City. When PO1 Christopher Millanes and the confidential informant were walking along the alley of V. Pozon St., they accidentally met [Dagdag]. The confidential informant told [Dagdag], "pare paeskor naman" and the latter asked, "magkano?" to which PO1 Millanes answered "dalawang daan." PO1 Millanes took out from his pocket the marked money and gave it to [Dagdag] who in turn handed to him the sachet containing the suspected shabu. Immediately thereafter, PO1 Millanes put inside his pocket the suspected shabu and dialed his cellular phone giving the pre-arranged signal to his back up PO2 Villanueva that the same was already consummated. At that point, PO1 Millanes grabbed the hand of [Dagdag] and introduced himself as Police Officer. [Dagdag] tried to resist the arrest but failed because of the timely response of PO2 Joseph Villanueva. [Dagdag] was bodily searched by PO1 Millanes who recovered the marked money and another two (2) plastic sachets of suspected shabu from his pocket. The evidence seized from [Dagdag] were immediately marked at the crime scene by PO1 Millanes with the markings: A Tisoy/CM 12/20/07 for the sachet subject of the sale and B and C, respectively, for the other two (2) sachets of shabu recovered as a result of the body search.

Thereafter, [Dagdag] was brought to the Pasig Police Station for proper booking and documentation, his photograph was taken as well as the items seized from the operation. The Request for Laboratory Examination for the seized items [was] prepared and transmitted to the PNP Crime Laboratory. PO1 Millanes brought the request for laboratory examination together with the three (3) sachets of suspected shabu to the Eastern Police District (EPD) of the PNP Crime Laboratory in Marikina City. Police Chief Inspector Isidro L. Cariño who conducted the laboratory examination on the seized evidence issued Physical Science Report No. D-524-07E stating that the specimens yielded positive result for methamphetamine hydrochloride or shabu, a dangerous [drug].



On the other hand, as reflected in Dagdag's Brief, the evidence for the defense shows the following:

“x x x.

At around 9:00 o'clock in the evening of December 20, 2007, **JERRY DAGDAG** (Jerry), his son-in-law, Albert V. Tacsagon[,] Jr. (Albert) and his two (2) grandchildren were watching [a] television show in the living room of their house located at 25 E. Jacinto Str[e]t Bambang, Pasig City. The daughter of [Dagdag], Joanna Camile C. Dagdag (Joanna), was sleeping in her room. Suddenly, two (2) men in civilian clothes and armed with firearms entered the house and poked a gun at [Dagdag]. PO1 Christopher introduced himself as a policeman and asked [Dagdag] if he is @ Jerry Tisoy. [Dagdag] answered “Opo, ano po ang problema?” PO1 Christopher immediately handcuffed [Dagdag] and told him to go with them. [Dagdag] asked PO1 Christopher and his companion why should he go with them when he did nothing wrong. Then, [Dagdag] told his grandchildren to stop crying while Albert was embracing them. PO1 Christopher and his companion pulled [Dagdag] towards the door and advised him not to make a scene on the road otherwise he [would] be shot. On the road, they flagged down a taxi, and when [Dagdag] was about to board the cab, Joanna, who was aroused from her sleep, came running after them and pulled the hand of [Dagdag]. The [latter] told Joanna to let go of him since the policemen [would] not allow him to let go. The policemen brought [Dagdag] to the Pariancillo Police Headquarters. Thereat, he was brought inside a room on the second floor where PO1 Christopher told him to settle the case for Fifty Thousand Pesos (P50,000.00). [Dagdag] told PO1 Christopher that he is just a carpenter and he has no money. The third time PO1 Christopher returned to the room, he was already asking a reduced amount of Twenty Thousand Pesos (P20,000.00). But when [Dagdag] still refused to give the money, PO1 Christopher got angry and hurled invectives at [Dagdag]. PO1 Christopher took out from the drawer three (3) small plastic sachets, a lighter and a pair of scissors. Thereafter, PO1 Christopher put something inside the three (3) small plastic sachets, sealed it (*sic*)[,] and put markings on it (*sic*) using a pentel pen, and told him “You son of a bitch, this will be the evidence that we will use against you and we will pursue the case if you do not give money to us”. A few minutes later, PO1 Christopher brought [Dagdag] to Marikina for drug testing, and then he was brought back to the police station where he was detained. (TSN, July 3, 2012, pp. 2-7).

ALBERT V. TACSAGON, JR. (Albert) corroborated the testimony of [Dagdag]. On December 20, 2007 at around 9:00 o'clock in the evening, while Albert was watching television together with his father-



in-law [Dagdag] and his two (2) children, two (2) armed men in civilian clothes suddenly barged into their house looking for [Dagdag]. They pointed a gun at [Dagdag] and dragged him out of the house. Albert was surprised and attended to his children because they were frightened of the armed men (TSN, September 17, 2012, pp. 2-4.).

On December 20, 2007 at around 10:30 o'clock in the evening, **JOANNA CAMILLE DAGDAG** (Joanna), while sleeping inside a room of her house located 25 E. Jacinto Street, Bambang, Pasig City, was awakened when she heard the cry of her two (2) children. Joanna witnessed her father, [Dagdag], being accompanied by two (2) men with firearms out of the house. Then, upon seeing [Dagdag] being boarded inside a taxi, Joanna held [Dagdag]'s arm. But [Dagdag] told Joanna to let go, so Joanna released his arm. (TSN, September 25, 2012, pp. 3-5).⁶

The Ruling of the RTC

On October 16, 2012, the RTC rendered a Judgment convicting Dagdag on both charges. The dispositive portion of the RTC's Judgment reads:

WHEREFORE, premises considered, accused Jerry Dagdag alias "Tisoy" is hereby found guilty beyond reasonable doubt of the offenses of illegal sale of 7 centigrams (0.07 gram) of methylamphetamine hydrochloride and possession of 14 decigrams (0.14 gram) thereof and sentences him as follows:

1. For Criminal Case No. 16032-D [violation of Section 5, Article II of R.A. No. 9165] – life imprisonment and to pay a fine of five hundred thousand pesos (P500,000.00); and
2. For Criminal Case No. 16033-D [violation of Section 11, Article II of R.A. No. 9165] – imprisonment ranging from twelve years and one day to fifteen years (applying the Indeterminate Sentence Law) and to pay a fine of thirty (*sic*) thousand pesos (P300,000.00).

The Branch Clerk of this Court is directed to forward the sachets of shabu (Exhibits "M", "N", & "O") to the Philippine Drug Enforcement Agency for destruction.

SO ORDERED.⁷

Aggrieved, Dagdag filed an appeal before the CA.

⁶ Rollo, pp. 3-6.

⁷ CA rollo, p. 98.



The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of Dagdag. The dispositive portion of the assailed Decision reads:

WHEREFORE, the foregoing considered, the appeal is hereby **DISMISSED** and the assailed Judgment is **AFFIRMED with MODIFICATION** in that in Criminal Case No. 16033-D, accused-appellant is ordered to pay a fine in the amount of **THREE HUNDRED THOUSAND PESOS (P300,000.00)** and **not** Thirty Thousand Pesos.

SO ORDERED.⁸

Hence, the instant appeal.

Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting Dagdag for violating Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. The Court acquits Dagdag for failure of the prosecution to prove his guilt beyond reasonable doubt.

Dagdag was charged with the crime of illegal sale and possession of dangerous drugs, defined and penalized under Sections 5 and 11, respectively, of Article II of RA 9165.

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (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 therefor.⁹

On the other hand, illegal possession of dangerous drugs under Section 11, Article II of RA 9165 has the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.¹⁰

⁸ *Rollo*, pp. 11-12.

⁹ *People v. Opiana*, 750 Phil. 140, 147 (2015).

¹⁰ *People v. Fernandez*, G.R. No. 198875, June 4, 2014, p. 2 (Unsigned Resolution).



In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.¹¹ While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,¹² the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.¹³ The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.¹⁴

In this connection, Section 21, Article II of RA 9165,¹⁵ the applicable law at the time of the commission of the alleged crimes, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation;** and (2) **the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

This must be so because with “the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin

¹¹ *People v. Guzon*, 719 Phil. 441, 451 (2013).

¹² *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

¹³ *People v. Guzon*, supra note 11, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

¹⁴ *Id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

¹⁵ The said section reads as follows:

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[.]



can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.”¹⁶

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be done in the presence of the aforementioned required witness, all of whom 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**. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.¹⁷ In this connection, 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**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

Applying the foregoing in the instant case, **no inventory and photographing of the evidence were conducted whatsoever in the presence of the required witnesses either at the scene of the purported buy-bust operation or even when Dagdag was brought to the police station thereafter**.

Simply stated, the supposed buy-bust operation in the instant case was conducted in *complete and utter derogation* of Section 21 of RA 9165.

It must be highly emphasized that the CA itself acknowledged that there was **no evidence** presented by the prosecution whatsoever showing that an inventory of the allegedly seized drugs was even conducted by the police:

x x x Although **the prosecution failed to introduce in evidence the inventory of the subject drugs** x x x¹⁸ (Emphasis, italics and underscoring supplied)

Further, it is equally striking that the CA itself recognized that there was **“the lack of photographs or representatives of the accused or the DOJ.”**¹⁹ Furthermore, the CA likewise readily acknowledged that there was

¹⁶ *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

¹⁷ IRR of RA 9165, Art. II, Sec. 21(a).

¹⁸ *Rollo*, p. 9.

¹⁹ *Id.*; emphasis and underscoring supplied.

a **“lack of signature[s] of Jerry, his counsel or any representative from the media or the DOJ on the inventory receipt.”**²⁰

In addition to the foregoing admissions made by the CA on the blatant failure of the prosecution to present certain evidence, a careful review of the testimony of PO1 Christopher Millanes (PO1 Millanes), the police officer who allegedly conducted the buy-bust operation, reveals the following:

First, while PO1 Millanes undertook to mark the allegedly seized three (3) plastic sachets of *shabu* at the scene of the supposed buy-bust operation, **the said marking was patently irregular**. As admitted by PO1 Millanes on cross-examination, the time and place of the marking were not indicated in the markings made:

Q: But you did not put the time when it was first confiscated?

A: No, ma'am.

Q: You did not even put there the place where you confiscated it. Correct?

A: Yes, ma'am.²¹

Second, it must be emphasized that PO1 Millanes, again on cross-examination, admitted point blank that **there was no certificate of inventory prepared by the police**:

Q: And Mr. Witness, in fact, you did not even prepare a certificate of inventory for this matter that, in fact, you were able to confiscate three plastic sachets for the accused to acknowledge it?

A: No, ma'am.²²

Third, as revealed again during the cross-examination of PO1 Millanes, **there were no pictures taken during the supposed buy-bust as the apprehending team failed to bring a camera**. The pictures of the supposed seized specimen were taken only in the police station:

Q: Where did you take this picture?

A: At the office, ma'am.

Q: But not at the crime scene?

A: Wala po kaming dalang camera, ma'am.²³

Fourth, PO1 Millanes testified that upon reaching the police station, **an inventory of the evidence allegedly seized was not conducted. Nor were there any witnesses present**. Upon reaching the police station, the police merely prepared the necessary documents for the crime laboratory. In fact, PO1 Millanes himself revealed that upon reaching the police station,

²⁰ Id.; emphasis and underscoring supplied.

²¹ TSN, May 7, 2010, p. 28.

²² Id. at 28-29.

²³ Id. at 29.

the assigned investigator did not even inspect closely the allegedly recovered specimens:

- Q: Mr. Witness, after you arrived at your office, what did you do?
A: Prepare the necessary documents for crime laboratory.
Q: You did not show the shabu to Inspector David?
A: Hindi na po, ma'am, kinustody ko kasi.
Q: When you arrived there, you did not talk to the investigator in order to turn over the accused and prepare the documents?
A: Pinakita ko lang po, ma'am.
Q: To whom?
A: To the investigator, ma'am.
Q: Paano mo siya pinakita, yung shabu?
A: Nagtanong po nasaan yung recovered evidence, pinakita ko.
Q: And then?
A: Tiningnan niya lang po.
Q: After that?
A: Tinago ko po.
Q: Saan mo tinago?
A: Sa kamay ko po hawak.
Q: Hawak-hawak mo lang noon time na yon?
A: Opo.²⁴

Once again, the Court stresses that the presence of the required witnesses at the time of the inventory is **mandatory**, and that the law imposes the said requirement because their presence serves an essential purpose. **Hence, the CA's assessment that the brazen and wholesale deviations of Section 21 of RA 9165 committed by the police in the instant case are mere "minor lapses"²⁵ is unquestionably incorrect. Such an assessment by the CA is irresponsible and reprehensible.**

In *People v. Tomawis*,²⁶ the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court

²⁴ Id. at 29-30.

²⁵ *Rollo*, p. 9; emphasis supplied.

²⁶ G.R. No. 228890, April 18, 2018.



in *People v. Mendoza*,²⁷ without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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 subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

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

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

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."²⁸

What further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM), the conduct of buy-bust operations requires the following:²⁹

CHAPTER V

x x x x

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x

V. SPECIFIC RULES

²⁷ 736 Phil. 749 (2014).

²⁸ *People v. Tomawis*, supra note 26, at 11-12.

²⁹ PNP-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation – [I]n the conduct of buy-bust operation, the following are the procedures to be observed:
 - a. Record time of jump-off in unit's logbook;
 - b. Alertness and security shall at all times be observed[;]
 - c. Actual and timely coordination with the nearest PNP territorial units must be made;
 - d. Area security and dragnet or pursuit operation must be provided[;]
 - e. Use of necessary and reasonable force only in case of suspect's resistance[;]
 - f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
 - g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;
 - h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arm[']s reach;
 - i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;
 - j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;
 - k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;
 - l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;
 - m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;**
 - n. **Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and**
 - o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination. (Emphasis supplied)



The Court has ruled in *People v. Zheng Bai Hui*³⁰ that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

Both the RTC and CA seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.³¹ And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases that it has proven the guilt of the accused beyond reasonable doubt,³² with each and every element of the crime charged in the information proven to warrant a finding of guilt for that crime or for any other crime necessarily included therein.³³ Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs, ***always*** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:³⁴

x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. ***The State must fully establish that for us.*** If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the

³⁰ 393 Phil. 68, 133 (2000).

³¹ CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

³² The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. (RULES OF COURT, Rule 133, Sec. 2)

³³ *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

³⁴ 745 Phil. 237 (2014).



presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.³⁵ (Emphasis and underscoring supplied)

To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do so within the bounds of the law.³⁶ Without the insulating presence of the representative from the media, the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*. Thus, this adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.³⁷

Concededly, Section 21 of the IRR of RA 9165 provides 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.” For this provision to be effective, however, the prosecution must first (1) recognize any lapses on the part of the police officers and (2) be able to justify the same.³⁸ **In this case, the prosecution neither recognized, much less tried to justify, its deviations from the procedure contained in Section 21, RA 9165.**

Breaches of the procedure outlined in Section 21 committed by the police officers, left 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* would necessarily have been compromised.³⁹ As the Court explained in *People v. Reyes*:⁴⁰

³⁵ Id. at 250-251.

³⁶ *People v. Ramos*, 791 Phil. 162, 175 (2016).

³⁷ *People v. Mendoza*, supra note 27, at 764.

³⁸ See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

³⁹ See *People v. Sumili*, 753 Phil. 352 (2015).

⁴⁰ 797 Phil. 671 (2016).



Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal. x x x⁴¹ (Emphasis supplied)

In *People v. Umipang*,⁴² the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witness before the buy-bust operation was executed. In the said case, the Court held:

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. 9165. **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. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.**⁴³ (Emphasis and underscoring supplied)

In sum, the prosecution miserably failed to provide justifiable grounds for the apprehending team's deviations from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, Dagdag must perforce be acquitted.

⁴¹ Id. at 690.

⁴² 686 Phil. 1024 (2012).

⁴³ Id. at 1052-1053.

As a final note, the Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.⁴⁴ The RTC and the CA therefore seriously and erred in simply brushing aside Dagdag's defense of frame-up, especially when the testimonies of Dagdag, Albert, his son-in-law, and Joanna, his daughter, were consistent in that the police officers forcibly apprehended Dagdag and planted on Dagdag the supposedly seized specimens of *shabu*. **In this connection, the Court sternly reminds the trial and appellate courts to exercise extra vigilance in trying and deciding drug cases, and directs the Philippine National Police to conduct an investigation on this incident and other similar cases, lest an innocent person be made to suffer the unusually severe penalties for drug offenses.**

Finally, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.⁴⁵

Dagdag in the instant case, despite the blatant disregard of the mandatory requirements provided under RA 9165, has been made to suffer incarceration for more than eleven (11) years. While the Court now reverses this grave injustice by ordering the immediate release of Dagdag, there is truth in the time-honored precept that *justice delayed is justice denied*. Such an injustice must not be repeated.

The Court believes that the menace of illegal drugs must be curtailed with resoluteness and determination. Our Constitution declares that the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.⁴⁶

Nevertheless, by sacrificing the sacred and indelible right to due process for the sheer sake of convenience and expediency, the very

⁴⁴ *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

⁴⁵ See *People v. Jugo*, G.R. No. 231792, January 29, 2018.

⁴⁶ CONSTITUTION, Art. II, Sec. 5.

maintenance of peace and order sought after is rendered wholly nugatory. By thrashing basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general welfare is viciously assaulted. In other words, when the Constitution is disregarded, the war on illegal drugs becomes a self-defeating and self-destructive enterprise. A battle waged against illegal drugs that tramples on the rights of the people, is not a war on drugs; it is a war against the people.

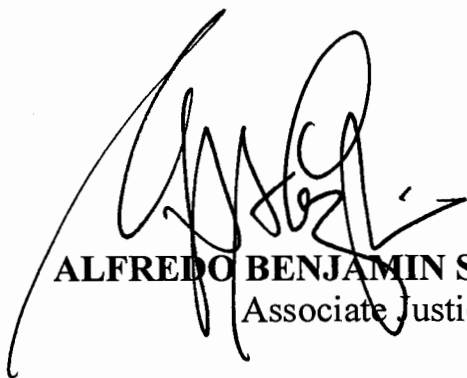
The sacred and indelible right to due process enshrined under our Constitution, fortified under statutory law, should never be sacrificed for the sheer sake of convenience and expediency. Otherwise, the malevolent mantle of the rule of men dislodges the rule of law. In any law-abiding democracy, this cannot and should not be allowed. *Not while this Court sits.*

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated December 1, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05817 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jerry Dagdag a.k.a. "Tisoy" is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

Further, let a copy of this Decision be furnished the Chief of the Philippine National Police and the Regional Director of the National Capital Region Police Office, Philippine National Police. The Philippine National Police is **ORDERED** to **CONDUCT** an **INVESTIGATION** on the brazen violation of Section 21 of RA 9165 and other violations of the law committed by the buy-bust team, as well as other similar incidents, and **REPORT** to this Court within thirty (30) days from receipt of this Decision the action taken.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

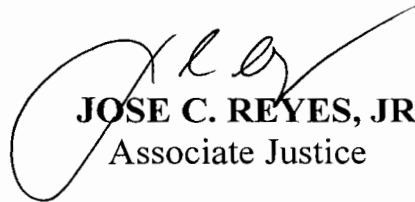
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



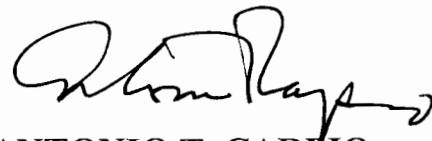
JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division



CERTIFICATION

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



LUCAS P. BERSAMIN
Chief Justice