



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. 237975

Present:

- versus -

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

JIMMY FULINARA y FABELANIA,<sup>1</sup>  
Accused-Appellant.

Promulgated:

19 JUN 2019

x-----MA Cabalagor-----x

DECISION

CAGUIOA, J.:

This is an Appeal<sup>2</sup> under Section 13(c), Rule 124 of the Rules of Court from the Decision<sup>3</sup> dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08722, which affirmed the Joint Decision<sup>4</sup> dated October 10, 2016 rendered by the Regional Trial Court, Branch 270, Valenzuela City (RTC) in Criminal Case Nos. 302-V-16 and 303-V-16 finding herein accused-appellant Jimmy Fulinara y Fabelania (Jimmy) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,<sup>5</sup> otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, as amended.

The Facts

Jimmy was charged with violation of Sections 5 and 11, Article II of RA 9165, in two separate Informations, which read as follows:

<sup>1</sup> Also stated as "Fabelenia" in some parts of the records.  
<sup>2</sup> See Notice of Appeal dated December 19, 2017, *rollo*, pp. 17-19.  
<sup>3</sup> *Rollo*, pp. 2-16. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles concurring.  
<sup>4</sup> *CA rollo*, pp. 63-75. Penned by Presiding Judge Evangeline M. Francisco.  
<sup>5</sup> 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).

**Criminal Case No. 302-V-16 [Illegal Sale of Dangerous Drugs]**

That on or about March 4, 2016 in No. 3065 Manggahan St., Karuhatan, Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, for and in consideration of two hundred pesos (Php 200.00), consisting of (2) pcs. of One Hundred [Peso] bill (100.00) with serial numbers LS950956 and RA163447, respectively, marked as (JC-6) and (JC-7) did then and there willfully, unlawfully and feloniously sell to PO2 JULIUS R. CONGSON, who posed as buyer, a zero point zero six (0.06) gram of Methamphetamine Hydrochloride (Shabu) marked as A(JC-1) [with] date and signature, knowing the same to be dangerous drugs.

CONTRARY TO LAW.<sup>6</sup>

**Criminal Case No. 303-V-16 [Illegal Possession of Dangerous Drugs]**

That on or about March 4, 2016 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) heat-sealed transparent plastic sachet containing zero point zero six (0.06) gram of white crystalline substance verified as [M]ethamphetamine Hydrochloride marked as (JC-2) with date and signature, knowing the same to be dangerous drugs.

CONTRARY TO LAW.<sup>7</sup>

Upon arraignment, Jimmy pleaded not guilty to both charges.<sup>8</sup>

*Version of the Prosecution*

The version of the prosecution, as summarized by the CA, is as follows:

On March 4, 2016, at around 3:00 p.m., PO2 Julius A. Congson ("PO2 Julius") and PO3 Socobos ("PO3 Socobos") were at the office of the Anti-Illegal Drugs, Special Operation Task Group ("SAID-SOTG"), Valenzuela City Police Station when their regular confidential informant ("RCI") arrived and informed them about the illegal drug activities of a certain alias "Boyet" in Manggahan Street, Karuhatan, Valenzuela. Boyet was later identified as Jimmy.

Upon informing their Unit Chief, PCI Ruba, about the information, they planned the buy-bust operation. PO2 Julius, duly coordinated with Philippine Drug Enforcement Agency ("PDEA") and prepared a Coordination Form and a Pre-Operation Report. PO2 Julius was then assigned as the poseur-buyer since he was just transferred from another battalion, making his identity more unknown to the target.

When the team arrived at the place of Jimmy, he was identified by the RCI. While at the gate of the house of Jimmy, the RCI proceeded to call

<sup>6</sup> *Rollo*, p. 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*



for Jimmy. Jimmy answered the call and PO2 Julius was told by the RCI that he was the target.

The RCI then [told] Jimmy that the poseur-buyer, PO2 Julius, would like to buy shabu worth Php 200.00. He used two (2) one hundred (100) peso bills, duly marked with PO2 Julius' initials. After giving the marked money to Jimmy, the latter placed the said money in his left pocket. Thereafter, Jimmy took out a black coin purse from his right side pocket and pulled out one (1) plastic sachet containing shabu, which was handed over to PO2 Julius.

After receiving the plastic sachet, PO2 Julius made the pre-arranged signal for arrest by lifting his cap and held the hand of Jimmy. The other operatives later handcuffed Jimmy. PO2 Julius proceeded to frisk Jimmy and was able to recover from the latter's right pocket the black coin purse, containing another plastic sachet of suspected shabu and two (2) aluminum foil strips. PO2 Julius also recovered from Jimmy the marked money.

As people around the closely built houses were starting to gather and cause a commotion, the buy[-]bust team was instructed by their lead operative to continue the inventory of the confiscated items at PCP-9. PO2 Julius testified that he had the sachet of shabu subject of sale in his right pocket while he was holding the black coin purse containing the other sachet of suspected shabu.

In the police station, inventory was conducted in the presence of Kagawad Rommel Mercado ("Kagawad Rommel"). The Department of Justice ("DOJ") Representative and Media Representative were also called to witness the inventory, but their numbers were busy. PO2 Julius duly marked the sachet of suspected shabu from his pocket as JC-1, the sachet of suspected shabu he recovered from the black coin purse as JC-2, the aluminum foils as JC-3 and JCV-5 and the coin purse itself as JC-4. PO2 Julius put all the evidence in a brown envelope and sealed it. Subsequently, PO2 Julius turned over the pieces of evidence to the investigator-on-case, [who], in turn, prepared the other pieces of evidence.

Meanwhile, PO3 Fortunato Candido ("PO3 Fortunato") prepared the following documents: Memorandum Request for the Conduct of Inventory, Request for Examination, Philippine National Police ("PNP") Arrest and Booking Sheet and the mug shot of Jimmy.<sup>9</sup>

### *Version of the Defense*

On the other hand, the defense's version, as summarized by the CA, is as follows:

Jimmy denied the allegations against him. He testified that on March 4, 2016, he was walking towards the pharmacy to buy Salbutamol since his son had an asthma attack. Jimmy noticed that an Innova car was following him. Suddenly, two (2) men alighted and slammed him to the wall. When Jimmy asked them if they were police officers, one of the men took out a gun and pointed the same at his stomach. Jimmy was brought

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<sup>9</sup> Id. at 4-6.

inside the car and [the policemen] started to question him about a certain Sugar. Jimmy replied that he [does] not know [Sugar] because many people eat at his “lugawan”.

One of the officers demanded Php 10,000.00 if he could not point to them a certain Sugar. Jimmy was brought to Total Gasoline Station in front of SM Valenzuela and boarded in another vehicle.

Jimmy only had Php 170.00 in his pocket when he was arrested. He would use the said amount to buy Salbutamol. The sachets of shabu recovered from Jimmy were not his. Jimmy saw the said sachets for the first time when he was brought to Block 9.

On the other hand, Rosalinda Lague (“Rosalinda”) testified that she is the live-in partner of Jimmy. It was not true that Jimmy was involved in selling drugs. On March 4, 2016, Rosalinda instructed Jimmy to buy Salbutamol because their son was experiencing an asthma attack. Rosalinda wondered why it took Jimmy so long to buy the medicine. Rosalinda learned about the arrest of Jimmy through a niece. At the precinct, Rosalinda told the police officers that Jimmy was just tending to his “lugawan” and had never been involved in selling drugs.<sup>10</sup>

### **Ruling of the RTC**

In the assailed Joint Decision<sup>11</sup> dated October 10, 2016, the RTC ruled that all the elements of Illegal Sale of Dangerous Drugs were established.<sup>12</sup> Similarly, all the elements of Illegal Possession of Dangerous Drugs were proven by the prosecution.<sup>13</sup> It further ruled that the defense of Jimmy that the evidence against him was merely planted after he was not able to produce the money that PO3 Julius R. Congson (PO3 Congson) demanded from him is without merit.<sup>14</sup> The defenses of frame-up and extortion interposed by an accused are usually viewed with disfavor as they can easily be concocted and are common and standard defense ploys in most prosecution of violation of the Dangerous Drugs Act.<sup>15</sup> It also held that the testimony of Jimmy’s wife is self-serving.<sup>16</sup>

The RTC further ruled that the fact that the marking of the recovered drugs was only done at the PCP-9 office and not immediately after their confiscation does not in any way taint their weight as evidence against Jimmy.<sup>17</sup> It held that the prosecution substantially complied with the requirements under RA 9165 and sufficiently established the crucial links in the chain of custody. Thus, the integrity and evidentiary value of the seized *shabu* remained unimpaired.<sup>18</sup>

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<sup>10</sup> Id. at 6-7.

<sup>11</sup> CA *rollo*, pp. 63-75.

<sup>12</sup> Id. at 70.

<sup>13</sup> Id. at 71.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id. at 72.

<sup>17</sup> Id.

<sup>18</sup> Id.

The dispositive portion of the RTC Decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered as follows, to wit:

In Criminal Case No. 302-V-16 finding accused JIMMY FULINARA y FABELENIA GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165 and, this Court sentences him to suffer the penalty of life imprisonment and a FINE of P500,000.00.

In Criminal Case No. 303-V-16, finding accused JIMMY FULINARA y FABELENIA GUILTY beyond reasonable doubt of violation of Section 11, Article II of RA 9165 and, this Court sentences him to suffer imprisonment of 12 years and One (1) day to Twenty (20) years and a FINE of P300,000.00.

Pursuant to Article 29 of the Revised Penal Code, as amended, [his] preventive imprisonment shall be credited in full to his favor.

The subject sachets of shabu are hereby ordered confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.<sup>19</sup>

Aggrieved, Jimmy appealed to the CA.

### **Ruling of the CA**

In the Decision<sup>20</sup> dated November 29, 2017, the CA affirmed Jimmy's conviction. The dispositive portion of the Decision reads:

**WHEREFORE**, the appeal is **DENIED**. The RTC *Joint Decision* dated October 10, 2016 is **AFFIRMED** *in toto*.

SO ORDERED.<sup>21</sup>

The CA ruled that all the elements of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs were proven by the prosecution.<sup>22</sup> It further ruled that the defenses of denial and frame-up, like alibi, are considered weak defenses and have been invariably viewed by the courts with disfavor since they can just easily be concocted but are difficult to prove.<sup>23</sup> Lastly, it ruled that the prosecution was able to account for every link in the chain of custody of the plastic sachets of *shabu* from the time they were seized by the police officers from Jimmy up to the time that the same

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<sup>19</sup> Id. at 74-75.

<sup>20</sup> *Rollo*, pp. 2-16.

<sup>21</sup> Id. at 15.

<sup>22</sup> Id. at 10-11.

<sup>23</sup> Id. at 12.

were turned over to the RTC, thereby establishing the *corpus delicti* and preserving the integrity and evidentiary value of the evidence.<sup>24</sup>

Hence, the instant appeal.

### Issue

Whether Jimmy's guilt for violation of Sections 5 and 11 of RA 9165 was proven beyond reasonable doubt.

### The Court's Ruling

The appeal is meritorious. The accused is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense<sup>25</sup> and the fact of its existence is vital to sustain a judgment of conviction.<sup>26</sup> It is essential, therefore, that the identity and integrity of the seized drug be established with moral certainty.<sup>27</sup> Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime.<sup>28</sup>

In this regard, Section 21,<sup>29</sup> Article II of RA 9165, as amended by RA 10640, the applicable law at the time of the commission of the alleged crimes, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia 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**

<sup>24</sup> Id. at 14.

<sup>25</sup> *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

<sup>26</sup> *Derilo v. People*, 784 Phil. 679, 686 (2016).

<sup>27</sup> *People v. Alvaro*, G.R. No. 225596, January 10, 2018, 850 SCRA 464, 479.

<sup>28</sup> *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

<sup>29</sup> 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof[.]

**official, (c) a representative from the media or a representative from the National Prosecution Service** (NPS) all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.<sup>30</sup>

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 allow 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.<sup>31</sup> **In this connection, this also means that the two required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — 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 sufficient time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;<sup>32</sup> and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>33</sup> It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.<sup>34</sup> Without any justifiable explanation, which must be proven as a fact,<sup>35</sup> the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.<sup>36</sup>

*The buy-bust team failed to comply with the mandatory requirements under Section 21.*

In the present case, the buy-bust team failed to strictly comply with the mandatory requirements under Section 21(1) of RA 9165.

<sup>30</sup> See RA 9165, Art. II, Sec. 21(1) and (2), as amended by RA 10640, Sec. 1.

<sup>31</sup> IRR of RA 9165, Art. II, Sec. 21(a).

<sup>32</sup> *People v. Sanchez*, 590 Phil. 214, 234 (2008)

<sup>33</sup> *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

<sup>34</sup> *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>35</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>36</sup> *People v. Gonzales*, 708 Phil. 121, 123 (2013).

*First*, none of the two required witnesses was present at the time of arrest of the accused and the seizure of the drugs. The barangay kagawad was merely “called-in” at the police station. As testified by PO2 Congson himself:

**Q** After arriving at PCP-9 for the inventory, what did you do next?

**A** We called for the barangay kagawad, Sir.

**Q** Who is this Barangay Kagawad?

**A** Barangay Kagawad Rommel Mercado, Sir.<sup>37</sup> (Emphasis supplied)

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,<sup>38</sup> 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 in *People v. Mendoza*,<sup>39</sup> 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 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 were 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

<sup>37</sup> TSN, June 17, 2016, pp. 22-23; records, pp. 72-73.

<sup>38</sup> G.R. No. 228890, April 18, 2018.

<sup>39</sup> 736 Phil. 749, 764 (2014).





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”.<sup>40</sup> (Emphasis and underscoring in the original)

*Second*, the police officers offered the flimsy excuse that an alleged commotion occurred as the reason why they decided to conduct the marking, inventory, and photography of the seized items at the police station instead of the place of arrest. The Court points out that PO2 Congson’s account of the events that transpired was full of inconsistencies and is thus, hardly believable, *viz.*:

**Q Why did you decide to proceed to PCP-9 instead of doing the inventory at the place of arrest?**

**A Sir because a commotion broke out and people from the area started to approach us.**

**Q Earlier, you said that you went in the area together with five other Police Officers and you will just arrest one person. Why is it that the other Police Officers were not able to isolate the place so you could conduct the inventory there?**

**A That is the decision of our team leader, SPO1 Estrella to proceed at PCP-9, Sir.**

The Court:

What is that commotion about?

Witness:

Upon handcuffing the target, the people went near us, Your Honor.

The Court:

Without even telling, “Move away, we are doing an operation?”

Witness:

We did tell them, Your Honor but they did not move away.

The Court:

How many people were there?

Witness:

Around 10-15 persons, Your Honor.<sup>41</sup>

x x x x

**The Court:**

**Earlier, you mentioned that there were no other people around?**

**Witness:**

**During the transaction, no other persons were there, Your Honor and it was only during the time when we were subduing alias Boyet and placing him in handcuffs when people started**

<sup>40</sup> *People v. Tomawis*, supra note 38, at 11-13.

<sup>41</sup> TSN, June 17, 2016, p. 15-16; records, pp. 65-66.

**coming near us because alias Boyet was then shouting, Your Honor.**

The Court:

Where do these people come from?

Witness:

From the house of alias Boyet and from nearby houses, Your Honor.<sup>42</sup>

During his cross-examination, PO2 Congson admitted that there was no real compelling reason for them to postpone the marking, inventory and photography of the seized items at the police station, viz.:

Atty. Kuong:

Q Since there is a wall facing the house of the accused, the persons who went near the area would only come either from the left or right direction of the house, correct?

A Yes Sir.

Q Despite of that, your four companions failed to cordon the area in order for you to mark the seized evidence in that area?

A Not anymore, Sir.

The Court:

All five of you in the operation?

Witness:

We are six, Your Honor.

The Court:

Who are your companions?

Witness:

SPO1 Estrella, PO3 Vizconde, PO2 Sacobos, PO3 Candido, PO2 Cabusao and I, your Honor.

**The Court:**

**All of you were armed?**

**Witness:**

**Yes, Your Honor.<sup>43</sup>**

x x x x

Atty. Kuong:

Q You said that a commotion occurred in such a way that you were able to subdue the accused, did I understand it correctly?

A Yes Sir.

The Court:

How does he resist?

<sup>42</sup> Id. at 16; id. at 66.

<sup>43</sup> Id. at 36; id. at 86.

Witness:

He was trying to free himself from my grasp and he was shouting,  
Your Honor.

**The Court:**

*Yun lang, hindi naman talagang nanlaban na nanutok,  
nagpupumiglas lang?*

Witness:

**Yes, Your Honor.**<sup>44</sup>

x x x x

The Court:

So there was no compelling reason for you not to be able to mark  
the evidence in the area?

Witness:

*Basta po...*

The Court:

Just answer me, is there any compelling reason for you not to be  
able to mark the seized evidence in the place of seizure and arrest?

Witness:

*Yung lang pong pag-lapit ng mga tao at...*

The Court:

Is that a compelling reason? As a Police Officer and there were six  
of you, all armed?

Witness:

Your Honor, we decided to...

**The Court:**

**Just answer me, you are the arresting and seizing officer.**

Witness:

*“Wala po siguro, Your Honor, pero iyon po ang desisyon ng  
team leader namin na pumunta na po kami sa presinto para  
mag-conduct ng inventory.”*<sup>45</sup>

It bears stressing that the prosecution has the burden of (1) proving  
their compliance with Section 21, RA 9165, and (2) providing a sufficient  
explanation in case of non-compliance. As the Court *en banc* unanimously  
held in the recent case of *People v. Romy Lim*:<sup>46</sup>

It must be **alleged** and **proved** that the presence of the three  
witnesses to the physical inventory and photograph of the illegal drug  
seized was not obtained due to reason/s such as:

<sup>44</sup> Id. at 37; id. at 87.

<sup>45</sup> Id. at 38-39; id. at 88-89.

<sup>46</sup> G.R. No. 231989, September 4, 2018.

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.<sup>47</sup> (Underscoring supplied)

In the present case, the police officers' excuse for postponing the inventory, marking, and photography of the seized items is weak and unbelievable.

Based on PO2 Congson's own account, the commotion only involved a group of 10 persons, who were five meters away from the buy-bust team.<sup>48</sup> Also, although the accused initially resisted, they were immediately able to subdue him by handcuffing him. It is thus highly questionable as to why the buy-bust team of six members, five of whom were armed, decided to vacate the place of arrest and proceed to the police station. **Moreover, the Court also points out that PO2 Congson expressly admitted himself that there was really no compelling reason for them to transfer to the police station and that they did it merely because they were instructed by their team leader to do so.**

*The saving clause does not apply to this case.*

As earlier stated, following the IRR of RA 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.**<sup>49</sup> If these elements are present, the seizure and custody of the confiscated drugs shall not be rendered void and invalid regardless of the non-compliance with the mandatory requirements of Section 21. In this regard, it has also been

<sup>47</sup> Id. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

<sup>48</sup> TSN, June 17, 2016, pp. 16-17; records, pp. 66-67.

<sup>49</sup> RA 9165, Sec. 21(1) as implemented by its IRR.



emphasized that the State bears the burden of proving the justifiable cause.<sup>50</sup> Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.<sup>51</sup>

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 have been compromised.<sup>52</sup> As the Court explained in *People v. Reyes*:<sup>53</sup>

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 x<sup>54</sup> (Emphasis supplied)

**In the present case, as admitted by PO2 Congson, the conduct of the marking, inventory, and photography was not done in the presence of a representative of the NPS or a media representative — it was only done before a Barangay Kagawad.**<sup>55</sup> Neither can it be shown from the respective testimonies of the arresting officers that reasonable efforts were exerted to contact these representatives. PO2 Congson merely mentioned that they contacted the Barangay Kagawad only when they arrived at the police station. However, when they tried calling the other mandatory witnesses, they received no answer.

Clearly, the buy-bust team only contacted the required witnesses after the operation was conducted when they were already at the police station. It was a mere afterthought. Moreover, no other proof that the NPS representative and media representative were contacted aside from the mere self-serving testimony of PO2 Congson.

In this connection, it has been repeatedly held by the Court that the practice of police operatives of not bringing to the intended place of arrest the required witnesses, when they could easily do so — and “calling them in” to the place of inventory to “witness” the inventory and photographing of

<sup>50</sup> *People v. Beran*, 724 Phil. 788, 822 (2014).

<sup>51</sup> *People v. Reyes*, 797 Phil. 671, 690 (2016).

<sup>52</sup> *People v. Sumili*, G.R. No. 212160, February 4, 2015.

<sup>53</sup> *Supra* note 51.

<sup>54</sup> *Id.* at 690.

<sup>55</sup> See RA 9165, Sec. 21(1), as amended by RA 10640, Sec. 1.

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.<sup>56</sup>

Thus, the prosecution failed to present any tangible proof to justify the non-compliance with the strict requirements of RA 9165 as amended by RA 10640 and its implementing rules. Moreover, the records of the present case are bereft of evidence showing that the buy-bust team followed the outlined procedure despite its mandatory terms.

Hence, the integrity and evidentiary value of the *corpus delicti* have been compromised, thus necessitating the acquittal of Jimmy.

*The presumption of innocence of the accused vis-à-vis the presumption of regularity in the performance of official duties.*

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.<sup>57</sup> The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.<sup>58</sup>

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.<sup>59</sup> The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.<sup>60</sup> Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.<sup>61</sup>

A review of the facts of the case negates the presumption of regularity in the performance of official duties supposedly in favor of the arresting officers. The procedural lapses committed by the apprehending team resulted in glaring gaps in the chain of custody thereby casting doubt on whether the dangerous drugs allegedly seized from Jimmy were the same drugs brought to the crime laboratory and eventually offered in court as evidence.

Corollary, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. The Court has ruled in *People v. Zheng Bai Hui*<sup>62</sup>

<sup>56</sup> *People v. Musor*, G.R. No. 231843, November 7, 2018, p. 13.

<sup>57</sup> 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

<sup>58</sup> *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

<sup>59</sup> *People v. Mendoza*, supra note 39, at 770.

<sup>60</sup> Id.

<sup>61</sup> See *People v. Catalan*, 699 Phil. 603, 621 (2012).

<sup>62</sup> 393 Phil. 68, 133 (2000).

that it will not presume to set an *a priori* basis on 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.

All told, the prosecution failed to prove the *corpus delicti* of the crimes of sale and possession of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drugs. In other words, the prosecution was not able to overcome the presumption of innocence of Jimmy.

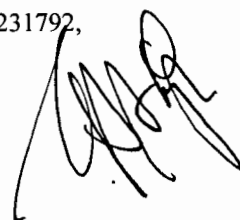
As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the 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,<sup>63</sup> 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.<sup>63</sup>

**WHEREFORE**, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08722, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Jimmy Fulinara y Fabelania** 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.

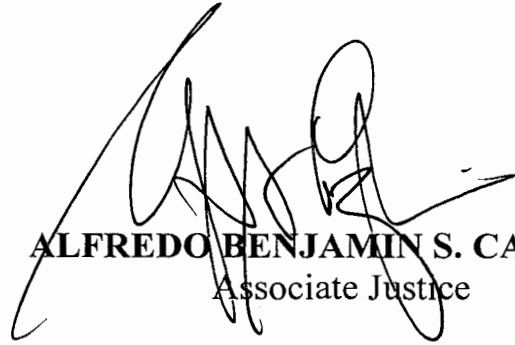
Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

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<sup>63</sup> *People v. Otico*, G.R. No. 231133, June 6, 2018, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 337-338.



**SO ORDERED.**




**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

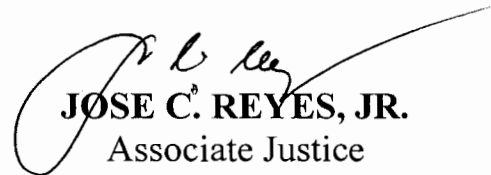
WE CONCUR:



**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.

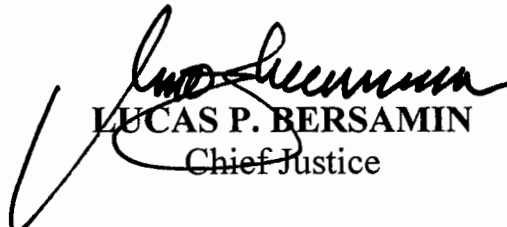


**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division



**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

